



2022

CIRMAR

# Online conditions



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## DEFINITIONS

### Article 1

The following definitions are defined as follows in the Cirmar contract and Cirmar Online Conditions:

- a) *(Additional) Order*: the purchase of products, modules, change of (the number) (read-only) Users (named users)/ licenses and similar after the Cirmar contract is in force;
- b) *Confidential Information*: the confidential information regarding Customer or Cirmar, including
  - (a) written information marked as "confidential",
  - (b) information not generally known to the public,
  - (c) information not made generally known by the party to whom it relates and/or from whom the information originates, and
  - (d) information whereof the confidential character is reasonably known;
- c) *Consultancy services*: in line with the Cirmar products to Customer provided Consultancy services by Cirmar as part of the Cirmar contract;
- d) *Customer*: the natural person or legal entity who signed a Cirmar Contract with Cirmar;
- e) *Customer data*: all data the Customer enters in the Web Application or are being entered in the Web Application on behalf of the Customer;
- h) *Imperfection*: all failures in the Web Application that impede the functioning thereof significantly, as described in the Documentation. The absence of given functionality in a new version of the Web Application that was present in a previous version is not marked as an Imperfection;
- i) *Documentation*: the (electronic) documentation of Cirmar as part of the Web Application;
- j) *Employee*: an employee of the Customer or Cirmar and/or a natural person or legal entity authorized to conduct activities for or under the responsibility of Customer or Cirmar;
- k) *Cirmar*: Cirmar who shall act as supplier of services under the Cirmar contract;
- l) *Cirmar Contract*: the contract determined between Cirmar and Customer regarding the Cirmar products and services, including these Cirmar Online Conditions.



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- m) *Cirmar Service(s)*: the services to be provided by Cirmar, as further described in the Cirmar Contract;
- n) *Cirmar Online Conditions*: these Cirmar Online Conditions;
- o) *Login Data*: User (named users) names, passwords, tokens and other codes intended exclusively for the User to obtain access to the Web Application;
- p) *Login Procedure*: the procedure prescribed by Cirmar to be followed by Customer to obtain access to the Web Application;
- q) *Privacy policy*: the privacy policy of Cirmar applicable to the processing by Cirmar of personal data of Customer, that can be unique for each geographic region;
- r) *Subsidiary*: a subsidiary in the meaning of article 24a of Boek 2 of the Dutch civil code ("BW"), or another legal entity in which Cirmar or Customer have an interest of more than 50% of either the share capital, either have voting rights in a general meeting, or have another majority of shares.
- s) *System requirements*: if applicable: the minimal demands set by Cirmar to the hardware and software of the Customer to be able to properly use the Cirmar Services and Cirmar Products;
- t) *Components from third parties*: a software (-component), collection of components, or an API-interface to a callable library (for example a .dll interface), developed by a third party and used by Cirmar in the software for the Web Application.
- u) *Services from third parties*: a third party developed service made possible by a connection between the Web Application and the website or application of a third party.
- v) *User*: Customer, Employee of Customer using the Cirmar Service; at all times a so-called named user;
- w) *Web Application*: the software to which Cirmar provides access to Customer for use in accordance with the provisions in the Cirmar Contract;
- x) *Website*: the website of Cirmar;
- y) *Working days*: Monday to Friday, except for official holidays.



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## **OFFER AND CONTRACT**

### Article 2

2.1 These Cirmar Online Conditions are applicable to the Cirmar Contract and to all negotiations, offers and other contracts with Cirmar regarding products and services of Cirmar, unless parties explicitly agreed otherwise in writing. Where these Cirmar Online Conditions refer to the Cirmar contract this applies as a reference to the Cirmar contract including these Cirmar Online Conditions, unless explicitly stated otherwise.

2.2 Cirmar retains the right to, at their own discretion, update the Cirmar Online Conditions from time to time. Via the Website or another manner Cirmar will provide reasonable prior notification before the updated Cirmar Online Conditions enter into force. Cirmar can partially or totally change or stop the delivery of the products and services of Cirmar. In case the Customer does not agree with the proposed changes, Customer can terminate the Cirmar Contract in accordance with article 5.2. In the absence of a termination Customer is supposed to have accepted the changed Cirmar Online Conditions.

2.3 All offers and quotations regarding the services of Cirmar are free of obligation and revocable.

2.4 Customer can place an Order or Additional Order for products and services of Cirmar, in the by Cirmar specified manner. Every order or Additional Order is subject to acceptance by Cirmar. Cirmar can, at their own discretion, accept or refuse an order or Additional Order. The Cirmar contract enters into force (the "Start date") on the date on which Cirmar sends Customer, respectively places in the application, a confirmation of the order or Additional Order.

2.5 Customer accepts the responsibility for the choice of the products and services of Cirmar to achieve her intended results and acknowledges that the products and services are not developed to specifically fulfill all points of the individual demands of Customer.

2.6 All delivery terms are determined by Cirmar with the best possible knowledge and will be honored as far as possible. As far as maximal permitted under applicable law to parties to determine this in the Cirmar Online Conditions, Customer is not entitled to compensation, refund, or discount because of a late delivery. Unless specific agreements are made with customer for a.o. customer-oriented continued development of Cirmar products, additional agreements will be made.

2.7 Every request of Customer to change the number of Users (named users) and/or products/modules will be seen as an Additional Order applying Article 2.4. As far as Customer requests some reduction, Customer will explicitly indicate which specific Users (named users) and/or products/modules must be removed. If Customer does not meet



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this obligation for specification, Customer will have to pay the fee for these Users (named users) and products/modules.

## **RIGHT OF USE**

### Article 3

3.1 When the Cirmar Contract enters into force Cirmar provides Customer a non-exclusive and non-transferable right to use the Web Application during the duration of the Cirmar contract for the internal operation of Customer, for the number of Users (named users), modules and products as are included in the Cirmar Contract, as well as for possible Additional Orders placed during the duration of the Cirmar contract. The right of use also entails the right to use the Documentation belonging to the Web Application.

