

## 1 Parties and the Agreement

- 1.1 **Supplier:** JX2 Technology Pty Ltd (ABN 61 944 720 595) ATF for JX2 Technology Pty Ltd Unit Trust T/A vintrace (**Supplier**), together with its licensors, has developed a proprietary winemaking and winery management software solution (**vintrace**) which it provides through its website [www.vintrace.com](http://www.vintrace.com) (**Website**) and the vintrace mobile app (**Mobile App**) as hosted software as a service (**Service**).
- 1.2 **Customer:** Access to and use of the Service is provided by Supplier to a party which signs and returns a quote provided by Supplier (**Quote**) or subscribes to the Service through the Website [or Mobile App], and commences paying the applicable Fee (**Customer**).
- 1.3 **Agreement:** The terms and conditions set out in this document (**Terms of Use**) together with the privacy policy published on the Website (as updated from time to time) (**Privacy Policy**) and the Quote (if any), comprise the Agreement under which the Supplier supplies the Service to the Customer (**Agreement**).
- 1.4 **Acceptance:** By signing and returning the Quote (if any), subscribing through the Website [or Mobile App] or otherwise accessing and using the Service, Customer agrees to the terms of the Agreement (**Acceptance**).

## 2 Definitions

Capitalised terms in this Agreement have the following meaning:

**Acceptance** is defined in clause 1.4;

**Additional Fees** means any fees payable by the Customer for goods and/or services that are not part of the Service.

**New Module** means an enhancement to the Service that adds new functionality and/or additional modules which is not present in the version of the Service licenced by the Customer at the Commencement Date.

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

**Agreement** is defined in clause 1.3;

**Authorised Users** means the number of user(s) permitted to use the Service as set out in the Selected Plan;

**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 of Acceptance;

**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 Rights, 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 initially the 12 month period from the Commencement Date and then each subsequent 12 month period during the Term ending on an anniversary of the Commencement Date;

**Consumer Price Index (CPI)** means the All Groups Weighted Average of the 8 Capital Cities (excluding the Housing Index) as published by the Australian Bureau of Statistics;

**CPI Increase** means the annual increase in the CPI based on a comparison of the most recently published calendar quarter as compared against the same quarter in the previous year;

**Customer Account** means the Customer's account in respect of the Service;

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

**Data** means all of the information, documents and other data, including any Personal Information, provided to the Supplier by the Customer including as uploaded to the Service or the Website;

**Fee** means the fee set out in the Quote or if there is no Quote, as specified in the Selected Plan;

**Force Majeure Event** means any event which is beyond a Party's reasonable control, including 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;

**Hosting Provider** means a third party provider engaged by the Supplier to host the Service;

**Intellectual Property Rights** means all intellectual property rights, including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

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

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

**Mobile App** is defined in clause 1.1;

**Party** means a party to the Agreement and Parties means all of them;

**Personal Information** means Personal Information as defined in the Privacy Act;

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

**Plan** means a subscription plan for the Service as detailed on the Website;

**Pre-Existing Material** is defined in clause 7.1;

**Privacy Act** means *Privacy Act* (Cth) 1988;

**Regulatory Requirements** means any compliance, controls, methods, reporting, etc. required by legislation, regulation, regulators regarding the Customer's business.

**Selected Plan** means the Plan selected by the Customer as specified in the Quote or the Customer Account;

**Quote** means a quote provided by the Supplier concerning access and use of the Service.

**Service** is defined in clause 1.1 and includes any New Modules;

**Service Material** is defined in clause 7.1(b);

**Taxable Supply** has the same meaning within any law imposing or relating to GST and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such act;

**Term** means the period commencing on the Commencement Date and continuing until the Agreement is terminated per its terms;

**New Version** means updates, bug fixes, minor enhancements to existing functionality of the Service and excludes New Modules; and

**Website** is defined in clause 1.1.

### 3 Service, Plans and Restrictions

3.1 **Service:** In consideration of the Customer paying the Fee, on and from the Commencement Date, the Supplier will provide the Customer with access to and use of the Service.

