



CargoWise Next™

Maintenance & License Agreement

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CargoWise Next™ Maintenance & License Agreement

1. PARTIES

- 1.1. This Maintenance & License Agreement (**MLA**) commences on the date that the Customer (as defined on the Order Form) and WiseTech Global (Australia) Pty Ltd (**WTG**) sign the applicable Order Form (**Effective Date**).
- 1.2. The Customer acknowledges and agrees that the Customer may change or alter its company details within the Application Suite, and that WTG takes no responsibility whatsoever for the accuracy, validity or correctness of any such company details supplied or altered by the Customer.

2. HOW OUR AGREEMENT WORKS

- 2.1. Our agreement with you comprises this MLA, the Order Form the Data Processing Addendum, all Additional Services Orders and any other agreement between the parties in respect of the Licenses and / or Service.
- 2.2. Where there is any inconsistency or conflict between the agreement documentation between the parties including this MLA, the following applies:
 - a. between the provisions of this MLA or the Order Form (on the one hand) and an Additional Services Order (on the other hand), the Additional Services Order will prevail to the extent of that inconsistency or conflict;
 - b. between the provisions of this MLA or the Order Form (on the one hand) and the Data Processing Addendum (on the other hand), the Data Processing Addendum will prevail; and
 - c. between the provisions of this MLA and the provisions of the Order Form, then the provisions of the Order Form will prevail to the extent of that inconsistency or conflict.

3. SCOPE, DURATION, ACCEPTANCE AND UPDATES

- 3.1. **Scope and duration.** This MLA and the applicable Order Form set out the terms and conditions on which WTG will provide the Customer with the Licenses for the Application Suite together with Services from the Effective Date until this Agreement is terminated or the MLA is superseded in accordance with the terms of this Agreement.
- 3.2. **Acceptance.** The earlier of signing of the applicable Order Form and/or payment of an invoice, in whole or in part, for the License to use the Application Suite and any Services under this Agreement will constitute acceptance of this MLA.
- 3.3. **Updated MLA.** WTG may, from time to time and upon providing the Customer with thirty (30) days' prior notice, provide an updated MLA (**Updated MLA**), pursuant to which, WTG is willing to continue providing the Customer with the Licenses to use the Application Suite, and the Services. Continued use of the Application Suite by the Customer after the Updated MLA has been provided by WTG to the Customer will constitute agreement by the Customer to be bound by the Updated MLA.
- 3.4. **Rejection of Updated MLA.** In the event that the Customer does not agree to be bound by the Updated MLA, the Customer may terminate this Agreement in accordance with section 12.1. The Customer's then current MLA will apply until that termination takes effect. This section 3.4 does not apply in respect of an Updated MLA that contains any changes or updates that WTG considers are necessary pursuant to any applicable laws or regulatory requirements.
- 3.5. **Updated Product Documentation.** In the event of a change to WTG's operational requirements, legislative or regulatory change, we will update the Product Documentation. The Customer's continued use of the Application Suite constitutes acceptance of the updated Product Documentation.

4. LICENSES AND USE

- 4.1. **Production License.** On and from the Effective Date, WTG grants to the Customer a Production License:
 - a. solely for the use of the Application Suite by the Registered Users of the Customer and its Authorized Affiliates' in accordance with the terms of this Agreement.
- 4.2. **Private Non-Production License.** Subject to the provisions of this Section 4, WTG grants to the Customer a Private Non-Production License and will make available to the Customer as many Private Non-Production Databases as reasonably requested by the Customer for purposes of testing, staff training and other

legitimate non-production uses. The Customer must not use any Private Non-Production License for any Commercial Use or in any Production Environment. Each such Private Non-Production License issued to the Customer is chargeable to the Customer in accordance with the applicable Price Lists. If the Customer is not utilizing the CargoWise Cloud Service, the Customer must maintain at least one (1) Private Non-Production License for the Application Suite to test new releases of the Application Suite.

