

Fortitude agrees to provide, and the Client agrees to accept, the Services on the terms and conditions set out in these Terms of Service and the Engagement Letter.

1 Definitions and interpretation

1.1 Dictionary

In these Terms of Service, unless the context otherwise requires, the following words and phrases have the following meanings:

Accounting Services	means an engagement to compile financial information in which Fortitude applies professional expertise in accounting and financial reporting to assist the Client in the preparation and presentation of financial information in accordance with an applicable financial reporting framework, without undertaking to express any assurance advice or opinion on the information. For the avoidance of doubt, the scope of the Accounting Services will be stipulated in the Engagement Letter and may include the preparation of financial statements or compilation of other financial information.
Agreement	means these Terms of Service together with the Engagement Letter, subject to any variation thereto agreed between the parties from time to time.
ASIC	means the Australian Securities and Investments Commission.
ATO	means the Australian Taxation Office.
Business Day	means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in section 9 of the Corporations Act) are open for general banking business in the capital city of the State.
Claim	means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Client	means the person or entity that is stated in the Engagement Letter as engaging Fortitude to provide the Services.
Commencement Date	means the date that is stated as the commencement date in the Engagement Letter.
Confidential Information	means: (a) any Personal Information of the Discloser; (b) any information related to Fortitude's fee structure, which Fortitude provides as Discloser and the Client receives as the Recipient; or



- (c) any information of a technical, business or financial nature or which is taken by any provision of these Terms of Service to be Confidential Information, or which the Discloser makes the Recipient aware is considered by the Discloser to be confidential and proprietary in nature.

Consulting Services	means the consulting services provided by Fortitude to the Client as stipulated in the Engagement Letter.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Discloser	means, in relation to Confidential Information, the party giving information.
Engagement Letter	means the engagement letter provided along with these Terms of Service by Fortitude to the Client.
Fees	means the fees payable by the Client to Fortitude, together with Fortitude's reasonable out of pocket expenses and disbursements incurred in connection with the Services, as stipulated in the Engagement Letter.
Fortitude	means Fortitude Business Consulting Pty Ltd ACN 167 470 662.
Fortitude's Personnel	means Fortitude's employees, directors, principals, partners or other personnel of Fortitude who perform the Services.
GST	has the meaning given to that term in the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Information	has the meaning given to that term in clause 4.2(a).
Insolvent	means, in relation to a party, where that party: (a) is: (i) insolvent as that term is defined in section 9 of the Corporations Act;

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- (ii) the subject of an event described in sections 459C(2)(a) to (f) or section 585 of the Corporations Act (or the person makes a statement from which another party to the Agreement may reasonably deduce the person is so subject);
- (iii) an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in section 9 of the Corporations Act; or
- (iv) dissolved (other than to carry out an amalgamation or reconstruction while solvent);
- (b) is otherwise unable to pay its debts as and when they become due and payable;
- (c) being a natural person, commits or suffers an act of bankruptcy; or
- (d) takes or suffers a similar consequence in debt to those in paragraphs (a) to (c) under the law of any jurisdiction.

Intellectual Property

means all intellectual property used, produced, developed or otherwise authorised by Fortitude including any title, interest or right in or in relation to any Confidential Information, copyright, patent, trademarks, design rights, registered business name or other intellectual property rights.

Law Institute of Victoria

means the Law Institute of Victoria Limited ACN 075 475 731, currently located at Level 13, 140 William Street, Melbourne VIC 3000, or its successor entity.

Loss

means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Personal Information

means information or an opinion, whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion, or any combination of them.

Recipient

means, in relation to Confidential Information, the party receiving information.

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Services	means the Accounting Services, Consulting Services and / or Taxation Services stipulated in the Engagement Letter, and as otherwise agreed by the parties in writing from time to time.
State	means the state of Victoria in the Commonwealth of Australia.
Taxation Services	means any professional activity undertaken by Fortitude expressly scoped and addressed in the relevant engagement letter relating to the Client's tax liabilities or entitlements or satisfying the Client's taxation obligations under a law relating to tax, provided under circumstances where the Client can reasonably expect to rely on the services of Fortitude. This includes (e) Preparation of a regulatory return, notice, statement, application or other document for lodgement with a revenue authority, and responding on behalf of the Client to the revenue authority's request for further information; (f) Preparation of tax calculations to be used as the basis for the accounting entries in the financial statements; (g) Provision of tax planning and other advisory services; and (h) Assisting the Client in the resolution of tax disputed, review and tax audits. For the avoidance of doubt, the scope of the Taxation Services will be stipulated in the Engagement Letter.
Term	means the period commencing from the Commencement Date and ending on the Termination Date.
Termination Date	means the date that the Agreement is terminated in accordance with clause 12.
Terms of Service	means these terms of service provided along with the Engagement Letter by Fortitude to the Client.

