

Subscription Agreement – Castaway Cloud

This subscription agreement (**Agreement**) is a legally binding contract between the Account Owner named in the Order and Financier Software Pty Ltd (ACN 140 224 102) of Suite 404/45 Lime St, Sydney NSW 2000, Australia (**Castaway**), and sets out the terms and conditions governing the orders placed under it.

1. Definitions and interpretation

1.1 Definitions

In the Agreement:

Additional Fees means the fees for Additional Services specified in an Order (if any), as updated from time to time in accordance with clause 7.3.

Additional Services means the Castaway products and services, other than Cloud Services, as specified in the Order (if any).

Authorised User means, collectively, Internal Users and External Users.

Business Days means a day on which banks are open for general banking business in Sydney, New South Wales, Australia, excluding Saturdays and Sundays.

Cloud Services means the 'Castaway Cloud' cloud-based service and basic software support and related services provided by Castaway, as specified in the Order (if any).

Confidential Information means information that is by its nature proprietary, confidential or commercial-in-confidence, and in respect of Castaway, includes the existence, functionality and output of the Solution, but does not include any information:

- (a) already known to the receiving party at the time of disclosure by the other party; or
- (b) in the public domain other than as a result of disclosure by a party in breach of its obligations under the Agreement.

Documentation means operating manuals, training materials and associated documentation provided by Castaway in connection with the Cloud Services and/or Software, and made available to the Account Owner, including online via Castaway's support webpage, as updated from time to time.

Excluded Loss means any loss, liability or damage which does not arise naturally from and in the usual course of the breach or act giving rise to liability, and includes any consequential or indirect loss, loss or corruption of data or loss of business, revenue, profit, anticipated savings or benefits, reputation or goodwill.

External User means any person granted access to the all or part of a Service by an Internal User.

Fees means the Additional Fees, Subscription Fees, and any other fees payable by the Account Owner to Castaway pursuant to this Agreement or the Order.

Force Majeure Event means an event, or a series of related events, that is outside the reasonable control of the party affected, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars.

Initial Period means, unless otherwise stated in the Order, the period of one (1) month commencing on the Service Start Date

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Internal User means:

- (a) where the Account Owner is an individual, the Account Owner; or

- (b) where the Account Owner is an entity or organisation, any employee or contractor of the Account Owner given a user account for the Cloud Services by the Account Owner's administrators.

Order means an order Castaway products and services referencing this Subscription Agreement.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, or about the affairs or personal particulars of any person, and that is received or learnt by a party from any source as a consequence of or in the performance of its rights and obligations under the Agreement.

Project Files means the project files for use in the Cloud Services purchased by the Account Owner in an Order or in accordance with clause 5.2.

Renewal Period has the meaning given in clause 2.2.

Service Start Date means the later of:

- (a) the date the Account Owner's initial payment is received in clear funds by Castaway; or
(b) the end of the Trial Period (if any).

Services means the Cloud Services and Additional Services (if any).

Software means the downloadable Castaway software applications, as specified in the Order (if any).

Solution means the Software, Services and Documentation (as applicable).

Subscription Fees means the fees specified for the Services on Castaway's website at the time the Account Owner submits the Order, as updated from time to time in accordance with clause 7.3.

Subscription Term means the term determined in accordance with clause 2.1.

Terms of Use means Castaway's terms of use for the Solution available on our website: castawayforecasting.com

Third Party Products means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Cloud Services.

Trial Period means the period of the trial provided under clause 3 (if applicable), being 14 days or such other period as set out in the applicable Order.

Usage Data means data and information related to access and/or use of the Services by or on behalf of the Account Owner or any Authorised User that is used by Castaway in an aggregate and anonymised manner, including to compile statistical and performance information related to the provision and operation of the Services.

