

The following provisions are the general conditions under which TRUST AND CHAIN BVBA, Valentijn Hennemanstraat 6, B- 8020 Oostkamp, Flanders, Belgium, Bruges register of companies, No 0699.889.642, - hereinafter referred to as "TANDC", performs its services to you, "The Customer".

THESE GENERAL CONDITIONS ARE APPLICABLE TO ANY AND ALL SERVICES OFFERED, CONTRACTED, OR OTHERWISE PERFORMED BY TANDC TO THE CUSTOMER. THE CUSTOMER'S GENERAL PURCHASE CONDITIONS OR ANY OTHER OF HIS GENERAL CONDITIONS ARE HEREBY EXPLICITLY REJECTED AND CAN NEVER BE INVOKED AGAINST TANDC AS IF TANDC WOULD EVER HAVE ACCEPTED THEM. THE CUSTOMER IS DEEMED TO HAVE READ, UNDERSTOOD AND ACCEPTED THE EXCLUSIVE APPLICABILITY OF THESE GENERAL CONDITIONS AND THEIR CONTENT BEFORE CONTRACTING WITH TANDC OR BEFORE LETTING TANDC PERFORM ANY SERVICES FOR THE CUSTOMER EITHER NOW OR ANY TIME IN THE FUTURE.

In case a provision could apply to either TANDC or the Customer they will be referred to as "the Party" or together as "the Parties".

**These General Conditions have been drafted bearing in mind that:**

TANDC provides customized software and frameworks instead of pre-packed fixed fee solutions, *i.e.* software and frameworks adapted to the Customer's individual needs, which are to be freely used by the Customer without that this necessitates any exclusivity to any of said customized software and frameworks.

TANDC is a software developer who uses its own specific source codes as well as open source frameworks in order to develop its own software and frameworks which it then further customizes according to the particular needs of each of its individual customers and which it bills as a service.

Due to its customized character any Software\* or Documentation\* is considered to be trade or business secrets, confidential, proprietary and not readily accessible to the public, and thus giving TANDC a competitive advantage, which otherwise would be jeopardised, compromised or even lost if it was improperly disclosed or used.

The same applies to any non-public information belonging to the Customer and to which TANDC would get access to in the framework of its collaboration with the Customer.

TANDC also Allocates Services.

*\* Words starting with a Capital letter are defined hereafter in section I "Definitions"*

**I. Definitions** *(Definitions in the singular form do also encompass their plural form and vice versa as well as their Infinitives and their conjugations. Words written in Italics are only referenced to in a single provision and therefore are not defined in this section, but take their meaning from the first time they were written in Italics.)*

**Contract** – any request from the Customer for Standard Services or Non-Standard Services and accepted by TANDC or any tender from TANDC for Standard Services or Non-Standard Services and accepted by the Customer.

**Change Request** – any further change requested by the Customer to a service which had already been Contracted, but which hasn't yet been fully Delivered or which Delivery hasn't yet been accepted by the Customer.

**Customer Rate** – Any Customer specific rate Parties agreed on for certain services during a given year and which are priced below TANDC's general rates or, in their absence, below general market rates for equivalent services.

**Software** – the computer applications and frameworks - database structures and websites included - developed by TANDC on the basis of TANDC's own specific source codes as well as on the basis of open source frameworks, and then tailored to the specific needs of the Customer, including any Updates, Releases, subsequent Versions and any related Documentation and (to be) made available to the Customer as agreed to by the Parties.

**Version** – (major release) a Software set containing major new functionality or other far-reaching changes. Versions are numbered by the first set of numbers after the product name and as a result a change in Version sets back to zero the following sets of numbers, e.g. MENTOR 5.2 -> MENTOR 6.0.

**Release** – (minor release) a Software set containing solutions for known Problems and minor functional enhancements. Releases are numbered consecutively within the same Version by the second set of numbers after the product name, e.g. MENTOR 6.1 -> MENTOR 6.2.

**Update** – (maintenance release) a Software set containing solutions for known Problems. Updates are numbered consecutively within the same Release by the third set of numbers after the product name, e.g. MENTOR 6.2.0 -> MENTOR 6.2.1.

**Delivery** – Physically handing over the Software to the Customer in form of an appropriate medium or by means of electronic transmission, for instance by giving a login to the Customer enabling him to operate said Software.

**Documentation** – Includes all printed or electronic documents delivered together with the above-mentioned computer applications and frameworks and containing instructions for installing, operating and using the Software.

**Allocation of Services** – Services and features TANDC makes available, TANDC branded or co-branded websites and Platforms (including sub-domains, international versions, software, devices).

**Platform** – a set of APIs and services that enable others, including application developers and website operators, to retrieve data from TANDC Services or to provide data to TANDC.

**System Environment** – hardware and software environment used by the Customer and wherein the Software is meant to be used.