1.2 Rules for interpretation

In these Terms of Service, unless the context otherwise requires:

- (a) (plural) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) (grammatical form) another grammatical form of a defined word or expression has a corresponding meaning;

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- (c) (cross references) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these Terms, and a reference to these Terms of Service includes any schedule or annexure;
- (d) (amendment to documents) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) (currency) a reference to dollar or \$ is to Australian currency;
- (f) (time) a reference to time is to eastern standard, Australia time;
- (g) (successors) a reference to a party is to a party to these Terms, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) (individuals and entities) a reference to a person includes a natural person, partnership, body corporate, trust, association, government authority or local authority or agency or other entity;
- (i) (amendments to law) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) (no limitation by examples) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) (no contra proferentem) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms of Service or any part of it; and
- (l) (time for performance) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 Term

The Agreement commences:

- (a) on the Commencement Date; or
- (b) if no Commencement Date is specified in the Engagement Letter, on the earlier of:
 - (i) the date that the Client accepts the terms of the Agreement; or
 - (ii) the date on which the Client instructs Fortitude to commence providing the relevant Services.

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3 Acceptance of Terms

- (a) The offer by Fortitude to provide the Services to the Client in accordance with the Agreement will lapse 14 calendar days after the Engagement Letter is first provided to the Client. If the Client fails to accept the Agreement within this timeframe:
 - (i) the offer contained in the Agreement will cease to apply, subject to any notice from Fortitude to the contrary; and
 - (ii) Fortitude may revise the proposed terms of the Agreement.
- (b) By signing the Engagement Letter, the Client acknowledges and agrees that it has:
 - (i) read, understood and accepted the Agreement;
 - (ii) has been provided with the reasonable opportunity to seek independent legal advice in relation to its rights and obligations under the Agreement; and
 - (iii) in relation to the Third Party Advisors (where relevant), it has been provided with sufficient details regarding the services to be provided by the Third Party Advisor to allow it to make an informed decision, and hereby consents to Fortitude's use of the Third Party Advisor.

4 Obligations

4.1 Fortitude's obligations

During the Term, Fortitude agrees to:

- (a) use reasonable commercial efforts to provide the Services in an efficient and timely manner using all reasonable skill and expertise;
- (b) use its best endeavours to provide the Services in accordance with the timeframes set out in the Engagement Letter or any other timeframe notified by Fortitude to the Client from time to time, which for the avoidance of doubt, are not guaranteed and are only indicative dates intended for approximate planning and estimating purposes;
- (c) conduct the scoped engagement in accordance with the scope of works in the Engagement Letter.

4.2 Client's obligations

During the Term, the Client agrees:

- (a) to provide Fortitude, in a timely manner, with all information, documentation, and accounting and taxation records necessary to facilitate the provision of

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the Services by Fortitude and such other information and documentation reasonably requested by Fortitude from time to time (**Information**);

- (b) that it is responsible for providing the most current, complete and accurate Information to Fortitude and acknowledges that Fortitude accepts the Information as supplied without investigation or verification;
- (c) to indemnify Fortitude immediately upon demand against any Claims made against Fortitude in connection with Fortitude's use of the Information in connection with the provision of the Services but only insofar as such Claim relates to the currency, completeness or accuracy of the Information;
- (d) to indemnify Fortitude immediately upon demand against any Claims made against Fortitude in connection with the services to be provided by the Third Party Advisors (if relevant) but only insofar as the Client's acts or omissions contributed to such Claim;
- (e) to familiarise itself with Division 7A and Part IVA of the *Income Tax Assessment Act 1936* (Cth);
- (f) to provide Fortitude with full, accurate and honest instructions relevant to the Services within a reasonable timeframe;
- (g) to, in a timely manner, do all things that Fortitude reasonably requests in connection with the Services and not interfere with Fortitude's provision of the Services;
- (h) to promptly give written notice to Fortitude if it becomes aware of any matter which may change the scope of the Services; and
- (i) to promptly give written notice to Fortitude if the Client engages another consultant or advisor to provide the Services without Fortitude's prior knowledge and consent.

4.3 Excluded Services

- (a) The Services do not include any financial services advice under an Australian Financial Services Licence (or AFSL) whether explicit or implied. The Client should seek financial services advice from an appropriate licensed adviser, as Fortitude will not provide such services.
- (b) Fortitude will not express an audit opinion or a review conclusion on whether the financial statements are prepared in accordance with the basis of accounting the Client has specified.
- (c) The Client acknowledges that any verbal advice will be of a general nature and may not take into account all the facts and identify all relevant issues.

4.4 Quality control

- (a) You are advised that Fortitude's system of quality control has been established and maintained in accordance with the relevant standard of the Accounting Professional & Ethical Standards Board (**APESB**). As a result, Fortitude's files may be subject to review as part of the quality control review

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program of CPA Australia which monitors compliance with professional standards by its members. By accepting Fortitude's terms of engagement you acknowledge that, if requested by CPA Australia, your files will be made available under this program.

