



# Terms & Conditions

## Viriciti

### 1. Definitions

1.1. In these terms and conditions the following definitions shall have the following meanings:

Agreement:	an agreement that may include one or more Licenses and/or rights to conclude Licenses, a Service Level Agreement, arrangements in respect of Units or other goods and services;
Client:	the party to an Agreement;
Error:	the reproducible failure to meet, in a material way, the functional specifications of the SaaS Service which failure is made known to ViriCiti in writing. Errors include "Defects" as defined in a SLA agreed upon between the Parties, if any;
GDPR:	the EU Regulation 2016/679 of 27 April 2016 also referred to as the General Data Protection Regulation;
License:	the right to access and use the SaaS Service;
Other Materials:	has the meaning attributed to it in <b>clause 10.4</b> ;
Parties:	ViriCiti and Client;
SaaS Service:	the software as a service to be accessed and used by the Client;
SLA:	has the meaning attributed to it in <b>clause 13.1</b> ;
Terms and Conditions:	these terms and conditions;

Unit: a hardware unit to be provided by or on behalf of ViriCiti, including its embedded software as well as any update and upgrade thereto;

ViriCiti: Means ChargePoint Network (Netherlands) B.V., with ViriCiti as its trade name, having its registered office in Amsterdam or an affiliate or group company of ChargePoint Network (Netherlands) B.V. that declares these Terms and Conditions applicable.

## **2. Applicability, offers and acceptance**

- 2.1. These Terms and Conditions apply to all Agreements and all Licenses.
- 2.2. Acceptance of a binding offer from ViriCiti is only binding for ViriCiti if the acceptance reaches ViriCiti within the term specified therein and, if the offer does not contain an applicable time period, if the acceptance reaches ViriCiti within ten days after the offer was made.
- 2.3. Terms and conditions of the Client do not apply. To avoid misunderstanding, they also do not apply if they are referred to or printed on any Client purchase order or other document issued in respect of a ViriCiti quotation, or otherwise issued in connection with (the conclusion of) an Agreement, unless and in as far as ViriCiti unambiguously and explicitly agrees to the applicability of such terms and conditions or specific clauses contained therein in writing.

## **3. SaaS Service**

- 3.1. No person may access and use the SaaS Service unless this person's access and use is based on an Agreement and a sufficient License.
- 3.2. All actions and omissions by all users that have gotten access through Client, whether such access is based on an Agreement or otherwise, are deemed to be Client's actions and omissions.
- 3.3. Access and use of the SaaS Service is only permitted in as far as the fees and costs due under the Agreement are and continue to be timely paid to ViriCiti.

## **4. Fees and payment**

- 4.1. Unless agreed upon otherwise or indicated otherwise, all fees are exclusive of VAT, withholding tax and other charges imposed by the government, customs charges, and transport-, travel-, insurance-, communication- and installation costs.
- 4.2. ViriCiti shall be entitled to adjust the agreed fees once per calendar year in accordance to the annual consumer price index for family consumption in the Netherlands (prijsindexcifer voor de gezinsconsumptie) over the previous year as published by the CBS (Dutch Central Statistical Office).
- 4.3. Unless otherwise agreed, ViriCiti invoices will be due and payable by Client in accordance with the following:
  - a. A License for its full initial term, immediately after the system or the Unit it is sold for, has been delivered; and
  - b. In the event no Units will be delivered, all Licenses for their full initial term within 14 days of the conclusion of the agreement; and
  - c. Licenses for their full prolonged term, ultimately on the last day before the prolonged term commences; and

- d. Units and other Other Materials, including the installation thereof: in full before the start of the project; and
- e. Development costs: in full before the start of the project; and
- f. Other fees, if applicable, within 30 days of the invoice date.

4.4. Client shall make all payments due to ViriCiti without discount or set-off.

4.5. For Smart products (Smart Driving / Smart Charging / Smart Routes), a go-live date will be agreed upon during the contract phase, or at the latest the kick-off meeting which will be held directly after the contract/agreement phase, in writing between ViriCiti, the Client, and potentially third parties. In the case, the go-live date cannot be met, the following payment agreements are in place:

- a. If the go-live date is prevented by the Client or third party failing to deliver the agreed requirements, the go-live date counts as the start date of the license, and 50% of the agreed license price is invoiced to the Client;
- b. If the go-live date is prevented by ViriCiti failing to deliver the agreed requirements, the start date of the license will be postponed until all agreed functionalities are delivered and 0% of the license will be invoiced.

