

**CARIO TECHNOLOGY PTY LTD  
SOFTWARE AS A SERVICE AGREEMENT**

**Parties**

**BETWEEN** **Cario Technology Pty Ltd (CAN 630 600 056) of Suite 3-4, 11–15 Smeaton Ave, Dandenong South 3175 ("Cario").**

**AND** \_\_\_\_\_ ABN \_\_\_\_\_ ("**Customer**")  
(company name) (ABN)

of \_\_\_\_\_  
(address)

**Recitals**

- A. Cario is the operator of the online electronic freight management platform as described in item 0 of Schedule 1 and the Platform Documentation (the "**Platform**").
- B. The Customer requests Cario, and Cario agrees, to provide Customer with access to the Platform for use in accordance with the terms and conditions of this agreement.

**Terms and conditions**

**1. Interpretation**

Capitalised terms used in this agreement have the meaning given to them in clause 19. Rules of interpretation for this agreement are contained in clause 18.12.

**2. Term**

The agreement commences on the Commencement Date and continues until the earlier of the Expiry Date, and the date that this agreement is terminated in accordance with its terms (the "**Term**").

**3. Cario's obligations**

- 3.1 During the Term of this agreement, Cario will provide the Customer with:
- (a) access to and use of the Platform; and
  - (b) the Support Services;
- as set out in this agreement and in accordance with the Platform Documentation.
- 3.2 The Customer acknowledges and agrees that the Platform Documentation may specify minimum technical requirements and third party service integrations that are required in order for the Customer to access and use the Platform. With the exception of any liability that Cario may have under a Non-Excludable Term, Cario takes no responsibility for any third party products or services that the Customer uses in connection with the Platform.
- 3.3 The Customer acknowledges that, subject to any Non-Excludable Terms, the Platform is provided by Cario on a strictly "as is" basis, and that:
- (a) the Customer's sole and exclusive remedy for any defects in, or problems arising in relation to, the Platform is to receive the Support Services; and
  - (b) the Customer's sole and exclusive remedy for any failure by Cario to provide the Support Services is to have the Support Services supplied again.

**4. Right to access the Platform**

- 4.1 In consideration of the payment of the Fees, Cario grants to the Customer a non-exclusive, non-transferable, royalty-free, limited right to access and use the Platform for the Customer's internal business purposes during the Term, and subject to the terms and conditions set out in this agreement.
- 4.2 The Customer agrees to access and use the Platform only in accordance with the terms and conditions of this agreement and the Platform Documentation.
- 4.3 The Customer acknowledges and agrees that:
- (a) except as set out in this agreement, and subject to any Customer access and use rights that cannot be limited by law, the Customer does not have any right or entitlement to access or use the Platform, or permit others to do so;
  - (b) except as set out in this agreement, Cario is not obliged to support the Platform, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise;
  - (c) except as set out in this agreement, Cario is not obliged to supply the Customer with any hardware or equipment, or training and support in respect of the Platform; and
  - (d) the Platform may be modified by Cario from time to time (at Cario's sole discretion), and the Customer is at all times during the Term required to use the most recent version of the Platform that is deployed by Cario, and does not have the ability to opt out of receiving any upgrades, updates or new features.

**5. Requirements for using the Platform**

- 5.1 The Customer must:
- (a) only use the Platform in accordance with the normal operating procedures and instructions as notified by Cario, including the Platform