**Problem** – any circumstance where the concerned Software or hosting service, when used in the System Environment as agreed on in the Contract, considerably deviates from the program or hosting description contained in the documentation provided by TANDC, or from its functionality (characteristics and/or features) as agreed to in the Contract or in any other written document wherein TANDC explicitly agreed to these, and therefore (a) doesn't work, (b) doesn't work correctly or (c) produces results that do not correspond to the results described in the documentation or assured by TANDC.

**Error** – any piece of code in the Software which is not completely correctly written, as well as any flaws in the design of the Software architecture or any technical malfunctioning of TANDC's hardware.

**Standard Services** – providing and installing Software as well as hosting the servers needed for running the Software on behalf of the Customer, *ad hoc* maintenance and support of the aforementioned, any training activities - including training by telephone -, organisational, operational and technical system consulting.

**Non-Standard Services** – any service with regard to

- a) Software which has been changed, modified, extended or combined with or linked to other products without that this has been done by TANDC;
- b) problems, including Software Problems, caused by a fault of the Customer, for instance by illegal, incorrect or non-contractual installation or use of the Software;
- c) Software used by the Customer in a System Environment that does not, or no longer, meet the System Environment requirements specified for said piece of Software.
- d) Problems resulting from changes to the Customer's System Environment - even though it still meets the requirements specified for said piece of Software - or from System Environment malfunctioning.
- e) any product, including software, that wasn't licensed to the Customer by TANDC.

**Working Days** – the weekdays from Monday to Friday, except official holidays.

**Manday** - Working Day with the length of 7,36 hours.

**Normal Business Hours** – from 9 am to 5 pm local time during every Working Day

## II. General Conditions

### 1. RESPECTING TANDC INTELLECTUAL PROPERTY RIGHTS

- 1.1 TANDC grants the Customer a non-exclusive right to use the Software solely in its System Environment and in conformity with the inter-operability provisions stipulated in paragraph II.1.4
- 1.2 All copy rights and other intellectual property rights to the Software remain the exclusive property of TANDC, even after the termination of the relevant Contract.
- 1.3 The Customer shall use at least the same degree of care as it uses in protecting its own crucial assets, for instance its confidential information (including the protective measures that go with these), but always at least a reasonable degree of adequate and effective care in order to avoid any abuse.

The latter encompasses amongst other things, without this enumeration being limitative:

- a) When exercising its limited right to produce up to 5 backup copies of every Software product, shall the Customer include all alphanumerical codes, trademarks and copyright indications in every single copy. These data must not be changed;
- b) The Customer shall keep a record of the number as well as the whereabouts of these backup copies, the original Software product and its Documentation, whereby this record must be made available to TANDC forthwith upon simple request;
- c) The Customer shall duplicate no part of any Documentation;
- d) The Customer shall ensure adequate physical security of the areas where access may be gained to the Software or Documentation, adequate controls and logs on access those areas included, in order to prevent any unauthorised person from getting access to the Software or Documentation.

The Customer shall immediately and fully inform TANDC whenever he notices or presumes that a non-authorised person might have had access to any part of the Software or the Documentation, thereby providing (1) all information that is relevant to the TANDC for correctly assessing the situation; and (2) a proposal for remedying this situation.

The burden of proof lies with the Customer.

Paragraph II.1.3 survives the Delivery for a period of five years.

- 1.4 The Customer is strictly forbidden to change, extend, decompile, disassemble or reverse engineer the Software.

Upon request and for an adequate fee, TANDC shall provide the Customer with any interface information necessary to allow communication between the Software and other third-party computer applications. If TANDC wouldn't provide the required information within a reasonable period of time, will the Customer send a reminder and set a reasonable target.

After expiry, the Customer has the right to establish interoperability himself or assign this task to a third-party, provided that decompilation of the Software is not taken any further than absolutely required and that no rights of TANDC are violated. The Customer does not have the right to integrate the Software into other applications, in any way that exceeds simple interoperability.

- 1.5 Whenever the Customer breaches or reasonable threatens to breach, the provisions of paragraph II.1.1-4, shall TANDC legally and automatically be entitled to (1) immediately stop any of its services and revoke any usage rights granted; (2) seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction without having to show or prove irreparable harm and without having to post bond; and to claim a fixed indemnity of two million euro (€ 2.000.000) - to be indexed annually by multiplying it with Belgium's general price index of December of that given year divided by Belgium's general price index of December 2010 -, which shall legally and without any warning notice be payable by the Customer to TANDC. This amount constitutes a reasonable estimation of the damage incurred as a result of the unlawful appropriation or use of any of TANDC's intellectual property rights. This amount does not waive any title of TANDC to other rights or remedies in law or in equity.