## 5. Sublicense

5.1. If the Parties agree that Client is entitled to sublicense the Licenses, the following applies:

- a. Client shall inform ViriCiti of the name and company's details of the sublicensee and provide ViriCiti with the data necessary (to be determined by ViriCiti) to deliver ViriCiti's services to the sublicensee;
- b. Client ensures and warrants that:
  - (i) The sublicensee shall, towards Client, be bound to clauses similar to the clauses in these Terms and Conditions in respect of performance, the (provision of the) (SaaS)-service(s), intellectual property and license, availability and maintenance, support, updates/errors/demands to the configuration, SLA, software included in the Units, warranties (including in respect of third party products and services), personal data, liability, confidentiality, terms and termination and amending the Terms and Conditions and any other clause that is relevant to outline the rights and connected obligations that the Client can sublicense; and
  - (ii) The sublicensee is and shall remain aware of and bound by the correct description of ViriCiti's services in conformity with the annexes attached to the agreement Client is bound by as they are updated from time to time; and
  - (iii) The sublicensee shall not be entitled to sublicense without the prior consent of ViriCiti; and
  - (iv) The sublicensee shall enter into a data processing agreement with Client in accordance with the ViriCiti model if a data processing agreement is required; and
  - (v) The sublicensee is informed correctly of all relevant elements of the (SaaS)service(s); and
  - (vi) All of the above shall be detailed in a written and duly digitally or otherwise validly signed instrument;
- c. In the event the sublicensee wishes to conclude an SLA, the preceding subclause b. applies, however sub i shall read "*similar to all the clauses of the SLA.*"
- d. In the event Client assumes more liability or any additional indemnity obligation towards the sublicensee than ViriCiti has assumed towards Client under these Terms and Conditions, regardless the origins of such additional liability or indemnity:
  - (i) This does not in any way amend, extend or infringe the liability clauses in this Terms and Conditions or lead to additional liability or an additional indemnity of ViriCiti in any other way; and
  - (ii) Client indemnifies ViriCiti fully for any and all of such additional liability, including ViriCiti's reasonable legal costs in relation to such additional liability and/or indemnity;

- e. Client must introduce in its agreement with the sublicensee a clause that shall allow for ViriCiti to claim with the sublicensee directly in the event of any confidentiality breach or any breach of the sublicensee's obligations in respect of intellectual property, without prejudice to ViriCiti's rights out of the applicable law.
- f. To avoid misunderstanding: Client shall be entitled to enter into any and all financial arrangements with the sublicensee it shall deem fit.

5.2. Client is not entitled to use a License that it sublicensed itself.

5.3. Any act or omission of a sublicensee, shall be considered an act or omission of Client, without prejudice to the rights and remedies ViriCiti may have towards the sublicensee under the applicable (intellectual property) laws.

## 6. Performance

6.1. Unless specified otherwise all obligations for ViriCiti are commercially reasonable efforts obligations ("inspanningsverbintenissen").

## 7. The provision of the SaaS Service

7.1. Unless agreed upon otherwise, Client itself shall install, set up, parameterize and tune the (auxiliary) software required on its own hardware and adapt the hardware used, other (auxiliary software) and operating environment where necessary, as well as achieving the interoperability desired by Client. ViriCiti is not responsible for the purchase or operation thereof.

7.2. ViriCiti publishes or provides Client with a list of countries where ViriCiti supplies cellular services for. Usage outside of these countries will lead to additional roaming costs which will be separately charged and invoiced to Client.

## 8. Intellectual property and (sub-)License

8.1. All copyright and any and all other intellectual and industrial property rights as well as similar rights, including neighbouring rights, database rights, rights for the protection of knowhow and confidential business information, in regard to the SaaS Service, Units, hardware and all other software, goods or services delivered or provided by ViriCiti accrue exclusively to ViriCiti and/or its licensors.