- (b) The Services cannot be relied upon to disclose irregularities including fraud, other illegal acts and errors that may exist. However, Fortitude may, as part of its responsibilities as a member of CPA Australia in Public Practice, take steps and actions as set out in section 360 of the Code (APES 110), "Responding to Non-Compliance with Laws and Regulations". These actions include:
 - (i) during the course of our engagement, if Fortitude identifies or suspects that non-compliance with laws or regulations has occurred or may occur, which may have a direct effect on material amounts or disclosures in the financial statements or compliance with which may be fundamental to the operating aspects of the Client's business, to the Client's ability to continue its business or to avoid material penalty, Fortitude will discuss the matter with the appropriate level of management, those charged with governance or the internal auditor, as appropriate, to enable the Client to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance or deter the commission of the non-compliance where it has not yet occurred; and
 - (ii) Fortitude will consider whether to communicate the non-compliance or suspected non-compliance with the Client's external auditor (if one is in use), unless prohibited by law or regulation. Fortitude will also consider, based on materiality and / or significance of the matter, whether further action is needed in the public interest. Further action may include disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so or withdrawing from the engagement and the professional relationship where permitted by law or regulation. Where appropriate Fortitude will inform the Client of our intention to disclose the matter to an appropriate authority before disclosing the matter. However, if Fortitude have reason to believe that the actual or intended conduct would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public, Fortitude may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation.

4.5 Assistance with financial statements

For any Services regarding the preparation of financial statements (including special purpose or general purpose financial statements) (**Compilation Engagement**):

- (a) the Compilation Engagement to be performed is conducted on the basis that the Client acknowledges and understands that Fortitude's role is to assist the

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Client in the preparation and presentation of the financial statements in accordance with the financial reporting framework the Client has adopted for the financial statements;

- (b) accordingly, the Client has the following overall responsibilities that are fundamental to Fortitude's undertaking the Compilation Engagement in accordance with APES 315:
 - (i) responsibility for the form and content of the financial information in accordance with an applicable financial reporting framework that is acceptable in view of the intended use of the financial statements and the intended user;
 - (ii) responsibility for the reliability, accuracy and completeness of the accounting records and disclosures you provide to us for the purpose of compiling the financial statement; and
 - (iii) responsibility for the judgements needed in the preparation and presentation of the financial statements, including those for which we may provide assistance in the course of the compilation engagement;
- (c) the Client is required to arrange for reasonable access by Fortitude to relevant individuals and documents and will be responsible for both the completeness and accuracy of the information supplied to Fortitude; and
- (d) the Client is also responsible for identifying and addressing any non-compliance in relation to the Client and its controlled entities.

4.6 Assistance with taxation returns

For any Services which relate to the attendance to regulatory requirements, the preparation of taxation returns or similar matters:

- (a) the Client is responsible for the accuracy and completeness of the particulars and information provided in relation to taxation services and this responsibility rests with the Client;
- (b) any advice provided to the Client is only an opinion based on Fortitude's knowledge of the Client's particular circumstances;
- (c) the Client has obligations under self assessment to keep full and proper records in order to facilitate the preparation of accurate returns. It is the taxpayer's responsibility to keep those records for five years;
- (d) the preparation of the Client's tax return(s) does not constitute or purport to represent an internal audit or prudential review of the Client's taxation obligations and documentation by Fortitude, unless specifically engaged, scoped and agreed to by Fortitude in writing;
- (e) the Client must:
 - (i) carefully review the tax returns and regulatory returns to ensure that all information has been provided and can be substantiated; and

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- (ii) sign a declaration to each tax return or regulatory return to this effect prior to Fortitude lodging the documents on the Client's behalf;
- (f) any late lodgement penalties or interest as a result of late lodgement of tax returns or late payment of tax assessments or other ATO debts imposed by the ATO are the Client's sole responsibility;
- (g) Fortitude's advice, including calculations in preparing a tax return, are based on current relevant law at the date the advice is given. Unless special arrangements are made, advice will not be updated after it is provided to reflect subsequent changes to legislation, case law, rulings and determinations, or other practices issued by relevant agencies such as the ATO, Australian Prudential Regulation Authority, ASIC and others; and
- (h) Fortitude is unable to give any guarantee that interpretation will be sustained in the event of a challenge by the relevant authority.

4.7 Tax audit or review

- (a) The Client must maintain all source documentation relevant to any return with the ATO as this will be requested by the ATO in the case of an audit or review.
- (b) In respect of individual income tax returns, each person must have the necessary documents to comply with the substantiation provisions of the Income Tax Assessment Act.
- (c) Fortitude will not check that the requirements of the substantiation provisions have been satisfied unless otherwise agreed in writing. Fortitude may charge additional fees to undertake such checks.

