

**GENERAL CONDITIONS
THE PATIENT SAFETY COMPANY
(TPSC)**

Version AV.v.1/2008

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1. GENERAL

1.1 Applicability

1.1.1 These conditions are applicable to all proposals and/or deliveries made by TPSC and agreements and/or other legal relationships between TPSC and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written and/or electronic agreement, unless otherwise agreed upon in writing.

1.1.2 Purchase conditions or any other conditions used by Customer will not be applicable. The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by TPSC, unless explicitly accepted in writing by TPSC.

1.1.3 The General Conditions TPSC are filed with the Chamber of Commerce in Noordwest-Holland under number 37113259.

1.1.4 TPSC reserves the right to make alterations and/or additions to the General Conditions TPSC. The modified General Conditions TPSC will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.5 Changes in and additions to the General Conditions TPSC and/or agreements made between TPSC and Customer are only valid when agreed to by TPSC in writing.

1.1.6 If Customer consists of more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with TPSC.

1.1.7 The headings above the articles of these conditions are only intended to increase the legibility of this document. The content and meaning of an article placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

1.2 Definitions

1.2.1 In the General Conditions TPSC the following words and expressions are used with a capital. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

1.2.2 Advance:
As further described in article 7.5.

1.2.3 Back-up:
Spare copies of digital data and/or information.

1.2.4 Customer:
Anyone who requests and orders the delivery of Products.

1.2.5 Courses:
Courses shall also include trainings and related activities.

1.2.6 Error:
As further described in article 6.7.

1.2.7 Fair Use:
The reasonable use by Customer of the Products.

1.2.8 Fixed Price:
As further described in article 7.3.

1.2.9 TPSC:
The TPSC organization within the TPSC group, its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions TPSC applicable.

1.2.10 TPSC Products:
All products and services provided by TPSC and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held

by TPSC.

1.2.11 Hosting-service:
A Product that consists of hosting Products and/or the website of Customer.

1.2.12 Identification Codes:
Usernames, passwords, address codes and/or other codes.

1.2.13 Maintenance:
As further described in article 2.3.

1.2.14 Object Code:
The computer programming code substantially in binary form. It is directly executable by a computer after processing, but without reverse engineering, compilation or assembly.

1.2.15 Process-data:
The data entered within the SaaS-service by Customer and/or data entered by third parties.

1.2.16 Products:
All TPSC Products and/or Third Party Products provided by TPSC, the resulting provisions and related activities. SaaS-service is considered a Product.

1.2.17 SaaS-service:
SaaS (Software as a service)-service constitutes the direct and/or indirect (through a third party) provision by TPSC of Products through a web-based application. Hosting-service is part of SaaS-service unless indicated otherwise.

1.2.18 Source Code:
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code. Source Code does not include Object Code.

1.2.19 Subsequent Calculation:
As further described in article 7.4.

1.2.20 Support:
As further described in article 2.5.

1.2.21 Third Party General Conditions:
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions or other conditions maintained by a third party.

1.2.22 Third Party Products:
All products and services provided by TPSC, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by TPSC.

1.2.23 Warranty:
As further described in article 6.9.

1.2.24 Workdays:
Normal Dutch working hours (8.30-17.30) and days (Monday through Friday) with the exception of public holidays.

1.3 Confirmation

1.3.1 Verbal agreements, assignments or other expressions of whatever nature by employees of TPSC are only valid and binding when they have been confirmed in writing by authorized representatives of TPSC.

