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# Prizetech Application and Equipment Use Agreement

Last updated: 23 February 2018





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## Contents

1.	General	2
2.	Licence	2
3.	Restrictions	3
4.	Equipment	3
5.	PPSA	4
6.	Intellectual Property	4
7.	Modifications to a Prizetech Product	4
8.	User Testing	5
9.	Updates to Prizetech Products	5
10.	Support Services	5
11.	Trade Promotion Compliance Services	6
12.	Third-Party Services	7
13.	Term and Termination	7
14.	Indemnification	8
15.	No Warranties	8
16.	Limitation of Liability	9
17.	Consumer Guarantees	9
18.	Severability	10
19.	Waiver	10
20.	Updates to this Agreement	10
21.	Dispute resolution	10
22.	Governing Law	11
23.	Contact Information	11
24.	Entire Agreement	11





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## 1. General

Please read this Application and Equipment Use Agreement ("**Agreement**") carefully before accessing or using our Application and Equipment.

This Agreement applies to the following Prizetech Products:

- a) the Safecrack System and Equipment;
- b) the Electronic Spinning Wheel;
- c) Laughing Clowns;
- d) 99 Bottles of Beer;
- e) Scan to Win; and
- f) Electronic Draw Till You Win.

A Prizetech Product may consist of both software ("**Application**") and physical equipment and products ("**Equipment**"). Equipment will be specified in the manual for each Prizetech Product.

By accessing or using Prizetech Products, you agree to be bound by the terms and conditions of this Agreement.

This Agreement is a legal agreement between you (either an individual or a single entity) and Prizetech Pty Ltd and it governs your use of the Prizetech Product/s made available to you by Prizetech Pty Ltd. The results from the use of a Prizetech Product are dependent on correct use without interference, including hacking or reverse engineering. Draw results from incorrect use or after or resulting from interference are void and should not be relied upon.

## 2. Licence

Prizetech Pty Ltd grants you a revocable, non-exclusive, non-transferable, limited licence to access and use the Application solely for use in accordance with this Agreement.

Prizetech Pty Ltd grants you this licence in consideration for the fee paid by you before accessing or using the Application. The fee payable for use of the Application will be provided in the quote that has been sent to you.

## 3. Restrictions

You agree not to, and you will not permit others to:

- a) licence, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Application or Equipment or make the Application or Equipment available to any third party;
- b) modify, make derivative works of, disassemble, decrypt, reverse compile or reverse engineer any part of the Application or Equipment; or





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- c) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Prizetech Pty Ltd or its affiliates, partners, suppliers or the licensors of the Application or Equipment.

## 4. Equipment

Prizetech Pty Ltd is and will remain the owner of all Equipment. You must not create any interest in the Equipment.

Prizetech Pty Ltd will provide the Equipment to you for the sole purpose of access and use of the Prizetech Product.

During the time that the Equipment is provided to you, you must ensure that it is securely and physically located at the draw location or on your premises, or in transit between either, and that it can be easily removed for return to Prizetech Pty Ltd.

Equipment must be used in accordance with all instructions provided by Prizetech Pty Ltd. You must ensure that Equipment is kept securely at all times and is not damaged when in use or storage. You will be solely responsible for any damage or loss to Equipment while in your possession. When using computing Equipment, you must only access the Application and must not access any third-party websites.

Equipment must be returned on the date, and using the method, specified in instructions given to you by Prizetech Pty Ltd.

Failure to return Equipment by the due date will result in further fees being payable. The further fee payable for failure to return the Equipment will be equal to Prizetech Pty Ltd's loss which may include loss of revenue, additional return costs, and the cost of the Prizetech Product.

## 5. PPSA

The *Personal Property Securities Act 2009* (Cth) (PPSA) does not apply to the use of the Equipment. Nonetheless, Equipment remains at all times the property of Prizetech.

At the end of the agreement the Equipment must be returned to Prizetech and remains the property of Prizetech at all relevant times.

## 6. Intellectual Property

Without limitation all copyright, patents, trademarks, trade secrets and other intellectual property rights in Prizetech Products are, and will remain, the sole and exclusive property of Prizetech Pty Ltd.





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## 7. Modifications to a Prizetech Product

Prizetech Pty Ltd reserves the right to modify, suspend or discontinue a Prizetech Product on a temporary or permanent basis. Reasonable notice and arrangements will be provided of any such modification, suspension, or discontinuance if they impact your use of a Prizetech Product.