4.8 Other requirements

- (a) If Fortitude are assisting the Client in relation to JobKeeper scheme in any way, the following terms apply:
 - (i) by providing Fortitude with budgets and forecasts as required for JobKeeper monthly reporting to the ATO, it is the Client's responsibility to ensure validity and accuracy of such figures. These figures will be supplied to the ATO and are not audited or reviewed by Fortitude.
 - (ii) data residing on Xero (for which we have access on your behalf) will also be used by Fortitude as part of ongoing JobKeeper disclosure requirements. It is your responsibility to ensure that your Xero ledger is maintained regularly.
- (b) Fortitude will not advise on employment law requirements and wage rates. This is the responsibility of the Client.

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5 Agent

- (a) Subject to clause 6.2, Fortitude may in its absolute discretion at the Client's request, but is not obliged to, agree to act as the Client's agent under a duly executed power of attorney to implement any advice or recommendation made by Fortitude in respect of the Services.
- (b) Fortitude may require the Client to execute additional documents before agreeing to act as the Client's agent.

6 Third parties

6.1 Contractors

Subject to clause 6.2, the Client consents to Fortitude engaging contractors to provide all or part of the Services, and any reference to Fortitude's Personnel includes any such contractors. Fortitude will remain liable to the Client for any Services that are provided by its contractors.

6.2 Third Party Advisors

- (a) In providing the Services, it may be necessary for Fortitude to engage third party specialist advisors, such as independent valuers and solicitors (**Third Party Advisors**).
- (b) Fortitude will use reasonable efforts to consult with the Client about the terms of engagements of any Third Party Advisors prior to incurring any expenses on the Client's behalf.
- (c) The Client acknowledges and agrees that Fortitude will not be liable for the services provided by Third Party Advisors or for any Claims or Loss in connection with work performed by or fees incurred with the Third Party Advisors. Fortitude will merely act as the Client's agent in engaging those relevant Third Party Advisors on behalf of the Client.
- (d) The Client expressly authorises Fortitude to engage Third Party Advisors as required in accordance with this clause 6.2.

6.3 ASIC Agency Requirements (Corporate Entities)

- (a) Fortitude offers the Service to be the company's registered office and agent for ASIC related matters. A fee will be charged for this Service and invoiced to the company annually or at other times depending on the complexity of work involved. It is incumbent of the officeholder(s) of the company to advise of any changes to addresses, officeholdings and registers so that Fortitude may prepare the necessary resolutions and ASIC documentation on the company's behalf.
- (b) It is the responsibility of the director(s) to maintain the corporate secretarial file which will include the preparation of the annual solvency

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resolution/minute and other resolutions/minutes such as consents to act as director or secretary, minutes of all meetings, resolutions passed and a register of charges and other required instruments. Fortitude is not in a position to evaluate and advise on solvency issues unless the company engages Fortitude to specifically to undertake this.

- (c) The company is responsible for its annual review fee. Any penalties for late payment and late lodgement are your responsibility.

6.4 Software Subscription – Agency Arrangement and Appointment

- (a) The Client and controlled entities will be responsible for maintaining the Xero subscription, and the Client will be responsible for allowing Fortitude access to the software to assist where required with various requirements and reporting extraction as determined by Fortitude from time to time. The monthly subscription fee will be the Client's responsibility.
- (b) Where Fortitude has subscribed for a Xero ledger on the Client's behalf, and incurs the cost of the Xero subscription on behalf of the Client, this does not diminish the Client's responsibility for the reliability, accuracy and timeliness of financial data of the Client. As a result, the Client is responsible for ensuring currency of the Xero lodger is maintained.

7 Fees

7.1 Fees

- (a) The Client must pay to Fortitude the Fees in accordance with this clause 7.
- (b) All Fees are exclusive of GST, unless otherwise stated in writing by Fortitude.
- (c) An estimate of Fees for the Services will be provided in the Engagement Letter.
- (d) Where the Fees are based on an hourly rate, any time spent which is less than an hour is charged on a pro rata basis.
- (e) Fortitude will use its best endeavours to provide an accurate estimate of the Fees, however any estimate of Fees is an estimate only and the actual Fees may vary due to the work taking longer than expected, general delays or changes in the scope of the Services.

7.2 Fees for Third Party Advisors

In respect of any Third Party Advisors:

- (a) Fortitude will pay the invoice for the services provided by the Third Party Advisor and invoice the Client the full value of the relevant invoice as a disbursement; and

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- (b) the Client must pay for any such disbursements strictly in accordance with clause 7.4, including by paying any fees for Third Party Advisors to Fortitude in advance where requested.

