



## Terms and Conditions

### 1. Definitions

#### 1.1 Definitions:

**Act** means the Corporations Act (2001) and includes any amendment or re-enactment of it or any legislation passed in substitution for it;

**Agreement** means the Application Form, the Terms and Conditions or any other document forming part of the Agreement between the Company and the Licensee, including any schedules or annexures;

**Application Form** means the application form of the Company completed by the Licensee;

**Authorised Person** means the person so named in the Agreement;

**Authority** means any government or governmental, semi-governmental, fiscal, administrative or judicial body, department, commission, authority, instrumentality, tribunal, agency or entity, and includes a revenue authority and any self-regulatory organisation established under statute or a stock exchange;

**Box** means the safety deposit box in the Vault Facility allocated for exclusive use to a Licensee as listed in the Schedule or in any other part of the Agreement;

**Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Melbourne, Victoria, Australia;

**Company** means Fortis Vaults Pty Ltd ABN 29 128 129 751;

**Company Key** means a key that corresponds to the relevant Licensee Key and is retained by the Company;

**Commencement Date** means the commencement date of the Agreement;

**Identification Requirements** means the requirements set out in clause 20 of the Terms and Conditions;

**Insolvency Event** means, in relation to a person or entity (as the case may be), the person or entity being made bankrupt, being placed into liquidation, receivership, administration or official management, entering into a scheme of arrangement, compromise or composition with creditors or being or becoming unable to pay one's debts as they fall due or similar event occurring to the person;

**Liability Policy** has the meaning set out in clause 16 of the Terms and Conditions;

**Licence Fee** means any monies payable by the Licensee to the Company in connection with the Agreement which are determined by the Company and notified to the Licensee from time to time;

**Law** means the requirements of any statute, rule, regulation, proclamation, ordinance or by-law;

**Licensee** means the person listed as the Licensee in the Agreement or any person nominated by the Licensee in accordance with the Agreement or otherwise approved by the Company;

**Licensee Keys** means the keys referable to a specific Box, issued by the Company to the Licensee and retained by that Licensee or its Authorised Person;

**Period** means the period as set out in the Agreement;

**Property** means the Licensee's property which is stored in the Box;

**Schedule** means the schedule to the Application Form or to these Terms and Conditions or to any other document between the Company and the Licensee forming part of the Agreement;

**Termination Date** means the date that this Agreement terminates;

**Terms and Conditions** means these terms and conditions;

**Vault Facility** means the premises at which the relevant Box is located, being Level 10, 227 Collins Street, Melbourne, Victoria, Australia, 3000.

## 1.2 Interpretation

- 1.2.1 Reference to one gender includes the others; the singular includes the plural and the plural includes the singular; and a person includes a body corporate.
- 1.2.2 "Including" and similar expressions are not words of limitation.
- 1.2.3 Headings and any table of contents or index are for convenience only and do not form part of the Agreement or affect its interpretation.

## 2. Agreement

In consideration of the payment by the Licensee to the Company of the Licence Fee and compliance by the Licensee and its Authorised Persons with the Agreement, the Company agrees to allocate and licence the Box to the Licensee for the Licensee's exclusive use during the Term.

## 3. Period

Subject to the terms of the Agreement, and unless otherwise indicated, the Period will be renewed on payment of the Licence Fee, made in advance, at least seven (7) Business Days prior to the end of the Period.

## 4. Licence Fee

- 4.1 The Licence Fee is set out in the Agreement.
- 4.2 The Licensee must:
  - 4.2.1 pay the Licence Fee for the full Period in advance and on or before the Commencement Date. The Agreement will not commence until the Licence Fee is paid;

- 4.2.2 pay the Licence Fee for subsequent renewals in advance and at least seven (7) Business Days prior to the end of the Period. The Agreement will terminate if it is not renewed.
- 4.3 All other charges which may be payable by the Licensee at any time are as set out in the Agreement.
- 4.4 All payments must be made by cash, bank transfer, approved credit or debit card, or by such other means as directed by the Company.
- 4.5 On execution of the Agreement the Licensee must provide a direct debit authority in a form required by the Company to automatically debit each Licensee fee from the Licensee's credit card or bank account.
- 4.6 Unless otherwise determined by the Company, the License Fee increases annually by 5 %.