3.2 **Plans:** The Customer acknowledges and agrees that:

- (a) the Customer may access and use the Service in accordance with the Supplier's current user documentation as provided within the Service and through the Website and/or Mobile App or other Supplier-provided written instructions provided to the Customer from time to time;
- (b) Customer's access and use of the Service is limited to the Authorised Users, and other parameters set out in the Selected Plan;
- (c) the Customer may request a change to the Selected Plan by contacting the Supplier. The Supplier will advise the Customer of any variation to the Agreement (including changes to the Fee) associated with a requested change of Selected Plan (**Variation**), and if the Customer accepts the proposed Variation, this Agreement will be deemed amended to reflect that Variation from the date of Customer's acceptance.

3.3 **Restrictions:** The Customer must not:

- (a) access or use the Service except as permitted by the Agreement and in accordance with the parameters of the Selected Plan;
- (b) 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 Service;
- (c) do or authorise or permit any person to:
  - (1) resell, assign, transfer, distribute, rent, distribute, pledge, encumber or otherwise provide others with rights or access to the Service;

- (2) “frame”, “mirror” or serve the Service on any web server or other computer server over the Internet or any other network;
- (3) copy, alter, modify, create derivative works from, reproduce, resell or transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Service, or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Service or any part of it, documentation or data related to it (except as expressly permitted by applicable Laws);
- (4) alter, remove or tamper with any trademarks, 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 Service; or
- (5) use the Service in any way that would be considered illegal or immoral or which is in breach of any laws or legal right of any person; or
- (6) use the Service for any purpose other than for the Customer’s internal use in accordance with the Agreement.

**3.4 New Versions:** The Customer acknowledges and agrees:

- (a) New Versions are designed to improve, enhance and further develop the Service. The Supplier will use reasonable efforts to give the Customer prior notice of the installation of any New Versions, but Customer acknowledges the Supplier is not obliged to give such notice and may automatically install New Versions at any time;
- (b) the Supplier's right to install New Versions at any time with or without the Customer’s prior knowledge or consent is a term of the Customer’s right to use the Service.

**3.5 New Modules:** The Customer acknowledges and agrees:

- (a) that the Supplier may from time to time add New Modules to the Service to expand the offerings of the Service.
- (b) that any New Modules incorporated into the Service by the Supplier may result in the Customer being required to pay Additional Fees to utilise the New Modules.

**3.6 Hosting:** The Customer acknowledges and agrees that:

- (a) the Supplier is dependent on the Hosting Provider to host the Service;
- (b) the Service may be inaccessible or inoperable from time to time as a result of acts or omissions of the Hosting Provider, failures of the Customer Environment and/or acts or omissions of third parties, including without limitation equipment and connectivity malfunctions, repairs or replacements or other factors beyond the Supplier's reasonable control; and
- (c) the Supplier is not liable for any failure in, fault with or degradation of the Service if that failure, fault or degradation is attributable to or caused by any failure of the Customer Environment or the software, facilities or services of the Hosting Provider).

- 3.7 **Suspension:** The Supplier reserves the right to suspend the Customer's access to the Service: (i) for scheduled or emergency maintenance, or (ii) if the Customer is in breach of the Agreement, including failure to pay any amounts due to the Supplier.
- 3.8 **Compliance:** By accessing and/or using the Service, the Customer acknowledges and agrees:
- (a) the compliance functions of the Service are designed to act as a compliance aid and reporting tool. The Supplier has not received and does not provide compliance or regulatory sign-off, advice or opinions upon which the Customer or Authorised Users may rely.
  - (b) The Service does not replace the need for a trained compliance or reporting professional to check and approve any reports prior to publication. The Supplier does not warrant that the Service will identify any potential breaches of Regulatory Requirements and expressly disclaims any liability whatsoever for any inability or failure of the Service to do so.

