

# General Terms and Conditions

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**Date:** 8 October 2020

These **General Terms and Conditions** (hereinafter: “**Terms**”) apply to any and all agreements between you (the Client) and Ciwit B.V., with its registered office in Amsterdam and registered with the Dutch Chamber of Commerce under file number 54723655 (hereinafter: “**Castor**”).

Please note that these Terms are specific to Clients who are not located in the U.S., Canada and Mexico. Our Clients within the aforementioned regions will contract with Castor Research, Inc. under its [General Terms and Conditions - Castor Research, Inc.](#) which can be found on our website [castoredc.com](http://castoredc.com).

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

## Article 1. Definitions

The capitalized words in these Terms have the meaning set out below, unless a (different) meaning is assigned elsewhere in these Terms, the Agreement or in an Annex.

- **Agreement:** any agreement between Castor and the Client that arises from an offer made by Castor and the valid acceptance thereof by the Client or any other agreement pursuant to which Castor provides Services to Client.
- **Annex:** an annex that forms an integral part of this Agreement.
- **Authorized Users:** accounts and/or access credentials issued to Client by Castor or by those accounts and/or access credentials issues to an authorized third-party by Client via Client’s account.
- **Client:** the individual or legal entity with whom Castor has concluded an Agreement. It is also a reference to a party with whom Castor negotiates in respect thereof and Clients representative(s), agent(s), successor(s) in title or beneficiaries.
- **Data:** the personal and other data captured and stored by Client within Castor’s Services.
- **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, neighboring rights and patent rights.
- **Medical Research Data:** any Participant Data that could be considered sensitive personal data within the meaning of section 9 of the General Data Protection Regulation.
- **Module:** specific (premium) modules within Castor’s online Services which allow for certain functionalities to be used by the Client.
- **Participant Data:** any personal data of the participants of a Study (i.e. patients or subjects in Studies), which may be processed by Castor on behalf of the Client.
- **Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed as described in article 4 paragraph (12) GDPR.
- **Running Study:** A running study is a study that has been set to ‘live’ and (a) has not reached its intended duration or (b) has actively collected Medical Research Data in the last 30 days. All studies are marked running for a minimum of one year.
- **Service(s):** the service(s) Castor provides as agreed by the Parties, which may include providing one or more of the services, including but not limited to the services mentioned hereunder, as well as any services reasonably related thereto:

- (1) Castor EDC: Castor's cloud-based electronic data capture software called Castor EDC intended for capturing and storing data in relation to medical studies;
- (2) Castor SMS: Castor's cloud-based study management system called Castor SMS intended for the management of medical studies within Castor EDC;
- (3) Castor eConsent: Castor's cloud-based software called Castor eConsent for asking and managing consent given by study participants.

- **Study:** the (clinical) study or studies conducted by the Client using the Castor EDC Service.

## **Article 2. Scope and applicability**

1. These Terms apply to every offer made by Castor concerning the Services and form an integral part of every Agreement.
2. The following ranking will apply in the event of inconsistencies between the provisions of the Agreement, these Terms or annexes thereto and any other agreed upon documents:
  - i. the Agreement;
  - ii. any annexes to the Agreement;
  - iii. the terms in a data processing agreement;
  - iv. these Terms.

## **Article 3. Offers**

1. Castor offers its Services electronically via its website (castoredc.com) and/or may draw up a written offer via which Castor indicates which Services Castor offers to provide and which fees will be owed in respect thereof. An offer of Castor is free of obligation and written offers are valid for 14 days after dispatch, unless otherwise indicated in the offer.
2. In addition to offering its Services by the aforementioned means, Castor can also make an offer to the Client via its Services (e.g. enabling Client to purchase certain additional Modules through Castor's Services). The prices stated in the Service are valid from the moment they are displayed, unless it concerns a clear programming or typing error.
3. If the Client does not explicitly indicate that it accepts the offer, but nevertheless agrees to it or creates the impression that Castor 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 Castor to perform certain activities without awaiting a formal offer.
4. If an offer of Castor is based on information provided by the Client and (prior to or during the Agreement) this information proves to be incorrect or incomplete, Castor is entitled to change its offer and/or the terms of the Agreement (including the fees) accordingly.