8.2. Licenses shall be non-exclusive, non-transferable and non-sub-licensable and be limited to the number of hardware or other indicators detailed in de Agreement.

8.3. Unless agreed otherwise in writing, Client shall only be permitted to use the SaaS Service within and on behalf of its own company or organization and shall not use the SaaS Service to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.

8.4. If the Agreement stipulates that Client is entitled to sublicense the Licenses, this shall mean that Client itself shall not be entitled to access and use the SaaS Service next to the party Client sublicenses the License to, unless Client acquire a License to do so itself.

8.5. Client shall not (let someone) decompile, reverse engineer or analyse the SaaS Service.

8.6. The preceding **subclauses of this clause** also apply to software specifically developed for Client if any.

- 8.7. If the SaaS Service is used in a manner other than as agreed upon between the Parties, outside the agreed period or for other purposes than within the organization of Client as a consequence of an act or omission of Client, Client shall pay ViriCiti 200% of the fee that ViriCiti usually applies to such extended usage, with a minimum amount of EUR 10.000,- per case, unabated ViriCiti's right to stop the use of the SaaS Service by Client and without prejudice to the other rights which ViriCiti may have pursuant to the Agreement or the law.
- 8.8. Client shall keep usernames and passwords for the SaaS Service strictly confidential. Client shall be responsible and liable for all of the Client's use of such usernames and passwords. Client shall use safe passwords.
- 8.9. For the avoidance of doubt: for standard software which is required for the SaaS Service but which is not a part of the SaaS Service, such as operating system software, browser software, plugins, interface software, as well as other third party software which ViriCiti has indicated as excluded from the SaaS Service, Client shall conclude a license agreement for all such ancillary software at its own expense.
- 8.10. Client is not entitled to make changes to or delete any indication of ViriCiti's intellectual property rights in or at the SaaS Service or in the documentation thereof.
- 8.11. Client shall not delete or bypass technical security of the SaaS Service.
- 8.12. The Client will exclusively own the raw data generated by the Units. ViriCiti will analyse such data and share the results of such analyses with the Client if, and in as far, the Client has procured sufficient Licenses. The Client shall not be entitled to access the results of any analyses after the License(s) terminate(s). Without prejudice to the obligations of ViriCiti to share their results, the analyses themselves and the know how derived from them, will be exclusively owned by ViriCiti.
- 8.13. Without prejudice to the preceding subclause, ViriCiti shall at all times be entitled to process all (raw and/or personal) data uploaded to the SaaS Service for its own purposes or for the purposes of its group companies, which purposes include, without limitation: (i) improving their services and products (including the training of artificial intelligence); (ii) analysing and compiling information on use patterns in relation to sub (i); (iii) combining the data with other data which ViriCiti or any of its group companies has or will have collected in relation to sub (i); (iv) pricing of their services and (v) any other processing the parties may agree on. In as far as the data processed or to be processed are personal data, in respect of the processing of such personal data, ViriCiti shall be data controller in the sense of the GDPR.
- 8.14. Client shall ensure that all users or whom have gained access to the SaaS Service by or via Client shall comply with the usage restrictions agreed upon in these Terms and Conditions.
- 8.15. With respect to the software or other materials of third parties which are a part of the SaaS Service Client shall have no more rights and obligations in such third party materials than ViriCiti has.
- 8.16. **This clause 8** applies also to the software embedded in the Units.

## 9. Availability and maintenance

- 9.1. ViriCiti shall use commercially reasonable efforts to make the SaaS Service available twenty-four hours a day, unless the access to the SaaS Service must be suspended due to maintenance of the SaaS Service or the systems of ViriCiti or of a third party appointed by ViriCiti. ViriCiti may temporarily shut down the SaaS Service entirely or partially for preventive, corrective or adaptive maintenance. ViriCiti shall shut down the SaaS Service for no longer than

necessary, and, if reasonably possible, after notifying Client. The Parties acknowledge that in emergency situations (such as a hack or DDOS attack) notifying Client might not be possible.