1.4 Offers

1.4.1 All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.

1.4.2 Offers are based on the data, information or requirements made known by Customer as set out in article 1.6.

1.5 Agreements

1.5.1 If a proposal, contract or other similar legally binding document is sent by TPSC to Customer and Customer

- fails to return this document, signed, to TPSC, Customer accepts by payment of compensation to TPSC the contents of this document and the General Conditions TPSC.
- 1.5.2** An agreement between TPSC and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product such as but not limited to Maintenance and Support, for which a periodic fee is charged. If this agreement is not terminated or not terminated in time, it is extended repeatedly in increments of 1 (one) year.
- 1.5.3** Termination of the agreement as described in article 1.5.2 occurs by means of a registered letter, which must be received by the other party no later than 40 (forty) days prior to the expiration date of the agreement.
- 1.5.4** Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.
- 1.5.5** Parties have the right to immediately terminate the agreement wholly or partially without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if the other party is a person and becomes deceased, if the other party submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for the other party, if the other party is in a state of bankruptcy or suspension of payment has been granted or if the other party's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by TPSC will be immediately due.
- 1.5.6** After the agreement has been ended, for any reason, parties can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and competition clause.
- 1.6 Co-operation/Information Requirements For Customer**
- 1.6.1** All assignments are carried out by TPSC on the basis of data, information, requests and/or requirements made known to TPSC by Customer.
- 1.6.2** Customer shall provide all necessary cooperation to TPSC and shall make known in time all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.
- 1.6.3** If data, information and/or requirements necessary for execution of the agreement are not provided, not timely provided, and/or not provided in accordance with the agreements, or if Customer fails to meet its obligations in any other way, then TPSC has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and TPSC has the right to charge the costs incurred at its usual rates.
- 1.6.4** If changes and/or new facts arise in regard to data, information, requests and/or requirements provided earlier, TPSC will always be fully justified in consultation with Customer to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.6.5** If Customer makes functional improvements or any other adjustments in the Products (after first having received the written permission from TPSC, as further described in article 2.1.4), Customer is obliged to report such adjustments to TPSC, in the event that TPSC provides Maintenance, Support, or any other services with regard to Products provided to Customer.
- 1.6.6** In the event TPSC performs activities on a location other than its own, Customer will be responsible for providing free of charge reasonable requested facilities, such as office space and telecommunication facilities.
- 1.7 Confidentiality/Non-competition**
- 1.7.1** TPSC and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products, of which they become aware. Data and information may only be used in order to carry out the agreement between parties.
- 1.7.2** TPSC is authorized to place the name and logo of Customer on the TPSC website and/or reference list and to make them available to a third party for information.
- 1.7.3** Customer will not enter into any direct or indirect commercial, employment or other such relations with employees from TPSC during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of TPSC. Customer will ensure that its clients will comply with the foregoing obligation.
- 1.7.4** In the event that Customer breaches article 1.7.3, Customer will be charged, without further notification required, a fine of Euro 50.000,- (fifty thousand) for each breach, undiminished the right of TPSC to claim full compensation for damages incurred.
- 1.8 Liability**
- 1.8.1** TPSC's total liability shall be limited, in accordance with articles 1.8.2 and 1.8.3, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of Euro 50.000,- (fifty thousand), whereby a sequence of events is regarded as one event.
- 1.8.2** If the agreement also includes an agreement over time with a term of more than 1 (one) year and TPSC's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to TPSC on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of Euro 50.000,- (fifty thousand).
- 1.8.3** TPSC has insured itself against damage. TPSC is in any case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with TPSC, however caused, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance increased with TPSC's deductible (own risk), except in case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).
- 1.8.4** TPSC's total liability for damage resulting from death or physical injury will in no event amount to more than Euro 1.000.000,- (one million), whereby a sequence of events is regarded as one event.
- 1.8.5** Direct damage is exclusively understood as:
- The reasonable costs made in determining the cause and the extent of the damage;
 - The reasonable costs incurred in prevention or limitation of damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.6** TPSC's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate

- inactivity and/or claims from third parties against Customer, is expressly rejected.
- 1.8.7** With the exception of the case named in article 1.8.1 and 1.8.4, TPSC has no liability for damage compensation regardless of what an action towards compensation could be based upon.
- 1.8.8** TPSC's liability exists solely when Customer immediately and appropriately notifies TPSC of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and TPSC then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that TPSC is able to react adequately.
- 1.8.9** The condition for the existence of any right to compensation is always that Customer notifies TPSC in writing within 60 (sixty) days after the damage came into existence, by registered mail, and takes the necessary measures to limit the damage as much as possible.
- 1.8.10** Customer indemnifies TPSC from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by TPSC.
- 1.8.11** TPSC does not accept any liability for damage regardless of its nature caused by Third Party Products which TPSC has delivered to Customer. If possible TPSC will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.12** TPSC is not liable for any damage regardless of its nature, which is the result of a failure to provide Support, Maintenance and/or Warranty on time.
- 1.9 Transfer**
- 1.9.1** The agreement between TPSC and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from TPSC.
- 1.10 Force Majeure**
- 1.10.1** Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and by law, legal act, or generally accepted practices cannot be held accountable for. The aforementioned circumstances include circumstances that are beyond TPSC's power as well as business risks of TPSC, these include but are not limited to failure to perform by a supplier of TPSC, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.
- 1.10.2** When force majeure is of a temporary nature, TPSC has the right to suspend its commitments until force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.10.3** TPSC reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.10.4** In the event that force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.
- 1.11 Nullity**
- 1.11.1** If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilaable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.11.2** In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilaable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with in which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.
- 1.12 Applicable Law and Dispute Mechanism**
- 1.12.1** All agreements made between TPSC and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 1.12.2** Any disagreement between parties because of an agreement will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, prior to arbitration, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes.
- 1.12.3** If the SGOA declares itself unauthorized or if parties mutually agree to such, disagreements will be placed before a qualified court in Amsterdam, The Netherlands.
- 1.12.4** The foregoing shall not prevent any party from taking legal procedures, prior to turning to the SGOA, for purposes of sequestration and/or garnish in order to ensure security for its existing rights.
- 2. TPSC PRODUCTS**
- 2.1 User Rights Software Programs**
- 2.1.1** Customer is granted the non-exclusive right to use the Products and corresponding documentation.
- 2.1.2** User rights are limited exclusively to own use of the Products for the agreed upon CPU (Central Processing Unit), number of users, servers and/or workstations. If nothing is agreed upon, user rights will be limited to the CPU on which the Products were first installed and the number of users, servers and/or workstations will be limited to 1 (one).
- 2.1.3** User rights for software Products are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing.
- 2.1.4** It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Products in any way, without the prior written approval from TPSC.
- 2.1.5** To the extend Products are not provided on the basis of SaaS-service, Customer is allowed to make one Back-up copy of the Products for safety purposes only, if a Back-up is not provided for by TPSC.
- 2.1.6** User rights on the Products cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.7** Customer does not have the right to make the Products available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.8** Reverse engineering or decompilation of the Products is

