



## Terms of Service

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 an order that incorporates these terms. Nothing in these terms obliges any party to enter into any orders.

### 1 Definitions and interpretation

#### 1.1 **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, at Caseware Africa's then current standard prices and rates, unless otherwise agreed in writing between Caseware Africa and customer;

**agreement** means the agreement between Caseware Africa and customer, consisting of the terms and any orders 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), South African Standard Time;

**Caseware Africa** means Adapt IT's legal entity that entered into the relevant agreement, being a subsidiary of Adapt IT Holdings Proprietary Limited, and the vendor(s) or service provider(s) named in the order and, if specified in the order, its related persons or persons under common control as defined by applicable company law;

**Caseware Africa's technology** means any technology that Caseware Africa has created, acquired or otherwise has rights in and may, in connection with performing Caseware Africa'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;

**confidential information** means all information of a confidential nature owned or used by, or relating to, discloser regardless of form (oral, written or electronic), whether identified or designated as confidential or proprietary or not, or that, due to the nature of such information or under the circumstances surrounding its disclosure reasonably should be understood to be treated as confidential by recipient, whether disclosed before, on or after the date of signature;

**customer** means the customer(s) that accepts these terms and enters into the agreement and, if specified in the order its related persons;

**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 generates, processes, or supplies 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;

**deliverables** means the deliverables as defined in an order form or related material and includes any custom-developed documents, data, reports, analyses, recommendations, work product (if any) or other material the customer requests and Caseware Africa authors or prepares specifically for the customer at an additional charge pursuant to an order;

**derived data** means any data that Caseware Africa creates in providing the goods or services to customer, as well as statistical information that is collected or acquired from the software delivered to customer as defined in the software agreement, but especially excludes customer confidential and customer proprietary information. For the avoidance of doubt, Caseware Africa will not use the derived data for profit purposes and will treat all customer derived data as confidential;

**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;

**effective date** means the date which the customer accepts or is deemed to accept the terms in terms of clause 2.

**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;

**existing material** means any intellectual property that a party has created, acquired or otherwise received rights, title or interest in or independently and outside of the agreement and provided during the course of the agreement;

**fees** means the fees (excluding the additional fees), charges, or price customer will pay to Caseware Africa in respect of goods or services it provides under an order;

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

**intellectual property** means any intellectual property that a party has created, acquired or otherwise has rights, title or interest in or to, and may, in connection with performing their obligations under the agreement, employ, provide, modify, create or otherwise acquire rights, title or interest in or to, and includes any registered or unregistered: copyright or trademark; design or patent; concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, algorithms, data, code, software 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;

**order** means a goods or services order, estimate, quote, order form, statement of work, or project scope generated by either party and agreed to, which describes the specific goods or services that Caseware Africa will provide to customer;

**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 duly appointed representative, including any director, employee, agent, affiliate, consultant, or contractor;

**personal data** means personal information as defined in the relevant data protection law of the jurisdiction applicable to this agreement;

**privacy policy** means Adapt IT's policy regulating data use and protection, accessible at [www.adaptit.com/privacy-policy](http://www.adaptit.com/privacy-policy) and which customer confirms that it has read, understood and agrees to be bound by;

**project** means any scoped project to make changes to the software that: (i) 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; (ii) requires business requirements analysis, functional specification or wire framing; or (iii) has a development time of more than two business days;

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

**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);

**services** means any services Caseware Africa or related persons provides to customer, including under the order;

**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 an order, where Caseware Africa will provide goods or services under the order;

**software agreement** means a software subscription or licence agreement (including these terms and an end user license agreement (EULA)) or relevant order setting out applicable subscription or license terms and may be agreed as between the customer and Caseware Africa, or between the customer and a third party owner of the intellectual property;

**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;

**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 must be (i) in or attached to an order form, or (ii) in writing, dated and signed by the parties;

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

**supported software** means the latest and immediately preceding version of the software as outlined here:

<https://success.casewareafrika.com/products>;

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

- these terms; and
- any other identified specific terms, policies, disclaimers, rules and notices (including any that may be applicable to any specific goods or services that are incorporated into agreement by reference and are available here: <https://success.casewareafrika.com/terms>);

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

**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 agreement;

**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;

**writing** or **written** means the reproduction of information or data in physical form (includes handwritten documents and hard copy printouts) 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;

- 1.2 **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.

- 1.3 **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail.

## 2 Duration

The terms start whenever customer accepts them by:

- doing so explicitly – such as agreeing to an order that incorporates them by reference or by selecting a checkbox indicating that customer accepts;
- using the services in any way – such as by accessing them; or
- exercising any rights granted to customer under the agreement.

or will otherwise commence on the effective date and terminate according to the terms.

## 3 Orders

- 3.1 **Capacity.** Customer represents and warrants that customer (and any person who places an order):

- possess the legal right, capability, full power, and authority to enter into the agreement; and
- will submit true, accurate and correct information to Caseware Africa.

