

PrezentBox

Service Provider Agreement

Welcome to PrezentBox!

This agreement (the **agreement**) governs your use of the PrezentBox website located on www.prezentbox.com.au (the **Platform**) as a registered service provider (**Service Provider**) and your provision of goods and/or services to people the Platform connects you with.

Before reading this agreement, you will have started registering to become a Service Provider. The details that you have provided us so far, including your business and contact details, as well as the details you will provide after accepting this agreement via the Platform are integrated into and form part of this agreement.

By ticking the acceptance box that follows this agreement, registering an account or otherwise using the Platform, you agree to be bound to this agreement.

The parties to this agreement are set out below:

THE PARTIES

What each party will be called in this agreement	Full name
PrezentBox, we, us or our	Prezent Group Pty Ltd ABN 33 637 288 576
Service Provider, you or yours	Anyone who registers an account as a service provider on the Platform.

PAYMENT DETAILS

Commission	5% (plus GST) for every Approved Redemption.
Payment Period	1 calendar month.
Payment Due Date	1 week following the end of each Payment Period.

Service Provider Agreement

Terms and Conditions

1. **HOW TO READ THIS AGREEMENT**

1.1 MEANING OF CAPITALISED WORDS AND PHRASES

Capitalised words and phrases used in these terms and conditions have the meaning given:

- (a) by the words immediately preceding any bolded and bracketed word(s) or phrase(s); or
- (b) in the definitions in clause 2 of this agreement.

2. **DEFINITIONS**

In this agreement, the following words and phrases have the following meaning:

Term	Meaning
Approved Redemption	Means a Redemption Request that has been approved by the Service Provider.
Business Day	A day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney, New South Wales.
Children	People under the age of 18 years for whom the Parent is a legal parent or guardian and to whom the Service Provider is to provide the Services.
Confidential Information	Information of, or provided by, a party that is by its nature confidential information, is designated as confidential, or that the recipient of the information knows or ought to know is confidential (including all commercial information exchanged between the parties), but does not include information which is, or becomes, without a breach of confidentiality, public knowledge.
Existing Material	Tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever that came into existence prior to the commencement of this agreement.
Fees	The fees set out in an Approved Redemption payable to the Service Provider by a Parent in exchange for the Services.
Intellectual Property Rights	All copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
Laws	Any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Services are performed or received and includes any industry codes of conduct.
Parents	Means a person who registers as a parent on the Platform and requests Services from the Service Provider via Redemption Requests on the Platform.
Personnel	Employees, secondees, agents and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.

Platform	The PresentBox website located at [www.presentbox.com.au].
Redemption Request	The submission through the Platform of a request by a Parent to the Service Provider to provide Services to a Child listed in that request in exchange for Fees. Means:
Services	(a) the goods, services or activities offered by the Service Provider to the Platform users and provided by the Service Provider to the Child and in exchange for Fees specified in a Redemption Request; and (b) if the context permits, any associated activities of the Service Provider on the Platform, such as responding to Redemption Requests.
User	A user of the Platform.

3. **DURATION OF THIS AGREEMENT**

This agreement will commence on the date you register an account on the Platform and continues until it is terminated in accordance with clause 22 (**Term**).

4. **ELIGIBILITY FOR USING THE PLATFORM**

By using the Platform and entering into this agreement, you represent and warrant that you:

- (a) have read and accepted the PresentBox User Agreement (available [here](#)) in your capacity as a User of the Platform;
- (b) are a business with a registered Australian Business Number (ABN);
- (c) have the necessary authority on behalf of your business, company or organisation to enter into this agreement;
- (d) will provide us with the correct business bank account details; and
- (e) at all times that you are using this Platform, you are not subject to any bankruptcy or insolvency.

