

Labnaf End User License Agreement (EULA)

Version 2.0 Labnaf. READ CAREFULLY: This End User License Agreement (hereinafter, "EULA") is a legal agreement between you (hereinafter, "the Licensee") and 4biz.at Consulting GmbH – Business Unit Sparx Services Central Europe (hereinafter, "the Distributor").

By installing, copying, or otherwise using any version of the Software, however obtained, you agree to be bound by the terms of this EULA. The EULA applies to all versions of the Software and may be updated at any time without notification to you, so please refer to this document from time to time.

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Subject to the terms of this EULA, you are granted a non-exclusive license to use the Software exclusively on the terms of this agreement. For the avoidance of doubt, you do not acquire ownership of copyright or other intellectual property rights in any part of the Software by virtue of this EULA.

§1 Definitions

In this End User License Agreement, the following terms apply unless otherwise specified,

"Author" means Alain de Preter;

"Distributor" means 4biz.at Consulting GmbH – Business Unit Sparx Services Central Europe;

"EULA" means this End User License Agreement;

"Field" means any field, provided a specific agreement is concluded whenever the Licensee is linked to the railway sector in the broadest sense;

"Licensee" means you, or the organization (if any), or the person on whose behalf you are accepting the terms of this EULA;

"Parties" means the Distributor and the Licensee, and "Party" shall mean either of them;

"Remote Desktop" means a mechanism by which an end user runs an exclusive instance of the Software on a remote machine, but manipulates the instance as if it were installed and executing on his current machine;

"Software" means the purchased version of the Labnaf software;

"Support" means email-based support provided by the Distributor, including advice on usage of the Software, investigation of bugs, fixes, repairs of models, if and when appropriate, and general product support;

"Territory" means the world.

§2 Grant of license in the software product

2.1. *Licence.* The Distributor hereby grants to the Licensee, subject to the provisions of this Agreement, a non-transferable and non-exclusive licence to use the Labnaf Software in the Field and in the Territory only. The Licensee shall not use the Labnaf Software for any purpose except as expressly licensed hereby and in accordance with the provisions of this Agreement.

2.2. *Rights.* The purchase of a licence entitles the Licensee to

- 2.2.1. a licence certificate which enables the correct functionality set for the license type, and;
- 2.2.2. a twelve months' subscription that entitles the Licensee to priority email support and free updates of the Software for the purchased licence type.
- 2.3. *Pre-requisite.* The Labnaf software is subordinated to the use and possession of the Sparx Enterprise Architect software which is not provided by this Agreement.
- 2.4. *Reservation of rights.* The Labnaf software is not sold, only licensed. Except for the licence expressly granted by Clause Licence, the Author and the Distributor reserve all their rights. The sole property of the Labnaf software remains in its Author.
- 2.5. *Sub-licence.* The Licensee shall not be entitled to grant sub-licences of its rights under this Agreement.
- 2.6. *Integrity.* Except as expressly permitted by this Agreement, the Licensee shall not modify, adapt, disassemble, reverse engineer, decompile, translate, or otherwise attempt to discover the source code of any of the Labnaf Software solely made available to the Licensee in object code form or permit any of these things to happen, except as expressly allowed by applicable, mandatory law governing the rights of software licensees.
- 2.7. *New licences.* Each supplementary license that the Licensee wishes to purchase shall be obtained in accordance with the financial conditions valid at the date of the purchase.

2.8. *Additional rights and limitations.*

- 2.8.1. Each license certificate is purchased for a specific licensee and for a specific number of users.
- 2.8.2. The Licensee undertakes not to use any part of the Software in a way that would enable more users to use the software than defined by the purchased license certificates. If the Licensee breaches this obligation in any way, the licence will be terminated and compensation may be sought for the loss of earnings.
- 2.8.3. "Remote Desktop" to access the Labnaf Add-In as an extension of Sparx Enterprise Architect is permitted provided the end user holds a valid license, has agreed to the terms of this EULA and of the Sparx Systems' Enterprise Architect EULA, and provided it does not breach the obligation set out in article 2.8.2.
- 2.8.4. You undertake not to reproduce or distribute license certificates except under the prior, express and written permission of the Author.

§3 Support

3.1 The Distributor acts as a support contact. This support includes

- a) the Software demonstration;
- b) the Software installation;
- c) the technical training;
- d) the technical support.

§4 Payments

4.1 *Price adjustment.* The renewal fees are susceptible to be adjusted, following three months' notice.

This adjustment cannot exceed 5% per year, in addition to the automatic indexation.

