

1 Parties and the Agreement

- 1.1 **Supplier:** VINX2 WINERY SOFTWARE, INC, a Delaware corporation (**Supplier**), is a subsidiary of Vintrace Holdings Pty Ltd, an Australian Company, which has developed a proprietary winemaking and winery management software solution (**vintrace**). Supplier provides access to vintrace through its website <http://www.vintrace.com/tus/> (**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 (available here: http://www.vintrace.com/pdf/privacy_policy_us.pdf) (the **Privacy Policy**) and the **Quote** (if any), comprise the Agreement under which Supplier supplies the Service to Customer (collectively, the **Agreement**). The Privacy Policy and Quote are hereby incorporated into the Agreement by reference.
- 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**). These Terms of Use may be updated by Supplier at any time and from time to time with or without notice to you. Your continued use of the Service following any such change shall be deemed to indicate your acceptance of and modifications to these Terms of Use.

2 Definitions

Capitalized terms in this Agreement have the following meanings:

Acceptance is defined in clause 1.4;

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

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 Service;

Agreement is defined in clause 1.3;

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

Business Day means a day which is not a Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of California are authorized or required by law or other governmental action to close;

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 most current Consumer Price Index – San Francisco Metropolitan Area as published by the United States Department of Labor, Bureau of Labor 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 is defined in clause 1.2;

Customer Account means Customer's account pursuant to which it can access the Service;

Customer Environment means the computing environment of Customer including all hardware, software, information technology and telecommunications services and infrastructure on or through which the Service are accessed or used;

Data means all of the information, documents and other data, including any Customer or Customer personnel personal information, provided to Supplier by Customer including as uploaded to the Service or the Website or Mobile App;

Dispute is defined in clause 10.1;

Dispute Notice is defined in clause 10.1(a);

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

Fee Review is defined in clause 5.2(a);

Force Majeure Event means an 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;

Harmful Code is defined in clause 4.6;

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

Initial Meeting is defined in clause 10.1(a);

Initial Term is defined in clause 11.1;

Intellectual Property Rights means all intellectual property rights including: (a) trademarks, service marks, trade names, brand names, logos, artwork, symbols, designs, trade dress, packaging and other proprietary indicia of goods and services and the goodwill associated therewith, whether registered, unregistered or arising by applicable Laws, as used by a party as a brand, trade name, and mark, whether alone or as part of

a larger composite, all licenses, registrations and applications for registration of such marks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (b) internet domain names and social media URLs; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by applicable Laws), copyrightable subject matter including advertising texts, promotional materials, web page designs, all copyright licenses, whether express or implied, registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) circuit layouts, trade secrets, know-how, confidential information, patents, invention and discoveries; and (e) other proprietary rights owned by a party, whether or not currently registered or registerable, and all applications and registrations thereof;

JAMS is defined in clause 10.1;

Laws means applicable laws, regulations, and rules of the State of California and the United States;

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;

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 licensed by Customer at the Commencement Date.

New Version means updates, bug fixes, minor enhancements to existing functionality of the Service and excludes New Modules; 10.1(a)

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

Personal Information has the same meaning as in the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020.

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 or Mobile App;

Pre-Existing Material is defined in clause 7.1;

Privacy Policy is defined in clause 1.3;

Quote is defined in clause 1.2;

Regulatory Requirements means any compliance, controls, methods, reporting, etc., required by legislation, regulation, regulators in regard to Customer's business under applicable Laws;

Renewal Term is defined in clause 11.2;

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

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

Service Material is defined in clause 7.1(b);

Supplier is defined in clause 1.1;

Term is defined in clause 11.1;

Terms of Use is defined in clause 1.3;

Variation is defined in clause 3.2(c);

vintrace is defined in clause 1.1;

Website is defined in clause 1.1.

3 Service, Plans and Restrictions

3.1 **Service and License:** In consideration of Customer paying the Fee, during the Term, Supplier hereby grants Customer a non-exclusive, non-sublicensable, non-transferable license to use the Service during the Term solely for Customer's internal business purposes in connection with its use of the Service.

