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1. Introduction

- 1.1. By signing up for or signing in to a Fortix® Service, you agree to the following terms and conditions ("Agreement") governing your use of our online hosted applications, our websites and related services we provide ("Service" or "Services") owned by Fortix®:
 - 1.1.1. For the purpose of the Agreement, "we", "us" and "our" shall refer to Fortix®.
 - 1.1.2. For the purpose of this Agreement, "you", "your" shall refer to Services Users.
 - 1.1.2.1. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity.
 - 1.1.2.2. If you do not have such authority, or if you do not agree with these terms and conditions, you must not proceed and may not use the service.
 - 1.1.3. Your registration for, or use of, the Services shall be deemed to be your acknowledgement to abide by this Agreement including any

materials available on the Fortix® website incorporated by reference herein, including but not limited to Fortix®'s privacy and security policies.

- 1.1.4. For reference, an additional Definitions section is included at the end of this Agreement.

1.2. Modifications

- 1.2.1. Fortix® reserves the right to amend, modify, change, add or remove portions of the terms and conditions of this Agreement or its policies relating to the Services at any time, effective upon posting of an updated version of this Agreement on its Site.
- 1.2.2. We reserve the right at any time to:
 - 1.2.2.1. change the terms and conditions of this Agreement;
 - 1.2.2.2. change the Site or Service, including eliminating or discontinuing content on or feature of the Site or Service;
 - 1.2.2.3. change any fees or charges for use of the Site or Service
- 1.2.3. You are responsible for regularly reviewing this Agreement.
- 1.2.4. Continued use of the Service after any such changes shall constitute your consent to such changes.

2. Fortix® Policies

2.1. Privacy

- 2.1.1. Our privacy policy may be viewed at <http://www.fortix.com.au/privacypolicy>.
- 2.1.2. Fortix® reserves the right to modify its privacy policies in its reasonable discretion from time to time.
- 2.1.3. When initially logging in to our Service, you may be asked whether or not you wish to receive marketing, weekly reports and other non-critical Service-related communications from Fortix® from time to time.
- 2.1.4. You may opt out of receiving such communications at that time or at any subsequent time by choosing the unsubscribe link from such communication.
- 2.1.5. As our Services are hosted online, Fortix® occasionally may need to notify all users (whether or not they have opted out as described above) of important announcements regarding the operation of the Services.

2.2. Confidentiality

- 2.2.1. Except agreed otherwise, each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure.
- 2.2.2. Any Fortix[®] Services performance information relating to the Services, and the terms and conditions of this Agreement shall be deemed Confidential Information of Fortix[®] without any marking or further designation.
- 2.2.3. Except as expressly authorised herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information.
- 2.2.4. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document:
 - 2.2.4.1. was rightfully in its possession or known to it prior to receipt of the Confidential Information;
 - 2.2.4.2. is or has become public knowledge through no fault of the Receiving Party;
 - 2.2.4.3. is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation;
 - 2.2.4.4. is independently developed by employees of the Receiving Party who had no access to such information; or
 - 2.2.4.5. is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).
- 2.2.5. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

2.3. Intellectual Property Ownership

- 2.3.1. Fortix® alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Fortix® application, the content, the supporting professional services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service.
- 2.3.2. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service or the Intellectual Property Rights owned by Fortix®.
- 2.3.3. The Fortix® name, the Fortix® logo, and the product names associated with the Services are trademarks of Fortix® or third parties, and no right or license is granted to use them.
- 2.3.4. You are only able to use the Services and the content on the terms and conditions as set out in this Agreement.
- 2.3.5. Fortix® reserve all rights not expressly granted to User in this Agreement.
- 2.3.6. The Services (including any content or information contained therein) and all copies thereof are protected by copyright and other intellectual property laws and treaties.
- 2.3.7. Fortix® own the title, copyright, and other intellectual property rights in the Services and all copies, modifications and derivative works of the Services and underlying software (including any incorporating “Feedback”), and you do not acquire any ownership rights in Fortix® Services.
- 2.3.8. All Services are licensed, not sold.

3. Fortix® Services

- 3.1. Fortix® offers to you the use of Services that include:
 - 3.1.1. Hosted online application which can be utilised for your commercial or noncommercial purposes;
 - 3.1.2. Professional services to deliver a configured hosted online application for your commercial or noncommercial purposes;
 - 3.1.3. Serviced infrastructure to host your configured online application.
- 3.2. The Services also includes ancillary materials and updates to support the Services such as:
 - 3.2.1. any documentation,
 - 3.2.2. any software updates,

