



# GENERAL TERMS & CONDITIONS - Castor Research, Inc.

**Version:** 1.2

**Date:** September 2021

PLEASE READ CAREFULLY

**BY EXECUTING A SERVICE ORDER FORM AND USING THE HOSTED SERVICES, OR OPENING AN ACCOUNT YOU (THE CLIENT) AGREE TO BE BOUND BY THESE GENERAL TERMS AND CONDITIONS.**

Client understands, acknowledges and agrees that these **General Terms and Conditions** (“**Terms**”), which are incorporated by reference, and made a part of, any Service Order Form (as defined below), govern Client’s use of the Services (as defined below) provided by Castor Research, Inc. (“**Castor**”), a Delaware corporation located at 221 River St, 9th floor, Hoboken, NJ 07030, United States of America. By entering into a Service Order Form or by opening an Account (as defined below), Client represents and warrants that it has read and understood the following Terms and Client agrees to be bound by them and to comply with all applicable laws and regulations regarding Client’s use of the Services, and Client acknowledges that these Terms constitute a binding and enforceable legal contract between Client and Castor.

Please note that these Terms are specific to Clients who are located in the United States of America, Canada and Mexico, and therefore contract with Castor Research, Inc. Clients who are located in any other geographical area contract with Ciwit B.V. under its [general terms and conditions](#) which can be found on its website [castoredc.com](http://castoredc.com).

## 1. Definitions

The capitalized words in these Terms have the meaning set out below.

- “**Account**” means an account with the Services, enabling the Client, or an Authorized User to access and use the Services in connection with any Study or Studies conducted and processed using the Services.
- “**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.
- “**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.
- “**Affiliate**” means, with respect to Castor, any person or entity which directly or indirectly controls, is controlled by, or is under common control with Castor as of the date of these Terms, for as long as such



relationship remains in effect. For purposes of this definition, “control” means the direct or indirect ownership of at least 50% of the outstanding share capital or voting securities of Castor, or the right to control the policy decisions of Castor.

- “**Agreement**” means the Service Order Form and these Terms, which together form a binding and enforceable agreement between Client and Castor.
- “**Authorized User**” means Client (if the Client is an individual using the Services) or Client’s employees, consultants, contractors, and agents who are authorized by Client to access and use the Services under the rights granted to Client pursuant to these Terms.
- “**Client Data**” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Client, or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data, or content by or through the Services, including Participant Data and Medical Research Data. For the avoidance of doubt, Client Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Client or any Authorized User.
- “**Client Systems**” means the Client’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services. For the avoidance of doubt, Client Systems does not include Castor Materials.
- “**Castor Materials**” means the Services, Documentation, and Castor Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Castor or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Castor Systems. Castor Materials shall also include Resultant Data and any information, data, or other content derived from Castor’s monitoring of Client’s access to or use of the Services, but shall not include Client Data.
- “**Castor Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of Castor or any Subcontractor.
- “**Castor Systems**” means the information technology infrastructure used by or on behalf of Castor in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Castor or through the use of Third-Party services.
- “**Documentation**” means any manuals, instructions, or other documents or materials that Castor provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the Services or Castor Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.
- “**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Client or any Authorized User from accessing or using the Services or Castor



Systems as intended by these Terms.

- **“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- **“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.
- **“Losses”** means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- **“Medical Research Data”** means any Participant Data that may be considered Protected Health Information (“PHI”) as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
- **“Participant Data”** means any personal data of the participants of a Study (e.g., patients or subjects), which may be processed by Castor on behalf of the client in accordance with the relevant Business Associate Agreement (“BAA”) (if necessary).
- **“Permitted Use”** means any use of the Services by an Authorized User for the benefit of Client in the ordinary course of its internal business operations/purpose in accordance with these Terms.
- **“Personal Information”** means information that Client provides or for which Client provides access to Castor in accordance with these Terms that: (i) directly or indirectly identifies an individual (e.g., names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers).
- **“Process”** means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. **“Processing”** and **“Processed”** have correlative meanings.
- **“Representatives”** means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.
- **“Resultant Data”** means data and information related to Client’s use of the Services that is used by Castor in an aggregated and anonymized manner, including to compile statistical and performance



information related to the provision and operation of the Services.

