

# GENERAL TERMS AND CONDITIONS

## CIWIT B.V. (CASTOR EDC)

*Version:* 1.2  
*Date:* November 22, 2016

These general terms and conditions apply to all offers and agreements that arise therefrom between Ciwit B.V. (also using the tradenames 'Castor EDC' and 'Castor SMS') with its registered office in Amsterdam and registered with the Dutch Chamber of Commerce under file number 54723655 and its clients.

Terms and conditions applied by the Client that deviate from or that are not included in these General Terms and Conditions only bind Ciwit B.V. if and to the extent such has been explicitly accepted in writing.

### ARTICLE 1. DEFINITIONS

The capitalised terms in the Agreement have the meaning set out below, unless a (different) meaning is assigned elsewhere in the General Terms and Conditions, the Agreement or in an Annex.

- 1.1. **Agreement:** any agreement between Ciwit and the Client that arises from an offer made by Ciwit and the valid acceptance thereof by the Client.
- 1.2. **Annex:** an annex to the Agreement.
- 1.3. **Ciwit:** Ciwit B.V., a private company with limited liability, with its registered office in Amsterdam and registered with the Dutch Chamber of Commerce under file number 54723655.
- 1.4. **Client:** the person or legal entity with whom Ciwit has concluded an Agreement. It is also a reference to a party with whom Ciwit negotiates in respect thereof and its representative(s), agent(s), successor(s) in title or beneficiaries.
- 1.5. **Data:** the personal and other data concerning the Client, its business, its employees and/or clients, which have been stored and can be accessed via the Software.
- 1.6. **General Terms and Conditions:** the provisions of the present document.
- 1.7. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, rights to domain names, trade name rights, rights to know-how, trademark rights, model rights, neighbouring rights and patent rights.
- 1.8. **Licence:** the non-exclusive, non-transferable right to use the Software that cannot be sublicenced.
- 1.9. **Service(s):** the service(s) Ciwit will perform for the Client as described in Ciwit's offer.
- 1.10. **Software:** each (online) software service provided by Ciwit.

### ARTICLE 2. SCOPE AND APPLICABILITY

- 2.1. These General Terms and Conditions apply to every offer made by Ciwit concerning the Services and form an integral part of every Agreement.
- 2.2. Terms and conditions applied by the Client that deviate from or are not included in these General Terms and Conditions only bind Ciwit if and to the extent that they have been explicitly accepted in writing by Ciwit.
- 2.3. The following ranking will apply in the event of inconsistencies between the provisions of the Agreement, the General Terms and Conditions or annexes thereof:
  - a. the Agreement;
  - b. any annexes to the Agreement;

- c. these General Terms and Conditions.

### **ARTICLE 3. OFFERS AND FORMATION OF THE AGREEMENT**

- 3.1. Ciwit draws up an offer in which Ciwit indicates what activities (the "Services") Ciwit offers to perform, what is included in the Services and what amount will be owed in respect thereof. Only the description of the Services included in the offer will be binding.
- 3.2. In a general sense the Services consists of the following during the Agreement: maintenance of the Software on behalf of the Client, configuration and installation Software on behalf of the Client, supply of the Software under Licence, providing access to the gathered Data, providing remote support, and everything that is related thereto. Other activities are only performed if this is stated in the offer.
- 3.3. An offer is free of obligation and is valid for 30 days after dispatch, unless otherwise indicated in the offer. Ciwit can never be forced to agree to acceptance after this period, but if Ciwit decides to agree, the offer will be accepted.
- 3.4. The agreement will be formed the moment Ciwit receives the notification of acceptance of the offer by the Client. The offer must be signed by the Client and returned in writing or by e-mail.
- 3.5. If the Client does not explicitly indicate that it accepts the offer, but nevertheless agrees to it or creates the impression that Ciwit performs activities that are covered by the description of the Services, the offer will be deemed to have been accepted. This also applies in the event the Client requests Ciwit to perform certain activities without awaiting a formal offer.
- 3.6. In addition to making an offer by means of a written quotation, Ciwit can also make an offer to the Client via the Software. The prices stated in the Software are valid from the moment they are displayed, unless it concerns a clear programming or typing error.