User Data means all data, works and materials uploaded or otherwise transmitted to or stored in the Services by or on behalf of the Account Owner or an Authorised User, or transmitted by the Services at the instigation of the Account Owner or an Authorised User, but excludes Usage Data.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa.
(b) a gender includes the other genders;
(c) other grammatical forms of defined words or expressions have corresponding meanings;
(d) headings and sub-headings are used for convenience only and do not affect the interpretation of the Agreement;
(e) no provision of the Agreement may be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Agreement or the preparation or proposal of that provision;

- (f) wherever “include”, “for example”, or any form of those words or similar expression is used, it means including without limitation;
- (g) a reference to a party is to a party to the Agreement and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes (including by novation);
- (h) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (i) the word “person” includes a natural person, partnership, body corporate, association, governmental or other authority and any body or entity whether incorporated or not;
- (j) the word “month” means calendar month and the word “year” means twelve (12) months; and
- (k) if a period of time is specified and dates from a given day or the day of an act or event, it will be calculated exclusive of that day.

2. Term and structure

2.1 Subscription Term

The Subscription Term starts on the Service Start Date and continues until the later of the final date of the Initial Period or the final date of the Renewal Period, unless it is terminated earlier in accordance with clause 3.3(b)(i) or clause 12.1.

2.2 Renewal Period

The Agreement will automatically renew for successive periods of one (1) month each or such other period specified in the Order (each, a **Renewal Period**), unless a party gives the other party one (1) month’s prior written notice of its intention not to renew (or such other period specified in the Order) before the end of the then current Initial Period or Renewal Period (as applicable).

2.3 Inconsistencies

In the event of any inconsistencies between the Agreement and an Order, the terms and conditions in the Order will prevail.

3. Trial Period

3.1 Application

If the Order includes a trial, this clause 3 will apply during the Trial Period.

3.2 Right to use

Castaway grants to the Account Owner a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to:

- (a) access and use the Cloud Services and the Documentation;
- (b) install and use the Software; and
- (c) authorise Internal Users to do any of the above,

during the Trial Period solely for the Account Owner’s internal evaluation of the Solution and not for any commercial or competitive purpose.

3.3 End of trial

- (a) If the Account Owner wishes to continue using the Cloud Services after the Trial Period, the Account Owner must pay the first instalment of the Subscription Fees at least two Business Days prior to the end of the Trial Period.
- (b) If the Account Owner fails to make payment before the end of the Trial Period, then (unless otherwise agreed in writing by Castaway):
 - (i) the Agreement will terminate on the expiry of the Trial Period;

- (ii) the Account Owner's access to the Solution will be automatically terminated, with or without notice; and
 - (iii) Castaway:
 - (A) is not obligated to retain any User Data; and
 - (B) may delete the User Data without further notice, obligation or liability to the Account Owner.
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4. Solution

4.1 Right to use

Castaway grants to the Account Owner a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to:

- (a) access and use the Cloud Services and the Documentation;
- (b) install and use the Software; and
- (c) authorise each Authorised User to do any of the above,

during the Subscription Term solely for the Account Owner's internal business operations.

4.2 Authorised Users

The Account Owner acknowledges and agrees that it is fully responsible for each Authorised User's use of the Services or Documentation and their compliance with the Agreement.

4.3 Restrictions on use

Account Owner must not, and must not allow a third party (including Authorised Users) to:

- (a) resell, sublicense, transfer, or distribute any of the Solution;
- (b) modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without Castaway's prior written consent;
- (c) directly or indirectly modify, copy, reverse engineer, decompile, disassemble, or extract any element of and/or otherwise discover or derive any source code, algorithms, methods or techniques embodied in the Solution (except to the extent such restriction is expressly prohibited by applicable law); or
- (d) access or use the Solution:
 - (i) in violation of the Terms of Use; or
 - (ii) in a manner intended to avoid incurring Fees.

4.4 Castaway assistance

Castaway may, at its option, provide assistance to the Account Owner relating to the use of the Solution by the Account Owner and its Authorised Users, including by offering live and/or pre-recorded webinars.

4.5 Maintenance and updates

The Account Owner acknowledges and agrees that:

- (a) Castaway may conduct maintenance on the Solution, including updating the Solution, as it considers necessary from time to time in its discretion; and
- (b) such maintenance may impact the Solution.