## **Article 4. Services**

1. Castor shall perform the agreed upon Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with the Agreement and industry standards for similar services.
2. 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 information (i.e. contact and/or invoice information) requested by Castor are provided to Castor in a timely manner.
3. Castor, taking into account due care and industry standards, may engage third parties (each a 'Subcontractor') in the performance of the Services. In this regard Client understands and accepts that Castor at least makes use of a third-party hosting provider and email service provider when providing its web services. Castor is and remains fully responsible for any Subcontractor it engages in the performance of the Agreement.

4. In the event Client fails to comply with an obligation towards Castor under the Agreement or acts contrary to these Terms, Castor has the right to (temporarily) suspend or limit access to its Services. However, such suspension or limitation is only allowed after Castor has provided Client with a reasonable notice in advance to remedy the situation.
5. Castor may from time to time change (the functionalities of) its Services. Client's feedback and suggestions are welcome, but Castor ultimately decides which changes, updates or upgrades it shall implement in its Services. Client understands and accepts that webservices provided by Castor are based on a Software-as-a-Service model and that it is therefore not possible to delay or refuse implementation of such changes, updates or upgrades.
6. Castor will periodically perform maintenance to its Services, including without limitation correcting known defects, installing improved versions of its software, and installing updates on its servers. The Services may be impaired or unavailable during such maintenance. Castor will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services outside of Standard Support Hours; and (b) give Client at least twenty-four (24) hours prior notice of all scheduled outages of the Services ("**Scheduled Downtime**") on <https://castorstatus.com>, where you can also subscribe to the latest status. In case of any major Scheduled Downtime, which will take longer than 30 minutes, this notice will also be provided via e-mail or within the system of the Services.
7. If Castor considers that there is a danger to the functioning of its systems, network or Services, Castor will have the right to implement all measures it considers reasonably necessary to avert or prevent this danger, including suspending the Services.
8. Castor will make an online manual available on how to use Castor's Services. Additional support may be requested by the Client through Castor's website, where Client will also be able to submit support tickets.
9. Unless parties have explicitly agreed upon certain service levels with regards to a specific Service, Castor does not make any commitments with regards to response times and/or availability. However, Castor will use commercially reasonable efforts to promptly respond to a support request from the Client and to keep its Services available.
10. Unless explicitly agreed upon, Study building services and Study maintenance services do not include: extensive user acceptance testing, end user training and data import or transfer. Furthermore, any communicated timelines are deemed indicative and Castor may apply a limit to the number of revision rounds, changes and amendments.
11. Client acknowledges and agrees that, unless explicitly otherwise agreed upon in writing, Castor's Services are intended solely for research purposes. Content found in the Services shall not constitute medical advice and should not be relied upon in making any medical decisions.

## Article 5. Service levels and support

1. Castor will use commercially reasonable efforts to provide its Services, taking into account the following service levels for Castor EDC, Castor SMS and/or Castor eConsent:

Service level Castor EDC	Bronze	Silver	Gold
<b>Availability:</b>	99%	99.5%	99.9%
<b>Email response time:</b>	Within 12 hours (average <2 hours)	Within 8 hours (average <45 minutes)	Within 6 hours (average <45 minutes)
<b>Advanced technical support:</b>	1 hour per year	2 hours per year	8 hours per year
<b>Phone support:</b>	No	Yes	Yes
<b>Dedicated customer</b>	No	No	Yes

<b>success manager:</b>			
<b>Maximum resolution time critical functionality:</b>	6 days	4 days	2 days
<b>Other</b>	N/A	N/A	Tailored onboarding and consultations  Pre-live study review  Configurable enforced 2FA & password rotation

<b>Service level Castor SMS</b>	<b>Bronze</b>
<b>Availability:</b>	99%
<b>Email response time:</b>	Within 12 hours (average <2 hours)
<b>Phone support:</b>	Only for Administrators and during European business hours (CET)
<b>Dedicated customer success manager:</b>	Yes
<b>Maximum resolution time critical functionality:</b>	6 days

<b>Service level Castor eConsent</b>	<b>Bronze</b>	<b>Silver</b>	<b>Gold</b>
<b>Availability:</b>	99%	99.5%	99.8%
<b>Email response time:</b>	Within 12 hours	Within 8 hours	Within 6 hours
<b>Phone support:</b>	No	Yes	Yes
<b>Maximum resolution time critical functionality:</b>	10 days	8 days	6 days