- Documentation as reasonably updated by or on behalf of Cario from time to time;
- (b) ensure that it only permits its officers, and individuals employed or contracted by the Customer, to use the Platform as well as any other Users specified in Schedule 1 (Commercial Details);
- (c) except as contemplated by clause 5.1(b), not authorise any other party to exercise its entitlement to access and use the Platform, or otherwise sub-license any of its rights under this agreement;
- (d) ensure that all Users of the Platform are aware of, understand, accept and comply with the Platform Documentation. Any breach of the Platform Documentation by any Users of the Platform will be deemed to be a breach of this agreement by the Customer;
- (e) immediately notify Cario if the Customer's actual or intended use of the Platform exceeds the scope of any usage restrictions or parameters set out in this agreement or the Platform Documentation;
- (f) comply with any reasonable security regulations, procedures or directions which may be notified by Cario from time to time in respect of the access and use of the Platform; and
- (g) not access or use the Platform after the Term has ended, and must ensure that its Users do the same.
- 5.2 The Customer must ensure that the Platform is not used for any of the following:
- (a) sending unsolicited emails or commercial messages to third parties;
- (b) any unlawful activities; or
- (c) publishing any materials (or storing any content) that is unlawful, pornographic, defamatory, abusive, insulting, threatening, obscene, inflammatory, offensive or otherwise inappropriate or objectionable.
- 5.3 The Customer is solely responsible for its use of the Platform, for supervising, managing and controlling use of the Platform by Users, and for ensuring that the recipients of all emails sent by or on behalf of the Customer and its Users have consented to receive these emails, including to the extent required under all applicable Laws. Cario may, but is not obliged to, monitor the use of the Platform by Users to verify the Customer's compliance with this agreement.
- 5.4 To the extent permitted by Law, in connection with its use of the Platform, the Customer must not (and must ensure that its Users do not):
- (a) provide information in relation to the Platform (including details of the functionality of the Platform, and screenshots of the Platform), or access to the Platform, to third parties, or disassemble, decompile, reverse-engineer, copy, translate or make derivative works of the Platform;
- (b) use the Platform to transmit any content or data, or conduct any transactions, that are unlawful or infringes any third party rights; or
- (c) interfere with or circumvent the security and integrity of the Platform.
- 5.5 Cario reserves the right, in its sole discretion and without liability, to restrict, suspend or terminate the Customer's access to part or all of the Platform:
- (a) if the Customer (or any of its Users) are in breach of this agreement;
- (b) where permitted by the Platform Documentation;
- (c) where directed to do so by Cario's Platform Providers; or
- (d) if continued use may result in material harm to the Platform or its users.
- 5.6 The Customer must promptly notify Cario of any faults in relation to the Platform.
- ## 6. Compliance with Laws
- 6.1 The Customer:
- (a) acknowledges and agrees that it is solely responsible for complying with all applicable Laws in its use of the Platform; and
- (b) warrants to Cario that the Customer will (and ensure that its Users will) use the Platform only for lawful purposes and comply with all applicable Laws in its use of the Platform.
- 6.2 With the exception of any liability that Cario may have under a Non-Excludable Term, Cario will not be liable under any circumstances (including in negligence) for any failure of the Customer (or its Users) to comply with its obligations under applicable Laws in connection with its use of the Platform or this agreement.
- ## 7. Customer Data
- 7.1 The Customer acknowledges that it is responsible for all Customer Data stored using the Platform, and that Cario will process the Customer Data through the Platform on the Customer's behalf.
- 7.2 The Customer must ensure that all Customer Data or other information provided to Cario or its Platform Providers:
- (a) is accurate, complete and current;
- (b) is provided promptly or otherwise within agreed timeframes;
- (c) does not infringe any Laws or infringe, contravene or misappropriate any rights (including IP Rights) of any person; and
- (d) is not misleading, deceptive, unlawful, fraudulent or defamatory.
- 7.3 The Customer grants Cario a non-exclusive, worldwide, royalty-free licence (including the right to sub-licence) to use, copy, transmit, display and store the Customer Data to the extent:
- (a) required for Cario to operate the Platform;
- (b) necessary for Cario to perform its obligations, and exercise its rights, under this agreement; and
- (c) permitted or required by Law.
- 7.4 The Customer grants Cario an irrevocable, perpetual, worldwide, royalty-free licence (including the right to sub-licence) to store and use the Customer Data for the purpose of conducting analytics activities and generating de-identified and aggregated statistical data. Subject to clause 9, Cario may use, copy, distribute and disclose such statistical data for any purpose.
- 7.5 The Customer acknowledges and agrees that it is solely responsible for:
- (a) doing all things necessary to ensure that the processing of the Customer Data through the Platform does not infringe any Laws or third party rights; and

- (b) maintaining its own back-ups of any Customer Data that is stored in the Platform.
- 7.6 Following termination or expiry of this agreement, Cario is under no obligation to retain any Customer Data, and the Customer acknowledges that the Customer Data may be irrevocably deleted by Cario without notice to the Customer.