- not permitted by Customer, unless such is explicitly permitted by law.
- 2.1.9** The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.
- 2.1.10** The extent of the user rights on Third Party Products is determined by the Third Party General Conditions as described in article 5. Where the foregoing does not deviate from the Third Party General Conditions, the foregoing will also be applicable.
- 2.2 Verification**
- 2.2.1** TPSC is entitled to incorporate technical limitations and control mechanisms in the Products in order to prevent and/or verify that the actual number of users, servers and/or workstations does not surpass the agreed upon number of users, servers and/or workstations.
- 2.2.2** TPSC is entitled or through the use of a third party, as long as Customer makes use of the Products, to make unannounced verification visits to the locations where the Products are used. Customer shall provide all necessary cooperation and access. In the event Customer refuses cooperation and/or access, TPSC will be entitled to terminate the agreement immediately. In this event Customer will no longer be entitled to use the Products and will be obligated to return or destroy any copies made thereof within 30 (thirty) days upon the first request of TPSC.
- 2.2.3** If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers and/or workstations surpasses the number of users, servers and/or workstations agreed upon, Customer will be obligated to immediately acquire the missing number of users, servers and/or workstations licenses and pay an additional fine of 25% over the amount due. Amounts indebted for Maintenance and Support for the missing users, servers and/or workstations will be charged from the moment of delivery of the earlier agreed upon number of users, servers and/or workstations.
- 2.3 Maintenance**
- 2.3.1** TPSC offers Customer, depending on the Products delivered, the option of acquiring Maintenance.
- 2.3.2** Maintenance on the Products is based on a periodic Advance and against further to be specified terms and conditions. Where these further to be specified terms and conditions do not deviate article 2.3 will be applicable.
- 2.3.3** Maintenance includes providing updates and documentation of the licensed Products delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Product that has been made available. TPSC is not obliged to actively keep Customer up to date concerning possible updates of the Products.
- 2.3.4** If Maintenance results in a functional improvement, TPSC will have the right to charge extra payment to compensate for this functional improvement.
- 2.3.5** TPSC is authorized to refuse the provision of Maintenance if the Products provided by TPSC or the environment in which the Products operate are altered by Customer in any way or form.
- 2.3.6** If Customer refuses to install updates of the Products that are offered by TPSC to Customer then TPSC reserves the right to terminate the agreement or to adjust the agreement in accordance with the refusal to install updates.
- 2.4 Advice**
- 2.4.1** All Products that can be considered advice or which can be described as advice, such as but not limited to Support, will only be given to the best of TPSC's knowledge and capability.
- 2.4.2** TPSC is not responsible and/or liable if the activities that follow forth from advice result in a failure to carry out a project for Customer within allocated budgets, time schedules and other agreed upon conditions.
- 2.4.3** TPSC will provide advice on the basis of the conditions required by TPSC and information received from Customer as mentioned in article 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.
- 2.5 Support**
- 2.5.1** Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Products. Support is initially based on a periodic Advance. On the basis of this periodic Advance, Customer is entitled to 16 (sixteen) response hours per year. If the number of hours entitled to are exceeded, the applicable hourly rate will be charged.
- 2.5.2** TPSC will only provide Support on the most current updates of the Products. TPSC is entitled at its sole discretion to provide Support on older versions, releases, etc. of the Products.
- 2.6 Custom Work**
- 2.6.1** All assignments consisting wholly or partially of custom work are billed on the basis of Fixed Price or Subsequent Calculation.
- 2.6.2** Parties shall specify in writing what TPSC Product will be developed and how this shall be done. TPSC will carry out the TPSC Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.
- 2.6.3** The development of custom work takes place according to the further to be set development phases by TPSC.
- 2.6.4** Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with TPSC, as described in article 8.1.
- 2.7 Additional Work**
- 2.7.1** If in the opinion of TPSC, a change request by Customer is in fact a request for additional work, TPSC will notify Customer thereof prior to performing additional work. Upon request by Customer, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.
- 2.7.2** It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.
- 2.8 Installation and Implementation**
- 2.8.1** Only if agreed upon in writing will TPSC install and/or implement the Products or have them installed and/or implemented.
- 2.8.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by TPSC have been met in order to ensure a successful installation and/or implementation.
- 2.8.3** Customer will ensure and is entirely responsible for

