



**GENERAL TERMS AND CONDITIONS OF DELIVERY AND LICENSING**  
**Version 2018.0**

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**CaseWare Nederland B.V.**

Amersfoortseweg 15F

7313 AB Apeldoorn

P.O. Box 2112

7302 EM Apeldoorn

Tel. (+31) (0)55 - 368 10 50

## 1. GENERAL

### 1.1. Applicability

- 1.1.1. These conditions apply to all offers and/or deliveries of CaseWare and agreements and/or other legal relationships between CaseWare and the Client, the resulting provisions and the corresponding activities regardless of whether occur in writing, orally and/or electronically unless it has been agreed upon otherwise in writing.
- 1.1.2. Any purchase conditions or other conditions of the Client or a third party in the interest of the client are explicitly rejected by CaseWare unless explicitly accepted by CaseWare in writing.
- 1.1.3. The client cannot derive rights for future agreements from any agreed upon deviations for these conditions.

### 1.2. Definitions

- 1.2.1. **Subscription:** The form of contract in which the sums owed on the basis of the agreement for the use of a Product are periodically charged to the Client.
- 1.2.2. **Third-party General Terms and Conditions:** Third-party General Terms and Conditions among other things include the delivery conditions, licensing conditions, warranty conditions and other conditions used by third parties.
- 1.2.3. **Back-up:** Back-up copies of digital data and/or files.
- 1.2.4. **CaseWare:** CaseWare Nederland B.V. and its legal successors or a company or partner affiliated with CaseWare Nederland B.V. that has a legal relationship with the Client and has declared that the CaseWare General Terms and Conditions to be applicable.
- 1.2.5. **CaseWare Products:** All products and serviced provided by CaseWare, including software programs, the provisions resulting from these products and services and the corresponding activities that are not provided by third parties and of which any intellectual property rights, industrial property rights and other rights lie with CaseWare. Custom products are CaseWare Products.
- 1.2.6. **Consultancy:** Consultancy includes the provision of oral and/or written (technical) advice to the Client.
- 1.2.7. **Courses:** Courses also includes educational courses, training sessions, etc.
- 1.2.8. **Third-party Products:** All products and serviced provided by CaseWare, including software programs, the provisions resulting from these products and services and the corresponding activities that are provided by third parties and of which any intellectual property rights, industrial property rights and other rights in principle do not lie with CaseWare.
- 1.2.9. **Fixed Price:** As further described in article 7.2.
- 1.2.10. **Faults:** As further described in article 3.2.
- 1.2.11. **Guarantee:** As further described in article 3.3.
- 1.2.12. **Identification Information:** Log-in name, passwords, address information and/or other codes.
- 1.2.13. **Infrastructure:** The collected information and communication technological facilities, such as software and hardware including wiring that is used for processing data and/or telephony.
- 1.2.14. **Interference:** The unforeseen non-availability of a business critical component of Products. An Interference exists only if it can be demonstrated and reproduced.
- 1.2.15. **License:** the non-exclusive right of use of Products granted by CaseWare to Customer for the duration of the agreement.
- 1.2.16. **Custom Work:** As further described in article 2.7.
- 1.2.17. **Subsequent Calculation:** As further described in article 7.3.
- 1.2.18. **Object Code:** The computer code mainly in a binary format. After processing, the object code can immediately be executed by a computer without requiring reverse engineering, compilation or assembly.
- 1.2.19. **Maintenance:** As further described in article 2.4.
- 1.2.20. **Client:** Anyone who requests and orders the delivery of Products.
- 1.2.21. **Process Data:** The data entered within the SaaS by Customer and/or third parties.
- 1.2.22. **Products:** All CaseWare Products and/or Third-party Products.
- 1.2.23. **SaaS:** Software-as-a-Service consist of the direct and/or indirect (through a third party) online provision of Products by CaseWare.
- 1.2.24. **Source Code:** The computer code that can be displayed in a format that is readable and understandable for an average programmer. This includes related Source Code system documentation, comments and procedural codes. The Source Code does not include the Object Code.
- 1.2.25. **Support:** As further described in article 2.5.
- 1.2.26. **Working Days:** Standard Dutch working hours (09:00 - 17:00) and working days (Monday to Friday) with the exception of national holidays.

