

Sparx Maths Homework and Sparx Reader: Terms and Conditions (September 2022)

Introduction

Sparx Learning is a socially-focused learning technology company which operates Sparx Maths Homework and Sparx Reader. We are on a mission to drive positive change through the effective use of education technology to improve the life opportunities of five million learners worldwide by 2030. **Sparx Maths Homework** contains world-class content combined with our innovative personalisation algorithms that generate high quality and highly bespoke homework which is achievable yet challenging for each individual student, along with the systems and insights schools need to operate a highly effective and inclusive homework maths strategy. **Sparx Reader** is a reading, comprehension and vocabulary programme that aims to get all young people reading regularly to help improve their literacy. Sparx Maths Homework and Sparx Reader are both made available to secondary schools on a subscription basis. Sparx Learning, Sparx Maths Homework and Sparx Reader are trading names of Sparx Limited (company number 07907042) whose registered office is at Oxygen House, Grenadier Road, Exeter, Devon EX1 3LH (**Sparx, we, our** or **us**).

This document sets out the terms and conditions which apply to the use of Sparx Maths Homework and/or Sparx Reader (together referred to as the **Sparx Products** and each a **Sparx Product**) in schools (**your school, you or your**) (**Terms and Conditions**). It has four sections – this **Introduction**, the **Trial Agreement** (Section A), the **Subscription Terms** (Section B) and the **Data Handling Agreement** (Section C).

- The Trial Agreement applies where your school is given free access to the Sparx Product to trial the Sparx Product.
- The Introduction, the Subscription Terms (insofar as it is applicable) and the Data Handling Agreement each apply when you implement the Sparx Product at your school (for both your trial of, and any paid subscription to, the Sparx Product).

Important:

- **Use of the Sparx Product by your school constitutes acceptance of the Terms and Conditions.**
- **If your school does not accept the Terms and Conditions, you should not use the Sparx Product. Acceptance means that the Terms and Conditions will be enforceable like any written contract signed by you and legally binding between us.**
- **Acceptance also constitutes your instruction to us to process school data (as defined below) for the purposes of your use of the Sparx Product. We will only process school data in accordance with the instructions set out in the Data Handling Agreement.**

Where a multi-academy trust or other school group (**MAT**) trials or subscribes to the Sparx Product on behalf of schools within its MAT, the term **your school** (which is used throughout the Terms and Conditions) should be construed as applying to all MAT schools which are using the Sparx Product and the MAT shall be responsible for the compliance of its schools with the Terms and Conditions. Unless the context otherwise requires, in the Terms and Conditions, an obligation on your school includes an obligation on your school to procure that your teachers and other staff at your school (**teachers**) comply with your obligation.

We may revise the Terms and Conditions from time to time. We will provide you with a copy of the updated Terms and Conditions whenever changes are made. The changes will not be retroactive, and the most current version of the Terms and Conditions will apply. By continuing to use the Sparx Product, you agree to be bound by the most current version of the Terms and Conditions.

Section A: Trial Agreement

Our agreement

At your school's request, we are pleased to give free access to the Sparx Product to your school to help you evaluate the Sparx Product (**Trial**). The period of the Trial will be agreed with your school before the Trial commences. Access to the Sparx Product for the Trial is provided free of charge. **Your school is not committed to subscribe to the Sparx Product by undertaking the Trial.** If your school wishes to subscribe to the Sparx Product, it will be provided on our standard rates and terms. You can subscribe to the Sparx Product at any time during or after the Trial. We may extend the Trial at our discretion and we may end the Trial without notice if your school is in breach of our Trial Agreement.

The Terms and Conditions and any accompanying document relating to the Trial (**Trial Form**) sets out the terms of our relationship in respect of your use of the Sparx Product during the Trial. In the event of a conflict between the Terms and Conditions and the Trial Form, the provisions of the Trial Form shall apply. You confirm you are not relying on any other documents or statements, nor expecting anything else. If this is wrong, please let us know before your Trial commences. The Trial is not transferable by, or exclusive to, your school.

Section B: Subscription Terms

Your subscription

The Terms and Conditions and any accompanying document relating to your subscription (which may be provided separately or in-product) (**Subscription Form**) set out the terms of our relationship in respect of your subscription to the Sparx Product. Key details relating to your subscription, including its cost and duration, are set out in the Subscription Form. In the event of a conflict between the Terms and Conditions and the Subscription Form, the provisions of the Subscription Form shall apply. You confirm you are not relying on any other documents or statements, nor expecting anything else. If this is wrong, please let us know before your subscription commences.