- 3.2 **Acceptance on behalf.** If customer accesses the goods or services on behalf of another person or entity, customer warrants that customer is authorised to agree to these terms on behalf of that person or entity and is able to bind the person or entity to these terms. The natural person agreeing to these terms warrants their authority to do so, should they be doing so on behalf of an entity.
- 3.3 **Goods and services.** Caseware Africa provides the goods and the services to customer according to the terms specified in an order.
- 3.4 **Risk and licensing.** All risk of loss or damage to the goods will pass to customer upon delivery. The customer is granted a license to use the software upon full payment of the fees. This does not constitute ownership of the software but grants a license to use it for a specified period of time as set out in the order. This arrangement does not signify ownership of the on-premises software but merely provides the customer a license to use it.
- 3.5 **Order.** Each accepted order will create a separate agreement (including these terms). Despite that, Caseware Africa may consider customer's breach of any one order to constitute a breach of any or all agreements.
- 3.6 **Additional applications.** As part of the software, there may be an app store. Each app that customer uses through any app store, may have its own terms or EULA's which in such cases customer will need to agree to prior to use.

## 4 Support and maintenance services

- 4.1 **Maintenance.** Caseware Africa commits to maintaining the supported software for the customer and will provide enhancements without additional charge as they become available.
- 4.2 **Basis.** Caseware Africa agrees to offer the support and maintenance services, on the basis that: (i) the services will be available during regular business hours, unless explicitly agreed otherwise between the parties in writing; (ii) support and maintenance will be primarily for the most recent version of the software, unless explicitly agreed otherwise between the parties in writing; (iii) the responsibility for data security, integrity, and backups rests with the customer and its users.

## 5 Excluded services

- 5.1 **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.
- 5.2 **Scope of exclusions.** Despite any provisions to the contrary, the following are expressly excluded from any support and maintenance services provided by Caseware Africa, unless explicitly agreed upon between the parties in writing:
- support for software accessories, attachments, machines, systems, or other devices not directly supplied by Caseware Africa, inclusive of the underlying hardware and operating software upon which the software operates;
  - rectification of any lost or corrupted data or content, irrespective of its cause;
  - remediation or support for issues resulting from: (i) unauthorised alterations or modifications made to the software, unless previously sanctioned in writing by Caseware Africa; (ii) usage of the software in combination with non-approved equipment or software, unless endorsed in writing by Caseware Africa; (iii) operation of the software in a manner contrary to or outside the parameters delineated within the respective EULAs; or (iv) issues predominantly attributed to errors on the end user's part;
  - direct on-premises support;
  - training provisions related to the software;
  - implementation services;
  - development of content, documentation, add-ons, or reports pertaining to the software; or
  - diagnosing or addressing issues unrelated to the core functionalities of the software.
- 5.3 **Not liable for failure to backup.** Caseware Africa bears no liability towards the customer for any losses that materialise due to the customer's negligence in maintaining secure and updated backups of the software and associated data in use.
- 5.4 **Additional services.** In the event the customer seeks services that are either excluded or additional to what's outlined, the parties will specify the scope of and pricing and billing for these services in writing.

## 6 Help desk support

- 6.1 **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. Customer can contact Caseware Africa via the contact details available here: <https://www.casewareafrica.com/support/>.
- 6.2 **Online support.** Caseware Africa provides a 24/7 online support platform available at <https://success.casewareafrica.com/>. Online support includes the ability to search for common errors, access guides, FAQs, and log cases if further support is needed.
- 6.3 **Email.** Requests may also be emailed to Caseware Africa's help desk at [casewareafrica.support@adaptit.com](mailto:casewareafrica.support@adaptit.com). This email address is regularly monitored and checked for incoming mail. Responses to email requests will be made within 1 business day of receipt of the request (on a business day).
- 6.4 **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, the customer must contact its relevant account manager for further information.
- 6.5 **Resolution.** Caseware Africa's help desk will retain query ownership from the time the request is received until it is resolved.
- 6.6 **No training through help desk.** The primary role of Caseware Africa's help desk is troubleshooting and problem resolution, not training. Caseware Africa's consultants will help to identify customer's training requirements at different stages of its product usage. If a help desk consultant 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. For training-related enquiries, customers should contact their account managers or refer to the support details mentioned above.

## 7 Help desk query procedure

- 7.1 **Information requirements for query logging.** Before logging a query 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 the customer is using;

- the type and version of the operating system the customer is running;
- a detailed description of the problem that the 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.

