

GENERAL TERMS AND CONDITIONS

InSpark May 2018

DEFINITIONS

Article 1

- 1.1. These General Terms and Conditions have been filed with the Chamber of Commerce in Amsterdam under number 52859452.
- 1.2. These General Terms and Conditions take effect on May 1, 2018.
- 1.3. In these General Terms and Conditions, the following definitions apply:
 - a. **InSpark:** InSpark B.V., based at the Oude Molen 3A (1184 VW) in Amstelveen, user of these General Terms and Conditions.
 - b. **Client:** the natural or legal person on behalf of whom InSpark provides services.
 - c. **Parties:** InSpark and Client.
 - d. **Performance:** the services and / or activities as specified in consultation between Parties that must be performed by InSpark on behalf of Client and the conditions, including these General Terms and Conditions, under which the specified services must be performed and therefore mutually are agreed upon.
 - e. **Agreement:** the Performance(s) agreed upon by Parties in writing.
 - f. **Contract Period:** the term as stated in the Agreement and for which the Agreement is extended upon each renewal.
 - g. **Invoicing Period:** the period over which the Premium due is charged.
 - h. **Errors:** the substantial non-fulfilment of the Performance to the functional or technical specifications of the Performance as expressly made known by InSpark in writing and, in case the Performance concerns Custom Software in whole or in part, to the explicitly agreed upon functional or technical specifications. An error only exists if Client can demonstrate this and moreover, is reproducible.
 - i. **Commencement Date:** the date on which the Agreement will take effect.
 - j. **Infrastructure:** an interconnected system of devices for the transmission of electronic data and managed as a coherent whole.
 - k. **Premium:** the periodic amount that is due for the Performance(s) to be delivered as described in the Agreement.
 - l. **License Agreement:** an Agreement whereby InSpark provides Client with licenses and / or rights of use on a repetitive basis with regard to the right to use certain software for a longer period of time and on the basis of a periodic rate, this being the Premium.
 - m. **Managed Services:** the carrying out of remote management activities, including, but not limited to, the management of the (virtual) Infrastructure of Client by InSpark on the basis of a periodic rate, this being the Premium.
 - n. **Custom Software:** software that is tailor-made or adapted by InSpark to the specific wishes of Client.
 - o. **Service Agreement:** an Agreement whereby InSpark delivers certain repetitive Performances to Client for a longer period of time and on the basis of a periodic rate, this being the Premium.
 - p. **Response time:** the time between the reporting of an incident by Client to InSpark, according to the method described in the Agreement, up to the moment when InSpark commences with the provision of support or the execution of management activities whereby the response time, during the opening hours of the service desk, is up to eight (8) hours.
 - q. **the Processor Agreement:** an additional agreement between Parties, which specifies how InSpark, in its capacity as processor within the meaning of the General Data Protection Regulation (GDPR), will deal with personal data.

GENERAL

Article 2

- 2.1. Insofar as Parties have not agreed otherwise in writing, the provisions of these General Terms and Conditions shall apply to all quotations, Agreements and Performances of InSpark, including any subsequent agreement, Processor Agreement or amended or supplementary agreement, as well as all legal relationships as a result thereof or in connection therewith.
- 2.2. These General Terms and Conditions apply to the exclusion of the (general) terms and conditions of Client. The (general) terms and conditions of Client are explicitly rejected by InSpark.
- 2.3. Deviations from these General Terms and Conditions at the expense of InSpark only apply if they have been approved in writing by InSpark. The remaining provisions of these General Terms and Conditions will remain in full force.
- 2.4. These General Terms and Conditions also apply to all Agreements with InSpark whereby third parties, which do not belong to InSpark, must be involved in the implementation.

OFFERS

Article 3

- 3.1. All quotations are always without obligation, unless a fixed period of validity is stated in the written offer.
- 3.2. A first quotation is accompanied by a copy of these General Terms and Conditions.
- 3.3. When Client signs a quotation, these General Terms and Conditions are deemed known by InSpark and therefore accepted.
- 3.4. Agreements and arrangements are binding to InSpark only if and insofar as they have been confirmed in writing by InSpark.

GUARANTEES

Article 4

- 4.1. InSpark will execute the Performances to be performed properly, soundly and according to the provisions of the Agreement, in accordance with the requirements of due care and quality.

- 4.2. InSpark ensures that the Performances to be performed by or on behalf of InSpark are carried out by persons who are competent in the matter.
- 4.3. InSpark guarantees that the Performance to be performed by, or possibly on behalf of InSpark, will meet the agreed upon qualifications as specified in the Agreement.
- 4.4. InSpark undertakes to treat as such all data and documents relating to the Agreement that are reasonably applicable as confidential and secret.

IMPLEMENTATION OF THE AGREEMENT

Article 5

- 5.1. All agreed upon Performances are performed within normal working hours, unless Parties have explicitly agreed otherwise.
- 5.2. If and insofar as required for the proper execution of the Agreement, InSpark has the right to have certain work carried out by other employees within InSpark and / or third parties that do not belong to InSpark.
- 5.3. Any implementation periods agreed upon by Parties never apply as a final deadline. If an implementation period is exceeded, Client will have to send InSpark a written notice of default. The Client must also provide InSpark the opportunity to fulfil its obligations under the Agreement within a reasonable period of time.