### **1.3. Agreements**

- 1.3.1. Any offer made by CaseWare is free of obligations and does not commit CaseWare to enter into a contract accordingly. The agreement will only have entered into effect if CaseWare has sent an order confirmation or has received an offer returned by the Client that is signed for approval or if CaseWare started with the actual execution thereof.
- 1.3.2. If an offer, contract or other similar legally binding document is sent by CaseWare to the Client and the Client signs and returns this to CaseWare, the Client accepts the contents of this document as well as the CaseWare General Terms and Conditions by means of payment of the reimbursements to CaseWare.
- 1.3.3. An agreement between CaseWare and the Client for which no further contract and/or further term is agreed has been entered into until the end of the calendar year. If the agreement is not terminated, continuation of the agreement takes places for a duration of one calendar year, starting on 1 January or a specifically agreed upon date.
- 1.3.4. Termination of the agreement as described in 1.3.3 is possible by means of a registered letter or e-mail with receipt confirmation that is received by the other party no later than 3 (three) months before the end of the agreement and that has been confirmed in writing by the other party.
- 1.3.5. CaseWare has the right to immediately and without judicial intervention terminate the agreement and/or the offers fully or partially or to cancel these by means of an extrajudicial declaration if bankruptcy or suspension of payment is filed for the Client, or if the Client is declared to be in a state of bankruptcy or suspension of payment is granted for the Client, or if the Client's company is being liquidated or terminated other than for the purpose of reconstructing or merging companies. In these cases, any claim from CaseWare on the Client is immediately claimable in full.
- 1.3.6. After the end of the agreement for whichever reason, the Client can no longer derive rights from the agreement, this does not affect the continued obligations of parties that, in their nature, are intended to continue after the end of the agreement, such as, but not limited to, the obligations regarding property rights, confidentiality and the noncompetition clause.

### **1.4. Client Cooperation/Duty of Disclosure**

- 1.4.1. All orders will be executed by CaseWare on the basis of the data, information desires and/or requirements provided to CaseWare by the Client.
- 1.4.2. The Client will cooperate at all times with CaseWare and will always timely provide useful and vital data and/or other information required for the adequate performance of the agreement. The Client will vouch for the accuracy of this data and/or other information.
- 1.4.3. If the Client provides CaseWare with software, templates or other materials for the performance of the agreement, the Client will indemnify CaseWare for any action in so far it is based on the position that the matters provided by the Client breaches an intellectual property right, industrial property right or any other right belonging to a third party.

### **1.5. Confidentiality/Noncompetition Clause**

- 1.5.1. CaseWare and the Client impose secrecy on each other regarding all data and information with respect to each other's organisation, clients, files and Products the parties obtain knowledge of when performing activities for each other. Data and information can only be used for the performance of the agreement between both parties.
- 1.5.2. The Client will not enter into direct or indirect business, labour or other similar relationships with any CaseWare employee during and up to 12 (twelve) months after the end or termination of the agreement notwithstanding CaseWare's written permission.
- 1.5.3. In case of a breach of the provisions in article 1.5.2, the Client - without further notice of default - owes an immediately claimable fine of EUR 70,000 (seventy-thousand) per breach and EUR 250 (two-hundred and fifty) per day the breach continues notwithstanding CaseWare's right to claim compensation for all the damage suffered.

### **1.6. Liability**

- 1.6.1. CaseWare's total liability due to accountable shortcomings in the compliance with the agreement will - while taking articles 1.6.2 and 1.6.6 into account - remain limited to compensation of direct damage up to a maximum sum of the price agreed upon for that agreement (excluding V.A.T.) with a maximum of EUR 250,000 (two-hundred and fifty-thousand) in which a series of interrelated events apply as one event.

- 1.6.2. If the agreement also consists of a continuing performance contract with a duration of more than 1 (one) year and CaseWare's liability results from this continuing performance contract, the agreed upon price is set to the total of the reimbursements (excluding V.A.T.) actually paid by the Client to CaseWare on the basis of the continuing performance contract for 1 (one) year (being the year in which the damage occurred) with a maximum of EUR 250,000 (two-hundred and fifty-thousand).
- 1.6.3. CaseWare's total liability for damage due to death or physical injury will in no case be more than EUR 1,000,000 (one million) in which a series of interrelated events apply as one event.
- 1.6.4. Direct damage is exclusively taken to be the following:
- a) reasonable costs incurred by the Client to have the performance of CaseWare meet the agreement; however, this alternative damage will not be compensated if the agreement is terminated by or at the suit of the Client;
  - b) the reasonable costs incurred to ascertain the cause and the scope of the damage;
  - c) the reasonable costs incurred to prevent or limit damage in so far the Client shows that these costs have led to limitation of damage.
- 1.6.5. CaseWare's liability for indirect damage including consequential damage, loss of profits, lost savings, destroyed or missing files and/or data, loss due to delay, incurred loss, damage caused by the inadequate provision of information and/or inadequate cooperation by the Client, damage due to business interruption or third-party claims on the Client is expressly excluded.
- 1.6.6. Apart from the case mentioned in articles 1.6.1 and 1.6.3, CaseWare is in no way liable for compensation regardless of the grounds on which an action for compensation would be based unless it concerns intent or conscious recklessness.
- 1.6.7. The liability of CaseWare will only arise if the Client forthwith and properly declares CaseWare to be in default in writing, specifying a reasonable period in which to rectify the failing, and if CaseWare continues to fail imputably in the fulfilment of its obligations even after such period. The notice of default must describe the failure in as much detail as possible, so that CaseWare is able to respond adequately.
- 1.6.8. The condition for any right to compensation always is that the Client must notify CaseWare by registered post in writing within 60 (sixty) days after the damage is created and takes measures to limit the damage as much as possible.
- 1.6.9. The Client indemnifies CaseWare of all third-party claims due to liability as a result of a fault in a product, system or service of the Client delivered to a third party and which product, system or service also comprised of what has been delivered by CaseWare.
- 1.6.10. CaseWare accepts no liability for damage of any kind as a result of Third-party Products that CaseWare has delivered to the Client. If possible, CaseWare will transfer its rights with respect to claiming compensation with the supplier of Third-party Product in question to the Client.
- 1.6.11. CaseWare is not liable for damage of any kind that is the result of the untimely provision or lack of Support, Maintenance and Guarantee.