## 4 Security and Data

4.1 **Security:** The Customer acknowledges that:

- (a) the Customer is solely responsible for maintaining the security of the Customer account, passwords (including but not limited to administrative and user passwords) and files for all users of the Customer account with or without Customer's knowledge or consent; and
- (b) it is responsible for all access to the Service through the Customer account, including by its Personnel and any Authorised Users.

4.2 **Environment:** The Customer:

- (a) permits the Supplier and its Personnel to have reasonable access to the Customer Environment to supply the Service;
- (b) will make any changes to its Customer Environment which are required to support the delivery and operation of the Service at the Customer's own cost; and
- (c) if the Supplier wishes to alter the delivery of the Service and such alteration requires a change to the Customer Environment (including reconfigurations or interface customisations to the extent necessary to access or use the Service), the Customer will give any assistance to the Supplier or make any such changes to the Customer Environment, that the Supplier reasonably requires.

4.3 **Data:** The Customer grants 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 Service including to enable the Customer to access and use the Service;
- (b) for diagnostic purposes;
- (c) to test, enhance and otherwise modify the Service whether requested by the Customer or not;
- (d) for benchmarking purposes (subject to any request from the Customer not to use the data for such purposes);
- (e) to improve the Service or to develop other services; and

- (f) as reasonably required for the performance of the Supplier's obligations under the Agreement.
- 4.4 **Data Permissions:** 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 Service 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.
- 4.5 **Back-Up:** The Customer acknowledges and agrees that:
- (a) the integrity of any Data entered and stored in the Service is the responsibility of the Customer;
  - (b) the Supplier will regularly (and at least daily) back-up the Data collected and entered into the Service by the Customer;
  - (c) if any omissions, loss or corruption of Data result from the actions or inactions of:
    - (1) the Supplier, then the Supplier will be responsible for restoration of the Data from the last available back up at its own cost; or
    - (2) the Customer, then the Supplier will assist in restoring the Data from the last available back-up at the cost of the Customer.
  - (d) to the extent permitted by law, the Supplier may relocate the Data to another jurisdiction. The Supplier will give the Customer 15 Business Days' notice of its intention to relocate the Data to another jurisdiction and use all reasonable endeavours to minimise the effect of such change on the Customer's access and use of the Service; and
  - (e) the Supplier is not responsible for the integrity or existence of any Data on the Customer Environment or any device controlled by the Customer or its Personnel.
- 4.6 **Harmful Code:** The Parties will each use all reasonable commercial endeavours to avoid introducing any virus or other contaminant (including any bugs, worms, logic bombs, Trojan horses or any other self-propagating program) that may infect or cause damage to the Service or disrupt the access and use of the Service (**Harmful Code**) including by utilising industry standard protection mechanisms;
- 4.7 **Restoration of Data:** If any Data is corrupted or lost due to introducing Harmful Code, the Supplier's sole liability to Customer will be to restore the Customer's Data into the Service from the last recorded back-up.
- 4.8 **Anonymous Data:** The Customer acknowledges and agrees that the Supplier will have the right to generate Aggregate/Anonymous Data and the Supplier owns all Intellectual Property Rights in that Aggregate/Anonymous Data. The Supplier may use the Aggregate/Anonymous Data for any business purpose during or after the Term of this Agreement (including without limitation to develop and improve the Supplier's other products and services and create and distribute reports and other materials). For clarity, the Supplier will only disclose any Aggregate/Anonymous Data externally in a de-identified (anonymous) form that does not identify the Customer or any Authorised Users, and that is stripped of all persistent identifiers (such as device identifiers, IP addresses, and cookie IDs). The Customer is not responsible for the Supplier's use of Aggregate/Anonymous Data.