- 9.2. ViriCiti is not responsible for an internet- or other connection required for the access and use of the SaaS Service.
- 9.3. In any event, ViriCiti shall not be in default if the access to the SaaS Service is impossible due to circumstances beyond its control. Such circumstances include, but are not limited to, the loss or unavailability of connection or services of third parties required to maintain the availability of the SaaS Service, such as (tele)communication providers and hosting providers. However, ViriCiti will use its commercially reasonable efforts to ensure that if ViriCiti selects such third parties, it shall select parties of good standing.
- 9.4. ViriCiti does not guarantee that the SaaS Service will function if the system for which it was designed (including the platform and/or the relevant API) is upgraded or in another way modified.

## 10. Delivery of Units and Other Materials

- 10.1. Unless otherwise agreed, Units and Other Materials shall be delivered in accordance with the Incoterm “Delivered at Place” (DAP). Regardless of the way the goods are delivered, DAP or otherwise agreed, Client shall pay or reimburse ViriCiti in respect of all clearing and import costs (custom charges).
- 10.2. ViriCiti shall only be obligated to (let a third party) install, configure and connect the Units if accepted by ViriCiti and agreed upon specifically in writing between ViriCiti and Client.
- 10.3. The risk of loss, damages or depreciation of the Units or Other Materials shall transfer to Client upon the moment ViriCiti makes said goods available for unloading at the place of destination. Unloading is carried out at Client’s risk. Notwithstanding the aforesaid, if and when ViriCiti arranges for transport, ViriCiti shall take out, for the account of Client, customary insurance for all risks involved in delivering the Units and Other Materials to the delivery location specified by Client. Risks exceeding the insured amount will be borne by Client.
- 10.4. All Units or other tangible materials (“**Other Materials**”) delivered or made available by ViriCiti shall remain the property of ViriCiti until Client has met in full all of the payment obligations under the Agreement and title shall thus pass to Client upon ViriCiti’s satisfaction of Client’s payment obligations in full.
- 10.5. Client shall protect and respect ViriCiti’s property rights to the Units delivered or made available by ViriCiti. Client shall use commercially reasonable efforts to protect and safeguard the Units and Other Materials during the time that title in such Units and Other Materials remains with ViriCiti. Client shall be liable for any losses or damages to Units or Other Materials (whether arising from theft, fire, adverse weather, acts of God, civil unrest, accident or otherwise) and shall be obligated to pay the purchase price in full notwithstanding any loss or damage to Units or Other Materials following ViriCiti’s delivery of such items.
- 10.6. If a third party attempts to impose attachment on Units or Other Materials delivered under retention of title or if a third party undertakes any action that has as its object to establish or invoke any rights in relation to such Units or Other Materials, Client shall promptly notify ViriCiti thereof.
- 10.7. If ViriCiti at any time wishes to exercise its property rights under the Agreement, Client hereby grants ViriCiti or any third party designated by ViriCiti the unconditional and irrevocable permission to enter the properties where the Units or Other Materials are located and repossess such Units or Other Materials.

## 11. Support

11.1. Unless the Parties concluded an SLA (as detailed in **clause 13**), if the Parties have agreed that ViriCiti shall provide support to Client, ViriCiti shall only advise i) during the term of the Agreement, ii) by phone and e-mail, and iii) about the use and functioning of the SaaS Service. ViriCiti may set conditions about the qualifications and the number of Client's contact persons eligible for support. Properly substantiated requests for support shall be taken up by ViriCiti within a reasonable time. ViriCiti does not make any guarantee regarding the accuracy, completeness or timeliness of the support. Unless agreed upon otherwise in writing, support shall only be provided on working days during the normal opening hours of ViriCiti.

## 12. Updates/Errors/demands to the configuration

12.1. ViriCiti does not guarantee that the SaaS Service or the usage thereof will always be compliant with all relevant legislation and regulation. Client should, inter alia, control and ensure compliance with the locally applicable labour-, and privacy laws.

12.2. Unless agreed upon otherwise, Client shall be responsible for the management, including verification of the settings, the usage of the SaaS Service and the way in which the results thereof will be used. Client is also responsible for instructing each user how to use the SaaS Service.

