

Effective: July 1, 2018

1 These Customer Terms of Service (**Terms**) describe your rights and responsibilities when accessing and using our Services (as defined herein). You have requested the Services set out in the Quotation. You agree and accept that these Terms and the Quotation form the agreement under which we will supply the Services to you. Please read the Terms carefully. Please contact us if you have any questions.

2 Agreement; Acceptance

2.1 The agreement formed by your acceptance of these Terms is between JX2 Technology Pty Ltd (ABN 61 944 720 595) ATF for JX2 Technology Pty Ltd Unit Trust T/A vintrace, its successors and assignees, (referred to as "**Supplier**", "**we**", "**us**" or "**our**"), and you as the customer, as described in the Quotation (referred to as "**Customer**", "**you**" or "**your**"), and collectively the Parties.

2.2 You accept these Terms by either:

- (a) signing and returning the Quotation; or
- (b) confirming by email that you accept the Quotation; or
- (c) making part or full payment for the services, by the methods set out in our Quotation or our tax invoice to you (**Invoice**).

3 The Services and Support

3.1 *Services*. Subject to the terms and conditions of these Terms, on or from the Commencement Date and during the Term, Supplier or its designee will provide the Customer with the right to access and use **vintrace**, Supplier's proprietary wine making and winery management software solution, as specified in the Quotation through the internet during the term of these Terms (**Services**). The Services may only be accessed and used for the purposes of tracking and managing the production of wine and other beverages and only in accordance with Supplier's then-applicable user documentation (including computer software and, where applicable, associated media and online or electronic documentation) or other Supplier-provided written instructions, and any related thereto provided by Supplier to the Customer. The Services are hosted by the Supplier or its designee.

3.2 *Commencement and Scope of Services*. The Customer acknowledges and agrees that the Services:

- (a) commence from the Commencement Date or the day the Customer is granted access to the Services by the Supplier, whichever occurs first; and
- (b) permit the Customer to use the Services in accordance with the Services' normal operating procedures; and
- (c) permit the Customer to access and use the Services in accordance with the number and type of Authorised Users, as applicable.

3.3 *Modifications and Updates to the Services*. The Services are subject to modification and updates from time to time at Supplier's sole discretion, for any purpose deemed appropriate by Supplier. Supplier will use reasonable efforts to give you prior written notice of any such modification. In connection therewith, the

Supplier or its designee may automatically download and install updates. These updates are designed to improve, enhance and further develop the Services and may take the form of bug fixes, enhanced functions, new modules, and completely new versions. The Customer agrees and consents to receive such updates (and permit the Supplier or its designee to deliver these updated with or without the Customer's knowledge) as part of the Customer's use of the Services.

3.4 The Parties agree that:

- (a) the Supplier will supply the Services on a non-exclusive basis;
- (b) the Services may use third party products or services;
- (c) certain of the Services, including back office technical support, database administration, user account management, sales and marketing consultancy, custom software development and maintenance services, are provided with the assistance and support of third parties and designees of the Supplier;
- (d) the Supplier does not make any warranty or representation as to the ability of the facilities or services of any third-party suppliers; and
- (e) the Supplier is not liable for any failure in, fault with or degradation of the Services if that failure, fault or degradation is attributable to or caused by any failure of the Customer Environment or the facilities or services of any third party.

3.5 *Service Level.* The Supplier will undertake commercially reasonable efforts to make the Services available at least 99.9% of the time (excluding scheduled maintenance time), twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, Supplier reserves the right to suspend Customer's access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of these Terms, including failure to pay any amounts due to Supplier.

3.6 The Supplier reserves the right to refuse any request in relation to the Services that it deems inappropriate, unreasonable or illegal.

3.7 Our Services cover the scope in the Quotation. If you request additional services, including but not limited to changes in scope or variations (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same.

3.8 If we agree to perform any Variation, then we will inform you of the additional costing (**Variation Fee**). We will invoice you accordingly for the Variation upon receipt of your approval, which may be via a statement of work signed by the parties.