## 1.7. Transfer

- 1.7.1. The agreement entered into between CaseWare and the Client and the resulting rights and obligations cannot be transferred to third-parties without the prior written consent of CaseWare.
- 1.7.2. The Client grants CaseWare the right in advance to transfer the entire agreement or parts thereof without the express permission of the Client to:
- a) parent companies, sister companies and/or subsidiaries;
  - b) a third party in case of a merger or takeover of CaseWare.
- 1.7.3. If this occurs, CaseWare will inform the Client.

## 1.8. Applicable Law and Dispute Settlement Rules

- 1.8.1. Dutch law applies to all agreements entered into between CaseWare and the Client unless parties agreed upon otherwise. The parties declare expressly that the applicability of the Vienna Sales Convention is excluded.
- 1.8.2. Disputes between parties that cannot be settled in mutual deliberation will be settled by means of arbitration of the Foundation for the Settlement of Automation Disputes (SGOA) according to the arbitration regulations of the SGOA. With the mutual consent of the parties, it is possible to attempt settling the dispute prior to arbitration by means of other provisions for settling disputes offered by the SGOA.
- 1.8.3. If the SGOA declares to be unauthorised or if the parties mutually agree to this, disputes will be put before the Dutch competent court in Arnhem.

## 2. SOFTWARE CONDITIONS

### 2.1. Software Use Rights

- 2.1.1. CaseWare grants the Client a License to the Products described in the agreement.
- 2.1.2. CaseWare will charge Customer a fee for the License, as described in the agreement. The fee may consist of a periodic fee (for instance yearly or monthly). Furthermore, CaseWare may charge a one-time fee for the first use of the Products.
- 2.1.3. The rights of use are limited to the exclusive company-only use of the Products for the number of users agreed upon with CaseWare. Every user will be a 'named user'. This means that only those persons who are indicated by the Client can use the Product. All named users must be employees of the Client, unless otherwise agreed upon with CaseWare in writing.
- 2.1.4. Every named user is authorised to copy the Products for personal use as long as these copies are used for personal use.
- 2.1.5. The software products use rights are limited to the Object Code. The Source Codes itself and rights thereto will not be provided unless expressly agreed upon otherwise in writing.
- 2.1.6. The Client is not permitted to copy, duplicate or alter the Products in any way themselves and/or by means of third parties without being granted the explicit prior written permission of CaseWare.
- 2.1.7. For security reasons, the Client is not permitted to make Back-ups of the Products provided.
- 2.1.8. The rights of use for the Products cannot be transferred to third parties (this also includes parent companies, sister companies and subsidiaries of the Client).
- 2.1.9. The Client is not authorised in any way or in any capacity to provide the Products to third parties (this also includes parent companies, sister companies and subsidiaries of the Client).
- 2.1.10. The Client is not permitted to reverse engineer or decompile the Products unless explicitly permitted by right.
- 2.1.11. The rights of use are limited to use of the Products on the configuration (operating and network systems) that are supported by CaseWare.
- 2.1.12. The rights of use of the Products enter into effect after payment by the Client took place and after the Client has met their other obligations.
- 2.1.13. If the agreement ends or if the Client no longer meets the agreed upon periodic payments, the rights of use of the Products expire. The moment the rights of use of the Products expire, the Client is no longer permitted to use the Products and the Client is obliged at own costs and risk to return the Products to CaseWare and to destroy any copies thereof.
- 2.1.14. The scope of the rights of use of Third-party Products is determined by the Third-party General Terms and Conditions as explained in article 6.2. In so far there are no deviations from the Third-party General Terms and Conditions in the previous, then the previous applies by analogy.

### 2.2. Inspections

- 2.2.1. CaseWare is authorised to include technical limitations and control mechanisms in the Products in order to prevent and/or inspect that the actual number of users does not exceed the agreed upon number of users.
- 2.2.2. Furthermore, CaseWare is authorised to perform unannounced inspections themselves or by means of a third party at the locations where the Products are used for so long the Client uses the Products. The Client will provide full cooperation and access to this end. If the Client refuses to cooperate or denies access to CaseWare, CaseWare is authorised to terminate the agreement effective immediately. In this case, the Client is no longer authorised to use the Products and is obliged to return all Products and destroy any copies made within 30 (thirty) days at CaseWare's first request.
- 2.2.3. If it turns out from the aforementioned inspections or otherwise that the actual number of users exceeds the agreed upon number of users, the Client must immediately purchase the number of missing user licences. Owed sums for the missing user licences will be charged to the Client retroactively up to the moment of the last delivery of the earlier agreed upon number of users.