3.2 Customer will not permit the Web Application to be used by or for any other (legal) person than Customer and her Employees, with exception of a Subsidiary. Customer is not allowed to relicense or sublicense the Web Application or use the Web Application for training from third parties, commercial (parttime) use, rental or use by a service bureau.

3.3 Customer is explicitly not permitted to use the Web Application for or by more Users (named users) dan the number specified in the Cirmar Contract.

3.4 Customer is not permitted to transfer rights or obligations arising from the Cirmar contract or the Cirmar Online Conditions to third parties as far as not explicitly permitted in the Cirmar Contract. Customer will not sell and/or rent the Cirmar Services to other parties without the prior written permission of Cirmar.

3.5 As far as not in conflict with any mandatory provision, Cirmar can, at their own discretion, adjust in the Web Application. Cirmar will inform Customer timely about updates and/or upgrades as far as these are of importance for the use of the Web Application.

3.6 Customer acknowledges and agrees the Web Application can include Components and Services from third parties – as described below in Article 16.1 and 16.2 – on which additional license conditions can be applicable that impose restrictions, if applicable, in export, import and access. By accepting these Cirmar Online Conditions, Customer commits to fully meet all relevant law- and regulations in this area applicable to the use of the products and services of Cirmar in the geographic region of Customer (“Export Laws”), as but not limited to the Export Administration Regulations(EARs) issued by the Bureau of Industry & Security of the American Ministry of Handel and to guarantee that nor Customer nor any allowed User is given access to the products and services of Cirmar in a manner that results in

(a) an export, directly or indirectly, infringing the Export Laws; or



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(b) use for a goal forbidden by the Export Laws, including but not limited to, the development of nuclear, chemical, or biological weapons. Customer declares and guarantees that nor Customer nor the allowed User is an excluded (legal)person with restrictions based on the Consolidated Screening List (CSL) of the American government, an excluded party under the US Arms Export Control Act (AECA), or a restricted (legal)person or entity under the list of Specifically Designated Nationals or Blocked Persons (the "SDN list") of the American Office or Foreign Assets Control (OFAC).

3.7 Customer is not allowed to make the Software public and to copy or otherwise multiply or change it, except for as far as this is necessary for the use that is explicitly permitted in this Contract, or for error correction in the Software.

3.8 Notwithstanding her other rights under the law of the Contract, Cirmar retains the right to suspend her obligations against Customer or to terminate the Contract if Customer acts or is reasonably suspected to act in breach of this article, without Cirmar being held to any compensation.

## **PRICES AND PAYMENT**

### Article 4

4.1 All prices applied by Cirmar, honoraria and other fees by are exclusive of VAT and exclusive of possible other taxes, charges, import levies, surcharges, fees and charges of any nature, now or in the future, that can be imposed by a government agency, tax authority or other authority, and that can be adjusted intermediate in accordance with the applicable changes to these charges or from the government, the tax authority or otherwise. Payments needs to be settled fully, free of and without deductions of or due to similar taxes, charges, import levies, surcharges, fees, and deductions, unless mandatory by law. If Customer is obliged by law to deduction, he will pay Cirmar the additional amounts necessary to ensure that Cirmar receives the full amount that Cirmar would have received in absence of the deduction. Payment of similar deductions to the authorities are the responsibility of Customer.

4.2 Customer owes Cirmar a fee under the Cirmar Contract and the current purchased products and services. Regardless of Customer using the products and services of Cirmar, the fee is due from the Start date of the purchase of the products and services, in accordance with article 2.4 of this Contract. All payable fees under this Contract are regardless of applicable fees for Consultancy services, that will be invoiced separately. Unless agreed otherwise Customer is invoiced from the moment of actual confirmation and processing of any Order and as included in the application in the account overview of Customer, during the duration of the Cirmar contract in proportion to the number of purchased products and services in the period.



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4.3 Cirmar can adjust the fees referred to in this article 4 annually. Where possible Cirmar will inform Customer one month prior to the start date of the rate change about an amendment of the fees via the Cirmar Website. In case that rate change leads to higher fees and Customer does not agree with the proposed amendment, Customer can terminate the Cirmar contract in accordance with article 5.2, in the absence of which Customer is supposed to have accepted the adjusted fees.

4.4 Fees for the products and services of Cirmar products will be paid monthly in arrears, unless individually agreed otherwise. Invoicing and payment take place based on the actual number of products and services registered for and by Customer in the application in the corresponding month. At the time of reduction of the number of products and services or full termination of the Cirmar Contract each remainder of the original amount not yet settled by Customer becomes immediately claimable by Cirmar. Cirmar has a payment term of 14 days.

4.5 As far as Cirmar offers a specific payment method to Customer and Customer accepts this as manner of payment of his financial obligations under the Cirmar contract, Customer acknowledges and agrees to possible additional conditions of Cirmar applicable to this payment method. Customer acknowledges and agrees that in case Cirmar uses the services of a third party for offering a payment method, the conditions from third parties can be applicable to Customer for his use of this payment method. Customer is advised to thoroughly read and agree to these additional conditions of Cirmar and/or a third party before using a payment method.

4.6 If Customer has chosen payment via direct debit Customer is responsible for providing Cirmar the proper authorization. Unless explicitly agreed otherwise direct debits will be done annually. In case a direct debit is not possible, the invoiced amount must be settled at the latest within 21 days after invoice date. Unless agreed otherwise in the contract.

4.7 If Customer has chosen payment via direct debit Customer must have a bank account at an (international) bank, registered at the local central bank.

4.8 Customer will provide Cirmar all information and cooperation, including the right name, current address, and payment data, and will communicate any change in these data immediately via mail to Cirmar. The e-mail address is: [finance@cirmar.com](mailto:finance@cirmar.com).