- 4.3. **Public Non-Production License.** If the Customer is utilizing the CargoWise Cloud Service, WTG grants to the Customer a Public Non-Production License that is chargeable to the Customer in accordance with the applicable Price Lists. Any Public Non-Production Database accessed by the Customer under the Public Non-Production License shall not contain any Confidential Information of the Customer or other licensees of the Application Suite and as such the Customer shall have no expectation of or right to confidentiality with respect to any data or information entered into the Public Non-Production Database. Customers utilizing the CargoWise Cloud Service will be provided a single administrative login to the Public Non-Production License and the Customer will be able to create as many Registered User accounts as the Customer may reasonably require. Storage charges for CargoWise Cloud storage shall be in accordance with the applicable Price Lists.
- 4.4. **Restrictions on Licenses and Use.** The Application Suite is and remains the property of WTG and its relevant Affiliates. The Customer's rights in relation to the Licenses, the Application Suite (including all use of the Application Suite) and the Services are limited to those specifically granted under this Agreement. This Agreement does not grant or assign to the Customer, its Authorized Affiliates or the Registered Users any other legal or equitable title or right in or to the Application Suite or the Services. Without limitation to any other provision of the Agreement, the Customer must not and must not permit others (including its Authorized Affiliates and the Registered Users) to:
 - a. reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from the Application Suite;
 - b. modify, translate, adapt, alter, or create derivative works from, the Application Suite;
 - c. copy, distribute, publicly display, sell, rent, lease, loan or otherwise exploit the Application Suite;
 - d. sub-license, lease or loan the Application suite to any third party;
 - e. assign, pledge, transfer, sub-license or in any way attempt to encumber the Application Suite; or
 - f. merge all or any part of the Application Suite with other computer programs without WTG's prior written consent.
- 4.5. **Use by Authorized Affiliates and Registered Users.** The Customer is permitted to provide its Authorized Affiliates and the Registered Users with access to the Application Suite, the Services and the Product Documentation for use in accordance with the terms of this Agreement, provided that the Customer remains solely liable at all times for all acts and omissions by or on behalf of its Authorized Affiliates and the Registered Users.
- 4.6. **Additional Customer responsibilities if not using CargoWise Cloud.** In the event that the Customer is not using the CargoWise Cloud Service, then the Customer has sole responsibility for the use, security and operation of the Application Suite, including:
 - a. its installation;
 - b. comprehensive back-up of input and output data;
 - c. appropriate Application Suite security, internet firewalls, anti-virus, anti-malware and any other protection that may be necessary within the Customer's environment, including its Operating Environment;
 - d. not allowing the Application Suite to be used, or any instance of the Application Suite to be hosted, in a Non-Conformant Environment; and
 - e. maintaining the required Operating Environment for the Application Suite in accordance with the Minimum Requirements and other Product Documentation.
- 4.7. **Human Users and Robotics Users.** If a Human User or Robotics User is so registered within the Application Suite at any time within the Billing Period, then the Customer will be charged for the transactions of that user in accordance with the Price List. The Customer represents and warrants to WTG that it has correctly identified each of its Registered Users as either a Human User or Robotics User.
- 4.8. **Audit of Registered Users.** WTG has the right, directly or via its authorized agent, to audit the Registered Users in the Application Suite. This audit right may be exercised by WTG at any time. To the extent required to conduct the audit and upon WTG providing written notice, WTG may request and the Customer must

grant WTG access to the Customer's systems and personnel necessary to undertake the audit within a reasonable time, but in any case no more than thirty (30) days from the WTG written notice. If the Customer is found to be in compliance with the requirements for Registered Users, then no further action shall be required. In the event the Customer's Registered Users are found to be out of compliance with the requirements for Registered Users including under section 4.8, then:

- a. the Customer shall be liable for all costs associated with WTG's conduct of the audit;
- b. the Customer must pay for all charges arising from the non-compliance at the applicable rates in the Price List; and
- c. the Customer must indemnify WTG for all Loss arising from a breach of this section 4.8.

4.9. **Features and Functions of the Application Suite.** WTG and its relevant Affiliates at all times retain complete discretion over the appearance, design, feature set, functionality, Modules, programmatic behavior and all other aspects of the Application Suite.

5. RELEASES AND OPERATING ENVIRONMENT

5.1. **CargoWise Technical Specifications Policy.** The Customer must comply with the CargoWise Technical Specifications Policy.

5.2. **New Releases.** Once a New Release of the Customer's current production version (DPR, STD or GPR) of the Application Suite is offered, the Customer must upgrade to the applicable New Release in accordance with the Minimum Requirements. The Customer acknowledges and agrees that this requirement is reasonable and necessary, including for technical and/or security reasons.

5.3. **Risks of STD or DPR in Production Environment.** The Customer must consider the risks of using the STD or DPR in a Production Environment and will take appropriate measures to deal with and mitigate those risks including a detailed testing process, business contingency planning and other measures designed to detect problems prior to use in a Production Environment and to remove, to the greatest extent possible, the commercial impact should Defects be found. Should Defects be found, WTG shall repair reported Defects according to its obligations under this Agreement for GPR, STD and DPR (as applicable to the Customer).

5.4. **Audit of Customer Operating Environment.** If the Customer is not accessing the Application Suite through CargoWise Cloud, WTG has the right, directly or via its authorized agent, to audit the Operating Environment of the Customer and its Authorized Affiliates to ensure that the Customer and its Authorized Affiliates are not operating in a Non-Conformant Environment. This audit right may be exercised prior to and as a pre-condition to the Customer installing the Application Suite on an environment other than CargoWise Cloud and/or anytime thereafter.