7.3 Changes to Fees

- (a) The Client may instruct Fortitude to make changes (including additions or reductions) to the Services and if such changes are accepted by Fortitude, they will become part of the Services from the date of each relevant instruction.
- (b) If either party becomes aware of circumstances that may necessitate a substantial change to the nature, scope, timing, sequencing or quantum of the Services (Updated Services) it must promptly notify the other party in writing.
- (c) If Updated Services are proposed by either party:
 - (i) Fortitude must propose a reasonable change to the Fees (Updated Fees); and
 - (ii) the Client must indicate promptly in writing whether it accepts the Updated Fees prior to Fortitude commencing the Updated Services.

7.4 Invoices

- (a) Unless otherwise agreed by the parties in writing, the time for payment of the Fees will be:
 - (i) stipulated in the Engagement Letter; or
 - (ii) if the time for payment of the Fees is not specified in the Engagement Letter, then within seven days of the Client receiving a tax invoice from Fortitude in respect of the Fees.
- (b) Fortitude reserves the right to request upfront payment of the Fees prior to commencing the Services.
- (c) If the Client disputes:
 - (i) all or part of a tax invoice, it must seek to resolve the dispute under clause 15; and
 - (ii) part of the invoice, the Client must pay the undisputed part as and when it becomes due.

7.5 Method of payment

Unless otherwise specified in writing by Fortitude and verified by telephone call, the Client must make each payment to Fortitude required under the Agreement in Australian dollars to the following bank account:

Bank Name: Macquarie Bank

Account Name: Fortitude Business Consulting Pty Ltd

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BSB: 182-512
Account Number: 962 732 525

7.6 Default

If the Client fails to pay the Fees in accordance with the payment terms specified under the Agreement, the parties agree and acknowledge that Fortitude may:

- (a) charge interest on all overdue amounts at the rate of eight per cent per annum accruing daily from the date they became overdue until the date they have been paid;
- (b) place a hold on the Services without penalty and hold all working papers and documentation until such time as all overdue amounts plus any accrued interest (Overdue Amounts) have been paid;
- (c) exercise a lien over any documents belonging to the Client which may be in its possession and held until such time as all Overdue Amounts have been paid;
- (d) start proceedings to recover any Overdue Amounts and any collection and / or legal costs incurred;
- (e) require the Client to pay, in advance, for any Services (or any part of the Services) which Fortitude has been engaged to provide but have not yet been provided; and
- (f) refuse to provide any further Services (or any part of the Services) until all Overdue Amounts have been paid.

7.7 Joint and several liability

Where the Engagement Letter lists one or more persons or entities as the Client, each of those persons and entities are jointly and severally liable to pay the Fees.

8 Confidentiality

8.1 Maintaining Confidentiality

The Recipient must:

- (a) keep confidential all Confidential Information (including the terms of this Agreement) and, except as permitted under the Agreement, not use or disclose any of it without the Discloser's prior consent;
- (b) ensure that the Confidential Information is only disclosed to those directors, employees and professional advisers (and its related bodies corporate) who have a specific need to access the Confidential Information in good faith;
- (c) ensure that those directors, employees and professional advisers (and its related bodies corporate) to whom the Confidential Information is disclosed comply with the Agreement; and

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- (d) subject to clause 12.3(b), immediately on the Discloser's demand, return or destroy all copies of the Confidential Information.

8.2 Exceptions

The obligations in clause 8.1 do not apply to any Confidential Information which the Recipient can prove:

- (a) is in, or comes into, the public domain other than by a breach of the Agreement;
- (b) was lawfully in its possession prior to disclosure by the Discloser;
- (c) was provided in good faith on a confidential basis to its solicitor or other professional advisors for a proper purpose (including to any auditor engaged);
- (d) was provided or disclosed to CPA Australia in connection with any quality assurance reviews of Fortitude;
- (e) was provided or disclosed as required or allowed for by law or in accordance with section 360 of the Code (APES 110), or with your express consent;
- (f) was received from a third party who is not under an obligation to the Discloser to maintain the Confidential Information in confidence and who legitimately obtained the Confidential Information; or
- (g) is required to be disclosed in order to enforce the Agreement or under law or a binding order of a governmental agency or court, provided that it:
 - (i) informs the Discloser of the required disclosure in advance to enable the Discloser to have a reasonable opportunity to object to the required disclosure; and
 - (ii) uses all reasonable efforts to obtain confidential treatment of such Confidential Information required to be disclosed.

8.3 Safe custody and transfer of secure documentation

- (a) The Client consents to sensitive information being transferred between Fortitude and the Client, and between offices and locations of Fortitude, physically or transmitted electronically, including by email, transfer and retrieval via portals and transmission via electronic transfer portals. This will include financially sensitive information about the Client, the organisation and payroll and taxation information relating to the Client and/or your employees (as relevant).
- (b) Information transferred electronically cannot be guaranteed to be error free or secure. This information may be intercepted corrupted, lost or destroyed. Fortitude will not be liable to the Client in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication to you.