- 7.2 **Role of the help desk technician.** The help desk technician will attempt to resolve all prioritized requests as they are logged.
- 7.3 **Escalation procedures.** The help desk technician will escalate the request to second level support when: (i) the first contact is unable to resolve the issue; or (ii) the request is not being resolved in a time commensurate with the assigned severity level as set out in support levels clause below.
- 7.4 **Logging resolutions.** The help desk technician will log the resolutions and all other details into the query logging system.
- 7.5 **Verification of resolution satisfaction.** 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.
- 7.6 **Email confirmations for logged queries.** The designated personnel will automatically receive email confirmation of a query being successfully logged, with detail of the logged query.
- 7.7 **Notifications on query closure.** On closure of the logged query by the help desk technician, the relevant designated person will further receive a closed or resolved query email with detail of the query resolution.
- 7.8 **Duration of resolved queries.** Any and all resolved queries will remain open for a further two days to allow the relevant designated person the opportunity to re-open the resolved query if it is not fully resolved, failing which the resolved query will be automatically marked as closed.
- 7.9 **Action requirements and re-opening queries.** If a query resolution requires an action to be taken by the customer or its designated personnel, a period of 2 business days is allowed for this action. If the customer or the designated person fails to respond within this timeframe, the logged query will be deemed to have been satisfactorily resolved. Any queries relating to this resolution post the 2-day period will need to be logged as a new case.

## 8 Support facilitation

- 8.1 **Scope of support services.** The parties agree that the support services to be provided in terms of this agreement are limited to assistance in the use or operation of the supported software and where possible, alternative approaches the software can accommodate to create the intended outcomes or partial outcomes sought. Where the 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.
- 8.2 **Compliance with normal working methods.** The provision by Caseware Africa of the support services in terms of this agreement will be in accordance with Caseware Africa's normal working methods and in accordance with the provisions of this agreement.
- 8.3 **Access to resources.** The customer will, on Caseware Africa's reasonable request, provide it with access to any resources required to enable it to provide the support services.
- 8.4 **Documentation of known solutions.** 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 offline. The help desk will confirm satisfactory resolution with the relevant designated person.

## 9 Support levels

- 9.1 **Severity levels.** The severity levels are based on the urgency of the designated person's logged query. It is used to determine how quickly the help desk will respond to the relevant designated person if the logged query is not resolved on the first query and how often the help desk technician will update the relevant designated person on their logged query.
- 9.2 **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 query. Response times are initiated when the query/mail is first received. Follow-ups are based on the response time unless customer requests otherwise. Response times differ to resolution times.
- 9.3 **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 queries within the response times stipulated below.
- 9.4 **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.
- 9.5 **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.
- 9.6 **Service levels.** The following describes the levels of service levels agreed between the parties:
- **business critical:** unable to work in the supported software at all – immediate response time when using chat or phone (within business hours), with 2 business hours (to a maximum of 3 business days) resolution time;
  - **business urgent:** (i) major impact on productivity; (ii) possible workaround in place; and (iii) deadline driven – immediate response time when using chat or phone (within business hours), with 4 business hours (to a maximum of 3 business days) resolution time;
  - **business important:** (i) minor impact on productivity; and (ii) workaround provided – 2 business hours response time, with 8 business hours (to a maximum of 3 business days) resolution time;
  - **business enquiry:** (i) functional query or fault; (ii) feature requests; and (iii) information enquiry with minimal impact on business – 4 business hours response time, with 10 business days resolution time.
- 9.7 **Escalation.** If any problem is not resolved within the resolution times, customer may escalate to customer account manager.

## 10 Training services

- 10.1 **Training.** Caseware Africa offers training services. Customers may book a slot for training at [https://success.casewareafrica.com/CQS\\_CustomerSuccessServices](https://success.casewareafrica.com/CQS_CustomerSuccessServices).
- 10.2 **Payment.** Payment for any training course must be made in full prior to the training event. Should payment not be received before the training event, the customer will not be granted access to the course.
- 10.3 **Cancellation.** Cancellations of training bookings must be made at least five working days in advance of the training date. If bookings are cancelled or rescheduled less than 5 days prior to the original date, Caseware Africa reserves the right to: (i) charge the customer for any on-

site consulting bookings affected by the change; (ii) bill the customer for any travel expenses incurred; and (iii) levy a fee equivalent to 25% of the consulting fee. Caseware Africa will not accept cancellations phone. Please email all requests for cancellation to [trainingr@casewareafrica.com](mailto:trainingr@casewareafrica.com).

- 10.4 **Penalties for late cancellations and non-attendance.** If a cancellation or rescheduling occurs within 5 days leading up to the event but more than 24 hours before the event, a penalty fee of 50% per delegate will be imposed. For cancellations or non-attendance within 24 hours of the event, a fee equivalent to 100% of the course charge per delegate will be applied.