MODIFICATION OF THE AGREEMENT

Article 6

- 6.1. If during the implementation of the Agreement it appears that for a proper implementation it is necessary to change or supplement the Performances to be delivered, Parties will adjust the Agreement accordingly in a timely manner and in mutual consultation.
- 6.2. If an amendment or addition to the Agreement entails additional work, InSpark will notify Client of this in advance.
- 6.3. If at the time of the conclusion of the Agreement there is a change in exchange rates of foreign currency, InSpark is entitled to pass on the aforementioned change, if applicable, to Client in addition to the prices previously provided by

InSpark to Client. However, such an amendment to the previously stated prices does not entitle Client to cancel the Agreement.

- 6.4. If at the time of or after the conclusion of the Agreement there is a change of taxes, levies or import duties due to any government measure, InSpark is entitled to charge the aforementioned change, if applicable, in addition to the prices previously provided by InSpark to Client. However, such an amendment to the previously stated prices does not entitle Client to cancel the Agreement.

DEFECTS AND COMPLAINT TERMS

Article 7

- 7.1. Complaints about the delivered Performance must be reported in writing to InSpark within one (1) week by Client after Client has discovered these or could reasonably have discovered them.
- 7.2. If a complaint is warranted, InSpark will perform the agreed upon Performance properly, unless this has become demonstrably useless in the meantime. The latter must be made known by Client in writing. If the performance of the agreed upon Performance is no longer possible or useful, InSpark will only be liable within the limits of Article 11.

PRICES

Article 8

- 8.1. All prices are exclusive of VAT and other levies that are or will be imposed by the government. Unless otherwise agreed, all prices are always in euros and Client must make all payments in euros.
- 8.2. At the conclusion of the Agreement Parties determine the manner of compensation. Unless Parties have agreed otherwise in writing, all Performances by InSpark on behalf of Client will be charged to Client on the basis of one of the following methods:
- a. **Subsequent Calculation:** all Performances to be performed by InSpark will be charged to Client according to the hourly rates made known to Client in advance, whereby the hourly rate applicable for the period in which the

Performances are performed will be multiplied by the number of hours worked.

- b. **Premium:** the Performances to be performed by InSpark are periodically charged to Client.
- 8.3. Any (preliminary) calculations and budgets to be provided by InSpark are only indicative. Client can never derive any rights or expectations from this.
- 8.4. Once a year InSpark is entitled to adjust its prices as described in Article 8.2. for both new and existing Agreements. If InSpark makes use of an agreement with third parties for the Agreement, InSpark is entitled to pass on any price changes. InSpark is also entitled to pass on reasonable increased operating costs.
- 8.5. As a result of inflation, InSpark is entitled annually to implement a price increase equal to the annual percentage change of the consumer price index for all households (CPI), as published by Statistics Netherlands (CBS), during the preceding Invoicing Period.

PAYMENT

Article 9

- 9.1. Unless Parties have agreed otherwise in writing, the payment of invoices must take place within 30 days of the invoice date. Objections against the invoice do not suspend the payment obligation.
- 9.2. InSpark is at all times entitled to require payment in advance, cash payment or security for the fulfilment of Client's obligations under the Agreement. If Client does not comply with such a request, InSpark will not be liable for any damage that arises as a result of the termination or suspension of the work by InSpark.
- 9.3. Settlement of an invoice with a claim by Client against InSpark is only possible if the relevant claim has been acknowledged in writing by InSpark.
- 9.4. The payment term as specified in Article 9.1. can be regarded as a deadline. If Client fails to timely or fully fulfil one or more payment obligations InSpark is entitled to charge interest from the expiration of the due date until the date of full payment. This interest is equal to the statutory interest.

- 9.5. If InSpark has to proceed with collection of the amount due, the extrajudicial and judicial costs arising from this shall be at the expense of Client. The extrajudicial costs will be charged to Client with a minimum of €40.00 and a maximum of 15% of the invoice amount in accordance with the Netherlands Extrajudicial Collection Costs Decree (Besluit vergoeding voor buitengerechtelijke incassokosten).

DISSOLUTION

Article 10

- 10.1. InSpark is entitled to dissolve the Agreement with immediate effect if Client:
- is declared bankrupt;
 - applies for or obtains provisional suspension of payments;
 - is liquidated;
 - is placed under guardianship;
 - otherwise loses control over its assets;
 - defaults on its obligations under the Agreement;
 - has been asked to provide security for compliance on the basis of Article 9.2., and this security is not provided or is insufficient.
- 10.2. Dissolution of the Agreement pursuant to the preceding paragraph shall be effected by means of a registered letter.
- 10.3. If the Agreement is dissolved, the claims of InSpark on Client will immediately be due and payable.

LIABILITY

Article 11

- 11.1. If there is an attributable shortcoming of InSpark, the contractual and legal liability of InSpark is limited to a maximum of the amount invoiced to Client pursuant to the Agreement, excluding VAT. If the Agreement concerns a continuing performance contract, InSpark's liability is limited to a maximum of the amount invoiced to Client pursuant the Agreement, excluding VAT, for a period of three (3) months. However, under no circumstances shall InSpark's total liability, on any legal basis, exceed €500,000 (in words: five hundred thousand euros). The aforementioned

liability limitation(s) also includes the possible financial obligations of InSpark pursuant to a reversal obligation resulting from the dissolution of the Agreement.

- 11.2. InSpark or its subcontractors or service providers are never liable for any indirect damage including, but not limited to, stagnation damage, trading loss, consequential loss and loss or damage to data carriers or data files.
- 11.3. InSpark is not liable for damage resulting from foreign software elements including, but not limited to, logic bombs, viruses, spyware, malware or worms.
- 11.4. InSpark is never obliged to repair data that has been corrupted or lost as a result of malfunctions and / or maintenance.
- 11.5. InSpark is not liable for damage, of whatever nature, because InSpark has assumed incorrect and / or incomplete information provided by Client, unless this inaccuracy or incompleteness should have reasonably been known to InSpark.
- 11.6. Claims for compensation will lapse if they have not been made known to InSpark within one (1) year after discovery thereof.

