

These General Terms and Conditions govern the legal relationship between Sprk Studios and its customers and prospects. The General Terms and Conditions are divided into several chapters, which are geared to the various forms of services offered by Sprk Studios.

# GENERAL STIPULATION

## Article 1. Quotation, offer and acceptance

1. An offer prepared by Sprk Studios is non-binding and valid until 21 days after its date by Sprk Studios, unless otherwise indicated in the offer. Quotes issued by Sprk Studios may be withdrawn at any time, but only within 48 hours after receipt of acceptance.
2. The Client should preferably accept the offer in Writing, but if the Client agrees to the offer in any other way than in Writing or creates that impression, the offer may be considered accepted by Sprk Studios.
3. Stipulations or conditions set by the Client that deviate from, or do not appear in, these General Terms and Conditions are only binding for Sprk Studios if and insofar as they have been explicitly accepted in writing by Sprk Studios.
4. Without prejudice to Sprk Studios's authority to withdraw the offer in accordance with article 1 paragraph 1, the Agreement may be amended after acceptance only by mutual consent.
5. In case of conflict between provisions in the following documents, the following order of precedence shall apply:
  - the Agreement;
  - the Service Level Agreement;
  - any annexes, excluding brochures;
  - these General Terms and Conditions;
  - any additional terms and conditions.

## **Article 2. Implementation of the Project & Provision of information**

1. After the conclusion of the Agreement, Sprk Studios will carry out the Project in accordance with the offer as soon as possible, taking into account reasonable wishes of the Client.
2. Sprk Studios endeavours to carry out the Project to the best of its ability under the application of sufficient care and skill.
3. The Client is obliged to enable timely and correct execution of the Project. In particular, the Client shall ensure that all data, which Sprk Studios indicates are necessary or which the Client should reasonably understand are necessary for the execution of the Project, are provided to Sprk Studios in a timely manner. The necessary efforts of the Client must be delivered with sufficient quality and timeliness. This applies both to support to be provided by the contact persons and to the planned deployment of project employees within the project activities to be carried out.

## **Article 3. Duration, termination and dissolution**

1. Terms of delivery stated by Sprk Studios are always indicative, unless it is explicitly stated in writing that it concerns a deadline. Sprk Studios is, also in case of an agreed deadline, only in default after the client has given him a notice of default In Writing, except for the situations prescribed by mandatory law in which the default occurs by operation of law.
2. If the Client fails to comply with any of its obligations under the Agreement, Sprk Studios has the right to suspend the execution of all Agreements concluded with the relevant Client without any notice of default or judicial intervention being required and without prejudice to Sprk Studios's right to compensation for damages, lost profits and interest, unless the non-compliance in question is of minor importance.
3. Sprk Studios is authorised to dissolve or suspend the contract in whole or in part with immediate effect, without judicial intervention, by letter, fax or e-mail and without any obligation to pay damages or compensation, if:
  - Client fails to fulfil its obligations under the Agreement, in full or on time;
  - After the conclusion of the Agreement, circumstances come to Sprk Studios's attention that give good reason to fear that the Client will not fulfil its obligations;

- Customer was requested to provide security for the fulfilment of its obligations under this Agreement when the Agreement was concluded and this security is not provided or is insufficient;
  - Due to the delay on the part of the Client, Sprk Studios can no longer be required to fulfil the Contract at the originally agreed conditions;
  - Client dies, applies for suspension of payments or files a declaration of declaration of bankruptcy does;
  - Client's bankruptcy is filed;
  - The Client's operations are shut down or liquidated;
  - Any asset of the Client is seized;
    - Circumstances occur which are of such a nature that fulfilment of the Agreement is impossible or unaltered maintenance of the Agreement cannot reasonably be required of Sprk Studios.
4. If the Agreement is dissolved, Sprk Studios's claims against the Client are immediately due and payable. If Sprk Studios suspends the fulfilment of its obligations, it retains its claims under the law and the Agreement.
  5. If the dissolution is imputable to the Client, Sprk Studios is entitled to compensation for the damage caused directly and indirectly as a result.