## 11 Obligations

- 11.1 **Customer's general obligations.** The customer must provide Caseware Africa with the necessary support and input to enable the delivery of services. Specifically, the customer must:
- ensure the environment is suitable for the provision of the support services;
  - where necessary, apply Caseware Africa's recommendations concerning the environment;
  - give Caseware Africa the required access to the environment, permitting it to offer the support services;
  - make sure that the software is used aptly by trained employees or by individuals under the customer's oversight;
  - regularly keep secure copies of the software and the customer's databases and computer records, adhering to the best IT operating practices;
  - refrain from altering the software or allowing any third party to do so, and not combine the software with other programs to produce a combined work;
  - only seek, allow, or authorise any entity other than Caseware Africa to render maintenance services for the software by accredited Caseware Africa third party service providers;
  - solely bear the responsibility of backing up all data linked to the software;
  - furnish Caseware Africa with any information and statistics it might reasonably need to ensure the software's optimal performance and the delivery of the support services; and
  - consistently obtain updated specifications from Caseware Africa regarding the necessary infrastructure, comprising hardware and operating software, to operate the software solutions, recognising that these are mere recommendations without guaranteed response times and that maintaining the hardware and networks is solely the customer's responsibility.
- 11.2 **Caseware Africa's general obligations.** Caseware Africa holds the responsibility for managing and overseeing the services' performance by its personnel in terms with this agreement.
- 11.3 **No responsibility for database changes.** 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.

## 12 Software updates

To ensure compliance with current laws, regulations, and standards, amongst other things, Caseware Africa frequently updates the software. It is the customer's responsibility to install these updates. Failure to do so might result in non-compliant submissions.

## 13 Non-solicitation

Unless otherwise agreed, neither party will, during the currency of any order 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.

## 14 Assignment and subcontracting

- 14.1 **No delegation or assignment.** A customer may not delegate its duties or assign its rights under the agreement, in whole or in part without Caseware Africa's prior written consent, which may not be unreasonably withheld. Caseware Africa may assign the agreement to any third party, successor or purchaser of its business or some of its assets, provided it informs customer of the change.
- 14.2 **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, only for those services so subcontracted. 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.

## 15 Relationship

- 15.1 **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.
- 15.2 **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.
- 15.3 **Client responsibilities.** The customer agrees to provide suitable staff necessary for the successful implementation and operation of the services provided under this agreement. The customer acknowledges that failure to provide such staff may impact the quality and timeliness of the services.

## 16 Fees and payment

- 16.1 **Due dates.** Customer will be liable for and pay the fees specified in the order, including license fees as outlined in the relevant EULA, and any additional fees, promptly on the due date specified in the relevant order, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the order. 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.
- 16.2 **Manner of payment.** Customer must make payment in the manner specified in the relevant order.
- 16.3 **Payments into Adapt IT's bank account.** It is customer's responsibility to ensure that payments to adapt it are paid into Caseware Africa's bank account, as set out in the relevant invoice. Adapt IT will not be liable for any incorrect payments made into any other bank accounts.

- 16.4 **Cybercrime risks relating to payments.** Adapt IT bank account details are fixed and are highly unlikely to change. Customer takes note of to the potential risk for cyber criminals to defraud Adapt IT and customer by directing payments due to Adapt IT into bank accounts not held by Adapt IT. Adapt IT will never use email, telephone or a purported bank stamped document to provide customer with any instruction of a change in Adapt IT's bank details. If customer receives any correspondence about a change in Adapt IT's bank details customer should treat it as suspicious and invalid and report it to Adapt IT at [legal@adaptit.com](mailto:legal@adaptit.com) and also customer's account manager or regular contact at Adapt IT as soon as possible for investigation. In the highly unlikely event that Adapt IT would change its bank details, it will only do so via a signed amendment to this agreement, signed by two authorised representatives of the Adapt IT executive. Customer undertakes to ensure that its finance function responsible for payments is aware of the information contained in this clause.
- 16.5 **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.
- 16.6 **Suspension.** Caseware Africa reserves the right to withhold or halt any goods or services if customer fails to pay any amount owing 30 days after Adapt IT sent a written demand for payment. Once payment is reflected in Caseware Africa's bank account, any suspended goods or services will be reinstated.
- 16.7 **Interest on overdue amounts.** Overdue amounts on any outstanding invoice may bear an interest of 5% above the base interest rate per annum of the country in which Caseware Africa's contracting entity is located, or 15% whichever is the higher rate. Interest is calculated using a per annum rate and calculated and accrued daily.
- 16.8 **Appropriation.** Caseware Africa may appropriate any payment received from customer towards the satisfaction of its indebtedness to Caseware Africa under the agreement.
- 16.9 **Withhold payment.** Customer may not withhold or set off payment of any amount due to Caseware Africa for any reason.
- 16.10 **Tax.** All fees exclude any tax, which will be payable by customer where applicable in addition to the fees.
- 16.11 **Fee increase.** During the period of an order and subject to any terms agreed in the order, Caseware Africa may increase the fees during each successive period of 12 calendar months calculated from the effective date, subject to one calendar month's prior written notice to customer. At the end of the initial period of this agreement or any order, and before any applicable automatic renewal, Caseware Africa may otherwise increase the fees and charges applicable under this agreement or any order.
- 16.12 **Disputed invoices.** If customer disputes an invoice, it must notify Caseware Africa and provide customer with reasons within seven calendar days of invoice date. Customer may not withhold payment on any invoice that is not disputed, whether it relates to a disputed invoice or not. Customer must pay any disputed invoice immediately upon resolution of the dispute. Customer will bear any costs of the payment at a later date, including interest and legal costs of recovery if the dispute is not held to be valid.
- 16.13 **Withholding Tax Certificate.** Where settlement of customer obligation includes the requirement for Caseware Africa to submit a Withholding Tax Certificate, customer agrees to reasonably assist Caseware Africa in timeously submitting it by providing Caseware Africa with any required information, including sending Caseware Africa the completed certificates. Customer acknowledges that any undue delay by customer in sending the correctly completed certificates could prejudice Caseware Africa's ability to comply with its tax obligations and result in financial losses, which it may claim from customer.
- 16.14 **Payment profile.** Caseware Africa may provide any registered credit bureau with information about the payment of amounts and may make enquiries to any registered credit bureaus and / or credit providers to conduct credit assessments in respect of customer.
- 16.15 **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 Caseware Africa's personnel or contractors affected by the agreement and recommencing the services or reinstalling the removed goods. Where Caseware Africa suspends the service, customer must still pay and will remain liable for all fees associated with the service during the suspension period.
- 16.16 **Third party expenses.** If it becomes necessary for Caseware Africa to contract with any third party contractor for services incidental to the provision of the support services, or if Caseware Africa incurs expenses or disbursements related to the performance of the support services, all costs and expenses of the third party contractor or such disbursements will be agreed upon with the customer in writing before they are incurred. The customer will reimburse Caseware Africa within seven days of receiving an invoice, which will be accompanied by supporting documentation.