2. Unless Client has specifically purchased the Silver or Gold service level, the standard Bronze service level will be applicable. The aforementioned service levels shall be interpreted as follows:
- “Availability” means the amount of time in percentages, as measured over the course of each calendar year during the term of the Agreement, wherein the Services were available for access and use by Client over the internet and operating in material accordance with the Agreement, excluding unavailability as a result of any of the exceptions described below in this article.
  - “Email response time” means the maximum number of hours (or minutes) during weekdays from 9:00am to 11:00pm Central European (Summer) Time (“**Standard Support Hours**”) in which Castor responds via email to a support request of the Client.
  - “Advanced technical support” means specific and advanced support for which Castor normally charges an hourly rate because it cannot be provided by Castor’s standard support desk. To specify:
    - Support provided by Castor’s standard support desk consists of: answering functional questions regarding the use of Castor’s Services (e.g. providing advice on the functionalities of the Services), resolution of blocking technical issues

- (e.g. critical bugs and issues with access), and streamlining feature requests to the product team.
- o Advanced technical support is the case wherein Client has a specific request that requires the involvement of the technical support team and includes but is not limited to providing dedicated solutions for calculations and automations, exporting audit trails, retrieval of study back-ups, and support with integrations and randomization settings. In addition to the Advanced technical support hours included in the Bronze, Silver and Gold packages, Client may at any time purchase additional hours of Advanced technical support.
  - “Phone support” means whether or not Client is entitled to support from Castor by telephone during Standard Support Hours.
  - “Maximum resolution time critical functionality” means the maximum number of days it may take Castor to resolve an issue within the Services which causes Client to be unable to: (i) login to the Service, or (ii) create a Study, or (iii) store, modify, and/or access the Data Client has stored within the Service. These resolution times are not applicable when a suitable work-around is provided. Specifically, for Castor eConsent, the “maximum resolution time critical functionality” means the maximum number of days it may take Castor to resolve an issue within Castor’s eConsent Services which causes Client to be unable to: (i) login to the Service, or (ii) electronically sign a consent form, or (iii) store, modify, and/or access the Data Client has stored within the Service. These resolution times are not applicable when a suitable work-around is provided.
3. For purposes of calculating the Availability, the following are exceptions to the Availability requirement, and neither the Services will be considered un-Available nor any failure to meet the stated Availability will be deemed to occur when Client’s (or the Authorized Users’) use of the Services is impaired due, in whole or in part, to any: (a) act or omission by Client or its users that does not strictly comply with these Terms and the Agreement; (b) Client’s or its user’s internet connectivity; (c) a Force Majeure event; (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Castor pursuant to the Agreement; (e) Scheduled Downtime (as defined in article 4); (f) emergency maintenance, which Castor will use commercially reasonable efforts to complete as soon as practically possible, or (g) disabling, suspension, or termination of the Services pursuant to these Terms.

## **Article 6. Fees**

1. Client is obliged to pay for the provision of the Services. The fees to be paid by the Client are stated in Castor’s offer or the Agreement. If Client purchases (additional) Services via Castor’s website, then the fees are stated on the website. Unless otherwise agreed upon, all prices are in euros and exclusive of VAT. If the Agreement concerns a continuing performance contract, the amounts owed will be invoiced upfront.
2. Once per calendar year, Castor has the right to adjust the agreed upon fees based on inflation, labor costs, costs of suppliers and changes in market conditions, provided that any increase does not exceed the percentage increase in the Consumer Price Index (“CPI”), published by the Statistics Netherlands (CBS), during the previous twelve (12) month period, or five percent (5%) of the previous year’s fees, whichever is higher. Castor shall inform Client of such change at least one month before the change will take effect.
3. Castor 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 organizational or other

changes. (e.g. certain quantity discounts will cease to apply if the conditions for the discount are no longer met.)

