



Customer relationship terms

general terms for providing goods or services to customers

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Terms Version Number

2.10

1 Introduction

These terms are the general terms that govern the relationship between Adapt IT and customer. The terms cover any transactions where Adapt IT provides goods or services to customer. The commercial terms of any transaction will be contained in an order that incorporates these terms. Nothing in the terms obliges any party to enter into any orders.

2 Definitions and interpretation

2.1 **Definitions.** In the agreement:

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

Adapt IT means the Adapt IT vendor or service provider that enters into an order, any Adapt IT vendor(s) or service provider(s) named in the order and, if and to the extent specified in the order, its related persons or persons under common control as defined by applicable company law;

Adapt IT software means the software as defined in the applicable order;

agreement means the agreement between Adapt IT 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 Adapt IT entered into the relevant order, and any other reference to a **day** means a calendar day;

business hours means Adapt IT's normal business hours on business days (9am to 5pm);

confidential information means all information of a confidential nature owned or used by, or relating to, a party 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, whether disclosed before, on or after the signature date;

customer means the customer that enters into an order and, if specified in the order, its related persons;

customer's data means customer data (including personal data) that:

- customer (or any third party on customer's behalf) provides to Adapt IT; or
- Adapt IT generates, processes, or supplies to customer in providing the goods or services; but excludes any derived data that Adapt IT 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 each order or related material and includes any custom-developed documents, data, reports, analyses, recommendations, work product (if any) or other material the customer requests and Adapt IT authors or prepares specifically for the customer at an additional charge pursuant to an order;

documentation means materials Adapt IT produces for general release to customers such as Adapt IT's specifications, technical and training manuals, and other materials, and all other user instructions regarding the functionality, capabilities, operations, installation or use of the intellectual property;

effective date means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the signature date;

existing material means any intellectual property that a party has created, acquired or otherwise received rights, title or interest in or to 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 Adapt IT in respect of goods or services Adapt IT provides under orders;

goods means any goods Adapt IT provides to customer, under orders (including Adapt IT software that Adapt IT 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, module, version, 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, statement of work, or project scope generated by either party and agreed to and signed by both the parties, which describes the specific goods or services that Adapt IT will provide to customer;

parties means the parties to this agreement being customer and Adapt IT, and **party** refers to either of the parties as the context requires;

personnel means any representative of a party, including any director, employee, agent, affiliate, consultant, or contractor of such party;

personal data means personal information as defined in applicable law;

privacy notice means Adapt IT's notice regulating data use and protection, accessible from Adapt IT's website at www.adaptit.com/privacy-policy;

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

services means any services Adapt IT or related persons provide to customer, under orders;

service levels means the levels according to which Adapt IT 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 Adapt IT will provide goods or services under the order;

software agreement means a software subscription or licence agreement (including 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 Adapt IT, or between the customer and a third party owner of the intellectual property;

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, 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 identified 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 intellectual property means all intellectual property owned by a third party but legally licensed to Adapt IT 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 the order.** Words defined (or assigned a meaning) in an order 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, it 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, these terms will prevail.

3 Duration

The terms commence on the signature date and continue until terminated according to the terms.

4 Orders

- 4.1 **Capacity.** Customer represents and warrants that customer (and any person who places an order on behalf of customer):
- is old enough under applicable law to enter into the agreement;
 - is legally capable of concluding any transaction;
 - possesses the legal right, full power, and authority to enter into the agreement; and
 - will submit true, accurate and correct information to Adapt IT.
- 4.2 **Valid and binding order.** The parties only conclude a valid and binding order when the order is signed by both parties.
- 4.3 **Fees.** The fees for any goods or services are as provided in the relevant order.
- 4.4 **Time and place.** The parties conclude any agreement between each other at the signature date and at the place where customer has its head office.
- 4.5 **Orders.** Each accepted order will create a separate agreement (including these terms). Despite that, Adapt IT may consider customer's breach of any one order to constitute a breach of any or all agreements.