12.3. ViriCiti does not warrant or guarantee that the SaaS Service shall always function without Errors and without interruptions. ViriCiti shall use commercially reasonable efforts to make the functionality of the SaaS Service conform with the official description. **This clause 12** is without prejudice to the obligations of ViriCiti, if any, from an SLA or other agreement to fix such Errors and interruptions.

12.4. Data generated or stored by or in relation to the SaaS Service may not be stored or disappear due to errors, interruptions, maintenance or the unavailability of the SaaS Service, particularly as a result of communications losses. ViriCiti shall not be liable for such loss.

12.5. Without prejudice to the other provisions hereof, ViriCiti shall always be entitled to apply temporary solutions or program bypasses or problem-avoiding restrictions to the SaaS Service and to drop or add certain functionalities.

12.6. Unless agreed otherwise in an SLA, if Errors occur, ViriCiti shall make commercially reasonable efforts to have fixed those Errors in the next version, or to release an update where the Errors have been fixed.

12.7. ViriCiti is not obligated to provide upgrades of the SaaS Service.

12.8. ViriCiti is not responsible for verifying the accuracy and comprehensiveness of the results from the generated data by the SaaS Service. Client itself shall verify the results of the SaaS Service and the results of the generated data by the service frequently.

## 13. Service Level Agreement

13.1. In a separate document (a Service Level Agreement or, shortly, "SLA"), ViriCiti may commit itself to:

- certain actions in the event of occurring Errors; and/or
- providing support to Client; and/or
- guaranteeing a certain amount of uptime or availability;

in accordance with the terms and conditions of the SLA.

- 13.2. The actions referred to in the preceding paragraph may include- starting- the repair of Errors.
- 13.3. The SLA may always be amended unilaterally by ViriCiti, provided this amendment shall not materially degrade Client's rights to support thereunder.
- 13.4. In the event of an Error, Client's only right shall be to claim performance of the SLA.
- 13.5. Client shall inform ViriCiti about all relevant circumstances in order to achieve the service levels agreed to.
- 13.6. The availability measured by ViriCiti shall be deemed to be full evidence of such availability, provided Client does not provide overriding evidence of the contrary.

#### 14. Warranty of the Units and Other Materials

- 14.1. Client shall promptly examine the Units and Other Materials following delivery. Client shall examine and determine if the quality and/or quantity of the delivered the Units and Other Materials corresponds with the Agreement. Any visible defects must be reported in writing to ViriCiti within seven days after delivery. Non-visible defects must be reported in writing to ViriCiti immediately and in any event no later than within fourteen days upon the discovery thereof. Notification of any alleged defect must at least include a detailed description of the alleged defect, as to enable ViriCiti to respond adequately. Client must provide all necessary information to ViriCiti as to enable ViriCiti to examine the complaint.
- 14.2. ViriCiti warrants for a period of two years following delivery that the Units will materially conform to ViriCiti's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. The Parties may agree on an extension of such warranty period against an additional fee. The warranty shall apply with respect to any Units that are repaired or replaced with the period of the warranty beginning on the date of initial delivery (i.e., not the date of repair or replacement). The sole remedy for a breach of the foregoing warranty and/or for any defect in the Unit during the warranty period, is repair or replacement (at ViriCiti's election) of the defective Unit. After the warranty period, ViriCiti shall not be in default or liable in any way, should a defect in a Unit occur. Regarding Other Materials, unless otherwise specified, **this clause** applies similarly.
- 14.3. A warranty on Units and Other Materials does not cover travel costs, transportation costs and damages caused by assembly or disassembly.
- 14.4. No warranty, neither explicit nor implicit, shall apply:
- if Client, a user or a third party has made any alterations, modifications or changes to the Units or Other Materials without the express written consent of ViriCiti;
  - to defects caused by or the result of improper or inappropriate use, improper storage or maintenance by Client, a user or a third party;
  - if the Units or Other Materials are (re-)sold or transferred by Client to a third party;
  - if the Units or Other Materials are used for any purpose other than indicated, including the use not in accordance with the instruction manual or instructions given by ViriCiti;
  - to defect caused by or arises from any circumstances that are outside ViriCiti's control, including but not limited to weather conditions (for instance, but not limited to extreme temperatures or rainfall), or
  - if Client does not satisfy any of its obligations under the Agreement.