4. Client acknowledges that some of Castor's Services are differently priced depending on whether the Services are used for commercial Studies or non-commercial Studies. A non-commercial Study is defined as a Study where the official 'Sponsor' (according to Good Clinical Practice terms) is not a commercial company. In all other cases (for example: a funded Study run by a clinical trial unit, clinical research facility, academic research organization and similar organizations) the Study is considered a commercial Study unless otherwise agreed upon. The Client must always check whether it is paying Castor for the correct amount of commercial and non-commercial Studies. If the Client is intending to use (its license for) the Services for one or more commercial Studies, then it must inform Castor hereof so Castor can provide the Client with a proper offer. On request of Castor, the Client will provide Castor additional information which proves that its Studies are indeed non-commercial. In case Client runs (or ran) any commercial Studies for which Client has only paid Castor a (basic) fee meant for non-commercial Studies, then the Client is obligated to pay Castor additional fees for such commercial Studies in accordance with the pricing that Castor would normally apply in such case.

#### **Article 7. Payment conditions**

1. The Client agrees to electronic invoicing by Castor. Invoices will be sent in PDF or another suitable format to the email address of the Client that is known to Castor.
2. Castor's invoices have a payment term of thirty (30) days after the invoice date, unless a different payment term is stated on the invoice. Client is obliged to pay invoices within the stated payment term without deduction or set-off.
3. In the event payment is not made on time, Castor will send a reminder with a payment term of fourteen (14) days. Should Client fail to pay the due amount(s) within the aforementioned fourteen (14) days, then the Client will be in default by operation of law without requiring any further formal notice of default. Castor will have the right as of that moment to limit or suspend its Services, for example by restricting access to the Services.
4. In the event that limiting its Services doesn't have an effect on Client or when Castor has reasonable doubts that Client will not pay the due amounts in time, then Castor will have the right to terminate, suspend or otherwise render inoperable the Agreement or the part thereof that has not yet been performed.
5. 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 Client goes into liquidation or is dissolved.
6. If the Client considers an invoice to be incorrect, the Client will be required to notify its objections to Castor in writing within fifteen (15) days after the invoice date. The payment obligation will continue to exist at all times. Any amount paid in excess by Client will be set off by means of a credit invoice.
7. If Castor has reasonable doubts that the Client is able to comply with its payment obligations, Castor has the right to demand additional financial security for the entire invoice amount or, if it concerns a continuing performance contract, for twelve (12) months of Service. If the Client is not able to provide financial security to the satisfaction of Castor, then Castor is entitled to suspend and/or terminate the Agreement.

#### **Article 8. License and Intellectual Property Rights**

1. Should Client purchase a license for certain Services, then such license granted by Castor shall always be non-exclusive, non-transferable and non-sublicensable.

2. All Intellectual Property Rights to the works developed by Castor, 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 Castor and/or its licensors. Nothing in these Terms is intended to transfer any Intellectual Property Rights.
3. Client will not perform any act that could infringe the Intellectual Property Rights of Castor or its licensors, including but not limited to disclosing and/or reproducing the Service without approval, licensing the Service to third parties or selling the Service or registering domain names, brands or Google AdWords search terms (keywords) that are similar or identical to any sign in respect of which Castor or its affiliates can exercise Intellectual Property Rights.
4. Castor has the right to implement technical measures to protect the Services 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. Client is not allowed to remove, render illegible, hide or change notifications or announcements concerning Intellectual Property Rights.
5. Unless otherwise agreed upon, Castor will never be obliged to provide Client with (a physical carrier containing) source codes or other software used in the provision and/or development of its Services.