INTELLECTUAL PROPERTY

Article 12

- 12.1. All copyrights and other intellectual property rights concerning the Performances remain the property of InSpark or its licensors or suppliers, unless Parties have agreed in writing that certain intellectual property rights will be transferred.
- 12.2. InSpark takes all reasonable precautions to ensure that the Performances to be performed by it will not conflict with any third-party intellectual property right in the Netherlands.

FORCE MAJEURE

Article 13

- 13.1. Force majeure means a shortcoming in the fulfilment of the Agreement that is not due to the fault of InSpark, nor does it, under law, legal act or through generally accepted legal practice, prevail at its expense, regardless of whether this

shortcoming was foreseeable at the time of the closing of the Agreement.

- 13.2. If InSpark cannot fulfil its obligations towards Client due to a non-attributable shortcoming (force majeure), the fulfilment of these obligations will be suspended for the duration of the force majeure situation.
- 13.3. If, due to force majeure, the delivery of the Performance(s) is delayed by more than two (2) months, both InSpark and Client are entitled to consider the Agreement terminated. In that case, InSpark is only entitled to compensation for the costs it has incurred.
- 13.4. In the event of force majeure on the part of InSpark, Client is not entitled to any (damage) compensation, even if InSpark is entitled to any benefit as a result of the force majeure.
- 13.5. InSpark is obliged to warn Client immediately if any event of force majeure occurs on the part of InSpark.

PERSONAL DATA

Article 14

- 14.1. If the General Data Protection Regulation (GDPR) applies to (a part of) the Performance, Parties will conclude an additional Processor Agreement in the context of the execution of the agreed upon Performance.
- 14.2. In the relation between Parties InSpark can be regarded as the processor and Client as controller in the sense of the General Data Protection Regulation (GDPR).
- 14.3. Parties undertake to act reciprocally in accordance with the General Data Protection Regulation (GDPR) and other privacy-related laws and regulations.
- 14.4. Parties indemnify each other from claims against each other under the General Data Protection Regulation (GDPR) and other privacy-related laws and regulations.

CONFIDENTIALITY

Article 15

- 15.1. Parties are obliged, both during this Agreement and after termination thereof, to keep

confidential all confidential information that they have obtained from each other or from another source within the framework of the Agreement. Information is considered to be confidential if this has been communicated as such by the other party, if this arises from the nature of the information or if the confidential nature of the information can be deemed to be known to Parties.

- 15.2. The parties also guarantee that any auxiliary persons engaged by them and / or other third parties involved in the provision of services have accepted the same confidentiality obligation as described in Article 15.1.

RISKS

Article 16

- 16.1. The risk of loss, theft, misappropriation or damage to software, data, documents, data files or other information (codes, passwords, documentation, etc.) that are produced or used within the framework of the execution of the Agreement shall be transferred to Client from the moment they are placed in the actual disposal power of Client or an auxiliary person of Client. Insofar as these objects are in the actual disposal of InSpark or auxiliary persons of InSpark, InSpark bears the risk of loss, theft, misappropriation or damage.
- 16.2. The Client bears the risk of loss, theft or damage to the equipment during the period that InSpark has it for maintenance work. It is left to Client to insure this risk.

ACCEPTANCE

Article 17

- 17.1. If Parties have not agreed to an acceptance test, Client accepts the Performance in the condition in which it is at the time of delivery, therefore with all visible and invisible Errors and defects, without prejudice to the obligations of InSpark under the guarantee scheme of Article 4. In the aforementioned case, the Performance will be deemed as being accepted by Client upon delivery or, if an installation to be performed by InSpark

has been agreed upon in writing, at the completion of the installation.

- 17.2. Client is obligated to report Errors immediately. InSpark has no obligation with regard to any other defects in or to the Performance other than with regard to Errors.
- 17.3. If an acceptance test has been agreed between Parties, the provisions in Articles 17.4. to 17.10. are applicable.
- 17.4. If an acceptance test has been agreed upon, the test period is fourteen (14) days after delivery or, if an installation to be carried out by InSpark has been agreed upon in writing, fourteen (14) days after completion of the installation. During the test period, Client is not entitled to use the Performance for productive or operational purposes.
- 17.5. If an acceptance test has been agreed upon, Client is obliged to test whether the delivered Performance meets the functional or technical specifications expressly made known by InSpark, and if and insofar as the Performance concerns fully or partially Custom Software, to the explicitly agreed upon functional or technical specifications.
- 17.6. The Client will carry out an agreed upon acceptance test with qualified personnel and with sufficient scope and depth.
- 17.7. The Performance will be deemed accepted between Parties:
 - a. if Parties have agreed to an acceptance test: on the first day after the test period; or,
 - b. if InSpark has received a test report as referred to in Article 17.8. before the end of the test period: at the moment that the Errors referred to in that test report have been repaired, without prejudice to the presence of Errors that according to Article 17.9. do not stand in the way of acceptance; or,
 - c. if Client makes any use of the Performance for productive or operational purposes: at the time of the relevant commissioning.
- 17.8. If, when carrying out the agreed upon acceptance test, it appears that the Performance contains Errors, Client shall report the test results to InSpark in writing, in a clear, detailed and

comprehensible manner no later than on the last day of the test period. InSpark will make every effort to repair the aforementioned Errors within a reasonable period of time, whereby InSpark is entitled to implement temporary solutions and / or restrictions.