4.9 If Customer does not pay the fees when these are payable, or cancels the direct debit authorization without due cause, or if the payment cannot be done due to reasons not imputable to Cirmar, Cirmar will inform Customer thereof, whereby Cirmar reserves the right to limit the functionality of the Web Application or to block the access of Customer to the Web Application without liability towards Customer. At request of Customer Cirmar can cancel the restriction or blocked access to the Web Application within three (3) months when the outstanding amounts, plus an extra fee in accordance with article 4.10, are fully settled.



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4.10 If Customer does not (timely) meet his payment obligations from article 4 he is in default without a further notice of default being required. As soon as he is in default interest is payable over the outstanding overdue amount at a rate of 1,5% per month (or part of the month). This interest accelerates from the at the latest day of payment until the date on which payment of the due amount plus the accrued interest is fully settled.

4.11 Customer is liable against Cirmar for all costs, expenses and (financial) damage, including but not limited to legal fees and collection costs, made by Cirmar because Customer does not meet his payment obligations. The Cirmar (collection)costs made by Cirmar will be determined at at least 15% of the principal sum of the claim.

4.12 Except for the provisions of article 4, Cirmar is authorized if the in article 5.4 intended cases occur, or if Customer does not pay the payable amounts after Cirmar has followed the procedure described in article 4.9, to immediately require advance payment of Customer till the end of the intended duration of the Cirmar contract. These total fees are immediately claimable.

## **DURATION AND END OF THE CONTRACT**

### Article 5

5.1 The Cirmar contract starts as soon as the conditions of article 2.4 of these Cirmar Online Conditions are met (the Start date) and is entered upon for unlimited time with the possibility to change the scope at any time in (number of products and services) or to terminate the contract.

5.2 Customer can change the scope of the the Cirmar Contract at any time or terminate the contract, by changing the number of products and services included by Customer in the application, in compliance with the provisions in article 4 of these Conditions.

5.3 Notwithstanding her other rights Cirmar can suspend her obligations under the Cirmar Contract without liability and/or block Customers access to the Cirmar Services with immediate effect in case Customer does not (properly) meet his obligations from the Cirmar Contract.

5.4 Cirmar can end the Cirmar Contract without further liability at any time with immediate effect and terminate without legal intervention by means of (electronic) notification to Customer, if Customer:

- a) does not (properly) meet one of his obligations under the Cirmar contract and, after written notification by Cirmar, does not restore this negligence or non-compliance within a reasonable term after that notification; or
- b) requests bankruptcy or is requested bankruptcy upon, which request is not withdrawn within 30 days, a curator is designated to manage his assets or





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business, informs Cirmar to not be able anymore to meet his payment obligations or if Cirmar has to conclude from the circumstances that Customer can no longer meet his payment obligations, is being terminated, is granted suspension of payment, is being liquidated or discontinues his activities as a going concern.

5.5 Except for any deviating provision in the Cirmar Contract the termination of the Cirmar contract does not dismiss Customer of existing obligations for payment of fees or other payable amounts, nor does this give Customer the right to a refund of fees or other consequently paid amounts. Cirmar is in no way obliged to payment or compensation because of termination as described in article 5.1, 5.3 and 5.4.

5.6 In case of termination of the Cirmar Contract Customer can download all his Customer data until the last day of the Cirmar contract. After termination of the Cirmar Contract Customer will immediately and permanently stop the use of the Web Application and has no longer access to the Web Application and his data.

5.7 After the termination of the Cirmar contract by Cirmar, as described in article 5.3, 5.4 and 5.5., Customer can request Cirmar up to 3 months after the termination to reactivate the Cirmar contract. Cirmar is not obliged to meet this request if Cirmar has not received proper payment of Customer in accordance with article 4.9 and 4.10, and each reactivation enters into force only when the first payment of an applicable reactivation fee is received. After reactivation Customer has insight into his Customer data in the Web Application as saved before the termination by Customer, if and when these Customer data are still easily available at Cirmar and can be provided to Customer. As part of this article 5.7, Customer hereby grants Cirmar permission to (i) save Customer data during the period of three months after the termination of the Cirmar contract, and (ii) to destroy the Customer data after this period of three months, at the latest six months after the termination of the Cirmar contract.

## **LOG-IN PROCEDURE**

### Article 6

6.1 Customer and Users (named users) obtain access to the Web Application via the Login Procedure, exclusively with help of the Login Data provided to Customer by Cirmar. Cirmar has the right, at their own discretion, to adjust the Login Procedure and will timely inform the Customer thereof.

6.2 Customer is responsible for the Login Data and must carefully handle these data. The Login Data are personal for the individual User and are not to be shared with or transferred to another party or person whether part of the organization of Customer or not. Customer and Users (named users) are required to keep the Login Data completely secret. Customer is exclusively liable for any use of Login Data by Customer, Employees of Customer and Users (named users). Besides all acts of the Users (named users) in this



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context are at the account and risk of Customer. In this respect Cirmar accepts no liability whatsoever.

## **USAGE RULES**

### Article 7

7.1 Customer will obtain access to and use the Web Application exclusively in accordance with:

- a) the provisions in the Cirmar Contract;
- b) these Cirmar Online Conditions;
- c) the Documentation;
- d) all applicable laws- and regulations. Customer will not use the products and services of Cirmar for act(s) and/or behavior that exposes Cirmar to negative publicity.

7.2 Customer guarantees that the Users (named users) will handle their access to the Web Application and the obtained information in a responsible manner. For clarification: Customer retains and/or accepts unconditionally the final responsibility for all information Users (named users) change or add to the Web Application.