5. **REDEEMING CONTRIBUTIONS**

5.1 **REDEMPTION REQUESTS**

You acknowledge and agree that:

- (a) Once a Parent has submitted a Redemption Request on the Platform, you will be notified via email and you must approve or reject that Redemption Request within 3 Business Days.
- (b) If you approve the Redemption Request, this will constitute an Approved Redemption, and form a binding contract between you and the Parent. At that point, the Fees in respect of the Approved Redemption will be payable by the Platform and you will be liable to provide the Services listed in the Approved Redemption to the relevant Child.
- (c) If you reject a Redemption Request, you must provide a reason for rejecting the Redemption Request through the comment functionality on the Platform.
- (d) It is your responsibility to resolve the issue with the Parent directly, including but not limited to any issues with verifying their identity.

5.2 **COMMISSION**

- (a) Unless specified otherwise during the registration process, PresentBox is entitled to a commission of 5% (plus GST) for every Approved Redemption (the **Commission**).

- (b) PresentBox reserves the right to change or waive the Commission at any time by updating this agreement. Where we do so, we will provide you with at least 14 days' notice and upon receipt of such notice you have the right to terminate this agreement immediately, without notice to us. Your continued use of the PresentBox Services after such notice, will constitute your consent to the changes.

6. THE SERVICE PROVIDER'S OBLIGATIONS

6.1 PROVISION OF SERVICES

During the Term, the Service Provider must provide the Services in line with this agreement.

6.2 GENERAL

The Service Provider agrees to:

- (a) promptly advise PresentBox of any changes in the Service Provider's circumstances that may affect its obligations under this agreement, including being able to provide the Services; and
- (b) immediately notify PresentBox if there is a change in ownership of the Service Provider's business.

6.3 INFORMATION AND LIAISON

The Service Provider agrees:

- (a) to provide PresentBox with the Service Provider's latest terms of sale and returns policies relating to any goods and/or services it makes available on the Platform and immediately notify PresentBox, if such documents are updated;
- (b) to provide any other documentation, information and/or assistance reasonably required by PresentBox; and
- (c) to liaise with PresentBox as it reasonably requests for the purpose of enabling PresentBox to provide the Platform.

6.4 STANDARD OF SERVICES

The Service Provider must provide, and ensure its Personnel provide, the Services:

- (a) in accordance with PresentBox's reasonable directions;
- (b) in accordance with PresentBox's policies (as notified to the Service Provider from time to time) and the PresentBox;
- (c) in accordance with all applicable Laws, tax obligations and industry standards;
- (d) with due care and skill and in a professional, punctual and diligent manner; and
- (e) in a manner so that the Services are fit for their intended purpose.

6.5 PRICING FOR SERVICES

The Service Provider must:

- (a) set prices for the Services at levels that are competitive in Australia for the kind of goods and/or services being offered by the Service Provider and at no higher rates than the Service Provider would charge its clients outside of the Platform for such goods and/or services; and
- (b) only offer specials that are bona fide.

6.6 APPROVED REDEMPTIONS

The Service Provider agrees to honour all Approved Redemptions by providing the goods and/or services associated with the Approved Redemption to the relevant Child.

6.7 COMMUNICATION WITH USERS AND BYPASSING

The Service Provider agrees:

- (a) not to communicate with another User, or request or entice a User to communicate with the Service Provider, outside the Platform (except in the course of providing the Services); and
- (b) to communicate with the Parent in relation to all matters pertaining to the Services after confirming a Redemption Request (including but not limited to issues, complaints, disputes, refunds or cancellations).

6.8 WARRANTIES AND INSURANCE

By accepting this agreement offering Services via the Platform, you agree and warrant that:

- (a) you are able to fulfil the requirements of any promise you make to a User of the Platform;
- (b) you will provide the relevant goods and/or services to the relevant Child using suitably qualified and trained personnel exercising due care and skill in a professional, efficient, diligent and safe manner, and to the best industry standards; and
- (c) you understand that PresentBox does not hold insurance in respect of any products and/or services you may provide to a Child, including any public liability insurance, and that it is your responsibility to obtain and hold any such insurances.

