



## Customer relationship terms

general terms for providing goods or services to customers

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## 1. Introduction

These terms are the general terms of the relationship between Caseware Africa and customer. The terms cover any transactions where Caseware Africa provides goods or services to customer. The commercial terms of any transaction will be contained in Annexure 1: Support and Maintenance Services Description.

## 2. Definitions and interpretation

2.1 **Definitions.** In the agreement:

**additional fee** means a charge customer must pay Caseware Africa for the supply of any goods or services outside of an order form, at Caseware Africa's then current standard prices and rates, unless otherwise agreed in writing between Caseware Africa;

**agreement** means the agreement between Caseware Africa and customer, consisting of the terms and any order forms the parties enter into;

**business day** means any day within business hours, other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where Caseware Africa's entity that entered into the relevant agreement is based, and any other reference to a **day** means a calendar day;

**business hours** means Caseware Africa's normal business hours on business days (9am to 5pm);

**Caseware Africa** means Caseware Africa as a division of Adapt IT and the vendor or service provider that enters into the agreement and, if specified in the order form, those related to it;

**Caseware Africa's technology** means any technology that Caseware Africa has created, acquired or otherwise has rights in and may, in connection with performing customer's obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

**customer** means the customer that enters into the agreement and, if specified in the order form, those related to it;

**customer's data** means customer's data (including information about an identifiable person) that:

- customer (or any third party on customer's behalf) provide to Caseware Africa; or
- Caseware Africa generate, process, or supply to customer in providing the goods or services; but excludes any derived data that Caseware Africa creates for its own internal purposes or which is proprietary or confidential to it or its third party contractors; and

**customer's technology** means any technology that customer has created, acquired or otherwise has rights in and may, in connection with performing customer's obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries.

**deliverables** means the deliverables as defined in Annexure 1 or related material;

**effective date** means in respect of each order form, the effective date stipulated in each order form, in the absence of which it will be the date the order form is accepted by customer;

**EULA** means an end user license agreement;

**existing material** means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

**fees** means the fees, charges, or price customer will pay to Caseware Africa in respect of goods or services it provides under orders forms;

**goods** means any goods Caseware Africa provides to customer, under order forms (including software that it provides to customer);

**order form** means the form Caseware Africa issued to customer and signed by it, which contains a description of the software, as well as the fees and payment terms in respect thereof;

**parties** means the parties to the agreement being customer and Caseware Africa, and **party** refers to either parties as the context requires;

**personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**privacy notice** means Caseware Africa's notice regulating data use and protection, accessible from its website;

**related** and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in applicable law;

**services** means any services Caseware Africa or related persons provides to customer, under Annexure 1;

**service levels** means the levels according to which Caseware Africa will provide each service as agreed by the parties in writing and signed;

**sign, signed or signing** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of a party's duly authorised representatives;

**signature date** means the date of signature by the party signing last;

**site** means any physical premises referred to in Annexure 1, where Caseware Africa will provide goods or services under the order form;

**specification** means the specification (which may be in the form of a proposal, wire frame, project initiation document, functional specification, or technical specification) of the deliverable, which may be (i) in or attached to an order form, or (ii) in writing, dated and signed by the parties;

**tax** means any tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction), duty, tariff, rate, levy, or any other governmental charge or expense payable;

**terms** means these terms, consisting of:

- these general customer relationship terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific goods or services);

**third party contractor** means any contractor, supplier, vendor, service provider or licensor any of the goods or services, which is not a party to the agreement;

**third party software** means all third party software owned by a third party but legally licensed to Caseware Africa for use in providing the goods or services;

**writing or written** means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf files), but excludes information or data in the form of email, text message or instant message;

- 2.2 **Definitions in Annexure 1.** Words defined (or assigned a meaning) in Annexure 1 will have that meaning in the terms, unless the context clearly indicates otherwise.
- 2.3 **Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever 'including' or 'include', or 'excluding' or 'exclude' follow a term together with specific examples or items, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any law or enactment will include the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.
- 2.4 **Conflict.** If there is a conflict of meaning between these terms and any order form, the order form will prevail in respect of customer's use of the relevant goods or services. This clause is subject to the limitations of liability clause below.

### 3. Duration

The terms commence on acceptance of an order form and continue until terminated according to the terms.

### 4. Order forms

- 4.1 **Capacity.** Customer represents and warrants that customer (and any person who places an order):
- is old enough under applicable law to enter into the agreement;
  - is legally capable of concluding any transaction;
  - possess the legal right, full power, and authority to enter into the agreement; and
  - will submit true, accurate and correct information to Caseware Africa.
- 4.2 **Valid and binding order form.** The parties only conclude a valid and binding order form when Caseware Africa accepts the offer made by customer. Customer will accept and sign the agreed upon order form and give Caseware Africa a signed copy.
- 4.3 **Fees.** The fees for any goods or services are as provided in the relevant order form.
- 4.4 **Time and place.** The parties conclude any agreement between each other at the date of the last signature of the parties and at the place where customer has its head office.
- 4.5 **Order forms.** Each order form will create a separate agreement. Despite that, Caseware Africa may consider customer's breach of any one order form to constitute a breach of any or all agreements.

### 5. Goods

- 5.1 **Sale.** Caseware Africa sells goods to customer who purchases the goods according to the agreement.
- 5.2 **Warranty.** The goods will be subject to any warranty indicated in the description of the goods appearing on the accompanying documentation, packaging, order form, or EULA. Please review those documents carefully. To the extent legally possible, Caseware Africa assigns to customer the benefit of any supplier warranties that a supplier may give to Caseware Africa in regards the goods. Customer may not waive any of Caseware Africa's rights as against the supplier.
- 5.3 **Risk and ownership.** All risk of loss or damage to the goods will pass to customer upon delivery but ownership of the goods will only pass to customer upon full payment of the fees.
- 5.4 **Software.** Unless otherwise stated, the license for any software is contained in the EULAs, Annexure 1 or the relevant order form. Customer will be required to agree to the EULAs or relevant order form prior to use of the software. The applicable EULA or order form, which takes precedence, governs the use of the software. If customer does not agree to the EULAs, customer must stop using the goods and return the software. If customer uses the software (or takes any other action that is described in the packaging or software as constituting customer's consent to the EULAs or relevant order form), then customer agrees to the EULAs or order form, unless otherwise allowed in the documentation accompanying the software or applicable law.
- 5.5 **Resale and exports.** If customer wishes to resell or export any goods, customer must obtain all required consents or licenses under all applicable laws and regulations that may affect or regulate such resale or export.