### 2.3. Annual Licence Specification

- 2.3.1. CaseWare may provide a licence specification to the Client annually. The Client is obliged to inspect the accuracy of the licence specification or to fill it in accurately. If it turns out from the licence specifications that the actual number of users exceeds the agreed upon number of users, the Client must immediately purchase the number of missing user licences. If the client wishes to lower the number of agreed upon user licences, the Client must indicate this to CaseWare at ninety (90) days before the end of the calendar year. CaseWare will process the reduction in the user licence.

### 2.4. Maintenance

- 2.4.1. The periodical user charges include Maintenance for the Products. If the agreement ends or if the Client no longer meets the agreed upon periodic payments, the rights to Maintenance expire.

- 2.4.2. Maintenance includes the provision of new versions and/or updates including documentation of the Products licensed to the Client that entail a qualitative (e.g. fault repairs, adjustments based on changes in legislation) or a functional improvement of the provided Product. CaseWare is not obliged to keep the Client actively informed of any new versions and/or updates.
- 2.4.3. All new updates will be provided through the internet.
- 2.4.4. CaseWare will try to leave a Product's functionality unaltered when making a new update available.
- 2.4.5. CaseWare is authorised to set requirements in terms of the configuration that is required to use the Maintenance of the Products. The Client also needs to meet the set requirements. If and for as long as the Client does not meet the requirements, CaseWare has the right to end or terminate the agreement or to suspend the performance of the agreement.

## 2.5. Support

- 2.5.1. The periodical user charges include Support for the Products. If the agreement ends or if the Client no longer meets the agreed upon periodic payments, the rights to Support expire.
- 2.5.2. Support involves providing oral (by telephone) and written (by e-mail) advice regarding questions relating to the operation of the Products.
- 2.5.3. Support specifically entails identifying and repairing Faults in the Products provided.
- 2.5.4. The Client is obliged to immediately report Faults to CaseWare. The Client is obliged to actively provide CaseWare with all requested and unrequested information that is required to repair Faults.
- 2.5.5. CaseWare will commence handling Faults, within three (3) working days after the Client reported a Fault to CaseWare.
- 2.5.6. CaseWare will only provide Maintenance and Support for the most recent updates of the Products. CaseWare is authorised at their discretion to provide Support for older versions, releases, etc. of the Products.

## 2.6. Maintenance and Support Exceptions

- 2.6.1. Maintenance and/or Support does not include the following:
  - a) the provision of upgrades that entail a functional improvement. To obtain an upgrade, the Client must enter into a new agreement with CaseWare;
  - b) adjusting Product on the basis of the Client's wishes. These adjustments are covered by Custom Work;
  - c) design activities, such as creating layouts, report statements, year sheets, designing calculation charts, accounting issues, import definitions and links with third-party software and/or third-party templates;
  - d) on-site activities.
- 2.6.2. CaseWare is authorised to refuse Maintenance and/or Support if:
  - a) the Products delivered by CaseWare or the environment in which they operate have been altered by the Client in any way without CaseWare's written permission;
  - b) Maintenance and/or Support is required as a result of incorrect use of the Products or as a result of causes outside of the Products;
  - c) circumstances arise that are hazardous to the safety of CaseWare employees or third-parties employed by CaseWare;
  - d) the Client refuses to install new versions or updates that have been offered to them by CaseWare.

## 2.7. Custom Work

- 2.7.1. All assignments that partially or fully consist of Custom Work will be charged based on Fixed Price or Subsequent Calculation. All custom work assignments will be performed at CaseWare's location.
- 2.7.2. The parties will specify in writing which custom work product will be developed and in which way this will occur. CaseWare will perform the custom work product development based on the information to be provided by the Client with the accuracy, completeness and consistency guaranteed by the Client.
- 2.7.3. Before completion/delivery, the Custom Work will be tested by CaseWare on technical and correct operation. The Client is responsible for the functional and quantitative testing of Custom Work.
- 2.7.4. If possible, CaseWare gives the Client the option to purchase Support for Custom Work. Support for Custom Work is charged based on Subsequent Calculation.
- 2.7.5. Intellectual property rights, industrial property rights or any other rights of Custom Work remain with CaseWare at all times, as is described in article 8.1.

## **2.8. Installation and Implementation**

- 2.8.1. The Client is responsible for the correct installation of the delivered matter unless otherwise agreed upon. Only if agreed upon in writing, CaseWare will install and/or implement the Products or have them installed and/or implemented.
- 2.8.2. Before starting installation and/or implementation, the Client will ensure at their costs that all conditions indicated by or on behalf of CaseWare are met to achieve a successful installation and/or implementation.
- 2.8.3. The Client will ensure and is fully responsible for the fact that the required Third-party General Terms and Conditions have been obtained in order to allow for a legal installation.
- 2.8.4. If the installation and/or implementation could not take place within the agreed upon time through the actions of the Client, the Client will make payments as if the installation and/or implementation took place notwithstanding the obligations of CaseWare to install and/or implement at a redetermined time.