7.3 The Customer is not permitted to:

- a) use or try to use the products and services of Cirmar for any illegal goal and/or for goals of publication or other distribution of material that are insulting, defamatory, or infringing on intellectual property rights belonging to third parties;
- b) use or try to use the products and services of Cirmar in a manner that disturbs, limits or interferes with the provision the products and services of Cirmar and/or the availability thereof for and the use by other Users (named users) authorized by Cirmar Users;
- c) (try) to gain access to which part whatsoever of the products and services of Cirmar to which Customer is not authorized and/or gain access to data held within the products and services of Cirmar or are accesible via the products and services of Cirmar, except for data entered by Customer together with data which are made publicly available by Cirmar to all Users (named users) within or via the products and services of Cirmar;
- d) (try) to gain access to which part whatsoever of the products and services of Cirmar with automized means (for example via a "scrape", "crawl" or "spider");



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- e) to have access to any virus, Trojan horse, worm or any other electronic infected or devices, or to store, distribute, upload or send these, during Customers use of the products and services of Cirmar;
- f) use any form of automized integration other than automized integration via the API's (application programming interface) provided by Cirmar;
- g) – except for where this is permitted under applicable mandatory right and provided the information that Customer demands is not otherwise available - software or other code or script that are part of or accessible via the products and services of Cirmar or Website to reverse engineering, decompile, copy, distribute, spread, grant sublicenses, change, translate, scan, adjust or change in any other manner and/or reproduce; and/or
- h) by acting or omission cause or try to cause direct or indirect disturbance to the functioning of the infrastructure of Cirmar or any part thereof, the infrastructure from third parties, and/or connections between these infrastructures by the content or size of his data traffic.

7.4 Notwithstanding the previous Customer will refrain from the use of the products and services of Cirmar for the spreading of spam or the facilitating of spam (including but not limited to have opened SMTP relays and/or proxies, have opened of proxies, the hosting or enable hosting of hosts or websites that advertise via unsolicited messages and the authorizing of DNS-services for similar websites). The burden of proof lies with the Customer to proof that the addressee granted permission in advance in case of large amounts of communication sent by or on behalf of Customer. Customer is liable for damage caused by the distribution of spam. Damage includes: the fee for the time spent by Cirmar for the removal of IP-addresses of Cirmar and other customers of Cirmar which, as a result of the spam, are added to the blacklists of spam filters, as well as the costs with regard to the handling of complaints about the spam distributed by Customer.

7.5 Cirmar provides the products and services of Cirmar based on her policy regarding reasonable use. This means that in principle Cirmar does not impose restrictions to the nature and scope of the use by Customer of the products and services of Cirmar, other than specified in article 7.1 until 7.5 and article 7.6. Cirmar offers the products and services of Cirmar for an amount of information stored by her and the scope of data transport she realizes, as can be expected on average. This is provided that Cirmar holds the right to take measures in case of excessive use, this means use that significantly exceeds the average use of a Customer. Customer must take immediate measures to end the above-mentioned excessive load after the first notification by Cirmar. Cirmar has the right to suspend the products and services of Cirmar in case of (suspected) permanent excessive load. Cirmar can charge Customer the costs regarding this excessive load at prices and fees then applicable. Excessive load includes: excessive high use of processing, memory, network, drive and storage capacity, as well as excessive use of supporting services and management services.



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7.6 If Customer and Cirmar have agreed a restriction in the Cirmar Contract regarding the number and the size of the by transactions registered by Customer, mutations, or entry, whether or not for a given period, in case of an exceeding of that number Cirmar can invoice the costs of exceeded numbers by Customer against the agreed rate per exceeded amount and/or scope. Customer hereby agrees that Cirmar can obtain access to the Data of Customer to report the number and the size of the transactions registered by Customer, report mutations and (financial) data, only to determine if the by parties agreed amount and/or scope is exceeded. The documents of Cirmar provide decisive proof here unless Customer proves the contrary.

7.7 should Customer discover at any moment that he/she can enter in the network layers of Cirmar, he/she must report this to Cirmar immediately.

7.8 Customer is responsible for the functioning of his/her hard- and software, configuration, peripheral equipment, and internet connection needed for the use of the products and services of Cirmar. Customer guarantees that the equipment and software that he/she uses for the products and services of Cirmar comply with the System requirements. Customer is responsible for taking the necessary measures to protect his equipment, software, Login Data and telecommunication- and internet connection against viruses, computer crime and illegal use by third parties.

7.9 In the event Cirmar, at their own discretion, is of the opinion that the undisturbed operation of the Cirmar infrastructure and/or the service to Customers of Cirmar is in danger because of, but not limited to virus infections, denial or service attacks, port scans, hacking, spam of or against Customer, or otherwise, Cirmar can provide instructions that need to be followed by the Customer immediately, and Cirmar has the right to partially or totally suspend the service as long as the danger exists. If Customer does not follow the instructions immediately Customer is in default, without further notice of default being required.

7.10 Cirmar may carry out an audit and/or inspection to check whether the Customer complies with the conditions of the Cirmar contract, provided that this audit and/or inspection takes place during the usual office hours and in such a way that the business activities of Customer will not be unreasonably impeded by the audit and/or inspection. This audit will be done by an expert hired and selected by Cirmar. Customer is obliged to provide this expert with information, support and access to her buildings and systems reasonably necessary to enable the expert to perform her audit/inspection properly. This expert will submit a summary statement with his findings regarding the audit of the reports given by Customer and the compliance of Customer with the Cirmar Contract, but the expert will under no circumstances provide Cirmar other information than that comes to his knowledge during the audit and/or the inspection. The costs of this audit are for the account of Cirmar, unless the audit shows that Customer is not meeting the conditions of the Cirmar Contract, in which case the costs are for the account of Customer.



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7.11 For each (suspected) abuse or other improper use of the Web Application or other breach of the provisions of the Cirmar Contract, Cirmar can, at their own discretion, and with immediate start:

- a) summon Customer to remove all abusive data temporarily or permanently from equipment, systems and/or (in case of hosting) from the servers of Customer; and/or
- b) restrict or block the access of Customer to the Web Application or the use of the Web Application temporarily or permanently;
- c) stop or suspend her service partially or totally;
- d) terminate the Cirmar Contract; this all notwithstanding the obligation of Customer to pay the due fees according to the Cirmar Contract and without Cirmar being obliged to pay Customer any compensation or other compensation. Where possible Cirmar prefers to inform Customer so breaches can be addressed voluntarily. However, Cirmar retains the right, if necessary, in the opinion of and at their own discretion of Cirmar, to act without notification. No refunds or credits will be given regarding taken measures because of breaches of the Cirmar Contract.