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

- (a) Customer may access and use the Service in accordance with 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 Customer from time to time;
- (b) Customer's access and use of the Service is limited to the Authorized Users and other parameters set out in the Selected Plan;
- (c) Customer may request a change to the Selected Plan by contacting Supplier. Supplier will advise Customer of any variation to the Agreement (including changes to the Fee) associated with a requested change of Selected Plan (**Variation**) and if 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:** Customer must not:

- (a) access or use, or permit access or use by anyone of, the Service except as permitted by the Agreement and in accordance with the parameters of the Selected Plan;
- (b) do or authorize the commission of any act that would or might invalidate or be inconsistent with Supplier's Intellectual Property Rights in the Service;
- (c) do or authorize 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 (except as otherwise permitted under the Agreement);
 - (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;
 - (4) bypass or breach any security device or protection used by the Service or access or use the Service other than by an Authorized User through the use of Customer Account;
 - (5) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Service, the Website or Mobile App, or Supplier's provision of services to any third party, in whole or in part;

- (6) access or use the Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right of any third party, or that violates any applicable Laws;
- (7) 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;
- (8) 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
- (9) use the Service for any purpose other than for Customer's internal use in accordance with the Agreement.

3.4 **Customer Failure or Delay.** Supplier is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement, including without limitation its obligations under clause 4.2 and 6 below.

3.5 **Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by clause 3.3 or 6.1, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Service and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Supplier of any such actual or threatened activity.

3.6 **New Versions:** Customer acknowledges and agrees:

- (a) New Versions are designed to improve, enhance and further develop the Service. Supplier will use reasonable efforts to give Customer prior notice of the installation of any New Versions but Customer

acknowledges Supplier is not obliged to give such notice and may automatically install New Versions at any time;

- (b) Supplier's right to install New Versions at any time with or without Customer's prior knowledge or consent is a term of Customer's right to use the Service; and
- (c) it shall be Customer's responsibility to review any updates to these Terms of Service in connection with any New Versions, and that Customer's continued use of the Service shall constitute Customer's acceptance of any modifications to the Terms of Service pursuant to clause 1.4.

3.7 New Modules: Customer acknowledges and agrees:

- (a) that 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 Supplier may result in Customer being required to pay Additional Fees to utilize the New Modules; and
- (c) that it shall be Customer's responsibility to review any updates to these Terms of Service in connection with Customer's acceptance of the New Modules. Customer's continued use of the Service shall constitute Customer's acceptance of any modifications to the Terms of Service pursuant to clause 1.4.

3.8 Hosting: Customer acknowledges and agrees that:

- (a) 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 Customer Environment and/or acts or omissions of third parties, including without limitation equipment and connectivity malfunctions, repairs or replacements or other factors beyond Supplier's reasonable control; and
- (c) 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 Customer Environment or the software, facilities or services of the Hosting Provider).

3.9 Suspension: Supplier reserves the right to suspend Customer's access to the Service: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of the Agreement, including without limitation failure to pay any amounts due to Supplier.

3.10 Compliance: By accessing and/or using the Service, Customer acknowledges and agrees:

- (a) the compliance functions of the Service are designed to act as a compliance aid and reporting tool. Supplier has not received and does not provide compliance or regulatory sign-off, advice or opinions upon which Customer or Authorized 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. Supplier does not warrant that the Service will identify any

potential breaches of Regulatory Requirements or applicable Laws and expressly disclaims any liability whatsoever for any inability or failure of the Service to do so; and

- (c) the Service is not intended to and does not provide any legal advice, and Customer or Authorized User is solely responsible for obtaining any and all legal advice related to the Service.

4 Security and Data

4.1 Security: Customer acknowledges that:

- (a) it is solely responsible for maintaining the security and confidentiality of Customer's account, passwords (including but not limited to administrative and user passwords) and files for all users of Customer's account with or without Customer's knowledge or consent;
- (b) it is responsible for all access to the Service through Customer's account or using Customer's passwords, including by its Personnel and any Authorized Users and by any unauthorized user who gains access to Customer's account; and
- (c) Supplier may refuse Service, terminate accounts, and remove or edit content in its sole discretion.