- obtaining the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.
- 2.8.4** If due to the Customer's fault, implementation and/or installation has not been performed within the agreed upon time schedule, Customer will make payments as if implementation and/or installation have been performed, undiminished the obligations of TPSC to proceed with installation and/or implementation at a later time period.
- 2.9 Back-ups**
- 2.9.1** Where possible Customer will be responsible for making the required Back-ups on time. TPSC will upon request inform Customer of the procedures and security measures necessary regarding data and the realization of Back-ups.
- 2.9.2** If it is not possible for Customer to make Back-ups (and it is possible for TPSC to make Back-ups) and it is agreed upon explicitly that TPSC will provide partially or entirely for the provision of Back-ups, TPSC will make the Back-ups. In no event, will TPSC be liable for these Back-ups for so far as but not limited to the complete or partial loss of these Back-ups and/or errors in the Back-ups.
- 2.10 Activities**
- 2.10.1** Any activities, Maintenance, Support and other services will take place without interruption on Workdays, under normal working conditions and to the best of TPSC's knowledge and capability.
- 2.10.2** For every continuous period within which TPSC performs activities for less than 3 (three) hours at a location other than at TPSC's place of business, TPSC will be entitled to charge Customer for a minimum of 3 (three) hours. A continuous period exists if the period in which no activities are performed, in between the one period and the next period in which activities are performed, does not exceed more than 1 (one) hour.
- 2.10.3** Activities that are performed outside of Workdays are considered as overtime. The applicable rate will be increased with 25% for overtime after or before Workdays. The applicable rate will be increased with 50% for overtime on weekends and public holidays.
- 2.10.4** If it is agreed upon that activities will take place in phases TPSC will be entitled to postpone activities that belong to the next phase until Customer has accepted in writing activities performed in the previous phase.
- 2.10.5** Only if agreed upon explicitly in writing will TPSC be obligated when performing activities to follow timely and reasonable instructions given. TPSC is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.
- 2.10.6** TPSC is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.
- 2.10.7** After Customer has notified TPSC of a problem in writing, electronic format or by telephone, TPSC will take the necessary steps which will lead to or could lead to a solution.
- 3. SAAS-SERVICE**
- 3.1 SaaS-service General**
- 3.1.1** The SaaS-service will only take place at a location approved by TPSC and on the equipment approved by TPSC.
- 3.1.2** TPSC may at its sole discretion provide Customer with the possibility to make enhancements, additions and/or changes in the SaaS-service. If this possibility is offered by TPSC, Customer will be responsible and liable for all enhancements, additions and/or other changes made and consequences that may flow forth there from.
- 3.1.3** With regard to the entrance and use of the SaaS-service, Customer has equipment and software directly or indirectly available which comply to the standards and/or requirements set by TPSC of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this article. If equipment and/or software do not comply with this article, the obligations of TPSC to provide access to the SaaS-service and the use of it may be postponed by TPSC.
- 3.1.4** Customer will enable TPSC to verify if the standards and/or requirements as set out in article 3.1.3 are met.
- 3.1.5** If Customer, after the verification as set out in article 3.1.4, still fails to meet the standards and/or requirements as set out in article 3.1.3, TPSC will have the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.
- 3.1.6** Customer is required to follow instructions given by TPSC regarding the SaaS-service.
- 3.1.7** TPSC is entitled to view log files and the like for purposes of analyzing the use of the SaaS-service. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of TPSC). This does not apply to figures and data with regard to the use of the SaaS-service which are not directly traceable to the use by Customer.
- 3.1.8** In the event Customer signals a malfunction, this will immediately have to be reported to TPSC. After Customer has notified TPSC of the malfunction, TPSC will take the necessary steps, which will lead or could lead to a solution.
- 3.1.9** The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the agreement.
- 3.1.10** TPSC will inform Customer prior to the commencement of intended Maintenance with regard to the SaaS-service, if Maintenance will lead to problems with regard to gaining access to the SaaS-service or the non-availability of the SaaS-service. In this case Maintenance will take place from 00.00 until 06.00 hours (CET). Other Maintenance will take place during Workdays.
- 3.2 Responsibilities TPSC SaaS-service**
- 3.2.1** TPSC will take care of the provision of the SaaS-service TPSC will on a best effort basis and where influential by TPSC strive to an availability of the SaaS-service of:
- 98% from Monday through Friday during 06.00 and 24.00 hours (CET);
 - 70% from Monday through Friday during 24.00 and 06.00 hours (CET);
 - 70% from Saturday through Sunday during 00.00 and 24.00 hours (CET).
- 3.2.2** The percentages mentioned in article 3.2.1 are measured over a calendar year. The time for Maintenance is not included.
- 3.2.3** TPSC does not guarantee, amongst others, that the telephone lines, the Internet and/or other networks will offer optimal access in the event TPSC depends on third party telecommunication providers for the use and/or provision of the connection.
- 3.2.4** TPSC does not have any obligations with regard to availability, reliability and/or other performance requirements with regard to the telephone lines, the Internet and/or other networks and the resulting