## **2. DELIVERY OF SOFTWARE BY TANDC AND OTHER STANDARD SERVICES**

- 2.1 The Customer shall grant TANDC a remote access facility to its System Environment.
- 2.2 TANDC shall deliver its Software in machine readable object code form on data carriers or by means of electronic transmission (e.g. via remote connection) so that the Customer can implement it in its System Environment, or, if requested, shall be given access to it by the Customer in order to implement the Software for the Customer.
- The Customer acknowledges and accepts that it belongs to the intrinsic nature of software that the installation of a new Version, Release or Update can result in a certain period wherein the Software and/or the entire System Environment is inactive and that the Customer will have to bear any such risk.
- 2.3 The Customer will provide the System Environment as specified by, or as agreed with, TANDC for each individual piece of Software so that it can implement and run said Software smoothly and in optimal conditions.
- 2.4 The Customer has to carry out acceptance tests within 10 Working Days after finalisation and installation of the Software, be it a new Update, Release or Version or a support or maintenance service. If no objection has been made within this period of time, the Delivered Software or service will be regarded as implicitly accepted.
- 2.5 TANDC cannot be obliged to release Update Deliveries for its Software to run in a System Environment which differs from the specifications for said piece of Software.
- 2.6 Unless stipulated otherwise, will TANDC process Standard Service requests in the order of submittal or according to the priority agreed on with the Customer. Services are available to the Customer during Normal Business Hours, whereas the Customer can submit service requests on a 24/7 basis by means of electronic media.
- 2.7 TANDC will strive to perform its Standard Services at the best effort, provided that the Customer is using the Software in a System Environment as specified or agreed by TANDC for said piece of Software, and provided that TANDC is able to provide these services with adequate and reasonable time and effort.
- 2.8 As a rule, Services will be delivered by TANDC's own staff. However, TANDC is entitled to transfer service activities to third-party providers. However, no privity of contract will be established between the Customer and the third-party provider.

- 2.9 The Customer is responsible for buying, leasing, etcetera the specified System Environment from third parties in a timely manner, at its cost and to ensure that all third party software used by him is in accordance with the authors' stipulations of use (no pirated copies, no arrears in the payment of third party licence fees, etcetera).
- 2.10 TANDC shall have the right to check at any time whether the Customer has complied with any requirement of Paragraph II.2.2 - II.2.3. and II.2.10 without having to do this either sporadically or systematically.

### **3. ALLOCATION OF SERVICES BY TANDC**

- 3.1 The Customer uses the Services at his sole risk. The Services are provided on an "as is" and "as available" basis.
- 3.2 TANDC does not warrant that the Services will meet the Customers' requirements or expectations, the Services will be delivered uninterrupted, timely, secure, or error-free, the results that may be obtained from the use of the Services will be accurate or reliable, any errors in the Services will be corrected.
- The Customer acknowledges and accepts that TANDC shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to any loss of profit, loss of goodwill, loss of business reputation, loss of data, cost of procurement of substitute goods or Services, or other intangible loss, resulting from: the use or the inability to use the Services, any changes which TANDC may make to the Services, or any permanent or temporary cessation in the provision of the Services; unauthorized access to or alteration of the Customer's transmissions or data; the deletion of, corruption of, or failure to store, any content and other communications data maintained or transmitted by or through the use of the Services; or any other matter relating to the Services.
- 3.3 Technical support is provided on a best-effort basis and only by e-mail.
- 3.4 The Customer acknowledges that TANDC can use third parties (e.g. hosting partners) to provide the necessary resources (e.g. hardware, software, networking, storage, etc.) to run the Services.
- 3.5 TANDC may stop, remove, modify or add (permanently or temporarily) Services (or features within Services) at TANDC's sole discretion. Any new, changed or removed features are subject to the General Conditions. Continued use of the Services after any such changes constitute Customer's consent to the changes.

#### 4. CUSTOMER'S USE OF SERVICES BY TANDC

- 4.1 The Customer agrees to use the Services only for purposes that are permitted by the GENERAL CONDITIONS and any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions.
- 4.2 For certain services, TANDC may offer or require the Customer to register for an account. The Customer ensures that all registration information he provides will always be valid, correct and up to date. The Customer is responsible for maintaining the security of his account and password. Accounts registered by bots or other automated methods are not permitted.
- 4.3 For certain services, TANDC may offer to upload photo's and or logo's. The Customer is responsible not to upload abusive photo's or wrong logo's, not to infringe on any copyrights or trademarks and not to use a design which TANDC users may deem offensive. The Customer will not input content such as photo's and or logo's or take any action on the Services that infringes or violates someone else's rights or otherwise violates the law.
- 4.4 For certain services, TANDC may offer to define a personal URL (web address). The Customer acknowledges that TANDC can rename or reject the personal URL, e.g. if it intentionally or unintentionally interferes with a trademark owner or because the personal URL is deemed offensive.
- 4.5 For certain services, TANDC may offer to input or upload content. The Customer is responsible not to input or upload abusive content, not to infringe on any copyrights or trademarks and not to use vocabulary which TANDC users may deem offensive. The Customer will not input content or take any action on the Services that infringes or violates someone else's rights or otherwise violates the law.
- 4.6 TANDC reserves the right (but has no obligation) to prescreen, review, flag, filter, modify, refuse or remove any or all content or account from any of the Services at TANDC's sole discretion. The Customer acknowledges that by using the Services the Customer may be exposed to content that may be offensive, indecent or objectionable and that, on this respect, the Customer uses the Services at his own risk.
- 4.7 The Customer will not impersonate another person.
- 4.8 The Customer will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).