4.2 Environment: Customer:

- (a) permits Supplier and its Personnel to have reasonable access to Customer Environment for the purposes of supplying the Service;
- (b) shall provide all cooperation and assistance as Supplier may reasonably request to enable Supplier to exercise its rights and perform its obligations under and in connection with the Agreement;
- (c) shall set up, maintain, and operate in good repair Customer Environment and to make any changes to Customer Environment as required, in Supplier's discretion, to support the delivery and operation of the Service at Customer's own cost; and
- (d) if Supplier wishes to alter the delivery of the Service and such alteration requires a change to Customer Environment (including reconfigurations or interface customizations to the extent necessary to access or use the Service) Customer will give any assistance to Supplier or make any such changes to Customer Environment, that Supplier reasonably requires.

4.3 Data: Customer grants Supplier and its Personnel a limited license 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) for the purpose of supplying the Service including to enable Customer to access and use the Service;
- (b) for diagnostic purposes;
- (c) to test, enhance and otherwise modify the Service whether requested by Customer or not;
- (d) for benchmarking purposes (subject to any request from 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 Supplier's obligations under the Agreement.

- 4.4 **Data Permissions:** Customer represents and warrants that any and all Data supplied by Customer or otherwise accessed by Supplier through the provision of the Service is the sole and exclusive property of Customer or Customer has secured any and all authorizations and rights to use the Data as applicable.
- 4.5 **Back-Up:** Customer acknowledges and agrees that:
- (a) the integrity of any Data entered and stored in the Service is the responsibility of Customer;
 - (b) Supplier will regularly back-up the Data collected and entered into the Service by Customer; however, Customer should maintain all original records of Data entered into the Service
 - (c) to the extent permitted by law, Supplier may relocate the Data to another jurisdiction. Supplier will give Customer 15 Business Days' notice of its intention to relocate the Data to another jurisdiction and use all reasonable endeavours to minimize the effect of such change on Customer's access and use of the Service; and
 - (d) Supplier is not responsible for the integrity or existence of any Data on Customer Environment or any device controlled by 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 other disrupt the access and use of the Service (**Harmful Code**) including by utilizing industry standard protection mechanisms;
- 4.7 **Restoration of Data:** If any Data is corrupted or lost due to introduction of Harmful Code, Supplier's sole liability to Customer will be to restore Customer's Data into the Service from the last recorded back-up.
- 4.8 **Anonymous Data:** Customer acknowledges and agrees that Supplier will have the right to generate Aggregate/Anonymous Data and Supplier owns all Intellectual Property Rights in that Aggregate/Anonymous Data. The Supplier may use Aggregate/Anonymous Data for any business purpose during or after the Term of this Agreement (including without limitation to develop and improve Supplier's other products and services and to create and distribute reports and other materials). For clarity, Supplier will only disclose any Aggregate/Anonymous Data externally in a de-identified (anonymous) form that does not identify Customer or any 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.

5 Price, Invoicing and Payment

5.1 Invoicing and Payment:

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

5.2 Fee Review:

- (a) On or after the anniversary of the Commencement Date, Supplier may conduct an annual review of the Fees (**Fee Review**). 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.

5.3 Late Payment. If Customer fails to make any payment when due, then in addition to all other remedies that may be available:

- (a) Supplier may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Laws;
- (b) Customer shall reimburse Supplier for all costs incurred by Supplier in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and
- (c) if such failure continues for 10 Business Days following written notice thereof, Supplier may suspend performance of the Service until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such suspension.

5.4 Refund Policy. All Fees paid are non-refundable. No refunds or credits for partial months, quarters or years of Service will be refunded to Customer upon cancellation. Customer may upgrade or downgrade its Plan at any time. If Customer downgrades its Plan, Supplier does not issue refunds or credits for partial months of Service.

5.5 No Deductions or Setoffs. Customer shall pay all amounts payable to Supplier under this Agreement to Supplier in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason any deduction or withholding of tax as may be required by applicable Laws.

5.6 Taxes: All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes

imposed on Supplier's income. If Supplier is legally required to collect or pay any tax from or on behalf of Customer, Customer agrees to pay such tax amount to Supplier on the same terms as the Fee.