5 Goods

- 5.1 **Sale.** Adapt IT sells goods to customer who purchases the goods on the terms of 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, or software agreement. Please review those documents carefully. To the extent legally possible, Adapt IT assigns to customer the benefit of any supplier warranties that a supplier may give to Adapt IT in regards to the goods. Customer may not waive any of Adapt IT'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 **Adapt IT software.** Unless otherwise stated, the license or subscription for any Adapt IT software is contained in the software agreement. Customer will be required to agree to the software agreement prior to use of the Adapt IT software. The applicable software agreement, which takes precedence, governs the use of the Adapt IT software. If customer does not agree to the software agreement, customer must stop using the goods and return the Adapt IT software. If customer uses the Adapt IT software (or take any other action that is described in the packaging or Adapt IT software as constituting customer consents to the software agreement), then customer agrees to the software agreement, unless otherwise allowed in the documentation accompanying the Adapt IT 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;
 - obtain written consent and approval from Adapt IT; and
 - enter into a written reseller or export agreement with Adapt IT, as applicable.

6 Services

Adapt IT will provide the services according to the agreed service levels.

7 Acceptance procedure

- 7.1 **Commencement and initial period.** Customer will commence acceptance testing of any deliverable immediately following delivery by Adapt IT. Customer must use acceptance tests and data developed by customer and approved by Adapt IT in its reasonable discretion. The acceptance tests will be completed within five business days of delivery, unless otherwise agreed in writing.
- 7.2 **Assistance.** Adapt IT will assist customer to complete the acceptance tests on request and reasonable notice.
- 7.3 **Variances.** Customer will report any variances in any deliverable from its specification that customer discovers during the period of the acceptance testing to Adapt IT in writing, as soon as reasonably possible after becoming aware of such variance.
- 7.4 **Correction.** Adapt IT will correct any variance detected during the initial acceptance period as soon as possible and at its cost.
- 7.5 **Additional period for testing.** Customer will have an additional period (equal to the initial period above) to conduct acceptance tests on any

corrected deliverable. If customer discovers any further material variance in a corrected deliverable from its specification, customer will report it to Adapt IT as soon as reasonably possible after becoming aware of such material variance. Adapt IT will correct any further variance in the corrected deliverable as soon as possible. During the additional period, customer may not report any variance that does not relate to: (i) a variance that customer initially reported; or (ii) the corrected deliverable, unless agreed by the parties in writing. The parties will deal with these separately as additional services. The parties may agree, to neither party's detriment to an extension of the additional period if further material variances occur.

7.6 **Acceptance confirmation.** The parties may, at any time, confirm in writing that customer has accepted the deliverables. For the purposes of this sub-clause, the term "writing" includes information or data in the form of email, text message or instant message.

7.7 **Deemed acceptance.** Customer will be deemed to have accepted the deliverables if it:

- fails to sign a confirmation of acceptance within three business days, unless otherwise agreed to in writing from when Adapt IT has signed and sent it to customer;
- fails to report any variance to Adapt IT in writing at the end of the initial or additional period;
- fails to report any variance to Adapt IT in any corrected deliverable within three business days, from when Adapt IT calls on customer to do so in writing; or put any deliverable to productive use.

8 Change control

8.1 **Changes to goods or services.** During the period of an order, 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.

8.2 **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.

8.3 **Scope change document.** If a scope change document is made by:

- customer, it must specify the reasons for that change and describe the change in sufficient detail to enable Adapt IT to respond. Adapt IT will investigate the likely impact of any proposed changes on the provision of goods or services and will provide customer with a scope change proposal, including amended pricing and timeframes; or
- Adapt IT, the scope change proposal will detail the reasons for and impact of the change, the goods or services required to implement the change and the effect that the changes, if implemented, will have on the relevant order.

8.4 **Sign-off.** The parties will discuss and agree on 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. If customer:

- accepts a scope change proposal, a duly authorised representative of the parties will sign off the scope change proposal and it will be incorporated into the relevant order; or
- rejects a scope change proposal, Adapt IT will continue to provide the goods or services on the existing terms.

8.5 **No change effective until sign-off.** No party may proceed with any change to an order 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 its agreement to a proposed change.

8.6 **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.

8.7 **Future enhancements.** If customer requires Adapt IT to make any future enhancements the same change control procedure will be followed. However, this does not prevent customer after the expiry of this 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 Adapt IT gives below is void.

9 Personnel

9.1 **Access.** If and as required under an order, customer will allow Adapt IT and its personnel access (at all reasonable times) to the sites for the purposes of fulfilling its obligations under orders, and with effect from the signature date.

9.2 **After-hours access.** At times, Adapt IT may need after-hours access to the sites. Adapt IT will request this access in writing prior to the access. Customer will not unreasonably withhold its consent.