- 17.9. The Client may not withhold the acceptance of the Performance for reasons not related to the specifications expressly agreed in writing between Parties and furthermore not due to the existence of minor Errors, i.e. Errors that do not reasonably impede the operational or productive use of the Performance, without prejudice to InSpark's obligation to repair these minor Errors. Acceptance may also not be withheld because of aspects of the Performance that can only be assessed subjectively, such as aesthetic aspects of user interfaces.
- 17.10. If the Performance is delivered and tested in phases and / or parts, the non-acceptance of a particular phase and / or part does not affect the acceptance of an earlier phase and / or another part.
- 17.11. Acceptance of the Performance in one of the ways as referred to in this Article will result in InSpark being discharged of the fulfilment of its obligations regarding the provision and delivery of the Performance and, if the installation of the Performance has also been agreed upon by InSpark, of its obligations concerning the installation. Acceptance of the Performance does not affect Client's rights under Article 17.9. concerning minor defects and Article 4 concerning guarantees.

DELIVERY AND INSTALLATION OF SOFTWARE

Article 18

- 18.1. InSpark will, at its discretion, provide software on the agreed upon format data carrier or, in the absence of agreements on this subject, on a data carrier to be determined by InSpark or make the software available to Client through online delivery. Any user documentation agreed upon will be provided in paper or digital form at the

choice by InSpark in a language determined by InSpark.

- 18.2. Only if this has been agreed upon, will InSpark install the software at Client's site. In the absence of agreements on this subject, Client will install, set up, parameterise and tune the software as well as adjust the used equipment and operating environment if necessary.

CO-OPERATION OBLIGATIONS

Article 19

- 19.1. The Client will ensure that all data, of which InSpark indicates that these are necessary or of which Client should reasonably understand that these are necessary for the execution of the Agreement, is provided to InSpark in a timely manner.
- 19.2. If the data required for the execution of the Agreement are not provided to InSpark in a timely manner, InSpark has the right to suspend the performance of the Agreement and / or charge Client for the additional costs arising from the delay in accordance with its applicable rates.
- 19.3. If Client employs its own personnel and / or auxiliary persons within the context of the provision of cooperation in the execution of the Agreement, this will only be done in mutual consultation between Parties.
- 19.4. The Client must refrain from acts which impede, delay or prevents InSpark from performing its Performances properly.
- 19.5. InSpark is entitled to suspend or terminate its services for the benefit of Client as soon as no action is taken regarding Article 19.1., 19.3. and / or 19.4. InSpark also has the right to charge the resulting costs according to its usual rates, as referred to in Article 8.2, without prejudice to InSpark's right to exercise any other legal and / or agreed upon right.

APPLICABLE LAW AND DISPUTES

Article 20

- 20.1. All offers made, Agreements concluded and Performances performed by InSpark, as well as all the resulting implementation and / or follow-up

agreements with Client, shall be exclusively governed by and construed in accordance with the laws of the country of the Netherlands. Also, the applicability of the Vienna Sales Convention (CISG) on offers made, Agreements concluded and Performances performed by InSpark, is expressly excluded.

- 20.2. Any dispute that may arise between Parties shall be submitted to the competent court in Amsterdam, unless InSpark prefers to have the dispute in question brought before the competent court of the place of establishment of Client.

MISCELLANEOUS

Article 21

- 21.1. The Dutch text of these General Terms and Conditions prevails over translations thereof.
- 21.2. These General Terms and Conditions remain in force if InSpark changes in whole or in part its name, legal form or ownership.
- 21.3. If several natural and / or legal persons act as Client or behave as such, then they are jointly and severally liable towards InSpark for the obligations arising from the Agreement.
- 21.4. Terms and Agreements that deviate from these General Terms and Conditions are only legally valid if confirmed in writing by InSpark. In that case, the remaining provisions of these General Terms and Conditions remain in full force.
- 21.5. Obligations between Parties reciprocally entered into, which by their nature are intended to continue after termination of the Agreement, will continue to exist after dissolution of the Agreement.
- 21.6. Third parties, including clients of Client, cannot invoke the provisions of the Agreement or these General Terms and Conditions. With regard to the resale of the services of InSpark, Client will enter into its own legal relationship with its clients.
- 21.7. Modification of the Agreement or additions thereto only are binding insofar as these have been agreed upon in writing between Parties. Changes will be included in a separate annex after it has been initialled by both Parties, this annex will then become part of the Agreement.

21.8. If a certain article of these General Terms and Conditions and / or the Agreement is invalid, void or unenforceable, Parties undertake to replace the relevant article with an article that is binding and, regarding the purpose and purport of these

General Terms and Conditions, deviates as little as possible from the invalid, void or unenforceable article.

MODULE - PROJECTS & PROJECT MANAGEMENT

GENERAL

Article 22

22.1. The conditions mentioned in this module apply to Agreements relating to services in the field of consultancy, advice and project management, in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.

SERVICES PROVIDED BY INSPARK

Article 23

- 23.1. InSpark will make every effort to carry out the services with due care and, where appropriate, in accordance with the accommodations and procedures recorded in writing with Client. All InSpark services are carried out on the basis of a best efforts obligation, unless and insofar as InSpark has explicitly promised a result in the Agreement and the result concerned has also been described with sufficient clarity.
- 23.2. If it has been agreed upon that the services will take place in phases, InSpark is entitled to postpone the commencement of the services that belong to a phase until Client has approved the results of the preceding phase in writing.
- 23.3. If an Agreement has been entered into with a view to execution by a specific person, InSpark is always entitled to replace this person after consultation with Client by one or more other persons with the same or comparable qualifications.
- 23.4. The work to be performed by InSpark in the context of its services will only be performed on the usual working days and hours of InSpark, unless Parties have explicitly agreed otherwise in writing.
- 23.5. Unless agreed otherwise in writing, the use that Client makes of an advice issued by InSpark is always at the expense and risk of Client.