## 8. User Testing

It is your responsibility to test the functionality of Prizetech Product prior to use and to ensure that it is working and that you are able to competently operate the Prizetech Product ("**User Testing**"). Such User Testing must occur during normal business hours.

You must respond to the email sent to you by Prizetech Pty Ltd confirming that you have conducted User Testing. You must contact Prizetech Pty Ltd if you identify any issues during User Testing and cease using the Prizetech Product until you have had a response.

In no event will Prizetech Pty Ltd be liable for loss or required rescheduling if you fail to conduct User Testing in accordance with this clause.

## 9. Updates to Prizetech Products

Prizetech Pty Ltd may from time to time provide enhancements or improvements to the features/functionality of a Prizetech Product, which may include patches, bug fixes, updates, upgrades and other modifications ("**Updates**").

Updates may modify or delete certain features and/or functionalities of a Prizetech Product.

## 10. Support Services

Prizetech Pty Ltd will arrange telephone support, in the form of consultations, assistance, and advice on the use and maintenance of the Prizetech Product ("**Support Services**").

Support Services will be available from 8:30am to 5pm on a business day, as defined in Victoria, Australia.

Prizetech Pty Ltd will make reasonable attempts to resolve any issue you identify within 48 hours. Should your draw not be able to be completed on the scheduled date and time, Prizetech Pty Ltd will arrange a further date and time within the following fortnight.

Should a draw be delayed as a result of any technical issue, Prizetech Pty Ltd's sole responsibility will be to reschedule the draw and in no event will Prizetech Pty Ltd be liable to pay any damages or costs for such delay. If a further draw cannot be arranged within a fortnight due to ongoing technical issues, Prizetech Pty Ltd will arrange for an alternative method to determine winners and that method must be used in place of the electronic system.





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You may access Support Services by calling the support number provided to you by Prizetech Pty Ltd.

Support Services will be provided by a third-party out of business hours. Support Services shall be provided in consideration for the payment of a fee calculated on the basis of the length of time taken to provide Support Services in increments of fifteen minutes at a rate of \$50 (Exc GST) per 15-minute block.

An invoice will be raised for any Support Services provided at the end of each week and must be paid within 5 business days. No fee will be payable for Support Services provided that relate specifically to a fault with a Prizetech Product.

## 11. Trade Promotion Compliance Services

You understand that trade promotions are heavily regulated and that you have sole responsibility for ensuring that you comply with all applicable laws in the promotion and conduct of any trade promotion. Prizetech Pty Ltd may arrange for competition terms and conditions and trade promotion permits to support your use of a Prizetech Product on request ("**Trade Promotion Compliance Services**"). Trade Promotional Compliance Services will be provided by a third-party. You are under no obligations to use any third-party recommended to you by Prizetech Pty Ltd.

It will be your responsibility to provide, and ensure the accuracy of, information needed for Trade Promotion Compliance Services. If trade promotion permits are required for the activity you are conducting in connection with the Prizetech Product, you will be responsible for complying with your obligations under those trade promotion permits, including ensuring that any draws conducted are appropriately supervised by an independent scrutineer where required.

## 12. Third-Party Services

The Prizetech Product may display, include or make available third-party content (including data, information, and other products services) or provide links to third-party websites or services ("**Third Party Services**").

You acknowledge and agree that Prizetech Pty Ltd is not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Prizetech Pty Ltd does not assume and shall not have any liability or responsibility to you or any other person or entity for any Third-Party Services.

Third-Party Services and links are provided solely as a convenience to you and your access and use them are entirely at your own risk and subject to such third parties' terms and conditions.

## 13. Term and Termination

This Agreement shall remain in effect until terminated in accordance with this clause.

This Agreement will terminate immediately, without prior notice from Prizetech Pty Ltd, in the event that you fail to comply with any provision of this Agreement.





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Upon termination of this Agreement, you shall cease all use of the Prizetech Product and immediately return the Equipment.

Termination of this Agreement will not limit any of Prizetech Pty Ltd's rights or remedies at law or in equity in case of breach by you.