- **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.
- **"Services"** means the Castor's offerings described in a Service Order Form issued under these Terms.
- **"Service Order Form"** means the document, whether entered into electronically via Castor's website portal, or via hard document, which sets forth the services, including Castor's software-as-a-service offerings.
- **"Study"** means the (clinical) study or studies conducted by the Client using the Services.
- **"Third-Party Materials"** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Castor.

## 2. Services

### 2.1 Access and Use

Subject to and conditioned on Client's and its Authorized Users' compliance with these Terms, and any Service Order Form issued hereunder, Castor hereby grants Client a non-exclusive, non-sublicensable, non-transferable right to access and use the Services during the Term (defined below), solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Client's internal use. Castor shall provide to Client the Access Credentials as of the Effective Date, or Client may otherwise choose its own Access Credentials as the case may be.

### 2.2 Accounts

In order to use and access the Service, Client must establish an account with Access Credentials, which shall be used only by an Authorized User. Client understands and acknowledges that Access Credentials are Confidential Information (as defined below), and Client shall maintain the confidentiality of the Access Credentials in accordance with these Terms. Client agrees: (a) that Client shall not authorize a third party to access the services via the Access Credentials or other means; (b) to immediately notify Castor of any actual or suspected unauthorized use of the Services and Access Credentials. Castor reserves the right to terminate, on notice to Client, any Access Credential that Castor reasonably determines may have been used by an unauthorized third party. Client shall be solely responsible for all access to and use of the Services by its Authorized Users, and all access and use of the Services through the Access Credentials, which result in a breach of these Terms.

### 2.3 Documentation License

Castor hereby grants to Client a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Client's internal business purposes in connection with its use of the Services.



## **2.4 Service and System Control**

Except as otherwise expressly provided in these Terms, as between the Parties: (a) Castor has and will retain sole ownership and control over the operation, provision, maintenance, and management of the Castor Materials; and (b) Client has and will retain sole ownership and control over the operation, maintenance, and management of, and all access to and use of, the Client Systems, and sole responsibility for all access to and use of the Castor Materials by any person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Castor; (ii) results obtained from any use of the Services or Castor Materials; and (iii) conclusions, decisions, or actions based on such use.

## **2.5 Reservation of Rights**

Nothing in these Terms grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Castor Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Castor Materials, and the Third-Party Materials are and will remain with Castor and the respective rights holders in the Third-Party Materials.

## **2.6 Changes**

Castor reserves the right, in its sole discretion, to make any changes to the Services and Castor Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of the Services to its Clients; (ii) the competitive strength of or market for Castor's Services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such requested changes in accordance with an agreed upon change procedure. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties.

## **2.7 Subcontractors**

Castor may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

## **2.8 Suspension or Termination of Services**

Castor may, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other person's access to or use of all or any part of the Services or Castor Materials, without incurring any resulting obligation or liability, if: (a) Castor receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Castor to do so; or (b) Castor believes, in its sole discretion, that: (i) Client or any Authorized User has failed to comply with these Terms, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under these Terms or in any



manner that does not comply with any material instruction or requirement of any Service Order Form; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) the Agreement expires or is terminated. This Section does not limit any of Castor's other rights or remedies, whether at law, in equity, or under these Terms.

## 3. Restrictions

### 3.1 Use Restrictions

Client shall not, and shall not permit any other person to access or use the Services or Castor Materials except as expressly permitted by these Terms and, in the case of Third-Party Materials, the applicable third-party license agreement. Without limiting the generality of the foregoing, Client shall not: (a) copy, modify, or create derivative works or improvements of the Services or Castor Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Castor Materials to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Castor Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services or Castor Materials or access or use the Services or Castor Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit, or otherwise provide to or through the Services or Castor Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Castor Systems, or Castor's provision of services to any third party, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Castor Materials, including any copy thereof; (h) access or use the Services or Castor Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; (i) access or use the Services or Castor Materials for purposes of competitive analysis of the Services or Castor Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Castor's detriment or commercial disadvantage; or (j) otherwise access or use the Services or Castor's Materials beyond the scope of the authorization granted under the Agreement.