4 Restrictions and Customer Covenants

4.1 The Customer must not access or use the Services except as permitted by these Terms and may not do or authorise the commission of any act that would or might invalidate or be inconsistent with the Supplier's Intellectual Property rights in the Services. Without limiting the foregoing provisions, the Customer agrees and acknowledges that it must not and will not permit any person to:

- (a) resell, assign, transfer, distribute, rent, distribute, pledge, encumber or otherwise provide others with rights or access to the Services;

- (b) “frame”, “mirror” or serve any of the Services on any web server or other computer server over the Internet or any other network;
 - (c) copy, alter, modify, create derivative works from, reproduce, resell or transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Services, or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any Software, documentation or data related thereto (except as expressly permitted by applicable law);
 - (d) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality legend or notice, or any numbers, or other means of identification used on or in relation to the Services; or
 - (e) use the Services or related Software or any data for any purpose other than Customer’s internal use in accordance with these Terms.
- 4.2 The Customer must not use the Services in any way which is in breach of any statute, regulation, law or legal right of any person within the Commonwealth of Australia or the jurisdiction in which the Customer or its Personnel are located.
- 4.3 The Customer will be responsible for maintaining the security of the Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the Customer account with or without Customer’s knowledge or consent.
- 4.4 The Customer further acknowledges, agrees to and is bound by the Privacy Policy on Supplier’s website (as they may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.

5 Data

- 5.1 Subject to Section 5.7, the Customer grants to the Supplier a limited licence to copy, transmit, store and back-up or otherwise access or use the Data or make reference to any Intellectual Property rights in the Data:
- (a) to supply the Services including to enable the Customer, its Personnel and any Authorised Users to access and use the Services;
 - (b) for diagnostic purposes;
 - (c) to test, enhance and otherwise modify the Services whether requested by the Customer or not;
 - (d) for benchmarking purposes;
 - (e) to improve the Services or to develop other services; and
 - (f) as reasonably required for the performance of the Supplier’s obligations under these Terms.

- 5.2 In relation to the use of the Data for benchmarking purposes in accordance with clause 4.1(d), the Customer may request that the Supplier not use the Data for benchmarking purposes at any time.
- 5.3 The Customer represents and warrants that any and all Data supplied by the Customer or otherwise accessed by the Supplier through the provision of the Services is the sole and exclusive property of the Customer or the Customer has secured any and all authorisations and rights to use the Data as applicable.
- 5.4 The Customer acknowledges and agrees that:
- (a) any collation, conversion and analysis of Data performed as part of the Services whether by the Services or otherwise is likely to be subject to human input and machine errors, omissions, delays and losses including but not limited to any loss of Data. The Supplier is not liable for any such errors, omissions, delays or losses. The Customer acknowledges and agrees it is responsible for adopting reasonable measures to limit the impact of such loss or error;
 - (b) the Supplier may relocate the Data to another jurisdiction. The Supplier will give the Customer 15 Business Days' notice and use all reasonable endeavours to minimise the effect of such Change on the Customer's access and use of the Services;
 - (c) the Supplier is not responsible for any corruption or loss of any Data if such corruption or loss is due to an act or omission by the Customer, its Personnel, its Related Bodies Corporate or any Authorised Users; and
 - (d) the Supplier is not responsible for the integrity or existence of any Data on the Customer's System, network or any device controlled by the Customer or its Personnel.
- 5.5 The Customer agrees to indemnify and hold the Supplier harmless for the corruption or loss of any Data controlled or stored by the Customer or any Related Bodies Corporate, to extent the corruption or loss is not caused by the negligent act or omission of the Supplier or its Personnel.
- 5.6 Customer acknowledges and agrees that Supplier will have the right to generate Aggregate/Anonymous Data and that Aggregate/Anonymous Data is Supplier Intellectual Property, which Supplier may use for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Supplier's products and services and to create and distribute reports and other materials). For clarity, Supplier will only disclose Aggregate/Anonymous Data externally in a de-identified (anonymous) form that does not identify Customer or Authorized Users, and that is stripped of all persistent identifiers (such as device identifiers, IP addresses, and cookie IDs). Customer is not responsible for Supplier's use of Aggregate/Anonymous Data.