### 6. Services

Caseware Africa will provide the services according to the agreed service levels.

### 7. Change control

- 7.1 **Changes to goods or services.** During the currency of the agreement, events may occur which require a change to the nature and scope of goods or services. The parties will not implement a change unless they comply with this clause.
- 7.2 **Change request.** A party may propose a change to the nature and scope of goods or services by sending a scope change document to the other party detailing the desired changes.
- 7.3 **Sign-off.** The parties will discuss and agree the proposed changes and revise the scope change proposal accordingly. Customer will then consider the scope change proposal and may approve or reject it in writing within three business days after delivery. If customer:
- accepts a scope change proposal, a duly authorised representatives of the parties will sign off the scope change proposal and it will be incorporated into Annexure 1; or
  - rejects a scope change proposal, Caseware Africa will continue to provide the goods or services on these existing terms.
- 7.4 **No change effective until sign-off.** No party may proceed with any change to the agreement until the change and all matters relating to the change have been agreed in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without taking account of the proposed changes. A party may not unreasonably delay or withhold their agreement to a proposed change.
- 7.5 **Exception.** Amendments to the content of the agreement that do not directly impact the nature and scope of the goods or services will not be subject to this change control procedure, unless otherwise agreed by the parties in writing.

- 7.6 **Future enhancements.** If customer requires Caseware Africa to make any future enhancements the same change control procedure will be followed. However, this does not prevent customer after the expiry of the agreement, to enter into a contract with another service provider to conduct any future changes or enhancements. If future enhancements are made by another service provider, the warranty Caseware Africa gives below is void.

## 8. Personnel

- 8.1 **Access.** With effect from the signature date, customer will allow Caseware Africa and its personnel access (at all reasonable times) to the sites for the purposes of fulfilling Caseware Africa's obligations under Annexure 1.
- 8.2 **Compliance with customer's policies.** Caseware Africa will take all reasonable steps to comply, and ensure that its personnel comply, with customer's policies. Customer must notify Caseware Africa of all its policies prior to the effective date and give Caseware Africa and the relevant personnel reasonable written notice of any change in its existing policies or the implementation of its new policies.
- 8.3 **Allocation of resources.** Caseware Africa endeavour to keep the same personnel listed in Annexure 1, for the duration of the agreement. However, it may allocate and re-allocate all its personnel who provide goods or services under the agreement. If it needs to re-allocate personnel, they will have substantially similar qualifications to the original appointments.

## 9. Non-solicitation

- 9.1 **Restriction.** Unless otherwise agreed, no party will, during the currency of any order form or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the order form.
- 9.2 **Recruitment fee.** If a party whose personnel is recruited (affected party):
- consents to any such employment, the recruiting party (recruiting party) will pay the affected party a recruitment fee equal to 50% of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the affected party to the member of personnel concerned (gross package); or
  - does not consent to any such employment, the recruiting party will, on written demand from the affected party, pay the affected party a recruitment fee equal to 60% of the gross package of the personnel concerned.

## 10. Assignment and subcontracting

- 10.1 **No assignment.** No party may delegate its duties under the agreement or assign its rights under the agreement, in whole or in part without the other party's prior written consent, which may not be unreasonably withheld. Caseware Africa may assign the agreement to any successor or purchaser of its business or some of its assets, provided it informs customer of the change.
- 10.2 **Consent.** Caseware Africa may cede and assign all rights and obligations under the agreement to a related person with customer's prior written consent, which may not be unreasonably withheld.
- 10.3 **Caseware Africa's third party contractors.** Caseware Africa may sub-contract or delegate its obligations under the agreement to third party contractors. Caseware Africa will remain liable for performance of the third party contractors. No one may require Caseware Africa to disclose the terms (including payment terms) of any sub-contract entered into with respect to Caseware Africa's obligations under the agreement.

## 11. Relationship

- 11.1 **No temporary employment service or partnership.** Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 11.2 **No employment relationship.** Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

## 12. Appointments and governance

- 21.1 **Appointment.** On the effective date, each party will appoint a suitably qualified and responsible person to act as their representative. If a party does not appoint a representative and that party is a natural person, then that party will be its own representative. Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its representative.
- 21.2 **Function.** The representative's responsibilities include to manage and coordinate the goods or services and to discuss and manage any changes.
- 21.3 **Meetings.** The representatives will meet as agreed between the parties in the Annexure.
- 21.4 **Replacement.** A party may, on five business days' written notice to the other, appoint an alternative representative who is suitably qualified and responsible.
- 21.5 **Other personnel.** Both parties will, in a separate appointment schedule, appoint other relevant personnel where necessary in connection with the provision of the goods or services.

## 13. Fees and payment

- 13.1 **Due dates.** Customer will be liable for and pay the fees specified in the order form, and any additional fees, promptly on the due date specified in the relevant order form, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the order form. If no due date is specified or agreed, the due date is within 30 days of the date of invoice. The parties may agree otherwise in the relevant order form.
- 13.2 **Manner of payment.** Customer must make payment in the manner specified in this agreement.
- 13.3 **Late payments.** Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. Customer must pay the surcharges and penalties to Caseware Africa on-demand. Caseware Africa may withhold or halt the provision of any goods or services until customer has paid all amounts that are due.
- 13.4 **Interest on overdue amounts.** To the extent permitted by applicable law, Caseware Africa may charge customer interest for overdue amounts within its reasonable discretion. If customer does not pay the overdue amounts within 14 days of receiving written notice from

Caseware Africa to do so, any amount not paid by customer on the date of the statement of outstanding invoices will bear interest for Caseware Africa's benefit, from the due date until the date customer pays it. The rate of interest will be either 2% per annum above the prime overdraft rate of Caseware Africa's bankers published from time to time or 15% per annum, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.