5.5. **Consequences of Non-Conformant Environment.** If the Customer is accessing or using the Application Suite, or any instance of the Application Suite is being hosted by or on behalf of the Customer, in a Non-Conformant Environment the Customer must use best efforts to promptly remediate all issues and ensure its Operating Environment ceases to be a Non-Conformant Environment. If a Non-Conformant Environment exists for a period of 90 (ninety) days or more, then in addition to any other right or remedy WTG may have, WTG may require the Customer to only access the Application Suite via CargoWise Cloud as a condition of WTG continuing to grant the Licenses under this Agreement. The Customer further acknowledges and agrees that this requirement is reasonably necessary for technical, maintenance and security reasons. The Customer indemnifies WTG for any Loss arising from the Customer operating a Non-Conformant Environment.

6. MAINTENANCE AND HELP DESK RESPONSE

6.1. WTG shall provide Maintenance and Help Desk Response Services in accordance with the Support and Incident Management Policy.

6.2. Any Incident Report by the Customer must be via eRequest in accordance with the Support and Incident Management Policy. No other method of lodging a Help Desk Response request shall be valid including email or phone. WTG shall provide Help Desk Response Services in the form of advice via eRequest in accordance with the Support and Incident Management Policy.

7. EXCLUSIONS

7.1. WTG will not provide the Customer with hardware, operating system, server, networking and other on-premises or third party hosted equipment and operating system support.

- 7.2. Without limiting any other section of this Agreement, WTG will not provide the following services as a part of Maintenance and Help Desk Response Services and will not be liable to the Customer for:
- a. correction of errors, losses, problems or Defects caused by the operation of the Application Suite due to the Customer's computer equipment or use of the Application Suite or such computer equipment by the Customer in a manner other than that specified in the Product Documentation or as otherwise specified by WTG;
 - b. correction of errors, losses, problems or Defects caused by any unauthorised modification, variation or alteration of the Application Suite, customization of reports or documents by the Customer, or the Customer's Non-Conformant Environment;
 - c. correction of errors, losses, problems or Defects caused by any computer virus, Trojan, mal-ware, spy-ware or other software not supplied by WTG to the Customer;
 - d. correction of errors, losses, problems or Defects caused by system failure, data loss or corruption caused by an operating system, hard disk, power, network, any hardware used by the Customer or other source unrelated to the Application Suite;
 - e. correction of errors, losses, problems, Defects or corruptions caused by a malicious attack from the Customer's (or an Affiliate of the Customer's) own staff, contractors or a security breach of the Customer's network, Internet (if the Customer is not using CargoWise Cloud) or elsewhere, and the Customer agrees to hold WTG harmless from and against any loss, cost or liability incurred by WTG in respect of any or all of the foregoing;
 - f. any services where the Customer has not provided Certified Staff to engage with WTG (and in the event that WTG provides any such services to the Customer, WTG will be entitled to charge for any incidents reported by the Customer which are classified, reclassified or resolved as a training incident (for example, as a CR5) by WTG in accordance with section 7.3);
 - g. customer-specific training of the Customer's staff and/or the Customer's Authorized Affiliates' staff;
 - h. training relating to the use of the Help Desk Response Services where relevant content is available via the WiseTech Academy or otherwise;
 - i. diagnosis or rectification of faults not directly related to the Application Suite such as faults related to the operating system, SQL server or hardware problems (unless the Customer is using CargoWise Cloud and the sole source of the relevant issues is CargoWise Cloud);
 - j. correction of any errors, losses, problems or Defects to a non-current version of the Application Suite; and/or
 - k. correction of any errors, losses, problems or Defects that arise from or are related to the Customer using the Application Suite, or hosting any instance of the Application Suite, in a Non-Conformant Environment.
- 7.3. Should the Customer request services that are excluded from the Maintenance and Help Desk Response Services under this section 7, WTG may supply these services at its sole discretion, and if supplied, these services are provided without warranty (to the maximum extent permitted by law) and on a time and materials basis. WTG shall charge for such services at the standard rates published by WTG from time to time, which may include a premium for any Non-Conformant Environment.