- 3.2.3. any add-ons, plug-ins, APIs or internet-based components of the application provided by Fortix® (but not third parties), and
 - 3.2.4. any third party software embedded in or provided with Fortix®'s application,
 - 3.2.5. add-ons, plug-ins, APIs or other code offered by third parties are not considered part of our Service, and Fortix® is not responsible for and does not offer any warranty, indemnity or support for those items.
- 3.3. All Services offered to you are subject to your acceptance to the following agreements:
- 3.3.1. Managed Services Agreement [MSA], which includes:
 - 3.3.1.1. applicable licenses and contractual agreement to have access to and use the Service,
 - 3.3.1.2. any generally released updates, upgrades, patches, and bug fixes for the Service when released by Fortix®,
 - 3.3.1.3. limited web-based and phone support as agreed in the Managed Services Agreement [MSA],
 - 3.3.1.4. serviced infrastructure as agreed in the Managed Services Agreement [MSA],
 - 3.3.1.5. automatic renewal of the Managed Services Agreement [MSA], regular fees review and fees change, and rollover to a new period,
 - 3.3.1.6. and other terms as set out specifically in the agreed Managed Services Agreement [MSA].
 - 3.3.2. Active Development Agreement [ADA], which includes:
 - 3.3.2.1. use of Professional Services to configure and/or develop and deploy nonexclusive features for a Service,
 - 3.3.2.2. upfront payment terms for the priority deployment of features as specified for a Service,
 - 3.3.2.3. and other terms as set out specifically in the agreed Active Development Agreement [ADA].
- 3.4. Access Rights
- 3.4.1. You may access and use the Services during the applicable terms as set out in the **Managed Services Agreement [MSA]** or the Active Development Agreement [ADA], and subject to the terms and conditions of this Agreement.

- 3.4.2. You may enable your users to access and use the Services for commercial and/or noncommercial purposes during the applicable terms.
- 3.4.3. All use of the Services must be in accordance with the relevant Fortix® documentation and policies.

3.5. User Data

- 3.5.1. Unless otherwise specified, you retain ownership of any data or other content or information that you provide through the Services ("Data").
- 3.5.2. Your use of the Services and all Data must comply with your own privacy policies and all domestic, foreign and international laws and regulations, including those relating to data privacy, international communications, and the exportation of technical or personal data.
- 3.5.3. You are solely responsible for the accuracy, content and legality of all Data.
- 3.5.4. You agree not to submit any content that is obscene, defamatory, libelous, threatening, harassing, pornographic, racially or ethnically offensive, that encourages conduct that would be considered a criminal offense or give rise to any civil liability.
- 3.5.5. You will not submit any material (including any virus, bot, worm, scripting exploit or other harmful code) that is likely to harm or corrupt the Services or any computer systems or data.
- 3.5.6. You represent and warrant to Fortix® that you have sufficient rights in the Data to grant the rights in this section and that the Data does not infringe the rights of any third party.
- 3.5.7. You hereby grant Fortix® a non-exclusive license to copy, distribute, perform, display, store, modify, and otherwise use your Data in connection with operating the Services.
- 3.5.8. Fortix® may also use aggregate information to measure general Service usage patterns and characteristics of your user base and otherwise to improve its Services, and may include such aggregate information about its audience in promotional materials or reports to third parties.
- 3.5.9. This aggregate information will not reference names, phone numbers, email addresses, or other personally identifiable

information, and it will be not traceable to a specific recipient or user email address.

3.6. Storage Limits

- 3.6.1. Fortix® sells different levels of data storage for Data at the rates specified in the Managed Services Agreement [MSA].
- 3.6.2. Use in excess of purchased data storage will count as an overage, and any overages will be notified to you and will be charged at the then-current storage fees.
- 3.6.3. Any failure by Fortix® to so notify you shall not affect your responsibility for such additional storage and traffic charges.
- 3.6.4. Services performance may deteriorate in accordance with overages and Fortix® is not liable for Services downtimes due to overages.
- 3.6.5. Fortix® reserves the right to create or modify maximum storage limits for the Services at any time, in its discretion, and you acknowledge that it may not receive notices about these limits.
- 3.6.6. Fortix® reserves the right to establish or modify its general practices and limits relating to storage of and traffic relating to Data.

3.7. Backup of Data

- 3.7.1. Fortix® will make best endeavours to backup Data every 24 hours, unless specified otherwise in the Managed Services Agreement [MSA].
- 3.7.2. Fortix® will not, unless requested, at any time retrieve Data if it is accidentally or otherwise deleted by you.
- 3.7.3. In the event that a request to retrieve Data has been made, Fortix® will require a valid Managed Services Agreement [MSA] to allocate performance of required works,
- 3.7.4. In the unlikely case where Data is lost because of software or hardware malfunction, Fortix® will endeavour to restore to the most recent successful backup.
- 3.7.5. Fortix® takes no responsibility whatsoever whether implied or otherwise for the quality or frequency of Data backup unless specified in the Managed Services Agreement [MSA].
- 3.7.6. Fortix® shall not be liable for any losses, damages, including any consequential damages, costs, expenses or any other outgoing

that may be incurred by you as a result of any data being lost because of software or hardware malfunction.

- 3.7.7. Fortix® does not own any data, information or material that Users submit in the course of using the Services.
- 3.7.8. You, not Fortix®, shall have sole responsibility for the input accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Data, and Fortix® shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data.