- 13.5 **Appropriation.** Caseware Africa may appropriate any payment received from customer towards the satisfaction of its indebtedness to Caseware Africa under the agreement.
- 13.6 **Withhold payment.** Customer may not withhold or set off payment of any amount due to Caseware Africa for any reason.
- 13.7 **Certificate.** A certificate, signed by an accountant appointed by Caseware Africa, of the amount due by customer and the date on which it is payable will be proof of the correctness of the certificate's contents and the amount that it must pay pending it providing evidence that such an amount is not due.
- 13.8 **Tax.** All fees exclude any tax, which will be payable by customer where applicable in addition to the fees.
- 13.9 **Payment profile.** Customer and any signatory consent and agree that Caseware Africa may provide any registered credit bureau with information about the payment of amounts.
- 13.10 **Reimburse costs.** If Caseware Africa suspends the service or removes any goods supplied by Caseware Africa due to non-payment, customer will pay to it the costs incurred by it (including redeployment, travel and associated expenses) in remobilising its employees affected by the agreement and recommencing the services or re-installing the removed goods.

## 14. Performance and good faith

The parties will cooperate with each other and at all times act in good faith towards each other in performing this agreement.

## 15. Intellectual property

- 15.1 **Retention of rights.** Caseware Africa has created, acquired or otherwise obtained rights in its technology and despite anything contained in the agreement, it will own all right, title, and interest in its technology.
- 15.2 **Use of customer's technology.** If Caseware Africa uses any of customer's technology in connection with its performance under this agreement, customer's technology will remain its property and Caseware Africa will not acquire any right or interest in it.
- 15.3 **Use of Caseware Africa's technology.** If Caseware Africa uses any of its technology in connection with its performance under this agreement, its technology will remain its property and customer will not acquire any right or interest in it. If required Caseware Africa may grant customer a non-transferable, non-exclusive licence in writing to use its technology in connection with the deliverable as agreed in Annexure 1.
- 15.4 **Licence.** Caseware Africa grants customer a non-transferable and non-exclusive licence in respect of any intellectual property that may be needed in supplying the goods or services.
- 15.5 **Deliverables created during the agreement.** Caseware Africa owns all rights to all deliverables it develops for customer in the course of providing the goods or services under this agreement and any order forms.
- 15.6 **Other rights.** Neither party will obtain any rights in the existing material or intellectual property of the other party that was not created in performing the agreement or existed before the commencement of the agreement, unless a licence is granted.
- 15.7 **Trademarks.** Caseware Africa's logo and sub-logos, marks, and trade names are its trademarks and no person may use them without permission. Any other trademark or trade name that may appear on its marketing material is the property of its respective owner.
- 15.8 **Restrictions.** Except as expressly permitted under the agreement, the goods or services may not be:
  - modified, distributed, or used to make derivative works;
  - rented, leased, loaned, sold or assigned;
  - decompiled, reverse engineered, or copied; or
  - reproduced, transferred, or distributed.
- 15.9 **Residual knowledge.** Nothing contained in the agreement will restrict Caseware Africa from the use of any generic ideas, concepts, know-how, or techniques developed by it or learned in the course of providing the goods or services.
- 15.10 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

## 16. Intellectual property infringements

- 16.1 **Defence.** Caseware Africa will defend customer against any claims made by an unaffiliated third party that any goods or services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which it consents). Caseware Africa will reimburse customer with all costs customer reasonably incurred in connection with assisting Caseware Africa with the defence of the action. Customer will promptly notify Caseware Africa of the claim in writing and Caseware Africa will have sole control over its defence or settlement.
- 16.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, Caseware Africa may within 30 days of a finding of infringement:
  - obtain for customer the right to continue using the infringing item or the parts that constitute the infringement;
  - replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially according to its specifications;
  - alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially according to its specifications; or
  - withdraw the infringing item and refund to customer all fees paid by it to Caseware Africa under the relevant order form specifically with regard to the infringing item in the preceding six calendar month period.
- 16.3 **Exclusion.** Caseware Africa will not be liable for any claim that arises out of goods or services customer selects and acquires from third parties.
- 16.4 **Survival.** This clause will survive termination of the agreement.

## 17. Confidential information

- 17.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement, including existing material and customer's data. Each party will take all reasonable steps to ensure their employees or contractors abide by this clause.
- 17.2 **The receiving party's responsibilities.** The party that receives confidential information agrees to protect the interests of the party it is receiving from, and will:
- only use it to comply with its responsibilities under this agreement;
  - only give the information to any of its employees or agents that need it, and only give as much of it as they need;
  - use reasonable security procedures to make sure employees or agents keep the information confidential;
  - get promises of confidentiality from those employees or agents who need access to the information;
  - not reveal the information to anyone else; and
  - not use it for any purpose other than this agreement.
- 17.3 **End of this agreement.** At the end of this agreement, or on written request, the parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.
- 17.4 **Exceptions.** These responsibilities will not apply to any information that:
- is lawfully in the public domain (available to the general public) when a party received it;
  - lawfully becomes part of the public domain afterwards;
  - is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
  - is given to comply with a court order or other legal duty.
- 17.5 **Privacy policy.** The terms and conditions of the privacy notice are also applicable to this agreement.
- 17.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid in perpetuity.

## 18. Data protection compliance

This clause applies when Caseware Africa is the operator and customer is the responsible party.

- 18.1 **Written agreement.** As part of Caseware Africa providing goods or services, it processes certain personal information on behalf (or for) customer. This makes Caseware Africa an operator for customer. Therefore, the law requires customer, in terms of a written contract, to ensure that Caseware Africa establishes and maintains certain technical and organisational security measures it considers to be appropriate or reasonable.
- 18.2 **Security measures.** Caseware Africa will establish and maintain the security measures to keep the personal information in its possession secure and confidential by taking appropriate and reasonable technical and organisational steps to stop it from being lost, damaged or destroyed, or unlawfully accessed or processed.
- 18.3 **Authorisation and confidentiality.** The law places certain obligations on Caseware Africa as the operator with regards to the personal information.
- Caseware Africa will:
- only process it with customer's knowledge or authorisation,
  - treat it as confidential, and
  - not disclose it.
- This does not apply if:
- the law requires Caseware Africa to do so, or
  - Caseware Africa have to do so in the course of the proper performance of its duties.
- 18.4 **Transferring personal information outside South Africa.** Caseware Africa will notify customer's information officer if it considers transferring the personal information outside of South Africa so that customer can consider how to do it lawfully. If customer is using the Caseware cloud service, its personal information will be transferred across borders. The Caseware cloud-based platform's security measures had be viewed [here](#).
- 18.5 **Caseware Africa will notify customer of incident.** Caseware Africa must notify customer's information officer immediately where there are reasonable grounds to believe that an unauthorised person has accessed or acquired the personal information.

