

## **End User License Agreement (EULA)**

### **SOFTWARE PRODUCT LICENSE AGREEMENT**

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### **Sparx Systems Pro Cloud Server**

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**IMPORTANT - READ CAREFULLY:** This End User License Agreement ("EULA") is a legal agreement between YOU as licensee, (which may be an individual, company, or other legal entity) ("You") and SPARX SYSTEMS PTY LTD (ABN: 38 085 034 546) ("SPARX") for the SOFTWARE PRODUCT defined below.

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### **1. DEFINITIONS**

In this End User Licence Agreement, unless the contrary intention appears,

- "Enterprise Architect Software" means the proprietary software wholly owned and controlled by SPARX;
- "EULA" means this End User Licence Agreement
- "SPARX" means Sparx Systems Pty Ltd A.C.N 085 034 546
- "Licensee" means YOU, or the organisation (if any) on whose behalf YOU are taking the EULA.
- "SOFTWARE PRODUCT" or "SOFTWARE" means the "Sparx Systems Pro Cloud Server", which includes computer software and associated media and printed materials, and may include online or electronic documentation.
- "Support Services" means email-based support provided by SPARX, including advice on usage of Sparx Systems Pro Cloud Server, investigation of bugs, fixes, repairs of models, if and when appropriate, and general product support.
- "SOFTWARE EXPRESS" means a version of the Software (including WebEA) provided without charge to certain Sparx authorised users, who have five or more current or renewed licenses of Corporate edition of SOFTWARE PRODUCT or above.

- "SPARX support engineers" means employees of SPARX who provide on-line support services.
- "WEBEA" means the html, php, css and all other associated files used to view Enterprise Architect Software model information via a web browser through the SOFTWARE PRODUCT's OSLC INTERFACE.
- "WORKER EDITION" means the copy of Enterprise Architect Software installed within the SOFTWARE PRODUCT service. It May be installed on a server and can only be used to update diagrams and document caches for models hosted by the Pro Cloud Server and WebEA.
- "OSLC INTERFACE" is the Application Programming Interface (API) exposed by the SOFTWARE PRODUCT over network protocols.

## **2. GRANT OF LICENSE IN THE SOFTWARE PRODUCT**

In accordance with the terms of this EULA YOU are granted the following rights:

- To install, use copies of the SOFTWARE PRODUCT, or in its place, any prior version for the same operating system, on a single server run by you, or by a third party, where the benefit of such server is limited to You. You may not allow others to use this server, unless they own a separate, legally obtained licence to use the Software Product.
- As the primary user of the computer on which the SOFTWARE PRODUCT is installed, YOU may make a second copy for backup purposes.

To store or install a copy of the SOFTWARE PRODUCT on a storage device, such as a network server, used only to install or run the SOFTWARE PRODUCT over an internal network server, used only to install or run the SOFTWARE PRODUCT over an internal network. If YOU wish to increase the number of servers concurrently running the SOFTWARE PRODUCT, YOU must notify SPARX and agree to pay an additional fee.

- To make copies of the SOFTWARE PRODUCT for backup, archival and instructional purposes.
- The WORKER EDITION may only be used to support the operation of the SOFTWARE PRODUCT. It may be installed on a single server or user machine
- The OSLC INTERFACE may be used by the Licensee for internal purposes. Commercial use of the OSLC interface requires authorization from SPARX and agreement to the Pro Cloud Server Commercial license.
- To deploy WEBEA onto an internal or external web server to allow web consumption of your models, You must first agree to the WebEA license.

## **3. RESERVED RIGHTS AND ADDITIONAL RIGHTS**

All rights not expressly granted to you are reserved to Sparx. For the avoidance of doubt, this includes, but is not limited to:

- YOU undertake not to sell, rent, lease, translate, adapt, vary, modify, decompile, disassemble, reverse engineer, create derivative works of, modify, sub-license, share, loan or distribute the SOFTWARE PRODUCT other than as expressly authorized by this EULA.
- Transfer: You are not authorised to sell, share, sub license or distribute copies of the Software Product on a stand-alone basis or as part of any collection, product or service.

- Fixed Licence: There may only be one live instance per license granted. Multiple installs on multiple servers is expressly forbidden.
- Additional Rights: YOU further undertake not to reproduce, sub licence, share or distribute license key-codes except under the express and written permission of SPARX, which must be done in writing, on terms determined by Sparx at its sole discretion on a case by case basis. For more information, contact Sparx directly sales@sparxsystems.com

#### **4. SOFTWARE EXPRESS: RESERVED RIGHTS AND ADDITIONAL RIGHTS**

This clause relates specifically to the use of the Software Express, and is in addition to the terms contained in the rest of this EULA. All rights not expressly licenced to you are reserved to Sparx. The licence to use the Software Express may be revoked at any time, where the user no longer meets the requirements of Sparx, determined at its sole discretion. The additional reserved rights in relation to the Software Express are as follows (without limitation):

- No commercial add-ons or usage of OSLC Interface beyond that supplied by Software Express.
- No third party software is to be used in conjunction with the Software Express.
- Creating software that is based on, imitates, clones, passes off as, or otherwise imitates or pretends to be WebEA is not permitted.
- No circumvention, reverse engineering, decompiling or otherwise bypassing any restrictions imposed by this EULA.
- No modifications of WebEA without approval from SPARX.
- This license is for a single instance of the Software Express on a single server.
- Multiple server installs are not permitted with a single copy of the Software Express.
- Multiple instances of the Software Express on a single server are not permitted.