7.12 In case of a violation by Customer of one of the provisions of this article Cirmar, besides her authorities as determined in article 7.11, is authorized to a contractual fine of €2.500,00 per case per day the violation continues, whereby Cirmar retains the right to Customer compensation of all damage suffered by her, less the by Customer paid contractual fine.

## **AVAILABILITY**

### Article 8

8.1 Cirmar will do what is commercially reasonable to ensure the optimal availability of and access to the Web Application.

8.2 Notwithstanding article 8.1 Cirmar can, without prior notification, (temporarily) block, stop the access to the Web Application or limit the use thereof for as far as this is reasonably necessary from time to time:

- a) to perform preventive or regular maintenance - or upgrade activities;
- b) in case of a real or suspected security breach; and/or
- c) in case of another emergency; this all without Customer having the right to claim compensation of Cirmar. Cirmar will make every effort to limit these



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measures to a minimum and, as far as this is commercially achievable, to inform Customer timely.

## **SUPPORT**

### Article 9

9.1 For the duration of the Cirmar Contract Customer has a right to support for the use and the functionality of the products and services of Cirmar. Only a User may request support, this right includes the consulting of Documentation and submitting questions via the Service Portal offered by Cirmar. Only after these options for support are used in vain, and in accordance with the type of Cirmar Contract of Customer, Customer has the right to telephonic support, which will be available to Customer on Working days from 08:30 to 17:00 h. Customer acknowledges and agrees that as part of the delivery of support Cirmar is authorized to review the data of Customer under the conditions as determined in article 13.

9.2 Support does not include:

- a) services regarding system configurations, hardware and networks;
- b) structural work as the overview and links with software from third parties;
- c) support on location;
- d) on request of Customer expanding of the functionality of the Web Application;
- e) converting of files and/or importing of back-up files;
- f) services regarding external databases from other producers than those of Cirmar;
- g) configuration, training or other not provide for in the Cirmar contract described services;
- h) support for control- and other software of other producers dan Cirmar, including the software from third parties that can be started from the Web Application or connections from third parties to websites from third parties;
- i) file repairs, whereby the cause cannot be attributed to the Web Application;
- j) the provision of new available products;
- k) support for the internet connection;
- l) support in an environment not supported according to the System requirements.



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9.3 Customer may ask Cirmar to perform activities regarding the in 9.2 a) up to and including l) mentioned subject, for example by means of Consultancy services as mentioned in article 10. All activities performed by Cirmar will be charged in addition to the fee meant in article 4 and at the current applicable Cirmar fees.

## **CONSULTANCY**

### Article 10

10.1 Customer will request Consultancy services via the website or, if known, contact person. In consultation with Customer Cirmar will plan the delivery of the Consultancy services, considering as much as reasonably possible the by Customer desired planning. Cirmar will use commercially reasonable efforts to perform the Consultancy services according to the agreed planning.

10.2 Customer can cancel an order for Consultancy services up to three working days prior to the agreed start date of the Consultancy services or ask Cirmar to determine a new start date. If Customer cancels or postpones the Consultancy services after this Cirmar has the right to invoice the planned Consultancy services to the Customer.

10.3 Cirmar is authorized to replace the Employee performing the Consultancy services and/or outsource the performance of the Consultancy services, at their own discretion, and without prior notification to Customer.

10.4 Consultancy services are performed on working days from 08.30 to 17.00 h and are invoiced to Customer upon delivery in.

10.5 If by start of the Consultancy services the computer systems of Customer do not meet the System requirements Cirmar is authorized (at their own discretion) to invoice Customer for unused Working days as a consequence thereof and/or costs made by Cirmar to make the computer system of Customer comply with the System requirements.

10.6 Customer is responsible for guaranteeing a safe working environment and healthy working conditions if Consultancy services are performed on the site of Customer. Customer indemnifies Cirmar against all claims of Employees of Cirmar and/or third parties because of a lack of this.

10.7 Consultancy services to a maximum of 4 hours will be performed without approval of Customer based on subsequent calculation at the hourly fee then applicable. If Consultancy services exceed the maximum of 4 hours Customer will be informed timely about this and asked for approval by means of an offer. Planning and performance of Consultancy services will always take place in consultation with Customer.



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## **CUSTOMER DATA**

### Article 11

11.1 At all times Customer remains the owner of the Customer data and is solely responsible and liable for the content and correctness of the Customer data. The compliance by Customer to all applicable laws- and regulations regarding the production, storage and access to (computer generated) data in every jurisdiction where Customer uses the contact person or sends Customer data by means of the Web Application, is exclusively the responsibility of Customer. Cirmar is not bound by a legal storage term for the data entered by Customer within the Web Application.

11.2 Cirmar guarantees that the Customer data, as far as commercially and reasonably practical, are protected against loss, damage, or destruction; However, Cirmar cannot guarantee that no loss, damage or destruction of data will take place. Cirmar makes back-ups of Customer data constantly, exclusively for goals of data recovery. Cirmar cannot provide this back-up directly to Customer.

## **PERSONAL DATA AND PRIVACY**

### Article 12

12.1 Customer acknowledges and agrees that the Privacy policy of Cirmar as published on Cirmar's website, is applicable to the processing of personal data of Customer by Cirmar. Hereby Customer explicitly agrees with the Privacy policy. Parties agree a separate Processor contract in case of the processing of personal data as part of the AVG.

## **CONFIDENTIALITY**

### Article 13

13.1 none of the parties shall disclose received Confidential Information, reveal, or use for another purpose other than for which the Confidential Information is revealed and/or as can be reasonably necessary to allow each party to meet his/her obligations under the Cirmar Contract, and to exercise granted rights under the Cirmar Contract. This also means that Cirmar can provide Confidential Information of Customer to those of her managers, employees, agents, sub-contractors, and professional advisers needing to know this to perform Cirmar's obligations under this Cirmar Contract.