## 19. Caseware Africa's warranties

- 19.1 **Service warranties.** Caseware Africa warrants in relation to the services that:
- it and its personnel will possess and have the right to use knowledge and expertise sufficient to enable it to provide the services;
  - it will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels; and
  - it will provide the services according to all applicable laws, enactments, and regulations.
- 19.2 **Goods warranties.** Goods are subject to the warranty in any document, packaging or EULA that accompanies them. To the extent legally possible, Caseware Africa assign to customer the benefit of any supplier warranties it has. Otherwise customer has the same rights against Caseware Africa as it has against the supplier.
- 19.3 **General warranties.** Caseware Africa warrants further that:
- it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under the agreement; and
  - it and its personnel will not knowingly introduce any malicious software into customer's material or its system.
- 19.4 **Specific warranties.** Caseware Africa may provide further specific warranties in Annexure 1.

## 20. Disclaimer of warranties

- 20.1 **Disclaimer.** Customer uses Caseware Africa's goods or services at its sole responsibility and risk. Caseware Africa provides the goods and services on an 'as is' and 'as available' basis. Except for the warranties given in this agreement and to the extent allowed by law, Caseware Africa expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement;
- any warranties regarding third party software; and
- that the goods or services will meet customer's requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software.

20.2 **Exclusion of liability.** Despite any warranty Caseware Africa gives, it will not be liable with regard to any defect arising from customer's negligence, failure to follow instructions (whether oral or in writing) or misuse.

20.3 **Security software.** Customer should keep up-to-date security software on any systems used to access the goods or services.

## 21. Limitation of liability

- 21.1 **Direct damages limited.** Despite anything else in this agreement including any order form, Caseware Africa's maximum liability to customer for any claim for direct damages is the total amount of fees it has paid Caseware Africa in the preceding 12 months for the goods or services related to the claim. Caseware Africa's total aggregate liability for all claims under this agreement will never be greater than the maximum liability. This limitation applies to the extent allowed by any law that applies, and regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis).
- 21.2 **Indirect damages excluded.** Despite anything else in the agreement including any order form, Caseware Africa and its personnel will never be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from the agreement. These include foreseeable or unforeseeable loss of profits, loss of goodwill, pure economic loss, damages relating to lost or damaged data or software, loss of use and damages relating to downtime or costs of substitute products.
- 21.3 **This limitation of liability clause prevails.** To avoid all doubt, and despite the conflict provisions in clause 2.4 of these terms, no order form can ever supersede the limitation of Caseware Africa's liability and the exclusion of indirect damages in this clause.
- 21.4 **Caseware Africa is not liable for customer's default.** Caseware Africa will not be liable for any loss or damage suffered by customer arising out of or in connection with any breach of the agreement by customer or any act, misrepresentation, error or omission made by or on behalf of it or its personnel.
- 21.5 **Other services.** Caseware Africa is not liable for any other deliverable, including website, goods, or service provided by any third party, nor is Caseware Africa liable for any claims arising due to third party software.
- 21.6 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 22. Customer's warranties and indemnities

- 22.1 Customer warrants that:
- customer has not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;
  - customer has obtained all necessary user licences in advance; and
  - by entering into an order form customer is not acting in breach of any agreement to which it is a party;
- 22.2 Customer must promptly obtain and provide all consents necessary for Caseware Africa to access, use or modify (including creating derivative works) it or a third party's software, hardware, firmware and other products used by it without infringing the ownership, licence or intellectual property rights of the providers or owners of such products. Caseware Africa will be relieved of performing any obligations affected by customer's failure to promptly provide any necessary consents to it.
- 22.3 Customer agrees to indemnify, defend, and hold harmless Caseware Africa (and those related to it and its personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

## 23. Termination

- 23.1 **Termination on notice.** Both parties have the right to terminate this agreement by giving 30 calendar days' written notice to the other party. However, no notice of termination is effective for as long as any order form remains in effect. Either party may cancel an order form by giving 30 calendar days' written notice to the other party, without giving reasons, and without necessarily terminating this agreement.
- 23.2 **Termination for breach.** If a party does not fix any breach of this agreement (failure to comply with it) or an order form within 14 days of receiving written notice from the other party to do so, the other party may, without prejudice to any of its rights:
- claim specific performance of this agreement (make the party comply with this agreement); or
  - immediately cancel this agreement in writing; and
  - claim damages from the other party, including any claim for any fees already due.
- 23.3 **Immediate termination in other circumstances.** Either party may immediately end this agreement at any time by giving the other notice in writing if:
- the other is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
  - the other takes steps to deregister itself (close down) or is deregistered;
  - the other makes any settlement or arrangement with its creditors;
  - the other fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand (or equivalent), within 21 days;
  - anything analogous to the foregoing occurs in any applicable jurisdiction, which is not dismissed in 21 days;
  - termination is necessary to comply with any applicable law or government instruction; or
  - the parties agree.
- 23.4 **Transfer management.** If this agreement is terminated by customer due to a material breach of the agreement by Caseware Africa or if terminated by Caseware Africa on notice, Caseware Africa may provide assistance to customer to enable it to effect a smooth non-disruptive transition to another service provider or to re-establish its in-house IT service, whichever it, in its discretion may decide. To this end, Caseware Africa may for a period of 30 days from date of termination specifically:
- provide advice and guidance to the new service provider or customer as the case may be;
  - make its personnel available to render assistance to customer or to the new service provider; or

- provide, on an ad-hoc basis, the goods or services that it was providing under Annexure 1 until the new service provider or customer is capable of performing the services or providing the goods.

23.5 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 24. Effect of termination

24.1 **Amounts due to Caseware Africa become due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to Caseware Africa for services rendered or goods received before termination will become due and payable even if it has not yet invoiced them. Customer may not withhold the amounts for any reason, unless an arbitrator directs otherwise. Caseware Africa will refund customer the proportion it has paid in advance for deliverables that are incomplete.

24.2 **Post termination assistance.** Following termination, customer may take advantage of any post-termination assistance that Caseware Africa may generally make available (such as data retrieval arrangements). Caseware Africa may provide customer with post-termination assistance, but it will not be under an obligation to do so. Customer's right to take advantage of any post-termination assistance will depend on its acceptance of and compliance with any additional fees, conditions or terms that Caseware Africa may impose for such assistance.