8. CONFIDENTIALITY

- 8.1. Each of the parties acknowledges that the Disclosing Party will disclose Confidential Information which shall always remain the exclusive property of the Disclosing Party.
- 8.2. Each party will regard and must treat the Confidential Information as confidential. The Receiving Party will not, without the prior written consent of the Disclosing Party or unless required to by law, regulation, legal process, order of any government agency or the rules of a recognised stock exchange, disclose or allow the disclosure of any of the Confidential Information to any person except its Authorized Representatives who have need of any of the Confidential Information for the purposes of assisting in the performance of its obligations or exercising any of its rights pursuant to this Agreement, provided that the Receiving Party remains responsible for any disclosure of Confidential Information by its Authorised Representatives. This includes any disclosure of Confidential Information on any social media, discussion platform or other public or semi-public forum. Notwithstanding anything to the contrary, the Customer shall not knowingly or intentionally disclose WTG Confidential Information to any former employee of WTG within twelve (12) months of that former employee ceasing to be employed by WTG or any Affiliate of WTG.

- 8.3. The Customer is solely responsible for the use, supervision, management and control of the Application Suite and each party is responsible for the confidentiality of the other party's Confidential Information in its possession. The Customer must ensure the Application Suite and all Confidential Information is protected at all times from access, use or misuse, damage or destruction by any person not authorized by WTG for that purpose and must ensure any disclosure of Confidential information to Authorized Representatives is in accordance with this section 8.
- 8.4. WTG will, for the purposes of support, maintenance, testing, development, security and license compliance, account management and general communications, collect, retain, inspect and analyse information about the Customer's computer hardware, system, network, key management contacts, accounting and staff details, customs entries, client, carrier, agent and vendor details and other information held in the Application Suite including whole backups of live or test data that may be provided by the Customer and the Customer authorizes WTG to collect, retain, inspect and analyse information as described in this section and in accordance with the Privacy Policy. Additionally, WTG may provide the Customer's contact details and information about the Customer's monthly Usage to independent third parties providing External Services or certified in the Application Suite and the Customer authorizes WTG's provision of such information.
- 8.5. Notwithstanding the provisions of this section 8, each party shall be at liberty to disclose in any media release, written statement, website materials or other publicity that the other party is (or has been) a supplier or customer of the other, as the case may be. Each party hereby consents to such disclosure. Each party agrees not to use such disclosure in any way which will disparage or harm the good business standing or reputation of the other party.

9. INTELLECTUAL PROPERTY

- 9.1. The Customer shall ensure that the Application Suite is utilized in accordance with this Agreement and that no person or company associated directly or indirectly with a product, internal tool, development or design process that is intended to create an alternative to or replacement of the Application Suite, in whole or in part, shall have access to the Application Suite or the Confidential Information or any network or equipment on which the Application Suite or Confidential Information is resident.
- 9.2. The Customer agrees that all Materials developed by WTG pursuant to this Agreement, regardless of whether developed jointly by WTG and the Customer, shall be the exclusive property of WTG. WTG agrees that the Customer shall have a license to use all Materials in Customer's own operations according to all of the terms and conditions of this Agreement.
- 9.3. The Customer acknowledges that all Materials which are or may be developed prior to or pursuant to this Agreement and the Application Suite are trade secrets and confidential proprietary products of WTG with all Intellectual Property Rights vesting solely in WTG. The Customer hereby transfers and assigns any and all rights in and to Materials to WTG, including all Intellectual Property Rights. The Customer must not disclose or otherwise make such Material available to any persons other than Registered Users of the Customer required to have such knowledge for normal use of the Materials and the Customer agrees to obligate each Registered User to a level of care sufficient to protect against such disclosure. The Customer remains liable for any disclosure of such Materials by any Registered User. These obligations of the Customer shall survive the termination or expiration of this Agreement.

10. PRIVACY AND DATA PROTECTION

- 10.1. The parties must at all times comply with applicable Privacy Laws, in the collection, storage, use and disclosure of any Personal Data they collect, use or otherwise access in connection with the services under this Agreement. Legitimate data protection obligations of the parties pertaining to possible commissioned data processing subject to the [Data Processing Addendum](#).
- 10.2. The Data Processing Addendum forms part of this MLA and the Agreement between WTG and the Customer. WTG may, from time to time and upon providing the Customer with thirty (30) days' prior notice, provide the Customer with an updated Data Processing Addendum (**Updated DPA**). If the Customer does not wish to accept the Updated DPA, then the Customer must terminate this Agreement in accordance with the provisions set out in section 12.1, and subject to the Customer providing WTG with a termination notice pursuant to section 12.1 within thirty (30) days of WTG's notice, the existing Data Processing Addendum will apply until that termination takes effect.

11. WARRANTIES AND DISCLAIMERS

- 11.1. WTG warrants that, for the term of this MLA, the Application Suite will perform substantially as described in

the Product Documentation, as updated from time to time, unless modified by a party other than WTG in which case this warranty is void.