### **ARTICLE 4. PERFORMANCE OF THE SERVICES**

- 4.1. After the Agreement has been rformed, Ciwit will perform the Services as soon as possible in accordance with the offer, taking into account the Client's reasonable wishes.
- 4.2. The Client is required to do and/or omit all that is reasonably necessary and desirable to enable timely and correct performance of the Services. The Client will in particular ensure that all data in respect of which Ciwit indicates that they are necessary or in respect of which the Client should reasonable understand that they are necessary for performance of the Services, are provided to Ciwit in a timely manner.
- 4.3. The Client will grant Ciwit access to all locations, services and accounts under its control that Ciwit reasonably requires to perform the Services.
- 4.4. Ciwit guarantees that the Services are performed carefully, soundly and in the best possible manner. If so demanded for a proper performance of the Services, Ciwit will have the right to have certain activities performed by third-parties. Ciwit is and remains the responsible party towards the Client.
- 4.5. If Ciwit considers that there is a danger to the functioning of its systems, network or Services, Ciwit will have the right to implement all measures it considers reasonably necessary to avert or prevent this danger. Ciwit will endeavor to take reasonable technical and organizational security measures which prevent the most common risks in respect of the Services.
- 4.6. Unless agreed otherwise, Ciwit is not a party to the performance of services by third parties, such as software licences or internet connections that are necessary in connection with the Services.
- 4.7. In the event the Client fails to comply with an obligation towards Ciwit under the Agreement or acts contrary to these General Terms and Conditions, Ciwit has the right to (temporarily) not provide the Services or to provide them on a limited basis, but only after giving the Client a reasonable notice in advance to remedy the situation.

- 4.8. Ciwit will endeavour to respond to a request from the Client as quickly as possible, but it cannot make any commitments about response times, unless agreed otherwise in the offer.

#### **ARTICLE 5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. All Intellectual Property Rights to the works developed by Ciwit, including source codes, results, documentation, software, websites, databases, (promotional) materials as well as material to prepare the above, will expressly continue to be vested in Ciwit and/or its licensors.
- 5.2. Nothing in these General Terms and Conditions is intended to transfer any Intellectual Property Rights.
- 5.3. Client will not perform any act that could infringe the Intellectual Property Rights of Ciwit or its licensors, including but not limited to disclosing and/or reproducing the Software without approval, licensing the Software to third parties or selling the Software or registering domain names, brands or Google AdWords search terms (keywords) that are similar or identical to any sign in respect of which Ciwit or its Clients can exercise Intellectual Property Rights. Client acknowledges and accepts that any unauthorised use of the Software, documentation, look-and-feel, interfaces, lay-out or other materials subject to these Intellectual Property Rights constitutes an infringement of these General Terms and Conditions and the applicable legislation.
- 5.4. Ciwit has the right to implement technical measures to protect the Software against unlawful use and/or against use in a manner or for purposes other than as agreed between the Parties. Client will not remove these technical measures or have them removed or circumvent them or have them circumvented.
- 5.5. Ciwit may make third-party Software available to Client. In the event that the (open source) licence and/or other conditions (applied by those third parties) also apply towards Client, then Ciwit undertakes to notify Client of the applicable license and/or other conditions.. Client guarantees that it accepts such third-party conditions and that it will comply with them strictly.
- 5.6. Client is not allowed to remove, render illegible, hide or change notifications or announcements concerning Intellectual Property Rights.
- 5.7. Ciwit will never be obliged to provide Client with (a physical carrier containing) the Software in source code or other software used for the development of the Software (in source code or otherwise), unless this is necessary for the performance of the Agreement.

#### **ARTICLE 6. USER DATA**

- 6.1. Data stored by Client or processed while using the Software is and remains the property of Client (or the property of Client's suppliers, collaborators or licensors). Ciwit receives an unlimited licence for use of this information for providing the Services and/or Software.
- 6.2. Client represents and warrants that any Data and contents stored by Client or processed while using the Software do not violate or infringe any rights (including Intellectual Property Rights) of any third party and are not libellous, defamatory or otherwise illegal. Client shall defend and indemnify Ciwit from and against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the foregoing representations and warranties.
- 6.3. After the termination of the Agreement Client may choose one of the following options:
  - a. Ciwit deletes the Data;
  - b. Ciwit transfers the Data to Client and deletes the Data in her possession;

- c. Ciwit will keep all Data for fifteen years on the servers of its standard hosting provider (during this period Ciwit shall provide Client with access to the saved Data).