24.3 **No expectation.** Caseware Africa acknowledges and confirms that no expectation has been created by anyone, by the agreement or any other agreement, entitling it or customer to expect the renewal or extension of the term of any agreement.

24.4 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 25. Resolving disputes

25.1 **Definitions.** For the purposes of this clause:

25.1.1 **AFSA** means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its place);

25.1.2 **LCIA** means the London Court of International Arbitration (or its successor or body nominated in writing by it in its place);

25.2 **Notifying each other.** There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

25.3 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 days of notification, to negotiate and try to end the dispute by written agreement within 15 more days.

25.4 **Mediation.** If negotiation fails with any entity of Caseware Africa's located:

- in South Africa, the parties must refer the dispute to mediation under AFSA's rules;
- anywhere else, the parties must refer the dispute to mediation under LCIA's rules.

25.5 **Arbitration.** If mediation fails with any entity of Caseware Africa's located:

- in South Africa, the parties must refer the dispute within 15 days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 days after the referral, the secretariat of AFSA will appoint the arbitrator.
- anywhere else, the parties must refer the dispute within 15 days to arbitration (including any appeal against the arbitrator's decision) under LCIA's latest rules for expedited arbitrations. The parties consent to any arbitration being conducted as a matter of urgency, and authorises the other party to apply to the secretariat of LCIA for the arbitration to be conducted on an urgent basis. The arbitration will be held in English, in camera and will be kept confidential by the parties. The arbitration will be held in London. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 days after the referral, the secretariat of LCIA will appoint the arbitrator.

25.6 **Legal costs.** Any legal costs (attorneys and advocates fees and the costs of experts and witnesses) incurred by the parties in the arbitration will be recoverable on the attorney and own-client scale.

25.7 **Costs of arbitration.** The costs of the arbitration proceedings, including the fees of the arbitrator/arbitrators, will be borne equally between the parties, unless the arbitrator's award provides otherwise.

25.8 **Agree otherwise in an order form.** The parties may agree otherwise in an order form.

25.9 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

25.10 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

25.11 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 26. Notices and domicile

26.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in Annexure 1.

26.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.

26.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in Annexure 1 to any other addresses or numbers in the same country by writing to the other party 14 days before the change.

26.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

26.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.



## 27. Force majeure

- 27.1 **Parties not liable.** No party is responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or 'acts of God'.
- 27.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately of:
- the cause, nature and extent of the circumstances;
  - the expected duration of the circumstances; and
  - the extent to which its performance will be affected;
- and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 27.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 30 days because of force majeure, the other party may cancel this agreement, without liability to the affected party, on seven days' written notice.

## 28. General

- 28.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 28.2 **Signed in part.** The agreement and order forms may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties.
- 28.3 **Changes to the terms.** Caseware Africa may change the terms at any time and where this affects customer's rights and obligations, it will notify customer of any changes by email. If customer does not agree with the change it must stop using the goods and services. If customer continues to use the goods or services following notification of a change to the terms, the changed terms will apply to it and it will be deemed to have accepted such terms.
- 28.4 **Changes to any third party software licence agreement.** Caseware Africa will notify customer of any changes to any third party software licence terms by placing a notice in a prominent place on its website, or notifying customer by email. The updated third party software licence terms will be effective immediately and customer will be deemed to have accepted them upon notification.
- 28.5 **Waiver (giving up of rights).** Any waiver Caseware Africa may allow customer will not affect or substitute any of its rights against customer.
- 28.6 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.
- 28.7 **Governing law.** Any order form entered into with any entity of Caseware Africa's located:
- in South Africa, will be governed by and construed in accordance with the laws of South Africa;
  - in Australia or New Zealand, will be governed by and construed in accordance with the laws of Perth Australia;
  - in Europe, will be governed by and construed in accordance with the laws of Ireland;
  - in the rest of Africa, will be governed and construed in accordance with the laws of the country in which its entity is located;
  - anywhere else, will be governed by and construed in accordance with the laws of Mauritius.
- 28.8 **Jurisdiction for Caseware Africa's action.** Customer consents to the jurisdiction of the courts of the country in which its entity which entered into the relevant order has its headquarters in respect of any action or proceedings Caseware Africa may bring against it in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction, without prejudice to Caseware Africa's right to institute any action in any other court having jurisdiction.
- 28.9 **Jurisdiction for customer's action.** If customer brings an action to enforce this agreement entered into with any entity of Caseware Africa's located:
- in South Africa, it must bring it in South Africa;
  - in Australia or New Zealand, it must bring it in Perth Australia;
  - in Europe, it must bring it in Ireland;
  - in Africa, it must bring it in the country in which Caseware Africa's entity is location;
  - anywhere else, it must bring it in Mauritius.
- 28.10 **Non-exclusivity.** Caseware Africa may provide any goods or services to any other person or entity. Caseware Africa may exploit its intellectual property subject to its confidentiality obligations.
- 28.11 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 28.12 **No right to reference.** Neither party may reference the other in any communications with third parties without the other party's prior written consent.
- 28.13 **Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.
- 28.14 **Acceptance of privacy notice.** By signing this agreement, customer confirm that it has read, understood and agree to be bound by the terms of Caseware Africa's privacy notice.
- 28.15 **Variation to these terms.** If Caseware Africa agrees to vary its standard terms for particular jurisdiction, Annexure 2 below will apply.
- 28.16 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

# Annexure 1: Support and Maintenance Services Description

## 1 Introduction and purpose

- 1.1 The parties have concluded this agreement to:
  - grant customer a license to use the software; and
  - provide or offer the support services.
- 1.2 This agreement sets out the terms and conditions upon which Caseware Africa will provide customer with support services.
- 1.3 Customer acknowledges and agrees that:
  - Caseware Africa provides or offers the support services, or similar services, to third parties who could be customer's competitors; and
  - Caseware Africa will continue to provide or offer the support services, or similar services, to such third parties for the duration of this agreement and any time thereafter.

## 2 Purpose

This Annexure defines the service offerings that will enable Caseware Africa to maintain the levels and quality of service that the parties have agreed to. It will form a benchmark for performance measurement. As such, customer must accurately cover any factors for which it is responsible and which may influence the provision of the support and maintenance services by Caseware Africa. The parties agree that service levels can only be achieved if the workloads (including the number of users, bandwidth, etc.) are within the maximum volumes and qualifying conditions described in this Annexure.