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8.4 External Auditor Transfer Requirements

Fortitude will supply information (which may be Confidential Information) to an approved auditor by the Client (by evidence of a signed audit engagement letter by the Client to the audit firm) to facilitate the transfer of information for audit purposes. By signing the Engagement Letter you are authorising Fortitude to facilitate this.

8.5 Storage of Personal Information

You acknowledge and agree that your personal information may be stored on cloud based servers which may be located overseas or domestically and also internal servers at Fortitude's office.

8.6 Non-disparagement

The parties must not say or do anything or engage in any act or omission that will directly or indirectly harm the other party's reputation or bring the other party into disrepute and / or (where applicable) their associated companies, agents, employees and servants.

9 Intellectual Property

9.1 Ownership

- (a) The Intellectual Property rights derived from, or relating to, the Services:
 - (i) remain solely with Fortitude at all times; and
 - (ii) may only be used by the Client during the Term and only in accordance with the written direction of Fortitude.
- (b) Fortitude may, in future engagements with other clients, use techniques, methodologies, ideas, concepts, information and general know-how gained in the course of performing the Services, provided such use does not involve the unauthorised disclosure of Confidential Information or Personal Information of the Client.
- (c) The Client must not use the Fortitude name, logo or trade mark (whether registered or unregistered) on any websites or in any public statement, (including filing all or part of a report with a regulator or including all or part of a report in any public document) without obtaining Fortitude's prior written consent.

9.2 Electronic Tools

- (a) Fortitude may use or develop software, including spreadsheets, databases, marketing presentations and other electronic tools in providing the Services (Electronic Tools).
- (b) If Fortitude provides a license to the Client to use the Electronic Tools, the Client acknowledges that the Electronic Tools:

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- (i) are not the Client's property and are made available to the Client on an "as is" basis for the Client's use only;
 - (ii) can only be used in connection with the Client's business or for an alternative purpose as otherwise agreed by Fortitude in writing;
 - (iii) were developed without consideration for how the Client may use the Electronic Tools; and
 - (iv) must not be distributed to, or shared, with any third party without Fortitude's written consent.
- (c) Fortitude makes no representation or warranty as to the sufficiency or appropriateness of the Electronic Tools for any purpose for which the Client or a third party may use them.

9.3 Infringement

- (a) The Information provided by the Client to Fortitude must not in any way whatsoever infringe any patent, registered design, copyright, trademark or name, or other protected right, Confidential Information (whether registrable, registered or unregistered and whether protected by a law in force in Australia or elsewhere).
- (b) The Client releases and indemnifies Fortitude and Fortitude's Personnel immediately upon demand against any Loss suffered or incurred by them in connection with any Claims relating to an infringement set out in clause 9.3(a), except to the extent that such Loss is caused by negligent acts or omissions of Fortitude.

10 Client's acknowledgements

The Client agrees and acknowledges that:

- (a) in entering into the Agreement, it does so without any reliance on any representation or warranty provided by Fortitude, except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law;
- (b) Fortitude provides no warranty that any result or objective can or will be achieved or attained at all or by any other such date as estimated by Fortitude from time to time;
- (c) Fortitude disclaims any assumption of responsibility for any reliance on its Services to any party other than the Client;
- (d) Fortitude will not provide the Client with legal advice and none of Fortitude's advice will be construed as such;

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- (e) Fortitude will not be liable for any Loss resulting from the Client ignoring or acting inconsistently with any advice provided by Fortitude in connection with the Services;
- (f) Fortitude may provide consultancy services to other clients that may be in competition with the Client, or have interests that conflict with the Client's interests;
- (g) notwithstanding the advice or recommendations provided by Fortitude in connection with the Services, the Client's decisions, actions or omissions will be based on its own independent evaluation of associated risks and benefits;
- (h) Fortitude's liability is limited by a scheme approved under professional standards legislation. Further information on the scheme is available from the Professional Standards Councils' website: psc.gov.au;
- (i) Fortitude will not incur any monetary liability on behalf of the Client or accept any offer or enter into any contract binding upon the Client without the prior written consent of the Client;
- (j) for a period of 12 months after completion of the Services, the Client will not without Fortitude's prior consent employ or procure a third party to employ, any of Fortitude's Personnel that have taken part in the performance of the Services; and
- (k) to the greatest extent permitted by law, Fortitude is not responsible for any Claims or Loss suffered or incurred by the Client in connection with any work performed by the Third Party Advisors.

11 Indemnities and Liabilities

11.1 Indemnity

The Client must indemnify and hold harmless Fortitude immediately upon demand against any Loss or Claims resulting from, or incurred in connection with:

- (a) the Client's breach or non-performance of any provision of the Agreement;
- (b) the negligent, wilful or wrongful act or omission of the Client or any of the Client's representatives;
- (c) any Claim by a third party that is caused or contributed to by the Client; or
- (d) any negative tax implications caused to the Client or third parties as a result of Fortitude's provision of the Services to the Client,

except to the extent that such Loss or Claims are caused by the negligence or wilful misconduct of Fortitude.