#### **ARTICLE 7. LIABILITY**

- 7.1. With the exception of wilful misconduct or gross negligence, Ciwit's liability for direct damage sustained by the Client as a result of an attributable failure on the part of Ciwit to comply with its obligations under the Agreement, or as a result of unlawful conduct on the part of Ciwit, its employees or third parties engaged by it, per event or series of related events, is limited to an amount that is equal to the compensation paid by the Client to Ciwit during the twelve (12) months prior to the event that caused damage, subject to a maximum of EUR 10,000 (exclusive of VAT).
- 7.2. With the exception of wilful misconduct or gross negligence, Ciwit's overall liability for losses resulting from death or physical injury or for material damage to property will never exceed the amount that will be paid by the insurance company. If no payment is made under the insurance, liability will be limited to an amount of EUR 50,000 (exclusive of VAT) per event that causes damage, whereby a series of related events apply as a single event.
- 7.3. Liability on the part of Ciwit for indirect loss, including consequential loss, lost profits, lost savings, damage to or loss of company or other data, data stored on Ciwit equipment and damage resulting from business interruption, is excluded.
- 7.4. Liability on the part of Ciwit for an attributable failure to comply with the Agreement only arises if the Client gives Ciwit proper notice of default in writing without delay, while providing it a reasonable term to remedy the failure, and Ciwit remains in default as regards compliance with its obligations after that term as well.

#### **ARTICLE 8. FORCE MAJEURE**

- 8.1. Neither party is obliged to comply with an obligation towards the other under this Agreement if it is prevented from doing so as a result of any anticipated or unanticipated outside cause that is beyond its reasonable control, and which causes the affected party to be unable to comply with the relevant obligation(s).
- 8.2. This includes a circumstance that is not attributable to fault and that is not for Ciwit's account pursuant to the law, a legal act or in common opinion. Force majeure includes in particular (but without limitation): domestic disturbances, mobilisation, war, transportation blocks, strikes, network attacks such as SYN (synchronous) floods or (distributed) denial of service attacks, business interruptions, supply stagnation, fires, floods, import and export obstructions and in the event Ciwit's suppliers for any reason prevent it from being able to comply with the Agreement, which means that Ciwit cannot be expected to comply with the Agreement within reason.
- 8.3. Each party has the right to suspend compliance with its obligations under the Agreement during the period of force majeure.. If this period exceeds ninety (90) days, each of the parties will have the right to terminate the Agreement without being obliged to pay compensation to the other party.
- 8.4. In the event Ciwit has already complied in part with an obligation under the Agreement at the time the situation of force majeure arises or will be able to comply with this obligation during this period of force majeure, and the part that has been or will be complied with has an independent value, Ciwit will have the right to separately invoice the part that has already been complied with or that will be complied with. The Client will be obliged to pay this invoice.

#### **ARTICLE 9. CONFIDENTIALITY**

- 9.1. The Parties commit that they will observe confidentiality concerning all confidential information concerning the business of the other party they receive, including the content of the Agreement. The parties also impose this obligation on their employees and on the third parties engaged by them in the performance of the Agreement.
- 9.2. Information is considered confidential in any event if it has been designated as such by one of the parties.
- 9.3. The obligations of confidentiality hereunder shall not apply to the extent that the party under the relevant obligation can demonstrate that the relevant information is required to be disclosed by: (i) law; (ii) any regulatory authority to which the relevant party is subject or submits; or (iii) any court of competent jurisdiction.
- 9.4. The obligation to treat confidential information as confidential will not be applicable if the recipient of such information can prove that this information:
  - a. was obtained from sources available to the general public such as newspapers, patent databases or informative websites;
  - b. was already in possession of the recipient prior to the date on which it was issued or made available by the other party;
  - c. is available from a third party without this party being in default towards either party arising from a confidentiality clause by distributing the information to the recipient.

#### **ARTICLE 10. PRICES**

- 10.1. Payments for the provision of the Services are stated in the annex to the Agreement, in the offer made by Ciwit or via the Software. All prices are stated in euros and exclusive of VAT.
- 10.2. If the Agreement concerns a continuing performance contract, the amounts owed will be invoiced each quarter to the Client prior to the next quarter, unless agreed otherwise in writing.
- 10.3. If Ciwit has not made an offer, the payments for the Services to be provided will be determined in principle on the basis of the hourly rate. Ciwit will communicate the hourly rates and wait for explicit approval before starting work.
- 10.4. Every year in the month January, Ciwit has the right to change the agreed upon prices with a maximum of 5%.
- 10.5. Ciwit has the right to adjust the price conditions in the interim and to send the Client an additional invoice if it becomes clear that the Client no longer satisfies the conditions it was assigned to when the Agreement was concluded as a result of organisational or other changes. (e.g. certain quantity discounts will cease to apply if the conditions for the discount are no longer met.)

#### **ARTICLE 11. PAYMENT CONDITIONS**

- 11.1. The Client agrees to electronic invoicing by Ciwit. Invoices will be sent in PDF or another suitable format to the email address of the Client that is known to Ciwit.
- 11.2. In principle, Ciwit invoices have a payment term of thirty (30) days after the invoice date, unless a different payment term is stated on the invoice.
- 11.3. In the event payment is not made on time, Ciwit will send a reminder with a payment term of fourteen (14) days. In this case the Client will be required to pay the administration costs in addition to the amount owed by the Client and the interest due in respect thereof. Said administration costs are set at an amount of EUR 45 exclusive of VAT.
- 11.4. Clients who do not pay within the aforementioned fourteen (14) days will be in default by operation of law without requiring any notice of default. Ciwit will have the right as of that moment to limit its Services, for example by restricting access to the Software and/or temporarily suspending the Service.