3.8. Return of User Data

- 3.8.1. After termination or expiration of this or other Agreements, unless it was for User's breach, at User's formally written request, Fortix® will use reasonable efforts to make available the Data for download in a format to be decided by Fortix®.
- 3.8.2. In the event that a request for Data has been made, Fortix® may charge applicable fees, as published, for preparation and performance of works.
- 3.8.3. If made available, you must download the Data within 30 days of termination or expiration.
- 3.8.4. After that, Fortix® may delete the Data permanently.
- 3.8.5. Fortix® reserves the right to withhold, remove and/or discard Data without notice for any breach, including, without limitation, your non-payment.
- 3.8.6. Upon termination, your right to access or use Data immediately ceases, and Fortix® shall have no obligation to maintain or forward any Data.
- 3.8.7. During your use of the Services, Fortix® will archive certain information as well as keep some usage and statistical information.
- 3.8.8. In all cases Fortix® reserves the right to delete archived, usage and statistical data irretrievably once it is older than three (3) months, unless specified otherwise in the Managed Services Agreement [MSA].
- 3.8.9. Fortix® shall not be liable for any loss, damage, including any consequential damages, cost, expense or any outgoing of whatsoever nature that may be incurred by you as a result of Fortix® deleting archived usage and statistical data.

3.9. Third Party Interactions

- 3.9.1. During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service.
- 3.9.2. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party.
- 3.9.3. Fortix® shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party.
- 3.9.4. Fortix® does not endorse any sites on the Internet that are linked through the Service.
- 3.9.5. Fortix® provides these links to you only as a matter of convenience, and in no event shall Fortix® be responsible for any content, products, or other materials on or available from such sites.
- 3.9.6. Fortix® provides the Service to you pursuant to the terms and conditions of this Agreement.
- 3.9.7. You recognise, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.
- 3.9.8. Fortix® shall not be liable for any losses, damages, including consequential damages, costs, expenses or outgoings of whatsoever nature that you may incur by dealing with any advertiser or sponsor or the acquisition of any goods or services or participation in any promotion through the Services.

3.10. Subscribing to Additional Services

- 3.10.1. As part of the Services, you may be able to subscribe to extra features such as short message service (sms).
- 3.10.2. Each service may have a fixed monthly charge as well as data usage charges.
- 3.10.3. In the case where usage charges apply, these will be calculated automatically and billed at the end of each calendar month or as

mutually agreed based on the then-current Fortix® pricing, unless specified in the Managed Services Agreement [MSA].

4. Conditions of Use

4.1. Fortix® hereby grants you a non-exclusive, non-transferable, non-sublicenseable, worldwide right to use the Services, solely for your own commercial and/or noncommercial purposes, subject to the terms and conditions of this Agreement.

4.1.1. All rights not expressly granted to you are reserved by Fortix®.

4.1.2. You shall not

4.1.2.1. license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way;

4.1.2.2. modify, amend, alter, copy, or in any other way vary or make derivative works based upon the Services;

4.1.2.3. create Internet "links" to the Service or "frame" or "mirror" any data on any other server or wireless or Internet-based device; or

4.1.2.4. reverse engineer or access the Service in order to:

4.1.2.4.1. build a competitive product or service,

4.1.2.4.2. build a product using similar ideas, features, functions or graphics of the Services, or

4.1.2.4.3. copy any ideas, features, functions or graphics of the Services.

4.1.2.4.4. You may use the Services for your internal business purposes and shall not:

4.1.2.4.4.1. send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;

4.1.2.4.4.2. send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights;

4.1.2.4.4.3. send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs;

- 4.1.2.4.4.4. interfere with or disrupt the integrity or performance of the Services or the data contained therein;
- 4.1.2.4.4.5. attempt to gain unauthorised access to the Services or its related systems or networks; or
- 4.1.2.4.4.6. breach any of the terms or conditions of use for the Services that Fortix® shall publish from time to time.

4.2. Open Source Software

- 4.2.1. The Service may contain or be provided with components subject to the terms and conditions of "open source" software licenses ("Open Source Software").
- 4.2.2. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including any provisions governing access to source code, modification or reverse engineering.

4.3. Evaluation Services

- 4.3.1. This paragraph applies to any Services that Fortix® makes available on an evaluation basis ("Evaluation Services").
- 4.3.2. You may only use the Evaluation Services for internal evaluation purposes for the period specified by Fortix® (or, if not specified, for 30 days), and may only permit a limited number of users (specified by Fortix®) to access the Evaluation Services.
- 4.3.3. After the evaluation period, access to the Services will be terminated and Data entered will be deleted off Fortix® servers.
- 4.3.4. You acknowledge that Evaluation Services may not be fully functional.
- 4.3.5. Notwithstanding anything else in this Agreement, Fortix® does not offer any warranty, indemnity or support for any Evaluation Services.

4.4. Feedback

- 4.4.1. User may provide Feedback in connection with Managed Services Agreement [MSA], Active Development Agreement [ADA] and otherwise.