## 17 Intellectual property

- 17.1 **Retention of rights.** Caseware Africa has created, acquired or otherwise obtained rights in its intellectual property and despite anything contained in the agreement, it will own all right, title, and interest in its intellectual property. If Caseware Africa uses any of its existing materials in connection with its performance under this agreement, its intellectual property will remain its property and customer will not acquire any right or interest in it.
- 17.2 **Use of customer's intellectual property.** If Caseware Africa uses any of customer's existing materials in connection with its performance under this agreement, customer's intellectual property will remain customer's (or its licensor's) property and Caseware Africa will not acquire any right or interest in it.
- 17.3 **Deliverables created during the agreement.** All intellectual property rights, title, and interest in and to any deliverables, and any associated documentation, materials, inventions or discoveries that Caseware Africa develops or makes for the customer in the course of providing the goods or services under this agreement and any orders, will vest in Caseware Africa. Any output or artefacts that the customer develops or creates using the goods or services provided by Caseware Africa will remain the property of the customer. Where necessary, the customer will assign any rights, title or interest in deliverables to Caseware Africa.
- 17.4 **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.
- 17.5 **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.
- 17.6 **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.
- 17.7 **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;
  - reproduced, transferred, or distributed.

- 17.8 **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.
- 17.9 **Monitoring security.** Caseware Africa reserves the right to take whatever action it deems necessary to preserve the security and reliable operation of Caseware Africa software. Caseware Africa may suspend or terminate customer's licence to use the relevant Caseware Africa software or its access to the Caseware Africa software if it reasonably believes that customer's activities pose a significant credit or fraud risk to Caseware Africa or its other customers, or may cause financial loss or legal liability for Caseware Africa, its other customers, or customer. Where Caseware Africa terminates customer's licence, it will be in accordance with the agreement, including notifying customer of its breach of Caseware Africa's licencing terms.
- 17.10 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.
- 17.11 **Survival.** This clause will survive termination of the agreement or an order.

## 18 Intellectual property infringements

- 18.1 **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 trademark 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.
- 18.2 **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 and in its discretion:
- 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
  - as a last resort, withdraw the infringing item and refund Customer any fees as it relates to the infringing item for the remainder of the term.
- 18.3 **Exclusion.** Caseware Africa will not be liable for any claim that arises out of goods or services customer selects and acquires from third parties. Further, Caseware Africa will not be liable for a claim if and to the extent such claim is caused by or arises out of: (i) any intellectual property, designs, directions or materials provided by the customer; (ii) any customer software; (iii) customer's use of Caseware Africa software other than in accordance with applicable documentation or instructions supplied by Caseware Africa; (iv) any combination, alteration, modification or revision of the Caseware Africa software not expressly authorised in writing by Caseware Africa; or (v) customer's failure to use or implement corrections or enhancements to the Caseware Africa software made available to customer by Caseware Africa.
- 18.4 **Customer Infringement.** *For the avoidance of doubt, the indemnity provided above shall not be enforceable in instances where the Customer infringes Caseware's intellectual property by seeking to determine its source code or provide access to any third party to such source code.*
- 18.5 **Survival.** This clause will survive termination of the agreement.

