

Application Services Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION, TRIAL AND USE OF OUR SERVICES FROM GNTC INVESTMENTS PTY LTD (ABN 88 690 502 125) TRADING AS DTRAK. BY ACCEPTING THIS AGREEMENT, EITHER BY SIGNING THIS DOCUMENT, EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY DOWNLOADING AN APPLICATION, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. THE TERMS AND CONDITIONS OF THIS AGREEMENT ("TERMS & CONDITIONS") APPLY TO ANY AND ALL USE OF THE SERVICE BY YOU, WHETHER YOU ARE USING THE SERVICE PURSUANT TO ANY DEMONSTRATION OR TRIAL PERIOD, OR THE TERM OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS REGARDLESS OF THE TYPE OF USE OF THE SERVICE BY YOU.

1. Definitions

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Application Services Agreement.

"Beta Services" means Our services that are not generally available to customers.

"Content" means information obtained by Us and provided to You pursuant to an Order Form, as more fully described in the Documentation.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time.

"Order Form" means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into

an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Purchased Services" means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Services" means the products and services that are ordered by You under a free trial or demonstration period or an Order Form and made available online by Us, or as detailed in Schedule 1.

"User" means an individual who is authorised by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us" or "Our" means GNTC Investments Pty Ltd, trading as DTRAK

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity, or as specified in Schedule 1.

"Your Data" means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services

2. Free Trial

If We provide you with a free trial or demonstration period, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period communicated by Us or specified in Schedule 1, or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s).

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMISATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

3. Our Responsibilities

3.1 Provision of Purchased Services

We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Our employees), Internet service provider failure or delay, or denial of service attack.

3.2 Protection of Your Data

We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

3.3 Our Personnel

We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.4 Beta Services

From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time at Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4. Use and Access

Subject to the restrictions on use as set forth herein, You will have access to the Service for its intended purpose and in accordance with the

specifications set forth in any Documentation relating to the Service or Software provided by Us. Such use and access will be continuous on a twenty four (24) hour a day, seven (7) day a week basis except for interruptions by reason of maintenance or downtime beyond Our reasonable control.

You will use the Service only for Your internal business operations and will not permit the Service to be used by or for the benefit of anyone other than You. You will not have the right to re-license or sell rights to access and/or use the Service to transfer or assign rights to access or use the Service, except as expressly provided herein. You may not modify, translate, reverse engineer, decompile or create derivative works based upon the Software. You agree to use the Service in a manner that complies with all applicable laws including intellectual property and copyright laws. We expressly reserves all rights not expressly granted to You herein.

You will not: (i) transmit or share identification or password codes to persons other than authorised Users; (ii) permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not authorised Users; or (iii) permit access to the Service through a single identification or password code being made available to multiple users on a network.

You may not access the Service if you are a direct competitor of Us, except with Our prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You will be responsible for all equipment and software required for You to access the Internet including, without limitation, a web browser compatible with the Service.

You agree that Your use of the Service will be in a manner consistent with this Agreement and with all applicable laws and regulations, including without limitation, all copyright, trademark, patent, trade secret and export control laws, as well as those laws prohibiting the use of telecommunications facilities to transmit illegal, obscene, threatening, harassing, or other offensive messages. You acknowledge that We are not responsible for any use or misuse of the Service by You or Your employees or contractors. In particular, You will not, nor shall it permit or assist others, to abuse or fraudulently use the Service, including but not limited to: (i) obtaining or attempting to obtain Service by any unauthorised means or device with intent to avoid payments; (ii) accessing, altering, or destroying any information belonging to any person other than You, or attempting to do so; and (iii) using the Service to interfere with the use of similar Service by other companies or users.

5. Price and Payment

You shall pay all fees or charges accruing to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments will be made in advance and may be made annually, quarterly or monthly, or as otherwise mutually agreed upon. All payment obligations are non-cancellable and all amounts paid are non-refundable. You are responsible for paying for all User Fees for Users ordered for the entire Term, whether or not such Users actually use the Service. We reserve the right to modify Our fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. Fees for other services will be charged on an as quoted basis. All pricing terms are confidential, and you agree not to disclose them to any third party.

Our fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Our income. If We are required to pay or collect any federal, state, local, or value-added tax on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on Our net income, then such taxes and/or duties will be billed to and paid by You immediately upon receipt of Our invoice and supporting documentation for the taxes or duties charged.

If there are any credit card disputes or chargeback inquiries, then these may be made via the contact us link on our website.