- provisions.
- 3.2.5** TPSC will strive to provide all useful and necessary measures to ensure adequate operability and continuity of the SaaS-service. TPSC makes use of the in the market most recent and most used virus protection programs.
- 3.2.6** TPSC will strive, in accordance with the most current technology available, to provide adequate physical and logical security measures against unauthorized access by third parties to computer systems or computer programs used by TPSC and/or stored Process-data, in light of the provisions provided for under the agreement.
- 3.3 Browser**
- 3.3.1** The SaaS-service is accessible by Customer through a browser. The SaaS-service has been optimized for the browsers as indicated by TPSC. The browsers for which the SaaS-service has been optimized at the moment of entering into the agreement will be made know by TPSC.
- 3.3.2** TPSC is not obligated to keep access to the SaaS-service optimal through the browsers as mentioned in article 3.3.1. TPSC is entitled, without any form of (damage)compensation being required, to make changes in the SaaS-service which may influence the browser used by Customer and/or advised by TPSC.
- 3.3.3** In the event that the situation as described in article 3.3.2 takes place, TPSC will use all reasonable endeavors to enable Customer to make a transition to a different browser. The costs incurred by Customer in doing so are for the account of Customer.
- 3.4 Use of Identification Codes**
- 3.4.1** TPSC will make Identification Codes solely available to Customer for the use of Products. Customer will use these Identification Codes with care. Customer will notify TPSC in the event of loss, theft and/or other forms of unauthorized use, in order to enable parties to take the proper actions.
- 3.4.2** Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will TPSC be liable for the misuse and/or unauthorized use of Identification Codes.
- 3.4.3** If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, TPSC can provide Customer with the necessary instructions, which must be carried out.
- 3.4.4** If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given as set out in article 3.4.3, Customer will be immediately in breach.
- 3.5 Changes in the SaaS-service**
- 3.5.1** TPSC is entitled, after notification within a reasonable term and without any compensation to Customer, to make adjustments and/or changes in the SaaS-service offered such as but not limited to:
- a) entrance procedures, such as:
 - procedures regarding operational rules;
 - security procedures.
 - b) changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of the SaaS-service.
- 3.5.2** If the changes made have a significant negative impact on Customer's business or the functionality of the SaaS-service, Customer may, after providing relevant proof of deterioration in writing, request TPSC in writing to provide an alternative. If TPSC than fails to provide an alternative, Customer will have the right to terminate the use of the SaaS-service, without any damage compensation required by TPSC and/or third party or restitution of monies paid.
- 3.6 Data Traffic From Customer**
- 3.6.1** TPSC does not control or have any insight in the data traffic from and/or to Customer. TPSC is merely a passive conduit. TPSC does not give any warranties with regard to content of data such as but not limited to reliability and completeness.
- 3.6.2** Customer is responsible for the content of data traffic originating from Customer. Where applicable the Code of Conduct as set out in article 3.9 will apply to Customer and its users.
- 3.6.3** Customer indemnifies and will keep TPSC free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Customer.
- 3.6.4** In deviation from that which has been agreed upon in article 8, Process-data will remain the (intellectual) property of Customer. Customer grants TPSC, without charge, a perpetual user and revision right of the Process-data. Process-data may only be distributed to a third party if not directly traceable to Customer.
- 3.6.5** Process-data will initially, for the duration of the agreement, be preserved for a maximum period of 3 (three) years. After termination of the agreement TPSC will no longer be required to preserve Process-data.
- 3.6.6** TPSC will offer cooperation in transferring Process-data and/or other data to another application as requested by Customer. TPSC does not warrant that the available Process-data and/or other data during the agreement and/or after the agreement can be transferred to another application. Customer is fully responsible for the reliability and completeness of Process-data and/or other data from the moment of transfer of the Process-data and/or other data to another application.
- 3.6.7** All costs connected to the transfer of Process-data and/or other data at the request of Customer to another application will be fully for the account of Customer.
- 3.7 Requirements Customer SaaS-service**
- 3.7.1** In the event the SaaS-service amongst others includes the hosting of a website for and/or on behalf of Customer, Customer must have a domain name provided and registered for by an authorized organization in accordance with the Third Party General Conditions as maintained by this organization. Customer indemnifies and will keep TPSC free from any damage compensation regarding any claim, accusation or court procedure with regard to (and the use of) the domain name on behalf of and/or by Customer. If agreed to in writing TPSC shall apply for and subsequently register this domain name, at the risk and responsibility of Customer.
- 3.7.2** If, through use of the SaaS-service, privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer will indemnify TPSC from all liability, costs or damage as a result of claims from a third party in the event privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or guidelines in question.
- 3.7.3** Customer will immediately inform TPSC in writing regarding changes that are relevant for the proper execution of the SaaS-service.
- 3.7.4** Customer will follow the instructions given by TPSC regarding Fair Use. If Customer fails to follow the instructions given by TPSC, TPSC will be entitled through technical means to reduce the overload or in the case of a

continuous overload to stop the provision of the SaaS-service to Customer. TPSC will never be liable for damage of whatever nature that is incurred by Customer and/or third parties as a result of the measures undertaken by TPSC.

3.8 Privacy Information

3.8.1 Customer is responsible for obtaining the explicit consent of the individuals involved for the entry/registration of the (privacy)information obtained by Customer.

3.8.2 Customer is responsible for protecting (privacy) information, which is sent and/or processed by the equipment and/or programs of TPSC on behalf of Customer.

3.8.3 Customer will indemnify TPSC against any allegation as a result of the violation of any person's privacy.

3.8.4 Where Customer is authorized, Customer explicitly agrees with the registration of (privacy)information of users in the privacy registration of TPSC for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for TPSC. This information will not be provided to third parties unless TPSC is obligated to do so on the basis of a court order.

3.8.5 In exception to what has been previously stated in article 3.8.1, TPSC will be responsible for the protection of privacy related information of which its use is necessary by TPSC for the proper performance of its obligations under the agreement and will indemnify Customer against allegations of private individuals for violation of their privacy as a result of an act or failure to act of TPSC.

3.9 Code of Conduct

3.9.1 Customer will make use of the SaaS-service and/or other facilities offered in a responsible manner. It is prohibited to use the SaaS-service and/or other facilities offered in a manner that will result in:

- a) damage in the system of TPSC and/or third parties;
- b) interference with its use.

3.9.2 Customer will ensure that such damage and/or interference will not be the result of miss configuration on Customer's part.

