

GENERAL TERMS AND CONDITIONS

Tanist Ltd (the “Company”)
Registered Office: Penbury, Pendrift, Blisland, Bodmin, Cornwall, PL30 4JT

Ver: 1.1 (15th August 2019)

OVERALL STATEMENT

- 1.0.1 Please read these terms and conditions carefully, as they set out ‘our’ and ‘your’ legal rights and obligations in relation to your use of Tanist services.
- 1.0.2 In the event of any inconsistency between the *General Terms and Conditions* and any Service Agreement, the Agreement shall prevail.

2.0 DEFINITIONS

Unless the context or circumstances clearly suggest otherwise, the following capitalised terms shall have the meanings stated below:

- 2.1 **Client** means the Company, or Companies, which have given the Company the assignment to perform the Services.
- 2.2 **Company** means the party or parties named in the Service Contract, who shall perform the Services.
- 2.3 **Data** means information, in any form, which belongs to the Client and is used, stored, or otherwise processed using the Services.
- 2.4 **Force Majeure** refers to risks; such as malicious damage, cyber-attack, act or threat of terrorism, act of government / war; that are beyond the reasonable control of a party, incurred not as a product or result of the negligence of the afflicted party, which have a materially adverse effect.
- 2.5 **Services** means all services that are to be provided by the Company under a Services Contract. Including, but not limited to, the result of the Service, such as reports and data. Deliverables such as implementation, system, software or documentation, which are to be delivered by the Company, are also included in “Services”.
- 2.6 **Service Contract** means the commercial agreement, either in the form of a mutually executed written agreement, or in the form of a written offer / proposal accepted by the Client, or the Client’s order and the Company’s confirmation, whereby the Client commissions the Company, and the Company agrees to perform the Services on terms and conditions specified therein and within these general conditions.

3.0 NO PARTNERSHIP / AGENCY

- 3.1 Nothing in this Contract / Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to Contract / Agreement in the name of or create a liability against the other party.

4.0 CONDUCT

- 4.1 The Client shall:
- 4.1.1 Conduct itself in a reasonable manner and shall not misrepresent The Company in any way;
- 4.1.2 Act with the utmost good faith at all times in dealing with and promoting the products and services of The Company to any third party.
- 4.2 The personnel provided by the Company will remain under the control of the Company. Neither the Company nor the Client shall solicit the services of or employ or otherwise contract for the services of any present or future employee of the other without the consent of the other until one year after the earlier of (a) the termination of such employee’s employment or contract, or (b) the termination of this Agreement

5.0 HEALTH AND SAFETY

- 5.1 The Client shall comply with all relevant Health and Safety legislation and all Health and Safety Commission approved Codes of Practice.

6.0 EQUAL OPPORTUNITIES

- 6.1 In the performance of this Contract/Agreement, the Client undertakes not to discriminate against any person in a way rendered unlawful by the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Protection from Harassment Act (1997), the Human Rights Act 2000, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010 or any enactment’s modifying or replacing any of them.

7.0 DATA PROTECTION

- 7.1 Both parties shall comply with their respective obligations under the current Data Protection regulations and around the processing of personal data.
- 7.2 The Client shall be appropriately registered under and comply with the Data Protection Act 1998 (as amended) in respect of any data to be stored and shall produce evidence of registration upon request.
- 7.3 The Client accepts that The Company may hold personal information about them and explicitly consents to the processing of such information by The Company for purposes connected with this Contract/Agreement.
- 7.4 The Company will obtain specific consent for the processing of the information for any other purposes and for the collection and processing of sensitive personal information as required by Government and/or European departments.
- 7.5 The provisions shall apply to the processing of Personal Data, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing.
- 7.6 The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:
- for the purposes of those Services and not for any other purpose;
 - to the extent and in such a manner as is necessary for those purposes; and
- 7.7 All instructions given by the Data Controller to the Data Processor shall always be in compliance with the General Data Protection Regulation (GDPR) and other applicable laws. The Data Processor shall act only on instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).
- 7.8 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 7.9 The Data Processor shall transfer all Personal Data that it may hold to the Data Controller on the Data Controller’s request in the formats, at the times, and in compliance with the Data Controller’s written instructions where reasonable.
- 7.10 Both Parties shall comply always with the GDPR and other applicable laws and shall not perform their obligations under this contract between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 7.11 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.