9.3 **Compliance with customer's policies.** Adapt IT will take all reasonable steps to comply, and ensure that its personnel comply, with customer policies regarding site access. Customer must notify and provide Adapt IT copies of all these relevant policies prior to the effective date and give Adapt IT and the relevant personnel reasonable written notice of any change in its existing policies or the implementation of its new policies that may have an impact on Adapt IT's delivery of the goods and services.

9.4 **Allocation of resources.** Adapt IT endeavours to keep the same personnel on the relevant order, for the duration of such order. However, Adapt IT may allocate and re-allocate all its personnel who provides goods or services under the agreement. If Adapt IT needs to re-allocate personnel, such personnel will have substantially similar qualifications to the original appointments.

10 Non-solicitation

10.1 **Restriction.** Unless otherwise agreed, neither Adapt IT nor the customer 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.

10.2 **Recruitment fee.** The recruiting party will pay the party whose personnel is recruited (affected party) a recruitment fee equal to a percentage of the highest gross package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the affected party to the personnel concerned. The recruiting party will pay this recruitment fee on written demand from the affected party. If the affected party:

- consents to any such employment, the recruitment fee will be 50% of the gross package; or
- does not consent to any such employment, the recruitment fee will be 200% of the gross package.

11 Assignment and subcontracting

11.1 **No assignment.** A party may delegate its duties or assign its rights under this agreement, in whole or in part, with the other party's prior written consent, which may not be unreasonably withheld. Adapt IT may assign this agreement to any successor or purchaser of Adapt IT's business or some of its assets, provided it informs customer of the change.

- 11.2 **Notice of assignment to related parties.** Adapt IT may delegate or assign its duties and rights under this agreement to a related person provided it informs customer of the change.
- 11.3 **Adapt IT's third party contractors.** Adapt IT may sub-contract or delegate its obligations under this agreement to third party contractors. Adapt IT will remain liable for performance of the third party contractors, only for those services so subcontracted. Adapt IT will not be obliged to disclose the terms (including payment terms) of any sub-contract entered into with respect to its obligations under this agreement.

12 Relationship

- 12.1 **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.
- 12.2 **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.

13 Appointments and governance

- 13.1 **Appointment of representative.** On the effective date, each party will appoint a suitably qualified and responsible person to act as its representative for purposes of this agreement. 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.
- 13.2 **Function.** The representative's responsibilities include to manage and coordinate the goods or services and to discuss and manage any changes.
- 13.3 **Meetings.** The representatives will meet as agreed between the parties in an order.
- 13.4 **Replacement.** A party may appoint an alternative representative who is suitably qualified and responsible, provided that the party gives five business days' written notice to the other party if such notice is reasonably practicable in the circumstances.