## **5. Contents**

- 5.1 The Licensee may use the Box to store Property, which the Licensee is legally entitled to store and which is accessible only by the Licensee and the Licensee's Authorised Persons.
- 5.2 The Licensee must not store:
  - 5.2.1 liquids;
  - 5.2.2 anything which is offensive in nature or illegal;
  - 5.2.3 anything that has been declared dangerous or hazardous under any Law;
  - 5.2.4 any dangerous, flammable, corrosive or perishable items;
  - 5.2.5 weapons, regardless of whether or not they are in working order;
  - 5.2.6 anything which may become a nuisance to any person;
  - 5.2.7 anything which the Licensee does not have full legal entitlement to store to the exclusion of third parties;
  - 5.2.8 anything the storage of which will make us subject to any liability or penalty;
  - 5.2.9 anything that requires any special handling or storage to enable its safe or effective storage.
- 5.3 The Licensee warrants and agrees that the Licensee's Property stored in the Box complies with this clause 5.
- 5.4 If the Company becomes aware that anything stored in the Box is of a kind that contravenes this clause 5, the Company may remove it and deal with it as it considers appropriate in the circumstances, including destruction of such property or handing it to an appropriate Authority. The Company will not be liable to the Licensee for any loss the Licensee incurs as a result of the Company taking such action, and the Licensee indemnifies the Company accordingly.

## **6. Licence Keys**

- 6.1 Two (2) Licensee Keys will be issued per Box to one (1) Authorised Person on receipt by the Company of the Licence Fee. A Box may only be opened when both a Licensee Key and a Company Key are present.

- 6.2 All Licensee Keys remain the property of the Company.
- 6.3 The Licensee must:
  - 6.3.1. not make or arrange for any person to make a copy of the Licensee Keys;
  - 6.3.2 not mark the Licensee Keys in any way;
  - 6.3.3 ensure that all Licensee Keys provided to the Licensee are not destroyed, damaged, lost or given to any person other than the Authorised Persons; and
  - 6.3.4 on termination of the Agreement the Licensee must return all Licensee Keys to the Company in good condition.

## **7. Access**

- 7.1 The Licensee agrees that only the Authorised Persons shall have access to the Box and its contents. The Company requires the Identification Requirements to be met before allowing access to the Box and the Company may, in its absolute discretion, refuse access if the Identification Requirements are not met.
- 7.2 The Licensee may nominate additional or withdraw Authorised Persons by notice in writing to the Company.
- 7.3 The Company may regulate access to the Vault Facility in its reasonable discretion.
- 7.4 The Authorised Person may only access the Box with the relevant Licensee Key in the presence of a Company representative with the corresponding Company Key. A Box can only be opened when both the Licensee Key and the Company Key are inserted into the key holes of the relevant Box. The Company reserves the right to deny access to the Box if any provision of the Agreement has been breached by the Licensee including but not limited to a failure to pay Licence Fees or other charges referred to in the Agreement.
- 7.5 Once the Box has been opened, the Authorised Person may view or remove the contents of the Box without the supervision of a Company representative in an allocated viewing suite and/or within the Vault Facility.
- 7.6 In the event that a duly authorised representative of an Authority serves upon the Company a legal demand to access a Box, or information held by it about the Licensee, the Company will comply with such a request. The Company expressly disclaims any liability for any loss or damage suffered by the Licensee in such an instance. All other attempts to access a relevant Box or information held by the Company about a Licensee will be resisted by the Company unless the Licensee has instructed the Company in writing otherwise. All costs incurred in resisting access will be borne by the Licensee.

## **8. Liability**

- 8.1 Subject to clause 16 of the Terms and Conditions, to the extent permitted by Law:
  - 8.1.1 the Company is not liable to the Licensee for any loss or damage the Licensee may suffer or incur in connection with the Agreement including for any loss of or damage to the Licensee's Property in excess of the Licensee's nominated amount under the Liability Policy; and
  - 8.1.2 all warranties that would otherwise be implied into the Agreement are excluded.

8.2 The Licensee indemnifies the Company for any loss or liability the Company may incur (including liability to any third party) arising from the licensing of the Box (and access to the Vault Facility).