- 5.7 **Purchase Orders:** If Customer requires a purchase order, Customer is responsible for providing the applicable purchase order at the time of purchase. Customer acknowledges and agrees to the extent of any inconsistency between the Agreement and any terms and conditions of Customer's purchase order, the Agreement will prevail. The Parties acknowledge and agree that any pre-printed terms and conditions attached to or on the back of any purchase order will not apply to the Agreement.

6 Customer Warranties and Obligations

- 6.1 **Customer Warranties:** Customer warrants that:

- (a) there are no legal restrictions preventing it from entering into the Agreement;
- (b) the information it provides to Supplier is true, correct and complete;
- (c) it is responsible for obtaining any consents, licenses and permissions from other parties necessary for the Service to be provided, at Customer's cost, and will provide Supplier with copies of the necessary consents, licenses and permissions if requested;
- (d) it consents to Supplier publishing its name and associated logo(s) (if any) on the Website and/or Mobile App solely for the purpose of Supplier identifying Customer as a customer of Supplier and grants Supplier a limited license(s) to the intellectual property attendant to such publication;
- (e) if applicable, it is registered for sales and use tax purposes;

- 6.2 **Additional Customer Obligations.** In addition to Customer's other obligations hereunder, Customer shall:

- (a) cooperate with Supplier and provide Supplier with any materials, information and assistance as requested by Supplier from time to time, that are reasonably necessary to enable Supplier to provide the Service;
- (b) not infringe any third-party rights in working with Supplier and receiving the Service; and
- (c) inform Supplier if it has reasonable concerns relating to the provision of the Service under the Agreement, with the aim that Customer and Supplier will use all reasonable efforts to resolve any concerns raised.

- 6.3 **Non-Solicitation.** Customer shall not, and shall not assist any other person to, directly or indirectly, canvass, employ, induce or attempt to employ, induce, solicit or entice away from Supplier any employee or contractor that was employed by or contracted to Supplier during the Term and for one year following the expiration thereof]. In the event of a violation of this clause 6.3, Supplier will be entitled to liquidated damages equal to the compensation paid by Supplier to the applicable employee or contractor during the prior six months.

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 Mobile App and any products, services, documentation and other material provided to Customer under this Agreement (**Pre-Existing Material**) and 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 Customer relating to the Service (but excluding Customer Data) (**Service Material**), vest in and are assigned to 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) 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 Customer to install certain software applications within Customer Environment. 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:** Customer grants to Supplier a non-exclusive, royalty free, non-transferable and revocable license to use any of Customer's Intellectual Property Rights as reasonably required for Supplier to provide the Service to Customer.

8 Audit and Monitoring

8.1 Right to Audit:

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

9 Confidential Information

9.1 **Supplier Obligations:** Supplier will not and will ensure its Personnel do not, disclose Customer's Confidential Information to any third party; use all reasonable endeavours to protect Confidential Information from any unauthorized disclosure, and only use the Confidential Information for the purpose for which it was disclosed by Customer and not for any other purpose.

9.2 **Customer Obligations:** Customer will not and will ensure its Personnel do not, disclose Supplier's Confidential Information to any third party; will use all reasonable endeavours to protect Confidential

information from any unauthorized disclosure; will only use the Confidential Information for the purpose for which it was disclosed or provided by Customer to Supplier and not for any other purpose; and will promptly notify Supplier of any unauthorized use or disclosure of Supplier's Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure.

9.3 **Exclusions:** The obligations in clauses 9.1 and 9.2 do not apply to Confidential Information that:

- (a) the Party whose information is to be disclosed has authorized the information 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 that third-party was under any obligation to maintain such information's confidentiality; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena; provided, however, that if Customer is the Party that is compelled to disclose Supplier's Confidential Information, Customer shall (1) promptly, and prior to such disclosure, notify Supplier in writing of such requirement so that Supplier can seek a protective order or other remedy or waive its rights under clause 9.3; and (2) provide reasonable assistance to Supplier, at Supplier's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If Supplier waives compliance or, after providing the notice and assistance required under this clause 9.3(d), Customer remains required by applicable Laws to disclose any Confidential Information, Customer shall disclose only that portion of the Confidential Information that Customer is legally required to disclose.