14 Fees and payment

- 14.1 **Due dates.** Customer will be liable for and pay the fees specified in the order, and any additional fees, promptly on the due date specified in the relevant order or invoice, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the order or invoice. 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.
- 14.2 **Manner of payment.** Customer must make payment in the manner specified in this agreement.
- 14.3 **Adapt IT's bank account.** ADAPT IT'S BANK ACCOUNT DETAILS WILL NOT CHANGE. IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE THAT PAYMENTS TO ADAPT IT ARE PAID INTO ADAPT IT'S BANK ACCOUNT, as set out in the relevant order. Adapt IT will not be liable for any incorrect payments made into any other bank accounts. Due to the potential for cybercrime 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.** Please do not rely on the bank details provided on Adapt IT's invoices as it is also possible for cyber criminals to intercept and falsify these. 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 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 ever wishes to change its bank details, it would 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.
- 14.4 **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 Adapt IT on-demand. Adapt IT may withhold or halt the provision of any goods or services until customer has paid all amounts that are due.
- 14.5 **Interest on overdue amounts.** To the extent permitted by applicable law, Adapt IT may charge customer interest for overdue amounts within Adapt IT's reasonable discretion. If customer does not pay the overdue amounts within 14 days of receiving written notice from Adapt IT to do so, any amount not paid by customer on the date of the statement of outstanding invoices will bear interest for Adapt IT'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 Adapt IT'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 its rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.
- 14.6 **Appropriation.** Adapt IT may appropriate any payment received from customer towards the satisfaction of its indebtedness to Adapt IT under the agreement.
- 14.7 **Withhold payment.** Customer may not withhold or set off payment of any amount due to Adapt IT for any reason.
- 14.8 **Certificate.** A certificate, signed by an accountant appointed by Adapt IT, 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 customer must pay pending customer providing evidence that such an amount is not due.
- 14.9 **Tax.** All fees exclude any tax, which will be payable by customer where applicable in addition to the fees.
- 14.10 **Fee increase.** During the period of an order and subject to any terms agreed in the order, Adapt IT may increase the fees once during each successive period of 12 calendar months calculated from the effective date, subject to 14 calendar days' prior written notice to customer. At the end of the initial period of this agreement or any order, and before any applicable automatic renewal, Adapt IT may otherwise increase the fees and charges applicable under this agreement or any order.
- 14.11 **Withholding Tax Certificate.** Where Adapt IT is required to submit a Withholding Tax Certificate, customer agrees to reasonably assist Adapt IT in timeously submitting it by providing Adapt IT with any required information, including sending Adapt IT the completed certificates. Customer acknowledges that any undue delay by customer in sending the correctly completed certificates could prejudice Adapt IT's ability to comply with its tax obligations and result in financial losses, which it may claim from customer.
- 14.12 **Payment profile.** Customer and any signatory consents and agrees that Adapt IT may provide any registered credit bureau with information about the payment of amounts.
- 14.13 **Reimburse costs.** If Adapt IT suspends the service or removes any goods supplied by it due to non-payment, customer will pay to Adapt IT the costs incurred by Adapt IT (including redeployment, travel and associated expenses) in remobilising Adapt IT's employees affected by the agreement and recommencing the services or re-installing the removed goods. Where Adapt IT suspends the service, customer must still

pay and will remain liable for all fees associated with the service during the suspension period.

15 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 and any orders.

16 Intellectual property

- 16.1 **Retention of rights.** Adapt IT 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 and will not dispose of any of its intellectual property to the customer in any manner.
- 16.2 **Use of customer's intellectual property.** If Adapt IT uses any of customer's existing material in connection with Adapt IT's performance under an order, customer's existing material will remain customer's (or its licensor's) property and Adapt IT will not acquire any right or interest in it.
- 16.3 **Use of Adapt IT's intellectual property.** If Adapt IT uses any of its existing material in connection with its performance under an order, Adapt IT's existing material will remain Adapt IT's (or its licensor's) property and customer will not acquire any right or interest in it. If required, Adapt IT may grant customer a non-transferable, non-exclusive licence in writing to use Adapt IT's (or its licensor's) intellectual property in connection with the deliverable as agreed in the relevant order.
- 16.4 **Deliverables created during the agreement.** All intellectual property rights, title and interests in and to the deliverables and any associated documentation, materials, inventions or discoveries that Adapt IT develops or makes for customer in the course of providing the goods or services under this agreement and any orders will vest in Adapt IT. Where necessary, customer will assign any such rights, title or interest to Adapt IT.
- 16.5 **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.
- 16.6 **Trademarks.** Adapt IT's logo and sub-logos, marks, and trade names are its trademarks and no person may use it without permission. Any other trademark or trade name that may appear on its marketing material is the property of its respective owner.
- 16.7 **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; or
 - accessed by a third party without the consent of Adapt IT.
- 16.8 **Residual knowledge.** Nothing contained in the agreement will restrict Adapt IT 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.
- 16.9 **Monitoring security.** Adapt IT reserves the right to take whatever action it deems necessary to preserve the security and reliable operation of the Adapt IT software. Adapt IT may suspend or terminate customer's licence to use the Adapt IT software or its access to the Adapt IT software if it reasonably believes that customer's activities pose a significant credit or fraud risk to Adapt IT or its other customers, or may cause financial loss or legal liability for Adapt IT, its other customers, or customer. Where Adapt IT terminates customer's licence, it will be in accordance with the agreement, including notifying customer of its breach of Adapt IT's licencing terms.
- 16.10 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.
- 16.11 **Survival.** This clause will survive termination of the agreement or an order.