- 4.9 The Customer will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose without the express written permission by TANDC.
- 4.10 The Customer agrees to be solely responsible for (and that TANDC has no responsibility to you or any third party for) any breach of the Customer's obligations under GENERAL CONDITIONS and for consequences (including any loss or damage which TANDC may suffer) of any such breach.
- 4.11 The Customer agrees to TANDC's PRIVACY POLICY.

## **5. ADVERTISEMENTS IN SERVICES BY TANDC**

- 5.1 Some of the Services are supported by advertising revenue and may display advertisements and promotions. These advertisements may be targeted to the content of information stored on or made available to the Services.
- 5.2 The manner, mode and extent of advertising on the Services are subject to change without specific notice to the Customer.
- 5.3 The Customer agrees that TANDC may place such advertising on the Services.
- 5.4 In case the Customer uses a free version of the Services, the Customer must not block such advertising.

## **6. API TERMS OF SERVICES BY TANDC**

Any use of the application programming interface (API) is bound by the GENERAL CONDITIONS plus the following specific terms:

- 6.1 Abuse or excessively frequent requests via the API\_ may result in the temporary or permanent suspension of access to the API. TANDC determines abuse or excessive usage of the API at its sole discretion.
- 6.2 At any time, TANDC reserves the right to modify or discontinue, temporarily or permanently, the Customer's access to the API (or any part thereof) with or without notice. TANDC especially reserves the right to limit the number of requests via the API to a certain upper limit per time interval.



- 6.3 TANDC reserves the right to at any time transform the API into a paid service and start billing for certain or all requests to the API. In such a case, the Customer will be given the choice to discontinue using the API or continue using the paid service.

## **7. PLUGIN TERMS OF SERVICES BY TANDC**

Any use of downloadable plugins (e.g. Outlook plugin) is bound by the GENERAL CONDITIONS plus the following specific terms:

- 7.1 A plugin may automatically download and install updates from TANDC. These updates may be bug fixes, enhanced functions, new software modules and completely new versions. The Customer agrees to receive such updates (and permit TANDC to deliver these to you) as part of the Customer's use of the Services.
- 7.2 At any time, TANDC reserves the right to transform any or all plugins into a paid service and billing for certain or all use of the plugin(s). In such a case, the Customer will be given the choice to discontinue using the plugins or continue using the paid service.

## **8. TANDC TERMS OF SERVICES FOR SERVICES**

Any use of TANDC Services is bound by the GENERAL CONDITIONS plus the following specific terms:

- 8.1 TANDC Services are billed in advance and is non-refundable. There will be no refunds also in the following explicit cases: unavailability of Services, downgrade, unused Services or when the functionality of Services is changed.
- 8.2 TANDC Services can be determined for a period of time (e.g. 1 year). The subscription to a period of time is automatically prolonged if not terminated explicitly and in written 2 months prior to the end of the subscription period.
- 8.3 TANDC Services can be determined for a one time event. The one time event can allow the usage of Services only for the duration of this particular event plus 4 months prior to the event an 1 month after the event.
- 8.4 Abuse or excessively frequent requests of an account via a TANDC Services may result in the temporary or permanent suspension of the account. TANDC determines abuse or excessive usage at its sole discretion.

- 8.5 In case of the Customer subscribing to TANDC Services, the Customer selects the number of users authorized to use the Customer's TANDC Service. A user in this context is a user that is allowed to create new events and if provided, to send emails. A user is identified by his email-address. If a person uses several different e-mail-addresses to create new events, then each unique email-address will count as a separate user. The Customer is responsible to ensure that the maximum user number for the Customer's specific TANDC Service is not exceeded and that, if the maximum user number is exceeded, the Customer upgrades to a higher subscription.
- 8.6 TANDC reserves the right to temporarily or permanently suspend and account immediately if any of the terms of the GENERAL CONDITIONS are violated. TANDC determines violation at its sole discretion. If an account is to be suspended, TANDC will make a reasonable attempt by email to warn the account owner prior to suspension.
- 8.7 A TANDC Service can be associated with a MYTANDC account (e.g. MyTrustandchain-account). In that case, all communication will be directed to the email-address associated with that MYTANDC account. The Customer is responsible to keep the MYTANDC account information up-to-date.

## **9. MODIFICATIONS TO THE PRICES OF SERVICES BY TANDC**

- 9.1 Prices of all Services are subject to change. If they change, the changes do not affect running subscriptions but will take effect only for any subsequent subscription period you choose to purchase.