- 11.2. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, THE APPLICATION SUITE AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ALL TERMS, CONDITIONS, WARRANTIES, UNDERTAKINGS, INDUCEMENTS OR REPRESENTATIONS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE RELATING IN ANY WAY TO THE APPLICATION SUITE OR TO THIS AGREEMENT ARE EXCLUDED. NO WARRANTY IS PROVIDED THAT THE APPLICATION SUITE WILL BE FREE FROM DEFECTS OR VIRUSES, OR THAT OPERATION OF THE APPLICATION SUITE WILL BE UNINTERRUPTED. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCES, WTG SHALL NOT HAVE ANY LIABILITY TO THE CUSTOMER IN RESPECT OF ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY EITHER THE CUSTOMER OR ANY THIRD PARTY, HOWEVER CAUSED, WHICH MAY BE SUFFERED OR INCURRED OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY IN RESPECT OF THE APPLICATION SUITE OR THE FAILURE OR OMISSION ON THE PART OF WTG TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF WTG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.3. To the extent allowed by applicable law, the liability of WTG and its Affiliates for any breach of a term, condition or warranty in relation to goods or Services shall be limited, at the option of WTG, to any one or more of the following: if the breach relates to goods; (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and if the breach relates to services: (i) the re-supplying of the services; or (ii) the payment of the cost of supplying the services again.
- 11.4. If, notwithstanding the above, WTG is held liable to the Customer for any reason, then the total aggregate liability of WTG and its Affiliates shall be limited to the lesser of the actual loss or damage and amounts actually paid to WTG by the Customer during the twelve month period prior to the event giving rise to the Customer's complaint.

12. TERMINATION

- 12.1. Unless otherwise specified in this Agreement, the Customer may give WTG written notice of its intention to terminate this Agreement and that termination will be effective immediately after the end of the next Billing Period after the month in which notice of termination was received by WTG.
- 12.2. WTG may terminate this Agreement without compliance with section 19 (Dispute Resolution) immediately by notice in writing and disable the Customer's access to the Application Suite if:
- a. the Customer disposes of the Application Suite, breaches WTG's copyright or permits or suffers unauthorized access to the Application Suite or WTG's Confidential Information;
 - b. the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency or bankruptcy administration;
 - c. the Customer, being a partnership, corporation, limited liability company or other legal entity, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - d. the Customer, being a natural person, becomes bankrupt or dies;
 - e. the Customer ceases or threatens to cease conducting business in the normal manner;
 - f. the Customer operates the Application Suite in a Non-Conformant Environment;
 - g. the Customer fails to remedy an obligation to pay WTG under this Agreement within 14 Business Days after receiving notice from WTG detailing the breach;
 - h. the Customer fails to remedy a breach of the Technical Requirements Policy within 14 Business Days after receiving notice from WTG detailing the breach; and/or
 - i. the Customer breaches section 4.4 (Restrictions), 5.2 (New Releases) or section 14.5.
- 12.3. Either party may terminate this Agreement if the other party breaches any section of this Agreement, and that breach remains unresolved after following and completing the Disputes Resolution Process in section 19.

- 12.4. On termination of the Licenses granted hereunder or termination of this Agreement for any reason, the Customer must return or destroy (and certify such destruction in writing to WTG) the Application Suite and all WTG Confidential Information in the possession or control of the Customer and its Authorized Affiliates.
- 12.5. Sections 4.4, 8, 9, 10, 11, 15, 19, 20.3 and 20.6 will survive any termination of this MLA.

13. ASSIGNMENT, TRANSFER OF OBLIGATIONS AND SUB-CONTRACTING

- 13.1. WTG may at any time assign its rights and/or transfer its obligations under this Agreement:
 - a. to any of its Affiliates by notice to the Customer; or
 - b. to any other person with the prior written consent of the Customer.
- 13.2. The Customer may at any time assign its rights under this Agreement to a third party, with the prior written consent of WTG.
- 13.3. The parties must promptly do all further acts and execute and deliver all further documents reasonably required by a party to give effect to any assignment contemplated by section 13.1.a or 13.1.b as applicable.
- 13.4. No party may assign to any person except as permitted under this section 13.
- 13.5. Without limitation to section 13.1, WTG may sub-contract the performance of any of its obligations under this Agreement, however WTG shall remain solely responsible for the performance of this Agreement in accordance with its terms.