## **2.9. Back-ups**

- 2.9.1. The Client is fully responsible for generating back-ups at all times. Under no circumstances will this be the responsibility of CaseWare. CaseWare is in no case responsible for the loss of data even if this is the result of Faults in the Products.

## **2.10. Advice/Activities**

- 2.10.1. All Products that can be considered to have an advisory nature, such as, but not limited to, Support and Consultancy will only be provided to the best of CaseWare's knowledge and capabilities.
- 2.10.2. CaseWare is not responsible and/or liable if the activities resulting from the advice mean that a Client's project cannot be completed within the determined budget, time and any other set conditions.
- 2.10.3. CaseWare will give advice on the basis of preconditions indicated by CaseWare and information provided by the Client as discussed in article 1.4. If it turns out that not all relevant information has been obtained and/or if other problems and/or insights occur, such as, but not limited to, incompatibility problems (products that are not compatible with each other), then the provided advice can be adjusted to this new situation.
- 2.10.4. All activities, Maintenance, Support or other service will generally be performed without interruptions and on Working Days and under normal working conditions.
- 2.10.5. For every uninterrupted period in which CaseWare performs less than 3 (three) hours of activities at a location other than CaseWare's, CaseWare is authorised to charge a minimum of 3 (three) hours. It concerns an uninterrupted period if the time in which no activities are performed between one period and the next in which activities are being performed is no longer than 1 (one) hour.
- 2.10.6. Activities performed outside of Working Days are considered to be overtime. For overtime before or after Working Days, in the weekend and on holidays, the then current rate will be increased by 100%.
- 2.10.7. Only if this is explicitly agreed upon in writing, CaseWare is bound to follow the Client's timely and responsible instructions in the execution of the activities. CaseWare is not obliged to follow instructions that change or add to the contents or scope of the agreed upon activities. However, if such instructions are followed, the activities in questions will be compensated on the basis of Subsequent Calculation.

## **3. DELIVERY**

### **3.1. (Delivery) Period**

- 3.1.1. Any and all (delivery) periods mentioned by CaseWare and applicable for CaseWare have been determined to the best of their knowledge on the basis of the information that has been provided to CaseWare and will be taken into account as much as possible.
- 3.1.2. As such, (delivery) periods are not considered to be fatal terms in which delivery must take place, but as periods in which CaseWare will strive to deliver the agreed upon matters to the best of their efforts. If there is a possibility that any period will be exceeded, CaseWare and the Client will deliberate as soon as possible with respect to a new period.
- 3.1.3. Exceeding any valid (delivery) period by CaseWare never entails an accountable shortcoming on the part of CaseWare. CaseWare will under no circumstances accept liability if a (delivery) period would be exceeded.

### **3.2. Faults**

- 3.2.1. Fault(s) are defined as the failure to meet the functional specifications determined in writing by CaseWare and, in case of developing Custom Products, the functional specifications agreed upon expressly in writing. A Fault exists only if it can be demonstrated and reproduced. The Client is obliged to notify any Faults to CaseWare immediately.
- 3.2.2. Every right to repair Faults expires if the provided Products have been altered in any way or any form by the Client.

- 3.2.3. Repairing Faults will take place at a location specified by CaseWare. CaseWare is authorised to implement temporary solutions, emergency solutions, bypasses and/or other problem-limiting measures.
- 3.2.4. Acceptance of the Products cannot be withheld on grounds other than those related to the specifications expressly agreed upon between the parties and thus not due to the existence of small Faults that do not reasonably hamper operational or productive use of the Products.

### **3.3. Guarantee**

- 3.3.1. CaseWare does not guarantee that the Software provided to the Client is suitable for the actual and/or intended use by the Client. CaseWare also does not guarantee that the Software will run without interruption, Faults or defects or that all Faults and defects will always be repaired.
- 3.3.2. CaseWare will do their best to repair Faults in the Software within a reasonable term in accordance with the agreements to be entered into with the Client. CaseWare will charge the costs of repair according to their usual rates.
- 3.3.3. CaseWare is never obliged to repair mutilated or lost data.

## **4. SOFTWARE AS A SERVICE (SAAS)**

### **4.1. SaaS General**

- 4.1.1. In case the Products are provided as SaaS, the following clauses will apply.
- 4.1.2. In the context of the access to and the use of the Products, the Client directly or indirectly possesses equipment and software that meets the standards and/or requirements set by CaseWare and directly or indirectly indicated to the Client. The Client must also continue to meet the conditions set in this paragraph. If and for as long as equipment and/or software does not meet this, CaseWare's obligation to provide access to the Products and the use thereof is suspended by CaseWare.
- 4.1.3. The Client is obliged to comply with CaseWare's instructions regarding the Products.
- 4.1.4. CaseWare is authorised to access log files and the like for the purpose of analysing the use of the SaaS. The results of such analyses will not be made available to third parties (this includes parent companies and/or subsidiaries not affiliated with CaseWare). This does not apply for figures and data regarding the use of the SaaS that cannot be directly be traced back to the use of the Client.
- 4.1.5. If the Client identifies an Interference then CaseWare must immediately be reported. After the Client reports a Interference, CaseWare will take measures that result in or could result in repair.
- 4.1.6. The costs for repairing the Interference will be paid by the Client if the cause of the Interference turns out to be the result of inexpert use or can be attributed to their negligence or actions that are in conflict with the agreement.
- 4.1.7. CaseWare will inform the Client beforehand of intended Maintenance in terms of the SaaS iff this Maintenance leads to problems regarding gaining access to the SaaS or the unavailability of the SaaS. In this case, Maintenance will take place between 00:00 and 06:00 as much as possible. Other Maintenance will take place on Working Days.