## 3 Definitions

In this Annexure:

**designated personnel or designated person** means the authorised or licensed users of the software, as set out in the software license statement, and who are sufficiently skilled and familiar with computer technology to enable them to use the software;

**enhancement** means the ongoing bug fixes, modifications or additions or updates or upgrades made by Caseware Africa to the existing version of the software and which will ultimately improve the overall usability and functionality, and may introduce new functionality or features;

**environment** means customer's network infrastructure and communications environment on which the software will be accessible or installed;

**project** means any scoped project to make changes to the software that:

- that permits the use of the software on hardware or in conjunction with operating system software other than that for which the software was initially designed;
- that requires business requirements analysis, functional specification or wire framing; or
- has a development time of more than two business days.

**response time** means the time elapsed from receiving the service request to identify the problem (or in the case of third party fault the specific cause or likely cause), but does not include the time to fix the problem (which will depend on the cause of the problem itself, which may be simple or complex);

**signature date** means the date of signature by the party signing last;

**site** means any physical premises referred to in this agreement, where Caseware Africa will provide services;

**specification** means the specification (which may be in the form of a proposal, wire frame, project initiation document, functional specification, or technical specification) of the deliverable, which may be in writing, dated and signed by the parties;

**supported software** means the latest and immediately preceding versions of the software, but specifically including the following:

- Caseware Working Papers;
- Caseware IDEA;
- SmartSync;
- BizSuite;
- Connector;
- Caseware Time; and
- Web Timesheets

**software** means the software programs which Caseware Africa are entitled to license to customer to use, which software is as customer indicated on the order form;

**software license statement** means the official software license statement issued by Caseware Africa to customer which contains, a description of the software, the unique identification code to access the software (if applicable) and the number of authorised or licensed users of the software;

**support** means unscheduled, ad hoc remedial support provided by Caseware Africa to address a problem;

**update** means any updates, patches, corrections, by-passes or revisions to the software (excluding upgrades), which add no functionality to the system and are provided to customer under this Annexure;

**upgrade** means all major changes to the software that results in the additions of functions or features not present in the software prior to the introduction of the change.

## 4 Duration

- 4.1 This agreement commences on the effective date and will continue until the termination or cancellation of the EULA for any reason whatsoever, unless subject to any other provision of this agreement which provides for early termination.
- 4.2 Notwithstanding the above clause 4.1, customer may terminate an order form for convenience on 30 days prior written notice to Caseware Africa.

- 4.3 If there is any conflict between the provisions of this agreement, in respect of the support services, and:
- the order form, then unless specifically agreed to in writing between the parties, the provisions of the order form will prevail; or
  - the EULAs, then unless specifically agreed to in writing between the parties, the provisions of this agreement will prevail.

## 5 Software updates

- 5.1 **Regular updates.** Caseware Africa regularly updates its software for compliance with the latest laws and regulatory authorities and standards. It is customer's responsibility to update the software. Should customer choose not to, then it may be liable for its submissions that may be non-compliant.

## 6 Training services

- 6.1 **Training.** Caseware Africa provides training customer can book a slot for its training on [https://success.casewareafrika.com/CQS\\_CustomerSuccessServices](https://success.casewareafrika.com/CQS_CustomerSuccessServices)
- 6.2 **Payment.** Customer must pay in full for any training course before the training event. If payment is not received before the training event, customer will unfortunately not be able to join the course.
- 6.3 **Cancellation.** Customer must cancel training bookings at least five working days prior to the training. Caseware Africa will charge customer for any on-site consulting bookings that are cancelled or re-scheduled less than 5 days prior to the original dates booked. Caseware Africa may also charge customer for any travel expenses incurred as well as 25% of the consulting fee. Telephonic cancellations of booking will not be accepted. Please email customer's cancellation to [training@casewareafrika.com](mailto:training@casewareafrika.com)
- 6.4 For any non-attendance or cancellation or rescheduling within 5 days prior to the event, a 50% penalty fee per delegate will be charged up to 24 hours before the event.
- For any non-attendance or cancellation or rescheduling within 24 hours prior to the event, a 100% of the course fee per delegate will be charged.

## 7 Support and maintenance services

- 7.1 **Maintenance.** Caseware Africa will maintain the software and will provide enhancements in respect of the current version of the software to the client, free of charge, as and when they are available.
- 7.2 **Basis.** Caseware Africa agrees to provide the support and maintenance services to customer on the basis that:
- the services will be provided during business hours, unless otherwise specified in writing;
  - the services will be provided for the current version of the software, unless the parties agree otherwise; and
  - customer and its users are responsible for ensuring the integrity, security and back up of any data stored.
- 7.3 **Caseware IDEA.** If customer is a Caseware IDEA customer, it will also gain access to:
- passport for resources;
  - audient premium;
  - IDEA lab; and
  - support and maintenance services for Caseware IDEA 11.
- 7.4 **Caseware IDEA 10 version.** If customer is a Caseware IDEA 10 customer, it will need to purchase a support contract for Caseware Africa for support and maintenance services.

## 8 Help desk support

- 8.1 **Help desk.** Caseware Africa will provide a help desk during business hours for problem reporting, problem diagnosis, progressing resolutions and feedback to any problems encountered by the designated personnel in their use of the software.
- 8.2 **Online support.** Caseware Africa recommends that customer makes use of its Success Community at <https://success.casewareafrika.com/>. Here customer will be able to search some of the common errors, and access guides and FAQs to assist it. Customer will also be able to log a case should still require assistance.
- 8.3 **Email.** Requests may also be emailed to Caseware Africa's help desk at [casewareafrika.support@adaptit.com](mailto:casewareafrika.support@adaptit.com). This email address is regularly monitored and checked for incoming mail. Responses to email requests will be made within five hours of receipt of the request (in a business day) or the following business day if received after 15h00 on any business day.
- 8.4 **Specialised service.** If the request received relates to template design, data corruption or database changes, these will need to be scheduled with Caseware Africa's consulting team and further agreements completed for this specialised service. In these circumstances, customer must contact its relevant account manager for further information.
- 8.5 **Resolution.** Caseware Africa's help desk will retain call ownership throughout the time the request is received until it is resolved.
- 8.6 **Contact details.** Customer can contact Caseware Africa on:

Type of query	Contact details
Caseware Working Papers Engagement Templates Financial Statement Templates Management Reporting Caseware Cloud Caseware IDEA	+27104941001
Tax Management, Secretarial Management, Time and Billing	+27104941001
Alternate channels	
Online	<a href="https://success.casewareafrika.com/">https://success.casewareafrika.com/</a>

Email

casewarefrica.support@adaptit.com

## 9 Call logging procedure

- 9.1 Before logging a call with Caseware Africa's help desk, the designated person must have the following information to help expedite the problem tracking and resolution process:
- the designated person's name, any identity number that may be issued to customer from time to time, a contact telephone number and, if applicable, the site where the software is being used;
  - which version of the software that customer is using;
  - the type and version of the operating system which customer is running;
  - a detailed description of the problem that customer is experiencing. The designated person must try to relate the problem to a specific function of the software; and
  - all other information reasonably required by Caseware Africa.
- 9.2 The help desk technician will attempt to resolve all prioritised requests as they come in.
- 9.3 The help desk technician will escalate the request to second level support when:
- the first contact is unable to resolve the issue; or
  - the request is not being resolved in a time commensurate with the assigned severity level.
- 9.4 The help desk technician will log the resolutions and all other details into the call logging system.
- 9.5 The help desk technician will verify that the designated personnel is satisfied with the resolution to their request. If the designated personnel is not satisfied with the resolution then the help desk technician will re-open the issue.
- 9.6 The designated personnel will automatically receive email confirmation of a call being successfully logged, with detail of the logged call.
- 9.7 On closure of the logged call by the help desk technician, the relevant designated person will further receive a closed or resolved call email with detail of the call resolution.
- 9.8 Any and all resolved calls will remain open for a further three days to allow the relevant designated person the opportunity to re-open the resolved call if it is not fully resolved, failing which the resolved call will be automatically marked as closed.
- 9.9 If a call resolution requires an action to be taken by customer or its designated person, a deadline for this action will be agreed to between the parties in writing. If customer or the designated person, fails to respond within the agreed timeframe, the logged call will be closed and then re-opened should the designated person subsequently log the same call.

## 10 Support facilitation

- 10.1 The parties agree that the support services to be provided in terms of this agreement are limited to workarounds and assistance in the use or operation of the supported software. Where customer has any additional services, Caseware Africa is not obliged to provide the additional services, but may elect to do so, in its sole discretion, on a time and materials basis.
- 10.2 The provision by Adapt IT of the support services in terms of this agreement will be in accordance with Adapt IT's normal working methods and in accordance with the provisions of this agreement.
- 10.3 Customer will, on Caseware Africa's reasonable request, provide it with access to any resources required to enable it to provide the support services.
- 10.4 If certain issues or operational difficulties experienced by Caseware Africa's other clients have been resolved previously or are known to its help desk, its help desk will, in most cases, be in a position to issue the relevant designated person with a documented solution or set of activities to be followed. In this way the relevant designated person will be able to take the resolution off-line. The help desk will confirm satisfactory resolution with the relevant designated person.

## 11 Support levels

- 11.1 **Severity levels.** The severity levels are based on the urgency of the designated person's logged call. It is used to determine how quickly the help desk will respond to the relevant designated person if the logged call is not resolved on the first call and how often the help desk technician will update the relevant designated person on their logged call.
- 11.2 **Response time.** The response time is the period of time it takes the help desk to update the relevant designated person on the status and the progress of their logged call. Response times are initiated when the call/mail is first received. Follow-ups are based on the response time unless customer requests otherwise. Response times differ to resolution times.
- 11.3 **Response times not binding.** The response times are not binding on Caseware Africa however, it does its best to ensure that the help desk targets 95% of all logged calls within the response times stipulated below.
- 11.4 **Resolution time.** The resolution time is the time it takes to resolve a problem that was successfully logged on Caseware Africa's help desk by a designated person. The resolution time is different for each situation and cannot be determined until the appropriate help desk technician has assessed the situation and has been able to determine an approximate resolution time.
- 11.5 **Resolution times not binding.** The resolution times are not binding on Caseware Africa, however it does its best to ensure that it achieves the resolution times, and will remain in constant contact with the designated person as to the progress of the resolution.
- 11.6 **Service levels.** The following table describes the levels of service levels agreed between the parties:

Severity level	Description	Response time	Resolution time
Business critical	Unable to work in the supported software at all	Immediate	2 business hours (to a maximum of 24 business hours)
Business urgent	(i) Major impact on productivity; (ii) Possible work-around in place; and (iii) Deadline driven	30 minutes (within business hours)	4 business hours (to a maximum of 24 business hours)

Business important	(i) Minor impact on productivity; and (ii) Work-around provided	2 business hours	8 business hours (to a maximum of 24 business hours)
Business enquiry	(i) Functional query or fault; (ii) Feature requests; and (iii) Information enquiry with minimal impact on business.	4 business hours	24 business hours

The parties may agree to amend any support request level from time to time in writing.

- 11.7 **Escalation.** If any problem is not resolved within the resolution times customer may escalate the problem via email to:

Name	Capacity	Email address
Claire Jones	Sales Manager	<a href="mailto:Claire.jones@adaptit.com">Claire.jones@adaptit.com</a>
Yogi Moodley	Support Manager	<a href="mailto:Yogi.Moodley@AdaptIT.co.com">Yogi.Moodley@AdaptIT.co.com</a>

## 12 Data recovery

- 12.1 **Re-indexing.** All database applications should be maintained by regular re-indexing and diagnostics. Caseware Africa recommends customer do this weekly. All Caseware Africa's software solutions have built-in re-index tools to assist users to maintain database integrity.
- 12.2 **Recovery.** Many factors such as power failures, network and operating system problems can result in corruptions beyond the re-index facility's ability to recover. Should an unforeseen database corruption occur, customer should revert to the previous day's backup.
- 12.3 **Data recovery request.** Caseware Africa's help desk is able to investigate files on customer's behalf to establish the nature of a reported problem. In the case of a corrupted database, if customer does not wish to revert to backup or no backup has been done, customer may request data recovery to be performed. Data recovery or database maintenance is not included as part of the support services and can be provided at a fee and in accordance with a written engagement agreement between the parties.
- 12.4 **Shipping charge.** Delivery of data files is customer's responsibility. If customer requires data files to be couriered back to customer, then Caseware Africa will levy a shipping charge. The recommended way to transfer data files are via email, which is both fast and cost effective. Caseware Africa is committed to handling every data file with the highest level of confidentiality and in accordance with the provisions of this agreement.
- 12.5 **Recommendations.** Integrity and availability of information is crucial to all businesses. As customer's technology partner, Caseware Africa strongly recommends that a regular backup be made of customer's data. Caseware Africa also recommends that customer ensures that these backups can be restored by regular testing of the restore procedure.
- 12.6 **Customer's sole responsibility.** Customer irrevocably and unconditionally acknowledges and agrees that it is its sole responsibility to run regular maintenance procedures (including back-ups).