## **9. Termination**

9.1 The Agreement terminates on the earlier of:

9.1.1 either the Company or the Licensee giving the other not less than thirty (30) days written notice of the intended termination; or

9.1.2 where the Company in its discretion elects to immediately terminate the Agreement where any of the events specified in clauses 6.2, 7.1 or 11 of the Terms and Conditions occurs; or

9.1.3 the end of the Period where the Licensee has not renewed the Agreement in accordance with clause 4.2 of the Terms and Conditions.

9.2 Termination of the Agreement is without prejudice to any accrued rights of the Parties.

9.3 The Licensee must return the Licensee Keys to the Company and remove the contents of the Box prior to the Termination Date.

9.4 Where the Agreement is terminated by either the Company or the Licensee by the giving of notice under clause 9.1.1 of the Terms and Conditions before the end of the Period, the Company will provide the Licensee with a refund of the Licence Fee that is commensurate with the period of the reduction of the Period on a pro rata basis.

9.5 Where the Agreement is terminated for any other reason than the giving of notice under clause 9.1.1 of the Terms and Conditions before the end of the Term, the Licensee will not be entitled to any refund of the Licence Fee.

9.6 Where the Agreement is terminated for any reason, the Licensee will not be entitled to a refund of any administrative or other charges paid by the Licensee to the Company.

9.7 Where this Agreement is terminated for any reason, the Licensee will immediately cease to be a named party on the Liability Policy.

## **10. Disposal of Property**

10.1 Where the Agreement is terminated for any reason, the Licensee must remove the Property from the Box within two (2) Business Days of termination.

10.2 Where the Licensee fails to remove the Property from the Box in accordance with clause 10.1, the Property will be held to be uncollected goods for the purposes of the *Warehousemen's Liens Act 1958*.

10.3 Where the Company holds uncollected goods, the Company may:

10.3.1 remove the Property from the Box and store the Property at the Company's discretion;

10.3.2 apply to the appropriate Court for an order for the sale and/or disposal of the Property and apply the proceeds of the sale to any outstanding Licence Fees or charges owing by the Licensee to the Company and refund the balance of the proceeds of the sale (if any) to the Licensee.

## **11. Insolvency, Incapacity or Death**

Where a Licensee:

11.1.1 suffers an Insolvency Event;

11.1.2 dies; or

11.1.3 otherwise becomes unable to exercise its rights under the Agreement for reasons of incapacity, and the property of the Licensee is vested in a relevant trustee or executor as the case may be,

the Company may terminate the Agreement and permit such trustee or executor to access the Box to remove its contents, subject to compliance with the provisions of the Agreement.

## **12. Goods and Services Tax**

12.1 Definitions In this clause:

12.1.1 "GST" means GST as defined in A New Tax System (Goods and Services Tax) Act (1999) as amended (GST Act) or any replacement or other relevant legislation and regulations;

12.1.2 words or expressions used in this clause 12 which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;

12.1.3 any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member;

12.1.4 any reference to an input tax credit entitlement by a Party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that Party is a member; and

12.1.5 if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

12.2 Supply is a taxable supply

12.2.1 Unless GST is expressly included, the consideration to be paid or provided under any other clause of the Agreement for any supply made under or in connection with the Agreement does not include GST.

12.2.2 To the extent that any supply made under or in connection with the Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause 12 is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

### **13. Variation**

13.1 The Company:

13.1.1 may vary the Terms and Conditions, or change or introduce any fee or charge, at anytime;

13.1.2 will give the Licensee notice of any variation to the Terms and Conditions no later than thirty (30) days before the change takes effect;

13.1.3 will give the Licensee at least thirty (30) days prior notice if the Company changes or introduces a new Licence Fee or charge.

13.2 If the Licensee does not accept any variation or change that the Company makes, and the Licensee is not in breach of the Agreement, the Licensee can terminate the Agreement within thirty (30) days from the date of the Company's notice under clause 13.1.2.

13.3 If the Licensee does not notify the Company that the Licensee wishes to terminate the Agreement within thirty (30) days from the date of the Company's notice under clause 13.1.2, the Licensee will be deemed to have accepted the variation set out in the Company's notice.