## **Article 4. Prices**

1. Prices are exclusive of sales tax (VAT) and other government levies.
2. If a price in an offer is based on data provided by the Client and these data prove to be incorrect, Sprk Studios has the right to adjust the prices accordingly, even after the Agreement has already been concluded.
3. All prices mentioned in Sprk Studios's quotation are subject to typing and calculation errors.

## **Article 5. Terms of payment**

1. Sprk Studios will invoice the Client for the amount owed by the Client. If the Project is delivered in stages, Sprk Studios is entitled to invoice per stage delivered, monthly or on the basis of hours worked (this at Sprk Studios's discretion). The payment term of an invoice is 21 days after the date of the invoice, unless otherwise indicated on the invoice or otherwise stipulated in the Agreement.

2. If the Customer does not pay in full on time, he shall be in default by operation of law from 21 days after the payment term without notice of default being required. If an amount due is not paid within the payment term, a contractual interest of 2% per month and €50,- administration fee due without further notice of default by Sprk Studios.
3. In the event of late payment, Client shall, in addition to the amount due and the interest accrued thereon, be liable for full compensation of both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies.
4. The claim for payment is immediately due and payable in the event that Client is declared bankrupt, applies for a suspension of payments or a general attachment is levied on Client's assets, Client dies and furthermore, if Client goes into liquidation or is dissolved.
5. In the above cases, Sprk Studios is furthermore entitled to terminate or suspend execution of the Agreement or any unperformed part of it without notice of default or judicial intervention, without any right to compensation of damages for the Client that may arise as a result.

## **Article 6. Security**

1. Sprk Studios is always entitled, before starting or continuing with the Project, to demand that the Client provides adequate security that the Client can and will fulfil its payment obligations.
2. If the requested security is not or insufficiently provided, Sprk Studios has the right to dissolve the Agreement without judicial intervention and to take back what has already been fulfilled, without prejudice to Sprk Studios's rights to payment of what is due on termination of the Agreement on account of work performed, Projects delivered and/or costs incurred.

## **Article 7. Additional work**

1. If, due to the wishes of the client, which can reasonably be considered by Sprk Studios as a change or addition to what is stated in the offer or the Agreement (which also includes a delay or walk-out with respect to the Project that can be attributed to the client), the work Sprk Studios has to perform under this Agreement is changed, made heavier or is the result of additional work. If Sprk Studios is of the opinion that additional work is involved, it will notify the Client as soon as possible and ask for approval.
2. Client will always decide on the proposed additional work within five (5) working days. The work to be carried out under accepted additional work will be recorded

in Writing and agreed by both parties. For any overrun of the time limit stated in the quotation

mentioned delivery deadlines due to additional work, Customer is responsible.

3. The provisions of these General Terms and Conditions apply to all additional work to be performed by Sprk Studios, insofar as the parties have not agreed otherwise.