13.2 Both parties take all reasonable measures to meet their confidentiality obligations. None of the provisions in this article impose the receiving party any restriction regarding information or data – whether or not identical or similar to the information or data contained in the Confidential Information or otherwise – if this information or data:





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- a) already were the legitimate possession of the receiving party before these were received by the revealing party;
- b) where developed independently by the receiving party without using information or data of the revealing party;
- c) are or will be generally known or accessible, other than by an act or omission by the receiving party; or
- d) is revealed by a third party to the receiving party, without a confidentiality obligation against the revealing party being violated.

13.3 The confidentiality obligations in this article do not apply as far as Confidential Information of the revealing party is mandatory by law to be made public, a regulation, or a legal order or by decision of a government agency, provided that the receiving party will make every effort to limit the scope of the mandatory revealing.

13.4 Parties ensure that their employees and third parties hired by parties will meet the described confidentiality obligations in article 14.1 and 14.2.

### **INTELLECTUAL PROPERTY RIGHTS**

#### Article 14

14.1 All copyrights, patents, trade name rights, brand rights, database rights, design rights (in any case registered and non-registered), rights regarding confidential information and trade secrets and other intellectual and industrial property rights and all similar rights for the protection of (information regarding) the Website, Web Application and Documentation, are the exclusive property of Cirmar or its licensor(s). None of the provisions included in the Cirmar Contract or the Cirmar Online Conditions can be interpreted in a way that this leads to a full or partial transfer of these rights to Customer.

14.2 Customer is not allowed to change, delete, or disguise a part of the intellectual property rights of Cirmar on the Website, Web Application or Documentation. Customer cannot use or register a single brand, design, logo, or domain name of Cirmar or a corresponding name or token, in whatever jurisdiction, all over the world. Each use of the brands and other intellectual property of Cirmar and all goodwill resulting from that use will benefit Cirmar.

14.3 Cirmar will defend Customer against any lawsuit against Customer, as far as this is based on a claim using the Web Application in accordance with the Cirmar Contract, the Cirmar Online Conditions, and the Documentation, makes infringement on a patent, copyright, or company secret from third parties that is valid and enforceable in the jurisdiction applicable to the Cirmar Contract as agreed between Cirmar and Customer.



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Cirmar indemnifies Customer of all final liabilities for costs or compensation as a result of a similar claim or arising from the settlement thereof, awarded by a judge, on the condition that Customer:

- a) immediately informs Cirmar in writing of a similar legal claim (and all prior claims with regard to this lawsuit) when they are known to him;
- b) the legal claim concerns the rights of a third party in a country that is part of the Berner Convention for the protection of works of literature and art;
- c) fully cooperates with Cirmar in any reasonable manner at costs of Cirmar to enable the defense against and the settlement of such a lawsuit;
- d) allows Cirmar exclusively, at their own discretion, to submit defense against the regarding claim and to submit all negotiations over a settlement, deemed appropriate by Cirmar.

14.4 If Customer is legally banned for the use of the Web Application because of an infringing act as meant in article 15.3 or, to the judgement of Cirmar, it is possible that the Web Application will be the subject of an infringement claim, Cirmar has the right, at their own discretion, and on own account to:

- a) obtain the right for Customer to keep using the Web Application as determined in these Cirmar Online Conditions;
- b) replace or adjust the Web Application in such a manner that this is not causing infringement, provided that the functionality thereof stays material unchanged; or
- c) end, if the previous options (a) and (b) are not reasonably achievable – to the judgement of Cirmar –, the Cirmar Contract, as well as the in the Cirmar Contract granted rights regarding the infringing of the Web Application.

14.5 Notwithstanding the provisions in article 15.3 under this article Cirmar is not liable against Customer as far as a claim is based on:

- a) use of the Web Application in connection with data not supplied by Cirmar, equipment or software, whereby the Web Application on its own does not infringe or is in any other manner subject of the claim;
- b) incorrect or unauthorized use of the Web Application or use in a manner not described in the Documentation;
- c) use of the Web Application by or on behalf of Customer in breach of the Cirmar contract, the Cirmar Online Conditions and the Documentation;
- d) an amendment of the Web Application made by a natural person or legal entity other than Cirmar; or



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e) complying with explicit instructions of Customer by Cirmar.

Customer will indemnify, defend against, and compensate Cirmar for claims directly against Cirmar as described in lid a) up to and including e) of article 15.5.

14.6 Customer acknowledges and accepts that the complete and exclusive liability of Cirmar for breach of patents, copyrights, brands, or other intellectual property rights reads as determined in article 15 and article 17.

14.7 Cirmar has the right to take and maintain technical measures for protection of the Website, Web Application, and the Documentation, including the intellectual property rights, given the agreed restrictions in the use of the Website, Web Application and the Documentation. Customer cannot avoid or delete similar technical measures.

## **SOFTWARE COMPONENTS AND SERVICES FROM THIRD PARTIES**

### Article 15

15.1 Customer acknowledges and agrees that the Web Application can include components from third parties, and that regarding the use by Customer of those Components from third parties the additional conditions will be applicable to the use of the Web Application by Customer.

Customer acknowledges and agrees that he has read and understood these additional conditions. These additional conditions can be changed from time to time, and it is the responsibility of Customer to regularly familiarize himself with possible changes and possible related costs. Continuation of the use by of the Web Application and similar Components from third parties by Customer after these changes is seen as the acceptance of the revised conditions by Customer, except for any contrary provisions in these Cirmar Online Conditions. Possible Components from third parties embedded in the Web Application or given to Customer in sublicense are given by Cirmar to Customer in license in the current state ("as is"). With exception of explicitly and directly given guarantees to Customer by the third-license provider according to the (possible) conditions of that third party, Cirmar provides no other guarantee regarding these Components from third parties, and Cirmar accepts no liability for whatever damage arising from the use by Customer of these Components from third parties.