- 11.5. In the event that limiting its Services doesn't have an effect on Client or when it's clear that Client will not pay, then Ciwit will have the right to (after providing the Client with a reasonable notice in advance) terminate, suspend or render inoperable the Agreement or the part thereof that has not yet been performed without requiring notice of default or judicial intervention, without the Client having the right to demand compensation for any damage that may arise for the Client as a result thereof.
- 11.6. Claims for payment are immediately due and payable if the Client is declared bankrupt, applies for a suspension of payments or a general attachment is levied against the Client's assets, the Client dies and furthermore if it goes into liquidation or is dissolved.
- 11.7. If the Client considers an invoice to be incorrect, the Client will be required to notify its objections to Ciwit in writing within fifteen (15) Working Days after the invoice date. The payment obligation will continue to exist at all times. It is therefore not allowed to suspend payment. Any amount paid in excess will be set off by means of a credit invoice.
- 11.8. If there can be reasonable doubt on the basis of facts and circumstances whether the Client is able to comply with its payment obligations, Ciwit has the right, in derogation from Article 10.2, to demand that the Client provide additional financial security in the form of a security deposit for the entire invoice amount or, if it concerns a continuing performance contract, for twelve (12) months' of service.

#### **ARTICLE 12. TERM OF THE AGREEMENT**

- 12.1. The Agreement commences at the moment Ciwit receives notification of acceptance by the Client or from the moment the Client creates the impression that it agrees to the offer, unless a different commencement date has been agreed in mutual consultation.
- 12.2. The Agreement is concluded for the term that is needed to provide the Service(s). The Agreement can only be terminated prematurely as provided for in this General Terms and Conditions or with the approval of both parties. If the Agreement concerns a continuing performance contract, it will in principle be concluded for twelve (12) months unless otherwise agreed in writing. If Clients keeps making use of the Service after the initial period, then the Agreement will keep being continued for three month periods for as long as Clients keeps making use of the Service.
- 12.3. Each party may terminate the Agreement with due observance of a notice period of one (1) month by the end of the Agreement.
- 12.4. Ciwit has the right to terminate the Agreement with immediate effect without being obliged to pay compensation in any way if
  - a) Client has failed to comply with its obligations and such failure has not been remedied by the Client within five (5) days after having received written notice of default;
  - b) if the Client has applied for a suspension of payment or has applied for its bankruptcy or the Client's bankruptcy is applied for, claimed or pronounced or the Client offers its creditors a private composition.

#### **ARTICLE 13. AMENDMENT OF THE AGREEMENT**

- 13.1. Ciwit has the right to amend these General Terms and Conditions, provided it announces the proposed changes to the Client at least thirty (30) days in advance. Changes of minor importance can be implemented at any time, without the Client having the right to terminate the Agreement.
- 13.2. If the Client objects to the changes, Ciwit will reconsider and withdraw the changes if it considers the objection well-founded.
- 13.3. However, if Ciwit implements the changes despite the Client's objection, the Client will have the right to terminate the Agreement as of the moment the changes enter into effect.

**ARTICLE 14. OTHER PROVISIONS**

- 14.1. The Agreement is governed by Dutch law.
- 14.2. Unless the rules of mandatory law provide otherwise, all disputes that may arise pursuant to this Agreement will be submitted to the competent Dutch court in the Amsterdam court district.
- 14.3. The version of any communication received or stored by Ciwit serves as authentic and binding proof, subject to evidence to the contrary provided by Client.
- 14.4. In these General Terms and Conditions "in writing" includes by e-mail or the Service and/or Software, provided the identity of the sender and the integrity of the content is established sufficiently.
- 14.5. If the Client is taken over by a third party or in the event the Client takes over a third party, it will always notify this to Ciwit without delay after the Client has become aware of the takeover.
- 14.6. Ciwit has the right to transfer its right and obligations arising from the Agreement to a third party that will take over the Service or the relevant business activity.
- 14.7. Ciwit is allowed to use Client's name, logo and the general agreement description as a reference, unless agreed otherwise in writing.
- 14.8. If any provision of this Agreement proves invalid, such will not impair the validity of the entire Agreement. The Parties to this Agreement will furthermore adopt (a) new provision(s) by way of replacement, which implement(s) the intention of the original Agreement as much as legally possible.