7. RELATIONSHIP

7.1 RELATIONSHIP WITH PREZENTBOX

The relationship between Service Provider and PresentBox is of a principal and an independent contractor. Nothing in this agreement constitutes or deems the Service Provider to be an employee or agent of PresentBox. Either party must not hold itself out as being entitled to contract or accept payment in the name of or on account of the other party.

7.2 RELATIONSHIP WITH PARENTS

You acknowledge and agree that when a Parent submits a Redemption Request, this constitutes their offer and intention to enter into a contract with you, where you will provide the Parent with the Services in exchange for the Fees. A contract is formed in this respect when you verify and approve a Redemption Request on the Platform confirming that you accept a Parent's offer.

7.3 NO EXCLUSIVITY

- (a) This agreement is not a commitment by PresentBox or the Service Provider to work exclusively with each other regarding referrals of work.
- (b) PresentBox is under no financial obligation to the Service Provider and is not required to refer work to the Service Provider.

8. PAYMENTS

8.1 MONTHLY STATEMENTS

- (a) PresentBox will pay Service Providers on a monthly cycle (**Payment Period**).
- (b) After each Payment Period, PresentBox will send to the Service Provider a statement (**Monthly Statement**), which will set out the amount payable by PresentBox to the Service Provider for that Payment Period, calculated as the Fees payable to the Service Provider for Approved Redemptions in a given Payment Period less PresentBox's Commission for the Payment Period (**Amount Payable**).
- (c) For the purposes of calculating the Amount Payable, it is irrelevant whether the Services in respect of each Approved Redemption have been performed by the Service Provider in a given Payment Period.

8.2 DUE DATE

PresentBox will pay the Amount Payable under each Monthly Statement to the Service Provider one week following each Payment Period (**Payment Due Date**). Payment will be made at the times and to the account specified during the registration process, or otherwise, on the Platform.

8.3 GST

- (a) Unless otherwise indicated, amounts specified on the Platform do not include GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount is payable by the party providing consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with A New Tax System (Goods and Transitional Business Continuity Services Tax) Act 1999 (Cth) (**GST Act**).
- (c) Any capitalised term in this clause which is not defined in this clause has the meaning given to that term in the GST Act.

9. ELIGIBILITY OF CHILD

- (a) Any Services requested via a Redemption Request are for the benefit of the Child listed in that Redemption Request and must be provided by you to that Child.
- (b) To be eligible to enjoy any benefit of the Platform, including by receiving Services from the Service Provider through the Platform, a Child must be under 18 years of age (**Eligible**).
- (c) If you become aware that a Child is not Eligible, and continues to use your Services through the Platform, then you must:
 - (i) notify the Parent that their Child is no longer Eligible for the purposes of using the Platform;
 - (ii) no longer approve any Redemption Requests in respect of that Child; and
 - (iii) immediately notify PresentBox.

10. **BYPASSING**

- (a) Subject to 10(b), you acknowledge and agree that while you are the Service Provider on the Platform, and for one (1) year after you cease using the Platform, you will not, outside the Platform, either directly or indirectly, solicit or attempt to solicit any business, work, income or other benefit, from any Parent whom you came to know about, or with whom you provided services to directly or indirectly, by using the Platform. This provision will apply whether or not the Parent or their representative is still active on the Platform.
- (b) Clause 10(a) does not apply to Parents if all of their Children are no longer Eligible in accordance with clause 9.
- (c) PresentBox may, in its absolute discretion, suspend you from using the Platform or terminate this agreement if it finds or suspects that you have breached or are in breach of this clause 10.

11. **CONFIDENTIALITY**

11.1 CONFIDENTIAL INFORMATION

The parties will not, during, or at any time after, the Term, disclose Confidential Information directly or indirectly to any third party, except:

- (a) with the other party's prior written consent;
- (b) as required by Law; or
- (c) to their Personnel on a need to know basis for the purposes of performing its obligations under this agreement (**Additional Disclosees**).