- 7.12 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Statement are satisfactorily performed in accordance with all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the Information Commissioner's Office (ICO).
- 7.13 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost where applicable) to the Data Controller in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments (where applicable), and in dealings with the ICO.
- 7.14 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
- a) process the Personal Data only to the extent, and in such manner, as is necessary to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - b) implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
 - c) not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld);
 - d) if so requested by the Data Controller (and within the timescales required by the Data Controller where reasonable) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
 - e) assist the Data Controller in the fulfilment of a subject data access request;
 - f) make available to the Data Controller all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR; and
 - g) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.
- 7.15 In the event that the Data Processor appoints a Sub-Processor (with the written consent of the Data Controller), the Data Processor shall enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations and ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.
- Such an agreement will include the following mandatory components:
1. the subject-matter of the processing
 2. the duration of the processing
 3. the nature of the processing
 4. the purpose of the processing
 5. the type of personal data
 6. the categories of data subjects
 7. the obligations and rights of the controller;
- 7.16 The Data Controller shall be liable for all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:
- a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
 - b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
 - c) any breach by the Data Controller of its obligations under this contract.
- 7.17 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor.
- 7.18 Nothing in this contract (and this Clause 8) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.
- 7.19 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following:
- a) the end of the provision of the Services; or
 - b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Service Agreement.
- 7.20 Following the deletion, disposal, or return of the Personal Data, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.
- 7.21 All Personal Data to be deleted or disposed of by the Data Processor under this Agreement shall be deleted or disposed of using the following method(s):
- a) Secure deletion or shredding; and/or
 - b) Secure physical destruction of media

8.0 CONFIDENTIALITY

- 8.1 The Client shall treat any information disclosed by The Company and relating to The Company or its clients as confidential, to the extent that the information is in the public domain other than as a breach of this agreement; regardless of whether or not such information is described as "confidential" and whether or not such information is reduced to a tangible form.
- 8.2 The Client shall not at any time without the prior written consent of The Company disclose any confidential information to any third party.
- 8.3 The Company is entitled to disclose any information provided to it by the Client in accordance with the terms of the "Monitoring" clause, but The Company agrees not to disclose any such confidential information for any other purpose without prior written consent.

9.0 FEES

- 9.1 Fees for the service offered by the Company are as quoted in the Proposal and written correspondence to the Client. All charges payable by the Client shall be in accordance with the information quoted.
- 9.2 Clients are required to pay all fees that are due in accordance with the Contract/Agreement.
- 9.3 Payment must be made within the period stated on any invoice in order for provision of the Service to continue without interruption.
- 9.4 The Company may at any time change the price of its Service, however, the Client will not be subject to any additional charges or refunds during a current Service provision. Any change in fees will be reflected in subsequent renewals of Service provision.
- 9.5 The Client will be informed of any such changes and shall be deemed to be bound by them one calendar month after receiving the notice.
- 9.6 If the Client does not agree to be bound by the changes they may terminate this Agreement in accordance with the Term and Termination clause of this Agreement.
- 9.7 All fees payable by the Client to the Company shall be paid in full, without set off or deduction.
- 9.8 Available payment methods are clearly stated on the invoice and the Client agrees to pay by one of the methods shown.
- 9.9 The Company reserves the right to re-charge the Client for bank charges incurred due to returned cheques plus an additional administration fee of £20.00 + VAT per returned cheque.
- 9.10 The Company reserves the right to consider an account to be overdue in the event of a returned cheque.
- 9.11 The Company reserves the right to suspend the Service(s) if any fees are not paid on or before the due date.
- 9.12 Where an account requires litigation to collect an overdue debt an administration fee of £2500.00 + VAT will be charged. Client's whose accounts become overdue agree to pay the Company reasonable legal expenses and third-party collection agency fees in the enforcement of these Terms and Conditions.
- 9.13 Interest shall be payable on overdue payments at the rate of 4% daily over Lloyds Bank base rate to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.