- 14.5. Claims do not influence Client's payment obligations under the Agreement. Client remains obligated to accept and pay for the Units, Licenses, Development Costs and Other Materials in accordance with clause 4.3 of these terms.
- 14.6. ViriCiti, at its sole discretion, is entitled to decide to either replace or repair defective Units or Other Materials.
- 14.7. The materials replaced by ViriCiti under warranty shall become ViriCiti's property after the replacement thereof.
- 14.8. The warranty does not include the performance of data conversion which may be necessary as the result of the defect, repair or replacement.
- 14.9. Client cannot invoke rights with regard to non-conformity of Units or Other Materials delivered other than as expressly set out in this clause.
- 14.10. If a warranty claim has no merit, including a defect reported later than the warranty period set out in the **second subclause of this clause**, Client will no longer be entitled to repair or replacement free of charge or any compensation by ViriCiti. Costs of performed work or recovery, including research costs, outside the scope of this warranty shall be charged by ViriCiti in accordance with the usual rates.
- 14.11. Parts manufactured or intellectual property produced by a third party may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Units, Other Materials or Services. Such products are not covered by the warranty in **the second subclause of this clause**.

## 15. Personal Data

- 15.1. Both Parties shall act in accordance with the obligations relating to personal data as defined in the GDPR and other applicable privacy laws. Client shall, inter alia, obtain all necessary consent of the data subjects and inform them in accordance with the GDPR where required. ViriCiti shall advise Client on the legal requirements of the GDPR against a fee to be separately agreed.
- 15.2. ViriCiti processes personal data of the user and personal data of Clients contact persons, among others in order to execute the Agreement, as mentioned in more detail in ViriCiti's privacy statement. Regarding such data ViriCiti shall be controller.
- 15.3. If a data processing agreement as detailed in the GDPR is required, these Terms and Conditions also apply to the processing agreement insofar the processing agreement does not diverge. In order to prevent misunderstandings: the limitation of the liability of ViriCiti in the **next clause** also applies to the processing agreement. In the event and in as far as the processing agreement conflicts with these Terms and Conditions, the processing agreement shall prevail.
- 15.4. Unless a data processing agreement stipulates otherwise, ViriCiti shall store all data for one year after uploading. After that such data will be deleted. To avoid misunderstanding: reports and analysis will remain available to the Client during the term of the License in accordance with **clause 8.12**.
- 15.5. To avoid misunderstanding: the Client shall always be entitled to request removal of (personal) data uploaded through the Units.

## 16. Liability

- 16.1. ViriCiti and all persons involved with ViriCiti (such as its directors, shareholders and employees) shall only be liable towards Client insofar **this clause** determines, without prejudice to other limitations of liability in these Terms and Conditions.
- 16.2. Without prejudice to ViriCiti's obligations out of the Agreement, ViriCiti shall not be liable for damages caused by the use of the SaaS service by Client.
- 16.3. ViriCiti will in no event be liable for any damages, of any kind that:
- are caused by or result from late, incomplete or incorrect information provided by Client;
  - are caused by or result from operating errors caused by Client;
  - are caused by or result from any act or omission of any third party engaged by Client
  - result from improper use;
  - are caused by or result from any advice given in any way, shape or form by ViriCiti to Client, other than advice provided in writing following a specifically written assignment to provide such advice as subsequently accepted in writing by ViriCiti.
- 16.4. The total liability of ViriCiti on account of all attributable breaches and/or torts by ViriCiti against Client is limited to the remuneration received by ViriCiti in the period of six months prior to the event that lead to the attributable breach (or first attributable breach) or tort. If a failure or unlawful conduct is related to an assignment to provide a service other than the SaaS Service or other than another service that is delivered over time against a recurring fee, such as developing customized software for Client or an advice, the liability of ViriCiti is limited to the fee for that specific assignment.
- 16.5. Liability shall at any time be limited to the direct damage suffered by Client. Direct damage only contains out-of-pocket costs which Client necessarily had to incur pursuant to the event giving rise to the damage. Without limitation, loss of goodwill, (possible) loss of (future) turnover or profit, claims of third parties because of other than direct damage, working hours of employees and such shall not be eligible for compensation.
- 16.6. The limitations of liability of ViriCiti do not apply if the liability is caused by gross negligence or intent by ViriCiti's management team.
- 16.7. Client must promptly notify ViriCiti of breach or default of this Agreement in writing. After receipt of a default notice, ViriCiti shall have a commercially reasonable period of time to attempt to cure a breach. The default shall contain a sufficiently detailed description of the breach in order to enable ViriCiti to react adequately.
- 16.8. Claims of Client under or in connection with the Agreement will expire after one (1) year, starting on the day that Client becomes aware or should have been aware of the grounds for the claim.
- 16.9. Client shall indemnify ViriCiti from any claim by any third party, including its personnel, based on the use Client makes of the SaaS Service, subject to ViriCiti fulfilling its obligations out of the Agreement.