- 4.4.2. User hereby grants Fortix® a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, copy, modify and otherwise exploit the Feedback for any purpose, including incorporating or implementing the Feedback in the Services.
 - 4.4.3. User agrees that Fortix® may exploit all Feedback without any restriction or obligation on account of intellectual property rights or otherwise.
 - 4.4.4. For clarity, no Feedback will be deemed User's Confidential Information, and nothing in this Agreement limits Fortix®'s right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.
- 4.5. IP Protection Mechanisms
- 4.5.1. The Service has license protection mechanisms designed to manage and protect Fortix®'s and its suppliers' intellectual property rights.
 - 4.5.2. Whether using Source Code or not, you must not modify or alter these mechanisms or try to circumvent them or the usage rules they are designed to enforce.
- 4.6. User will not, and will not allow any Users or other third party to:
- 4.6.1. resell, assign, rent, give, transfer, pass title to, lease, copy, provide access to or sublicense (including without limitation on a timeshare, subscription service, hosted service or outsourced basis) any Service to any third party (for use in its business operations or otherwise) or anyone else besides Users (including Customers) in accordance with this express terms of this Agreement, or permit anyone besides Users to use any data or information not owned by User that is generated by the Services (and, in the event User grants any security interest in any Services, the secured party has no right to use or transfer the Services);
 - 4.6.1.1. use Services to provide, or incorporate Services into any product or service provided to, a third party, except as expressly permitted above for Customer Use;
 - 4.6.1.2. reverse engineer, decompile, disassemble, decipher, decrypt, or otherwise seek to discover or obtain the source

code or non-public APIs to Services (including any data structure or similar materials produced by the Services), except to the extent expressly permitted by applicable law despite this prohibition (and then only upon advance notice to Fortix®);

4.6.1.3. modify, adapt or create derivative works of a Services (excluding User Modifications and User Plug-ins);

4.6.1.4. remove or obscure any proprietary, branding or other notices of Fortix® or any third party contained in any Services (including any information or data generated by the Services);

4.6.1.5. publicly disseminate information regarding the performance of Services;

4.6.1.6. use any Services for commercial solicitation purposes or spam;

4.6.1.7. use the Fortix® name or any Fortix® trademarks or logos except as permitted; or commit any act or omission that could result in damage to Fortix®'s reputation.

4.6.2. User will not attempt to do any of the foregoing, encourage others to do so, or otherwise attempt to bypass or circumvent any usage restrictions in this Agreement.

4.7. Marketing

4.7.1. You grant Fortix® the right to display your brand including company name and logo on its website and other marketing communications.

4.7.2. Fortix® may identify you as a customer in its' promotional materials.

4.7.3. You may request that Fortix® cease identifying you at any time by submitting an email to sales@fortix.com.au which may take up to thirty (30) days to process.

4.8. Accounts and Passwords

4.8.1. You will provide accurate, current and complete information when registering with Fortix® and agree to update this information if it changes.

4.8.2. Fortix® may send notices, statements and other information to you by email or through your account.

- 4.8.3. You will keep all of your users' passwords and usernames confidential and will not share them with third parties.
- 4.8.4. You are responsible for all activity occurring under your user accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data.
- 4.8.5. You shall:
 - 4.8.5.1. notify Fortix® immediately of any unauthorised use of any password or account or any other known or suspected breach of security;
 - 4.8.5.2. report to Fortix® immediately and use reasonable efforts to stop immediately any copying or distribution of Data that is known or suspected by you or your users; and
 - 4.8.5.3. not impersonate another Fortix® user or provide false identity information to gain access to or use the Service.
- 4.8.6. You are responsible for your own internet connection and must use software, systems and equipment compatible with the Services, as Fortix® specifies in its published policies.
 - 4.8.6.1. Any web browsers and other software must support the Secure Socket Layer (SSL) protocol or other protocols accepted by Fortix®.
 - 4.8.6.2. Fortix® is not responsible for any data lost, altered, intercepted or stored across networks not owned or operated by Fortix®.
- 4.9. Service Use by Extended Parties
 - 4.9.1. Your customers, suppliers and other contacts ("Extended Party" or "Extended Parties") may use the Service as your users.
 - 4.9.2. You will be responsible for Extended Parties the same as any other user and must enter into valid, binding agreements with Extended Parties consistent with this Agreement, including the additional conditions below.
 - 4.9.3. An Extended Party's permitted use of Services under this Agreement is "Extended Party's Use".
 - 4.9.4. In addition to all other terms in this Agreement, the following conditions apply to Extended Party's Use:

- 4.9.4.1. You may not distribute or make available any Service on a standalone basis.
- 4.9.4.2. Instead, you may only make available the Service to Extended Parties in order to support Extended Parties' use of content and features that are part of your own existing offerings.
- 4.9.4.3. You may not resell or OEM the Service or otherwise charge Extended Parties for use of the Service itself, but may charge Extended Parties as part of an overall program that includes access to your content or features as supported by the Service.
- 4.9.4.4. Extended Parties may interact with the Service, but may not receive any administrator, configuration or similar access to the Service.
- 4.9.4.5. In making available Services to Extended Parties, you may not violate any other term or condition in this Agreement, such as reverse engineering and anti-circumvention restrictions.
- 4.9.4.6. Fortix® will not have any direct or indirect liability or obligation to any Extended Party, and Extended Parties do not acquire any rights under this Agreement.
- 4.9.4.7. Fortix® understands that Services usage may be flexible and that you may identify new proposed uses for the Products.
- 4.9.4.8. If you have questions about whether a proposed use complies with these rules, please contact Fortix® at sales@fortix.com.au.