## 13 Miscellaneous

- 13.1 **No responsibility.** Caseware Africa will not be held responsible if customer makes direct changes in any of the databases using alternate tools (such as Microsoft SQL Server, Microsoft Access, etc.). Caseware Africa's databases are relational and have links between various tables. When making changes to the database it needs to be in accordance with these links. Should the changes not be in line with the table links, corruptions can result. In many cases these types of corruptions cannot be fixed.
- 13.2 **Training.** The function of Caseware Africa's help desk is not to provide training. Caseware Africa's consultants will help to identify customer's training requirements at different stages of its product usage. If a help desk technician identifies that customer's designated personnel requires training, then the information will be forwarded to Caseware Africa's training department, which is staffed with experienced trainers at well-equipped training venues to fulfil all of customer's training needs. Caseware Africa's trainers aim to ready customer's staff on the utilisation of the software. In the event that customer's designated personnel require training on the software, contact Caseware Africa's audit software training department on +27104941002.
- 13.3 **Additional or excluded services.** Caseware Africa is not obliged to perform any additional services for customer, other than the support and maintenance services unless otherwise agreed between the parties in writing.
- 13.4 **Copy of specifications.** Infrastructure refers to hardware and operating software required to run customer's software solutions. As these items change frequently, Caseware Africa recommends that it requests a copy of the recommended specifications to run its software solutions. It should be noted that these are recommendations only and do not in any way guarantee response times. The maintenance of hardware and networks remains customer's sole responsibility.
- 13.5 **Caseware IDEA additional applications.** As part of the IDEA platform, there is an app store. Each app that customer uses through this app store, will have its own terms or EULA's which customer will need to agree to prior to use.

## 14 Excluded services

- 14.1 **Services not provided.** Unless otherwise agreed between the parties, the following are excluded from the support and maintenance services:
- support of other software accessories, attachments, machines, systems or other devices Caseware Africa does not supply, including the hardware and operating software on which the software is installed;
  - rectification of lost or corrupted content arising for any reason whatsoever;
  - support for faults arising due to:
  - modifications made to the software or any part thereof other than those authorised in writing by Adapt IT;
  - use of the software in conjunction with equipment or software that is not approved by Caseware Africa in writing;
  - use of the software outside the provisions laid down in the EULAs;
  - problems and faults caused by end user error;
  - onsite support;
  - training services;
  - implementation services;

- development of any content, documentation, reports or add-ons to the software; or
- diagnosis and/or rectification of problems not associated with the software.

- 14.2 **Not liable.** Caseware Africa is not be liable to customer for any loss arising out of customer's failure to keep full and up to date security copies of the software and data customer use.
- 14.3 **Additional services.** If customer requires excluded or additional services, the parties will conclude these under a separate Annexure. This Annexure will be quoted and billed for separately.

## 15 Excused performance

- 15.1 Caseware Africa is not be in breach of its obligations under this agreement to the extent that such breach is as a direct result of:
- a failure or malfunction in the environment;
  - customer's default of any of its obligations under this agreement or the EULAs;
  - any delay caused because of Caseware Africa's failure to obtain customer's consent timeously or at all;
  - a failure by a third-party contractor to provide any services incidental to the use of the software or the provision of the support services; or
  - telecommunications, infrastructure and communication line faults, power failures or power interruptions or the occurrence of a force majeure event.

## 16 Fees and payment

- 16.1 **Consideration.** In consideration for the support services customer will pay Caseware Africa the license fees , in accordance with the provisions set out in the order form and the EULAs.
- 16.2 **Third party.** If it is necessary for Caseware Africa to contract with any third party contractor for services incidental to the provision of the support services, or should Caseware Africa otherwise incur expenses or disbursements in relation to the performance of the support services, all costs and expenses of third party contractor or such disbursements, will be agreed with customer, in writing, prior to the incurrence thereof, and customer will reimburse Caseware Africa within seven days of presentation of an invoice, together with supporting documentation.

## 17 Obligations

- 17.1 **Customer's general obligations.** Customer must provide the assistance and input as Caseware Africa may reasonably require at customer's own cost to enable Caseware Africa to provide the services, including:
- ensuring that the environment is appropriate for the provision of the support services;
  - to the extent necessary, implement Caseware Africa's recommendations in relation to the environment;
  - provide Caseware Africa with the necessary access to the environment to enable it to perform the support services;
  - ensuring that the software is used in a proper manner by competent trained employees only or by persons under customer's supervision;
  - keep full security copies of the software and of customer's data bases and computer records in accordance with best IT operating practice;
  - not (nor permit any third party) to alter or modify the software in any way whatsoever, nor permit the software to be combined with any other programs to form a combined work;
  - not request, permit or authorise anyone other than Caseware Africa to provide any maintenance services in respect of the software, without its prior written consent;
  - be solely responsible for backing up all data associated with the software at all times; and
  - provide Caseware Africa with all information and statistics as reasonably required, at its sole discretion, for the purposes of allowing it to ensure the proper performance of the software and provision of the support services.
- 17.2 **Caseware Africa's general obligations.** Caseware Africa will be responsible for the management and supervision of the performance of the services by its personnel under this Annexure.

## 18 Customer's failure

If customer fails to comply with its obligations for a period in excess of five calendar days after receiving a written request from Caseware Africa for it to do so, the failure will constitute a material breach of this agreement. In addition to any remedies Caseware Africa may have arising out of the breach, if customer fails to comply with its obligations within the notice period of five calendar days, Caseware Africa will be excused from meeting the service levels for as long as customer fails to comply with its obligations.