#### **5. ASSIGNMENT**

YOU may only assign all your rights and obligations under this EULA to another party if YOU supply to the transferee a copy of this EULA and all other documentation including proof of ownership, and they agree to be bound by these terms, and inform SPARX of this fact. Your license is then immediately terminated.

#### **6. TERMINATION**

Without prejudice to any other rights, SPARX may terminate this EULA if YOU fail to comply with the terms and conditions. Upon termination YOU or YOUR representative shall destroy all copies of the SOFTWARE PRODUCT and all of its component parts or otherwise return or dispose of such material in the manner directed by SPARX.

#### **7. WARRANTIES AND LIABILITY**

SPARX warrants that:

- The SOFTWARE PRODUCT will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt (and not for the avoidance of doubt, from the date of installation); and

- Any Support Services provided by SPARX shall be substantially as described in applicable written materials provided to You by SPARX on a case by case basis, and SPARX support engineers will make commercially reasonable efforts to solve any problems associated with the SOFTWARE PRODUCT.

## **8. EXCLUSION OF LIABILITY**

To the maximum extent permitted by law, SPARX excludes, for itself and for any supplier of software incorporated in the SOFTWARE PRODUCT, all liability for all claims, expenses, losses, damages and costs made against or incurred or suffered by You directly or indirectly (including without limitation lost costs, profits and data) arising out of:

- Your use or misuse of the SOFTWARE PRODUCT;
- Your inability to use or obtain access to the SOFTWARE PRODUCT;
- Gross negligence of SPARX or its employees, contractors or agents, or of any supplier of software incorporated in the SOFTWARE PRODUCT, in connection with the performance of SPARX's obligations under this EULA; or
- Termination of this EULA by either party for any reason.

Sparx will remain liable to you in accordance with the terms of this EULA, in all cases where the user(s) has an active and paid up subscription. The indemnities in this EULA will have no effective where the SOFTWARE PRODUCT licence is obtained, used, acquired or assigned unlawfully.

## **9. LIMITATION OF LIABILITY**

The SOFTWARE PRODUCT and any documentation are provided "AS IS" and all warranties, whether express, implied, statutory or otherwise, relating in any way to the subject matter of this EULA or to this EULA generally, including without limitation, warranties as to: quality; fitness; merchantability; correctness; accuracy; reliability; correspondence with any description or sample, meeting your or any other requirements; uninterrupted use; compliance with any relevant legislation; and being error or virus free are excluded. Where any applicable legislation implies in this EULA any term, and that legislation avoids or prohibits provisions in a contract excluding or modifying such a term, such term shall be deemed to be included in this EULA. However, the liability of SPARX for any breach of such term shall, if permitted by legislation, be limited, at SPARX's option to any one or more of the following, upon return of the SOFTWARE PRODUCT and a copy of the receipt:

If the breach relates to the SOFTWARE PRODUCT, Sparx shall at its discretion:

- Replace the SOFTWARE PRODUCT; or
- Cover the costs of the supply of an equivalent SOFTWARE PRODUCT (up to the aggregate liability figure listed below);

If the breach relates to services provided by Sparx in relation to the SOFTWARE PRODUCT, Sparx shall at its discretion provide:

- The services again; or
- The payment of the cost of having the services supplied again.

In all cases, the total aggregate liability of Sparx under or in connection with this agreement or use of the SOFTWARE PRODUCT shall be limited to the cost of a SOFTWARE PRODUCT licence (AU\$600).

## **10. TRADEMARKS**

All names of products and companies used in this EULA, the SOFTWARE PRODUCT, or the enclosed documentation may be trademarks of their corresponding owners. Their use in this EULA is intended to be in compliance with the respective guidelines and licenses. Windows, Windows XP, Windows 2003 Server, Windows 2008 Server, Windows Vista, Windows 7 and Windows 8, and Windows 10 are trademarks of Microsoft.

## **11. PRIVACY AND CONTACT**

At SPARX we take your privacy seriously. A copy of our privacy policy can be found <https://sparxsystems.com/privacy.html>. Should you wish to contact us regarding privacy or any other matter contained in this EULA, please contact us at the following address [sparks@sparxsystems.com](mailto:sparks@sparxsystems.com)

## **12. GOVERNING LAW**

This agreement shall be construed in accordance with the laws of the Commonwealth of AUSTRALIA, in the state of Victoria.

## **13. OPEN SOURCE SOFTWARE**

SPARX incorporates a small number of Open Source Projects into the SOFTWARE PRODUCT.

In all such cases SPARX has evaluated the licensing terms and conditions and remains fully compliant with the terms and conditions specified.

SPARX actively reviews their use of Open Source software and where faults or vulnerabilities are discovered, undertakes to correct such errors in a timely and practical manner.