11.2 BREACH

If either party becomes aware of a suspected or actual breach of clause 11.1 by that party or an Additional Disclosee, that party will immediately notify the other party and take reasonable steps

required to prevent, stop or mitigate the suspected or actual breach. The parties agree that damages may not be a sufficient remedy for a breach of clause 11.1.

11.3 PERMITTED USE

A party may only use the Confidential Information of the other party for the purposes of exercising its rights or performing its obligations under this agreement.

11.4 RETURN

On termination or expiration of this agreement, each party must immediately return to the other party, or (if requested by the other party) destroy, any documents or other Material in its possession or control containing Confidential Information of the other party.

11.5 ADDITIONAL DISCLOSEES

Each party will ensure that Additional Disclosees keep the Confidential Information confidential on the terms provided in this clause 11. Each party will, when requested by the other party, arrange for an Additional Disclosee to execute a document in a form reasonably required by the other party to protect Confidential Information.

12. **INTELLECTUAL PROPERTY**

12.1 EXISTING MATERIAL

Except to the extent otherwise stated in this agreement:

- (a) each party retains ownership of the Intellectual Property Rights in any of its Existing Material or any material it develops following the commencement of this agreement; and
- (b) nothing in this agreement transfers ownership of, or assigns any Intellectual Property Rights in either party's Existing Material to the other party.

12.2 TRADE MARKS

Each party (**First Party**) grants the other party a non-exclusive, non-transferable, royalty-free licence for the Term to use the First Party's name and trade marks notified to the other party from time to time solely for the purposes of making general public statements or displays about the referral relationship between the parties, including in any proposal, promotional material, and press release, provided no commercially sensitive information is used or disclosed.

13. **PLATFORM, PLATFORM USE AND RELATED OBLIGATIONS**

13.1 GENERAL

At all times when using the Platform, you agree:

- (a) not to intimidate, harass, impersonate, stalk, threaten, bully or endanger any other user of the Platform or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment;
- (b) if applicable, to not share your account or access with any other person and that any use of your account or access by any other person is strictly prohibited;
- (c) to immediately notify PresentBox of any unauthorised use of your account, password or email, or any other breach or potential breach of the Platform's security;
- (d) to not use the Platform for any purpose other than for the purpose of making arrangements to provide Services, including by not:
 - (i) using the Platform in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes); and
 - (ii) using the Platform in connection with any commercial or money making or other promotional or marketing endeavours except those that are endorsed herein, or as approved in writing by PresentBox;

- (e) not to act in any way that may harm the reputation of PresentBox or associated or interested parties or do anything at all contrary to the interests of PresentBox or the Platform;
- (f) to not make any automated use of the Platform and not to copy, reproduce, translate, adapt, vary or modify the Platform without the express written consent of PresentBox;
- (g) that PresentBox may change any features of the Platform or services offered through the Platform at any time without notice to you;
- (h) that information given to you through the Platform, by PresentBox or another User including a Parent, is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information; and
- (i) that PresentBox may cancel your account or access at any time, if it considers, in its absolute discretion, that you are in breach or are likely to breach this clause **Error! Reference source not found..**

13.2 THIRD PARTY TERMS

- (a) Any feature that requires PresentBox to acquire goods and services supplied by a third party on behalf of the Gift Giver (including a third party payment service) may be subject to the terms and conditions of that third party (**Third Party Terms**).
- (b) Users agree to familiarise themselves with any Third Party Terms applicable to any such goods and services and, by instructing PresentBox to acquire the goods or services on the User's behalf, the User will be taken to have agreed to such Third Party Terms.

13.3 SECURITY

PresentBox does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with your use of the Platform. You should take your own precautions to ensure that the process you employ to access the Platform does not expose you to the risk of viruses, malicious computer code or other forms of interference.

13.4 SERVICE LIMITATIONS

The Platform is made available to you strictly on an 'as is' basis. Without limitation, you acknowledge and agree that PresentBox cannot and does not represent, warrant or guarantee that:

- (a) the Platform will be free from errors or defects;
- (b) the Platform will be accessible at all times;
- (c) messages sent through the Platform will be delivered promptly, or delivered at all;
- (b) information you receive or supply through the Platform will be secure or confidential; or
- (c) any information provided through the Platform is accurate or true.