15.2 Customer acknowledges and agrees that the use by Customer of Services from third parties and the content thereof made possible by the Web Application is exclusively bound to the conditions of the Third Supplier. If Customer obtains access to the Services from third parties and uses these, Customer is responsible for the judging, understanding, agreeing with, and following these conditions applicable to the Services from third parties. In case Customer data are accessible, are exchanged or saved this is possible exclusively under authorization by Customer. By choosing to give a third-party



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website (website) or a Service from third parties and/or the Web Application access to Customer data in the Web Application and/or from a third party (website), Customer agrees with the use of his Customer data as part of the described functionality. This description can be included in an additional disclaimer, an introduction text, a pop-up “click and accept”-screen, or another related description in the Web Application or on the third-party website (website). Customer acknowledges and agrees that Cirmar;

- a) is not obliged to offer access to Services from third parties;
- b) does not have control over Services from third parties;
- c) does not guarantee features or qualities for the Services from third parties;
- d) does not guarantee that the Services from third parties will be available permanently or continuously; and
- e) can suspend or terminate the access to and the use of the Services from third parties, as is possible regarding his use of the Web Application, to the choice of Cirmar and without Customer being entitled to any refund, crediting, or other fee. In case Services from third parties are provided free of charge, this can be changed in the opinion of Cirmar or the Third parties-provider.

## **LIABILITY**

### Article 16

16.1 Cirmar does not intend to limit or exclude her liability for death or personal injury caused by negligence in any manner whatsoever, nor for any other case, claim or matter for which liability cannot be legally limited or excluded. Every provision of the Cirmar Contract and these Cirmar Online Conditions must be read subject to article 17.1, and no provision is meant or may be construed as an attempt to restriction or exclusion of similar (mandatory) liability.

16.2 In compliance with article 17.1 the total liability of Cirmar because of attributable failure in the compliance of the Cirmar Contract on all legal grounds, including every non-compliance of a with Customer agreed guarantee obligation, explicitly limited to compensation of direct damage (as defined in article 6:96 BW) up to an amount of 50% of all invoiced amounts in the six (6) months prior to the fact that caused the damage. The total liability of Cirmar for direct damage, on all legal grounds, will never exceed EUR 5,000 (five thousand euro). In all cases, a series of related occurrences is seen as one single event regarding these restrictions.

16.3 The exclusions and restrictions of the liability of Cirmar as described in article 17.2 do not affect the other exclusions and restrictions of the liability of Cirmar as described in the Cirmar Contract.



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16.4 In compliance with article 17.1 Cirmar is never liable for: lost profit, lost savings, reduced goodwill, damage from business interruption, damage as a result of claims by customers of Customer, mutilation or loss of (the use of) data, damage relating to the use of prescribed matters by Customer to Cirmar, materials or software from third parties, damage with regard to the help of by Customer to Cirmar prescribed suppliers, or any other form of indirect, incidental or consequential damage, despite of the nature of the act, (breach of contract, illegal act or otherwise), even if Cirmar is informed about the chance of the emerging of the damage or was aware of the chance of (the emerging of) the damage, either from the start date of the Cirmar Contract either otherwise.

16.5 Cirmar is never liable for any damage of any nature suffered by Customer:

- a) regarding the temporarily not, not properly or not fully being available of the Web Application;
- b) regarding the (nonperformance of software of Customer or from third parties (including Components from third parties and Services from third parties), of the equipment of Customer, Cirmar or third parties, or of internet connections of Customer, Cirmar or third parties; and/or
- c) regarding the not correct, not complete and not timely send or received Customer data or other data placed with Cirmar via the Web Application.

Customer acknowledges and accepts the fact that the Web Application will never be perfect or 100% free of imperfections and that not all imperfections can or will be restored.

16.6 The exclusions and restrictions meant in this article 17 lapse if and insofar as the damage is the result of intent or deliberate recklessness of the management of Cirmar or these exclusions and restrictions conflict with otherwise applicable mandatory law.

16.7 Except for as far as determined in article 15 it is excluded that clients, potential clients, employees, representatives, agents and (sub)contractors of Customer are considered as third parties-beneficiaries under this Cirmar Contract and that they become a party in the Cirmar Contract; as far as necessary parties agree that article 6:254 lid 1 of the Dutch civil code is not applicable. Customer agrees to fully indemnify Cirmar, his employees, representatives and/or (sub-)contractors and agents brought in for the compliance of the obligations of Cirmar, against claims from third parties arising from or connecting to the Cirmar Contract or the Cirmar Online Conditions, unless Customer can make these claims against Cirmar valid in compliance with the determinations in this article as if Customer suffered the damage herself.

16.8 The liability of Cirmar arises in all cases only if Customer electronically declares Cirmar in default immediately and properly, in accordance with article 19.6 of these Cirmar Online Conditions, whereby and in which notification Customer gives Cirmar a reasonable term to restore the attributable non-compliance (which term is in any case



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not shorter than 30 days), and Cirmar remains attributable in the compliance of his obligations also after the expiring of that term. The notice of default must include a full and a detailed as possible description of the failure, so Cirmar is able to respond adequately.

16.9 In the event of Cirmar failing in the compliance of its obligations under the Cirmar contract, every right for compensation Customer can have (under the Cirmar contract or otherwise, and always on condition of the restrictions and exclusions as determined in this article 17), in any case if Customer does not take measures to:

- a) limit the damage immediately after this occurred;
- b) prevent (other or additional) damage; or
- c) if after notification of the damage Customer neglects to inform Cirmar about the damage within 72 hours and to provide Cirmar with all relevant information.

16.10 The provisions in this article as well as all other restrictions and exclusions of liability mentioned in this Cirmar contract are in favor of all (legal) persons which Cirmar uses for the performance of the Cirmar contract.

16.11 Customer acknowledges and agrees that the via the Web Application and/or the Website submitted information by or on behalf of Cirmar is offered without guarantees, unless explicitly stated otherwise, and without Customer or third parties being able to derive any rights.