4.6 Changes

Castaway may make changes to the Solution which do not materially reduce the level of performance, functionality or availability of the Services to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Products.

4.7 **Third Party Products**

The Account Owner acknowledges and agrees that:

- (a) the Services may permit access to Third Party Products;
- (b) unless otherwise expressly agreed by Castaway, the Services do not include the provision of services or updates relating to the Third Party Product; and
- (c) if the Account Owner requires any services or updates in relation to the Third Party Product, the Customer must seek such services or updates directly from the third party provider of the Third Party Product; and
- (d) to the maximum extent permitted by law, Castaway does not provide any warranty or assume any liability in connection with any Third Party Product or any services provided by a third party in connection with any Third Party Product.

5. **Project Files**

5.1 **Audit rights**

- (a) Upon 30 days' written notice, the Account Owner must permit Castaway or its designated auditor to audit the Account Owner's use of the Solution during business hours and cooperate, at its own costs, with Castaway in the conduct of such an audit (including providing reasonable access to information relevant to the Account Owner's use of the Solution). Each such audit must be conducted no more than once per quarter, at Castaway's expense and in such a manner as not to substantially interfere with the Account Owner's normal conduct of business; and
- (b) If any of the audits referred to in clause 5.1(a) reveal that:
 - (i) any password has been provided to any individual who is not an Authorised User, then without prejudice to Castaway's other rights, the Account Owner must promptly disable such passwords and Castaway will not issue any new passwords to any such individual; and
 - (ii) the Account Owner has underpaid Subscription Fees to Castaway, then without prejudice to Castaway's other rights, the Account Owner must pay to the Supplier an amount equal to such underpayment as calculated in accordance with the then current Subscription Fees within 30 days of the date of the relevant audit.

5.2 **Additional Project Files**

- (a) The Account Owner may, from time to time during the Subscription Term, purchase additional Project Files through the Account Owner portal.
- (b) Access to the additional Project Files will be provided after payment of additional charges at Castaway's then current Subscription Fees is made.
- (c) If the Account Owner orders additional Project Files during the Subscription Term, the applicable Subscription Fees will be payable in advance on a pro-rata basis for the remainder of the then-current Initial Term or Renewal Term (as applicable).

6. **Account Owner obligations**

6.1 **General obligations**

The Account Owner acknowledges and agrees that it will, and will ensure that the Authorised Users:

- (a) only use the Solution in accordance with the Agreement and the Terms of Use;
- (b) not use the Solution in any way that causes, or may cause, damage to the Solution or impairment of the availability or accessibility of the Solution; and
- (c) be solely responsible for providing the required internet connection and browser to access the Cloud Services.

6.2 **Unauthorised access**

The Account Owner must:

- (a) ensure that each Authorised User keeps their login credentials associated with the Solution secure and does not share such login credentials with any other person;
 - (b) use reasonable endeavours to protect the Solution from unauthorised use or access; and
 - (c) notify Castaway immediately on becoming aware of any unauthorised use, access to, or any security incident related to the Solution.
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7. **Fees and payment**

7.1 **Fees**

The Account Owner must pay to Castaway:

- (a) the Subscription Fees monthly in advance, unless otherwise agreed in an Order; and
- (b) the Additional Fees (if any) in accordance with the payment terms specified in an Order, or if none specified, monthly in advance.

7.2 **Payment**

- (a) The Fees are:
 - (i) subject to applicable law, non-cancellable and non-refundable; and
 - (ii) exclusive of the applicable GST or value added tax, which the Account Owner must pay to Castaway at the same time as the Account Owner pays the Fees.
- (b) The Account Owner must pay the Fees through one of the payment methods specified in the Order by the date such amounts are due.

7.3 **Change in fees**

- (a) The fees as at the Service Start Date are as set out in the Order.
 - (b) Castaway may adjust the fees with effect from the first day of the next Renewal Period by giving the Account Owner written notice of the proposed changes at least one month before the end of the then current Initial Period or Renewal Period (as applicable).
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8. **Warranty, disclaimer and limitation of liability**

8.1 **Limited warranty**

Castaway warrants that it has the right and authority to grant to the Account Owner the rights specified in clause 4.1.