10.0 LIABILITY

- 10.1 The Client shall not be liable to The Company for loss or damage suffered by The Company unless due to the negligence or other failure of the Client to perform its obligations under this Contract / Agreement or under the general law; any liability would be limited to a maximum of £10,000 in any single instance.
- 10.2 The Company shall not be liable to the Client or to third parties for:
- 10.2.1 Any losses resulting from interruptions or downtime to the Service;
- 10.2.2 Any inability, on the part of the Client, to use the Service;
- 10.2.3 Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the internet
- 10.3 Nothing in this Clause shall exclude the liability of the Company for death or personal injury resulting from the Company's negligence or that of its employees or agents.
- 10.4 Nothing in this Clause or in this Contract / Agreement shall exclude the liability of the Company for fraudulent misrepresentation.

11.0 WARRANTIES AND DISCLAIMER

- 11.1 The Company, its employees, servants or agents will make every reasonable effort to ensure that all information advice and other services (the services) given in relation to this Contract / Agreement shall be accurate. However, the Client accepts that the Company shall have no legal responsibility or liability for any errors or omissions in the services provided and accepts that the Company has no responsibility or liability with regard to the standing of any Firms, Companies or Individuals mentioned in relation to the services provided.
- 11.2 Subject to the provisions of this Contract/Agreement, the Company gives no warranty, express or implied, in connection with the Service(s) obtained as to fitness for purpose, quality, non-infringement or merchantability.
- 11.3 Both parties and the signatories to the Contract / Agreement warrant that they are authorised and permitted to enter into the Contract/Agreement, and have obtained all necessary permissions and approvals.
- 11.4 Both parties warrant and undertake that they are not aware as at the date of the Contract / Agreement of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under the Contract/Agreement.

12.0 INDEMNITY

- 12.1 The Client will fully indemnify the Company against all costs, expenses, liabilities, losses, damages and judgements that the Company may incur or be subject to as a result of any of the following:
- 12.1.1 The Client's misuse of the Service;
- 12.1.2 The Client's breach of this Contract/Agreement;
- 12.1.3 The Client's negligence or other act of default;
- 12.2 The Activities of third parties conducted on the Client's website using facilities such as blogs, forums and chat.
- 12.3 Neither party shall be liable to the other under this Contract / Agreement in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.
- 12.4 The Client agrees to indemnify the Company against any claims, damages, losses, costs and expenses which the Company may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.
- 12.5 The Company agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of the Confidentiality and Intellectual Property Rights clauses of this Contract / Agreement committed knowingly by the Company.
- 12.6 Nothing in this Contract / Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