16.12 Except for what is explicitly included in the Cirmar contract, Cirmar does not provide other or further guarantees, commitments or conditions regarding the delivered products and services of Cirmar. Cirmar hereby waives all other guarantees, commitments, or conditions, either explicitly, implicitly or under the law (including but not restricted to guarantees or conditions regarding merchantability, suitability for a certain goal, no infringement on other rights or) regarding the products and services of Cirmar.

16.13 Cirmar develops 'international' Software. This means that the Software is suitable for use in many countries. Besides for some countries localized Software is developed. 'Localized Software' means that the international version of the Software is adjusted and/or localizations are integrated to tally as much as reasonably possible to (mandatory) right and the most common company rules in a country. Localized Software is made solely at the own discretion of Cirmar. Although it is the intention of Cirmar that Localized Software tallies as much as reasonably possible to (mandatory) right and the usual company rules, Cirmar cannot guarantee this. It can differ per country and is exclusively to the insight of Cirmar whether a certain country specific functionality can or cannot be supported, and if so, how.



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## **FORCE MAJEURE**

### Article 17

17.1 If compliance is prevented by force majeure none of the parties is obliged to compliance of a contractual obligation, with exception of an obligation to payment, arising from the Cirmar Contract or the Cirmar Online Conditions. "Force majeure" here has the same meaning as in article 6:75 of the (Dutch) Dutch civil code.

Force majeure includes:

1. a failure of external hosting providers and suppliers of Cirmar;
2. interruptions or breakdowns in the power- and/or telecommunication facilities;
3. obstacles as a result of the hard- and software or technical infrastructure used by Licensee;
4. strikes;
5. fire;
6. accident or illness of staff;
7. Denial or Services (DoS) attacks;
8. no longer having available of necessary data;
9. war;
10. problems and any other circumstances unforeseen by Cirmar which do not exclusively depend on the will of Cirmar.

17.2 If restrictions or obstacles or other forms of force majeure prevent Cirmar to meet the contract, Cirmar is authorized to suspend the performance of the contract. In this case the Customer is not entitled to damages, costs, or interest.

17.3 If, at the arising of the force majeure Cirmar has already fulfilled part of her obligations, or due the force majeure is able to only fulfill part of her obligations, Cirmar can charge the delivered performance c.q. the deliverable part of the performance separately and Customer is bound to pay this invoice as if it were a separate contract.

17.4 During the whole duration of the force majeure Cirmar has the right to suspend the compliance of its obligations. If this period lasts longer than three months Cirmar is authorized to terminate the Cirmar Contract with immediate effect by notification to Customer and without obligation to payment of any damages or compensation to Customer.



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## **MISCELLANEOUS**

### Article 18

18.1 Cirmar can sublicense, hand over, renew, commission, outsource or subcontract the compliance of his rights and/or obligations under the Cirmar contract at any time. In case of outsourcing or subcontracting Cirmar remains liable against Customer for the act or omission of his service providers or subcontractors as if this was the act and omission of Cirmar itself under the Cirmar Contract.

18.2 Should any provision from the Cirmar Contract or these Cirmar Online Conditions be partially or totally invalid, destroyed, or illegal this contract remains fully in force and the provision will be interpreted in a manner in line as closely as possible with the intention of parties. The other provisions of the Cirmar Contract or these Cirmar Online Conditions remain in force unchanged.

18.3 Delay or default by Cirmar regarding the Customer to invoke any right, authority or privilege under the Cirmar Contract or the Cirmar Online Conditions, will not include waiver of right, nor will any (partial) execution of a right, authority or privilege prevent other or further performance thereof.

18.4 The Cirmar Contract includes the full agreement between parties and replaces all previously and/or simultaneously written and verbal negotiations, agreements, and contracts between parties regarding the subject thereof, including specific commercial or sales material of Cirmar.

18.5 The applicability of the whole or a part of the general conditions of Customer, including conditions included in a purchase order or other order document, is hereby explicitly rejected, unless explicitly accepted by Cirmar.

18.6 Possible communication between Cirmar and Customer can take place electronically, except for as far as the Cirmar Contract and/or the law determine otherwise. The version of the communication in question as saved by Cirmar is seen as proof thereof unless Customer proves otherwise. Electronic communication is supposed to be received on the date of dispatch unless the contrary thereof is proven by the recipient. If the communication is not received due to a delivery- and/or accessibility problems this is at the risk of Customer, even if the e-mailbox is accommodated by a third party.

18.7 In addition to the provisions in article 2.2 and article 4.3 the Cirmar contract can only be changed by means of an explicit contract between Customer and Cirmar.

18.8 The provisions of the Privacy statement of Cirmar are an integral part of these General Conditions.





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18.9 The agreements made between parties are primarily controlled by what is specified in the Cirmar contract, next by these Cirmar Online Conditions and after that by the Privacy Statement.

### **APPLICABLE LAW AND DISPUTES**

#### Article 19

19.1 to this Cirmar contract, including these Cirmar Online Conditions, Dutch law is applicable. The provisions of the Vienna Sales Convention are not applicable.

19.2 Notwithstanding any mandatory stipulated authorization by another judge, all disputes, disagreements, or claims arising from or relating to the Cirmar contract and/or these Cirmar Online Conditions, or the non-compliance, termination, or invalidity thereof or another dispute between Customer and Cirmar, will be exclusively submitted to the authorized judge of the Court of Limburg in Maastricht. If however the Cirmar contract is concluded with, and the products and services of Cirmar are provided to a Customer based outside The Netherlands and this condition has no validity under local right, than all disputes, disagreements or claims arising from or relating to the Cirmar Contract or the non-compliance, termination or invalidity thereof, will be submitted to the authorized court in the capital of the country in which the Cirmar Contract is concluded with and the products and services of Cirmar are being delivered to Customer.

19.3 This contract is governed exclusively by the laws of the Netherlands. In case of disputes arising from this contract or contracts building upon it, parties will try to solve these with help of mediation in accordance with the then applicable Reglement of the Stichting Nederlands Mediation Instituut in Rotterdam. If mediation does not lead to a solution, parties will refer the dispute to the authorized judge of the Court of Limburg in Maastricht.