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11.2 Liability

- (a) Fortitude's liability is limited by a scheme approved under professional standards legislation. Further information on the scheme is available from the Professional Standards Council's website: psc.gov.au.
- (b) Subject always to the requirements and conditions of the limitation of liability scheme referred to in clause 11.2(a), and to the maximum extent permitted by law:
 - (i) Fortitude is not liable for any Loss arising out of or in connection with its provision of the Services, except where such Loss is due to the negligence of Fortitude or Fortitude's Personnel, or is due to breach by Fortitude of any of its obligations under the Agreement; and
 - (ii) Fortitude is not liable for any Loss arising out of or in connection with the services performed by a Third Party Advisor, except where such Loss is due to the negligence of Fortitude or Fortitude's Personnel.

12 Termination

12.1 Termination for convenience

Either party may terminate the Agreement for any or no reason by providing seven days' notice in writing to the other party.

12.2 Termination for cause

- (a) A party to the Agreement (**Non-Defaulting Party**) may terminate immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party:
 - (i) becomes, or in the reasonable opinion of the Non-Defaulting Party is likely to become, Insolvent;
 - (ii) ceases to operate its business;
 - (iii) commits an act of serious misconduct, or a serious or persistent breach of the Agreement, or a breach of a material term of the Agreement;
 - (iv) commits an act of dishonesty or a criminal offence which in the reasonable opinion of the Non-Defaulting Party is likely to bring the Non-Defaulting Party into disrepute;
 - (v) commits an act that the Non-Defaulting Party considers to be misconduct or a serious breach of the Agreement; or
 - (vi) commits a breach of any statutory, legal or regulatory requirement of which the Non-Defaulting Party becomes aware and which, if appropriate, is not remedied within a reasonable period of time to the satisfaction of the Non-Defaulting Party.

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- (b) Fortitude will notify the Client if it becomes aware that its provision of the Services creates any actual or potential conflict of interest and it may terminate the Agreement immediately by written notice to the Client if such conflict of interest is to occur.

12.3 Return of documents

Upon termination of the Agreement for any reason:

- (a) upon the Client's request, Fortitude must deliver to the Client, any hard copies of documents provided by the Client or on the Client's behalf which are in the possession of Fortitude; and
- (b) Fortitude may retain soft copies of:
 - (i) any documents received by the Client or on the Client's behalf; and
 - (ii) any documents prepared by Fortitude in connection with providing the Services.

12.4 Implications of termination

- (a) Upon termination of the Agreement, Fortitude must render an invoice for all accrued Fees payable by the Client in respect of any period prior to the Termination Date. For the avoidance of doubt, all unpaid Fees remain payable by the Client.
- (b) Clauses 4.2(c), 8.6, 8, 9.3, 11.1, 12, 14 and 15.8(b) will continue to apply after termination of the Agreement.

13 GST

13.1 Taxable supply

If the supply of goods or services by one party (**Supplier**) to another party (**Recipient**) under the Agreement is a taxable supply, then the amount due to the Supplier for that supply will be the sum of:

- (a) the amount that is payable under the Agreement by the Recipient for that supply (**GST Exclusive Consideration**); and
- (b) the amount of GST payable by the Supplier in respect of the GST Exclusive Consideration (**GST Amount**).

13.2 Tax invoice

The Recipient's obligation to pay to the Supplier the GST Amount is subject to the Supplier first providing to the Recipient a tax invoice conforming to the requirements of the GST Act.

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14 Compliance with laws

- (a) Throughout the Term, the parties must comply at their own cost and expense with all rules, regulations, other delegated legislation, and the requirements of any applicable governmental authorities.
- (b) Fortitude may collect personal information about you the Client, your representatives, your clients and others when we provide services to you the Client. If Fortitude does, the Client agrees to work with Fortitude to ensure that we both meet the obligations that we each may have under the Privacy Act 1988 (Cth) (as amended) (**Privacy Act**). Where the Client has collected personal information, the Client confirms that it has collected the personal information in accordance with the Privacy Act, that the Client is entitled to provide this personal information to Fortitude and that Fortitude may use and disclose the personal information for the purpose/s Fortitude provides services to the Client.

15 Dispute resolution

15.1 Dispute

- (a) Subject to clause 15.8, if a dispute arises between any of the parties (Disputing Parties) in connection with the Agreement (Dispute), the relevant dispute resolution procedures in this clause 15 must be complied with prior to the initiation of any action or proceeding.
- (b) A party who is a respondent to a court proceeding in connection with a Dispute may plead the Agreement as a bar to the court proceedings.

15.2 Dispute notice

- (a) A party wishing to resolve a Dispute must give notice in writing to the other Disputing Parties specifying reasonable details of the Dispute and requiring resolution of the Dispute by the parties under this clause 15 (Dispute Notice).
- (b) The Dispute Notice must state that a Dispute has arisen and identify the matters in dispute.