14. TECHNICAL SPECIFICATIONS AND REQUIREMENTS

- 14.1. WTG shall provide the Customer with the Application Suite in accordance with the Product Documentation.
- 14.2. The Customer must comply with the Minimum Requirements, which form part of the Product Documentation, in the time and manner specified in the Minimum Requirements, as updated by WTG from time to time.
- 14.3. Any requests in respect of Application Suite release/s by the Customer for upgrades to STD or product enhancements, including access to DPR, must be in accordance with the Product Documentation.
- 14.4. The Application Suite must be installed so that all its associated databases are in locked mode. In this mode all associated databases are locked to 'read only', ensuring that only the Application Suite can modify the database and the Customer shall have a specific read-only access for backup, data extraction and reporting. The Customer acknowledges that writable access to the Application Suite's database can be used to violate business rules, modify or delete data and commit and remove evidence of theft or fraud. The Customer shall advise WTG immediately if it discovers that the database is writable by any person, method or tool to its knowledge or in its possession and agrees that any repair or rectification work on the Customer's database by WTG as a result of the Application Suite being placed in writable mode shall be chargeable on a time and materials basis as per the Order Form.
- 14.5. If at any time writable access to the Application Suite's data and associated databases is achieved in any way then WTG shall not be responsible for the integrity of the Application Suite's data or any costs or problems, and any and all warranties provided under this Agreement by WTG shall be null and void and the Application Suite shall be licensed on an "as is" basis if writeable access to the Application Suite's data and associated databases is achieved in any way.
- 14.6. Should WTG, at its sole discretion, permit and the Customer elects not to access the Application Suite through CargoWise Cloud, WTG shall have the right, directly or via its authorized agent, to audit any of the infrastructure involved in the provisioning of the Application Suite including, but not limited to any Operating Environment, to ensure that the Customer is in compliance with any one of the Minimum Requirements.
- 14.7. This audit right may be exercised prior to and as a condition of the Customer installing the Application Suite on an environment other than CargoWise Cloud or anytime thereafter. In furtherance of such rights and on WTG providing written notice, the Customer shall grant WTG access to the Customer's systems and personnel necessary to undertake the audit within a reasonable time, but in any case, no more than thirty (30) days from the WTG written notice. If the Customer is found to be in compliance with the applicable Minimum Requirements, then no further action shall be required and there shall be no costs chargeable to the Customer. In the event the Customer's Operating Environment is found to be out of compliance with the applicable Minimum Requirements, then, (i) the Customer shall be liable for all costs associated with WTG's conduct of the audit (ii) unless otherwise agreed in writing by the WTG CEO or his nominated senior manager, the Customer shall have three (3) months to comply with the applicable Minimum Requirements.

or in the alternative access the Application Suite through CargoWise Cloud. At the end of the 3-month period WTG shall conduct a follow-up audit and if the Customer is still found to not be in compliance with the applicable Minimum Requirements, then WTG may apply the relevant sections dealing with the Customer's failure to meet and maintain the Minimum Requirements until such time as the Customer becomes compliant with the Minimum Requirements and such compliance is confirmed by a follow-up audit or the Customer is accessing the Application Suite through CargoWise Cloud. All follow-up audits shall be chargeable to the Customer until such time as the audit confirms the Customer's compliance with the Minimum Requirements.

15. IP INFRINGEMENT INDEMNITIES

- 15.1. WTG will defend and indemnify the Customer against any damages incurred arising from any third-party claim that the Application Suite infringes a copyright, patent, trade secret or other intellectual property right (**IP Infringement**), provided that:
 - a. the Customer notifies WTG in writing within seven (7) days of receiving a claim;
 - b. the Customer does not admit liability in relation to any such claim without the prior written approval of WTG;
 - c. WTG has sole control of the defense and all related settlement negotiations; and
 - d. the Customer provides WTG with all necessary assistance, information, access and authority to enable WTG to exercise its rights and perform its obligations under this section 15.
- 15.2. The Customer shall be responsible for its own direct costs for staff, management, business obligations and professional advice arising from any claim.
- 15.3. WTG shall have no liability for any IP Infringement based on use of a superseded or altered release of the Application Suite if the IP infringement would have been avoided by the use of a published unaltered Release of the Application Suite prior to the date of the alleged IP Infringement.
- 15.4. WTG may resolve a claim under section 15.1 by:
 - a. modifying the Application Suite to be non-infringing; or
 - b. obtaining for the Customer a license to continue using the Application Suite.
- 15.5. The obligations contained in this section define WTG's entire liability and Customer's exclusive remedy for any IP Infringement.

16. CARGOWISE CLOUD

- 16.1. Usage by the Customer and its Authorized Affiliates of the CargoWise Cloud Service and its associated features and functionality will be charged in accordance with the Price List and be subject to the terms of the CargoWise Cloud Requirements document.