## **10. MAINTENANCE AND SUPPORT SERVICES**

- 10.1 TANDC provides maintenance or support services by means of the available remote support tools. Maintenance or support services are only offered during Normal Business Hours. TANDC will treat any request for these services with the reaction time "as soon as possible". However, this special reaction time is neither applicable to any service concerning events resulting from, System Environment changes or upgrades and/or Software customisation, nor to events that qualify as Non-Standard Services.
- 10.2 Any Non-Standard Service shall be charged double the rate for standard maintenance or support services. Whenever TANDC would agree to provide maintenance or support services outside Normal Business Hours will those hours be charged double the afore-mentioned rates. Should Problem analysis and/or Problem solving only be possible locally, expense fees will be charged, whereby travelling costs and expenses for travelling outside of Belgium shall be

charged at 110%. Any day outside of Belgium, travelling days included, shall be charged as a full Working Day.

10.3 The Customer shall extensively support TANDC in delivering its maintenance and support services. There to shall the Customer:

- register any *Problem* and notify TANDC thereof through a contact who
  1. is able to give information about the *Problem* that occurred and who has sufficient extensive user knowledge for implementing any proposed measures in the Customer's System Environment; and
  2. is able to make and carry out decisions; and
  3. shall be available in Belgium for TANDC to contact when performing its Maintenance and Support services;
- provide TANDC with precise written *Problem* descriptions, prompt answers to questions, adequate co-operation and intermediate inspection of proposed solutions and tests.
- provide and operate all hardware and software that happens to be necessary for TANDC to perform remote diagnosis and Error correction to the Software in the Customer's System Environment, whereby the connection is to be established by the Customer (especially with regard to data security). (*Any information concerning this matter is available from TANDC CUSTOMER SUPPORT.*)
- provide TANDC with the necessary means for performing its maintenance and support services, for instance - without this enumeration would be exhaustive - office, paper, printers, free use of phone and internet lines.

10.4 TANDC has the right to remedy any Error as well as to decide how this to be done, for instance by means of an Update Delivery. As long as the Error has not been cured and upon request by the Customer, shall TANDC search to provide an intermediate workaround solution for the Error if this can be achieved within reasonable time and with reasonable effort and if as a result of said Error the Customer is not capable of carrying out tasks that cannot be delayed.

10.5 Should TANDC receive a service assignment for a Problem that is caused by an Error in its Software or hosting service which is not covered by the warranty of paragraph II.4, will TANDC be entitled to charge all services provided with respect to this assignment as an *ad hoc* Maintenance and Support Service.

## 11. HOSTING SERVICES

11.1 TANDC can provide hosting services. The Customer acknowledges that TANDC can use third parties (e.g. hosting partners) to provide the necessary resources (e.g. hardware, software, networking, storage, etc.) for the hosting services.

11.2 Hosting services may only be according to the law. Any use of these services which violates any local, state, federal, or international laws which may apply to TANDC, your local jurisdiction, or any jurisdiction that you or your site may be subject to is strictly prohibited.

While using the service, the Customer may not:

A. Restrict or inhibit any other user from using the Internet;

B. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation the U.S. export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;

C. Post, publish, transmit, reproduce or distribute any information or software which contains a virus or other harmful component; Post, publish, transmit, reproduce, distribute or in any way exploit any information, software, or other material obtained through the service for commercial purposes (other than as expressly permitted by the provider of such information, software, or other material)

11.3 The Customer agrees to indemnify, defend, and hold harmless TANDC from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from the Customer's use of the service which damages either the Customer, TANDC, or any other party or parties without limitation or exception. This indemnification and hold harmless agreement extends to all issues associated with the hosting for the Customer, including but not limited to domain name selection and Website content.

11.4 TANDC reserves the right to refuse or discontinue hosting service to anyone at TANDC's sole discretion. TANDC may deny the Customer access to all or part of the service without notice if the Customer engages in any conduct or activities that TANDC, in its sole discretion, believes violates any of the terms and conditions in this agreement. TANDC shall have no responsibility to notify any third-party providers of services, merchandise or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification.

11.5 TANDC makes no warranties or representations of any kind for the hosting services being offered. The hosting service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, non-infringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by TANDC or employees shall create a warranty. TANDC provides no warranty that the hosting service will be uninterrupted or error free or that any information, software or other material accessible on the service is free from viruses or other harmful components. Under no circumstances shall TANDC be liable for any direct, indirect, special, punitive, or con-

sequential damages that result in any way from the Customer's use of or inability to use the service, or for third parties' use of the service to access your Webpace, or to access the Internet or any part thereof, or the Customer's or any third parties' reliance on or use of information, services, or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance. If the Customer is dissatisfied with TANDC hosting service or any of its terms, conditions, rules, policies, guidelines, or practices, the Customer's sole and exclusive remedy is to discontinue using the hosting service.

The Customer understands that by placing information on TANDC servers or third parties' servers (e.g. hosting partners) such information becomes available to all Internet users and that TANDC has no way of limiting or restricting access to such information or protecting such information from copyright infringement. The Customer assumes total responsibility and risk for the Customer's use of TANDC servers or third parties' servers (e.g. hosting partners) and the Internet. It is solely the Customer's responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise provided through TANDC servers or third parties' servers (e.g. hosting partners) or on the Internet generally.