4.10. Non-Solicitation of Fortix® Employees

- 4.10.1. During your use of our Services, you may be provided access to information regarding Fortix® employees.
- 4.10.2. You agree and acknowledge that the non-solicitation obligations hereunder are essential to the protection of Fortix®'s intellectual property and business.
- 4.10.3. You agree that without expressed written consent, at all times while you are employing the services of Fortix® and for twelve (12) months after contract period terminates, the user will not, directly or indirectly, whether individually or as an officer, director, employee, consultant, partner, stockholder, individual proprietor,

joint venturer, investor, lender, consultant or any other capacity whatsoever: solicit, divert hire, retain (including as a consultant) or encourage to leave the employment or contract period of Fortix® and any employee or contractor of Fortix®, or hire or retain (including as a consultant) any former employee of Fortix® who has left the employment or contract period of Fortix® within twelve (12) months prior to such hiring or retention.

4.10.4. You agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation:

4.10.4.1. Should the parties fail to resolve any such disagreement within thirty (30) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Perth, Western Australia and in accordance with the Commercial Arbitration Rules of the Institute of Arbitrators & Mediators Australia (IAMA). The arbitration shall be conducted by one arbitrator, who shall be

4.10.4.1.1. (a) selected in the sole discretion of the Institute of Arbitrators & Mediators Australia (IAMA) administrator and

4.10.4.1.2. (b) a licensed attorney with at least ten (10) years experience in the practice of law and at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes.

4.10.4.2. The arbitrator shall have the power to enter any award that could be entered by a judge of the state of Western Australia sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the state of Western Australia or any other applicable law.

4.10.4.3. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration.

- 4.10.4.4. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration.
- 4.10.4.5. If the arbitrator finds the Client to be in any violation of the agreement the Client agrees to pay liquidated damages in the amount of \$250,000 per breach.
- 4.10.4.6. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

4.11. Compliance

4.11.1 Fortix® is entitled to check whether the software is used in compliance with the rights of use granted. For this purpose, Fortix® may demand information from the Customer, particularly on the period of time and scope of use of the software, as well as inspect the books and written papers as well as the hardware and software of the Customer insofar as this provides information on the period of time and scope of use of the software.

4.11.3 Fortix® shall be granted access to the business premises of the Customer for this purpose during customary hours of business after announcing this at least two weeks in advance. The Customer will ensure to a reasonable extent that Fortix® can carry out the audit and will assist in the audit.

4.11.4 Fortix® will use all the information gained during the audit only for the purposes of examining the legality of the use of the license. The Customer can demand that the audit on site is carried out by a representative of Fortix® obliged to maintain secrecy by profession.

4.11.5 Fortix® will pay the costs of the audit, unless the audit reveals that the Customer is using or has used the software beyond the scope agreed (under-licensing). In that case the Customer pays the costs of the audit. In the event of under-licensing the Customer is also obliged to purchase the missing rights at the list prices generally valid at the time of the audit for comparable services plus lump-sum damages of 10% of the value of the under-licensing.

5. Service Levels

- 5.1. The service levels are contained within the Managed Services Agreement [MSA] as agreed between Fortix® and you.
- 5.2. It comprises of your ability to access Data via a web-browser interface and any other reliability, timeliness, quality, suitability, truth, availability or completeness of the Service is not covered in this agreement.
- 5.3. Fortix® plans for scheduled downtimes are set between the hours of 2000 to 0600 (AEST), but cannot guarantee that downtimes outside of these hours will not occur.
- 5.4. In the unlikely event where Service Levels are not met for any given month, a pro-rata rebate, at your request, may be applied against the next billing period as specified under the Managed Services Agreement [MSA].
- 5.5. The rebate request is valid only when requested within ten (10) days of the occurrence of the service level not being met.
- 5.6. Any such rebate will need to be approved by Fortix®.
- 5.7. Normal billing will resume from the following period.
- 5.8. No rebate applies nor is payable if no future billing period exists.
- 5.9. Fortix® shall not be liable to you for any losses, damages, including consequential damages, costs, expenses or outgoings of whatsoever nature arising out of in connection with any breach by Fortix® of this clause.
- 5.10. Our services may be subject to internet limitations, delays, and other problems inherent in the use of the internet and electronic communications.
- 5.11. Fortix® is not responsible for any delays, delivery failures, or other damage resulting from such problems.

6. Disclaimer of Warranties

- 6.1. Fortix® make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service or any content except for what is stated.
- 6.2. Fortix® do not represent or warrant that:
 - 6.2.1. the use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data,
 - 6.2.2. the service will meet your requirements or expectations,

- 6.2.3. any stored data will be accurate or reliable,
- 6.2.4. the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your requirements or expectations,
- 6.2.5. errors or defects will be corrected
unless otherwise stated in the Managed Services Agreement [MSA] or the Active Development Agreement [ADA].
- 6.3. The service and all content is provided to you strictly on an "as is" basis.
- 6.4. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Fortix®.

7. Fees and Payment

7.1. General

- 7.1.1. You shall pay all fees or charges to your account in accordance with the setup and ongoing fees and charges, and billing terms in effect at the time a fee or charge is due and payable as stated in the Managed Services Agreement [MSA] or the Active Development Agreement [ADA], or as per the current Fortix® published fees and rates.
- 7.1.2. You must pay all fees by their due date specified at the time of order or otherwise within 30 days of Fortix®'s invoice date.
- 7.1.3. Renewal fees for infrastructures (servers, SSL certificates, gateways etc) will be charged as described in the Managed Services Agreement [MSA].