INSTRUCTIONS AND ADDITIONAL WORK

Article 24

- 24.1. Only if this has been explicitly agreed upon in writing, InSpark is obliged to follow timely and sound instructions given by Client during the performance of the service. InSpark is not obliged to follow instructions that change or supplement the content or scope of the agreed upon service.
- 24.2. However, if the instructions referred to in Article 24.1. are followed by InSpark, the work in question will be regarded as additional work and will therefore be charged in accordance with Article 8.2. at InSpark's then applicable rates.

CONTACTS CLIENT

Article 25

- 25.1. In connection with the continuity of the work activities, Client will designate a contact person or contact persons who will act as such for the duration of the activities of InSpark. Contact persons of Client will have the necessary experience, specific material knowledge and insight into the desired objectives of Client.

PROTECTION 'KNOW-HOW' INSPARK

Article 26

- 26.1. Without the prior written consent of InSpark, Client is not entitled to make any communication to third parties regarding the method, methods and techniques of InSpark.

BILLING

Article 27

- 27.1. In the absence of an explicitly agreed upon invoicing schedule, all amounts relating to services provided by InSpark are payable in arrears per calendar month.

MODULE – LICENSE AGREEMENTS HOMEMADE SOFTWARE INSPIRE

GENERAL

Article 28

28.1. The conditions mentioned in this module apply to License Agreements concerning Homemade Software in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.

USER RIGHT AND USAGE RESTRICTIONS

Article 29

- 29.1. InSpark makes the agreed upon software as well as the accompanying documentation available to Client during the term of the License Agreement, on the basis of a user license. The right to use the software is non-exclusive, non-transferable, non-pledged and non-sub licensable.
- 29.2. The obligation of InSpark to make the Client's right of use available only extends to the so-called object code of the software. Client's right of use does not extend to the source code of the software. The source code of the software and the technical documentation created during the development of the software will not be made available to Client, even if Client is prepared to pay a financial compensation for this.
- 29.3. The Client will always strictly observe the agreed upon restrictions, of whatever nature or content, concerning the right to use the software.
- 29.4. InSpark may require Client not to use the software before Client has acquired one or more codes required for use from InSpark. InSpark is at all times entitled to take technical measures to protect the software against unauthorized use and / or against use in any other way or for purposes other than such agreed upon between Parties. Client will never remove or circumvent technical measures that are intended to protect the software.
- 29.5. Client may only use the software within and for the benefit of its own company or organization and only to the extent that this is necessary for the intended use. Client will not use the software for the benefit of third parties, for example in the context of 'Software-as-a-Service' (SaaS) or 'outsourcing', unless Parties have agreed upon otherwise in writing.
- 29.6. Unless otherwise agreed upon in writing by Parties, Client is never permitted to make available, sell, rent, dispose of or grant limited rights to or to otherwise make available a third party the software and the carriers on which the software is recorded. Nor shall Client give a third party, whether or not remotely, (online) access to the software or transfer the software to a third party for hosting, even if the third party in question uses the software solely for the benefit of Client.
- 29.7. If requested, Client will cooperate without delay in an investigation to be carried out by or on behalf of InSpark regarding compliance with the agreed upon usage restrictions. Client will provide access to its buildings and systems at InSpark's first request. InSpark will treat as confidential all confidential business information it receives by or from Client in the context of an investigation, insofar as this information does not concern the use of the software itself.
- 29.8. An Agreement concluded between Parties, insofar as concerning the availability and the use of software, will never be regarded as a purchase agreement.
- 29.9. InSpark is not obliged to maintain the software and / or provide support to users and / or administrators of the software. If, contrary to the aforementioned maintenance and / or support with respect to the software is requested, InSpark may require Client to enter into a separate written agreement for this purpose.

AVAILABILITY

Article 30

- 30.1. InSpark will make the software available to Client within a reasonable period after entering into the Agreement.
- 30.2. Immediately after the Agreement has ended, Client will return all copies of the software in its possession to InSpark. If it has been agreed upon that Client will destroy the relevant copies at the end of the Agreement, Client shall immediately notify InSpark of such destruction in writing. InSpark is not obliged at or after the end of the Agreement to provide support concerning a data conversion desired by Client.

RIGHT OF USE FEE

Article 31

- 31.1. The Premium to be paid by Client for the right to use is due at the agreed upon times, or in the absence of an agreed upon time on delivery or installation of the software and then at the start of each new Invoicing Period.

CHANGES TO THE SOFTWARE

Article 32

- 32.1. The Client is not entitled to change the software in whole or in part without prior written permission from InSpark. InSpark is entitled to refuse permission or to attach conditions to it. Client bears the full risk of all changes made by or on behalf of Client by third parties.