## 5 Price, Invoicing and Payment

### 5.1 Invoicing and payment:

- (a) Unless otherwise specified in a Quote or the Selected Plan, the Supplier will charge the Fee monthly and invoice in advance. The Customer must pay the Fee, using the agreed payment method and as per the payment terms included in the invoice.

### 5.2 Fees:

- (a) On or after the 12 month anniversary of the Commencement Date, the Supplier may conduct an annual review of the Fees (**Fee Review**). The Supplier may propose an increase to the Fee which will not exceed the greater of: (a) the CPI Increase for the preceding Contract Year and (b) 6%.
- (b) Supplier will notify Customer in writing of any proposed increase in Fees due to a Fee Review at least 30 days prior to the commencement of the date that the new Fees will take effect. If Customer does not agree with the proposed increase in Fees, Customer may terminate the Agreement within such 30-day period by providing Supplier with written notice and the termination will take effect on the last day of the then current billing period.
- (c) If the Fees are unpaid for 10 Business Days after the due date, the Supplier has the right to engage debt collection services to collect of any unpaid debt and the right to commence legal proceedings for any outstanding amounts owed to the Supplier. The Customer agrees to indemnify the Supplier for the full amount of the Supplier's legal and debt recovery costs. The Supplier may place a default against the Customer with a credit reporting agency.

5.3 **Purchase Orders:** If the Customer requires 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 the Agreement and any terms and conditions of the Customer's purchase order, the Agreement 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 the Agreement.

5.4 **GST:** The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Agreement in addition to the Fees payable for the Service provided that the Supplier has issued a valid Tax Invoice. The GST is payable at the same time as the Fees.

## 6 Warranties

### 6.1 Customer Warranties: The Customer warrants that:

- (a) there are no legal restrictions preventing it from entering into the Agreement;
- (b) it will cooperate with the Supplier and provide the Supplier with any materials, information and assistance as requested by the Supplier from time to time that are reasonably necessary to enable the Supplier to provide the Service;
- (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 Service;

- (e) it will inform the Supplier if it has reasonable concerns relating to the provision of the Service under the Agreement, with the aim that the Customer and the Supplier will use all reasonable efforts to resolve any concerns raised;
- (f) it is responsible for obtaining any consents, licences and permissions from other parties necessary for the Service to be provided, at the Customer's cost, and will provide the Supplier with copies of the necessary consents, licences and permissions if requested;
- (g) it consents to the Supplier publishing its name and associated logo (if any) on the Supplier's Website solely for the purpose of the Supplier identifying the Customer as a customer of the Supplier;
- (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;
- (j) it will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from the Supplier, any employee or contractor employed by or contracted to the Supplier during the Term.

## 7 Intellectual Property Rights

### 7.1 Supplier Materials:

- (a) Customer acknowledges that Supplier and its licensors own all right, title and interest in the Service, the content of the Website and any products, services, documentation and other material provided to the Customer under this Agreement (**Pre-Existing Material**). Other than the express right to use and access the Service granted under this Agreement, Customer receives no right, title or interest in such Pre-Existing Material.
- (b) All Intellectual Property Rights in suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer relating to the Service (but excluding Customer Data) (**Service Material**) vest in and are assigned to the Supplier upon creation. This assignment operates as an assignment of future rights to the extent any such Intellectual Property Rights are not presently existing at the Commencement Date.
- (c) The Customer will not copy, distribute, reproduce or use any Pre-Existing Material or Service Material except as expressly permitted under the Agreement.
- (d) **Third Party Software:** Access to the Service may require the Customer to install certain software applications within the Customer Environment. The Customer agrees to be bound by any end-user software agreements (if applicable) that govern the installation and use of the third-party software applications, and the terms governing such Third Party Software are directly between Customer and the applicable Third Party Provider.

7.2 **Customer Intellectual Property Rights:** The Customer grants the Supplier a non-exclusive, royalty free, non-transferable and revocable licence to use any of the Customer's Intellectual Property Rights as reasonably required for the Supplier to provide the Service to the Customer.