11.6 The Customer agrees that TANDC is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

11.7 The Customer agrees not to maliciously or intentionally interfere with the proper operation of the system, including but not limited to defeating identification procedures, obtaining access beyond that which you are authorized for, and impairing the availability, reliability, or quality of service for other customers. The Customer further agrees not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. The Customer agrees to follow the Acceptable Use Policy of any network or service The Customer connects to.

The Customer agrees to adhere to system policies and all other policies designed to protect and enhance the quality and reliability of hosting services. The Customer agrees to abide by any and all future TANDC policy decisions.

11.8 The Customer agrees that the security is solely the Customer's responsibility. If the Customer believes the security has been compromised in any way, the Customer will notify TANDC immediately in writing. The Customer shall be held fully responsible for any misuse or compromise for which TANDC is not properly notified. The Customer agrees not to provide or share access to any third party, and that the Customer is responsible for any use of the Customer's access by any party to whom such access has been provided. The Customer agrees that if any security violations are believed to have occurred in association with the Customer's access, TANDC has the right to suspend access pending an investigation and resolution.

- 11.9 The Customer's use of the service is at The Customer's sole risk. TANDC is not responsible for files and data of the Customer. the Customer agrees to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data.
- 11.10 The Customer agrees not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of TANDC or any other service with reference to services obtained through TANDC, for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming" is strictly prohibited and may cause the Customer's services to be terminated immediately and without warning, and the Customer will be held fully responsible for any damages to the Customer, TANDC, or any other party or parties resulting from any such conduct.

## 12. WARRANTY

- 12.1 An Error causing a Problem is only considered to constitute a *defect* when it does not resort under the circumstances described in the definition of Non-Standard Services (a) till (d), except in the limited circumstances mentioned here below.
- If the Customer has extended the Software by means of interfaces within the Contract's boundaries, in which case TANDC' warranty only applies up to the interface.
- Whenever the Software was changed or extended (1) by the Customer or by a third party on behalf of the Customer, or (2) as result of a Change Request and there is no possibility to exclude that these changes or extensions have added to the Problem, then a *defect* to the above mentioned specification will only have occurred if irrefutable evidence can be provided that the Problem would equally have occurred if these changes or extensions hadn't been made, whereas in all other circumstances dealing with said Problem will be charged depending on the circumstances as maintenance or support services, additional Software development services or as Non-Standard Services, whereas any other Error in a Version or Release reported by the Customer within the timeframe of paragraph II.2.4 shall be remedied by TANDC for free.
- 12.2 TANDC guarantees that the Software remains free of *defects* as specified in paragraph II.4.1 only for the duration of the warranty period. The warranty period is limited to 1 year of 365 calendar days from Delivery, provided that TANDC did not act deliberately. The warranty includes diagnosis and correction of *defects*.
- 12.3 The Customer can set TANDC a target of at least 20 Working Days for removal of a *defect*. The target is to be extended if this is required by the complexity or difficulty of Error diagnosis and/or removal. If the above mentioned target cannot be met, can the Customer set TANDC another 10 Working Days target to remove the *defect*. If TANDC fails to remove the *defect* before the

second target expires, can the Customer, within the legal boundaries, request to reduce the fee (mitigation), to withdraw from the Contract (withdrawal) or claim damages as specified in paragraph II.7.

- 12.4 The Customer has no right of withdrawal or mitigation of the Contract if the Software or hosting service shows an Error that either does not qualify as a Problem, or which does qualify as a Problem, but which can be solved by TANDC within the timelines set out in paragraph II.4.3.

### **13. TERM AND TERMINATION**

- 13.1 Except for any specific conditions to the contrary in a given Contract, TANDC provides its Services for an indefinite period in which case each Party can terminate TANDC's services annually by means of a registered letter which has to be sent before the first of October of the current year, in which case these General Conditions will no longer cover any Contract entered into after 31<sup>st</sup> December of the current year, whereas these General Conditions will continue to cover any Contract which would have been entered into before the 31<sup>st</sup> December of the current year and which would only expire thereafter (gradual phasing out period).
- 13.2 Any Contract that mentions a fixed term for repeat services, will automatically be prolonged in the absence of a termination notice by registered letter which has to be sent at least three months before the end of the term of the Contract, unless stipulated differently in that Contract.

### **14. CONDITIONS OF PAYMENT**

- 14.1 Any Fees or prices agreed on with, or mentioned by, TANDC are VAT exclusive.
- 14.2 Except when stipulated differently, will TANDC charge any Contracted service upon Delivery and their acceptance by providing its invoices on a monthly basis and in writing by the 10<sup>th</sup> of each month. Even when TANDC wouldn't invoice some of its services on a monthly basis, shall it nevertheless present the Customer on a regularly basis with its timesheets, explicative sheets of spent working hours, together with information on the developments.
- 14.3 All payments are due without deduction within 10 Working Days after receipt of invoice. If the Customer does not fully pay within said payment term, shall he automatically be considered to be in default without separate notice and shall he be liable to pay interest for default of 8% p.a. on top of the European Central Bank's interest rate "marginal lending facility" for the corresponding period. Any partial payment of an invoice shall mean that the Customer accepted said

invoice unreservedly, unless prior explicit and written statement by the Customer to the contrary.