WARRANTY

Article 33

- 33.1. InSpark will make every effort to rectify Errors within a reasonable period if they are submitted to InSpark in writing within three (3) months of delivery or, if an acceptance test has been agreed upon, within three (3) months from reporting the acceptance. InSpark does not guarantee that the software is suitable for the actual and / or intended use. InSpark does not guarantee that the software will work without interruption and / or that all Errors will be corrected.
- 33.2. The correction of Errors takes place at a location and in a manner to be determined by InSpark. InSpark is hereby entitled to bring temporary solutions or limitations to the software.
- 33.3. The repair obligation lapses if Client makes changes to the software or has them made without the written permission of InSpark.
- 33.4. If there are errors of use or improper use by Client or other causes not attributable to InSpark, InSpark may charge the costs of repair according to its usual rates.
- 33.5. InSpark is never obliged to recover corrupted or lost data.
- 33.6. InSpark has no obligation whatsoever of any nature or kind whatsoever in respect of Errors that are reported after the end of the warranty period referred to in Article 33.1.

MODULE – LICENSE AGREEMENTS MICROSOFT SOFTWARE

GENERAL

Article 34

- 34.1. The conditions mentioned in this module apply to License Agreements concerning Microsoft Software in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.
- 34.2. In this module:
- Microsoft: the partner and supplier of InSpark being the Microsoft Corporation.
 - Subscription: the number of ordered units of online services from Microsoft as well as software from Microsoft for a specified period.
 - CloudBilling: a backend tool which during the course of each calendar month measures the number of active Subscriptions and invoices them on a pro rata basis to Client on the first day of each subsequent calendar month.
 - CloudPortal: an online portal in which all active Subscriptions and other relevant information are displayed online and is at all times accessible and can be consulted by Client and by means of a unique login.
- 34.3. The following terms and conditions of Microsoft are also fully applicable to License Agreements:
- Microsoft Cloud Agreement
 - Microsoft Product Terms
 - Microsoft Online Services Terms
 - Microsoft Online Services Privacy Statement
- 34.4. The Contract Period of Subscriptions is one (1) month, namely from the effective date on the 1st of each calendar month up to and including the last day of the same calendar month. Current Subscriptions are tacitly renewed for the duration of the Contract Period.
- 34.5. The Invoicing Period for Subscriptions is the same as that of the Contract Period as referred to in Article 34.4., unless otherwise agreed upon by Parties.

BILLING

Article 35

- 35.1. Client will not incur any initial costs when ordering a Subscription. The first Premium due will be invoiced to Client on the first of the next calendar month. If a new Subscription is delivered before the 1st of the first month, these extra days will be proportionally added to the first Premium due. InSpark will subsequently invoice the Premium for the previous month to Client on the 1st of each calendar month.
- 35.2. Exceeding the number of Subscriptions during the Invoicing Period or the ordering of additional Subscriptions will be settled (financially) in accordance with the provisions of Article 35.1.
- 35.3. InSpark will send all invoices electronically to Client by means of CloudBilling. In accordance with the provisions of Article 9.1., the payment of these invoices must take place within thirty (30) days of the invoice date, unless Parties have agreed otherwise in writing.
- 35.4. If Client does not pay invoices within the payment term referred to in Article 35.3., InSpark is entitled, after issuing two written warnings to Client, to suspend the Subscriptions concerned. This does not affect Client's obligation to pay the sum already due. After receiving the late payment, the Subscriptions concerned are reactivated.

USAGE OF CLOUDPORTAL

Article 36

- 36.1. The ordering of new or the cancellation of active Subscriptions by Client must take place through the CloudPortal. Client is entirely responsible for ordering or (timely) cancelling its Subscriptions.
- 36.2. InSpark is not liable for incorrect and / or incomplete orders or cancellations made by Client through the CloudPortal.
- 36.3. Before Client enters personal details of a user of a Subscription in the CloudPortal or provides it to

Microsoft, Client is obliged to obtain the necessary permission from the relevant user on the basis of the General Data Protection Regulation (GDPR).

MODULE - DEVELOPMENT OF CUSTOM SOFTWARE

GENERAL

Article 37

37.1. The conditions mentioned in this module apply to License Agreements concerning Custom Software in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.

SPECIFICATIONS AND DEVELOPMENT CUSTOM SOFTWARE

Article 38

38.1. If no specifications or a design for the Custom Software to be developed have been provided to InSpark before or at the conclusion of the Agreement, Parties will, in consultation, specify in writing which Custom Software will be developed and in which manner the development will take place.

38.2. Before commencing with the development work, InSpark may require Client to agree in writing with the specifications or the design.

38.3. InSpark will develop the Custom Software with care, all this with due observance of the explicitly agreed upon specifications or the design and - if applicable - with due observance of the project organization, methods, techniques and / or procedures agreed upon in writing with Client.

38.4. In the absence of specific agreements on this matter, InSpark will start the design and / or development work within a reasonable term to be determined by it after entering into the Agreement.

38.5. If requested, Client will give InSpark the opportunity to perform the work activities outside the usual working days and working hours at Client's office or location.

38.6. The development work does not include the maintenance of the Custom Software and /

or the provision of assistance (support) to users and / or administrators thereof. If, contrary to the aforementioned, maintenance and / or support must also be provided by InSpark, Client must enter into a separate agreement for this. These working activities will be charged separately at the usual rates of InSpark, as referred to in Article 8.2.

ITERATIVE DEVELOPMENT CUSTOM SOFTWARE

Article 39

39.1. If Parties use a development method that is characterized by the principle that the design and / or development of (parts of) the Custom Software takes place in an iterative manner, Parties agree that the work activities at the start will not be carried out on the basis of complete or fully detailed specifications and in addition that specifications, which may or may not have been agreed upon at the start of the work activities are subject to change, in good consultation, during the implementation of the Agreement, taking into account the project approach that is part of the relevant development method.