### **4.2. SaaS Subscription**

- 4.2.1. The SaaS is offered on a Subscription basis and is entered into for a period of at least 12 (twelve) months.
- 4.2.2. If the Subscription is not cancelled or not cancelled in time by the Client, the Subscription will be extended with a period of 1 (one) year each time.

### **4.3. Obligations CaseWare SaaS Service**

- 4.3.1. CaseWare ensures the availability of SaaS. CaseWare will strive for an availability percentage that will be indicated at a later date to the best of their abilities and in so far CaseWare has any influence on it.
- 4.3.2. The aforementioned percentage will be measured over a calendar year. The time required for Maintenance will not be included.
- 4.3.3. CaseWare does not guarantee, among other things, that the telephone lines, the internet and/or other networks offer optimum use and access.
- 4.3.4. CaseWare does not have any obligations in terms of availability, reliability or other performance requirements with respect to telephone lines, the internet and/or other networks and the resulting facilities.
- 4.3.5. CaseWare will strive to take all useful and necessary measures to ensure the good operation and continuity of the SaaS. CaseWare uses the most recent and most-used virus protection software on the market.
- 4.3.6. CaseWare will strive for a technologically sufficient physical and logical security against wrongful access by third parties to the computer equipment and computer software and/or stored Process Data used by CaseWare in the context of the agreed upon facility/facilities in the agreement.



#### **4.4. Browser**

- 4.4.1. The Client can access SaaS by means of a browser. The browsers for which the SaaS is optimised at the time the agreement enters into effect will be further specified by CaseWare.
- 4.4.2. CaseWare is not obliged to ensure optimum access to the SaaS by means of the intended browsers. CaseWare is authorised without being obliged to pay any form of damages/compensation to make changes to the SaaS that could influence the browsers advised by CaseWare and/or used by the Client.

#### **4.5. Using Identification Information**

- 4.5.1. CaseWare will only provide the Client with Identification Information for the use of Products. The Client will handle this Identification Information with due care. In case of loss, theft and/or other forms of wrongful use, the Client will inform CaseWare so that both parties can take fitting measures.
- 4.5.2. The Client bears all responsibility, liability and costs caused by the use of the Identification Information used and/or distributed by the Client. CaseWare is by no means liable for the abuse and/or wrongful use of the Identification Information.
- 4.5.3. If it can be reasonably suspected that the Identification Information has been abused or used wrongfully by the Client, CaseWare can give the Client instructions which must be followed.
- 4.5.4. If it has been determined that the Identification Information has been abused or if the Client has not complied with the instructions as intended in article 4.5.3, then the Client is immediately in default.

#### **4.6. Changes to the SaaS Service**

- 4.6.1. CaseWare is authorised to make additions and/or changes to the SaaS after writing notification taking into account a reasonable term and without owing any form of compensation to the Client with respect to, but not limited to:
  - A. access procedures, such as:
    - procedures regarding operational rules;
    - security requirements.
  - B. changing a third-party provider/supplier, location, hardware, software and other facilities important for the provision of SaaS.
- 4.6.2. If the changes result in a demonstrable and significant negative change to the work method of the Client's company and/or the functionality of SaaS, the Client can request an alternative from CaseWare in writing after first providing the deterioration in writing. If CaseWare does not provide a reasonable alternative, the Client has the right to end the use of SaaS without CaseWare owing any form of compensation or reimbursement of already paid sums.

#### **4.7. The Client's Data Traffic**

- 4.7.1. The Client is responsible for the content of data traffic from the Client. In so far as is applicable, the code of conduct as defined in article 4.9 applies to the Client and their users.
- 4.7.2. The Client warrants and indemnifies CaseWare against any form of third-party claim, charge or proceeding regarding the (content of the) Data Traffic or the information deriving from the Client.
- 4.7.3. Process Data remains the (intellectual) property of the Client. The Client grants CaseWare the perpetually renewable rights of use and rights to process Process Data without financial consideration. Process Data can only be provided to third parties if it cannot be directly traced back to the Client.
- 4.7.4. In principle, Process Data will be stored for the duration of the agreement. When the agreement ends, CaseWare is not obliged to store Process Data.
- 4.7.5. All costs regarding transferring Process Data and/or other data at the request of the Client to another application will be paid in full by the Client.