Subscription fee and payment	<p>Your subscription fee is set out in the Subscription Form. Subscription fees are reviewed annually. We will propose any changes to your subscription fee at least six (6) weeks in advance of your renewal date. All subscription fees must be paid in pounds sterling.</p> <p>Payment of your subscription fee is due within twenty-eight (28) days of the start of your subscription. Your school must send a purchase order to our finance team within forty (40) days of your school agreeing to subscribe to the Sparx Product. Multi-academic year subscriptions are invoiced annually. We reserve the right not to provide and/or to suspend your access to the Sparx Product if you do not send us a purchase order and/or pay your subscription fee as set out above. We will warn you before we do this. Please note that you are committed to pay your subscription fee once you have agreed to subscribe to the Sparx Product (whether in-product or by signing a Subscription Form).</p>
Renewal and cancellation	<p>Renewal of your subscription will not happen automatically. We will contact you (either in-product or via email) in advance of your renewal date to confirm your renewal terms. If you do not renew your subscription, it will terminate on your renewal date and you will no longer be able to access the Sparx Product from that date. You can cancel your subscription at any time. If you cancel, no refund will be given. If you cancel and do not have another ongoing Sparx Product subscription, we will remove our access to your school's MIS as part of our off-boarding process.</p>
Our responsibilities	<p>We will:</p> <ul style="list-style-type: none"> • set-up your school to use the Sparx Product; • provide online training and a dedicated support team to remotely assist with account and product queries; • provide reports and insights relating to Sparx Product usage; • carry out our responsibilities with reasonable skill and care; and • give you reasonable notice of material changes to the functionality and features of the Sparx Product.
Supporting you	<p>A teacher should be appointed by your school as your Sparx Leader for the Sparx Product. Your Sparx Leader will be our primary contact and act as a first-line liaison for queries relating to the Sparx Product. Support requests can be submitted in-product or via email. We are unable to accept direct support requests from your students or their parents, who should raise their queries with your school. Where we are contacted directly by a student or parent, we will refer them to you.</p>
Service availability	<p>We will do our best to ensure that access to the Sparx Product is available 24/7 (except during planned maintenance windows or due to issues outside of our control) and aim to achieve 99.5% availability. We will not undertake planned maintenance during normal UK school hours unless this does not require any service downtime. We reserve the right to suspend access to the Sparx Product at any time for reasons outside our control.</p>
School responsibilities	<p>You are responsible for:</p> <ul style="list-style-type: none"> • adopting and implementing the Sparx Product at your school; • teaching outcomes at your school and the actions of your teachers when using the Sparx Product; • correspondence with your teachers, your students and their parents relating to the Sparx Product; • arranging for your teachers to complete our online training sessions; • providing complete, timely and accurate information to help us set up your school to use the Sparx Product; • providing and maintaining access to your school management information system (MIS) via Wonde; • keeping your MIS data up to date; • supporting your students who have special educational needs to use the Sparx Product; • managing your school's teacher accounts via our teacher portal, including managing teacher changes; • compliance with your school policies (including in relation to procurement) and the Terms and Conditions; and • ensuring paperback books chosen by your students in the Gold Reader function are appropriate (Sparx Reader only).
Unacceptable use	<p>You are responsible for ensuring that your teachers and students use the Sparx Product in the ways that are acceptable to us. You may not, and shall ensure that your teachers and students do not:</p> <ul style="list-style-type: none"> • use the Sparx Product (including not copying, downloading, distributing, printing or publishing our content or materials) for any purposes other than for teaching and learning in your school; • use the Sparx Product to provide services to anyone other than students enrolled at your school; or • transfer your subscription or any of your rights or obligations in relation to the Sparx Product to anyone else. <p>If we become aware of unacceptable use by, or receive inappropriate communications from, your teachers or students, we will inform you and may suspend or terminate your access to the Sparx Product if the matter is sufficiently serious.</p>
School data	<p>To use the Sparx Product, you need to share personal data relating to your teachers, students and (where applicable) their parents (which we call school data) with us. We use school data to provide the Sparx Product by processing it in accordance with the instructions set out in the Data Handling Agreement.</p>
Intellectual property	<p>We own or license all rights in the Sparx Product (including our schemes of learning, our content, our e-books and book catalogue (Sparx Reader only), the materials available in our knowledge base, our technical architecture and infrastructure, our databases, code and algorithms and the usage data (as defined in the Data Handling Agreement)). Except for access or as otherwise set out in the Terms and Conditions, you do not have any rights in respect of the Sparx Product. 'Sparx'</p>