## 4. Client Obligations

### 4.1 Client Systems and Cooperation

Client shall at all times during the Term: (a) set up, maintain, and operate in good repair and all Client Systems on or through which the Services are accessed or used; (b) provide Castor Personnel with such access to Client Systems as is necessary for Castor to perform the Services in accordance with a relevant Service Order Form; and (c) provide all cooperation and assistance as Castor may reasonably request to enable Castor to exercise its rights and perform its obligations under and in connection with the Agreement.



#### 4.2 Effect of Client Failure or Delay

Castor is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under the Agreement (each, a "**Client Failure**").

#### 4.3 Corrective Action and Notice

If Client becomes aware of any actual or threatened activity prohibited by Section 3.1 of these Terms, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Castor Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Castor of any such actual or threatened activity.

#### 4.4 Client Control and Responsibility

Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services ("**Client Systems**"); (d) the security and use of Client's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Castor Materials directly or indirectly by or through the Client Systems or its or its Authorized Users' Access Credentials, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use. 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.

#### 4.5 Access and Security

Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Client Data, including the uploading or other provision of Client Data for Processing by the Services.

#### 4.6 Information and changes

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.





## 5. Service Levels & Support

### 5.1 Service Levels

CRI will use commercially reasonable efforts to provide the Services, taking into account the following specific service levels for the Castor EDC, Castor SMS, Castor eConsent Service and Castor Connect as indicated on Castor's website ([www.castoredc.com/sla](http://www.castoredc.com/sla)).

### 5.2 Access and Security

The Services do not replace the need for Client to maintain regular data backups or redundant data archives. **CASTOR HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CLIENT DATA.**

### 5.3 Study building and maintenance services

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 amendment.

### 5.4 Backups

Castor will make a backup of the Data in Castor EDC, Castor SMS and Castor Connect 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.

## 6. FEES

### 6.1 Fees

Client shall pay Castor the fees set forth in the Service Order Form in accordance with this Section 6. All Fees and other amounts payable by Client under the Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Castor's income. Client shall pay all Fees within thirty (30) days after the date of the invoice therefore. Client shall make all payments hereunder in US dollars by in accordance with the method set forth in the Service Order Form and/or





Castor's invoice. If so instructed by Castor, Client will pay the due Fees to an Affiliate of Castor. Once per calendar year, Castor has the right to change 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 U.S. Department of Labor, during the previous twelve (12) month period.

## **6.2 Commercial or funded Studies**

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.

## **6.3 Late Payment**

If Client fails to make any payment when due then, in addition to all other remedies that may be available to Castor: (a) Castor may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) Client shall reimburse Castor for all reasonable costs incurred by Castor in collecting any late payments or interest, including attorneys' fees and court costs; and (c) if such failure continues for twenty (20) days following written notice thereof, Castor may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other person by reason of such suspension.

## **6.4 No Deductions or Setoffs**

All amounts payable to Castor under the Agreement shall be paid by Client to Castor in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason other than any deduction or withholding of tax as may be required by applicable Law.