#### **4.8. Personal Data**

- 4.8.1. The Client is the 'responsible party' in the sense of the General Data Protection Regulation (GDPR) as such responsible for the protection of personal data that is sent, edited and/or processed by the equipment and/or software of CaseWare for the benefit of the Client.
- 4.8.2. CaseWare is 'processor' in the sense of the General Data Protection Regulation (GDPR). As 'processor' CaseWare will comply with all relevant obligations in the General Data Protection Regulation (GDPR) applicable to him.

#### **4.9. Code of Conduct**

- 4.9.1. The SAAS service and/or the other provided facilities must be used responsibly. It is not permitted to use the SAAS service and/or other provided facilities in such a way that:
- the systems of CaseWare and/or third parties can be damaged;
  - interruptions of the use can occur.
- 4.9.2. It is not permitted to use the SAAS service and/or other provided facilities for illegal practices and/or for matters that are in conflict with the agreement. This includes among other things the following actions and behaviour:
- breaching the rights of third parties or facilitating a breach of the rights of third parties, such as, but not limited to, intellectual property rights and privacy rights;
  - not meeting applicable legislation and/or other relevant regulations;
  - spamming (the unsolicited distribution of commercial messages and other messages (or make this possible for third parties));
- 4.9.3. At their own judgement, if compelled by law or court decision and/or if a third party reports and/or if it is suspected that there is a breach of the rights of a third party by means of the SAAS service or in case of activities that are in conflict with the CaseWare General Terms and Conditions and/or the agreement and the resulting relevant obligations are not, not sufficiently or not fully complied with, then CaseWare reserves the right to take out of service the use of the SAAS service and/or the other provided facilities, to delete the information in question and/or suspend their obligations until the obligations have been complied with.
- 4.9.4. If the gravity of the actions and/or inaction of the Client justifies it and/or these are continued despite the measures of and/or for the benefit of CaseWare as explained in article 4.9, CaseWare has the right to terminate the agreement without being obliged to pay any form of relevant compensation or reimbursement of already paid sums.

### **5. COURSES**

#### **5.1. Registration**

- 5.1.1. Registering to participate in a Course must occur no later than 2 (two) weeks before commencement of the Course. An announcement will be made if the desired Course is fully booked and an alternative date will be proposed.
- 5.1.2. Immediately after receiving a registration CaseWare will send written confirmation of the Course planned for the Client. For registrations that took place orally, the order confirmation is deemed to accurately and completely indicate the registration notwithstanding written objections within 3 (three) Working Days.
- 5.1.3. Courses are provided at the current Course Rates at the time. The Course Rates include the costs of the teaching materials. CaseWare is authorised to charge for the costs incurred by CaseWare for, among other things, renting the Course room.
- 5.1.4. Invoicing takes place no later than two weeks before the start of the Course. In any case, Payment must be made to CaseWare no later than (2) days before the start of the Course.

#### **5.2. Cancellation, Replacement**

- 5.2.1. CaseWare reserves the right to cancel a Course due to lack of the required number of registrations. The Client will in principle receive notification of such a cancellation no later than 1 (one) week before the Course commences. Already paid Course costs will be refunded. If there are insufficient participants for a Course, the Client can decide to still partake in the Course at a higher Course fee. This will be discussed in mutual deliberation.
- 5.2.2. If the Client cancels up to 7 (seven) days before the Course commences, 50% of the owed Course fees will be charged. If the Client cancels 7 (seven) days or less before commencement or after commencement of the Course, CaseWare reserves the right to charge 100% of the owed Course fees.

#### **5.3. Execution**

- 5.3.1. CaseWare will do everything in its power to provide the Course in accordance with the published schedule, but does not accept any liability if a Course cannot go ahead or is to be interrupted as a result of special circumstances. In such a case, CaseWare will strive within reason to possibly provide or complete the Course at a later time. If this turns out not to be possible, already paid Course fees will be remunerated in proportion.

#### **5.4. Private Courses**

- 5.4.1. Private Courses are Courses provided for the Client in which only the Client participates. Private Courses can be provided at both CaseWare's location as the Client's location. Private Courses are provided on the basis of conditions subject to agreement.

## **5.5. Rejection of Participant**

- 5.5.1. CaseWare reserves the right to reject access to the Course to a participant:
- a) if owed sums are not met fully and/or in time before the start of the course;
  - b) due to reasons of competition or other reasonable grounds for CaseWare.

## **6. THIRD-PARTY PRODUCTS**

### **6.1. Third-party Products**

- 6.1.1. CaseWare is authorised to provide Third-party Products or to involve Third-party Products in the performance of their obligations resulting from the agreement. CaseWare is not responsible for Third-party Products unless explicitly agreed upon otherwise.
- 6.1.2. If CaseWare delivers Third-party Products to the Client, then apart from these CaseWare General Terms and Conditions, the Third-party General Terms and Conditions apply to the agreement.
- 6.1.3. CaseWare delivers rights to Third-party Products under the conditions as described in the Third-party General Terms and Conditions.
- 6.1.4. Regarding delivered Third-party Products, CaseWare provides:
- a) The service for Third-party Products under a maximum of the same conditions that are indicated in the Third-party General Terms and Conditions.
  - b) The Guarantee for the term and under a maximum of the same conditions as indicated in the Third-party General Terms and Conditions.