## **Article 8. Liability**

1. The liability of Sprk Studios for direct damage suffered by the Client as a result of an attributable shortcoming in the fulfilment by Sprk Studios of its obligations under the contract, explicitly also including any shortcoming in the fulfilment of a guarantee obligation agreed upon with the Client, or as a result of an unlawful act by Sprk Studios, its employees or third parties engaged by it, is per event or a series of events related events to an amount equal to the fees payable by the Customer under this Agreement per year (excluding VAT). However, in no case shall the total compensation for direct damage exceed EUR 10,000 (excluding VAT).
2. Sprk Studios's liability for indirect damage, including consequential damage, loss of profit, missed savings, mutilation or loss of (business) data and damage due to business stagnation, is excluded.
3. Outside the cases mentioned in paragraph 1 of this article, Sprk Studios has no liability for damages, regardless of the ground on which an action for damages would be based. The exclusions and limitations referred to in this article lapse if and insofar as the damage is the result of intent or conscious recklessness on the part of Sprk Studios's management.
4. The liability of Sprk Studios for attributable shortcomings in the fulfilment of the contract only arises if the client gives Sprk Studios immediate and proper notice of default in writing, setting a reasonable term to remedy the shortcoming, and Sprk Studios remains attributable in default in the fulfilment of its obligations even after that term. The notice of default must contain a description of the shortcoming that is as detailed as possible, so that Sprk Studios is able to respond adequately. 5. A condition for the occurrence of any right to compensation is always that the client reports the damage in writing to Sprk Studios within 14 days after the occurrence.
6. The client indemnifies Sprk Studios against all third-party claims for liability as a result of a Defect in the Project/Service which was delivered by the client to a third party and which partly consisted of Sprk Studios's services.

IT, except if and insofar as the Client proves that the damage was caused by those items, Materials or results. Client also indemnifies Sprk Studios against claims regarding non-compliance with licences by Client and/or third parties (including Users) that fall under Client's responsibility.

7. Sprk Studios's liability for shortcomings in third-party products and Services, including software, (web) applications and software, is excluded.

## **Article 9. Breakdowns and force majeure**

1. Neither Party can be held to fulfil any obligation if a circumstance beyond the control of the Parties, which could not or should not already have been foreseen at the time the Agreement was concluded, nullifies any reasonable possibility of fulfilment. The Parties may only invoke Force Majeure vis-à-vis each other if the Party concerned notifies the other Party In Writing of such invocation of Force Majeure as soon as possible after the failure has occurred, submitting the necessary documentary evidence.
2. The circumstances referred to in paragraph 1 may include, for example: (a) failures of internet or other telecommunication facilities, (b) shortcomings by parties on whom Sprk Studios depends in the provision of the Services, (c) defectiveness of items, equipment, software, or Materials the use of which the Client has prescribed to Sprk Studios, (d) the unavailability of one or more members of staff (due to illness or otherwise) and (e) government measures
3. In the event of force majeure, the fulfilment of the relevant obligation(s) and the related obligation(s) shall be suspended in full or in part for the duration of such force majeure, without the parties being mutually obliged to pay any compensation in that respect. The parties may only invoke force majeure vis-à-vis each other if the party concerned notifies the other party in writing of such invocation of force majeure as soon as possible after the failure has occurred, submitting the necessary documentary evidence.
4. If a force majeure situation has lasted for thirty (30) days, or as soon as it is established that the force majeure situation will last for more than three months, each of the parties shall be entitled to terminate the Agreement In Writing, unless the nature or extent of the failure does not justify the early termination. What has already been performed under the Agreement shall in that case be settled proportionally, without the parties owing each other anything.

## **Article 10. Intellectual property rights**

1. All intellectual property rights to all Materials developed or made available under the Project shall belong exclusively to Sprk Studios or its licensors.
2. Client only acquires the rights of use and powers granted in these General Terms and Conditions, the Agreement or otherwise In Writing

are explicitly granted and otherwise the Customer shall not reproduce or disclose the software, Services or other Materials.

3. The Client is not permitted to remove or change any indication concerning copyrights, brands, trade names or other intellectual property rights from the Materials, including indications concerning the confidential nature and secrecy of the Materials.
4. Sprk Studios is permitted to take technical measures to protect the Materials. If Sprk Studios has secured the Materials by means of technical protection, the Client is not permitted to remove or evade this security.
5. Any use, reproduction or disclosure of the Materials beyond the scope of the Agreement or rights of use granted shall constitute an infringement of Sprk Studios's intellectual property.
6. The Client shall pay an immediately due and payable penalty of 5,000 euros per infringing act and 25,000 euros per deliberately infringing act to Sprk Studios, without prejudice to Sprk Studios's right to recover its damages. After the expiry of one working day after Sprk Studios has notified the Client of an infringement, the Client shall also owe a penalty of 5,000 euros per day that the infringement is not terminated.