3.9.3 It is not permitted to use the SaaS-service and/or facilities offered for activities that are illegal and/or in violation of the agreement. The foregoing includes amongst others the following activities:

- a) the violation of a third parties rights or making it possible to violate third party rights, such as but not limited to intellectual property rights and privacy rights;
- b) the noncompliance to law and other applicable regulations;
- c) spamming (un-requested distribution (or creating the possibility for third parties) of advertisement and/or other messages);
- d) storage/distribution of (child) pornography;
- e) sexual intimidation, racial prejudice and/or the harassment of individuals in any other manner;
- f) distribution or the making available to third parties of obscene, insulting and tormenting material and/or other material of similar nature;
- g) threats;
- h) storage and distribution of viruses, worms and/or other destructive activities;
- i) unauthorized access (hacking) of accounts, systems and/or networks of third parties and/or TPSC and/or the performance or non-performance that make hacking possible.

3.9.4 TPSC reserves the right, at its own discretion, if forced by

law or a court order and/or a third party informs TPSC and/or a suspicion exists that through the SaaS-service a violation is made of the rights of a third party, there is a breach of the General Conditions TPSC and/or the agreement and the resulting obligations in question have not been met wholly or partially, to stop access to the SaaS-service and/or other facilities offered, to remove the information in question and/or suspend its other obligations, this until the obligations have been met.

3.9.5 TPSC and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of TPSC on the basis of article 3.9.4. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of TPSC on the basis of article 3.9.4.

3.9.6 If the actions and/or failure to act of Customer justifies this and/or the actions and/or failure to act of Customer continues regardless of the measures under taken by TPSC, as set out in article 3.9.4, TPSC will be entitled in accordance with article 1.5.4 to terminate the agreement, without any damage compensation or restitution of monies paid being required.

4. COURSES

4.1 Application

4.1.1 Applications for participation in Courses must take place at least 2 (two) weeks prior to commencement of the Course. If the requested Course is fully booked, Customer shall be notified.

4.1.2 Immediately after receipt of an application TPSC will send a confirmation of receipt regarding the Course subscribed to. For applications which have been made verbally, the confirmation will be considered to reflect the application correctly and completely, unless objections are made in writing within 3 (three) Workdays.

4.1.3 Courses are given against the current applicable rate. TPSC has the right to charge costs made such as rent for office space, Course materials, etc.

4.2 Cancellations

4.2.1 TPSC reserves the right to cancel a Course if the required number of applications is not met. If such cancellation takes place Customer will initially be notified at least 1 (one) week prior to commencement of the Course. Any Course fees paid will be reimbursed. In the event the required number of applicants is not met Customer may decide to participate in the Course against a higher fee. This will be done in consultation.

4.2.2 Cancellations made by Customer 4 (four) weeks prior to commencement of the Course are free of charge, after that 50% of the indebted Course fee will be charged. For cancellations made within 1 (one) week or after commencement of the Course TPSC will be entitled to charge 100% of the indebted amount.

4.3 Execution

4.3.1 TPSC will strive with best efforts to provide the Course in accordance with the published schedule but will not be liable if the Course must be canceled due to special circumstances. In such an event TPSC will strive within reason to provide the Course or the remainder of the Course at a later time period. If this is not possible, Course fees paid will be reimbursed proportionally.

4.4 Private Courses

4.4.1 Private Courses are Courses exclusively provided for

- Customer in which only Customer participates. Private Courses can be provided at either the location of Customer or TPSC.
- 4.4.2** Fees for Private Courses depend on the number of participants. If the number of participants is more or less than the number of participants assumed in the offer, TPSC will have the right to increase or reduce the applicable fee.
- 4.4.3** In the event Courses are provided at Customer's location Customer must provide the necessary facilities and offices space in accordance with article 1.6.6.
- 4.5 Refusal Participants**
- 4.5.1** TPSC reserves the right to refuse participants to a Course:
- if payments due have not been fully paid yet and/or on time before commencement of the Course;
 - due to competitive reasons or other reasonable grounds for TPSC.

5. THIRD-PARTY PRODUCTS

- 5.1 Third Party Products**
- 5.1.1** TPSC has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that may flow forth from the agreement. TPSC is not responsible for Third Party Products, unless agreed upon otherwise in writing.
- 5.1.2** If TPSC delivers Third Party Products to Customer the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions TPSC.
- 5.1.3** TPSC will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.
- 5.1.4** No Maintenance, Support or other services will be carried out by TPSC on Third Party Products, unless agreed upon otherwise in writing.
- 5.2 Third Party General Conditions**
- 5.2.1** Third Party General Conditions that are declared applicable in these General Conditions TPSC shall, when available to TPSC, only be provided on request. Third Party General Conditions will be delivered in the same format and language as received by TPSC.
- 5.2.2** The General Conditions TPSC have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions TPSC and Third Party General Conditions, TPSC has the right to declare the conflicting terms of the Third Party General Conditions non-applicable or applicable.

6. DELIVERY

- 6.1 (Delivery) Dates**
- 6.1.1** All (delivery) dates which may be named by and may be applicable to TPSC are determined to the best of TPSC's knowledge on the basis of information made known to TPSC and will be taken into consideration as much as possible.
- 6.1.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which TPSC shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then TPSC and Customer will consult with each other to agree on a substitute (delivery) date.
- 6.1.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by TPSC.