## 8. Intellectual Property

- 8.1 Nothing in this agreement transfers ownership in, or otherwise grants any rights in, any IP Rights of any party.
- 8.2 Cario and its licensors own all IP Rights in, and associated with, the Platform.
- 8.3 As between Cario and the Customer, ownership of the Customer Data remains with the Customer.
- 8.4 The Customer agrees:
- (a) not to do any act or thing which might invalidate or be detrimental to the IP Rights of Cario and its licensors in the Platform;
  - (b) not to assert or represent that it has any proprietary, intellectual or moral right, title or interest in the Platform, or register or attempt to register any such rights;
  - (c) to bring to the immediate attention of Cario:
    - (i) any actual, suspected or threatened infringement of the IP Rights in the Platform; or
    - (ii) any assertion or claim that the Platform infringes the intellectual property rights of any third party,and to provide Cario with reasonable assistance in such a claim.
- 8.5 The Customer agrees that Cario may (and may permit its Platform Providers to) publicly identify the Customer as users of the Platform. If requested by Cario, the Customer will provide a brief profile of itself and its use of the Platform which may be used by Cario (or its Platform Providers) for promotional purposes.

## 9. Confidentiality

- 9.1 Each party (**receiving party**) must keep confidential, and not disclose, any Confidential Information of the other party (**disclosing party**) except:
- (a) as permitted under this agreement;
  - (b) where the receiving party has obtained the prior written permission of the disclosing party;
  - (c) to the receiving party's Personnel, professional advisers, auditors, and insurers who have a need to know the Confidential Information and agree to keep it confidential on terms consistent with this agreement;
  - (d) to the receiving party's Related Bodies Corporate;
  - (e) to the receiving party's auditors; or
  - (f) where the receiving party is compelled to do so by Law, provided that where possible it gives the disclosing party written notice prior to disclosure.
- 9.2 Each party must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with this agreement.
- 9.3 Except as permitted under clauses 8.5, each party must not make any public statement or issue any press release concerning or relating to this agreement or its relationship with the other party without the prior

written consent of the other party.

- 9.4 Subject to clause 7.6, on termination or expiry of this agreement, on request from the disclosing party, the receiving party must return or destroy all copies of the Confidential Information of the disclosing party in its power, possession or control.

## 10. Records and audit rights

- 10.1 During the Term and for a period of 2 years after the Term, the Customer must:
- (a) maintain current, complete and proper records relating to the performance of its obligations under this agreement; and
  - (b) give Cario (and, if requested by Cario, Cario's Platform Providers) access, on reasonable notice, to the Customer's records relating to the Platform in electronic or paper form as Cario reasonably requires in order to enable Cario to review and audit the Fees charged to the Customer.
- 10.2 Without limiting clause 10.1, the Customer agrees to submit to, and provide all reasonable co-operation in relation to, any audit of the Customer's compliance with this agreement and usage of the Platform that is requested by Cario or its Platform Providers.
- 10.3 If any audit establishes that the Customer has been undercharged, the Customer shall pay the sum undercharged within 14 days together with the costs of the audit incurred by Cario.

## 11. Fees

- 11.1 The Customer must pay Cario the Fees specified in Schedule 1 (Commercial Details), which may be updated from time to time upon written notice of at least 90 calendar days from Cario.
- 11.2 Unless otherwise agreed by the parties, the Customer must pay any invoices issued by Cario for the Fees within 14 days of the date of the invoice.
- 11.3 If the Customer fails to pay any properly rendered invoice by the date required under clause 11.2 then, without limiting any other rights or remedies that Cario may have in relation to the Customer's payment default, Cario will be entitled to set-off part or all of the amount of the invoice against any amount payable by Cario to the Customer under this agreement or any other agreement between the parties.

## 12. GST

- 1.2 Terms used in this clause have the same meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.3 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to Cario an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

## 13. Warranties and indemnities

- 13.1 Each party represents and warrants to each other party that:
- (a) it has capacity unconditionally to execute and deliver and comply with its obligations under this agreement;