## 8 Audit and Monitoring

### 8.1 Right to Audit:

- (a) The Supplier, its Personnel, or any person authorised by the Supplier has the right to audit and inspect no more than once per Contract Year any Customer Environment, documents and records to verify the Customer's compliance with the Agreement.
- (b) Upon receipt of written notice from the Supplier, the Customer agrees to permit the audits and inspections referred to in clause 8.1 by the Supplier, its Personnel or any other person authorised by the Supplier. The Customer agrees to give reasonable assistance to enable the auditing or monitoring by the Supplier.
- (c) The Parties agree that the Supplier will bear all costs associated with any audits and inspections under this clause.

## 9 Confidential Information

- 9.1 **Supplier Obligations:** The Supplier will not and will ensure its Personnel do not disclose the Customer's Confidential Information to any third party; use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only use the Confidential Information for the purpose for which it was disclosed by the Customer and not for any other purpose.
- 9.2 **Customer Obligations:** The Customer will not and will ensure its Personnel do not disclose the Supplier's Confidential Information to any third party; use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only use the Confidential Information for the purpose for which it was disclosed or provided by the Customer to the Supplier and not for any other purpose.
- 9.3 **Exclusions:** The obligations in clauses 9.1.9.1 and 9.2 do not apply to Confidential Information that:
  - (a) is authorised by the other Party to be disclosed;
  - (b) is in the public domain and/or is no longer confidential, except as a result of a breach of the Agreement;
  - (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.
- 9.4 **Enduring obligations:** The obligations under this clause will survive termination of the Agreement.

## 10 Dispute Resolution

- 10.1 **Disputes:** If there is a dispute between the Parties concerning the Agreement (**Dispute**), the Parties agree to the following dispute resolution procedure:
  - (a) The complainant must inform the respondent in writing of the nature of the Dispute, what outcome the complainant seeks and what action the complainant thinks will settle the dispute (**Notice**). Within 10 Business Days of the respondent providing Notice, the Parties agree to meet in good faith to resolve the Dispute (**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 Australian Dispute Centre under its 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 allocation of the mediator pursuant to the Procedures. The mediation session shall last for at least one full day

before either Party has the option to withdraw from the process. The Parties shall attend the mediation in good faith to seek to resolve the Dispute.

- 10.2 **Other actions:** Any attempts made by the Parties to resolve a Dispute under this clause are without prejudice to any other rights or entitlements of the Parties under this Agreement, by law or in equity, including the right to apply for urgent interlocutory relief.

## 11 Term

- 11.1 **Term:** The Agreement will commence on the Commencement Date and continue for an initial term as specified in the Quote or Selected Plan (**Initial Term**) together with any subsequent Renewal Term unless terminated earlier in accordance with the provisions of clause 12 (**Term**).
- 11.2 **Renewal:** At least 20 Business Days prior to the expiry of the Initial Term or any Renewal Term (as applicable), either Party may notify the other that it does not wish to renew, in which case the Agreement will expire at the end of the then current Contract Year. If a Party has not given notice pursuant to this clause, the Agreement is automatically renewed for a further 12-month period (**Renewal Term**).

## 12 Termination

- 12.1 **Rights of termination:** Either Party may terminate the Agreement, if the other Party:
- (a) breaches a material term of the Agreement and fails 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).
- 12.2 **Supplier rights:** The Supplier may immediately suspend the Customer's access to the Service and/or terminate the Agreement by written notice if:
- (a) the Customer is in breach of clause 3.3; or
  - (b) the Customer fails to pay an Invoice within 10 Business Days of the due date.
- 12.3 **Consequence of termination:** On termination of the Agreement:
- (a) the Customer must cease to use the Service;
  - (b) the Customer is to pay (i) all outstanding invoices for services properly rendered; and (ii) for those services that have been rendered, but not invoiced, up to the effective date of termination;
  - (c) the Customer agrees to promptly return (where possible), or delete or destroy (where not possible to return), any Supplier Confidential Information, Pre-Existing Material and Service Material.
  - (d) the Supplier agrees to promptly return (where possible), or delete or destroy (where not possible to return), any Customer Confidential Information, Data and materials containing Customer Intellectual Property Rights.
  - (e) the Supplier will retain any Customer documents (including copies) as required by law or regulatory requirements.
  - (f) The Supplier will retain or destroy documents in accordance with the statutory periods required by law or on termination of the Agreement, whichever is the latter.