## **Article 11. Staff**

1. The Client shall provide employees of Sprk Studios who perform work at the offices of the Client for the delivery of products and/or services with all necessary support for the performance of their work.
2. The Client and organisations acting on behalf of the Client in the context of the Agreement are not permitted, as long as the relationship between the Client and Sprk Studios continues, as well as for one year after it ends, to employ employees of Sprk Studios or otherwise have them work for them, directly or indirectly, without Sprk Studios's prior Written consent. In this context, employees of Sprk Studios are understood to be persons who are employed by Sprk Studios or one of Sprk Studios's affiliated companies or who have not been employed for more than 6 (six) months ago were employed by Sprk Studios or any of its affiliates.

## **Article 12. Confidentiality**

1. Parties will keep confidential any information they provide to each other before, during or after the performance of the Agreement if this information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this

obligation on their employees as well as third parties engaged by them for the performance of the Agreement.

2. Sprk Studios will not take cognisance of data that the Client stores and/or distributes through Sprk Studios's Services, unless this is necessary for a proper execution of the Agreement or the quality of the Projects, or Sprk Studios is obliged to do so under a statutory provision or court order. In that case, Sprk Studios will make every effort to limit the knowledge of the data as much as possible, insofar as this is within its power.
3. This obligation continues even after termination of the Agreement for whatever reason, and for as long as the providing party can reasonably claim the confidentiality of the information.

## **Article 13. Amendments to General Terms and Conditions**

1. Sprk Studios reserves the right to amend or supplement these Terms and Conditions and any sections thereof.
2. Changes shall also apply in respect of already concluded Agreements subject to a period of 30 days after the announcement of the change on Sprk Studios's website or by electronic notification. Changes of minor importance may be made at any time.
3. If the Customer does not wish to accept a change in these General Terms and Conditions, it may, until the date on which the new General Terms and Conditions come into force, terminate the Agreement by this date or on the date of receipt of the notice of termination if this is after the effective date of the change.

## **CUSTOMISED DEVELOPMENT**

This chapter applies to custom work supplied by Sprk Studios to the Client, for example the design and/or development of websites, web shops, (web) applications, house styles, logos, leaflets, brochures, advertisements, marketing and/or communication plans, concepts, images, texts, sketches and documentation, advice, reports or other specific content works including search engine optimisation, online advertising, e-marketing plan and Google services.



## Article 14. Completion & acceptance

1. Sprk Studios endeavours to deliver the Materials in accordance with the Specifications to the Client for acceptance.
2. Once the Materials have been delivered to the Client for acceptance, the Client shall subject them to an Acceptance Test at its own expense and responsibility during the one-week acceptance period. By acceptance, the Client grants discharge to Sprk Studios in respect of all its obligations in respect of the Results.
3. If Client does not reject the Materials (in whole or in part) within the period referred to in paragraph 2, they shall be deemed to be accepted and delivered.
4. The Client shall also be deemed to have accepted the Materials if the Client has proceeded to put the Materials into use or if the Client has not notified Sprk Studios In Writing at the latest within ten days after delivery that and for what reason(s) it does not accept the Materials.
5. If Materials are not accepted, Sprk Studios will specify which adjustments will be made, together with the corresponding time or possible costs. The client will then indicate whether it agrees with the said adjustments and the associated time and costs or whether it waives the rejection. Sprk Studios will make a maximum effort to implement the adjustments made by Client identified and reproducible Defects within the time agreed by the parties, and failing that within a reasonable time.
6. Making adjustments in response to a rejection of a Material may take place on a delivered or an undelivered version of the Materials (this at Sprk Studios's discretion), provided that it does not involve a Defect rendering the delivered Material completely non-functional.
7. If the Client has accepted the Results (with the exception of Defects in independent functionalities and external Defects; minor Defects), the guarantee period of 30 days comes into effect. Within this period, the Results are considered accepted, but it is possible to report Defects, which could not reasonably have been discovered during the Acceptance Test. Sprk Studios will specify and supplement any Defects with the expected time and, if the Defects cannot be easily remedied and within 30 days, any additional costs for adaptation of those parts. This warranty period shall therefore not count as an extended Acceptance Test and shall not give any more guarantees than provided for in this paragraph.
8. Minor Defects, including Defects that, due to their nature and/or number, do not reasonably prevent the Materials from being put to operational use, but not limited to these, will not be a reason for withholding acceptance, without prejudice to