9.4 **Trade Secrets:** Notwithstanding clause 9.3 to the contrary, Customer's obligations under this clause 9 concerning any Confidential Information that constitutes a trade secret under any applicable Laws will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of Customer or any of its Personnel or other agents or representatives.

9.5 **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 regarding 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 (**Dispute Notice**). Within 10 Business Days of the respondent providing the Dispute 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 confidential, non-binding mediation, using an experienced mediator with at least five (5) years of experience in the technology services industry who is an attorney or retired judge and who is mutually agreed upon by the Parties. If the Parties are unable to agree upon a mediator, Judicial Arbitration and Mediation Services (**JAMS**) will suggest three mediators meeting the above qualifications, and each Party will strike one. A mediation session will be scheduled within thirty (30) days after the failure of the Initial Meeting to resolve the dispute. Costs of the mediation will be borne equally by the Parties. The mediation will be held under the rules of JAMS and will be conducted in San Francisco, California, unless the Parties mutually agree to mediation via remote means or in an alternative location. The Parties will participate in the mediation process in good faith and have a representative in attendance throughout the mediation with authority to settle the dispute. The requirement of good faith will be satisfied by each Party preparing a brief, written

statement of that Party's position to be submitted in advance to the mediator and to the other Party and by attending at least one mediation session of at least six hours' duration. The Parties may be represented by counsel at both the informal discussions and the mediation session. Statements made during the mediation process will be made in the context of settlement discussions, will not be admissible in any subsequent judicial proceeding, and will be subject to the mediation provisions of the California Evidence Code, including Section 1119 thereof. If mediation fails to resolve the dispute, the Parties may resort to any form of dispute resolution, including litigation within the California courts.

10.2 **Other actions:** Nothing in clause 10.1 shall prohibit either of the Parties from filing an action in the courts of San Francisco County, California, for emergency or injunctive relief where deemed necessary by the filing Party.

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 expiration 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 of its business; 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:** Supplier may immediately suspend Customer's access to the Service and/or terminate the Agreement by written notice if:

- (a) Customer is in breach of any of its obligations, representations, or warranties under the Agreement; or
- (b) 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) Supplier's license to Customer granted under clause 3.1 shall terminate immediately, and Customer must cease to use the Service;
- (b) Customer is to pay (i) all outstanding invoices for services rendered; and (ii) for those services that have been rendered, but not invoiced, up to the effective date of termination; and
- (c) 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) Upon payment of all invoices for services rendered, Customer may request a copy of any Customer Confidential Information, Data and materials containing Customer Intellectual Property Rights stored by Supplier. Upon request of Customer, Supplier will delete or destroy any such Customer Confidential

information, Data or materials containing Customer Intellectual Property Rights, unless Supplier is required by law or regulatory requirements to retain such information.

13 Limitation of Liability and Disclaimers

13.1 Supplier Warranties.

- (a) Supplier does not warrant that the Service will be error-free or will operate without interruption; that defects therewith will be corrected; or that the Website, Mobile App, or their servers are free of viruses or other harmful elements. The Service is provided on an “as is” basis. Supplier excludes all express and implied representations or warranties. All material and work are provided to Customer without representations or warranties of any kind, either express or implied including but not limited to implied warranties of adequacy, timeliness, completeness, reasonableness, non-infringement, suitability, reliability, accuracy, satisfactory quality, merchantability and fitness for a particular purpose of the Service.
- (b) Customer’s use of the Service is at Customer’s own risk, and Customer assumes full responsibility for all costs associated with all necessary servicing of or repair of any equipment Customer uses in connection with its use of the Service.

13.2 Liability limitation.

- (a) In any Contract Year, 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 Customer to Supplier in the current Contract Year in respect of the Service.
- (b) Supplier will not be liable to Customer or any third-party provider for any Liability or Claim arising (whether under statute, contract, negligence or other tort, indemnity, or otherwise) in relation to any Consequential Loss, whether or not Supplier has been advised of the possibility of such damage.
- (c) Supplier’s Liability under or in connection with this Agreement will be reduced to the extent, if any, to which Customer or its Personnel acts or omissions cause or contribute to the Claims and Liabilities of Customer.
- (d) Notwithstanding any of the foregoing clause 13.2 to the contrary, to the extent Customer has not subscribed to the Service or signed a Quote under these Terms of Service, Customer agrees that if it is dissatisfied with any portion of the Website or Mobile App, or with any of these Terms of Use, then Customer’s sole and exclusive remedy is to discontinue using the Website or Mobile App.