12.4 **Accrued rights:** The accrued rights, obligations and remedies of the Parties are not affected by the termination of the Agreement.

### 13 Limitation of Liability and Disclaimers

13.1 **Australian Consumer Law:** Nothing in this Agreement excludes the operation of the Australian Consumer Law (ACL). Supplier acknowledges that Customer may be entitled to certain consumer guarantees under the ACL, which cannot be excluded. If so, Supplier's liability for breach of any such consumer guarantee under is limited in the case of goods to (a) re-supply of the goods or (b) the cost of re-supply of the goods and in the case of services (a) re-supply of the services or (b) the cost of re-supply of the services.

13.2 **Warranties:** Subject to clause 13.1 and to the extent permitted by law:

- (a) the Supplier does not warrant that the Service will be error-free or will operate without interruption;
- (b) the Service is provided on an "as is" basis; and
- (c) the Supplier excludes all express and implied warranties, and all material and work are provided to the Customer without warranties of any kind, either express or implied, 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 the Service.

13.3 **Liability limitation:** Subject to clause 13.1 and to the extent permitted by law:

- (a) in any Contract Year, the Supplier's liability in the aggregate for all alleged Liabilities or Claims in relation to the Agreement (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 Fees paid by the Customer to the Supplier in the current Contract Year in respect of the Service.
- (b) the Supplier will not be liable to the Customer or any Third Party Provider for any Liability or Claim arising (whether under statute, contract, negligence or other tort, indemnity, or otherwise) concerning 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 or not Supplier has been advised of the possibility of such damage.
- (c) To the extent permitted by law, the Supplier's Liability under or in connection with this Agreement will be reduced to the extent, if any, to which the Customer or its Personnel's acts or omissions cause or contribute to the Claims and Liabilities of the Customer.
- (d) each Party's liability to the other Party, whether in contract, tort, under statute, under any indemnity or otherwise, is reduced to the extent that it is attributable to the act or omission of the part of the other Party, or any person for whom the other Party is responsible.

### 14 Indemnity

14.1 The Customer is liable for and agree to indemnify, defend and hold the Supplier harmless for and against any and all Claims and Liabilities resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) the Supplier's receipt and use of the Data;
- (c) any breach of the Agreement; and
- (d) any misuse of the Service from or by the Customer or its Personnel.

14.2 the Customer agrees to co-operate with the Supplier (at its own expense) in handling any Claims that arise as a result of the actions in clause 14.1.

14.3 If a third party claims that the Service provided by the Supplier infringes its Intellectual Property Rights, then the Supplier indemnifies the Customer for all direct costs, Claims and Liabilities arising from such claim. If the quiet enjoyment of the Service is prevented, the Supplier will use all reasonable commercial efforts to secure the right for Customer to continue to use the Service or replace or modify the Service to make the Service non-infringing.