7.2. Taxes

- 7.2.1. Payments made by you under this Agreement may exclude any taxes or duties payable in respect of the Services in the jurisdiction where the payment is either made or received.
- 7.2.2. To the extent that any such taxes or duties are payable by Fortix®, you must pay to Fortix® the amount of such taxes or duties in addition to any fees owed under this Agreement.
- 7.2.3. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed.

- 7.2.4. In that case, you will have the right to provide to Fortix® with any such exemption information and Fortix® will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.
- 7.2.5. The amount payable will be equal to the setup and ongoing charges as specified in the Managed Services Agreement [MSA] or the Active Development Agreement [ADA].
- 7.2.6. Payments may be made, in advance, monthly, half yearly or annually, consistent with the terms set out in the Managed Services Agreement [MSA], or the Active Development Agreement [ADA], or as otherwise mutually agreed upon.
- 7.2.7. You are responsible for paying for all fees and charges, whether or not the Services are actively used.
- 7.2.8. You must provide Fortix® with an approved electronic approval and/or purchase order information as a condition to signing up for the Services.
- 7.2.9. The pricing schedule is outlined in the Managed Services Agreement [MSA] or the Active Development Agreement [ADA] or as per the current Fortix® published fees and rates.
- 7.2.10. Fortix® reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by email.
- 7.2.11. All pricing terms are confidential, and you agree not to disclose them to any third party.
- 7.2.12. Any and all fees paid in advance are not refundable if you cease to use the Services.

7.3. Billing and Renewal

- 7.3.1. Depending on the Service, Fortix® may charge and collect in advance for use and/or development of the Service.
- 7.3.2. Fortix® will automatically renew the Managed Services Agreement [MSA] and bill your credit card or issue an invoice to you:
 - 7.3.2.1. every month for monthly terms,
 - 7.3.2.2. every 6-months for half-yearly terms,
 - 7.3.2.3. each year on the subsequent anniversary for annual terms,
or
 - 7.3.2.4. as otherwise mutually agreed upon.

- 7.3.3. The renewal charge will be equal to the then-current value fee plus any excess weighted average of Service use in effect during the prior term, including an annual Consumer Price Index increase, unless Fortix® has given you at least 15 days prior written notice of a fee change, which shall be effective upon renewal and thereafter.
- 7.3.4. Fortix® reserves the right to review and change its fees and charges at any time taking into consideration actual usage from any past period.
- 7.3.5. Fees for other services will be charged on an as-quoted basis.
- 7.3.6. Fortix®'s fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.
- 7.3.7. You agree to provide Fortix® with complete and accurate billing and contact information.
- 7.3.8. If you have opted in to for credit card payment, you agree to keep the credit card details up-to-date and sufficient funds are maintained for payments.
- 7.3.9. This information includes your legal company name, street address, email address, and name and telephone number of an authorised billing contact.
- 7.3.10. You agree to update this information within 30 days of any change to it.
- 7.3.11. If the contact information you have provided is false or fraudulent, Fortix® reserves the right to terminate your access to the Service in addition to any other legal remedies.
- 7.3.12. If you believe your bill is incorrect, you must contact us in writing within 15 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

8. Non-Payment and Suspension

- 8.1. In addition to any other rights granted to Fortix® herein, Fortix® reserves the right to suspend or terminate this Agreement and your access to the Service, if your account becomes delinquent (falls into arrears).
- 8.2. Access to the Service interface will be suspended immediately if an invoice is delinquent and is re-enabled when such delinquent invoices are paid in full.

- 8.3. Fortix® reserves the right to suspend or terminate the Services provided to you if delinquent invoices are
 - 8.3.1. 30 days overdue, web-based and telephone support services will cease;
 - 8.3.2. 45 days overdue, users and extended parties access to the Service will be disabled and the Service placed in maintenance mode;
 - 8.3.3. 60 days overdue; the Service will be removed from Fortix® servers.
- 8.4. Fortix® shall be entitled to charge interest on any monies that are not paid by the due date at the rate of interest that is 2% greater than the rate of interest charged by Fortix's bank on overdrafts of greater than AUD\$100,000.00, together with any costs incurred by Fortix® in recovering the monies, including any legal costs that may be incurred calculated on an indemnity basis.
- 8.5. Depending on the Service, you will continue to be charged for any Managed Services Agreement [MSA] or Active Development Agreement [ADA], whichever is applicable, during any period of suspension.
- 8.6. If you or Fortix® initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Managed Services Agreement [MSA] and/or Active Development Agreement [ADA].
- 8.7. You agree that Fortix® may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.
- 8.8. Fortix® reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service.
- 8.9. You agree and acknowledge that Fortix® has no obligation to retain Data and that such Data may be irretrievably deleted if your account is 30 days or more delinquent.
- 8.10. Fortix® shall not be liable for any losses, damages, including any consequential damages, costs, expenses or any outgoings of whatsoever nature that you may incur as a result of Fortix® suspending or terminating your account as a result of your account becoming delinquent.

