

SPARK License Agreement

§ 1 Subject Matter of this Agreement

(1) This Agreement is a binding contract between you, the Licensee (referred to as Licensee), and Nextron Systems GmbH (referred to as Nextron) concerning the software „SPARK Incident Response Scanner“, consisting of a computer program, a description of the computer program, operating instructions and other pertaining written material (hereinafter also referred to simply as „SPARK “). The Licensee may use SPARK solely for testing purposes for a limited amount of time as set forth in this Agreement.

(2) By using the software, the Licensee is consenting to be bound to this Agreement. You have no right to use SPARK in any way or form before this Agreement is made and becomes binding between the Parties. Usage of SPARK without a valid Agreement or in violation of the Agreement constitutes a copyright violation that will be prosecuted nationally and internationally.

§ 2 Limitations

(1) The Licensee is not permitted

- a) to change, refine, advance, translate, decompile, reverse-engineer or disassemble the software SPARK without prior written permission of NEXTRON.
- b) to create derivative works from SPARK or to copy, translate or change the written material or create derivative works from it.
- c) to delete or change the copyright notices on copies of the software SPARK.

(2) The Licensee is obliged to use the software SPARK only for testing purposes and in compliance with all applicable laws and statutes of all relevant countries in which the software SPARK is used.

(3) The Right Of Use of SPARK may be transferred from the Licensee to a third person only after NEXTRON has agreed to such a transfer in writing and only if the conditions of this Agreement also apply against the third person. In particular, the commercial sale of the software SPARK, providing it gratis, renting it out or lending it out is expressly prohibited.

§ 3 Ownership of Rights

(1) The Licensee may use the data storage device, onto which the software SPARK is saved, solely for testing purposes. The Licensee also shall be granted the limited non-exclusive right to use the software SPARK as it is saved on the acquired data storage device solely for testing purposes (in this Agreement also referred to as "Right Of Use"). No other rights whatsoever as to the software SPARK are granted to the Licensee. In particular, the Licensee has also no right to access to the source code of the software SPARK.

(2) NEXTRON retains and keeps all rights to the software SPARK, in particular, without limitation, publication rights, copyrights, rights to create derivative works, rights to use and all other rights regarding the software SPARK.

§ 4 Term of the Agreement

(1) The term of the Agreement shall be limited to one month ("trial period"). The Right Of Use shall automatically end and expire

- a. At the end of the trial period,
- b. in case the Licensee violates one or more conditions / provisions of this Agreement.

(2) In case of a culpable violation of this Agreement caused by the Licensee, NEXTRON has the right to terminate the Agreement without notice.

(3) Once the Right Of Use has expired, the Licensee has the obligation to delete and destroy the data storage device with the software SPARK on it, also all created copies of the software SPARK and all written material pertaining to it. On demand, the Licensee has the additional obligation to swear under oath and sign a written affidavit before a notary public that the Licensee has fulfilled the obligation of the first sentence of § 4 (3).

§ 5 Damages etc. in case of a violation of this Agreement

The Licensee has the obligation to compensate NEXTRON for all damages that occur because of the Licensee's violation(s) of this Agreement, copyright violation(s) or any other violations to the detriment of NEXTRON. The Licensee has in addition the obligation to inform NEXTRON about the nature and the extent of the Licensee's violations. As for the rest, the general legal provisions shall apply, also concerning legal remedies (injunctions, reimbursements etc.).

§ 6 Changes and Updates

(1) NEXTRON has the right to update and change the software SPARK at any time according to its own discretion. NEXTRON has no obligation to provide the Licensee with updates and changes of the software SPARK.

(2) Each and every complementary software code the Licensee is provided with shall be regarded as part of the software SPARK and shall be subject to all provisions in this Agreement.

§ 7 Warranty

(1) In case the product has any flaws or deficiencies, the statutory provisions concerning warranty rights shall apply.

(2) NEXTRON informs the Licensee herewith that it is according to the state of the art impossible to create computer software that works flawlessly with and in all appliances and combinations.

§ 8 Limitation of Liability

(1) Out of the reasons mentioned under § 7 (2), NEXTRON shall not be liable for flaws and deficiencies of the software SPARK. In particular, NEXTRON shall not be liable, if the software SPARK does not fulfill and suffice the needs and purposes of the Licensee or if the software SPARK is not compatible with other computer programs. The Licensee alone is responsible for the right choice and the consequences of the Licensee's usage of the software SPARK, also for the intended and reached results gleaned from SPARK 's usage. The same applies to the written and electronic material that is related to and associated with the software SPARK.

(2) The liability of NEXTRON is limited / excluded for such damage that results from death, bodily harm or damage to health, if this is not based on an intentional or negligent violation of duties of NEXTRON or an intentional or negligent violation of duties of a legal representative or an agent of NEXTRON.

(3) The liability of NEXTRON is limited / excluded for all other damage, if this is not based on an intentional or grossly negligent violation of duties of NEXTRON or an intentional or grossly negligent violation of duties of a legal representative or an agent of NEXTRON.

(4) In case a third person alleges legal claims against the Licensee that are based on SPARK 's alleged unauthorized use of the third person's alleged intellectual property, then NEXTRON has the right (to the exclusion of any other liability) to do the following upon NEXTRON's own discretion and at NEXTRON's own cost, either:

- 1) acquiring a license to use the intellectual property of the third person, or
- 2) changing the parts of the software SPARK that allegedly violate the intellectual property of the third person, or
- 3) taking back the software SPARK and terminating the trial period / the Right Of Use.

§ 9 Open Code Usage

Open Code is Software that is offered as open source code for general use and that the user receives rights of use without payment. SPARK makes use of Open Code as far as the respective open code license permits this usage and permits this usage without payment.

SPARK contains code under the following licenses:

MIT License: <https://opensource.org/licenses/MIT>

CPL License: <https://opensource.org/licenses/cpl1.0.php>

Apache 2.0 License: <http://apache.org/licenses/>

Python License 2.7: <https://www.python.org/download/releases/2.7/license/>

By clicking on the respective link, the Licensee can find the full license agreements for Open Code that SPARK makes use of: **PLEASE BE AWARE: In addition to complying with the SPARK License Agreement, the Licensee must also comply with the license terms and conditions of the respective owner(s) of the respective Open Code.**

§ 10 Miscellaneous

(1) Applicable Law

The Parties agree that exclusively German law shall be applicable in all legal disputes between the Parties. CISG, which is part of German law, shall not be applicable.

(2) Jurisdiction

(a) German courts shall have exclusive international jurisdiction in all legal disputes between the Parties.

(b) The Parties agree that place of performance and jurisdiction within Germany shall be Frankfurt am Main. Frankfurt am Main shall have exclusive jurisdiction to the extent that this is legally possible. However, NEXTRON has the right to sue the Licensee alternatively at the Licensee's residence / headquarters.

(3) Requirement of the Written Form

Changes of this Agreement are valid only if they are done in written form. The same written form rule applies to agreements on the annulment of the written form requirement.

(4) Severability Clause

If any provision of this Agreement shall be found invalid or unenforceable, then such provision shall not invalidate or in any way affect the enforceability of the remainder of this Agreement. The invalid or unenforceable provision shall be replaced by the Parties with a valid provision that comes closest to the economic goal of the invalid or unenforceable provision.