- (a) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with its obligations under, this agreement;
  - (b) this agreement constitutes its valid and legally binding obligations and is enforceable against it by any other party in accordance with its terms; and
  - (c) its unconditional execution and delivery of, and compliance with its obligations under, this agreement, do not contravene:
    - (i) any law to which it or any of its property is subject or any order or directive from a government body binding on it or any of its property; or
    - (ii) its constituent documents, any agreement or instrument to which it is a party or any obligation to any other person.
- 13.2 The Customer indemnifies Cario, its Related Bodies Corporate and each of their officers, employees and agents (**those indemnified**) from and against any claim, action, demand, loss, fine or payment which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with:
- (a) any breach of this agreement by the Customer;
  - (b) any wilful or negligent act or omission of the Customer or its Personnel in connection with this agreement; or
  - (c) any claim or allegation against those indemnified that the receipt or use of the Customer Data, or any materials provided to Cario by the Customer in connection with this agreement, infringes third party rights (including IP Rights) or any Laws.
- 14. Exclusions and limitations of liability**
- 14.1 All implied terms, conditions, guarantees and warranties which otherwise might apply to or arise out of this agreement are excluded other than:
- (a) those set out in the terms of this agreement; and
  - (b) any term, condition, guarantee or warranty which cannot lawfully be excluded or modified by agreement including those under the *Competition and Consumer Act 2010* (Cth) (**Non-Excludable Term**).
- 14.2 To the fullest extent permitted by law (and subject to any Non-Excludable Terms), Cario disclaims any representation or warranty that:
- (a) the Platform will perform error-free or uninterrupted;
  - (b) the Platform will provide any functions not expressly stated by Cario in this agreement; or
  - (c) the Customer Data or third party content stored in, or processed through, the Platform will be secure or not otherwise lost or damaged.
- 14.3 If a party is liable for a breach of a Non-Excludable Term, where it is permissible to limit liability for such Non-Excludable Term, that party's liability is limited (at its option, acting reasonably) to:
- (a) in relation to goods, replacing or repairing the goods, or paying the costs of replacing or repairing the goods; or
  - (b) in relation to services, the re-supply of services or the payment of the cost of having the services resupplied.
- 14.4 The Customer must ensure that all information that the Customer inputs into the Platform is accurate and correct, and check that any reports or summaries produced by the Platform represent the information that the Customer has inputted into the Platform. To the extent permitted by law, the Customer agrees that Cario is not liable to the extent that the information that the Customer inputs into the Platform is not accurate and correct, and to the extent that any calculations and consignment information calculated by the Platform is not true and correct.
- 14.5 To the fullest extent permitted by law, Cario excludes all liability arising under or in connection with this agreement (whether arising out of breach of contract, negligence or any other tort, under statute or otherwise) for any loss of profit, revenue, data, contracts, goodwill or business, or any interruption to the business of the Customer, or any consequential, indirect, special, punitive or incidental damages.
- 14.6 With the exception of any liability that Cario may have under a Non-Excludable Term, Cario's maximum aggregate liability under or in connection with this agreement (however arising, including in negligence) is limited to the lower amount of:
- (a) in relation to any loss or damage in relation to an individual consignment, the amount of the fees paid by the Customer for that consignment; and
  - (b) the Fees payable by the Customer in the one (1) month preceding the event giving rise to the liability (calculated by determining the average Fees payable each month during the three (3) month period preceding the event giving rise to the liability).
- 14.7 The Customer acknowledges and agrees that the Platform is provided to the Customer by Cario, and that, with the exception of any liability under a Non-Excludable Term, Cario's Platform Providers will have no liability to the Customer or its Personnel under or in connection with this agreement or the Platform.
- 15. Termination**
- 15.1 Cario can terminate this agreement with immediate effect by notice in writing to the Customer where:
- (a) the Customer ceases business, or threatens to do so;
  - (b) the Customer breaches a term of this agreement which is capable of remedy, but does not remedy the breach within 14 calendar days of notice in writing issued by Cario, identifying the breach and requesting remedy;
  - (c) the Customer breaches a term of this agreement and that breach is incapable of remedy; or
  - (d) an Insolvency Event occurs in respect of the Customer, or is reasonably likely to occur.
- 15.2 This agreement will be deemed to terminate immediately if Cario ceases to have the necessary rights from its Platform Providers to provide the Platform to the Customer.
- 15.3 Either party can terminate this agreement at any time by giving the other party not less than 90 calendar days notice in writing.
- 15.4 The Customer can terminate this agreement with immediate effect by notice in writing to Cario where:

- (a) Cario has notified the Customer of a change to the Fees under clause 11.1, provided that the Customer provides this written notification within thirty (30) days of being notified of this change under clause 11.1;
  - (b) Cario ceases business, or threatens to do so;
  - (c) Cario materially breaches a term of this agreement but does not remedy the breach within 14 calendar days of notice in writing issued by the Customer, identifying the breach and requesting remedy; or
  - (d) an Insolvency Event occurs in respect of Cario, or is reasonably likely to occur.
- 15.5 The parties agree that to the extent any stay period applies to the termination rights set out in clauses 15.1(d) or 15.4(d) pursuant to the Corporations Act or any other applicable Law, a notice given under such clauses will be deemed to be given and will only take effect from the day on which such stay period under the Corporations Act or any other applicable Law expires.