## 7. Confidentiality

### 7.1 Confidentiality

For the purposes of these Terms "**Confidential Information**" means any and all information disclosed, provided or made accessible by, or on behalf of, one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") and/or any of its key persons, whether in writing, orally or in any other form which is not in the public domain, or regarding past, present, or future marketing and business plans, technical, financial or other proprietary or confidential information of the Disclosing Party, or which, given the nature of the information or material, or the circumstances surrounding the disclosure or provision, reasonably should be understood to be confidential or proprietary, as well as improvements, derivatives, upgrades, updates, and know-how related thereto. Confidential Information does not include information that: (i) is already or becomes generally known or available to the general public through no act or omission by the Receiving Party in breach of these Terms; (ii) is already known to the Receiving Party at the time of disclosure without breaching any confidentiality obligation, as such may be evidenced in the Receiving Party's written records; (iii) is rightfully disclosed to the Receiving Party by a third party, who is not, to the knowledge of the Receiving Party, in breach of an obligation of confidentiality; and/or (iv) is independently developed by the Receiving Party without use of, reference to, any of the Confidential Information of the Disclosing Party, as such may be evidenced in the Receiving Party's written records. If Confidential Information is to be released and disclosed pursuant to a binding order of a government agency or a court, then the Receiving Party shall: (a) if legally permissible, notify the Disclosing Party of such release or disclosure order with as much notice as reasonably possible so that the other Party may seek a protective order or other appropriate remedy; and (b) use reasonable efforts to limit such release or disclosure only to the extent required. Such lawful disclosure of Confidential Information to a government agency or court does not in any way limit the Receiving Party's responsibility to keep the Confidential Information confidential in relation to any other parties. Neither Party shall disclose any Confidential Information to any third party; provided, however, that a Party may disclose Confidential Information to its employees, agents and/or independent contractors to whom disclosure is reasonably required provided that such individuals and entities have agreed to keep such information confidential in the same or a substantially similar manner as provided for in these Terms. Each Party will take reasonable security precautions to protect and safeguard the Confidential Information against any unauthorized use, disclosure, transfer or publication, with at least the same degree of care and precaution as it uses to protect its own Confidential Information of a similar nature, but in no event with less than reasonable care. Either Party shall notify the other Party upon discovery of any unauthorized use or disclosure of the Confidential Information and shall take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of these Terms. The Parties agree that in the event of a breach of this Section 7, substantial injury could result to either Party, and money damages may not be a sufficient remedy for such breach. Therefore, in the event that a Party engages in, or threatens to engage in any act which violates any provision in these Terms, the Parties agree that the non-breaching Party shall have no adequate remedy in money or damages and, accordingly, shall be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions), and specific enforcement of these Terms. The non-breaching Party shall not be required to post a bond or other security in connection with the granting of any such relief. The provisions of this Section 7.1 shall survive expiration or other termination of the Agreement.



## 8. Intellectual Property Rights

### 8.1 Castor Materials

All right, title, and interest in and to the Castor Materials, including all Intellectual Property Rights therein, are and will remain with Castor and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Client has no right, license, or authorization with respect to any of the Castor Materials except as expressly set forth in Section 2.1 of these Terms, or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Castor Materials are expressly reserved by Castor. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Castor an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

### 8.2 Client data

As between Client and Castor, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 8.3 of these Terms.

### 8.3 Consent to Use Client Data

Client hereby irrevocably grants all such rights and permissions in or relating to Client Data and Resultant Data as are necessary or useful to Castor, its Subcontractors, and the Castor Personnel to enforce the Agreement and exercise Castor's, its Subcontractors', and the Castor Personnel's rights and perform Castor's, its Subcontractors', and the Castor Personnel's obligations hereunder. The Client Data and Resultant Data may be used by Castor in order to provide support with regard to its Services, provide recommendations regarding its Services and improve its Services.

## 9. Responsible Data Handling & Privacy

### 9.1 Responsible Data Handling

Each Party represents and warrants that it will comply with all applicable laws, rules, regulations, directives and guidelines regarding the collection, use and disclosure of Participant Data, Protected Health Information ("PHI"), and other Medical Research Data, which apply to the Services utilized hereunder (collectively, the "Rules"). The term "Rules" shall include, without limitation, (a) all United States Federal Trade Commission rules and guidelines regarding the collection, use and disclosure of data; and (b) all United States federal and state laws regarding data collection and data privacy, including HIPAA.