- 14.4 Any licence for use is intermitted for as long as payment of the invoices by the Customer is overdue, whereas TANDC keeps all title to the property rights and usage rights of any Software or source code sold, including all storage media, until complete payment of all amounts. If the Customer is defaulting on his payment of service fees, will TANDC be entitled after having first notified the Customer in writing of its intention to cease its service activities after expiry of a final payment target set by TANDC (1) to cease all service activities for the duration of the default, (2) to withdraw from any Contract mentioned in said notification, (3) to recall any Software whose development hasn't been fully paid up, included their test or demo Versions or Releases.

## 15. INTELLECTUAL PROPERTY RISKS AND GENERAL LIABILITY

- 15.1 If a third party alleges towards the Customer that the use of the Software according to the licence granted in a Contract directly violates a patent, a copyright, a database right, a trademark (herein after referred to as *intellectual property rights*) in a country, in which TANDC knew the Customer planned to use the Software, shall TANDC defend and indemnify the Customer according to the following stipulations (paragraphs II.7.2 to II.7.4), upon the prior condition that the Customer strictly and fully observes paragraph II.7.2. Any further liability of TANDC for infringement of *intellectual property rights* is explicitly excluded.
- 15.2 As soon as the Customer gains knowledge of the claims specified in paragraph II.7.1., shall he (a) immediately and fully inform TANDC about the claimant as well as the claim, (b) exclusively abandon any control over defence or settlement measures with respect to this claim to TANDC, (c) provide TANDC with all authorisations, information and support at TANDC's expense that TANDC deems necessary to avert or settle the claims and (d) not make any replies, accommodations or agreements without the prior express written permission of TANDC. TANDC is entitled to decide at its own discretion if the claim is to be admitted, settled, averted or contested. If the Customer is legally sentenced to payment of damages or costs as a result of the claimed infringement or a decision by TANDC that would result from dealing with this claim, or if the Customer would suffer any other costs or damages, then TANDC's liability clauses mentioned below will be applicable.
- 15.3 As soon as TANDC has been duly informed by the Customer about the claims specified in paragraph II.7.1., shall TANDC be entitled (a) to provide the Customer with the unencumbered right to use the Software as specified in the Contract, (b) to change the Software in a way that it doesn't infringe any *intellectual property rights* or (c) demand that the Customer ceases to use



the Software or parts thereof in which case TANDC will refund him the corresponding part of the Software development fee, minus 20% for every full year (365 days) following its Delivery date.

- 15.4 TANDC is exonerated from its obligations under paragraphs II.7.1 to II.7.3 if the claimed infringement of *intellectual property rights* results from one or several of the following scenarios: (a) The Software was used in connection with Customer-specific methods or processes. (b) The Software was adapted to meet requirements made by the Customer. (c) The Customer didn't use the most recent, unaltered Update Delivery of the Software in question and the use of said Update Delivery would have prevented the circumstances causing the claimed infringement to occur. (d) The Software was used or combined with programs that weren't supplied by TANDC and the circumstances causing the claimed infringement wouldn't have occurred if the aforementioned third-party programs hadn't been used. (e) The Software was changed by the Customer or a third party. (f) The Software was used in another way than prescribed by TANDC or allowed within the scope of its Contract.
- 15.5 TANDC declares that it has no knowledge of any claim that its Software or other services would infringe on a third party's *intellectual property rights*. TANDC warrants that whenever it would be informed about such a claim, it shall forthwith analyse the situation and if, required or advisable, undertake any of the measures of paragraph II.7.7 in order to protect the Customer.
- 15.6 TANDC shall be liable for any act or omission from any of its vicarious agents,. TANDC cannot be held liable for minor negligence for any cause whatsoever, except when TANDC would continue to default on, or would be unable to perform, any of the obligations it explicitly undertook in any Contract.
- Any liability by TANDC, even for a violation of a cardinal obligation, shall be limited to the amount of predictable damage within the scope of that Contract, which shall be limited for every separate damage event to the amount of three (3) or five (5) times the fees invoiced for the specific piece of Software or for the particular service which caused the liability, whereby the lower multiple is to be applied whenever that fee is based on a Customer Rate, whereas the higher multiple has to be applied in all other circumstances.
- 15.7 Exclusions and limitations of liability in these General Conditions do neither apply to TANDC's liability as stipulated by the Product Liability Act, nor to any liability for fraud, injury of life, body or health.
- 15.8 In order to minimise risks with respect to the Software, shall the Customer produce backup copies of his data in regular intervals, however, at least once a day.
- 15.9 Notwithstanding all the afore mentioned shall TANDC not be held liable for anything which is caused by force majeure or an act of God falling upon TANDC, its vicarious agents or its major