6 Price, Invoicing and Payment

- 6.1 The Customer will pay the Supplier the Fees, using the payment method and as per the payment terms in the Quotation.
- 6.2 On or after the 12 month anniversary of the Commencement Date, the Supplier may conduct a review of the Fees on account of changes to the consumer price index (CPI) and changes to the Services provided by the Supplier (**Fee Review**). The Supplier may increase the Fees by the average CPI for the preceding financial year

or another amount. Subsequent Fee Reviews may take place once every Contract Year. The Supplier will provide notice the Customer that it is conducting a Fee Review.

- 6.3 The Supplier's pricing structure or payment methods may be amended from time to time in the Supplier's sole discretion, subject to clause 5.2.
- 6.4 If the Customer requires the use of a purchase order, the Customer is responsible for providing the applicable purchase order at the time of purchase. The Customer acknowledges and agrees to the extent of any inconsistency between these Terms and any terms and conditions attached to the Customer's purchase order, these Terms will prevail. The Parties acknowledge and agree that any pre-printed standard terms and conditions attached to or on the back of any purchase order will not apply to these Terms.
- 6.5 If the Fees are unpaid for 10 Business Days after the expiry of the applicable payment term, the Supplier has the right to engage debt collection services for the collection of any unpaid and undisputed debt and the right to commence legal proceedings for any outstanding amounts owed to the Supplier. The Customer acknowledges and agrees that it is liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expense and that the Supplier may place a default against the Customer with a credit reporting agency. The Customer agrees to indemnify the Supplier for the full amount of the Supplier's legal and debt recovery costs.

7 Customer Warranties

- 7.1 The Customer warrants that it will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from the Supplier, any employee or contractor that was employed by or contracted to the Supplier during the term that the Supplier provides the Services to the Customer or the prior 12-month period.
- 7.2 The Customer warrants that throughout the Term of these Terms that:
- (a) there are no legal restrictions preventing it from agreeing to the Terms;
 - (b) it will cooperate with the Supplier and provide the Supplier with information and assistance as requested by the Supplier from time to time, that are reasonably necessary to enable the Supplier to provide the Services;
 - (c) the information it provides to the Supplier is true, correct and complete;
 - (d) it will not infringe any third party rights in working with the Supplier and receiving the Services;
 - (e) it will inform the Supplier if it has reasonable concerns relating to our provision of the Services under the Terms, with the aim that the Customer and the Supplier will use all reasonable efforts to resolve the concerns;
 - (f) it is responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at the Customer's cost, and for providing the Supplier with the necessary consents, licences and permissions;
 - (g) it consents to the use of its name and Intellectual Property in relation to the Services in a way which may identify it;
 - (h) if applicable, it has a valid corporate registration number, which has been advised to the Supplier; and

- (i) if applicable, it is registered for sales and use tax purposes.

8 Additional Customer Obligations

8.1 The Customer will provide all required materials as required by the Supplier from time to time for the Supplier to perform the Services.

8.2 The Customer must, at the Customer's own expense:

- (a) provide all reasonable assistance and cooperation to the Supplier in order to enable the Supplier to supply the Services in an efficient and timely manner including but not limited to (i) obtaining from Authorised Users any consents necessary to allow the Customer and its Personnel to engage in the activities described in these Terms and to allow the Supplier to provide the Services and (ii) being ready to undergo training and on-boarding if the Customer is a new customer;
- (b) use reasonable endeavours to ensure the integrity of the Data;
- (c) permit the Supplier and its Personnel to have reasonable access to the Customer Environment for the purposes of supplying the Services;
- (d) ensure that only Customer Personnel and Authorised Users will access and use the Services and such use and access will be in accordance with the terms and conditions of these Terms; and
- (e) make any changes to its Customer Environment that may be required to support the delivery and operation of the Services.