## 9.2 Data Security

The Parties shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of Client Data and Castor Materials. Without limiting the generality of the preceding sentence, the Parties shall maintain, implement, and comply with a written data security program that requires commercially reasonable policies and procedures to ensure a reasonable and suitable level of data protection. An overview of Castor's security can be found on Castor's website: <https://castoredc.com/security-statement/>. Parties acknowledge that technology is constantly changing, therefore Castor is allowed to change and update its security measures from time to time. Castor endeavors to only update its security measures for the better, taking into account best practices, innovations in the field of information security and the user experience.

## 9.3 Audits

Client is entitled to have audits performed by an independent third party bound by confidentiality to check Castor's compliance with its obligations under this Agreement. Such audits may only take place after: (i) the Client has requested (from Castor) an audit certificate that are already in Castor's possession, and (ii) the Client has reviewed the aforementioned audit certificates and can still provide legitimate reasons to initiate an audit as mentioned in the first sentence of this paragraph. An audit initiated by Client may only be undertaken once per calendar year. If Client wishes to exercise its right to have an audit performed, then the Parties will in good faith agree to a date on which the audit may be performed. The costs of such audit, including the costs that Castor has to make to cooperate with the audit, shall be borne by the Client. Any report or other results generated through the audit will be Confidential Information pursuant to Section 7 (Confidentiality). The Parties shall exercise reasonable efforts promptly to address identified deficiencies in the data protection features.

## 9.4 Archiving inactive studies

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 on the Services over the course of one (1) year. Archived Studies will still show up in Client's list of Studies within the Service. 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.

## 9.5 Accessing completed studies

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).

# 10. Representations and Warranties

## 10.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other



organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under the Agreement; (c) the execution of the Agreement by its representative whose signature is set forth in the Service Order Form has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, the Service Order Form (to which these Terms apply) will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

## **10.2 Additional Castor Representations, Warranties, and Covenants**

Castor represents, warrants, and covenants to Client that Castor will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under the Agreement.

## **10.3 Additional Client Representations, Warranties, and Covenants**

Client represents, warrants, and covenants to Castor that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Castor and Processed in accordance with the Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

## **10.4 DISCLAIMER OF WARRANTIES**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2, ALL SERVICES AND CASTOR MATERIALS ARE PROVIDED "AS IS." CASTOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CASTOR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR CASTOR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

# **11. Indemnification**

## **11.1 Castor Indemnification**

Castor shall indemnify, defend, and hold harmless Client and Client's officers, directors, employees, agents, successors, and assigns (each, a "**Client Indemnitee**") from and against any and all Losses incurred by Client/Client Indemnitee resulting from any Action by a third party (other than an Affiliate of Client that



Client's or an Authorized User's use of the Services (excluding Client Data and Third-Party Materials) in accordance with these Terms) infringes or misappropriates such third party's Intellectual Property Rights/US patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Third-Party Materials or Client Data; (b) access to or use of the Castor Materials in combination with any hardware, system, software, network, or other materials or service not provided by Castor or specified for Client's use in the Documentation; (c) modification of the Castor Materials other than: (i) by or on behalf of Castor; or (ii) with Castor's written approval in accordance with Castor's written specification; (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of Castor; or (e) act, omission, or other matter described in Section 11.2(a), Section 11.2(b), Section 11.2(c), or Section 11.2(d), whether or not the same results in any Action against or Losses by any Castor Indemnitee.

### 11.2 Client Indemnification

Client shall indemnify, defend, and hold harmless Castor and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Castor Indemnitee**") from and against any and all Losses incurred by such Castor Indemnitee resulting from any Action by a third party (other than an Affiliate of a Castor Indemnitee) to the extent that such Losses arise out of or result from, or are alleged to arise out of or result from: (a) Client Data, including any Processing of Client Data by or on behalf of Castor in accordance with the Agreement; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including Castor's compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by Castor; (c) allegation of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants, or obligations under the Agreement; or (d) gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with the Agreement.

### 11.3 Indemnification Procedure

Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.