### **6.2. Third-party General Terms and Condition:**

- 6.2.1. Third-party General Terms and Conditions that are declared to apply in these CaseWare General Terms and Conditions will, if available to CaseWare, only be sent on request. The Third-party General Terms and Conditions will be made available in the same format and language as CaseWare has received them.
- 6.2.2. The CaseWare General Terms and Conditions rank above the Third-party General Terms and Conditions unless otherwise specified. In case of a conflict between the CaseWare General Terms and Conditions and the Third-party General Terms and Conditions, CaseWare can declare the conflicting provisions in the Third-party General Terms and Conditions not to apply or declare them to apply.

## **7. PRICES/PAYMENTS**

### **7.1. Prices and Payments**

- 7.1.1. All prices are V.A.T. exclusive and exclude any other levies imposed by the government. The owed sums will be charged V.A.T. inclusive and will include any levies imposed by the government.
- 7.1.2. The agreed upon prices between CaseWare and the Client among other things are based on wage costs, social security costs, the costs of materials and travel and accommodation costs, etc. as well as the exchange rate between the currencies used as they apply at the time the agreement enters into effect. In case of a change in one or more cost items and/or a change in the exchange rate, CaseWare is authorised to change the prices according to these changes. In any case, CaseWare is authorised to apply an annual price change on the licence fee on the basis of the CPI (Consumer Price Index) as published in November of the calendar year by the CBS.
- 7.1.3. In all cases, CaseWare will offer the Client the opportunity to take note of any price changes. If the Client does not agree with a price change, the Client is only authorised to end the agreement starting on the date the price change will enter into effect if the total price increase exceeds the inflation rate of the current year (or the prior year for price increases announced for the next year) published by the CBS by 10% for a period of 1 (one) year.

### **7.2. Fixed Price**

- 7.2.1. In a Fixed Price agreement, the activities will be performed at a price agreed upon beforehand.

### **7.3. Subsequent Calculation**

- 7.3.1. If charging takes place on Subsequent Calculation, this means that a general assessment can be made of the costs to be expected before CaseWare starts the agreed upon activities. After the activities are performed, all actual costs related to the activities will be charged. As such, the Client is aware that there is a possibility that the assessed costs are lower than the actual costs. If no method of charging is discussed beforehand, activities will be performed on the basis of Subsequent Calculation.

### **7.4. Payment Term**

- 7.4.1. CaseWare will charge the owed sums to the Client by means of a solid cost specification. The Client will pay the owed sums within 30 (thirty) days after the invoice date without being entitled to any deduction, set-off or settlement other than allowed by right.
- 7.4.2. Unless agreed upon otherwise, the following payment terms apply to the Client for projects that last longer than four weeks:
- a) first term, 10% of the owed sum must be paid as an advance;
  - b) second term, 40% of the owed sum must be paid at the time half of the agreement has been performed;
  - c) third term, 40% of the owed sum must be paid immediately after delivery;
  - d) fourth term, 10% of the remainder of the owed sum must immediately be paid after the acceptance.
- 7.4.3. CaseWare has the right to suspend its activities and other obligations until full payment took place notwithstanding the Client's burden to meet their obligations.

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1. Rights of CaseWare and the Client**

- 8.1.1. CaseWare or its suppliers have the exclusive right to further develop the Products and the use thereof by means of providing licences to third parties.
- 8.1.2. For every assignment performed by CaseWare wherever and whenever regardless of whether it concerns the delivery of an existing Product or a Product to still be developed, all resulting intellectual property rights, industrial property rights and other rights remain with CaseWare or its supplier.
- 8.1.3. The Client recognises that all current and future intellectual property rights, industrial property rights, other rights and the registration and/or application for aforementioned rights and/or similar rights for the entire term and possible extensions or renewals thereof now or in the future will accrue to CaseWare forever and globally or will be transferred to CaseWare.
- 8.1.4. The Client is not permitted to remove or change any indication regarding intellectual property rights, industrial property rights, other rights, brands and trademarks from the Products or have such be performed by a third party.
- 8.1.5. The intellectual property rights, industrial property rights and other rights of a Product or a part thereof can only be transferred by means of written deed to the Client if CaseWare has these rights.
- 8.1.6. If CaseWare, the Client or third parties make functional improvements or other changes to the Products, the intellectual property rights, industrial property rights and other rights in this case resting on the improved or changed Products remain with CaseWare or the third-party rightsholder unchanged. If aforementioned rights are not held by CaseWare or a third-party rightsholder, the Client will ensure the transfer of aforementioned rights to CaseWare or the third-party rightsholder free of charge.
- 8.1.7. CaseWare reserves all intellectual property rights, industrial property rights and other rights regarding the Course Material and/or the documentation that is provided. The Client is expressly not permitted to multiply this in any way or put at the disposal of a third party or to provide this on loan. The Client must ensure that their employees and/or third parties will meet with aforementioned obligations.