13.5 INTELLECTUAL PROPERTY IN THE PLATFORM

- (a) PresentBox retains ownership of or provides you with a sublicense to (as the case may be) all materials developed or provided (or both, as the case may be) in connection with the Platform (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software (**Service Content**) and reserves all rights in any Intellectual Property Rights owned or licensed by it not expressly granted to you.
- (b) You may make a temporary electronic copy of all or part of the Service Content for the sole purpose of viewing it. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish the Service Content without prior written consent from PresentBox or as permitted by law.

14. POSTED MATERIALS ON THE PLATFORM

This clause 14 applies if you upload any material, including your Existing Material, onto the Platform.

14.1 WARRANTIES

By providing or posting any information, materials or other content on the Platform (**Posted Material**), you represent and warrant that:

- (a) you are authorised to provide the Posted Material (including by being authorised to provide any services that you represent you provide);
- (b) the Posted Material is accurate and true at the time it is provided;
- (c) the Posted Material is free from any harmful, discriminatory, defamatory or maliciously false implications and does not contain any offensive or explicit material;
- (d) the Posted Material is not "passing off" of any product or service and does not constitute unfair competition;
- (e) the Posted Material does not infringe any Intellectual Property Rights, including copyright, trademarks, business names, patents, confidential information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world;
- (f) the Posted Material does not contain any viruses or other harmful code, or otherwise compromise the security or integrity of the Platform or any network or system; and
- (g) the Posted Material does not breach or infringe any applicable laws.

14.2 LICENCE

- (a) You grant to PresentBox a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify, reproduce and adapt any Intellectual Property Rights in any Posted Material in order for PresentBox to use, exploit or otherwise enjoy the benefit of such Posted Material.
- (b) If it is determined that you retain moral rights (including rights of attribution or integrity) in any Posted Material, you forever release PresentBox from any and all claims that you could assert against PresentBox by virtue of any such moral rights.
- (c) You indemnify PresentBox against all damages, losses, costs and expenses incurred by PresentBox arising out of any third party claim that your Posted Material infringes any third party's Intellectual Property Rights.

14.3 REMOVAL

- (a) PresentBox acts as a passive conduit for the online distribution of Posted Material and has no obligation to screen Posted Material in advance of it being posted. However, PresentBox may, in its absolute discretion, review and remove any Posted Material (including links to you, your profile or listings you have posted on the Platform) at any time without giving any explanation or justification for removing the Posted Material.
- (b) You agree that you are responsible for keeping and maintaining records of Posted Material.

15. TAX

You are responsible for the collection and remission of all taxes associated with the services you provide or receive or any transactions through your use of the Platform, and PresentBox will not be held accountable in relation to any transactions between Gift Givers, Parents and Service Providers where tax related misconduct has occurred.

16. RECORD / AUDIT

To the extent permitted by law, PresentBox reserves the right to keep all records of any and all transactions and communications made through this Platform between you and other Users (including conversations, user posts, job request bids, comments, feedback, cookies, and I.P. address information) for administration purposes and also holds the right to produce these records in the event of any legal dispute involving PresentBox.

17. **DISCLAIMERS & LIABILITY**

- (a) **(Introduction Service)** PresentBox is a medium that facilitates the introduction of gift givers, Parents, Children and Service Providers. PresentBox simply collects a Commission from the Service Providers in consideration for providing this introduction service and does not have any obligations or liabilities to, and is not a party to any contract between gift givers, Parents, Children and Service Providers in relation to the Services resulting from the introduction.
- (b) **(Limitation of liability)** To the maximum extent permitted by applicable law, the maximum aggregate liability of PresentBox to the Service Provider in respect of loss or damage sustained by the Service Provider under or in connection with this agreement is limited to the total Fees paid to the Service Provider by the PresentBox in the 6 months preceding the first event giving rise to the relevant liability.
- (c) **(Indemnity)** The Service Provider agrees at all times to indemnify and hold harmless PresentBox and its officers, employees and agents ("**those indemnified**") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the Service Provider and the Service Provider's officers', employees' or agents':
 - (i) breach of any term of this agreement; or
 - (ii) negligent, fraudulent or criminal act or omission.
- (d) **(Consequential loss)** PresentBox will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by PresentBox, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