4.2 *Payment terms.* All sums due under this Agreement:

4.2.1 are exclusive of Value Added Tax which where applicable will be paid by the Licensee to the Distributor in addition;

4.2.2 shall be paid in Euro by transferring an amount in aggregate to the following account number:

4bis.at Consulting GmbH – Business Unit Sparx Services Central Europe
IBAN: AT023236700000219469
BIC: RLNWATWW367

4.2.3 shall be made by the due date, failing which the Distributor may automatically charge interest on any outstanding amount at the rate established in conformity with the directive 2011/7/EU of the European parliament and of the council of 16 February 2011 on combating late payment in commercial transactions, from the date of the invoice or, in the absence of invoice, from the date of the request in due form.

§5 Intellectual property

5.1. Notwithstanding any other provision, the Author shall have the exclusive right to determine whether or not any litigation shall be instituted or other action taken in connection with any infringement or potential infringement of any intellectual property rights that subsist in the Labnaf Software. The Licensee shall not institute any litigation or other action in relation to any such infringement or potential infringement except with the Author's prior written agreement.

5.2. The Author retains complete copyright ownership of all patterns, images, process and guidance documents shipped with the Software. These may only be used within the Software.

§6 Warranties and liability

6.1. *Warranties.* The Distributor warrants that it is entitled to grant the licences in the Software contained in this EULA without need for further agreement.

6.2. *Exclusion of liability.* To the maximum extent permitted by law, the Distributor excludes, for itself and for the Author, all liability for all claims, expenses, losses, damages and costs made against or incurred or suffered by the Licensee directly or indirectly (including without limitation lost costs, profits and data) arising out of:

6.2.1. the Licensee's use or misuse of the Software;

6.2.2. the Licensee's inability to use or obtain access to the Software;

6.2.3. gross negligence of the Distributor or its employees, contractors or agents, or of any supplier of software incorporated in the Software, in connection with the performance of the Distributor's obligations under this EULA; or

6.2.4. termination of this EULA by either party for any reason.

The Distributor 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 which would be due by the Distributor or the Author will not be applicable when the Software licence is obtained, used, acquired or assigned unlawfully.

6.3. *Limitation of liability.* The Software 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 the Distributor for any breach of such term shall, if permitted by legislation, be limited, at the Distributor's option to any one or more of the following, upon return of the Software and a copy of the receipt:

6.3.1. If the breach relates to the Software, the Distributor shall at its discretion:

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

6.3.2. If the breach relates to services provided by the Distributor in relation to the Software, the Distributor 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 the Distributor under or in connection with this agreement or use of the Software shall be limited to the cost of a Software licence (880,-euros).

§7 Privacy and contact

7.1. The Distributor's privacy policy can be found on <https://www.sparxservices.eu/data-privacy-gdpr/>.

7.2. The Distributor does not collect any sensitive data. The Licensee acknowledges and consent that the Distributor collects and processes some personal data needed notably for order management, product delivery, and statistics, and that it does it in accordance with the General Data Protection Regulation.

7.3. The Licensee acknowledges that the Author has access to the data collected by the Distributor for his own processing.

§8 Duration and termination

8.1. *New License*. A new license entitles the purchaser to:

8.1.1. A license certificate that enables the correct functionality set for the license type.

8.1.2. A 12 months subscription; that entitles the user to priority email support and to acquire free updates of the Labnaf software for the purchased license type.

8.2. *Renewal*. Once the Labnaf software has been purchased, the purchaser can reinstate it, before the subscription lapses, just by paying the renewal fee for the license type held. A renewal extends a purchaser subscription for an additional 12 months, thereby providing access to priority email support and free updates. A renewal entitles the purchaser to receive the latest version of the Labnaf software. The renewal will cover the number and type of licenses originally purchased. Any additional licenses must be purchased at the standard list price for the required license type.

Labnaf software license certificates will not expire. Only the subscription will do. If the purchaser chooses not to renew, the purchaser can continue to use the Labnaf software purchased, the purchaser just won't be able to update it unless he renews. Subscriptions that have lapsed for 3 or more years will not be eligible for subscription renewals and the user will need to purchase new licenses if they wish to use the latest version of the Labnaf software.

8.3. *Termination.* Without prejudice to any other rights, the Distributor may terminate this EULA if the Licensee fail to comply with the terms and conditions. Upon termination the Licensee or the Licensee's representative shall destroy all copies of the Software and all of its component parts or otherwise return or dispose of such material in the manner directed by the Distributor.

8.4. *No other obligation.* Subject as provided in clause 8.3, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.

§9 General

9.1. *Force majeure.* Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

9.2. *Waiver.* No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

9.3. *Law and jurisdiction.*

9.3.1. This Agreement shall be governed by and construed in accordance with the laws of the Austria and each Party agrees to submit to the exclusive jurisdiction of the courts of Austria.

9.3.2. Notwithstanding Clause 9.3.1., before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes. Such alternative processes may include internal escalation procedures and/or mediation in accordance with the WIPO mediation rules. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

9.4. *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.

9.5. *Entire agreement.* This Agreement sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.