17. EXTERNAL SERVICES

- 17.1. The Customer may use External Services made available by WTG on the Application Suite, and WTG will invoice the Customer for Usage of External Services in accordance with this Agreement.
- 17.2. A third party provider of an External Service may:
 - a. require that WTG imposes External Service Terms on the Customer's use of the External Service and update those External Service Terms from time to time; and
 - b. terminate WTG's right to offer an External Service on the Application Suite or from use by the Customer.
- 17.3. The Customer must comply with directions given by WTG in relation to the Customer's use of External Services and the Customer represents and warrants that it will not use any External Service without having first accepted the applicable External Service terms as made available by WTG (including via the Application Suite) from time to time.
- 17.4. Notwithstanding anything to the contrary in this Agreement, WTG does not guarantee the provision of any External Service at any time and WTG disclaims all liability whatsoever for any inaccuracy, incompleteness, inadequacy, lack of merchantability or unfitness for purpose of External Services or any data provided through an External Service.
- 17.5. The Customer indemnifies WTG from Loss WTG suffers or incurs in respect of, in connection with, or in any

way arising out of, the Customer's use of the External Services.

18. ADDITIONAL SERVICES

- 18.1. WTG may agree to provide Additional Services to the Customer in accordance with the provisions of this MLA and any Additional Services Order.

19. DISPUTE RESOLUTION

- 19.1. **Non-Invoice Disputes.** Other than Disputes relating to Invoices (which are subject to sections 19.7 to 19.9), the parties agree that section 19 (other than section 19.7) applies to all Disputes between the parties in connection with the Agreement.
- 19.2. Where a Dispute occurs, the parties must first seek to resolve the Dispute amicably and informally. Where the parties are unable to resolve a Dispute in accordance with this section 19.2 within twenty (20) Business Days of either party requesting in writing discussions under this section, the Disputing Party must issue the Responding Party with a completed Initial Dispute Notice.
- 19.3. The Responding Party must provide the Disputing Party with a written response to the Initial Dispute Notice within ten (10) Business Days, either:
- agreeing to remedy the Dispute as identified in the Initial Dispute Notice as contemplated by section 19.5 (**Rectification Response**); or
 - issuing the Disputing Party with a Dispute Notice, including in circumstances where the Initial Dispute Notice has not been issued in accordance with section 19.2 or is not in respect of a Dispute.
- 19.4. Where the Responding Party provides a Rectification Response, sections 19.5, 19.6, 19.8 and 19.9 will apply. Where the Responding Party provides a Dispute Notice pursuant to section 19.3(b), sections 19.8 and 19.9 will apply.
- 19.5. The Responding Party agrees to remedy the Dispute as identified in the Initial Dispute Notice within twenty (20) Business Days or such other period of time as agreed between the parties in writing. The Responding Party shall notify the Disputing Party in writing once the remedy is complete (**Rectification Confirmation**).
- 19.6. Within ten (10) Business Days of receiving a Rectification Confirmation, the Disputing Party must notify the Responding Party in writing that the Dispute has been resolved or issue the Responding Party a Dispute Notice. If the Disputing Party fails to provide the Responding Party with a notice pursuant to this section 19.6, then the Disputing Party is deemed to have confirmed that the Dispute has been resolved.
- 19.7. **Invoice Disputes.** If the Customer disputes any charge or discount on an invoice or the issue of an invoice, the Customer must provide WTG with a Dispute Notice within ninety (90) days after the date of the invoice, after which the invoice will be deemed to be accepted by the Customer and no longer subject to dispute. In order for the Customer to avoid payment of the disputed portion of that invoice without breaching this Agreement, the Dispute Notice must be provided within ten (10) Business Days after the date of the invoice. If the Customer does not meet that deadline for delivery of the Dispute Notice, the Customer must pay the invoice in full by the Due Date, including any disputed portion of that invoice.
- 19.8. The parties must use reasonable endeavours to resolve any Dispute documented in a Dispute Notice issued under sections 19.3.b 19.3 or 19.6 amicably through discussions within three (3) months after receipt of the Dispute Notice by the Responding Party and any Dispute documented in a Dispute Notice issued under section 19.7 amicably through discussions within six (6) months after receipt of the Dispute Notice by the Responding Party.
- 19.9. If the parties do not resolve the dispute documented in a Dispute Notice issued under sections 19.3.b, 19.6 or 19.7 as applicable within the applicable period stated in section 19.8 (and if the dispute is unable to be resolved by the parties following discussions between their respective CEOs or other nominated senior executives) the parties agree to refer their dispute to arbitration for resolution in accordance with the Australian Center for International Commercial Arbitration (ACICA) Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English.