8.3 The Customer is responsible for its use of the Services and must ensure that no person uses the Services:

- (a) to break any law or infringe any person's rights including but not limited to Intellectual Property rights;
- (b) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
- (c) in any way that damages, interferes with or interrupts the supply of the Services.

8.4 The Customer acknowledges and agrees that:

- (a) it is responsible for all users using the Services including its Personnel and any Authorised Users;
- (b) its use of the Services will be at its own risk;
- (c) if the Supplier wishes to alter the delivery of the Services which requires a change to the Customer Environment (including reconfigurations or interface customisations the extent necessary to access or use the Services) the Customer will give any assistance to the Supplier or make any such changes to the Customer Environment, that the Supplier reasonably requires; and
- (d) the Supplier may pursue any equitable or other available remedy against the Customer as a result of a breach by the Customer of any provision of these Terms.

9 Intellectual Property rights

- 9.1 A Party's ownership of, or any right, title or interest in, any Intellectual Property rights in all products, services, software, documentation and other material provided by either Party under these Terms, including any developments, updates, advancements, modifications or adaptations of those products, services, documentation and any other material (**Pre-Existing Material**) will not be altered, transferred or assigned by virtue of these Terms.
- 9.2 In particular, except as expressly set forth herein, Supplier alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Supplier. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under these Terms. These Terms are not a sale and do not convey to Customer any rights of ownership in or related to the Services or Software, or any other intellectual property rights. The Customer agrees the Supplier owns or holds the applicable licences to all Intellectual Property rights in the Services and any documentation provided with the Services by the Supplier to the Customer including any Customer configuration documentation.
- 9.3 Access to the Services may require the Customer to install certain software applications. Customer agrees to be bound by any End-User Software Agreements (if applicable) that govern the installation and use of such client software applications.
- 9.4 The Customer grants to the Supplier a non-exclusive, royalty free, non-transferable and revocable licence to use any of the Customer's Intellectual Property rights including any Pre-Existing Material as reasonably required for Supplier to provide the Services to the Customer.

10 Audit and Monitoring

- 10.1 The Supplier, its Personnel or any person authorised by the Supplier has the right to audit and inspect, and appoint one or more auditors to audit and inspect, any Customer Systems, documents and records to verify Customer's compliance with these Terms.
- 10.2 Upon receipt of written notice from the Supplier, the Customer agrees to permit the audits and inspections referred to in clause 9.1 by Supplier, its Personnel or any other person authorised by the Supplier or a regulatory authority or governing body and Customer will provide reasonable assistance as required. Customer agrees to give such person reasonable assistance to enable the auditing or monitoring by Supplier.
- 10.3 The Parties agree that the Supplier must bear all costs associated with any audits and inspections under this clause.

11 Confidential Information

- 11.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.
- 11.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 11.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

11.4 The obligations under this clause will survive termination of these Terms.

12 Feedback and Dispute Resolution

12.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact us.

12.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, the parties may, in their discretion, try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (**Procedures**) before resorting to litigation or some other dispute resolution procedure. The mediator will decide the time and place for mediation, provided that the mediation session shall be held no later than thirty (30) calendar days following the retention of the mediator pursuant to the Procedures. The mediation session shall last for at least one full mediation day before any party that has agreed to attend the mediation has the option to withdraw from the process. The Parties shall attend the mediation in good faith to seek to resolve the dispute.

12.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

13 Term

13.1 The initial term of these Terms will commence on the Commencement Date and continues, for an initial term (if one is specified in the Quotation), until these Terms are terminated earlier in accordance with the provisions of these Terms.

13.2 If an initial term is specified, at least 30 Business Days prior to the expiry of the current Contract Year, either Party may notify the other that it does not wish for the Term to be renewed and in such event, these Terms will expire at the end of the then current Contract Year. If a Party has not given notice pursuant to this clause, these Terms are automatically renewed for another 12-month period.

13.3 If no initial term is specified, these Terms continue unless terminated in accordance with its terms.

14 Termination

14.1 The Parties may terminate these Terms by mutual agreement, by notice if a Notice Period is specified in writing including by email.

