

## Sparkol Terms of Use

Available at: <http://www.sparkol.com/terms.php>

### User

The User subscribes to sparkol by using Sparkol Presentations (the Sparkol software tool) either online or as an installed desktop version. By accepting these terms, the User confirms that it will be using Sparkol exclusively in connection with the activities of a business, profession, charity, educational establishment or public authority. The resulting contract ('User Agreement') between the User and The Inspiration Engine Limited ('TIE') consists of these terms and the User's sparkol account application. Amongst other things, these terms limit TIE's obligations and restrict its liabilities.

sparkol.com

Sparkol Presentations (Sparkol) run within the User's web browser, on the user's desktop on either PC or Mac, as well as on the iPad. Sparkol enables the User to create electronic materials which can be shown on a computer or online. A sparkol presentation consists of a template designed and created by The Inspiration Engine and its partners (images, videos, etc.) and the presentation (the User's content). A professional (Pro) subscription is purchased as a one-off transaction covering a period of one year or an ongoing payment of a monthly direct debit.

### 1 Interpretation

1.1 IPR (i.e. intellectual property rights) includes copyrights and related rights, database rights, moral rights, design rights, trade mark and service mark rights, patents, and all rights and forms of protection in any part of the world which are equivalent or similar to any of the foregoing - in each case whether registered or unregistered and including all applications for and renewals and extensions of such rights.

1.2 A reference to a sparkol component includes a reference to any reproduction of the whole or a substantial part of the visible or audible aspects of a sparkol component (where 'substantial part' has the same meaning as it has in copyright law) and a reference to any representation of something substantially similar to the visible or audible aspects of a sparkol component.

1.3 A reference to the User's templates and components is a reference to those sparkol templates and components which at the relevant time are in the base library or the User's library.

1.4 A reference to a 'term' is to a term of any nature whatsoever, including conditions, warranties and innominate terms.

1.5 'person' includes individuals, legal entities, the Crown, government departments and agencies, and unincorporated associations whether or not they have a separate legal personality.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment at any time (before or after the date of the User Agreement) together with any subordinate legislation made under it which is in force for the time being.

1.7 An obligation to refrain from doing something includes an obligation not to agree to, or allow or permit that thing to be done.

1.8 If a clause introduces examples with the words 'in particular' or 'including', those examples do not restrict the scope of that clause in any whatsoever.

1.9 Words in the singular include the plural and vice versa.

## 2 Licence and permitted use

2.1 The User's account gives the User access to sparkol, and a limited licence to use it and the User's sparkol presentations on, and subject to, these terms. The User does not acquire any title, right or interest to or in sparkol.

2.2 TIE grants the User the following worldwide, non-exclusive licence under the IPR in sparkol which belongs to, or is licensed to, TIE:

2.2.1 The User may use the sparkol editor and the User's templates and components to create any number of sparkol videos.

2.2.2 The User may use its sparkol videos in any form - including website content, CD-Rom, memory stick and print-out - solely in connection with the User's own business.

2.3 The User is not permitted to use any sparkol videos, templates or components in any other way, and in particular:

2.3.1 The User must not permit any person other than the User's employees to use the User's sparkol account.

2.3.2 The User must not use sparkol to prepare videos for any person other than the User.

2.3.3 The User must not avoid or circumvent any feature of sparkol that is intended to protect the security or privacy of the application or any material or information in it, or which is intended to restrict access to any of these, nor attempt to do so.

2.3.4 The User must not use a sparkol component as a separate design or on any item (including mouse mats, pens, mugs, greetings cards (or electronic equivalents) or tee shirts) or as a trade mark, service mark or logo.

2.3.5 Sparkol provides the User with the ability to customise sparkol videos by configuring various characteristics of the sparkol components (eg background, colours of defined areas, duration of appearance, fade-in and fade-out) but the User must not make any other changes to any components.

2.4 Before the User passes a copy of a sparkol video to a third party, it must effectively impose the restrictions in clause 2.3 on that third party and that third party's use of the video and its templates and components is deemed to be use by the User.

## 3 Intellectual property

3.1 The User shall not acquire any IPR in any sparkol video, component or configuration of any of these, and all such IPR shall remain vested in TIE (or its licensors) absolutely.

3.2 TIE shall not acquire any IPR in any other material which has been generated by the User and included in a sparkol video, and all such IPR shall remain vested in the User absolutely.

3.3 TIE does not have any reason to believe that the User's use of sparkol in accordance with these terms will infringe a third party's IPR, but it has not undertaken any investigation regarding any third party's IPR and it is not obliged to do so.

3.4 If pursuant to an order of a UK court the User pays damages (or an account of profits) to a third party for the User's infringement of that third party's copyright in sparkol or a sparkol template or component, TIE shall reimburse the user for those damages (or account of profits) and its reasonable legal costs. However, TIE shall not have any liability under this clause 3.4 unless the User has passed all communications relating to that infringement to TIE within 5 days and has allowed TIE to direct the settlement and/or defence of the claim. TIE's total aggregate liability under this clause 3.4 shall not exceed £10,000.

#### 4 Confidential information

4.1 TIE shall not make any use of any material in the User's videos which has been generated by the User except in connection with the enforcement of these terms and as required by any law to which it is subject or the order of any court or governmental or regulatory authority which has jurisdiction over it.