39.2. During the execution of the Agreement, Parties will jointly decide in good consultation on the specifications that apply to the next phase of the project and / or to the subsequent portion of the development. Client accepts the risk that the Custom Software will not necessarily meet all specifications.

39.3. Client will ensure a permanent and active contribution supported by Client's organization as well as the cooperation of relevant end-users for, including but not limited to, testing and further (further) decision-making.

39.4. The Client guarantees that the employees that it employs and who are named in key positions have the decision-making powers required for this position. Client guarantees the promptness of the progress decisions to be made by it

during the execution of the Agreement. In the absence of timely and clear progress decisions on the part of Client in accordance with the project approach associated with the relevant development method, InSpark is entitled - but not obliged - to take the appropriate decisions.

- 39.5. If Parties make use of a development method as referred to in Article 39.1., then the provisions of Article 17.1. and Article 17.5. until 17.9. do not apply. Client accepts the Custom Software in the state in which it is at the moment of the end of the last development phase ('as is, where is'). InSpark is not obliged to correct Errors after the last development phase, unless expressly agreed upon otherwise in writing.

RIGHT OF USE

Article 40

- 40.1. InSpark provides the Custom Software developed on behalf of Client and any user documentation belonging to it for use by Client.
- 40.2. Only if this has been agreed upon in writing, the source code of the Custom Software and the technical documentation created during the development of the Custom Software will be made available to Client, in which case Client will be entitled to make changes to the Custom Software.
- 40.3. InSpark is not obliged to make available the auxiliary software and program or data libraries required for the use and / or maintenance of the Custom software.
- 40.4. The provisions of Article 29 on user rights and usage restrictions apply mutatis mutandis.
- 40.5. Only if the contents of the Agreement expressly show that, by way of derogation from the provision of Article 40.4., all design and development costs are fully and exclusively borne by Client no restrictions will apply for Client in the right to use the Custom Software.

COMPENSATION

Article 41

- 41.1. In the absence of an agreed upon payment schedule, all amounts relating to the design and development of Custom Software are payable each calendar month on the basis of Subsequent Calculation.
- 41.2. The price for the development work also includes the fee for the right to use the Custom Software during the term of the Agreement.
- 41.3. The fee for the development of the Custom Software does not include a fee for the software and program and data libraries required by Client, any installation services and any adjustment and / or maintenance of the Custom Software. Nor is the compensation included for the provision of assistance (support) to users.

GUARANTEE

Article 42

- 42.1. The provisions of Article 33 regarding warranty apply mutatis mutandis.

MODULE - SERVICE AGREEMENTS

GENERAL

Article 43

43.1. The terms and conditions mentioned in this module also apply to Service Agreements, in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.

Exclusions and extra work

ARTICLE 44

- 44.1. Activities that are not covered by the Agreement, such as the investigation or repair of malfunctions resulting from or in connection with user errors, improper use or external causes, such as defects in communication lines, network connections or in power supplies, or links to equipment, software or materials do not belong to the obligations of InSpark under the Agreement.
- 44.2. If Client instructs InSpark to perform activities which are not covered by the Agreement, these shall be charged at InSpark's then applicable rates in accordance with Article 8.2.

BILLING

Article 45

- 45.1. The Premium due is billed in advance before the coverage of the Agreement takes effect. Unless otherwise agreed in writing, the Invoicing Period is twelve (12) months.
- 45.2. In the event of late payment in accordance with the provisions of Article 9, the coverage of the Agreement will lapse, this does not affect Client's obligation to pay the sum due. After receiving the late payment, the coverage becomes effective again with the effective date being the original date of the Agreement.

EXCEEDANCE RESPONSE TIME

Article 46

- 46.1. Client can claim a refund of five percent (5%) of the monthly Premium at a time, with a maximum of fifteen percent (15%) per Invoicing Period, if the maximum response time is exceeded by InSpark. Client can claim reimbursement by notification via registered letter within fourteen (14) days after the exceedance of the maximum response time.
- 46.2. Client is not entitled to a refund of part of the Premium, as referred to in Article 46.1., if the exceedance is caused by circumstances beyond the control of InSpark. There is also no right to a refund if the delay is the result of non-compliance by Client with the obligations stipulated in Article 19.

TACIT EXTENSION

Article 47

- 47.1. After the first Contract Period, the Agreement is tacitly renewed for one (1) year at the then applicable rates.

TERMINATION

Article 48

- 48.1. The Agreement can be terminated by Client by cancellation via registered letter. This letter must be received by InSpark at least three (3) months before the expiration of the Contract Period.
- 48.2. InSpark can terminate the Agreement by written notification at least three (3) months before the expiration of the Contract Period.

MODULE - MANAGED SERVICES

GENERAL

Article 49

49.1. The conditions mentioned in this module apply to Services Agreements concerning Managed Service in addition to the General Terms and Conditions. Where the conditions in this module conflict with any condition in the General Terms and Conditions, the condition with the highest article number prevails.

FORMS OF SERVICE

Article 50

- 50.1. The Performance to be performed by InSpark will be based on the three following services:
- Expert Desk:** InSpark provides support to the IT department of Client through second or third line support.
 - Managed Cloud:** InSpark unburdens the organization of Client completely or partly concerning the use of Microsoft Cloud Services.
 - Cloud Security Center:** InSpark monitors and secures the Microsoft Cloud environment of Client and ensures a follow-up on incidents.
- 50.2. The Service Agreement specifies which tasks are included in the Performance to be performed and which are not.