8.2 **Disclaimers**

Except as expressly and specifically provided in the Agreement or required by law:

- (a) the Solution is provided to the Account Owner on an "as is" basis;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
- (c) the Account Owner assumes sole responsibility for results obtained from the use of the Solution by the Account Owner, and for conclusions drawn from such use. Castaway will not be liable for any damage caused by errors or omissions in any information, instructions or scripts provided to Castaway by or on behalf of the Account Owner in connection with the Solution, or any actions taken by Castaway at the Account Owner's direction.

8.3 **Limitation of liability**

Subject to clause 8.4:

- (a) neither party will be liable to the other party for any Excluded Losses however arising under or in connection with the Agreement (whether based on an action in contract, equity, negligence, tort or other theory); and
- (b) Castaway will not be liable for any loss, liability or damage arising out of or in connection with any services, products or deliverables provided under the Agreement for no fee (including the Solution provided during any Trial Period).
- (c) the total liability of Castaway to the Account Owner will not exceed the total amount paid by the Account Owner to Castaway under the Agreement in the six-month period preceding the first event giving rise to the claim.

8.4 Exclusions

Nothing in the Agreement excludes a party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability that cannot be limited or excluded by law.

8.5 ACL

- (a) Nothing in the Agreement is intended to exclude, restrict, or modify any consumer guarantee, right or remedy conferred on the user by the Australian Consumer Laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- (b) If the ACL applies to the Agreement:
 - (i) for major failures with the service, the Account Owner may be entitled to:
 - (A) cancel its service contract with Castaway; and
 - (B) a refund for the unused portion, or compensation for its reduced value;
 - (ii) for failures that do not mount to a major failure, the Account Owner is entitled to have the failure rectified in a reasonable time, failing which the Account Owner is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
 - (iii) the Account Owner may also be entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

9. User Data

9.1 Ownership rights

As between the parties, Castaway acknowledges and agrees that the Account Owner retains all right, title and interest in and to the User Data.

9.2 Licence

The Account Owner grants to Castaway a non-exclusive, worldwide, royalty-free licence to copy, store, configure, display, transmit, translate, anonymise, create derivative works of and use the User Data solely to the extent necessary for the performance of Castaway's obligations, and the exercise of Castaway's rights, under the Agreement.

9.3 Warranties

The Account Owner warrants to Castaway that the use of the User Data by Castaway under clause 9.2 will not:

- (a) breach the provisions of any law, statute or regulation; or
- (b) infringe the Intellectual Property Rights or other legal rights of any person.

9.4 **Retention of User Data**

The Account Owner acknowledges and agrees that, after the Subscription Term, or in the event of any suspension under clause 12.1, Castaway:

- (a) is not obligated to retain any User Data; and
- (b) may delete the User Data without further notice, obligation or liability to the Account Owner.

10. **Intellectual Property Rights**

10.1 **Ownership rights**

As between the parties, the Account Owner acknowledges and agrees that Castaway retains all right, title and interest in and to the Solution, Documentation, Usage Data and all other materials in which Intellectual Property Rights subsist developed by or on behalf of Castaway during the term of the Agreement, whether in its original form or as modified by any of Castaway, the Account Owner or an Authorised User.

10.2 **Further assurances**

The Account Owner agrees to take such steps as are reasonably required by Castaway in order to give effect to clause 10.1, including executing and perfecting any assignment to Castaway of any Intellectual Property Rights falling within clause 10.1.

10.3 **Feedback**

The Account Owner grants Castaway a perpetual, irrevocable, transferable, non-exclusive right to use any comments, suggestions, ideas or recommendations the Account Owner or Authorised Users provide in relation to any of Castaway's products or services in any manner and for any purpose.