	<p>and 'Sparx Learning' are registered trademarks. 'Sparx Maths Homework' and 'Sparx Reader' are unregistered trademarks. We are happy for you to use these brand names and associated logos for internal purposes, in correspondence with students and their parents, on your website and in school materials, but we ask that such use accords with any guidelines that we may issue from time to time. We expect you to stop using our brand names and associated logos completely if you stop using the Sparx Product or if we ask you to do so at any time.</p>
Confidentiality and publicity	<p>Where either of us receives confidential information from the other, we will act in good faith to preserve confidentiality and use the information solely to perform our respective responsibilities and obligations relating to the provision of the Sparx Product. We regard all personal data and the commercial aspects of our relationship as confidential. We do not regard the fact that you are using the Sparx Product as confidential and may refer to this fact in our dealings with existing or prospective users of the Sparx Product.</p> <p>We shall be able to publicise that your school is using the Sparx Product on our website and social media channels and in our marketing materials. We are of course happy for you to publicise your school's positive experiences and achievements working with the Sparx Product and would be happy to contribute to this should you wish us to do so. Reports and insights relating to Sparx Product usage are provided to you for information purposes only. You may share such reports and insights as you see fit (for example, with teachers, governors or parents) and can also publish them on your website, provided they do not contain any personal data and/or are not marked "not for publication". We may rank your school's performance using the Sparx Product in comparison to all other schools who are using the Sparx Product and share a leaderboard-style report with all such schools on a non-anonymised basis.</p>
Problems or unexpected events	<p>The performance of the Sparx Product depends on a number of factors, many of which are outside our control, and we cannot promise that the Sparx Product will be error-free or uninterrupted. Whilst we are happy to assist you with such issues, we cannot provide fixed assurances about the exact performance experienced by users, except that we will provide sufficient capacity and bandwidth in our system environment to allow for all normal usage demands.</p> <p>If we suspend access to the Sparx Product due to an event outside our control, whether due to malicious action or otherwise, then, if this suspension lasts more than fourteen (14) days, we will refund a <i>pro-rata</i> amount of your subscription fee for those fourteen (14) days and each further consecutive day that access is suspended. We shall not be under any further liability to you in respect of such suspension. If the suspension lasts for a continuous period of fifty-six (56) days, then you may immediately terminate your subscription and we will refund any subscription fees paid in advance for the period starting from the beginning of the fifty-sixth (56th) day suspension to your renewal date. If either of us fail to carry out our responsibilities then, provided the one who is failing has been given a written warning and a reasonable chance to fix it, the other may end your subscription by giving thirty (30) days' notice.</p>
Liability	<p>In any relationship, there are risks and we need to be responsible for our fair share. We hold suitable insurance to cover our liabilities to you as set out in the Terms and Conditions.</p> <ul style="list-style-type: none"> • Legal requirements: As required by law, we accept unlimited liability for personal injury and death caused by our negligence. Similarly, our liability for fraud or fraudulent misrepresentation is unlimited. • Suspension: Liability in respect of suspension of access to the Sparx Product due to events outside our control is dealt with under 'Problems or unexpected events' above. We have no liability to you in the event of a suspension of access arising where our invoice has not been paid when due or we become aware of any unacceptable use. • Cyber risks: Liability for a security breach affecting school data caused by our negligence is limited to £100,000. • Intellectual property: We will indemnify you against any claim that is made by anyone in the UK challenging our ownership of, or your right to use, the Sparx Product. If a claim is made against your school, please tell us at once. • All other risks: We are responsible for your direct losses up to the amount paid by you in respect of the relevant Sparx Product in the preceding twelve (12) months. We do not accept liability for any indirect or consequential loss (including damage to goodwill) you may suffer because we do not know what they are likely to be, nor quantify them. We are not responsible for any fault, error or delay caused by you failing to give us the information we need or failing to carry out any of your responsibilities to us in respect of the Sparx Product. We are also not responsible for any loss, destruction, alteration or disclosure of school data caused by any third party (except our subcontractors or support companies), your teachers, your students and their parents or by circumstances beyond our control. <p>Sparx Products only form part of your teaching programme and we cannot offer a guarantee that student progress will be made using Sparx Products. You agree that you have sole responsibility for the results obtained and conclusions drawn from the use of Sparx Products at your school.</p>
Complaints and disputes	<p>If you are not happy with any aspect of the Sparx Product, the matter should be raised with the School Success Team. If they are unable to resolve the matter satisfactorily within a reasonable time then it shall be escalated to an appropriate senior Sparx representative. If the matter relates to data protection, then it shall instead be escalated to our Data Protection Team. If things go badly wrong, our appropriate senior Sparx representative or Data Protection Team representative may convene a meeting with an appropriate senior representative at your school to discuss the matter. If that fails to fix things, we suggest that the matter is resolved by mediation organised by CEDR.</p>