## 17. Force Majeure

- 17.1. No failure or omission by either of the Parties in the performance of any obligation under the Agreement shall be deemed a breach of the Agreement or create any liability if the same arises on account of force majeure. Force majeure on the part of ViriCiti shall include a situation of force majeure encountered by ViriCiti's own suppliers or contractors. Force majeure to include: governmental measures, amendments in the directions of supervisors, faults

affecting the internet and other networks and/or electricity, war, riot, general transport problems, physical intrusion and an hack of ViriCiti's systems.

- 17.2. Without affecting any payment obligations pursuant to these terms and conditions, If a situation of force majeure lasts for longer than three months, both Parties shall be entitled to terminate the Agreement without liability. Client shall settle the License fee on a pro rata basis for the amount of SaaS Services received.

## 18. Confidentiality

- 18.1. All Confidential Information provided by ViriCiti to Client or otherwise obtained by Client will be treated as confidential by Client, its representatives, employees and/or subcontractors and neither used other than for the benefit of ViriCiti or operation of the Units, Other Materials and Service nor disclosed to third parties without the prior written consent of ViriCiti, except insofar as required by law.

- 18.2. "Confidential Information" shall be deemed to be, without limitation:

- matters of a clearly confidential nature and/or specified as confidential in writing;
- trade secrets;
- technical know-how of ViriCiti;
- the specifics of the Agreement.

- 18.3. Client shall cause its representatives, employees and/or subcontractors to whom confidential information is disclosed to be bound by the confidentiality obligations set out in **this clause**.

- 18.4. Client will be responsible to prevent any action or failure to act that would constitute a breach or violation of any of the terms, obligations and understandings of this Agreement by Client, or Client's representatives, employees and/or subcontractors, which includes taking all reasonable measures, at its cost (including, but not limited to, court proceedings), to restrain Client's representatives, employees and/or subcontractors from prohibited or unauthorized disclosure or use of Confidential Information. Client agrees to notify ViriCiti without undue delay in writing of any misappropriation or misuse by any of its representatives, employees and/or subcontractors of Confidential Information of which it becomes aware. Client agrees that the acts or omissions of its representatives, employees and/or subcontractors in connection with the Confidential Information will be treated as the acts or omissions of Client.

## 19. Term and termination of the Agreement and terms of the Licenses

### General

- 19.1. Unless otherwise agreed, an Agreement will commence on the day it is signed by the last party or, if earlier, the day Client activates its first License. Unless agreed upon otherwise, an Agreement, other than a License, concerning the continuous delivering of services and/or goods that has been concluded for a specific term, shall automatically be extended with 12 months, unless terminated in accordance with **the following subclause**. In the event the Parties did not agree on an initial term for such an Agreement such term shall be 12 months.
- 19.2. Each Party may terminate an Agreement against the last day of a (prolonged) term in writing, giving at least a three months' notice.

### License

- 19.3. Unless agreed upon otherwise, a License shall be concluded for an initial term of 48 months. Such term shall automatically be extended with 12 months, unless terminated in accordance with **the following subclause**.
- 19.4. Each Party may terminate a License against the last day of a (prolonged) term in writing, giving at least a six months' notice.
- 19.5. The terms of the Licenses granted may supersede the term of an Agreement and the Agreement will continue to be in force in respect of such Licenses.
- 19.6. If the Parties have not agreed upon a starting period for a License, the License will commence on the earlier of: three months of the date of the delivery of the Unit in respect of which the License has been granted, and the date the Client has received notice that he can activate the License. In the event no Units are delivered, the Licenses will start three months after the date the agreement is concluded.