14.2 Either Party may terminate the Terms, if the other Party:

- (a) has breached a material term of these Terms and has failed to remedy such breach within 10 Business Days of receiving notice to do so, subject to any other express right of termination;

- (b) ceases operation without a successor; or
- (c) seeks protection under any insolvency, bankruptcy, receivership, trust deed, creditors arrangement, administration, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within 60 days).

14.3 We may terminate the Terms by providing you with five business days' notice, in our sole discretion, if:

- (a) we consider that a request for the Services is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
- (d) you fail to pay an Invoice within 10 business days of the payment date.

14.4 **Applicable to Services:** Notwithstanding anything to the contrary in these Terms, we may remove access to the Services with immediate effect and without notice if you breach clause 2 (Services and Support) or clause 3 (Restrictions and Customer Covenants).

14.5 On termination of these Terms:

- (a) you must cease to use the Services;
- (b) you agree that any payments made are not refundable to you, and you are to pay (i) all invoices for services rendered to you; and (ii) for those services that have been rendered, but not invoiced, up to the effective date of termination;
- (c) you must pay the Supplier for those Third Party Services specifically ordered by the Supplier for you in anticipation of these Terms continuing, where those orders cannot be cancelled without losses or expenses incurred by the Supplier; and
- (d) you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

14.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information, Data and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.

14.7 On termination, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

14.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

14.9 This clause will survive termination of these Terms.

15 Limitation of Liability and Disclaimers

15.1 **Warranties:** The Supplier does not warrant that the Services will be error-free or will operate without interruption. The Services are provided on an "as is" basis, and to the extent permitted by law, Supplier excludes all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of adequacy, timeliness, completeness, reasonableness, non-infringement, suitability, satisfactory quality, merchantability and fitness for a particular purpose of such Services.

- 15.2 **Liability:** To the extent permitted by law, in any Contract Year, the Supplier's liability in the aggregate for all alleged Liabilities or Claims in relation to the Services, Quotation or these Terms (whether under statute, contract, negligence or other tort, indemnity, or any other legal theory) will be limited to, and shall not exceed, the amount of the Fee paid by you to the Supplier in the current Contract Year in respect of the relevant services giving rise to Liability.
- 15.3 The Supplier will not be liable to you or any third party for any Liability or Claim arising (whether under statute, contract, negligence or other tort, indemnity, or otherwise) in relation to any Consequential Loss, nor for any loss of profits, loss of business or anticipatory profits, loss of use, loss of revenue, loss of goodwill or reputation, or any interruption of business, whether based on breach of contract, tort (including negligence) or otherwise, whether or not such Party has been advised of the possibility of such damage.
- 15.4 To the extent permitted by law, the Supplier's liability under or in connection with these Terms will be reduced to the extent, if any, to which your acts or omissions cause or contribute to your own loss or damage.
- 15.5 **Delay.** Where providing or setting up the Services on your Systems depends on your information, act, or response, or that of your Personnel, we have no liability for a failure to perform the Services in this estimated period, which is affected by your or your Personnel's delay in response or action or incomplete or incorrect information.
- 15.6 **Referrals:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 15.7 To the extent permitted by law, the Supplier will not be liable to you for any Liability or Claim caused or contributed by:
- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in the Terms which cannot be excluded by law;
 - (b) the distribution, public release, use or communication of Data, the release of which has been caused by breaches of privacy or confidentiality;
 - (c) the loss, corruption, deletion or changes in part or whole of the Data;
 - (d) errors in producing, altering, erasing or using Data;
 - (e) difficulties in receiving, sending, accessing or utilising Data at any time;
 - (f) damage to your Systems caused by the Services;
 - (g) any virus, fault or defect in any item in your System;
 - (h) any Force Majeure Event;
 - (i) any negligence or breach of these Terms by you or your Personnel; and
 - (j) difficulties in receiving, sending, accessing or utilising Electronic Data at any time.
- 15.8 The Customer further acknowledges and agrees that the Services operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (**Third Party Services**). Notwithstanding anything to the contrary in these Terms, the Supplier will not be liable for any interruption to the Services, unavailability or outage, or any interruption, unavailability or outage of your Systems, caused by any third party, whether they are Third Parties or providers of Third Party Services.