17 Intellectual property infringements

- 17.1 **Defence.** Adapt IT will defend customer against any claims made by a third party that the goods or services infringe any patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which Adapt IT consents). Customer will promptly notify Adapt IT of the claim in writing and Adapt IT will have sole control over its defence or settlement. Adapt IT will reimburse customer with all costs customer reasonably incurred in connection with assisting Adapt IT with the defence of the action.
- 17.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, Adapt IT may in its discretion 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.
- 17.3 **Exclusion.** Adapt IT will not be liable for any claim that arises out of goods or services customer selects and acquires from third parties. Further, Adapt IT 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 Adapt IT software other than in accordance with applicable documentation or instructions supplied by Adapt IT; (iv) any combination, alteration, modification or revision of the Adapt IT software not expressly authorized in writing by Adapt IT; or (v) customer's failure to use or implement corrections or enhancements to the Adapt IT software made available to customer by Adapt IT.
- 17.4 **Survival.** This clause will survive termination of the agreement or an order.

18 Confidential information

- 18.1 **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 employees or contractors 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.
- 18.2 **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 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 confidential information confidential;
- get promises of confidentiality from those employees or agents 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.

18.3 **End of this agreement.** On written request, the parties will give back to the other all originals and copies of confidential information of the other that it has. If the other agrees, it may destroy the confidential information it has.

18.4 **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.

18.5 **Privacy notice.** Adapt IT's privacy notice is also applicable to this agreement. Despite anything to the contrary in this clause, Adapt IT may process personal information as described under its privacy notice.

18.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid in perpetuity.

19 Customer's data and data protection compliance

19.1 **Customer's data.** Unless otherwise required by law or agreed in an order, Adapt IT is not responsible for any of customer's data stored on Adapt IT's systems.

19.2 **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.

19.3 **Responsible party.** Customer remains the responsible party for determining the purpose and means of Adapt IT's processing of customer's personal information, including that processing will not place Adapt IT in breach of any laws.

19.4 **Operator.** Where Adapt IT acts as operator for customer, Adapt IT will, in respect of customer's personal data:

- establish and maintain technical and organisational security measures that it considers to be appropriate or reasonable in order to stop customer's personal information from being lost, damaged, destroyed, or unlawfully accessed or processed;
- treat customer's personal information 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 information officer immediately where Adapt IT has reasonable grounds to believe that an unauthorised person has accessed or acquired customer's personal information.

19.5 **Trans-border flows of customer's data.** Customer consents to Adapt IT transferring customer's data across any country border to enable Adapt IT to comply with its obligations under the agreement. Customer is solely responsible for determining that any transfer of its data across a country border complies with the applicable laws.

19.6 **Indemnity.** Customer agrees to indemnify, defend, and hold Adapt IT harmless (and those related persons to Adapt IT 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.

19.7 **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.

19.8 **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.

19.9 **Records.** Customer agrees that Adapt IT's records are provisional (prima facie) evidence of the goods supplied or services provided to customer.

19.10 **Return of data.** On request following the termination of any order, each party will 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.

19.11 **Agree otherwise.** The parties may agree otherwise if it is in writing and signed.

19.12 **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.

20 Adapt IT's warranties

20.1 **Service warranties.** Adapt IT 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.

20.2 **Goods warranties.** Goods are only subject to the warranty in any document, packaging or software agreement that accompanies it, to the extent applicable. To the extent legally possible, Adapt IT assigns to customer the benefit of any supplier warranties it has. Otherwise, customer has the same rights against Adapt IT as Adapt IT has against the supplier.

20.3 **General warranties.** Adapt IT 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.

20.4 **Specific warranties.** Adapt IT may provide further specific warranties in the relevant order.

21 Disclaimer of warranties

- 21.1 **Disclaimer.** Customer uses Adapt IT's goods or services at customer's sole responsibility and risk. Adapt IT 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, Adapt IT expressly disclaims 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 intellectual property; 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.
- 21.2 **Exclusion of liability.** Despite any warranty Adapt IT gives, Adapt IT will not be liable with regards 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.
- 21.3 **Security software.** Customer should keep up-to-date security software on any systems used to access the goods or services.

22 Limitation of liability

- 22.1 **Direct damages limited.** Despite anything else in this agreement including any order, Adapt IT's maximum liability to customer for any claim for direct damages is the total amount of fees customer has paid Adapt IT in the preceding 12 months for the goods or services related to the claim. Adapt IT'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).
- 22.2 **Indirect damages excluded.** Despite anything else in the agreement including any order, Adapt IT 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.
- 22.3 **This limitation of liability clause prevails.** To avoid all doubt, and despite the conflict provisions in clause 2.4 of these terms, no order can ever supersede the limitation of Adapt IT's liability and the exclusion of indirect damages in this clause.
- 22.4 **Adapt IT is not liable for customer's default.** Adapt IT 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 customer or its personnel.
- 22.5 **Other services.** Adapt IT is not liable for any other deliverable, including website, goods, or service provided by any third party, nor is Adapt IT liable for any claims arising due to third party intellectual property.
- 22.6 **Contribution.** Adapt IT is not liable to the extent that any access, combination, alteration, modification or revision of any Adapt IT software has been undertaken by a third party and not expressly authorised in writing by Adapt IT.