13.3 **Commercial Relationship:** The Service is provided for commercial purposes only. Customer acknowledges that it is not obtaining the Service for personal or household use and that this Agreement is not an agreement for personal consumer services.

14 Indemnity

14.1 Except to the extent caused by Supplier’s gross negligence or willful misconduct, Customer is liable for and agree to indemnify, defend and hold Supplier, and Supplier’s officers, directors, employees, agents, Personnel, successors, and assigns harmless for and against any and all Claims and Liabilities resulting directly or indirectly from:

- (a) any information provided by Customer or any Authorized User that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) Supplier's receipt and use of the Data;

- (c) any breach of the Agreement by Customer; and
 - (d) any misuse of the Service from or by Customer or its Personnel.
- 14.2 Customer agrees to co-operate with 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 Supplier infringes its Intellectual Property Rights, then Supplier indemnifies Customer for all direct costs, Claims and Liabilities arising from such claim and, if the quiet enjoyment of the Service is prevented, 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) Customer promptly notifying Supplier of the claim, and permitting Supplier to control the defense of the claim;
 - (b) Customer providing Supplier with reasonable cooperation to enable Supplier to defend the claim;
 - (c) Customer not making any admissions in relation to the claim; and
 - (d) 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:** Customer acknowledges and agrees to be bound by the Privacy Policy, which can be found here: http://www.vintrace.com/pdf/privacy_policy_us.pdf
- 15.2 **Publicity:** Customer consents to Supplier using advertising or publicly announcing that it has undertaken work for Customer and grants Supplier a limited license to Customer's name or logo(s) in such advertisements or announcements in whatever medium or format Supplier uses.
- 15.3 **Email:** Customer acknowledges that Parties are able to correspond via electronic mail. Customer releases Supplier from any Claim that may result of any unauthorized 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 Customer's system or any files by a transfer.
- 15.4 **Relationship of Parties:** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 15.5 **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 as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Notwithstanding the foregoing, Supplier may delegate 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.
- 15.6 **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.

- 15.7 **Force Majeure:** 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 Supplier is delayed from performing its obligations due to such a circumstance for a period of at least two months, it may terminate the Agreement by giving Customer five (5) Business Days' notice in writing.
- 15.8 **Notice:** Any notice, request, demand, claim, waiver, or other communication required or permitted to be given by either Party to the other Party under the Agreement will be in writing addressed to the other Party as follows:
- (a) If to Supplier:
- VINX2 Winery Software, Inc. dba vintrace
548 Market St, #62071
San Francisco, CA 94104
E-mail: info@vintrace.com
- (b) If to Customer: To the address and e-mail address indicated in the Quote, or, if no Quote is available, then to the address and e-mail address given in Customer Account.

Notices sent in accordance with this clause will be deemed effectively given: (1) when received, if delivered by hand, with signed confirmation of receipt; (2) when received, if sent by a nationally recognized overnight courier, signature required; (3) when sent, if by email (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (4) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid unless such receipt is returned as non-deliverable.

- 15.9 **Jurisdiction & Applicable Law:** This Agreement is governed by the laws of the State of California and of the United States. The Parties agree that California law and controlling United States federal laws, without regard to choice- or conflicts-of-law provisions of any jurisdiction, will govern any action related to this Agreement. The Parties submit to personal jurisdiction in the courts of San Francisco County, California and the Federal Courts having jurisdiction thereover for any dispute arising under or as a result of this Agreement.
- 15.10 **Entire Agreement:** This Agreement and the documents expressly referred to in it, including in Section 1.3, represent the entire agreement between Customer and Supplier and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 15.11 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.
- 15.12 **Waiver.** Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 15.13 **Survival.** This clause 15 will survive termination of the Agreement.

Last updated: October 12th 2021