13.0 FORCE MAJEURE

- 13.1 Neither the Company nor the Client shall be liable for breaching this Contract / Agreement where that breach results from Force Majeure.
- 13.2 Neither party shall be deemed in default of these T&Cs if prevented from complying with any obligations due to an act or cause not within the reasonable control of the party whose performance is interfered with and which by the exercise of reasonable diligence a Party is unable to prevent. All reasonably available means must be employed the affected Party to restore performance following a Force Majeure event.
- 13.3 If such force majeure occurs, the party affected shall notify the other party in writing as soon, as is practicable.
- 14.0 MONITORING, AUDIT AND INFORMATION**
- 14.1 The Client shall provide as soon as possible to The Company or such other interested body as The Company shall from time to time determine, such information as is requested to ensure that this Contract / Agreement is being complied with.
- 15.0 INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS**
- 15.1 All Intellectual Property Rights relating to the Services provided by The Company shall remain the property of The Company and the Client may not copy or in any way utilise the materials (including inventions, designs, drawings, performances, computer programs, patents, registered designs, database rights, confidential information, business names, goodwill and the style of presentation of goods or services) for any purpose other than the completion of the contracted service, without the express, written permission of The Company
- 15.2 The Client will not acquire ownership rights over any of the Company's Intellectual Property in or in relation to the Service or in relation to any other property owned by the Company.
- 15.3 The Company will not acquire ownership rights over any of the Client's Intellectual Property in the Client's Website or any other material belonging to the Client.
- 15.4 The Client agrees to fully indemnify the Company against all costs, expenses, liabilities, losses, damages, claims and judgements that the Company may incur or be subject to as a result of the infringement of any Intellectual Property infringement owned by third parties arising from:
- 15.4.1 The Client's failure to obtain the necessary rights and permissions from third parties in order to enable the Company to legally provide the Service;
- 15.4.2 The provision of the Service by the Company based upon information and material provided by the Client.
- 16.0 NOTICE**
- 16.1 Any notice given by either of the parties under this Contract / Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery or first-class post to the receiving party as set out in this clause.
- 16.2 Any such notice shall be deemed to be effectively served as follows:
- 16.3 In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting; or
- 16.4 In the case of service by email on the next working day
- 17.0 TERMINATION**
- 17.1 This Contract / Agreement may be terminated by either party giving at least 90 days notice in writing without the need to give any reason and in that event neither party shall have any right or rights against the other arising out of, or in consequence of, such termination, provided that the termination shall not affect any prior rights either may have under this Contract / Agreement.
- 17.2 The Company shall have the right to terminate this Contract / Agreement immediately by notice in writing to the Client if: a) The Client is in material breach of any of its obligations under this Contract/Agreement; or b) The Client (if a company) ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of being wound up or enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it; or c) The Client shall have a receiver or administrative receiver appointed over all or a substantial part of its assets or distraint is levied over any of its assets.
- 17.3 In the event of a breach by the Client of any term of this Contract/Agreement, The Company may as an alternative to immediate termination of the Contract / Agreement serve notice on the Client requiring the breach to be remedied (if capable of remedy) within such reasonable period specified in the notice, not being longer than 28 days. If the breach has not been remedied before the expiry of the specified period The Company may then terminate this Contract / Agreement forthwith.
- 17.4 Termination of this Contract / Agreement for any reason shall not prejudice any accrued rights or obligations of either party or any rights or obligations which The Company may have in consequence of any breach by the Client of its obligations.
- 18 SEVERANCE**
- 17.5 If any provision of this Contract / Agreement is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of this Contract / Agreement is not to be affected.
- 18.0 DISPUTE ESCALATION**
- 18.1 If any issue between the parties arising out of or in connection with this Contract / Agreement cannot be resolved amicably through ordinary negotiations by appropriate representatives of the parties the issue will be referred in writing by either party to the Managing Directors (or their equivalent) of the parties. The Managing Directors will meet in order to attempt to resolve the matter, within 14 days.
- 18.2 If either party is of the view that the meeting called under the above clause has failed to resolve the issue, either party, on giving written notice to the other, may declare that the parties are in dispute.
- 18.3 The failure of either party to insist upon strict performance of any term or condition of this Contract / Agreement, or the failure to exercise any right or remedy to which it is entitled including the right of termination for breach, shall not constitute a waiver thereof.
- 18.4 Any notice or other communication required to be served under or in connection with this Contract / Agreement shall be in writing and shall be delivered in the case of both The Company or the Client to the address appearing on this Contract/Agreement. Any such notice shall be delivered by hand or sent by recorded delivery and shall conclusively be deemed to have been served at the time of receipt. Notice is not validly served if sent by email.
- 18.5 Each of the parties warrants its power to enter into this Contract / Agreement and has obtained all necessary approvals to do so.
- 18.6 Each of the parties agrees that this Contract / Agreement contains the whole Contract / Agreement between the parties and supersedes any prior Contract / Agreement between the parties whether oral or in writing.
- 18.7 The parties to this Contract / Agreement do not intend that any term of this Contract / Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 19.0 JURISDICTION**
- 19.1 This Contract / Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

19.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Contract / Agreement or its subject matter or formation (including non-contractual disputes or claims)