23 Customer's warranties and indemnities

- 23.1 **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, 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;
- 23.2 **Consents.** Customer must promptly obtain and provide all consents necessary for Adapt IT to access, use or modify (including creating derivative works) customer's 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. Adapt IT will be relieved of performing any obligations affected by customer's failure to promptly provide any necessary consents to Adapt IT.
- 23.3 **Indemnity.** Customer agrees to indemnify, defend, and hold harmless Adapt IT (and its related persons, 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.

24 Termination

- 24.1 **Termination on notice.** The parties may agree in an order that they have a right to terminate the relevant order by giving written notice to the other party.
- 24.2 **Termination for breach.** If a party does not fix any breach of this agreement (failure to comply with it) or an order 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.
- 24.3 **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 it is 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.

- 24.4 **Termination for good cause.** Adapt IT may immediately terminate this agreement at any time by giving customer notice in writing if Adapt IT:
- 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.
- 24.5 **Transfer management.** If this order and agreement is terminated by customer due to a material breach of the agreement by Adapt IT or if terminated by Adapt IT on notice, Adapt IT may provide assistance to customer to enable customer to effect a smooth non-disruptive transition to another service provider or to re-establish customer's in-house IT service, whichever customer, in its discretion may decide. To this end, Adapt IT 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 an order until the new service provider or customer is capable of performing the services or providing the goods.

25 Effect of termination

- 25.1 **Duties on termination.** On termination, cancellation, or expiry of this agreement, Adapt IT:
- will stop providing the services to customer;
 - may deny access to their goods or services; or
 - may erase customer's data, unless they have agreed to provide customer with post termination assistance in writing.
- 25.2 **Amounts due to Adapt IT becomes due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to Adapt IT for services rendered or goods received before termination will become due and payable even if Adapt IT has not yet invoiced it. Subject to section 26 below, customer may not withhold the amounts for any reason. Adapt IT will refund customer the proportion it has paid in advance for deliverables that are incomplete.
- 25.3 **Post termination assistance.** Following termination, customer may take advantage of any post-termination assistance that Adapt IT may generally make available (such as data retrieval arrangements). Adapt IT 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 customer's acceptance of and compliance with any additional fees, conditions or terms that Adapt IT may impose for such assistance.
- 25.4 **No expectation.** Adapt IT 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.
- 25.5 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

26 Resolving disputes

- 26.1 **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).
- 26.2 **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).
- 26.3 **Negotiation.** Each party must make sure that its chosen representatives meet within 10 days of notification, to negotiate and try to end the dispute by written agreement within 15 more days.
- 26.4 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.
- 26.5 **Arbitration.** If mediation fails, 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.
- 26.6 **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.
- 26.7 **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.
- 26.8 **Agree otherwise in an order.** The parties may agree otherwise in an order.
- 26.9 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.
- 26.10 **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).

27 Notices and domicile

- 27.1 **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 specific order.
- 27.2 **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.
- 27.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific order to any other addresses or numbers in the same country by writing to the other party 14 days before the change.
- 27.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, or email confirmation of delivery.
- 27.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

28 Force majeure

- 28.1 **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'.
- 28.2 **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 it 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.
- 28.3 **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.