## 19 Confidential information

- 19.1 **Responsibility to keep information confidential.** Each party must keep confidential any confidential information it receives from the other party or under this agreement, including existing material, personal data and customer's data. Each party will take all reasonable steps to ensure its personnel abide by this clause. Each party shall treat the other party's confidential information with at least the same degree of care and protection with which it treats its own confidential information of similar nature and importance (but in any event no less than reasonable care and protection) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the confidential information.
- 19.2 **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 confidential information to any of its personnel that need it, and only give as much of it as they need;
  - use reasonable security procedures to make sure personnel keep the confidential information confidential;
  - get promises of confidentiality from those personnel who need access to the confidential information;
  - not reveal the confidential information to anyone else; and
  - not use it for any purpose other than this agreement.
- 19.3 **End of this agreement.** On written request, a party may request the return or destruction of all its confidential information by the other party (receiving party). The receiving party may, in its discretion, either destroy or return such information.
- 19.4 **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, to the knowledge of the receiving party, allowed to reveal the confidential information; or
  - is given to comply with a court order or other legal duty.
- 19.5 **Privacy policy.** Caseware's privacy policy is also applicable to this agreement. Despite anything to the contrary in this clause, Caseware may process personal data as described under its privacy policy. In the instance where Caseware uses a third-party sub-processor, Caseware shall remain liable for the actions of the sub-processor and shall ensure that all legislative requirements are adhered to.
- 19.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement unless otherwise agreed in writing between the parties.

## 20 Customer's data and data protection compliance

- 20.1 **Legal obligations.** Each party is responsible for complying with its own obligations under applicable laws governing personal data. The parties both acknowledge that neither party is investigating the steps the other is taking to comply with any applicable privacy and data protection laws.
- 20.2 **Controller.** Customer remains the controller for determining the purpose and means of Caseware Africa's processing of customer's personal data, including that processing will not place Caseware Africa in breach of any laws.

- 20.3 **Processor.** Where Caseware Africa acts as processor for customer, Caseware Africa will, in respect of customer's personal data:
- establish and maintain technical and organisational security measures that it considers to be appropriate or reasonable to stop customer's personal data from being lost, damaged, destroyed, or unlawfully accessed or processed;
  - treat customer's personal data as confidential, not disclose it, and only process it with customer's knowledge or authorisation, except as otherwise required or allowed under the relevant data protection legislation; and
  - notify customer's data protection officer (or the equivalent person in the applicable jurisdiction) promptly, where Caseware Africa has reasonable grounds to believe that an unauthorised person has accessed or acquired customer's personal data.
- 20.4 **Trans-border flows of customer's data.** Customer consents to Caseware Africa transferring customer's data across any country border to enable Caseware Africa to comply with its obligations under the agreement. Please see our data protection FAQs on our website <https://www.adaptit.com/data-protection-faqs> and our privacy policy <https://www.adaptit.com/privacy-policy>.
- 20.5 **Indemnity.** Customer agrees to indemnify, defend, and hold Caseware Africa harmless (and those related persons to Caseware Africa and its personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to customer failing to comply with its obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 20.6 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding customer's data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.
- 20.7 **Preservation of integrity of customer's data.** Both of the parties will take reasonable precautions (having regard to the nature of each of its obligations under the agreement), to preserve the integrity of customer's data and prevent any unauthorised access, corruption or loss of customer's data.
- 20.8 **Records.** Customer agrees that Caseware Africa's records are provisional (prima facie) evidence of the goods supplied or services provided to customer.
- 20.9 **Return of data.** On written request following the termination of any order, each party will either return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of performing the relevant order or destroy the other party's data, in the receiving party's discretion.
- 20.10 **Definitions of words.** Words in this clause have the meaning given to them in the South African Protection of Personal Information Act 4 of 2013.

## 21 Data recovery

- 21.1 **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.
- 21.2 **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.
- 21.3 **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.
- 21.4 **Shipping charge.** Delivery of data files is customer's responsibility. If digital transfer is preferred, Caseware Africa recommends using a secure digital transfer method. If customer requires data files to be couriered back to customer, then Caseware Africa will levy a shipping charge. Caseware Africa is committed to handling every data file with the highest level of confidentiality and in accordance with the provisions of this agreement.
- 21.5 **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.
- 21.6 **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).

## 22 Caseware Africa's warranties

- 22.1 **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; and
  - it will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels.
- 22.2 **Goods warranties.** Goods are subject to the warranty in any document, packaging or EULA that accompanies them. To the extent legally possible, and at Caseware Africa's discretion, Caseware Africa may 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.
- 22.3 **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.
- 22.4 **Specific limitation of liability.** Caseware Africa's sole liability for any breach of this warranty will be in Caseware Africa's sole discretion:
- to advise customer how to achieve substantially the same functionality with the goods; or
  - to terminate this agreement and refund the fees paid by customer for the calendar month in which Caseware Africa received customer's written notice detailing why the goods do not function materially in accordance with their purpose.