#### **Article 9. Client Data and Exit**

1. Data stored by Client or processed while using the Service is and remains the property of Client (or the property of Client's suppliers, collaborators, licensors or the concerning data subjects). Client hereby grants Ciwit the perpetual right to use such Data in order to provide the Services, provide support with regard to its Services, provide recommendations regarding its Services and improve its Services.
2. Client represents and warrants that any Data and contents stored by Client or processed while using the Services do not violate or infringe upon any rights (including Intellectual Property Rights) of any third party and are not libelous, defamatory or otherwise illegal. Furthermore, the Client represents and warrants that it has a valid legal basis to process the relevant (personal) Data and to engage Castor in relation to such processing of Data.
3. Client shall defend and indemnify Castor and hold Castor harmless from and against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs, reasonable legal fees and penalties) arising out of or in connection with Clients breach of the foregoing representations and warranties.
4. With regards to its Services, Castor is entitled to archive inactive Studies. In any case a Study is considered 'inactive' when Client has not performed any activity within a specific Study over the course of one (1) year. Archived Studies will still show up in Client's list of Studies within Castor EDC. However, if Client wishes to continue the Study and/or view the captured data within that Study, then Client must request Castor to restore such study from its archive, which may incur an additional fee.
5. For studies starting in 2021 or later, Castor is entitled to charge a fee to enable a Client to access a study that has completed its intended duration (and is no longer a Running Study).
6. Upon any expiration or termination of the Agreement, except as expressly otherwise provided in the Agreement, Castor and Client shall adhere to the following (not applicable for Castor eConsent, please contact your account manager for more information):
  - i) Client and Castor shall in good faith discuss what must be done with Client's Data stored within Castor's systems. Client may export its Data using the tools available in Castor EDC. Client may at any time and free of charge, export its Data using Castor

EDC's exporting tool in Excel (only export option available for Castor SMS), CSV or SPSS format for captured Data and XML format for study structure and metadata. Audit logs containing data entry logs are not included in such export. However, if the Client requests support in exporting its Data, Castor may offer this service to the Client for a reasonable fee ("Exporting Services"). For Exporting Services, Castor will disclose the Client's Data by delivering the study structure including metadata, study Data and audit trail of all Client's studies.

- ii) If so instructed by Client, Castor shall erase Client's Data from Castor EDC and Castor SMS (excluding backups, archives, and disaster recovery systems until such Data is deleted in the ordinary course of business).
- iii) If Castor does not receive instructions from Client, then Castor may retain and/or archive Client's Data pursuant to the Guideline for Good Clinical Practice and taking into account the confidentiality obligations in these Terms. In such case Castor shall only delete the Data captured by the Client after having informed Client via email about Castor's intention to delete such Data and providing the Client a ninety-day period to make other arrangements with Castor. When Client has stored Data using the "Large File Upload" functionality, then additional costs may be charged for retaining and/or archiving such large files after a study ends. In such case Castor will contact Client to agree upon additional charges.

#### **Article 10. Processing of personal data**

1. For the avoidance of doubt, all terms regarding the processing of personal data stated in these Terms are only applicable insofar not otherwise agreed upon between Castor and Client in a separate data processing agreement.
2. The Client specifies the objectives and means of the processing of personal data under the Agreement and is therefore the 'controller' with regard to the applicable privacy legislation such as the General Data Protection Regulation (GDPR). Insofar additional terms are required by applicable law, the Client shall request Castor to agree upon such additional privacy related terms. Parties will then discuss such request in good faith.
3. The Client shall notify Castor of the purposes of the processing to the extent not already specified in the Agreement. Insofar required by applicable law, the Client makes sure that both parties are familiar with the categories of personal data to be processed by Castor and the categories of data subjects from which the personal data is processed.
4. Where a data subject submits a request to Castor regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), Castor will forward the request to the Client and the request will then be dealt with by the Client. Castor may notify the data subject hereof. On request of the Client, Castor will provide assistance with handling such request to the extent necessary and reasonable. Castor may charge a reasonable fee for such assistance.
5. In case applicable privacy legislation requires a Data Protection Impact Assessment (DPIA) or prior check of a regulatory body to be conducted before the intended processing under the Agreement may be carried out, then Castor shall provide the Client with assistance to the extent necessary and reasonable. Castor may charge reasonable costs for the aforementioned assistance.
6. Castor may process the personal data in countries within the European Union. Processing of personal data in countries outside the European Union is only allowed when the legal requirements for such processing have been fulfilled. Notwithstanding the aforementioned, Participant Data will be stored by Castor in the country chosen by Client. However, to be able to offer certain Modules, Castor may engage third parties or subcontractors that process Participant Data in other countries. In the event the Client

chooses to make use of these Modules, Castor is permitted to transfer the corresponding Participant Data to third countries, with due consideration of applicable laws. On request of the Client, Castor will inform the Client about which Modules result in the processing of Participant Data in countries outside of the country chosen by Client to store the Data.