9. Indemnification

- 9.1. You will indemnify, defend and hold harmless Fortix® from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to
 - 9.1.1. any breach of this Agreement,

- 9.1.2. any Data,
- 9.1.3. any modifications, plug-ins or other modifications of or combinations with the Service, or any service or product offered by you in connection with or related to the Service,
- 9.1.4. any Uncontrolled Systems, or
- 9.1.5. any representations or warranties made by you (including any users) regarding the Service to third parties.
- 9.2. This indemnification obligation is subject to you receiving
 - 9.2.1. prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice);
 - 9.2.2. the exclusive right to control and direct the investigation, defense, or settlement of such claim, provided that Fortix® may participate in the claim at its own expense and you may not settle any claim without Fortix®'s prior written consent; and
 - 9.2.3. all reasonable necessary cooperation of Fortix® at your expense.
- 9.3. a claim, which if true, would constitute a violation by you of your representations and warranties; or
 - 9.3.1. a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Fortix®
 - 9.3.1.1. gives written notice of the claim promptly to you;
 - 9.3.1.2. gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Fortix® of all liability and such settlement does not affect Fortix®'s business or Service);
 - 9.3.1.3. provides to you all available information and assistance; and
 - 9.3.1.4. has not compromised or settled such claim.
- 9.4. Fortix® shall indemnify and hold you and your parent organisations, subsidiaries, affiliates, officers, directors, employees, solicitors and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees calculated on an indemnity basis) arising out of or in connection with:
 - 9.4.1. a claim alleging that the Service directly infringes a copyright or a trademark of a third party, a U.S. patent issued as of the Effective Date;

- 17.3.2. a claim, which if true, would constitute a violation by Fortix® of its representations or warranties; or
- 17.3.3. a claim arising from breach of this Agreement by Fortix®; provided that you
 - a. promptly give written notice of the claim to Fortix®;
 - b. give Fortix® sole control of the defense and settlement of the claim (provided that Fortix® may not settle or defend any claim unless it unconditionally releases you of all liability);
 - c. provide to Fortix® all available information and assistance; and
 - d. have not compromised or settled such claim.
- 17.3.4. Fortix® shall have no indemnification obligation, and you shall indemnify Fortix® pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

10. Limitation of Liability

- 10.1. In no event shall Fortix® or any of its affiliates or subsidiaries be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods or services arising out of or related to the use, inability to use, unauthorised use, performance or nonperformance of or reliance upon this or any other Fortix® Service even if Fortix® has been advised previously of the possibility of such damages and whether or not such damages arise in contract, tort, under statute, in equity or at law.
- 10.2. Your sole remedy for dissatisfaction with the Service is to cease using the Service as applicable.
- 10.3. The sole and exclusive maximum liability to the association for all damages, losses and causes of action, whether in contract, tort (including, without limitation, negligence) or otherwise, shall be half of the total amount paid by you, if any, to access the Site.
- 10.4. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.
- 10.5. Any exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, shall apply unless

excluded by law of Western Australia and in which case, the exclusion shall be limited to the extent set out in the law of Western Australia.

11. Assignment Change in Control

- 11.1. This Agreement may not be assigned by you without the prior written approval of Fortix®.
- 11.2. Fortix® shall not unreasonably withhold its approval to a proposed assignee who is, in the opinion of Fortix®, financially sound, has the business acumen and capacity to perform the terms and conditions of this Agreement, and enters into an agreement acknowledging to be bound by the terms and conditions of this Agreement and at the time of the proposed assignment you are not in breach of any of the terms and conditions of this Agreement.
- 11.3. Fortix® may assign this Agreement without your consent to:
 - 11.3.1. a parent or subsidiary,
 - 11.3.2. an acquirer of assets, or
 - 11.3.3. a successor by merger.
- 11.4. Any purported assignment in violation of this section shall be void.
- 11.5. Any actual or proposed change in control of you that results or would result in a direct competitor of Fortix® directly or indirectly owning or controlling 50% or more of you shall entitle Fortix® to terminate this Agreement for cause immediately upon written notice.

12. Termination

- 12.1. This Agreement will remain effective so long as a valid and current Managed Services Agreement [MSA] and/or Active Development Agreement [ADA] are maintained and licensed for the use of the Services, unless earlier terminated.
- 12.2. Fortix® may suspend or terminate this Agreement, with respect to one or more of the Services, if you fail to comply with the terms and conditions of this Agreement, including any failure to pay fees when due.
- 12.3. Fortix®, in its sole discretion, may terminate your password, account or use of the Services (including your users) if you breach or otherwise fail to comply with this Agreement.
- 12.4. Fortix® may terminate any free accounts or evaluation usage at any time in its sole discretion.