#### 5 Limited warranty

5.1 TIE warrants that sparkol will provide the functions described in the product description on the sparkol website at the time of the User's account.

5.2 The User Agreement does not include any term other than those explicitly stated in these terms, and any which would otherwise be implied by law, usage, custom, previous course of dealings, circumstances or otherwise (including any relating to functionality, performance, quality or fitness for purpose) are excluded.

5.3 Without limiting the scope of clause 5.2 in any way:

5.3.1 It is not a term of the User Agreement that sparkol is or will be free of errors or defects.

5.3.2 As a browser based online application, the benefit of any improvements to sparkol will automatically be available to the User, but it is not a term of the User Agreement that sparkol will be improved and TIE does not offer any support, maintenance or development services in relation to sparkol.

5.3.3 As a browser based online application, sparkol's availability and performance speed may vary with the number of concurrent users, and the user experience may be affected at times of high demand.

#### 6 TIE's liability is limited

6.1 In this clause 6, a reference to TIE's liability for something is a reference to any liability whatsoever which TIE might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the User Agreement, for breach of contract, in tort or otherwise, and even if it results from TIE's negligence or from negligence for which TIE would otherwise be liable.

6.2 TIE shall not have any liability in connection with any claims brought against the User by a third party except as stated in clause 3.4.

6.3 TIE shall not have any liability for any indirect or consequential loss or damage.

6.4 TIE shall not have any liability for any loss of business, profit or anticipated savings.

6.5 TIE shall not have any liability for any damage to reputation.

6.6 TIE shall not have any liability for any loss or damage suffered by any third party.

6.7 TIE shall not have any liability for any loss or corruption of any computer program, data or information. The User shall make sufficient backup copies of all these so as to ensure that it can easily reinstate them as and when that may be necessary, and shall reinstate them at its own cost as and when necessary.

6.8 TIE shall not have any liability for the consequences of exercising any of its rights under these terms.

6.9 TIE's liability for any loss or damage that is wholly or partly attributable to the User's breach of these terms or negligence shall be reduced in proportion to reflect the User's contribution to that loss or damage.

6.10 TIE's total aggregate liability in connection with sparkol and the User Agreement shall not exceed 120% of the total monies received by TIE from the User pursuant to the User Agreement at the time of judgment.

6.11 As special exceptions, nothing in these terms restricts TIE's liability for: (i) death or personal injury resulting from negligence; (ii) breach of any term (if any) implied by Section 2 of the Supply of Goods and Services Act 1982; (iii) fraud (including fraudulent misrepresentation).

## 7 Relief events

7.1 TIE shall not be in breach of contract, and shall not have any liability, for any breach of the User Agreement to the extent that it is attributable to any act, omission, event, situation or combination of the foregoing that is beyond TIE's reasonable control and makes it impossible or unreasonably difficult for TIE to avoid that breach of the User Agreement.

## 8 Charges and payment

8.1 Cash refunds: The User is not entitled to a refund of any monies in accordance with these terms. Any applications for refunds should be made in writing, along with reason for refund and a return of any materials purchased to support@sparkol.com.

## 9 Termination

9.1 TIE or the User may terminate the User's account in accordance with this clause 9.1 without any liability for doing so.

9.2 TIE or the User may terminate the User's account by simply not renewing payment at the monthly or annual anniversary of signing-up.

## 10 General

10.1 Unless stated otherwise, a right or remedy provided by these terms is in addition to any other right or remedy provided by law or equity.

10.2 TIE may set off any liability which the User has to TIE against any liability which TIE has to the User, whether either liability arises under the User Agreement, another agreement or otherwise.

10.3 A third party does not acquire any rights or benefits under the User Agreement, and TIE and the User do not have any obligations to any third party under it and may agree to vary it, or terminate it in accordance with its terms or as otherwise permitted by law, without informing or consulting any third party, obtaining any third party's consent, or having any liability to any third party.

10.4 TIE may assign its rights and delegate its obligations under these terms, but the User's rights and benefits cannot be transferred to, or held for the benefit of, a third party, and the User shall not attempt or purport to do so.

10.5 These terms do not restrict a party's liability for fraud (including fraudulent misrepresentation) or the other party's rights and remedies in respect of fraud.

10.6 TIE's acceptance of monies due from the User shall not constitute a waiver of any breach of these terms or of any right or remedy in respect of any breach.

## 11 Entire agreement

11.1 The User Agreement constitutes the whole agreement between TIE and the User regarding sparkol and the parties rights, benefits, obligations and duties in connection with sparkol, and that agreement supersedes any previous agreement, arrangement or understanding between them regarding these things.

11.2 The User acknowledges that in entering into the User Agreement it has not relied on any representation by TIE or any other person except for those (if any) in these terms or the sparkol product description on the TIE website at the time of the User's acceptance of these Terms. The User agrees that the only remedies available to it in connection with any representation will be for breach of contract or as expressly provided in these terms.

## 12 Governing law and jurisdiction

12.1 English law applies to the formation and construction of the User Agreement and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it or its subject matter. The English courts have exclusive jurisdiction over any dispute or claim concerning the formation or construction of the User Agreement and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it or its subject matter.