## 23 Disclaimer of warranties

- 23.1 **Disclaimer.** Customer uses Caseware Africa's goods or services at customer's own 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 disclaims all representations, warranties, or conditions of any kind, whether express or implied.
- 23.2 **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, or to the extent the customer's negligence, failure to follow instructions (whether oral or in writing) or misuse contributes to any defect.



## 24 Limitation of liability

- 24.1 **Direct damages limited.** Despite anything else in this agreement including any order, the Parties maximum liability for any claim for direct damages is the total amount of fees paid in the preceding 12 months for the goods or services related to the claim. Neither Party'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), but shall not apply to clause 18.
- 24.2 **Indirect damages excluded.** Despite anything else in the agreement including any order, neither party and its personnel will ever be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from the agreement. These include without limitation 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.
- 24.3 **This limitation of liability clause prevails.** To avoid all doubt, and despite the conflict provisions in clause 1.3 of these terms, no order can ever supersede the limitation of Caseware Africa's liability and the exclusion of indirect damages in this clause.
- 24.4 **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.
- 24.5 **Other services.** Caseware Africa is not liable for any other goods or services, including website, goods, or service provided by any third party, nor is Caseware Africa liable for any claims arising due to third party software. For the avoidance of doubt, where any loss is suffered by Caseware Africa's wilful misconduct, this clause shall not apply.
- 24.6 **Contribution.** Caseware Africa is not liable to the extent that any combination, alteration, modification or revision of any Caseware Africa software has been undertaken by a third party and not expressly authorised in writing by Caseware Africa.

## 25 Customer's warranties and indemnities

- 25.1 **Warranties.** Customer warrants that:
- it 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;
  - it has, in advance of the effective date, has obtained all necessary user licences and physical infrastructure that it needs to receive the goods or services described in the order; and
  - by entering into an order, customer is not acting in breach of any agreement to which it is a party.
- 25.2 **Consents.** 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 customer 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.
- 25.3 **Indemnity.** 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.

## 26 Termination

- 26.1 **Termination on notice.** A party may terminate this agreement on 90 calendar days prior written notice to the other party. Where customer terminates the agreement under this clause, Caseware Africa will not be liable to pay any refunds.
- 26.2 **Termination for breach.** If a party does not fix any breach of the agreement (failure to comply with it) within 14 calendar 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.
- 26.3 **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.
- 26.4 **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 breaches its obligations relating to modern slavery or anti-bribery and corruption compliance as described in this agreement;
  - 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;
  - termination is necessary to comply with any applicable law or government instruction; or
  - the parties agree.
- 26.5 **Termination for good cause.** Caseware Africa may terminate this agreement at any time by giving customer 120 calendar days prior written notice if Caseware Africa:
- discontinues trading in the goods or services;
  - believes that providing the goods or services could create an economic or technical burden or material security risk for them;
  - determines that customer's use of the services or the provision of any of the goods or services to customer has become impractical or unfeasible for any legal or regulatory reason.
  - upon such termination of good cause, Caseware Africa will provide a pro rata refund to customer where applicable beyond the termination date.

## 27 Excused performance

Caseware Africa will not be in breach of its obligations under this agreement to the extent that such breach is as a direct result of: (i) a failure or malfunction in the environment; (ii) customer's default of any of its obligations under this agreement or the EULAs; (iii) any delay caused because of Caseware Africa's failure to obtain customer's consent timeously or at all; (iv) 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 (v) telecommunications, infrastructure and communication line faults, power failures or power interruptions or the occurrence of a force majeure event.

## 28 Effect of termination

- 28.1 **Duties on termination.** Caseware Africa will stop providing the services, customer will no longer be able to access them, and Caseware Africa may return or erase customer's data on termination, cancellation, or expiry of this agreement.
- 28.2 **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.
- 28.3 **Post termination assistance.** Caseware Africa may provide customer with post termination assistance (such as data retrieval) subject to agreement between the parties on any additional fees and conditions.
- 28.4 **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 period of any agreement.

## 29 Resolving disputes

- 29.1 **Definitions.** For the purposes of this clause:
- AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its place).
  - LCIA means the London Court of International Arbitration (or its successor or body nominated in writing by it in its place).
- 29.2 **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).
- 29.3 **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.
- 29.4 **Mediation.** If negotiation fails, and the customer is based:
- In Africa, the parties must refer the dispute to mediation under AFSA's rules;
  - Anywhere else, the parties may refer the dispute to mediation under LICA's rules by agreement (provided that consent shall not be unreasonably withheld by a party).
- 29.5 **Arbitration.** If mediation fails, and the customer is based:
- in 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 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 LCIA will appoint the arbitrator.
- 29.6 **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.
- 29.7 **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.
- 29.8 **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).