## **11.4 Mitigation**

If any of the Services or Castor Materials are, or in Castor's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client's or any Authorized User's use of the Services or Castor Materials is enjoined or threatened to be enjoined, Castor may, at its option and sole cost and expense: (a) obtain the right for Client to continue to use the Services and Castor Materials as contemplated by the Agreement; (b) modify or replace the Services and Castor Materials, in whole or in part, to seek to make the Services and Castor Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Castor Materials, as applicable, under the Agreement; or (c) by written notice to Client, terminate the Agreement with respect to all or part of the Services and Castor Materials, and require Client to immediately cease any use of the Services and Castor Materials.

## **11.5 Sole Remedy**

THIS SECTION 11 SETS FORTH CLIENT'S SOLE REMEDIES AND CASTOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND CASTOR MATERIALS OR ANY SUBJECT MATTER OF THE AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

# **12. Limitation of Liability**

## **12.1 EXCLUSION OF DAMAGES**

EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL CASTOR OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **12.2 CAP ON MONETARY LIABILITY**

EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF CASTOR AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED





THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO CASTOR UNDER THE AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### 12.3 Exceptions

The exclusions and limitations in Section 12.1 and Section 12.2 do not apply to Castor's obligations under Section 11 or liability for Castor's gross negligence or willful misconduct.

## 13. Term & Termination

### 13.1 Term

The term of the Agreement commences upon the date set forth in the relevant Service Order Form and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for twelve (12) months thereafter such date (the "**Initial Term**"). If, after this Initial Term or a Renewal Term, the Client still uses the Services, the Agreement shall automatically renew for successive one (1) month periods, unless earlier terminated pursuant to the Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, with the Initial Term, the "**Term**").

### 13.2 Termination

In addition to any other express termination right set forth elsewhere in the Agreement: (a) Castor may terminate the Agreement, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Castor's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1 (Use Restrictions) or Section 7 (Confidentiality); (b) either Party may terminate the Agreement, effective on written notice to the other Party, if the other Party materially breaches the Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and (c) either Party may terminate the Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

### 13.3 Effect of Termination or Expiration

Upon any expiration or termination of the Agreement, except as expressly otherwise provided in the Agreement all rights, licenses, consents, and authorizations granted by Castor to the Client hereunder will immediately terminate, taking into account the following (not applicable for Castor eConsent, please contact



your account manager for more information):

- (a) Client and Castor shall in good faith discuss what must be done with the Client Data stored within the Castor EDC, Castor SMS and Castor Connect. Client may export its Client Data using the tools available in the Services. Client may at any time and free of charge, export the Client Data using Castor EDC's exporting tool in Excel (only export option available for Castor SMS), CSV or SPSS format for Client 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 Data by delivering the study structure including metadata, study data and audit trail of all Client's Studies.
- (b) If so instructed by Client, Castor shall erase the Client Data from the Services (excluding backups, archives, and disaster recovery systems until such data is deleted in the ordinary course of business).
- (c) If Castor does not receive instructions from Client, then Castor may retain and/or archive the Client 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 Client Data after having informed Client via email about Castor's intention to delete the Client 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.

## 13.4 Surviving Terms

The provisions set forth in the following sections, and any other right or obligation of the Parties in these Terms that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: Section 3.1 (Use Restrictions), Section 7 (Confidentiality), Section 10.4 (Disclaimer of Warranties), Section 11 (Indemnification), Section 12 (Limitation of Liability), Section 13.3 (Effect of Termination), this Section 13.4 (Surviving Terms), and Section 14 (General Provisions).

# 14. General Provisions

## 14.1 Headings

The section headings used in these Terms are intended for reference purposes only and shall not affect the interpretation of these Terms.

## 14.2 Counterparts

The Agreement may be executed in counterparts (which may be exchanged via electronic mail, PDF, and/or facsimile), each of which shall be deemed an original, but which together shall constitute one and the same instrument.



### **14.3 Waiver**

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under the Agreement shall operate as a waiver thereof.