suppliers, for instance - without that this enumeration would be exhaustive - long lasting social unrest, strikes or lock-outs; acts or omissions by public authorities; serious transport, electricity, Internet or telecommunication troubles; natural disasters, epidemics, a great number of its collaborators being ill for a longer period of time; fire, burglary into or vandalism of its premises; malware attacks on or infections of information or communication systems even though the sector's state of the art defensive measures having been applied; legal software or hardware that breaks down without that this could have been foreseen and thereby disabling all fall back software or hardware even though the sector's state of the art preventive measures had been taken; revolts, insurrections, terrorism, war or other violent acts.

## 16. DATA PROTECTION / CONFIDENTIALITY

- 16.1. The Customer's data can be stored and archived on storage media of any kind in the context of a Contract. They can be transferred for processing by TANDC or its vicarious agents as well as used by TANDC along the specifications of that Contract. **THE CUSTOMER AGREES THAT HIS DATA WILL BE PROCESSED AND USED BY TANDC ALONG THE SPECIFICATIONS OF THESE GENERAL CONDITIONS AND ANY APPLICABLE CONTRACT.** TANDC will treat all Customer data with due confidentiality and shall see to it that its employees, officers, consultants and vicarious agents are duly informed of this obligation and that they will abide by it.
- 16.2. Upon request by the Customer shall TANDC delete any data (program or test data) and destroy or return any documents made available by the Customer, provided that archiving these isn't required for the purpose of documenting fulfilment of contractual obligations by TANDC. Even without such a request shall TANDC not keep any data than what is required for performing its services under these General Conditions and any Contract, provided that archiving these isn't required for the purpose of documenting fulfilment of contractual obligations by TANDC.
- 16.3. TANDC will carefully store the subjects of the Contracts, especially its source code programs and any documentation from the Customer.
- 16.4. Confidential treatment of information does not apply to either Party for any information that - as evidenced on the basis of clear, unambiguous, dated and verifiable documentation (in writing or other documentary form) - is or becomes publicly known other than by reason of acts or omissions of the receiving Party, or if the Customer or TANDC already have the information, which is not secret, or if the information was developed independently by the Customer or TANDC.
- 16.5. TANDC has the right to state that the Customer is a customer of TANDC by mentioning the Customer's name in press releases, product brochures and financial reports.

## **17. TRANSFERABILITY**

- 17.1 TANDC can transfer all or part of the rights and duties resulting from these General Conditions and the Contracts to a third party upon a prior written approval from the Customer. The Customer can only refuse to approve the contemplated transfer for important reasons.
- 17.2 No rights or duties whatsoever resulting from these General Conditions and the Contracts can be transferred to a third party by the Customer.

## **18. CHOICE OF LAW AND JURISDICTION**

- 18.1 These General Conditions and any Contract shall be governed by and construed under the laws applicable in 8000 Bruges, without regard to conflicts of laws principles.
- 18.2 The Parties shall try to settle amicably and by mutual consultation any dispute about the interpretation and/or execution of these General Conditions or any Contract that would result.
- 18.3 When there is no likelihood of reaching a settlement within a reasonable period of time, or when the urgency of the case so requires, shall any dispute be decided upon under the exclusive jurisdiction of the courts in Bruges, provided that the Customer is a merchant entered in the commercial register. In case of disputes concerning GDPR, the Belgian Commission for the Protection of Privacy (CCP) shall be consulted.

## **19. MISCELLANEOUS**

- 19.1 No obligation upon TANDC resulting from these General Conditions or the Contracts shall be interpreted as an obligation to deliver results, except when stipulated explicitly otherwise either in these General Conditions or later on in writing by a competent officer from TANDC. As a result any obligation upon TANDC shall be a means obligation, whereby any such means obligation shall be interpreted as "standard effort", except when stipulated explicitly otherwise either in these General Conditions or later on in writing by a competent officer from TANDC that this means obligation is to be considered to be a best efforts obligation.
- 19.2 The headings of the paragraphs only serve as a convenient reference and shall not be considered for construing these General Conditions.

- 19.3 These General Conditions 2018 supersede all previous versions whereby these General Conditions shall govern any Contract, including the ones already concluded, unless explicit stipulations to the contrary in any new Contract, in which case the diverging provisions will be limited to that specific Contract and strictly interpreted. Just like all other changes and amendments to these General Conditions will those diverging provisions have to be in written form and duly signed by the competent representatives of TANDC.
- 19.4 Should any of the clauses of these General Conditions be or become invalid or unenforceable, shall it be replaced by one that comes as close as possible to its economic purpose, while all other provisions shall continue in full force and effect, even in the intermediate period. The Parties will agree on a regulation by mutual agreement and according to the vein of present General Conditions. This also applies to all circumstances that have not been regulated by these General Conditions.