## 30 Notices and domicile

- 30.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, or email to an address or number given in the order. If Caseware Africa needs to contact the customer, we may publish a notice on our website or email you such notice. Customer agrees that this satisfies all legal requirements in relation to written communications. Customer may give Caseware Africa notice in connection with these terms by emailing [casewareafrica.info@adaptit.com](mailto:casewareafrica.info@adaptit.com).
- 30.2 **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.
- 30.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the order to any other addresses or numbers in the same country by writing to the other party 14 days before the change.
- 30.4 **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.
- 30.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

## 31 Anti-bribery and corruption compliance

- 31.1 **Adapt IT's policies and applicable laws.** Caseware Africa will abide by Adapt IT's policies on ethics and anti-bribery and corruption compliance (and any other similar policies in place), which customer can access at [www.adaptit.com/legal-centre](http://www.adaptit.com/legal-centre). Caseware Africa will provide the services in accordance with (and will require its personnel to honour) these policies, and all applicable laws, enactments, and regulations.

- 31.2 **Unethical behaviour.** Customer warrants that neither it nor its related persons (including its personal, co-branders, partners or suppliers) will, for the entire duration of this agreement, promise, offer, pay, cause to pay, accept payment or induce payment or take any action that Caseware Africa could consider a bribe or generally unethical behaviour.
- 31.3 **Obligations.** Customer must:
- use all reasonable efforts to ensure that it and any parties related to it (including its personnel, co-branders, partners or suppliers) comply with the anti-bribery and corruption laws;
  - include all reasonable rights in contracts with third parties to enable Caseware Africa to comply with its obligations under this clause; and
  - notify Caseware Africa as soon as practicable of any instance of bribery or corruption identified in the operations or supply chains of the customer or any parties related to it (including its personnel, co-branders, partners or suppliers), as well as any steps that they have taken or plan to take in response to this instance of bribery or corruption.
- 31.4 **Vetting or due diligence process.** Customer agrees to undergo any applicable Caseware Africa vetting or due diligence process where it has not already done so, and to provide Caseware Africa with accurate and complete information as Caseware Africa may require to complete the process. Customer also warrants that it will not make (or, where it has already completed the process, it has not made) any material omission or misrepresentation in respect of this information it provides.

## 32 Modern slavery

- 32.1 **Definitions.** For the purposes of this clause, the following terms have the following definitions:
- **modern slavery** means the unlawful and severe exploitation of persons for personal, commercial or other gain, and includes slavery, servitude, human trafficking, forced marriage or labour, bonded labour, forced or child prostitution or pornography, forced or child armed conflict, forced or child production or trafficking illicit goods or services (including drugs), or other work that by nature or circumstance is likely to harm the health, safety or morals of children.
  - **modern slavery laws** means any applicable laws concerning modern slavery in force in the legal jurisdiction of this agreement.
- 32.2 **Warranty.** Each party warrants that it and any parties related to it (including its personnel, co-branders, partners or suppliers) do not engage in any activity or practice that would constitute modern slavery.
- 32.3 **Obligations.** Each party must:
- use all reasonable efforts to ensure that it and any parties related to it (including its personnel, co-branders, partners or suppliers) comply with the modern slavery laws;
  - include all reasonable rights in contracts with third parties to enable the other party to comply with its obligations under this clause; and
  - notify the other party as soon as practicable of any instance of modern slavery identified in the operations or supply chains of the first party or any parties related to it (including its personnel, co-branders, partners or suppliers), as well as any steps that they have taken or plan to take in response to this instance of modern slavery.
- 32.4 **Material breach.** Each party acknowledges that failure to comply with this clause is a material breach of this agreement.
- 32.5 **Survival.** This clause survives the termination of this agreement or any order.

## 33 General

- 33.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 33.2 **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.
- 33.3 **Force majeure.** Neither party is responsible for breach of the agreement caused by circumstances beyond human control, including flood, fire, earthquake, industrial action, epidemic, government restrictions or 'acts of God' but either party may cancel the agreement on written notice to the other if the circumstances persist for more than 30 calendar days.
- 33.4 **Waiver (giving up of rights).** Any waiver Caseware Africa may allow customer will not affect or substitute any of its rights against customer.
- 33.5 **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.
- 33.6 **Governing law.** The law of the country in which Caseware Africa's contracting entity is located governs this agreement.
- 33.7 **Jurisdiction.** Customer consents to the jurisdiction of any local lower court, or its equivalent in the relevant jurisdiction, in respect of any action or proceedings that Caseware Africa may bring against them in connection with this agreement, even if the action or proceedings would ordinarily be beyond its jurisdiction. This is without prejudice to Caseware Africa's right to institute any action in any other court having appropriate jurisdiction.
- 33.8 **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.
- 33.9 **Publicity and reference.** Neither party may reference the other in any communications with third parties or make any announcement or statement to the press about this agreement, without first getting written permission from the other party.
- 33.10 **Variation to these terms.** Despite anything else in these terms, If Caseware Africa agrees to vary its terms in respect of a particular order, no change to the terms will be effective unless in writing and signed by both parties and the relevant order specifically references the clause in these terms and states that parties intend to change the clause in these terms.
- 33.11 **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.