7. Notwithstanding the previous paragraphs, Medical Research Data will exclusively be processed by Castor in the country chosen by the Client and otherwise in the Netherlands.
8. Within the framework of the Agreement, Castor is hereby authorized to engage third parties (sub-processors). On request of the Client, Castor shall inform the Client about which sub-processors are engaged by Castor. Castor shall inform the Client about any planned change in the used sub-processors, in which case the Client has the right to object to the proposed change in sub-processors. Such objection must be received by Castor in writing and within two weeks after the date on which Castor has informed Client about the proposed change in sub-processors. Furthermore, such objection must be supported by valid and reasonable arguments.
9. Should the Client object to such change, then the Parties will jointly endeavor to find a reasonable solution. If Parties cannot come to a solution, then Castor is allowed to make the planned change in the used sub-processors and the Client is allowed to terminate the Agreement on the date that Castor will actually make the change in the used sub-processors.
10. Castor will use its best efforts to inform the Client of a Personal Data Breach as soon as reasonably possible. If applicable laws so dictate, Castor will cooperate with the process of informing all relevant authorities and data subjects of the Personal Data Breach. However, the Client will remain responsible for reporting the Personal Data Breach in an appropriate and timely manner.

#### **Article 11. Security**

1. Castor will take appropriate technical and organizational measures with respect to the processing of the personal data against loss or against any form of unlawful processing (such as unauthorized disclosure, damage, alteration or transfer of personal data). These measures will provide a suitable level of protection, taking into account the state of technology, the costs of implementation, the risks associated with the processing and the nature of the information to be protected.
2. Where relevant, Castor will provide proof of any acquired (information security) certifications on request of the Client. Furthermore, Castor shall at least take the security measures as mentioned in its security statement, which is available at: <https://castoredc.com/security-statement/>. If additional or certain specific security measures or certifications are required in order to process the (personal) Data, then Client shall inform Castor hereof.
3. Parties acknowledge that technology is constantly improving, therefore Castor is allowed to change the technical and organizational measures (and its security statement) from time to time. Castor endeavors to only update the technical and organizational measures (and its security statement) for the better, taking into account article 11.1, innovations in the field of information security and the user experience. In the event of changes to the implemented technical and organizational measures, Castor will use its best efforts to update the aforementioned security statement as soon as possible.

#### **Article 12. Audits**

1. The Client has the right to have audits performed by an independent third party bound by confidentiality to check Castor's compliance with its obligations under this Agreement.
2. Such audits may only take place after:

- i. the Client has requested (from Castor) the similar audit reports from independent third parties that are already in Castor's possession; and
  - ii. the Client has reviewed the aforementioned audit reports and can still provide legitimate reasons to initiate an audit as mentioned in article 12.1.
3. An audit may only be undertaken once per calendar year. The Client shall inform Castor of the audit at least four weeks before the audit shall take place.
4. Castor shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible.
5. The costs of the audit, including the costs that Castor has to make to cooperate with the audit, shall be borne by the Client. After definition of audit scope, Castor can provide an estimate of the associated costs.
6. The findings further to the audit conducted are confidential and will be assessed by the Parties in mutual consultation and, following on from this, may or may not be implemented by one of the Parties or by both Parties together.

### **Article 13. Backups**

1. Castor will make a backup of the Data in Castor EDC and Castor SMS at least two (2) times per day. For Castor eConsent this will be done at least one (1) time per day. Upon request of the Client and in emergency situations, Castor is authorized and will use its best efforts to restore such backup. Restoring a backup on request of the Client may reasonably be subject to an additional fee, unless such restore is necessary because of an attributable failure by Castor.

### **Article 14. Liability**

1. Castor's liability for direct damages sustained by the Client as a result of an attributable failure on the part of Castor to comply with its obligations under the Agreement, or on any grounds whatsoever, per event or series of related events, is limited to an amount that is equal to the compensation (exclusive of VAT) paid by the Client to Castor during the twelve (12) months prior to the event that caused damage. In any event, Castor's liability towards Client will never surpass EUR 10.000,- per calendar year.
2. Liability on the part of Castor for indirect loss and consequential loss, such as: lost profits, lost savings, damage to or loss of company or other data, Data stored on Castor's equipment and damage resulting from business interruption, is excluded.
3. Any limitation of liability will not be applicable insofar the damages are a result of intentional misconduct or deliberate recklessness on the part of Castor's management.
4. Liability on the part of Castor for an attributable failure to comply with the Agreement only arises if the Client gives Castor proper notice of default in writing and without delay, while providing Castor a reasonable term to remedy the failure, and Castor remains in default as regards compliance with its obligations after that term as well.