## 16. Consequences of termination

- 16.1 Immediately upon expiration or termination of this agreement for any reason, the Customer must:
- (a) cease using the Platform;
  - (b) return all copies of any Confidential Information belonging to Cario within its possession or control;
  - (c) if requested by Cario, certify in writing to Cario that the Customer has complied with paragraphs (a) and (b); and
  - (d) pay to Cario all outstanding amounts owing to Cario.
- 16.2 Immediately upon expiration or termination of this agreement for any reason, Cario may use remote or other means to limit or disable the Customer's access to, or use of, the Platform.
- 16.3 Without limiting clause 7.6, Cario:
- (a) if requested by the Customer up to the date that is 30 days prior to the expiration or termination of this agreement, will return extracts of the Customer Data uploaded to the Platform by the Customer up to this expiration or termination date, in a format (such as csv or xml) determined by Cario, and the Customer must pay, in advance, Cario's standard published rates effective at the time of the request in relation to this Service provided by Cario; and
  - (b) is otherwise under no obligation to continue to store or provide the Customer with access to any Customer Data, reports or other material stored in or generated by the Platform.
- 16.4 Any termination of this agreement shall not affect any accrued rights or liabilities of any party, nor shall it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

## 17. Force Majeure

- 17.1 Cario will be relieved from performance of its obligations under this agreement to the extent that it is unable to perform those obligations due to a Force Majeure Event.
- 17.2 If a Force Majeure Event persists for a period of more than 10 days, Cario may terminate this agreement (without liability) by giving written notice to the

Customer.

- 17.3 For the avoidance of doubt, this clause 18 does not apply to the Customer's obligations under this agreement to pay amounts that are due and payable to Cario.

## 18. General

### 18.1 Survival

Clauses 3.3, 4.3(a), 5.1(g), 5.4, 6.2, 7.3, 7.6, 8, 9, 10.1, 11.3, 13.2, 14, 15, 16, this clause 18, and any other provisions of this agreement which, by their nature, are continuing, survive the termination or expiration of this agreement.

### 18.2 Relationship

The parties are independent contractors and nothing in this agreement gives rise to any relationship of agency, partnership, employment or otherwise.

### 18.3 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

### 18.4 Severability

If any provision of this agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### 18.5 Assignment and subcontracting

- (a) Cario may assign, novate or transfer any of its rights and obligations under this agreement at any time. The Customer must not assign, novate, transfer or subcontract any of its rights under this agreement without the prior written consent of Cario.
- (b) Cario may subcontract any of its obligations under this agreement to any person.

### 18.6 Waiver

No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. A single or partial exercise or waiver by a party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

### 18.7 Rights cumulative

Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.

### 18.8 Variation

No variation of this agreement is effective unless made in writing and signed by each party.

### 18.9 Costs, expenses and duties

Each party must pay its own costs and expenses in relation to the negotiation, preparation, execution, variation and performance of this agreement.

### 18.10 Governing law

This agreement is governed by the laws of Victoria, Australia, and each party submits to the exclusive jurisdiction of the courts of Victoria, Australia, and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### 18.11 Counterparts

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### 18.12 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
- (c) the singular includes the plural and vice versa;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it; and
- (g) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors, permitted assigns and permitted persons substituted by novation;
  - (iii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email transmissions;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Sydney, Australia; and
  - (vii) a monetary amount is in Australian dollars.

## 19. Definitions

In this agreement:

**Commencement Date** has the meaning set out in item 1 of schedule 1 (Commercial Details).

**Confidential Information** in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Corporations Act** means the Corporations Act 2001

(Cth).

**Customer Data** means all data stored in, processed by or retrievable from, the Platform, and which is either uploaded by the Customer or generated by the Platform pursuant to a transaction processed through the Platform that involves the Customer.