## 14. Indemnification

To the maximum extent permitted by law, you agree to indemnify and hold Prizetech Pty Ltd and its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (if any) harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of your:

- a) use of the Prizetech Product;
- b) violation of this Agreement or any law or regulation;
- c) violation of any right of a third-party; or
- d) your failure to comply with applicable laws including, without limitation, laws regulating trade promotion lotteries.

## 15. No Warranties

To the maximum extent permitted by law, the Prizetech Product is provided to you "AS IS" and "AS AVAILABLE". To the maximum extent permitted by law, Prizetech Pty Ltd, on its own behalf and on behalf of its affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, or otherwise, with respect to the Prizetech Product. Without limitation to the foregoing, Prizetech Pty Ltd provides no warranty or undertaking, and makes no representation of any kind that the Prizetech Product will achieve any intended sales result.

To the maximum extent permitted by law, Prizetech Pty Ltd makes any representation or warranty of any kind, express or implied: (i) as to the operation or availability of the Prizetech Product, or the information, content, and materials or products included thereon; (ii) that the Prizetech Product will be uninterrupted or error-free; (iii) as to the accuracy, reliability, or currency of any information or content provided through the Prizetech Product; or (iv) that the Prizetech Product, its servers, the content, or e-mails sent from or on behalf of Prizetech Pty Ltd are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

The limitations on warranties provided are subject to and do not seek to exclude the Non-Excludable Guarantees, to the extent that they are applicable.

## 16. Limitation of Liability

Notwithstanding any damages that you might incur, the entire liability of Prizetech Pty Ltd and any of its suppliers under any provision of this Agreement and your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by you for the Prizetech Product.







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To the maximum extent permitted by applicable law, in no event shall Prizetech Pty Ltd, or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, for loss of data or other information, for business interruption, for personal injury, for loss of privacy arising out of or in any way related to the use of or inability to use the Prizetech Product, third-party software and/or third-party hardware used with the Prizetech Product, or otherwise in connection with any provision of this Agreement), even if Prizetech Pty Ltd or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

## 17. Consumer Guarantees

Nothing in this Agreement is to be read to limit, exclude or modify or purports to limit, exclude or modify the statutory consumer guarantees as provided under the Competition and Consumer Act 2010 (Cth), as well as any other implied warranties under the ASIC Act or similar consumer protection laws in the State and Territories of Australia ("**Non-Excludable Guarantees**").

All terms of this Agreement are to be read subject to the Non-Excludable Guarantees, to the extent that they are applicable.

## 18. Severability

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be amended and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## 19. Waiver

Except as provided, the failure to exercise a right or to require performance of an obligation under this Agreement will not affect a party's ability to exercise such right or require such performance at any time thereafter nor will be the waiver of a breach constitute waiver of any subsequent breach.

## 20. Updates to this Agreement

Prizetech Pty Ltd reserves the right to modify or replace this Agreement at any time. If a revision is material we will provide at least 15 days' notice prior to any new terms taking effect.

By continuing to access or use the Prizetech Product after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Prizetech Product.

## 21. Dispute resolution

If a dispute arises between the parties in relation to this Agreement, the dispute must be dealt with in accordance with this clause.

Any party claiming that a dispute exists must notify the other party to the dispute (Second Party) in writing of the nature of the dispute.







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If the dispute is not resolved by agreement within five working days of the Second Party receiving the notice referred to above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five working days or failing agreement within that period, as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited. The costs of the mediator shall be borne equally between the disputing parties. The chosen mediator shall determine the procedures for the mediation. The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.

If the parties have not mediated a resolution of the dispute within 10 working days of the selection of a mediator, neither party shall be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it thinks fit in relation to the dispute.

## **22. Governing Law**

The laws of Victoria, Australia, excluding its conflicts of law rules, shall govern this Agreement and your use of the Prizetech Product. Your use of the Prizetech Product may also be subject to other local, state, national, or international laws.

## **23. Contact Information**

If you have any questions about this Agreement, please contact us.

## **24. Entire Agreement**

The Agreement constitutes the entire agreement between you and Prizetech Pty Ltd regarding your use of the Prizetech Product and supersedes all prior and contemporaneous written or oral agreements between you and Prizetech Pty Ltd or any agent of Prizetech Pty Ltd.

You may be subject to additional terms and conditions that apply when you use or purchase other Prizetech Pty Ltd's services, which Prizetech Pty Ltd will provide to you at the time of such use or purchase.