6. Term and Termination

The term of this Agreement will commence the day the Services are accessible by You, and will continue for a period of one year, quarter or month, as selected by You or for such other initial term as identified in Schedule 1 (the "Term"). Thereafter this Agreement will automatically renew for successive periods of the same duration as the initial Term ("Renewal Term") unless either party gives the other party not fewer than thirty (30) days notice of its intent not to renew, or unless terminated earlier under the terms contained within this Agreement.

Either party may terminate this Agreement for material breach, by the other party, provided, however, that the terminating party has given the other party at least twenty-one (21) days written notice of and the opportunity to cure the breach. Termination for breach will not preclude the terminating party from exercising any other remedies for breach available to it under law.

7. Ownership of Intellectual Property

Title to any and all proprietary rights in the Service components including, without limitation, the Software, Our web site and user interface will remain

in and be the exclusive property of Us. You will be the owner of all data or information created by You and stored on Our application servers (collectively, "Your Data").

You hereby grant to Us a non-exclusive, fully paid, world-wide and irrevocable license permitting Us to copy, anonymise, aggregate, process and display Your Data to derive anonymous statistical and usage data, and data about the functionality of the Service, provided such data cannot be used to identify You or Your individual users ("Anonymous Data"), for the purposes of combining or incorporating such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, licensees, users, or otherwise (when so combined or incorporated, referred to as "Aggregate Data"), so as to permit Us to provide services including the copying, publication, distribution, display, licensing or sale of Aggregate Data and related or similar other statistics or data to third parties (and to You should You elect to subscribe for same) pursuant to a separate licensing or services arrangement or agreement. We will be the owner of all rights, title and interest in and to Aggregate Data.

Any access by You to Aggregate Data shall be pursuant to an additional licence or services agreement.

8. Confidentiality

8.1 Definition of Confidential Information.

"Confidential Information" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.2 Protection of Confidential Information.

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the

Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorised by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 8.2.

8.3 Compelled Disclosure.

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

9. Representations, Warranties and Disclaimers

9.1. Representations.

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties.

We warrant that (a) this Agreement, the Order Forms and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, (d) We will not materially decrease the functionality of the Purchased Services during a subscription term, and (e) the Purchased Services and Content will not introduce Malicious Code into Your systems. If there is a breach involving the Service, Your exclusive remedy will be for Us to provide access to replacement Services, for the Services that are materially deficient, within a commercially reasonable time.

9.3. Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

10. Limitation of Liability

10.1 Limitation of Liability.

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

10.2. Exclusion of Consequential and Related Damages.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND

REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. INDEMNITY OF LICENSEE

YOU AGREE TO INDEMNIFY AND HOLD HARMLESS US, OUR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, PROCEEDINGS, ACTIONS OR DEMANDS WHICH MAY BE BROUGHT AGAINST US OR ANOTHER OF THE INDEMNIFIED PARTIES AND AGREE TO INDEMNIFY AND HOLD US AND THE OTHER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST, ANY AND ALL LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) REAL OR PERCEIVED, THAT OCCUR, OR THAT WE MAY SUFFER, SUSTAIN

OR INCUR, AS A RESULT OF: (A) YOUR USE OF THE SERVICES, OR (B) YOUR BREACHES OF THIS AGREEMENT. YOU WILL HAVE SOLE CONTROL OF THE INVESTIGATION, PREPARATION, DEFENCE AND SETTLEMENT OF ANY SUCH INFRINGEMENT CLAIMS AND WE SHALL MAKE REASONABLE EFFORTS TO PROVIDE COOPERATION AND ASSISTANCE IN ANY SUCH INVESTIGATION, PREPARATION, DEFENCE AND SETTLEMENT. WE MAY ENGAGE SEPARATE COUNSEL TO MONITOR THE DEFENCE AT OUR SOLE COST AND EXPENSE.

12. General Provisions

12.1 Relation of Parties.

Nothing in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

12.2 Non-assignment.

Neither party may assign, voluntarily, by operation of law, or otherwise, any rights or delegate any duties under this Agreement (other than the right to receive payments) without the other party's prior written consent, which consent will not be unreasonably withheld, except that We may assign this Agreement, without consent, in connection with a sale of all or substantially all of Our business or assets. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

12.3 Applicable Law.

This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland, Australia.

12.4 Attorneys' Fees.

If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

12.5 Severability.

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

12.6 Force Majeure.

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control. Lack of funds does not entitle a party to claim force majeure.

12.7 Waiver and Modification.

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

12.8 Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

12.9 Amendments.

We may amend this Agreement by giving you 30 days notice of the proposed amendments, which notice may be provided by e-mail. We may periodically amend this Agreement, as contemplated above, for any purpose including, without limitation, changing fees or charges for use of the Service or restricting the amount of data you can store on the Service or to implement a charge for data storage or for data storage in excess of certain amounts.