**Expiry Date** has the meaning set out in item 1 of schedule 1 (Commercial Details).

**Fees** means the amounts payable by the Customer under this agreement for the Services and the Hardware, including as set out in Schedule 1 (Commercial Details).

**Force Majeure** means an event or circumstance over which a party could not reasonably have exercised control including, but not limited to, an act of God; fire; lightning; explosions; flood; subsidence; insurrection or civil disorder or military operations; sabotage; telecommunications infrastructure or network failures; expropriation, prohibition, intervention, confiscation, embargo or restraint of property by or under the order of any government or government authority; strikes; lock-outs or other industrial disputes of any kind.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

**GST Law** has the meaning given to it in the GST Act.

**Hardware** means the items of equipment listed under the heading "Hardware" in Schedule 1 (Commercial Details), which are used by the Customer in connection with the Platform.

**Insolvency Event** means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

**IP Rights** means all existing and future copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.

**Law** means any applicable statute, regulation, bylaw, ordinance, policy or subordinate legislation in force from time to time in any part of the world, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Non-Excludable Term** has the meaning given in clause 14.1(b).

**Personnel** means employees, directors, agents, contractors and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.

**Platform** has the meaning given in the "Recitals"

section of this agreement.

**Platform Documentation** means Cario's user instructions, manuals, policies, specifications and other documentation for the Platform, as updated by or on behalf of Cario from time to time.

**Platform Provider** means a third party that provides any software, hardware, services and/or intellectual property rights or access rights that are used by Cario to operate the Platform and make the Platform available to Cario Group Customers.

**Related Body Corporate** has the meaning defined in the *Corporations Act 2001* (Cth).

**Services** mean the services provided by Cario to the Customer under this agreement, including as set out in clause 3.1.

**Cario Group Customer** means a customer of Cario or any Related Body Corporate of Cario.

**Support Services** means the support services described in Schedule 2 (Support Services) to be supplied by Cario under this agreement.

**Taxes** means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

**Tax Invoice** has the meaning given in the GST Act.

**Term** has the meaning given in clause 2.

**User** means an individual who accesses or uses the Platform using Cario's account or login credentials, including all individuals who the Customer authorises to use the Platform using the Platform's administrative interface (as, and to the extent, permitted pursuant to clause 3)..

# Schedule 1 Commercial Details

## 1. Pricing Assumption Acknowledgement

The Customer acknowledges that the pricing set out in this Schedule is calculated on the basis that the Terms & Conditions apply without amendment.

The Customer further acknowledges that this clause is an essential term for Cario to be able to provide the platform and software at the price offered, and that any request to amend, vary, or otherwise interfere with the operation of the Terms & Conditions may require a recalculation of the pricing offered to the Customer.

## 2. Dates

In this agreement, the following dates apply:

Definition	Date
Commencement Date	[The date on which this agreement is executed by the last party.]
Expiry Date	Twelve (12) months from the Commencement Date. The parties agree that, unless this agreement is terminated earlier in accordance with its terms, this agreement automatically extends at the end of each twelve (12) month period after the Commencement Date for a further twelve (12) month period.

3. **Billing and Invoicing:** The Customer agrees that billing for Cario will commence within sixty (60) days from the date of contract execution, regardless of the go-live date or system usage. An invoice will be issued accordingly, and standard payment terms will apply as outlined in this agreement. Onboarding services are provided at no additional cost to the Customer; however, this complimentary onboarding does not alter or delay the commencement of billing unless otherwise agreed in writing by both parties.

## 4. Description of Platform (clause 3)

The Platform is Cario's online electronic freight management platform, which allows customers to calculate charges for freight delivery, despatch freight, Create labels and other consignment documentation and were appropriate invoice their clients.

## 5. Fees (clause 11)

### 3.1 Deployment Fee

An initial Fee of \$[##] (plus GST) is payable for the following deployment Services:

- [##]; and

Cario may invoice the initial Fees immediately on the Commencement Date.

### 3.2 Minimum Monthly Charge

The Customer must pay a minimum monthly Fee of \$[##] (plus GST) at the end of each month during the Term if the usage Fees payable by the Customer in relation to that month (as set out in set out in section 3.3 below) are less than this minimum monthly Fee.

These monthly service Fees will be invoiced monthly in arrears.