Where we use the Third Party Services of software vendors, or their affiliates (**Software Vendors**) to provide Software, the following applies:

- (a) The Supplier does not make any representations or warranties with respect to Third Party Services or any third party providers;
- (b) Any exchange of data or other interaction between the Customer and a third party provider is solely between the Customer and such third party provider and is governed by such third party's terms and conditions;
- (c) Software Vendors shall have no warranty, support or other obligation or liability to you;
- (d) you indemnify us, and hold us harmless, against any Claims made by Software Vendors against us arising from your breach of these Terms, including Claims in respect to your acts or omissions constituting misuse or infringement of Software Vendors' Software; and
- (e) the Supplier will not be liable for any loss or damage to you caused by Software Vendors' Software.

15.9 The Supplier will have no Liability for any Claims arising in relation to Third Party Services.

15.10 This clause will survive termination of these Terms.

16 Indemnity

16.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) our receipt and use of the Data;
- (c) any breach of these Terms; and
- (d) any misuse of the Services from or by you, your employees, contractors or agents.

16.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

16.3 If a third party claims that the Services provided by the Supplier infringes its intellectual property rights, then the Supplier shall indemnify you for all direct costs, claims and liabilities arising from such claim and, if the quiet enjoyment of such Service is prevented, secure the right for Customer to continue using the Services or replace or modify the Services to make them non-infringing. This indemnity is given subject to:

- (a) You promptly notifying us of the claim, and permitting us to control the defence of the claim;
- (b) You providing us with reasonable cooperation to enable us to defend the claim;
- (c) You not making any admissions in relation to the claim; and
- (d) You not combining the Services with any other products or services to the extent that the claim would not have arisen but for such combination.

16.4 This clause will survive termination of these Terms.

17 General

17.1 Privacy.

- (a) The Parties agree to comply at all times with all applicable laws relating to data protection or privacy in respect of any personal data that it collects, stores, or processes in connection with these Terms.
- (b) Customer further acknowledges, agrees to and is bound by the Privacy Policy on Supplier's website (as they may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.
- (c) Customer acknowledges and agrees that any Data provided to us may be disclosed, if appropriate, to other entities in order to facilitate the purpose for which the information was collected. Such entities generally include:
 - (1) third party service providers for the purpose of enabling them to provide a service such as (but not limited to) payroll, superannuation administration, IT service providers, data storage, web-hosting and server providers, debt collectors, maintenance or problem-solving providers, marketing or advertising providers;
 - (2) any applicable or relevant regulator or third party for the purpose of legislative or contractual compliance and/or reporting;
 - (3) any related entities of the Supplier; or
 - (4) other entities if you have given express consent.
- (d) If Supplier processes any Personal Data on Customer's behalf in the course of providing the Services under these Terms, the Parties agree that their intention is that Supplier shall be Customer's data intermediary. In this regard, the Customer agrees to the following:
 - (1) that the Personal Data may be transferred or stored outside the jurisdiction in which Supplier had received the personal data for the purposes of Supplier performing its obligations under these Terms. This includes without limitation any transfers to Supplier's affiliates, agents or third party service providers;
 - (2) Customer shall ensure that Supplier may lawfully use, process and transfer the Personal Data in accordance with these Terms on the Customer's behalf. This includes without limitation Customer procuring all necessary permissions, authorisations, consents and/or licences to use, process and transfer the Personal Data in accordance with these Terms on the Customer's behalf; and
 - (3) Customer shall ensure that the individuals whose Personal Data is being transferred overseas have been informed of, and have given their consent to, such use, processing, and transfer as required by any and all Applicable Laws relating to data protection or privacy.
- (e) From time to time, these parties may reside outside the Commonwealth of Australia. The Supplier's contracts with these parties generally include an obligation for them to comply with applicable privacy laws. However, you acknowledge that, by agreeing to the disclosure of personal information to these entities outside of the Commonwealth of Australia, the Supplier will no longer be required to take reasonable steps to ensure the overseas recipient's compliance with applicable Commonwealth of

Australia privacy law (including the laws of the State of Victoria) in relation to personal information and we will not be liable to you for any breach of the privacy laws of the Commonwealth of Australia or the State of Victoria by these overseas recipients. On this basis, you consent to such disclosure.