This indemnity is given subject to:

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

14.4 This clause will survive termination of the Agreement.

## 15 General

### 15.1 Privacy.

- (a) The Parties agree to comply at all times with the Privacy Act in respect of any Personal Information that it collects, uses, discloses, stores, or handles in connection with the Agreement. To avoid doubt, the Customer will comply at all times with the Privacy Act regardless of whether the Customer is actually bound by the Privacy Act.
- (b) The Customer further acknowledges and agrees to the collection, usage, disclosure, storage or handling of Personal Information by vintrace in accordance with the Privacy Policy.
- (c) Without limiting the foregoing, the Customer agrees to the following:
  - (1) that the Personal Information may be transferred or stored outside the jurisdiction in which the Supplier had received the Personal Information for the purposes of the Supplier performing its obligations under the Agreement. This includes without limitation any transfers to any of the Supplier's affiliates, agents or third party service providers;
  - (2) the Customer shall ensure that the Supplier may lawfully collect, use, disclose, store, handle, and transfer the Personal Information in accordance with the Agreement on the Customer's behalf. This includes without limitation the Customer procuring all necessary permissions, authorisations, consents and/or licences to use, process and transfer the Personal Information in accordance with the Agreement on the Customer's behalf; and
  - (3) the Customer shall ensure that the individuals whose Personal Information is being transferred to the Supplier by the Customer have been informed of, and have given their consent to, such collection, use, disclosure, storage, handling, and transfer in accordance with this Agreement, as required by the Privacy Act.

- (d) The Customer acknowledges agrees that it will procure all individuals whose Personal Information is being transferred to the Supplier by the Customer have consented to:
- (1) the disclosure or transfer of Personal Information to third party entities outside of the Commonwealth of Australia;
  - (2) the Supplier not be taking reasonable steps to ensure the overseas recipient's compliance with the Privacy Act concerning Personal Information;
  - (3) the Supplier not being liable to the Customer for any breach of the Privacy Act by these overseas recipients; and
  - (4) that the individuals will not be able to seek redress against the Supplier under the Privacy Act.

The Customer warrants that it has provided all notices to, and sought all consents from, the individuals whose Personal Information is being transferred to the Supplier, as required under this clause.

- 15.2 **Publicity:** The Customer consents to the Supplier using advertising or publicly announcing that it has undertaken work for the Customer.
- 15.3 **Email:** The Customer acknowledges that Parties are able to correspond via electronic mail. The Customer releases the Supplier from any Claim that may 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 the Customer's system or any files by a transfer.
- 15.4 **Sales and Use Tax:** If and when applicable, any sales or use tax payable on the Service will be set out in the Invoices. By accepting the Agreement, you agree to pay the Supplier an amount equivalent to the sales or use tax imposed on these charges.
- 15.5 **Relationship of parties:** The Agreement is not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 15.6 **Assignment:** The Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under the Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld). Provided; however, that Supplier may assign this Agreement in whole or in part as part of a solvent corporate reorganisation, consolidation, merger, or sale of substantially all of its assets.
- 15.7 **Subcontracting:** Notwithstanding clause 15.6, Supplier may subcontract the performance of the Services hereunder to subsidiaries or contractors, provided Supplier controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services and any acts or omissions of the subcontractor.
- 15.8 **Severance:** If any provision (or part of it) of the Agreement is held to be unenforceable or invalid in any jurisdiction, it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of the Agreement 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 the Agreement and the remaining provisions (and remaining part of the provision) are valid and enforceable.
- 15.9 **Force Majeure:** The Supplier will not be liable for any delay or failure to perform its obligations under the Agreement if such delay is due to any Force Majeure Event. If the Supplier is delayed from performing its obligations due to such a circumstance for at least two months, it may terminate the Agreement by giving the Customer five (5) Business Days' notice in writing.

- 15.10 **Notice:** Any notice required or permitted to be given by either Party to the other under the Agreement will be in writing addressed to the Party at the address in the Quote. 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 email transmission.
- 15.11 **Jurisdiction & Applicable Law:** This Agreement is governed by the laws of the State of Victoria. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and the appeal courts from them.
- 15.12 **Entire Agreement:** This Agreement and any document expressly referred to in it represents the entire agreement between the Customer and the Supplier and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 15.13 This clause 15 will survive termination of the Agreement.

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