15.3 Good faith discussions

- (a) Within five Business Days after the date on which a Dispute Notice is received by a party, each Disputing Party must promptly meet and engage in good faith discussions with the objective of resolving the Dispute by agreement.
- (b) If, and only after a period of ten Business Days after the date on which a Dispute Notice is received, the Disputing Parties have not been able to resolve the Dispute, any Disputing Party may refer the Dispute to mediation.

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15.4 Mediation

A mediator will be appointed:

- (a) by agreement between the Disputing Parties within five Business Days of the matter being referred to mediation in accordance with clause 15.3(b); or
- (b) if a mediator has not been agreed on by the Disputing Parties within five Business Days of the matter being referred to mediation in accordance with clause 15.3(b), then the party who served the Dispute Notice may within a further five Business Days apply to the President of the Law Institute of Victoria to have a mediator appointed.

15.5 Mediation procedures

The following procedures will apply in respect of the mediation:

- (a) the mediator must act impartially and assist the parties to reach a resolution of the Dispute by agreement;
- (b) the mediator is entitled to terminate the mediation if it forms the view that the mediation process has been exhausted;
- (c) any party to the mediation may appoint a person, including a legally qualified person, to represent it or assist it in the mediation; and
- (d) each of the parties must bear the mediator's fees and any other costs of the mediation equally, but pay their own costs in relation to submissions or representations made to the mediator (including, without limitation, legal costs).

15.6 End of mediation

The dispute resolution procedures set out in this clause 15 will be deemed to be complied with if:

- (a) the mediation is concluded, but the Dispute is not resolved; or
- (b) the Dispute is not resolved within three months of the date on which a Dispute Notice is received.

15.7 Costs of mediation

The parties acknowledge and agree that:

- (a) the mediation costs are to be borne equally by the parties; and
- (b) each party is to bare its own legal costs in connection with the mediation.

15.8 Exceptions

This clause 15:

- (a) does not apply to the recovery of any unpaid Fees under the Agreement; and
- (b) does not prejudice the rights of a party at any time to seek injunctive, declaratory or other interlocutory relief (including for specific performance)

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against the other parties in order to protect or preserve its rights under the Agreement.

16 Notices

16.1 Form

- (a) Any notice or other communication, including any request, demand, consent or approval, to or by a party to the Agreement:
 - (i) must be in legible writing and in English;
 - (ii) where the sender is a company, must be signed by an officer or under the common seal of the sender;
 - (iii) is regarded as being given by the sender and received by the addressee:
 - (A) if sent by hand, when delivered to the addressee;
 - (B) if by post, three Business Days from and including the date of postage;
 - (C) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee; or
 - (D) if by email, when transmitted to the addressee,but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and
 - (iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee communicates with the sender within two hours after transmission is received, or regarded as received under clause 16.1(a)(iii), and informs the sender that it is not legible.
- (c) In this clause 16.1, a reference to an addressee includes a reference to an addressee's officer, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

16.2 Address for service

The address for service for:

- (a) Fortitude is set out in the Engagement Letter; and
- (b) the Client is as notified by the Client to Fortitude in writing.

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17 General conditions

17.1 Governing law

The laws of the State govern the Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in the State.

17.2 Giving effect to the Agreement

The parties must do everything (including execute any document), and must ensure that its employees and agents do anything (including execute any document) that may be reasonably required to give full effect to the Agreement.

17.3 Relationship

Nothing in this Agreement may be deemed to constitute a partnership, joint venture, agency, employment or other legal relationship between Fortitude and the Client other than that of service provider and recipient.

17.4 Waiver

- (a) No failure or delay by Fortitude in exercising any right, power or privilege under the Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights and remedies provided by law.

17.5 Force Majeure

Neither party will be in default nor liable for any delay or failure to comply with the Agreement to the extent that, that default, delay or failure is due to any act beyond the control of the affected party, excluding industrial disputes, provided such party immediately notifies the other.

17.6 Operation of the Agreement

- (a) The Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.
- (b) In the event of any conflict or inconsistency between the Engagement Letter and the Terms, the parties agree that the Engagement Letter will take precedence.
- (c) Any provision of the Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Agreement enforceable, unless this would materially change the intended effect of the Agreement.

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- (d) Any indemnity provided by one party to another under the terms of this Agreement survives termination of this Agreement or completion of any transactions contemplated hereunder.

17.7 Amendment

A provision of the Agreement, or right, power or remedy created under them, may be varied by Fortitude with notice to the Client but Fortitude does not require the Client's prior written consent to make any such amendments.

17.8 Assignment

The Client may not assign or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written consent of Fortitude.

17.9 Counterparts

The Engagement Letter may consist of several counterparts and if so the counterparts taken together constitute one and the same document.

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