Sprk Studios's obligation to repair such Defects. The parties will consult with each other to this end.

9. If the Project is carried out in phases, Customer shall give its approval or disapproval of the Materials of that phase after completion of each phase and the above procedure shall also apply. Customer may not base an approval or disapproval of the Materials of a later stage on matters approved in an earlier stage.

10. Sprk Studios is entitled to wait with the start of a new phase until the Client has explicitly accepted the old phase.

11. Sprk Studios does not guarantee that what the client intends to achieve with the work to be developed or developed by Sprk Studios will actually be achieved.

12. Sprk Studios endeavours to develop and make available its products/works (applications) as well and as error-free as possible. However, Sprk Studios cannot guarantee that the software will always function completely error-free.

13. Sprk Studios is entitled to set up temporary solutions or 'workarounds', whereby certain functionalities are restricted to avoid serious errors.

## **Article 15. Progress**

1. The client and Sprk Studios shall mutually agree the phases, delivery dates and deadlines specific to the Project, for example in the Quotation or the Agreement.
2. After consultation between Sprk Studios and the client, agreed delivery dates and deadlines may be deviated from without further consequences.

## **Article 16. Specifications & (source) materials**

1. The parties will specify in Writing which works will be developed, the requirements to be met and the manner in which this will be done. Sprk Studios will carry out the development with care on the basis of the data to be provided. The client guarantees the correctness, completeness, consistency and timeliness of its instructions and data.
2. A Written Specification as mentioned in article 3.1 is not required if the Client has expressed the desire, whether in Writing or not, to offer Sprk Studios a high degree of freedom in the development of work and the manner in which this takes place. If the development has taken place in that manner, the Client cannot afterwards invoke Specifications in writing to which Sprk Studios has not agreed.
3. Sprk Studios is entitled, but not obliged, to investigate the correctness, completeness or consistency of the (source) Materials, requirements or Specifications made available to it and, upon discovery of any imperfections, to

suspend the agreed work until the Client has removed the imperfections in question.

4. If (source) Materials provided by the Client to Sprk Studios are protected by any intellectual property right, the Client warrants at all times that it holds all licences necessary for the provision to and intended use by Sprk Studios under the Agreement.
5. Unless otherwise agreed, Sprk Studios has the right to use images, software and components of third parties, including open source software, in the development of the works. After delivery, the responsibility for correct compliance with the relevant third-party licences when using the developed works lies with the Client. Sprk Studios will adequately inform the Client about the applicable licence conditions. Costs involved in the licences, which are necessary for the execution of the Agreement, will be charged to the Client. This is specified in the offer.
6. The client is responsible for keeping its own applications, Services and infrastructure up to date for interoperability with Sprk Studios's products and Service. This in connection with possible links.
7. Sprk Studios is not liable for the unusability of a Project / Service if the unusability is caused by the client not having migrated in time (on the instructions of Sprk Studios) to up-to-date standards or using standards that are no longer supported in the industry. A standard introduced 4 years ago is no longer considered current by Sprk Studios. This liability exclusion also applies if the Client works with a version of an Internet browser whose use and support is no longer obvious due to the appearance of a new version of that Internet browser.