- 17.2 **Publicity:** You consent to us using advertising or publicly announcing that we have undertaken work for you.
- 17.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 17.4 **Sales and Use Tax:** If and when applicable, any sales or use tax payable on our Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the sales or use tax imposed on these charges.
- 17.5 **Relationship of parties:** The Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 17.6 **Assignment:** The Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 17.7 **Severance:** If any provision (or part of it) of the Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of the Terms are valid and enforceable.
- 17.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under the Terms if such delay is due to any Force Majeure Event. If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, we may terminate our agreement with you by giving you five business days' notice in writing.
- 17.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address in the Quotation. Our address is set out in the Quotation. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 17.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the city Melbourne, Victoria.
- 17.11 **Entire Agreement:** These Terms, the Quotation and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 17.12 This clause 16 will survive termination of these Terms.

18 Definitions

Unless defined in a Quotation, the following words will mean:

Aggregate/Anonymous Data means: (i) data generated by aggregating Customer Data with other data so that results are non-personally identifiable with respect to Customer or its Authorized Users; and (ii) learnings, logs, and data regarding use of the Services.

Agreement means these Terms and any Quotation;

Authorised Users means the number of user(s) permitted to use the Services as set out in the Quotation, or as otherwise agreed by the Parties via a signed change control notice, or such other users identified by the Supplier through an audit;

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

Business Hours means 9am to 5pm on a Business Day;

Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

Commencement Date means the date the Customer accepts the Quotation;

Confidential Information includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential";

Consequential Loss means any indirect, special, punitive, consequential or exemplary loss or damage (including without limitation any loss of profits, loss of business or anticipatory profits, loss of use, loss of revenue, loss of goodwill, or any interruption of business);

Contract Year means each 12 month period ending on an anniversary of the Commencement Date during the Term (as defined in the Quotation);

Customer Environment means the computing environment of the Customer including all hardware, software, information technology and telecommunications services and Systems;

Data means all of the information, documents and other data, including any Personal Data, provided or uploaded by you or your Personnel to the Supplier or its Systems or otherwise accessed by the Supplier in providing the Services;

Electronic Data means ideas, notes and information used for communications, displays, distribution, interpretation or processing by electronic and electromechanical data processing systems or electronic equipment and includes programmes, software and other coded instructions for such equipment;

Fees means the fees set out in the Quotation;

Force Majeure Event means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person other than a subcontractor of a Party, but in each case, only if and to the extent that the non-performing party is without fault in causing the event, and the event, or its effect could not have been prevented by reasonable precautions;

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names;

Laws means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory;

Liability means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

Notice Period is set out in the Quotation;

Party means a party to these Terms from time to time, and Parties means all of them;

Personal Data means information provided to Supplier by or at the direction of Customer, or to which access was provided to Supplier by or at the direction of Customer, in the course of Supplier's performance under these Terms that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers); provided, however, that Customer's business contact information is not by itself deemed to be Personal Data.

Personnel means, in relation to a party, the officers, employees, contractors (including subcontractors) and agents of that party;

Services has the meaning set forth in clause 2.1, as modified or supplemented in the Quotation;

Software means the software used to provide any of the Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after these Terms is entered into by the Parties;

System means all hardware, software, networks and other IT systems used by a Party or its affiliates from time to time, including a network; and

Third Party Services means any hardware, software, services, systems, applications or infrastructure provided by a third party that the Supplier uses to provide the Services (or part thereof).

Contact details:

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Collingwood, VIC, 3066

Attention: Joshua Abra

Email: josh@vintrace.com