TPSC does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

6.2 Reservations

- 6.2.1** TPSC shall commence execution of the agreement between TPSC and Customer only after a signed copy of the agreement drawn up by TPSC has been received by TPSC and/or having received payment of all amounts due fully and on time. Should TPSC commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received payment of all amounts due fully and on time, TPSC reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or payment of all amounts due fully and on time.
- 6.2.2** Customer's rights, such as but not limited to the transfer of Products, are provided under the suspended condition that Customer pays the agreed compensations fully and on time. In case of failure to pay, Customer must return the Products to TPSC at Customer's expense within one week of receiving the instruction from TPSC to do so. All other remedies in law remain applicable.
- 6.2.3** If Customer fabricates a new product, on the basis of the Products delivered by TPSC, this will be done on behalf of TPSC and Customer will keep the new product for TPSC until all amounts due on the basis of the agreement have been paid fully and on time. TPSC will maintain all the rights as owner of the new product until the moment payments have been made fully and on time.
- 6.3 Risk**
- 6.3.1** From the moment of delivery Customer will bear the risk of the Products delivered even if possible ownership and user rights have not yet been transferred. As a result Customer will be held accountable for full payment of the Products delivered regardless of the situation that the Products delivered have perished or that their value has declined due to circumstances for which TPSC cannot be held accountable.
- 6.3.2** The aforementioned will also be applicable from the moment in which Customer does not make it possible for TPSC to make a delivery.
- 6.4 Evaluation Period**
- 6.4.1** TPSC may at its discretion grant Customer an evaluation period for the Products. An evaluation period is only applicable, if such is confirmed by TPSC in writing.
- 6.4.2** Unless agreed upon otherwise, the evaluation period will have a duration of 30 (thirty) days commencing from the moment of delivery.
- 6.4.3** During the evaluation period there will be no obligations and/or responsibilities for TPSC. Use of the Products during the evaluation period is at the sole risk and expense of Customer.
- 6.4.4** In the event Customer does not want to acquire the Products, Customer must see to it that:
- TPSC is informed prior to the end of the evaluation period that Customer will not make use of the Products;
 - the Products are removed from the systems on which they have been installed;
 - the Back-ups and/or all other possible copies of the Products are deleted/destroyed;
 - the Products are in the possession of TPSC within 7 (seven) days after the end of the evaluation period. Customer bears the costs and the risk for (a timely) return of the Products to TPSC.
- 6.4.5** Customer agrees that in case of any breach of article 6.4.4, TPSC has the right, without further notification being

required, to charge Customer the license fees and/or other fees then applicable if the Product were to be acquired after completion of the evaluation period, undiminished the right of TPSC to claim full compensation for damages incurred.

6.4.6 Data generated by Customer during the evaluation period will remain the property of Customer. It is Customer's sole responsibility to Back-up and/or transfer data to an alternative system prior to discontinuing use of the Products. TPSC does not have any obligations with regard to the aforementioned data during the evaluation period or thereafter.

6.5 Delivery, Installation and Acceptance Procedure

6.5.1 TPSC shall deliver the Products to Customer in accordance with the specifications established in writing by TPSC and, if desired by Customer, install them.

6.5.2 Delivery of the Products takes place when they are made available to Customer at TPSC's warehouse. The costs for transport and possible insurance are for the account of Customer. The manner in which transport takes place is determined by TPSC and insurance of the Products by TPSC will not take place unless agreed upon otherwise in writing.

6.5.3 The delivery of services by or through TPSC takes place at the place and time that the services are performed.

6.5.4 Only in cases where installation is carried out by TPSC will there be an acceptance period immediately following completion of the installation. The acceptance period for Customer runs for 14 (fourteen) days following completion of the installation. During the acceptance period, Customer is not permitted to use the Products for production and/or operational purposes.

6.5.5 The Products shall be considered by both parties as accepted:

- a) at delivery when the installation is not carried out by TPSC, or
- b) when TPSC has completed the installation: on the first day following the acceptance period, or
- c) when TPSC, before the end of the acceptance period, receives a Test Report (article 6.6): at the moment that the Errors (article 6.7) identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to article 6.7.4 do not hinder acceptance.

6.5.6 If the Products are delivered in phases, and/or parts are delivered and tested, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.

6.5.7 In deviation to the previous, the Products shall be considered as accepted when Customer uses the Products in any manner before the moment of acceptance for productive or operational purposes, from the beginning of such use.

6.6 Test Report

6.6.1 If it becomes apparent during the acceptance period that the Products contain Errors, as described in article 6.7, which hinder the progress of the acceptance test, Customer shall inform TPSC no later than the last day of the acceptance period in a written and as detailed as possible Test Report of the Errors, in which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the Errors are removed.

6.7 Errors

6.7.1 Error(s) means the failure to fulfill the functional specifications set down in writing by TPSC and, in cases of

developing custom work TPSC Products, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. The Customer is required to immediately report possible Errors to TPSC.

6.7.2 Every right to repair of Errors lapses if the Products provided by TPSC are altered in any way or form.

6.7.3 The repair of Errors shall take place at the location to be determined by TPSC. TPSC is entitled to install temporary solutions, emergency solutions, detours and/or other problem-avoiding restrictions in the Products.

6.7.4 Acceptance of the Products may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Products into productive or operational use.