## **Article 17. Licence conditions in development**

1. Sprk Studios grants the Client the right to reproduce and distribute developed corporate identities, logos, folders, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, concepts, images, texts, sketches, documentation, advice, reports or other specific works of content for the purposes intended by the Client when entering into the Agreement.
2. Sprk Studios thereby never transfers any intellectual property rights (such as copyright) accruing to Sprk Studios to the Client, unless expressly agreed otherwise in writing.
3. The source code of software supplied by Sprk Studios, not being open source software, and the technical documentation produced during the development of the software may not and will never be made available to the Client, nor may the Client make any changes to it, unless expressly agreed otherwise in writing.
4. Sprk Studios grants the Client the non-exclusive right to use the Service/Software developed for the benefit of the Client. The Client will always

strictly comply with the usage restrictions agreed between the parties. The right of use granted is nontransferable.

5. The Customer shall not be permitted to sell, rent out, sub-licence, alienate or make the developed works available to a third party in any way or for any purpose whatsoever, not even if the third party in question uses the software exclusively for the benefit of the Customer, unless otherwise agreed in writing or in the event of and in combination with a sale of the relevant business units or activities of the Customer.

## **HOSTING / MANAGEMENT**

This chapter applies to Sprk Studios 'remotely' providing and keeping available (hosting) data and/or (web) applications to the Client via the Internet or another network, without providing the Client with a physical carrier containing the relevant software. This also includes the registration and management of domain names.

### **Article 18. Implementation**

1. After the conclusion of the Agreement, Sprk Studios will perform the Service in accordance with the offer as soon as possible, taking into account reasonable wishes of the Client.
2. The Agreement will determine when Sprk Studios will start installing and managing the (web) application.
3. Sprk Studios makes every effort to ensure that the (web) application is configured and managed to the best of its ability, applying sufficient care and skill.
4. The Client is obliged to do and refrain from doing everything necessary to enable the timely and correct installation of the (web) application. In particular, Client shall ensure that all data and facilities, of which The Webdeveloper indicates that these are necessary or which the Client should reasonably understand are necessary for the installation of the (web) application, shall be made available to Sprk Studios in a timely manner.

### **Article 19. Duration of Agreement**

The Agreement is entered into by the Client for a minimum duration of three (3) months. After the initial duration, the Agreement shall continue for an indefinite period. After the end of the minimum duration, the Agreement may be terminated mutually subject to a notice period of at least one (1) month. Termination of an Agreement by the Customer must be done In Writing via e-mail.

## Article 20. Rules of conduct

1. Client shall refrain from storing and/or distributing (or having distributed) material in violation of provisions of Dutch law, including in any case, but not limited to, material that is defamatory, libelous, offensive, racist, discriminatory or hateful, erotic or pornographic, unless explicitly permitted in the offer, infringes on the rights of third parties, including in any case, but not limited to, copyrights, trademark rights and portrait rights, violates the privacy of third parties including in any case but not exclusively including the distribution of personal data of third parties without permission or necessity or repeatedly harassing third parties with communications unwanted by them, contains hyperlinks, torrents or similar information which the Client knows or should know refers to material that infringes the rights of third parties, contains unsolicited commercial, charitable or idealistic communication or contains malicious content such as malware.
2. The Client shall refrain from hindering other Clients or Internet users or causing damage to Sprk Studios's servers. The Client is prohibited from starting up processes or programs, whether or not via the server, of which the Client knows or can reasonably suspect that this hinders or damages Sprk Studios, other Clients or Internet users. Sprk Studios will inform the Client of any measures taken.
3. In addition to the obligations under the law, damage caused by (technical) incompetence on the part of the Customer or failure by the Customer to act in accordance with the above points shall be for the Customer's account.
4. To prevent aforementioned problems such as damage and security risks, Sprk Studios, at its own discretion, is entitled to limit the management options of the Client to such an extent that the management is carried out entirely by Sprk Studios.