- 12.5. You may terminate, unless otherwise stated in the Managed Services Agreement [MSA] and/or the Active Development Agreement [ADA], this Agreement at any time by giving 30 days written notice to Fortix®.
- 12.6. Immediately upon termination of this Agreement by either party, your access to Services will cease, and you must at your own cost cease using (and require all of your users and extended parties) our Services and you shall destroy all materials obtained from the site and all copies thereof, whether made under the terms of this agreement or otherwise.;
- 12.7. Upon termination of this Agreement for whatever reason, you will not be entitled to credits or refunds for any unused portion of this Agreement, including but not limited to unused maintenance and support.
- 12.8. In addition, we reserve the right to immediately terminate this agreement, and/or your access to and use of the site or any portion thereof, at any time and for any reason, with or without cause.
- 12.9. You agree and acknowledge that Fortix® has no obligation to retain the Data, and may delete such Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.
- 12.10. Fortix® shall not be liable for any loss, damage, including consequential damage, cost, expense or outgoing of whatsoever nature that may be incurred by you as a result of Fortix® undertaking any of the matters as set out in this clause.

13. Notice

- 13.1. Fortix® may give notice by means of a general notice on the Service, electronic mail to your email address on our records, or by written communication posted by mail to your address on our records.
- 13.2. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by pre-paid post) or 12 hours after sending (if sent by email).
- 13.3. You may give notice to Fortix® (such notice shall be deemed given when received by Fortix®) at any time by any of the following:
 - 13.3.1. letter sent by confirmed facsimile to Fortix® at the fax number +61 8 6365 4384;
 - 13.3.2. letter delivered by nationally recognised overnight delivery service or first class postage prepaid mail to Fortix® at the following address

Fortix®
PO BOX 265
MAYLANDS WA 6931
AUSTRALIA

in either case, addressed to the attention of the Managing Director.

14. Jurisdiction

- 14.1. You and your users choose to access our Services may do so at your own initiative and risk, and are responsible for compliance with local laws, if and to the extent local laws are applicable.
- 14.2. We reserve the right to limit the availability and provision of the Service to any person, geographic area or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any such service that we provide.
- 14.3. We also reserve the right in our sole discretion to remove any user without further or special notice.
- 14.4. In the event that the laws of the jurisdiction you are in do not permit or impose restrictions on the access to the contents of the Service, you shall immediately discontinue access or comply with such restrictions (as the case may be).
- 14.5. This Agreement shall be governed by the laws of Western Australia, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Western Australia.
- 14.6. No text or information set forth on any other document (other than Managed Services Agreement [MSA] and/or the Active Development Agreement [ADA]) shall add to or vary the terms and conditions of this Agreement.
- 14.7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

- 14.8. No joint venture, partnership, employment, or agency relationship exists between you and Fortix® as a result of this agreement or use of the Service.
- 14.9. The failure of Fortix® to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Fortix® in writing.
- 14.10. This document, together with applicable and valid agreements (Managed Services Agreement [MSA] and/or the Active Development Agreement [ADA]), comprises the entire agreement between you and Fortix® and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

15. Definitions

- 15.1. As used in this document or any agreements produced by Fortix® hereafter associated herewith:
 - 15.1.1. "Active Development Agreement [ADA]" is the document which details the agreed professional services work that are to be performed on the Service and its payments terms, as requested by you;
 - 15.1.2. "Administrator(s)" means those Users designated by you who are authorised to purchase additional Fortix® Services via the Service or email to sales@fortix.com.au and to create User accounts and otherwise administer your use of the Service;
 - 15.1.3. "Agreement" means these online Terms of Service, Managed Services Agreement [MSA], Active Development Agreement [ADA] and any materials available on the Fortix® Sites specifically incorporated by reference herein, as such materials, may be updated by Fortix® from time to time in its sole discretion;
 - 15.1.4. "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service;
 - 15.1.5. "Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service;
 - 15.1.6. "Effective Date" means the earlier of either the date this Agreement is accepted, or by signing one or more of the Managed

Services Agreement [MSA], Active Development Agreement [ADA] or the date you begin using the Service;

- 15.1.7. "Extended Party User" or "Extended Parties Users" means your representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by you (or by Fortix® at your request);
- 15.1.8. "Feedback" means any feedback, comments, suggestions or materials that User may provide to Fortix® about or in connection with the Services, including any ideas, concepts, know-how or techniques contained therein.
- 15.1.9. "Fortix®" means collectively Fortix®, having its principal place of business at 63 Eighth Ave, Maylands WA 6051, Australia;
- 15.1.10. "Fortix® Technology" means all of Fortix®'s proprietary technology (including software, hardware, products, processes, frameworks, workpapers, specifications, documentation, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Fortix® in providing the Service;
- 15.1.11. "Initial Term" means the first License Term period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is quarterly, the Initial Term (and first License Term) is the first quarter);
- 15.1.12. "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;
- 15.1.13. "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s);
- 15.1.14. "Managed Services Agreement [MSA]" is the document which details service levels, support levels, infrastructure levels and agreement to provide users with access to the Service and its payments terms, as requested by you;

- 15.1.15. "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail);
- 15.1.16. "Service(s)" means the specific edition of Fortix®'s online business management, customer relationship management and content management systems, billing, data analysis, or other corporate services identified during the ordering process, developed, operated, and maintained by Fortix®, accessible via <http://www.fortix.com.au> or another designated web site or IP address, or ancillary services rendered to you by Fortix®, to which you are being granted access under this Agreement, including the Fortix® Technology and the Content;
- 15.1.17. "User(s)" means your employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by you (or by Fortix® at your request).