13.4 The Licensee may not vary the Agreement.

### **14. Late Payment and Charges**

If the Licensee does not pay the Licence Fee or any other charge within seven (7) days of the date that it becomes due, then without limiting the Licensee's rights under the Agreement:

14.1 the Company will immediately suspend the Licensee's access to the Vault Facility;

14.2 the Licensee will be charged a holding fee and administration fee if the Property remains in the Box, after the suspension;

14.3 the Licensee you must pay a late payment fee of 12% per annum on all overdue amounts (on a monthly basis) until the day of actual payment, as well as a \$100.00 per month administration fee.

### **15. Changes to Licensee's Particulars**

15.1 The Licensee must notify the Company promptly and in writing of any change to the details of the Licensee or Authorised Person set out in the Agreement

15.2 The Company will not accept any changes to those details set out in the Agreement unless they are given to the Company in writing and signed by the Licensee.

### **16. Insurance**

16.1 The Company notifies the Licensee and the Licensee acknowledges that:

16.1.1 the Company has insurance in place for its liability under the Agreement (Liability Policy) for all claims and damages, including any costs and expenses incurred in connection the Agreement which are, during the period of cover, sustained or discovered to have been sustained by reason of damage, destruction, theft, disappearance or physical loss by any cause of gold, silver, diamonds, precious metals, jewellery, specie, cash, securities, bonds, certificates, bills of exchange or any other property or articles of intrinsic value for a period of 12 months, at which time it is renewed;

16.1.2 the Company is not an insurance provider and does not hold an Australian Financial Services (AFS) licence;

- 16.1.3 the Company has a Liability Policy which covers the contents of all Boxes;
- 16.1.4 the Licensee is not a listed party to the Company's own Liability Policy between the Company and its insurer.
- 16.2 The Company will provide the Licensee with a copy of the terms and conditions of the Liability Policy on the Licensee's written request, without charge, within a reasonable time after the request.
- 16.3 The Company undertakes to the Licensee that in consideration of the Licensee paying the Licence Fee and otherwise complying with the terms of the Agreement, the Company will take reasonable steps to provide information about the status of the Liability Policy.

## **17. Authorised Persons**

- 17.1 If the Licensee is an individual, the Licensee can nominate one or more persons over the age of 18 years to be Authorised Persons. The Company reserves the right to refuse to accept any person as the Licensee's Authorised Person.
- 17.2 If the Licensee is a company or other entity, the Licensee must nominate one or more Authorised Persons over the age of 18 years. The Company reserves the right to refuse to accept any person as the Licensee's Authorised Person.
- 17.3 The Licensee's Authorised Persons will have the same control over Property as the Licensee does, including the rights to access the Property, remove the Property, and terminate the Agreement
- 17.4 If the Company is unable to contact the Licensee using the details the Licensee has provided to the Company in the Agreement, the Company may contact the Authorised Persons to, among other things, give notice that the Company requires the Property to be removed.
- 17.5 The Licensee can revoke the authority of any Authorised Person or replace an Authorised Person with another by giving the Company written notice.

## **18. Access to Vault Facility**

- 18.1 Access to Property stored at the Vault Facility is limited to the Licensee and the Authorised Persons.
- 18.2 The Company will require identification and authorisation in the manner notified by the Company to the Licensee before allowing access (and by appointment only) to the Vault Facility and the Company may refuse access if it is not satisfied with the form of identification and authorisation produced.
- 18.3 The Licensee can access the Vault Facility between 9.00am and 5:00pm Monday to Friday (public holidays excepted) and every 1<sup>st</sup> and 3<sup>rd</sup> Saturday of every month between 10 am and 2 pm.
- 18.4 The Company may refuse any person access to the Vault Facility or to the Property where required to do so by Law, notices, orders or directions.

## **19. Joint Ownership**

If the Licensee comprises two (2) or more parties, they will be jointly and severally liable under the terms of the Agreement and treated as jointly and severally entitled to the Property. If the Parties are individuals, access to the Vault Facility and the Property will be treated as that of the survivor if any of the Licensees are deceased.