11. **Confidentiality**

11.1 **Protection of Confidential Information**

Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of the other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to the Disclosing Party. Subject to clause 11.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose or communicate that Confidential Information to any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to keep secure all the Disclosing Party's Confidential Information coming into its possession or control;
- (c) only use the Confidential Information of the Receiving Party to perform its obligations under this Subscription Agreement;
- (d) not memorise, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than (and to the extent required) for the performance by the Receiving Party of its obligations under the Agreement; and
- (e) immediately on the written request of the Disclosing Party, or the termination or expiry of the Agreement for any reason, cease use of the Disclosing Party's Confidential Information and, if requested by the Disclosing Party, destroy and certify to the Disclosing Party that it has destroyed the Disclosing Party's Confidential Information.

11.2 **Exceptions**

The obligations of confidentiality under clause 11.1 do not apply to any disclosure:

- (a) that is required to be made by any applicable law; or
- (b) to a party's legal and other professional advisor, where such advisor is bound by an obligation of confidentiality.

11.3 **Account Owner to notify Authorised Users**

The Account Owner must inform each Authorised User of the provisions of this clause 11, and in the event that they have not entered into a separate agreement, such as an employment agreement, which contains provisions commensurate with the confidentiality restrictions similar to those set out in this clause 11, then the Account Owner must require each such Authorised User to agree in writing to be bound by the provisions of this clause 11 in the same manner as the Account Owner is bound under it.

11.4 **Privacy**

- (a) Without limiting the parties' obligations under clause 11.1, where a party gains access to Personal Information about any individual as a result of or in connection with performing its obligations under the Agreement, that party will process such Personal Information in compliance with applicable data protection laws.
- (b) To the extent the Account Owner or an Authorised User gives Castaway access to Personal Information, the Account Owner warrants that such collection and disclosure complies with applicable data protection laws.

12. **Suspension and termination**

12.1 **Suspension for non-payment**

Castaway may suspend the provision of the Solution without notice if any amount due to be paid by the Account Owner to Castaway under the Agreement is overdue.

12.2 **Termination**

A party may terminate the Agreement immediately by written notice to the other party if the other party breaches or is alleged to have breached a material term of the Agreement for any reason and either:

- (a) the breach is not capable or remedy; or
- (b) if capable of remedy, fails to remedy that breach within 14 days after being given notice by the other party to do so;

12.3 **Termination consequences**

On termination of the Agreement for any reason:

- (a) the Account Owner's right to access and use the Solution will immediately terminate without any further action from either party;
- (b) the Account Owner must:
 - (i) cease using, and must ensure the Authorised users cease using, the Solution; and
 - (ii) uninstall or allow Castaway to uninstall the Software from all of the Account Owner's systems on request by Castaway;
- (c) all unpaid invoices issued by Castaway under the Agreement will become immediately due and payable;
- (d) each party must promptly return, or at the other party's election, destroy all copies of the Confidential Information of the other party in its possession or control (whether in their original form or as modified by the first party);
- (e) any accrued rights or liabilities of either party will be affected; and
- (f) clauses 8.2, 8.3, 8.4, 8.5,9, 10, 11, 12.3 and 13 will survive and continue to apply.

13. **General**

13.1 **Entire agreement**

The Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter. No addition to

or modification of any provision of the Agreement, including in any customer purchase orders, will be binding upon the parties unless in writing signed by the parties.

13.2 Assignment

The Account Owner must not assign, whether in whole or part, the benefit of the Agreement or any rights or obligations under the Agreement, without the prior written consent of Castaway.

13.3 Governing Law

The Agreement will be governed by and construed in accordance with the laws for the time being in force in New South Wales, Australia. The parties agree to submit to the exclusive jurisdiction of the courts and tribunals of that jurisdiction.

13.4 Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of the Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.

13.5 Severability

If any part of the Agreement be or become invalid, that part will be severed from the Agreement and such invalidity will not affect the validity of the remaining provisions of the Agreement.

13.6 Force Majeure

If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event, provided that the affected party:

- (a) promptly notifies the other party, including the period for which it is estimated that such failure or delay will continue; and
- (b) takes reasonable steps to mitigate the effects of the Force Majeure Event.