### **14.4 Further Assurances**

On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to the Agreement.

### **14.5 Remedies**

Not Exclusive. Except as expressly set forth herein, no remedy hereunder is intended to be exclusive of any other remedy available hereunder or at law or in equity.

### **14.6 Severability**

If any provision of the Agreement is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall apply only to such provision. The illegality, invalidity, or unenforceability of such provision shall not in any manner affect or render illegal, invalid or unenforceable any other provision of the Agreement, and that provision, and the Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the Parties as expressed in the Agreement. The fact that any provision of the Agreement is held to be illegal, invalid or unenforceable in a particular jurisdiction shall have no effect upon the legality, validity, or enforceability of such provision in any other jurisdiction.

### **14.7 Non-Exclusivity**

The Agreement is non-exclusive.

### **14.8 No Strict Construction**

If an ambiguity or question arises with respect to any provision of the Agreement, the Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of the Agreement.



#### **14.9 Assignment**

Neither the Agreement, any Exhibit or any rights or licenses granted hereunder may be assigned, delegated or subcontracted by Client without the prior written consent of Castor, and any attempt to assign any rights, duties or obligations which arise under the Agreement without such consent shall be null and void *ab initio*. The Agreement will be binding upon and will inure to the benefit of the Parties and their respective permitted successors and assignees. Notwithstanding the foregoing, a Party may assign its rights, duties or obligations under the Agreement without the consent of the other Party in the event of a merger, acquisition or other change in control of its ownership.

#### **14.10 Independent Contractor Relationship**

The Parties are independent contractors and the Agreement does not create an agency, partnership, or joint venture relationship between the Parties. Each Party has sole responsibility for its activities and its personnel, and shall have no authority and shall not represent to any third party that it has the authority to bind or otherwise obligate the other Party in any manner.

#### **14.11 Force Majeure**

Neither Party shall be liable for any failure or delay in the performance of any of their respective obligations if prevented from doing so by a Force Majeure Event. "Force Majeure Event" means (i) floods, earthquakes, or other similar elements of nature or acts of God; (ii) riots, civil disorders, rebellions or revolutions in any country; (iii) network attacks such as SYN (synchronous) floods or (distributed) denial of service attacks, ransomware attack, business interruptions, supply stagnation, in the event Castor's suppliers for any reason prevent it from being able to comply with the Agreement or (iv) any other cause beyond the reasonable control of the non-performing Party, provided the non-performing Party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing Party through the reasonable use of alternate sources, workaround plans or other reasonable precautions.

#### **14.12 Notices**

All notices and other communications required or permitted to be given to a Party pursuant to the Agreement shall be in writing, and shall be deemed duly given (i) on the date delivered if personally delivered; or (ii) on the business day after being sent by Federal Express or another recognized overnight courier service which utilizes a written form of receipt for next day or next business day delivery in each case addressed to the applicable Party at the address set forth on the Service Order Form; provided that a Party hereto may change its address for receiving notice by the proper giving of notice hereunder. A copy of any notice to Castor shall be sent to Rosenberg Fortuna & Laitman, LLP, attention: Arthur S. Laitman, Esq., 666 Old Country Road, Suite 810, Garden City, New York, 11530, facsimile: (516) 228-6672.



#### **14.13 Governing Law/Jurisdiction/Venue/Legal Fees**

The Agreement, and all matters arising directly or indirectly from the Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws rules applicable to contracts to be performed entirely within the State of New York. For all such matters, each Party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the County of New York, State of New York and waives any jurisdictional, venue, or inconvenient forum objections to such courts. The prevailing Party in any litigation shall be entitled to recovery of its reasonable attorneys' fees from the other Party in addition to any other award of damages from the court.

#### **14.14 Changes**

Castor is entitled to change these Terms and/or the Agreement at any time, provided that Castor informs the Client of such changes at least thirty (30) days in advance. 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. 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.

#### **14.15 Entire Agreement**

The Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all existing or prior agreements and communications, whether written or oral, relating to the subject matter hereof.