### **Article 15. Force Majeure**

1. Neither party is obliged to comply with an obligation towards the other under the 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) (force majeure).
2. This includes a circumstance that is not attributable to fault and that is not for Castor's account pursuant to the law, a legal act or in common opinion. Force majeure includes in particular (but without limitation): domestic disturbances, mobilization, war, transportation blocks, strikes, network attacks such as SYN (synchronous) floods or

(distributed) denial of service attacks, ransomware attack, business interruptions, supply stagnation, fires, floods, import and export obstructions and in the event Castor's suppliers for any reason prevent it from being able to comply with the Agreement, which means that Castor cannot be expected to comply with the Agreement within reason.

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.
4. In the event Castor 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, Castor 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 16. Confidentiality**

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.
2. Information is considered confidential in any event if it has been designated as such by one of the parties.
3. Each party is entitled to share any confidential information with a third party requesting such information to the extent that the party under the relevant confidentiality 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.
4. The obligation to treat confidential information as confidential will not be applicable insofar the recipient of such information can prove that this information:
  - i. was obtained from sources available to the general public such as newspapers, patent databases or informative websites;
  - ii. was already in possession of the recipient prior to the date on which it was issued or made available by the other party;
  - iii. 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 17. Term of the Agreement**

1. The Agreement commences at the moment Castor 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.
2. The Agreement is concluded for the term that is needed to provide the Service(s). If the Agreement concerns a continuing performance contract, it will be concluded for an initial period of twelve (12) months unless otherwise agreed in writing. If Client keeps making use of the Service after the initial period, then the Agreement will keep being extended for three-month periods for as long as Client keeps making use of the Service.
3. The Agreement can only be terminated prematurely as provided for in these Terms or with the approval of both parties. Each party may terminate the Agreement with due observance of a notice period of one (1) month by the end of the initial or extended term of the Agreement.

4. Castor has the right to terminate the Agreement with immediate effect without being obliged to pay compensation in any way if:
  - i. 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;
  - ii. if the Client is declared bankrupt, applies for a suspension of payments or a general attachment is levied against the Client's assets and furthermore if Client goes into liquidation or is dissolved.

#### **Article 18. Amendments**

1. Castor has the right to change these Terms and/or the Agreement, provided it announces the proposed changes to the Client at least thirty (30) days in advance.
2. During the aforementioned 30-day period, the Client is entitled to object to the proposed changes. Should the Client object to the changes, Castor will reconsider and withdraw the changes if it considers the objection well-founded. If Castor does not receive any objections from the Client within the aforementioned term and Client keeps using the Service, then the changes are considered to be accepted by the Client.
3. However, if Castor 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. Changes of minor importance or changes resulting from new legislation can be implemented at any time, without the Client having the right to terminate the Agreement.

#### **Article 19. Miscellaneous**

1. The Agreement is governed by Dutch law. Unless the rules of mandatory law provide otherwise, all disputes that may arise pursuant to the Agreement will be submitted to the competent Dutch court in the Amsterdam court district.
2. During the term of the Agreement and for one (1) year thereafter, the Client shall not hire any employees of Castor, or have such employees work for them in any other way, directly or indirectly, without prior written consent of Castor.
3. The version of any communication received or stored by Castor serves as authentic and binding proof, subject to evidence to the contrary provided by Client.
4. Castor 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.
5. Castor is allowed to use Client's name, logo and the general agreement description as a reference, unless agreed otherwise in writing.
6. If any provision in the Agreement or in these Terms proves to be invalid or unenforceable, such will not impair the validity of the entire Agreement or these Terms. In such case, Castor is entitled to adopt (a) new provision(s) by way of replacement, which implement(s) the intention of the original provision as much as legally possible.

#### **Previously used versions**

Version 1.3 (English)  
Version 1.2 (English)  
Version 1.1 (English)  
Version 1.0 (Dutch)