Our relationship	By providing the Sparx Product to your school, we are not creating or operating a partnership with you, and neither of us has the authority to act as the other's agent. Nobody else receives or has any rights under the Terms and Conditions. Any provision of the Terms and Conditions that is intended to come into or continue in force on or after termination shall remain in full force and effect. Termination shall not affect any accrued rights or remedies to which we may be entitled. We may assign or subcontract any or all of our rights and obligations under the Terms and Conditions to any group company. Your subscription is not transferable by, or exclusive to, your school.
Jurisdiction	The Trial Form or the Subscription Form (as applicable) and the Terms and Conditions shall be interpreted and governed by the laws of England.

Section C: Data Handling Agreement

General	<p>We both agree to comply with all data protection and privacy legislation and rules that apply to your use of the Sparx Product. The General Data Protection Regulation (as adopted into UK law and tailored by the Data Protection Act 2018) (UK GDPR) requires that the processing of personal data by a processor on behalf of a controller is governed by a contract. The provisions below set out the terms of our processing of personal data (as processor) on behalf of your school (as controller). The terms 'processing', 'personal data', 'processor', 'controller', 'transfer' and 'data subjects' used herein have the meaning given to them in UK GDPR. Our Privacy Notice for Schools also applies to our processing of personal data on behalf of your school (but the Data Handling Agreement shall prevail in the event of a conflict).</p> <p>We are happy to provide any information and assistance that you require to demonstrate your compliance with UK GDPR, including contributing to data protection impact assessments, audits and inspections that you wish to conduct in respect of your use of the Sparx Product.</p> <p>The 'Liability' section of the Subscription Terms applies to the Data Handling Agreement, however nothing herein relieves your school of your own direct responsibilities and liabilities under UK GDPR or otherwise. You are responsible for notifying us if there is a change of controller relating to your school (for example, if your school joins or transfers to a new MAT). Please contact privacy@sparx.co.uk should this occur. Non-UK based schools who subscribe to the Sparx Product should review the Data Handling Agreement to ensure compliance with local data protection and other applicable laws.</p> <p>We have appointed IT Governance Europe Limited to act as our EU representative for schools located in the EU. Should you have any privacy queries, you can contact us directly or via our EU representative by emailing eurep@itgovernance.eu.</p>
School data being processed	<p>In connection with your use of the Sparx Product, your school will or may provide us with certain personal data relating to your teachers, students and (where applicable) their parents (school data) as follows:</p> <ul style="list-style-type: none"> • via your school's MIS via Wonde: <ul style="list-style-type: none"> o Required: certain personal data relating to your students including their name, gender, year group, class, date of birth and unique pupil number (UPN) or other identifying code (where UPN is unavailable) which is required by us for you to use the Sparx Product; o Optional: the school email addresses of your students where your school is eligible and wishes to use our single sign-on feature; o Optional: personal data fields relating to your students that allows full product functionality (for example, more detailed reporting) including pupil premium status, free school meals and whether they speak English as an additional language; and o Optional: personal data fields relating to your students' parents that enables us to send them weekly update emails on your school's behalf, including their name and contact email address (currently Sparx Maths Homework only); and • where it is shared by your school by being manually entered into the Sparx teacher portal, certain personal data relating to your teachers, including their name, role, school email address and teaching classes. <p>Where your school's MIS is not compatible with Wonde or in other exceptional circumstances, school data may be transferred via CSV file upload. If this occurs, you will be responsible for manually updating your school data and managing students in the Sparx Product (including creating new students and off-rolling students). You must do this whenever changes need to be made for data accuracy purposes. We are not liable for any consequences of your failure to do so. Transmission of personal data via CSV file upload is not as secure as using a MIS migration tool and is at your own risk.</p> <p>You grant us a licence to use, and instruct us to process, the school data for the purposes of both your trial of, and any paid subscription to, the Sparx Product. We will only process school data in accordance with the instructions set out in the Data Handling Agreement. Details of our processing activities are set out under 'Processing undertaken' below.</p> <p>Occasionally, we may agree to undertake a specific project with your school (for example, you may ask us to provide some bespoke attainment reporting). If this happens, you may share certain personal data relating to your students' attainment (for example, assessments data and/or exam results) which we shall process as school data for that specific project. You agree we may also process such personal data to help us measure the effectiveness and impact of Sparx Products.</p>