## 20. Identification

- 20.1 The Licensee acknowledges:
- 20.1.1 in accordance with The Anti-Money Laundering and Counter-Terrorism Financing Act (2006) (AML/CTF Act), the Company must verify the identity of the Licensee and, at the discretion of the Company, the beneficial owners of companies, trusts, partnerships, incorporated associations and registered co-operatives of the Licensee;
  - 20.1.2 “beneficial owner” means “the natural person who ultimately owns or controls the Licensee and/or the natural person on whose behalf the Licensee has entered into the Agreement”;
  - 20.1.3 “beneficial owner” includes those persons who exercise effective control over a legal person or arrangement, and includes a person who directly or indirectly owns 25% or more of an entity or who controls another person; and
  - 20.1.4 if there is a chain of ownership, the relevant beneficial owner is the person who ultimately owns or controls the Licensee.
- 20.2 The Licensee is required to complete the current Application Form, which includes the Company’s AML/CTF Act Identification Requirements. These requirements are in place to:
- 20.2.1 ensure the Licensee is properly identified through a documented process; and
  - 20.2.2 verify the identity of customers/businesses using reliable electronic and independent documentation.
- 20.3 In relation to the Company’s activities, the Company undertakes to comply with the AML/CTF Act.
- 20.4 The Company acknowledges that it also has obligations under the Privacy Act 2008, including the requirement to comply with the Australian Privacy Principles. A copy of the Company’s Privacy Policy will be provided upon request.
- 20.5 Pursuant to the Australian Privacy Principles, the Licensee authorises the Company to collect personal information provided to the Company by the Licensee (including the Licensee’s full name, address, date of birth, email address, contact details and copies of personal ID documents such as the Licensee’s Driver Licence, Passport, Medicare Card, Bank Statements, Council Rates Notices or any other documents that prove the Licensee’s identity) (“Personal Information”).
- 20.6 The Company may provide the Personal Information to its related companies so that the Company’s relationship with the Licensee may be best administered.
- 20.7 The Company may provide the Licensee with products and services the Licensee requests, and the Company may provide the Licensee with information about the Company’s products and services as well as products and services of related companies.
- 20.8 To complete the Company’s Identification Requirements, the Licensee authorises the Company to use the Personal Information provided by the Licensee to request information from credit agencies, financial institutions and Authorities as required to verify the Licensee’s identity.

## 21. Notices

## **21.1 Notices**

21.1.1 Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to the Agreement:

- (a) must be in legible writing and in English addressed in accordance with the recitals or as specified to the sender by any party by notice;
- (b) where the sender is a company, must be signed by an officer or under the common seal of the sender;
- (c) is regarded as being given by the sender and received by the addressee:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post, on delivery to the addressee;
  - (iii) if by electronic mail, when received by the addressee; or
  - (iv) if by facsimile transmission to the facsimile number specified at the commencement of this Agreement or such other number as may be notified to the Company, whether or not legibly received, when received by the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
- (d) 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.

21.1.2 A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under error and informs the sender that it is not legible.

21.1.3 In this clause, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

## **21.2 Governing law and jurisdiction**

21.2.1 The Agreement is governed by the laws of Victoria.

21.2.2 Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

## **21.3 Assignment**

21.3.1 The Licensee may not assign, transfer or in any other manner deal with its rights under the Agreement without the prior written approval of the Company;

21.3.2 The Company may assign its rights under the Agreement provided it first notifies the Licensee.

## **21.4 Prohibition and enforceability**

21.4.1 Any provision of, or the application of any provision of, the Agreement or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

21.4.2 Any provision of, or the application of any provision of, the Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

**21.5 Waivers**

Waiver of any right arising from a breach of the Agreement or of any power arising upon default under the Agreement must be in writing and signed by the party granting the waiver.

**21.6 Entire agreement**

The Agreement incorporates the entire understanding of the Company and the Licensee and supersedes all previous arrangements and understandings, written and oral, between them in relation to the same.

**21.7 Costs and outlays**

21.7.1 Each party must pay its own costs and outlays connected with the preparation and execution of the Agreement.

21.7.2 The Licensee must, when due or earlier, pay all stamp duty and other government duties and imposts payable from time to time in connection with the Agreement and all other documents and matters referred to in the Agreement.

**FORTIS VAULTS PTY LTD – LICENCE AGREEMENT**

This document is for the licence of a Vault (S) at Fortis Vaults Pty Ltd.

**The licensee’s name (The licensee)**

.....

**And / or**

.....

**Name of Company/ Trust/ SMSF**

**The licensor’s name is Fortis Vaults Pty Ltd.**

The licensee acknowledges that Fortis Vaults Pty Ltd has granted to the Licensee to use the security storage facility, in particular

Box Number .....

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**Licensee 1**

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**Licensee 2**