#### **General/License**

- 19.7. Without prejudice to its statutory and other contractual rights to termination, ViriCiti is entitled to terminate or dissolve the Agreement (and, to avoid misunderstanding, in doing so terminating the Licenses granted thereunder as well) at any time with immediate effect by notice in writing without a notice of default to Client in any of the following circumstances, without incurring any liabilities whatsoever towards Client, if:
- a. Client uses or let a third party use the SaaS Service in violation of the applicable rights of use or usage restrictions and/or has breached any intellectual property rights relating to the SaaS Service or another service or product;
  - b. Client enters into liquidation or enters into any arrangement with its creditors or suffers any similar occurrence under the relevant legislation;
  - c. any change in (indirect) ownership or by any other means, that results in another party being able to exercise the (direct or indirect) ultimate control of Client than the party that could do that when the Agreement was concluded;
  - d. Client has filed for bankruptcy or is declared bankrupt.
- 19.8. The termination of the Agreement in accordance with these Terms and Conditions shall never cause ViriCiti to be liable for any compensation.
- 19.9. The termination of the Agreement does not discharge Parties from their then current obligations. The termination further does not discharge Parties from obligations regarding intellectual property rights, confidentiality, applicable law and the competent court and other provisions which by their nature should remain in full force after the termination of the Agreement.

#### **20. Miscellaneous**

- 20.1. Without prior written consent of ViriCiti, Client is not entitled to transfer any of its obligations, rights or claims in relation to the Agreement and any transfer without the consent of ViriCiti is void *ab initio*.
- 20.2. ViriCiti shall be entitled to transfer its company and/or the Agreement entirely or partially to a third party within the concern of ViriCiti or fully transfer its company. In such event, the third party shall fully take ViriCiti's place. Client shall upon first request of ViriCiti fully cooperate with the assignment of agreement.
- 20.3. Additions and amendments to the Agreement shall only be valid if agreed upon between the Parties in writing.

- 20.4. Annexes to the Agreement, if any, are part of the Agreement.
- 20.5. If at any time any term or provision in the Agreement or these Terms and Conditions shall be held to be illegal, invalid or unenforceable by any government authority or court of competent jurisdiction, in whole or in part, such term or provision or part shall to that extent be deemed not to form part of the Agreement or these Terms and Conditions, but the enforceability of the remainder of the Agreement or the Terms and Conditions shall not be affected. In such event the Parties shall negotiate the amendment of any such term or provision in such manner that it becomes legal, valid and enforceable without affecting the original intent or the economic purpose and effect of such term or provision.
- 20.6. The applicability of the Convention on Agreements for the International Sale of Goods 1980 (CISG) is expressly excluded. Title 1 of Book 7 of the Dutch Civil Code does not apply.
- 20.7. The (digital) administration and the (digital) data in ViriCiti's systems or the systems which are used on behalf of ViriCiti (such as logfiles), will provide full evidence on any and all of ViriCiti's statements unless Client provides overriding evidence on the contrary.
- 20.8. The Agreement and any agreements and obligations arising therefrom shall be governed by and construed in accordance with the laws of the Netherlands. All disputes between the Parties arising under the Agreement and any agreements and obligations arising therefrom shall be submitted to the competent courts of Amsterdam.
- 20.9. ViriCiti is entitled to amend these Terms and Conditions. The amended provisions shall be applicable to the Agreement, unless Client makes an objection against the amended provisions within four weeks after receiving the notice of the amendment of the Terms and Conditions. If Client makes an objection against the amended provision within the above-mentioned period and the amendments result in a material worse position of Client, Client shall be entitled to terminate the Agreement without an obligation to pay compensation, if:
- i) it notifies ViriCiti in writing that it wants to terminate the contract due to the amended provisions; and
  - ii) ViriCiti does not notify Client within four weeks after receiving that notice, that ViriCiti is willing to continue the Agreement under the former conditions.