## Article 21. Licence

The Client hereby grants Sprk Studios an unrestricted licence to distribute, store, transmit or copy any Materials supplied by the Client to Sprk Studios's Services in any manner deemed appropriate by Sprk Studios, but only to the extent reasonably necessary for the purposes of Sprk Studios's performance of the Agreement.

## Article 22. Indemnification

1. The Client indemnifies Sprk Studios against all legal claims of third parties regarding the Client's use of the Services. Sprk Studios is not responsible for the data/Services/software invoked through a link.
2. If, pursuant to a request or authorised order issued by a government body or in connection with a legal obligation, Sprk Studios must perform work with regard to

data of the Client, its employees or Users, all related costs will be charged to the Client.

## **Article 23. Service provision and availability**

1. All services of Sprk Studios are performed on the basis of an obligation of effort, unless and insofar as in the Written Agreement Sprk Studios has explicitly promised a result and the result concerned is also described with sufficient certainty.
2. The electronic transmission of data from the Client as part of the Services, via the Internet, other networks or by any other means, is at the risk and expense of the Client, even when performed or provided by Sprk Studios.
3. Sprk Studios is never obliged to also deliver the remotely provided applications to the Client on a physical data carrier (e.g. CD or USB stick).
4. If the Services are (partly) delivered via Sprk Studios's Services and/or networks, Sprk Studios will make every effort to minimise Downtime in doing so.
5. Sprk Studios offers no guarantees on the exact amount of Uptime unless otherwise agreed in the offer through an SLA designated as such. Unless otherwise stipulated in an applicable SLA, the provisions in this article apply to availability.
6. Subject to evidence to the contrary, the availability and service level measured by Sprk Studios will constitute full proof.
7. Sprk Studios will endeavour to ensure that Client can use the networks directly or indirectly connected to Sprk Studios's network. However, Sprk Studios cannot guarantee that these networks will be available at any time. The use of third-party networks may be subject to legal and contractual conditions. Sprk Studios will make every effort to inform the Client about this in a timely manner.
8. If, in the opinion of Sprk Studios, a danger arises for the functioning of the Services or the network of Sprk Studios or third parties and/or of the service provision via a network, in particular due to excessive sending of e-mail or other data, poorly secured Services or activities of viruses, trojans and similar software, Sprk Studios has the right to take all measures it reasonably considers necessary to avert or prevent this danger.
9. Sprk Studios has the right to temporarily take the Services or parts thereof out of use for the purpose of maintenance, adaptation or improvement thereof. Sprk Studios will try to have such taking out of service take place outside office hours as much as possible and will make every effort to inform the Client of the planned taking out of service in a timely manner. However, Sprk Studios is never

obliged to pay compensation for damage caused in connection with such taking out of service, unless explicitly agreed otherwise in writing, for example in an SLA.

10. Only if expressly agreed in Writing is Sprk Studios obliged to have a fallback centre or other fallback facilities.
11. Unless the Agreement provides otherwise, Sprk Studios is not obliged to make backups of data stored by the Client on Sprk Studios's Services. Any backups made may be destroyed at any time after termination of the Agreement. It is the responsibility of the Client to request backups upon termination or dissolution.

## **Article 24. Amendments**

Sprk Studios is entitled to modify the applications made available during the term of the Agreement at its discretion. If an adaptation leads to a significant change in functionality, Sprk Studios will make every effort to inform the Client thereof. Only if this is technically possible and would not require a disproportionate effort by Sprk Studios, the Client may continue to use an older version of the application upon request. Sprk Studios may charge additional costs for providing that possibility.

## **Article 25. Storage and data limit**

Sprk Studios may set a limit on the amount of storage space or data traffic per month that the Client may use under the Services. The Client shall not exceed the limits, unless the Agreement explicitly regulates the consequences thereof. If this limit is exceeded, Sprk Studios is authorised to charge an additional amount in accordance with the amounts for additional data traffic stated in the Agreement. If no storage and/or data limits are agreed upon, Sprk Studios's fair use policy applies.