6.8 Replacement Performance

6.8.1 TPSC is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.

6.8.2 If the agreement is closed with the objective of having activities carried out by a particular individual, TPSC will be entitled to replace this person with another person with the same qualifications.

6.9 Warranty

6.9.1 For a period of 3 (three) months (Warranty period), commencing upon acceptance (if the moment of acceptance is unclear the date the agreement was entered into will apply), TPSC shall strive to repair any Errors, as defined in article 6.7, to the best of its ability, provided these Errors have been reported in detail in writing to TPSC within the Warranty period. At its sole discretion TPSC is entitled at its expense to repair, modify or replace the Products. In the event Errors are a result of a service, TPSC will provide alternative services.

6.9.2 TPSC is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Products if the Error may be said to be caused by mistakes made by the Customer, the result of improper and non-careful use by the Customer, the result of other causes that may not be attributed to TPSC or if Customer could have reasonably detected the Error during the acceptance period.

6.9.3 The Warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. TPSC does not warrant that the Products shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer during or after the Warranty period. The Warranty obligation is void if the Customer alters the Products, or has them altered, without the written permission of TPSC, as required in article 2.1.4.

6.9.4 After termination of the Warranty period, TPSC shall not be bound to repair, modify and/or replace the Products, unless parties have agreed otherwise.

6.9.5 The Warranty provided on Third Party Products is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products as described in article 5.

7. PRICES/PAYMENTS

7.1 Prices and Payments

7.1.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will

- include applicable VAT and other levies possibly imposed by the government.
- 7.1.2** TPSC will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.
- 7.1.3** Should Customer fail to fulfill any obligation, Customer is in breach without any further notification of breach being required. TPSC reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of Euro 500,- (five hundred). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay.
- 7.1.4** Until full payment has been made, TPSC has the right to suspend all services and obligations to Customer. The Customer's obligation to meet Customer's commitments remains unchanged.
- 7.1.5** If TPSC is unable to make a delivery in time due to Customer, TPSC will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.
- 7.1.6** Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized prior to each year or other period that the agreement between parties continues.
- 7.1.7** The indebted amount in article 7.1.1 may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of TPSC's office. In the event that activities need to take place outside of TPSC's office, hourly rates, travel and waiting- time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting- time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by TPSC. The foregoing is also applicable on services provided outside of The Netherlands.
- 7.1.8** Above mentioned paragraphs leave all the legal rights of TPSC unhindered, when Customer fails to meet Customer's commitments.
- 7.2 Price Changes**
- 7.2.1** The prices agreed to between TPSC and Customer are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. TPSC is authorized, in case of changes to one or more of the cost items and/or changes in the rate of exchange, to adjust the prices to these changes.
- 7.2.2** TPSC will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.
- 7.3 Fixed Price**
- 7.3.1** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.
- 7.3.2** Unless TPSC can appeal to article 1.6.4 extra hours will not be charged.
- 7.4 Subsequent Calculation**
- 7.4.1** When charges are to be based on Subsequent Calculation, this means that prior to TPSC commencing the activities agreed to a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. The Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.
- 7.5 Advance**
- 7.5.1** TPSC has the right to charge payments in Advance. If full payment of the Advance is not made, TPSC has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owned by Customer will be immediately due.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 Rights of Customer and TPSC**
- 8.1.1** TPSC has the exclusive right to further develop the TPSC Products and place them at the disposal of third parties by means of licenses.
- 8.1.2** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights and other rights resulting from all activities carried out by TPSC, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or a still-to-be-developed Product, reside with TPSC.
- 8.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to TPSC.
- 8.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trade-marks and trade-names from the Products, or to have such changes made by third parties.
- 8.1.5** The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if TPSC has these rights.
- 8.1.6** In the event that TPSC, Customer or a third party makes functional improvements or other adjustments in the Products the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product will remain unchanged with TPSC or the rightful third party. If the above mentioned rights do not belong to TPSC or the rightful third party, Customer will cooperate in transferring the above mentioned rights to TPSC or the rightful third party.
- 8.1.7** All intellectual property rights, industrial property rights or other rights of Course material and/or other documentation will remain with TPSC. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply to the foregoing

obligation.

8.2 Indemnification

8.2.1 TPSC shall protect Customer from any allegation to the effect that the TPSC Products violate a copyright valid in The Netherlands. TPSC shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:

- a) notifies TPSC immediately, but no later than within 10 (ten) days, after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
- b) gives the case completely over to TPSC, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, TPSC reserves the right to obtain a license or sub-license on the TPSC Product in question or to change or replace the TPSC Product in such a way that the TPSC Product will no longer infringe a copyright valid in The Netherlands. If, at TPSC's sole judgment, the foregoing remedies are not a reasonable option, TPSC has the right to take the delivered TPSC Product back against reimbursement of payments made for the TPSC Product in question, minus a reasonable compensation for having made use of the TPSC Product.

8.2.2 TPSC shall not indemnify Customer against an action in the event that:

- a) such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- b) what has been provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- c) Customer has made a change in or to the Product.

8.2.3 If TPSC and Customer agree that the intellectual property rights, industrial property rights or any other rights of a TPSC Product, or a part thereof, shall be transferred to Customer, Customer will indemnify TPSC against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.