29 Anti-bribery and corruption compliance

- 29.1 **Adapt IT's policies and applicable laws.** Adapt IT will abide by its 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. Adapt IT will provide the services in accordance with (and will require its personnel to honour) these policies, and all applicable laws, enactments, and regulations.
- 29.2 **Anti-bribery and corruption training programme.** Adapt IT will require all its employees to undergo its Anti-Bribery and Corruption training programme.
- 29.3 **Unethical behaviour.** Customer also warrants that neither it nor its related persons (including its personnel, 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 Adapt IT could consider a bribe or generally unethical behaviour.
- 29.4 **Obligations.** Customer must:
- use all reasonable efforts to ensure that it and any related persons (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 Adapt IT to comply with its obligations under this clause; and
 - notify Adapt IT as soon as practicable of any instance of bribery or corruption identified in the operations or supply chains of the customer or any related persons (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.
- 29.5 **Vetting or due diligence process.** Customer agrees to undergo any applicable Adapt IT vetting or due diligence process where it has not already done so, and to provide Adapt IT with accurate and complete information as Adapt IT 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.
- 29.6 **Written confirmation of compliance.** For the duration of this agreement, customer agrees to provide Adapt IT with a written confirmation at least once in a calendar year, on the request of Adapt IT. The written confirmation will contain information about any training that customer has provided to its personnel and any other measures it has taken or plan to take to comply. Customer warrants that such written confirmation will be accurate and not misleading.
- 29.7 **Right to audit.** Customer agrees that these obligations are necessary and reasonable in order to protect Adapt IT's legitimate interests and ensure customer's compliance with applicable laws, and that Adapt IT has a right to audit customer's compliance with the provisions of this clause. Customer will give Adapt IT all reasonably necessary access to customer's premises for Adapt IT to carry out the audit. Adapt IT will give customer five business days' written notice before arriving to conduct any such audit.
- 29.8 **Ongoing monitoring.** Customer agrees that it is necessary for Adapt IT to monitor customer on an ongoing basis for the duration of this agreement after it has completed Adapt IT's due diligence process, to ensure that it continues to comply with this agreement, Adapt IT's policies, and any applicable laws. Adapt IT agrees to limit its monitoring to only those aspects or activities of customer's business that have an impact, whether direct or indirect, on customer's compliance with this agreement, Adapt IT's policies, and any applicable laws.

30 Modern slavery

- 30.1 **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 or an order.
- 30.2 **Warranty.** Each party warrants that it and its related persons (including its personnel, co-branders, partners or suppliers) do not engage in any activity or practice that would constitute modern slavery.
- 30.3 **Obligations.** Each party must:
- use all reasonable efforts to ensure that it and its related persons (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 its related persons (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.
- 30.4 **Reasonable assistance.** The customer must provide all reasonable assistance to Adapt IT to enable it to comply with its obligations under applicable modern slavery laws, and to identify and address the risks of modern slavery in its supply chains, including assisting Adapt IT to conduct an audit of the customer and its personnel to assess compliance with this clause.
- 30.5 **Material breach.** Each party acknowledges that failure to comply with this clause is a material breach of this agreement.
- 30.6 **Survival.** This clause survives the termination of this agreement or any order.

31 General

- 31.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 31.2 **Signed in part.** The agreement and orders may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties.
- 31.3 **Changes to the terms.** 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.
- 31.4 **Waiver (giving up of rights).** Any waiver Adapt IT may allow customer will not affect or substitute any of its rights against customer.
- 31.5 **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.
- 31.6 **Governing law.** Any order entered into with any entity of Adapt IT will be governed by and construed in accordance with the laws of South Africa, unless otherwise provided in an order.
- 31.7 **Jurisdiction for Adapt IT's action.** Customer consents to the jurisdiction of the lowest courts of South Africa, in respect of any action or proceedings that Adapt IT may bring against customer in connection with this agreement or the relevant order, even if the action or proceedings would otherwise be beyond that court's jurisdiction. This clause is without prejudice to Adapt IT's right to institute any action in any other court having jurisdiction.
- 31.8 **Jurisdiction for customer's action.** If customer brings an action to enforce any order entered into with any entity of Adapt IT's, customer must bring it in South Africa.
- 31.9 **Non-exclusivity.** Adapt IT may provide any goods or services to any other person or entity. Adapt IT may exploit its intellectual property subject to its confidentiality obligations.
- 31.10 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 31.11 **Reference and publicity.** Customer may not make any announcement or statement to the press about this agreement or any order, or otherwise reference Adapt IT in any communications with third parties without Adapt IT's prior written consent.
- 31.12 **Acceptance of privacy policy.** By agreeing to these terms, customer confirms that it has read, understood and agree to be bound by the terms of Adapt IT's privacy notice at www.adaptit.com/privacy-policy.
- 31.13 **Variation to these terms.** If Adapt IT agrees to vary its standard terms in respect of a particular order, the parties will do so in an annexure to that order.
- 31.14 **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.