EXPERT DESK

Article 51

- 51.1. If the Performance to be performed by InSpark takes place on the basis of an Expert Desk package, Client will have access to the service desk of InSpark regarding (technical) questions and / or problems. InSpark will take care of answering these questions or provide support in solving (technical) problems. The exact range of duties of InSpark depends on the service level included in the Service Agreement.
- 51.2. Unless expressly stated otherwise in the Service Agreement, Client can only call upon the

service desk of InSpark for support regarding Azure and Office 365.

- 51.3. Connection of each user to the service desk of InSpark will take place according to a connection procedure to be determined by Parties in mutual consultation.
- 51.4. For the purposes of support mentioned in Article 51.1., the service desk of InSpark is available to the IT department of Client via e-mail, telephone or Skype during the times as stated in the Service Agreement. Tickets will be answered during regular business hours and within the response time as stated in the Service Agreement.
- 51.5. InSpark will make every effort to execute its services with care, in accordance with the accommodations and procedures laid down in the Service Agreement. All Performances by InSpark are exclusively performed on the basis of a best efforts obligation, unless and insofar as InSpark has promised a result explicitly and in writing and the result concerned has also been described with sufficient certainty. Results also include the accommodations concerning the connection procedure and what is stated in the Expert Desk package.
- 53.6. Not included in the Expert Desk package are so-called 'Premier Support' services for which Client must conclude an additional Agreement with InSpark. Premier Support means that InSpark will, after consultation with Client, escalate a malfunction in a Microsoft Cloud Service from Client to Microsoft via its own Premier Support contract. InSpark coordinates the escalation and adjusts the follow-up with Microsoft where necessary. The costs that Microsoft charges to InSpark are charged to Client on a one-to-one basis through Subsequent Calculation. If Microsoft stops offering Premier Support in its current form and / or InSpark no longer has an existing contract

with Microsoft for Premier Support, the additional Agreement automatically expires.

- 51.7. Not included in the Expert Desk package are so-called 'standby services'. If Client wishes that InSpark, keeps one or more of its staff members available for the resolution of serious problems of a pressing or urgent nature, InSpark will determine an additional fee based on Subsequent Calculation.

MANAGED CLOUD

Article 52

- 52.1. If the Performance to be performed by InSpark takes place on the basis of a Managed Cloud package, InSpark will, in whole or in part, take over the management of the Infrastructure of Client. The exact range of duties of InSpark depends on the service level included in the Service Agreement.
- 52.2. With regard to Managed Cloud, InSpark focuses on the management of that part of the Infrastructure which makes use of the Microsoft Azure platform. In relation to this InSpark will only support for the components included in the Service Agreement.

CLOUD SECURITY CENTRE

Article 53

- 53.1. If the Performance to be performed by InSpark is based on a Cloud Security Center package, InSpark will monitor the Microsoft Cloud Services defined in the Service Agreement within the Infrastructure of Client and ensure that all security related incidents and recommendations are followed up on. The exact range of duties of InSpark depends on the service level included in the Service Agreement.
- 53.2. Concerning Cloud Security Center InSpark makes use of services from Microsoft Security as mentioned in the Service Agreement.

ACCESS INFRASTRUCTURE

Article 54

- 54.1. In order to make Managed Services possible, the service desk of InSpark must at all times be able to gain electronic access to the Infrastructure of Client. Specific arrangements with regard to access will be stated in the Service Agreement.
- 54.2. If and as long as access to the Infrastructure of Client by the service desk of InSpark is not possible due to a failure of the connection concerned resulting from a fault in the electricity supply at Client or third parties or as a result of actions performed by or on behalf of Client, InSpark is not held to the obligations arising from the Service Agreement. This does not entitle Client to terminate the Service Agreement prematurely or to claim a refund of (a part of) the Premium.

DISTURBANCES AND INCIDENTS

Article 55

- 55.1. Disruptions in hardware are solved insofar as covered by and under the terms of the Service Agreement. software updates are performed insofar as covered by the Service Agreement.
- 55.2. InSpark will at all times strive to respond to incidents within the response time set out in the Service Agreement.
- 55.3. Exceeding the response time does not entitle Client to terminate the Service Agreement.

EXCLUSIONS

Article 56

- 56.1. InSpark is not bound by the obligations under the Service Agreement if malfunctions occur as a result of user errors, hardware and software problems that are not covered by the Service Agreement or incompatibility of software.
- 56.2. Defects as a result of improper handling, repairs by third parties, use of unsuitable accessories or peripherals or any other cause that cannot be regarded as normal wear and tear, are not covered by the Service Agreement.

56.3. Hardware that is no longer supported by the manufacturer is not covered by the Service Agreement.

CHANGES BY CLIENT

Article 57

- 57.1. If Client makes changes or has them installed in the hardware, the software or in the configuration of (parts of) its Infrastructure then Client must notify InSpark in writing. If InSpark expects the change to lead to problems, it will advise to adjust the Infrastructure. If Client does not follow this advice, InSpark is entitled to cease its services and / or terminate the Service Agreement immediately. In that case, Client must pay the Premium due until the next due date.
- 57.2. If Client itself makes changes or has them installed as referred to in Article 57.1., InSpark will no longer be required to keep logs. This does not entitle Client to the premature termination of the Service Agreement or to the restitution of (a part of) the Premium.

REPORTING AND CONSULTATION

Article 58

- 58.1. InSpark will discuss incidents with the relevant employees of Client. InSpark will deregister an incident when it is resolved in its opinion. At InSpark's choice, communication can be made by letter or e-mail or a consultation by telephone or in person can take place.
- 58.2. At the request of Client, consultation can take place regarding the susceptibility to interference of the Infrastructure and regarding the quality of the service provided by InSpark.



INSPARK

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