Usage data being created	<p>Use of the Sparx Product at your school will create and collect the following data (usage data):</p> <ul style="list-style-type: none"> • a unique user ID for each student distinct from their UPN; • students' answers, inputs and results history, and analysis of the same; • XP levels and other usage and skill indicators; • the time tasks are completed and submitted by students; • a profile of each student's ability level, performance and learning; • product feedback (for example, in-product questionnaire/survey responses); • other information concerning the use of the Sparx Product by teachers and (where applicable) students' parents; • analytics data including browser type and version, operating system, device and unique identifiers such as IP addresses and behavioural cookies; and • ratings of book enjoyment and difficulty submitted by students (Sparx Reader only).
Duration of processing	<p>We will process school data and usage data for the duration of your use of the Sparx Product. We will retain school data after you finish using the Sparx Product for a maximum of two (2) years to fulfil school reporting and other requirements (including continuity of service should you wish to re-subscribe to the Sparx Product). Once school data is no longer required for these purposes, or at the request of your school at any time after you finish using the Sparx Product, it will be permanently deleted so the remaining usage data is anonymised. The anonymised data sets will be owned by us and may be used for research, product development and other business purposes.</p>
Processing undertaken	<p>We (and our support companies) will process school data and usage data for the following purposes:</p> <ul style="list-style-type: none"> • delivering the Sparx Product at your school, including MIS integration via Wonde; • creating and administering user accounts, log-ins and profiles for teachers and students; • making automated task recommendations for each student based on a profile we create and setting those tasks; • providing insights and reports to teachers, your Subject Lead and/or Headteacher relating to Sparx Product usage (including combining school data and usage data in dashboards, league tables and/or via data export functions); • if applicable, providing insights and reports to your school's MAT relating to Sparx Product usage across MAT schools; • providing reports and reminders by email to students' parents (currently Sparx Maths Homework only); • identifying and reporting on when tasks are completed and whether they are completed on time; • pseudonymising school data and usage data during your use of the Sparx Product and anonymising school data and usage data once you have finished using the Sparx Product; • sharing user accounts and log-ins between Sparx Products to enable you to trial additional Sparx Products; • providing technical and user support and general communications; • evaluating and improving the Sparx Product (for example, analysing user activity or testing new product features); • measuring the effectiveness and impact of the Sparx Product; and • for financial, accounting and administrative purposes.
Sub-processors	<p>By using the Sparx Product, you are providing us with general authorisation to:</p> <ul style="list-style-type: none"> • use sub-processors who support us in delivering the Sparx Product to you (support companies); and • transfer personal data for the purposes referred to in the Terms and Conditions to support companies which are based outside of the UK, provided that such transfer is subject to a legally enforceable mechanism which is permitted under UK GDPR from time to time. <p>We have binding written UK GDPR-compliant data processing contracts with each of our support companies, who are carefully selected, audited and approved. We will remain liable to you for all the acts and omissions of our support companies in respect of their processing activities for us as if they were our own. A list of our support companies is available here. No personal data derived from school data relating to students is transferred outside the European Economic Area - we will notify you should there be a change to the international transfer of school data relating to students. Save for our support companies, we will never share school data with third parties without your prior written permission. However, we may share anonymised data sets with third parties without restriction, including for research, product development and other business purposes. We will provide reasonable notice of any change to our support companies. This will present an opportunity for your school to object. If, within five (5) business days of receipt of such notification, you object on reasonable grounds, then we shall take reasonable steps to address your objections.</p>
Data subjects' rights	<p>We will assist you (by appropriate technical and organisational measures), insofar as possible, to help you to fulfil your obligations to respond to requests from data subjects to exercise their rights under UK GDPR. If we receive such a request from a data subject, we will refer the requestor to your school.</p>
Data security	<p>We have implemented appropriate technical and organisational security measures to protect school data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Further details are available here.</p>
Data breach	<p>We will inform you, without undue delay and in writing, if we become aware that school data has been subject to a data breach. You will inform us, without undue delay, if you are investigating any data breach that is notified to you and/or proposing to report such data breach to the Information Commissioner's Office (ICO). You are responsible for making any necessary data breach notifications to the ICO or the affected data subjects, however we will assist you with this.</p>