## Article 26. Processing personal data

1. If the Client enters personal data into the applications hosted by Sprk Studios, both the Client and Sprk Studios are subject to the Personal Data Protection Act (Wbp), where, according to the terminology of that Act, the Client constitutes the 'responsible party' and Sprk Studios the 'processor'.
2. Pursuant to the Wbp (art. 14), Controller and Processor must enter into an Agreement in respect of the processing of personal data carried out by the Client or Sprk Studios. In the absence of a further explicitly agreed 'processor's agreement', the provisions in this article will count as an Agreement within the meaning of the Wbp.
3. Sprk Studios will ensure an appropriate level of security in view of the risks involved in the processing and the nature of the data to be protected. This, however, only if and insofar as these are located in Sprk Studios's Services or infrastructure.
4. Sprk Studios also guarantees that anyone acting under the authority of Sprk Studios, insofar as they have access to personal data for which the Client is the responsible party, will only process them on behalf of the Client.
5. Client guarantees that it will only enter personal data into Sprk Studios's Services in an entirely lawful manner.
6. If the Client needs to change, remove or hand over data stored in Sprk Studios's Services as part of a legal obligation, for example under the Dutch Data Protection Act (Wbp), Sprk Studios will assist as much as possible. The costs for the work involved may be invoiced separately.

## Article 27. Cancellation Clause

1. In the event that the Client decides to cancel a signed or accepted proposal from Sprk Studios, the following cancellation fee structure shall apply:
  - a. If cancellation occurs within the first 7 days from the date of proposal acceptance, a cancellation fee equal to 50% of the total proposed project price shall be due and payable by the Client to Sprk Studios.
  - b. If cancellation occurs after the aforementioned period, the cancellation fee remains applicable and shall be payable in addition to any expenses or costs already incurred by Sprk Studios up to the point of cancellation.
2. Sprk Studios reserves the right to assess additional charges for any work completed up to the date of cancellation, including but not limited to design concepts, development, and other project-related tasks.



3. The cancellation fee specified herein is intended to compensate Sprk Studios for time, resources, and opportunities allocated to the project, as well as potential business lost due to the cancellation.

4. In the event of cancellation, Sprk Studios shall retain all intellectual property rights to any work completed up to the point of cancellation, including but not limited to design concepts, source code, and other project-related assets.

5. Sprk Studios shall make reasonable efforts to provide the Client with any deliverables and assets produced up to the cancellation date, provided that all outstanding payments and cancellation fees have been settled in full.

6. The Client acknowledges that this cancellation fee is a genuine estimate of the losses incurred by Sprk Studios due to the cancellation and agrees to fulfill the payment obligations outlined in this clause.

## **Article 28. Final provisions**

1. This Agreement is governed by Dutch law.
2. To the extent not otherwise prescribed by the rules of mandatory law, all disputes that may arise as a result of this Agreement will be submitted to the competent Dutch court in Amsterdam.
3. If any provision of this Agreement is found to be invalid, this shall not affect the validity of the Agreement as a whole. In that case, the parties will adopt (a) new provision(s) to replace it, which will give shape to the intention of the original Agreement and General Terms and Conditions as much as legally possible.
4. Information and notices on the Sprk Studios website are subject to programming and typing errors.
5. The version of any communication received or stored by Sprk Studios shall be deemed authentic unless counter-evidence is provided by the Client.
6. In order to promote its services, Sprk Studios is entitled to show third parties which Projects it delivers to the Client, unless the reasonable interests of the Client make this unacceptable or it is agreed otherwise in writing.
7. Sprk Studios has at all times the right to involve third parties in the execution of the Agreement.
8. Each party shall only be entitled to assign its rights and obligations under the Agreement to a third party with the prior Written consent of the other party.