20. DEFINITIONS AND INTERPRETATION

- 20.1. **Definitions.** The MLA Glossary sets out the definitions used in this Agreement. The Customer agrees that WTG may update the MLA Glossary from time to time, including to reflect technological developments and business operations changes, by providing the Customer with thirty (30) days' prior written notice. The

Customer agrees any notice under this section 20.1 may be provided by WTG or its Affiliates posting the updated MLA Glossary [here](#). Capitalized terms used but not defined in this MLA shall have the meanings ascribed to such terms in the MLA Glossary.

20.2. **Interpretation.** The following rules of interpretation apply to this Agreement unless the contrary intention appears:

- a. headings are for convenience only and do not affect interpretation;
- b. the singular includes the plural and vice versa;
- c. words of one gender include all genders;
- d. wherever the words 'include', 'including' and 'includes' are used in this Agreement, they should be interpreted in an illustrative and non-exclusive manner as though the words "but is/are not limited to" immediately followed the same;
- e. a reference to:
 - i. 'incurred by', 'use', 'using', 'utilized' and 'used' with respect to the Customer (and any other similar reference) will be deemed to include the Customer, all of the Customer's Authorized Affiliates, and all of the Registered Users;
 - ii. a party includes its agents, successors and permitted assigns;
 - iii. a section or a clause means a section of this MLA;
 - iv. a document includes all amendments or supplements to, or replacements or novation of, that document;
 - v. any laws, legislation, regulations, binding industry codes and guidelines and ancillary regulations include all amendments, supplements to or replacements of the same; and
- f. no rules of construction apply to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or any part of it.

21. GENERAL

21.1. **Force Majeure.** No delay, failure or omission by a party to perform any of its obligations (excluding any payment obligations) under this Agreement, and no delay, failure or omission by WTG to provide Services in accordance with this Agreement:

- a. will be a breach of this Agreement; or
- b. will create any liability,

if such delay, failure or omission arises from or is due to any act, omission or circumstance over which the party could not reasonably have exercised control, including acts of God, fire, storm, lightning, flood, earthquake, acts of the public enemy, war, rebellion, insurrection, riot, invasion, strikes, lockouts, pandemics and states of emergency.

21.2. **Waiver and Variation.** The parties agree that:

- a. no right under this Agreement shall be deemed to be waived except by notice in writing signed by each party;
- b. a written waiver provided by one party pursuant to section 21.2(a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party;
- c. subject to section 21.2(a), any failure by a party to enforce any section of this Agreement, or any forbearance, delay or indulgence granted by one party to the other party, will not be construed as a waiver of that party's rights under this Agreement; and
- d. no modification or alteration of any section of this Agreement will be valid except in writing and signed by each party.

21.3. **Entire Agreement.** The Agreement constitutes the entire Agreement between the parties for the subject matter. Any prior arrangements, agreements, representations or undertakings are superseded. The Customer warrants that it has not entered this Agreement based on any warranties, representations, specifications, documentation or advertising material other than that stated in this Agreement.

21.4. **Severance.** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from that provision which shall be deemed deleted.

- 21.5. **Execution.** This Agreement will be deemed to have been accepted upon execution of the applicable Order Form but may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Each party consents and agrees that the other party may elect to execute this Agreement electronically or by exchanging PDF signatures over email. If a party elects to execute this Agreement electronically or by email, the electronic signature or PDF signature page of that party will have the same effect as a written signature and will be a valid and binding signature for the purposes of this Agreement.
- 21.6. **Governing law and jurisdiction.** This Agreement, and the rights and obligations of the parties under this Agreement, will be governed by and construed according to the laws of the State of New South Wales (NSW), Australia, without reference to any conflict of laws rules or principles. Any suit, action or proceeding by any party with respect to this Agreement shall be brought in a proper NSW court and the parties hereby submit to the exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. The parties hereby irrevocably waive any objections which they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in accordance with section 19 and hereby further irrevocably waive any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- 21.7. **Notices.** Notices under this Agreement may be delivered by email, hand or registered mail to:
- a. If to WTG: to company.secretary@wisetechglobal.com; and
 - b. If to the Customer: the email address specified by the Customer prior to the Effective Date, or to such email address as otherwise notified by the Customer to WTG.

Notice will be deemed given on email reply by the recipient acknowledging delivery or 30 minutes after the time sent (as recorded on the device from which the sender sent the email and provided the sender has not received an automated message that the email has not been delivered), whichever happens first. All communications under this Agreement must be in English.

Authority. The Customer represents and warrants, and where applicable undertakes, to WTG that it has full capacity and power to enter into and comply with all terms and conditions of this Agreement and it has all approvals and authorizations that may be required to permit it to enter into this Agreement and to perform its obligations under this Agreement in accordance with its terms. The Customer agrees and acknowledges that this Agreement is a valid and binding obligation on it, and enforceable against it by WTG.