### **3.3 Usage fees**

All Customer consignments processed by Cario through the Platform will incur the following usage Fees:

Minimum monthly fee of \$### ex GST. Includes:

These usage Fees will be invoiced monthly in arrears.

### **3.5 Additional services and equipment**

The Customer may request that Cario provide additional Services (including training, additional support services including outside the standard hours, or development services to change or improve the Platform) or items of equipment in connection with the Platform and this agreement. The Customer acknowledges that any such requests are subject to Cario's availability. Where Cario agrees to provide such requested additional services or items of equipment, Cario will charge the Customer for those services or items of equipment at Cario's standard rates.

### **3. Annual CPI Increase**

The Fees payable under this Agreement shall be subject to an annual increase on each anniversary of the Commencement Date after the initial term. The increase shall be the greater of:

- a. four percent (4%) of the Fees payable in the preceding year; or
- b. the percentage increase (if any) in the Consumer Price Index (All Groups, Melbourne) published by the Australian Bureau of Statistics (or any successor index) for the twelve (12) month period ending immediately prior to the relevant anniversary of the Commencement Date.

The adjusted Fees shall be notified in writing to the Customer at least thirty (30) days prior to the effective date of the increase.

## Schedule 2 Support Services

### 1. Scope of Support Services

Cario is to provide Support Services consisting of the operation of a Help Desk as described in section 5 below.

The Customer acknowledges and agrees that Cario and its Platform Providers are not responsible for resolving faults caused by software, hardware or other components that are outside of their networks or beyond their reasonable control (or which are due to scheduled outages).

Cario reserves the right to conduct system maintenance from time to time. The Platform will not be available during these system maintenance periods.

### 2. Definitions

In this schedule:

- (a) **Business Hours** means 9am to 5pm on days when banks are open for business, excluding Saturday, Sundays and public holidays in all of the States in Australia. Business Hours include days that are public holidays in some but not all of the States in Australia. The system will be generally available at other times unless there is scheduled maintenance. Support outside the stated hours are by agreement with an individual Customer based on their requirements. There may be additional charges for support outside these hours.
- (b) **Defect** means a failure of the Platform to comply with its specifications as set out in the Platform Documentation, or any other defect, error, problem, malfunction or deficiency.
- (c) **Help Desk** means a telephone and email help desk facility, as further described in section 4 below.

### 3. Reporting Defects

The Customer's Personnel may report any Defect of which the Customer becomes aware to Cario by contacting the Help Desk. All support requests are to be via email or if Cario provides an online ticket system, then only via this ticket system. Urgent support requests can be communicated by phone in addition to this ticket or email.

### 4. Service Levels

Cario agrees to use its best endeavours to ensure that at least 90% of all Defects that are reported by the Customer to Cario are resolved by Cario within the following response and resolution times:

Severity Level	Definition	Response time	Resolution time
1	Platform unavailable to all customers (including the Customer)	60 minutes	4 hours
2	An individual major function or part of the Platform (as determined by Cario) is not available to the Customer	4 to 8 hours	90% within 24 hours 100% within five working days
3	A fault with the Platform that does not prevent the normal operation of the system including if there is a workaround to the issue.	7 days	4 weeks

### 5. Help Desk

Cario must, during the Term, make a Help Desk available to the Customer to enable the Customer to:

- (a) report Defects to Cario; and
- (b) seek answers to technical and user questions relating to the Platform.

The Help Desk is staffed by Cario during Business Hours.

- (a) answer calls and respond to emails from the Customer's Personnel to the Help Desk; and
- (b) answer technical and user questions relating to the Platform as soon as practicable.

The telephone numbers and email addresses for the Help Desk are:

- (a) Telephone number(s): 1300 822 746
- (b) Email address: support@cario.com.au

## Schedule 3      Contract Modifications

### 1. Clause 10

**Executed as an agreement.**

**Executed by Cario Technology Pty Ltd** )  
(ACN 630 600 056) in accordance with )  
section 127 of the *Corporations Act 2001* (Cth): )  
)

.....  
Director

.....  
(Print) Full Name

.....  
Director/Secretary

.....  
(Print) Full Name

**Executed** for and on behalf of )  
 )  
\_\_\_\_\_ )  
(insert company name) )

in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

.....  
Director

.....  
(Print) Full Name

.....  
Director/Secretary

.....  
(Print) Full Name