18. **SECURITY**

PresentBox does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with your use of the Platform. You should take your own precautions to ensure that the process you employ to access the Platform does not expose you to the risk of viruses, malicious computer code or other forms of interference.

19. **THIRD PARTY CONTENT**

The Platform may contain text, images, data and other content provided by a third party and displayed on the Platform (**Third Party Content**). PresentBox accepts no responsibility for Third Party Content and makes no representation, warranty or guarantee about the quality, suitability, accuracy, reliability, currency or completeness of Third Party Content.

20. **PRIVACY**

You agree to be bound by the clauses outlined in PresentBox's Privacy Policy, which can be accessed [here](#).

21. **DISPUTE RESOLUTION**

- (a) Once you approve a Redemption Request, all complaints, issues, refunds and cancellations relating to the Services linked to that Redemption Request must be dealt with directly by you and the relevant Parent.
- (e) If any issue or problem relating to the Platform remains unresolved, you must report it to PresentBox via help@presentbox.com.au. We will assess the complaint and attempt to quickly and satisfactorily resolve it.

- (f) Any costs you incur in relation to a complaint or dispute with a Parent will be your responsibility.
- (g) PresentBox has the option to appoint an independent mediator or arbitrator if needed. The cost of any mediator or arbitrator must be shared equally between each of the parties to the dispute.
- (h) PresentBox reserves the right to hold funds in relation to a dispute until the dispute is resolved by the relevant parties or by a mediator or arbitrator.
- (i) If you have a dispute with PresentBox, you agree to notify us first and enter into discussion, mediation or arbitration with us for a minimum of a 120-day period before pursuing any other proceedings.
- (j) Notwithstanding any other provision of this clause 21, PresentBox may at any time cancel your Account or discontinue your use of the Platform.

22. TERMINATION

22.1 TERMINATION RIGHTS

- (a) PresentBox may terminate this agreement at any time by providing one (1) month's written notice to the Service Provider.
- (b) The Service Provider may terminate this agreement at any time by providing three (3) month's written notice to PresentBox.
- (c) Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party:
 - (i) is in breach of this agreement and either:
 - A. fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - B. that breach is not capable of remedy; or
 - (ii) ceases, suspends or threatens to cease or suspend to conduct its business; or
 - (iii) becomes subject to any form of insolvency or bankruptcy administration.

22.2 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.

22.3 CONSEQUENCES OF TERMINATION

Upon termination of this agreement:

- (a) PresentBox will pay all amounts owed to the Service Provider as at the date of termination date;
- (b) the Service Provider must not accept any further Redemption Requests;
- (c) the Service Provider must fulfil all of its obligations to Parents for the Services listed in any Approved Redemptions; and
- (d) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its possession or control containing Confidential Information of the other party.

22.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

23. **FORCE MAJEURE**

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement (including an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 23(a), the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of the Affected Party;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

24. **NOTICES**

- (a) A notice or other communication to a party under this agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent; or
 - (ii) when replied to by the other party, whichever is earlier.

25. **GENERAL**

25.1 **GOVERNING LAW AND JURISDICTION**

This agreement is governed by the law applying in the New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

25.2 **BUSINESS DAYS**

If the day on which any act is to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately following Business Day except where this agreement expressly specifies otherwise.

25.3 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

25.4 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

25.5 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

25.6 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

25.7 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

25.8 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

25.9 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

25.10 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

25.11 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or "dollar" is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;

- (j) **(includes)** the word "includes" and similar words in any form is not a word of limitation;
and
- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.