

Redgate Spawn EULA

Use of Spawn is subject to the terms of this licence agreement ("**Agreement**"). Please read the full Agreement carefully. You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement by downloading and/or installing and/or using Spawn. If you do not accept these terms, do not download, install or use Spawn.

IMPORTANT NOTICES:

- 1 Where you sign a paper version or a bespoke version of this Agreement, that paper/bespoke version will take precedence over any subsequent click to agree versions of this Agreement presented on download and/or installation; and
- 2 This Agreement shall prevail over any other agreement you have in place with us with respect to your use of Spawn. No previously agreed terms shall apply to your use of Spawn.
- 3 This Agreement shall prevail over your standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or confirmation of order.

TERMS AND CONDITIONS

1 **LICENCE**

- 1.1 We grant you a limited, personal, non-exclusive, and non-transferable licence to use Spawn, subject to any applicable Product Specific Terms.
- 1.2 The Licence is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Spawn or hold this Agreement on trust for any other person.
- 1.3 Except as stated in this Licence, you have no right to use, incorporate into other products, copy, publish, display, modify or translate Spawn or any modification, adaptation or copy of Spawn or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of Spawn either in whole or in part, as expressly permitted under the Licence or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.
- 1.4 You shall not use Spawn to manufacture or distribute a product that is substantially similar to or competitive with our software.

2 **OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 2.1 You acknowledge that i) all Intellectual Property Rights in or relating to Spawn are owned by or licensed to us, ii) except as expressly granted under the Licence, you have no rights in Spawn and iii) we shall have the right to use your name and/or logo on customer lists on our website and in other marketing material.
- 2.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to Spawn or which would call those rights into question.
- 2.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours, including without limitation any electronic watermarks or other identifiers that may be incorporated in Spawn. All representations of our name or logo must remain as originally distributed.

3 **PAYMENT**

- 3.1 Your use of Spawn is free of charge, unless stated otherwise on our website: <https://spawn.cc/>.

4 **CONFIDENTIALITY**

- 4.1 The structure, organisation, and source code of Spawn are proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information of ours (including relating to or derived from Spawn) to any third party, including where such confidential information is derived under any applicable law as set out in clause 1.3.
- 4.2 Other than the disclosures referred to in our Privacy Notice, we agree not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.
- 4.3 The provisions of clauses 4.1 and 4.2 will not apply to the extent that:
 - 4.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or
 - 4.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or

4.3.3 such information is required to be disclosed by law.

4.4 No information to which clause 4.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law) (i) given the disclosing party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing party, and (iii) agreed with the disclosing party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.

4.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 4, the terms of the confidentiality agreement shall prevail over this clause 4.

5 WARRANTY AND SUPPORT

5.1 Spawn has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that it will meet any particular user needs. You shall take full responsibility for ensuring that Spawn is suitable for your intended purposes.

5.2 Spawn is a beta version made available to you for preview prior to full release and is therefore provided AS IS with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, implied whether by statute or otherwise, which are hereby expressly excluded.

5.3 **Support.** In relation to and without prejudice to the generality of clause 5.2 above, we may, at our sole discretion, provide support to users of Spawn via our development team by email (spawn@red-gate.com). The support is provided subject to the terms of this Agreement. You accept that, although we will use reasonable endeavours to solve problems identified by you, the nature of software is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to Spawn, the scheduling of any new releases and the functionality those releases contain shall be under our sole control.

6 LIMITATION AND EXCLUSION OF LIABILITY

6.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.

6.2 Subject to clause 6.1, neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise). We shall not be liable to you for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, or loss of use of software or hardware; or (c) any loss, or corruption, or loss of use of data (except to the extent such data is Personally Identifiable Data you upload to Spawn, for which our liability is set out in clause 6.3).

6.3 Subject to clause 6.1, our aggregate liability for any breach of clauses 8.4 and 8.5 shall be limited in all cases to the aggregate sum of £300.

6.4 Subject to clauses 6.1, 6.2, 6.3 and 9.2, we will not be liable to you for any direct loss or damage howsoever arising as a result of your use of Spawn.

6.5 The provisions of this clause allocate risks under this Agreement between you and us, and your free use of Spawn reflects this allocation of risks and these limitations of liability.

7 LICENCE TERM AND TERMINATION

7.1 The Licence shall commence upon your acceptance of its terms and shall continue until terminated in accordance with clause 7.2, 7.3 or 7.4, or otherwise in accordance with this Agreement.

7.2 We reserve the right to terminate the Licence on 30 days' written notice by us at any time.

7.3 We may terminate the Licence immediately and without notice if:

7.3.1 we reasonably suspect that you are using Spawn for any purpose which contravenes any applicable law; or

7.3.2 you materially fail to comply with any provision of this Agreement including the Product Specific Terms.

7.4 The Licence will terminate automatically if you uninstall and cease use of Spawn, or uninstall and destroy or voluntarily return Spawn to us.

7.5 Where the Licence is terminated in accordance with clause 7.2, 7.3 or 7.4, then the Agreement shall terminate in its entirety.

7.6 Upon termination of this Agreement: (a) you must cease use of Spawn, and uninstall, destroy or put beyond use all copies of Spawn in your possession or control; and (b) the provisions of clauses 1.4, 4, 5.2, 6, 7, 8, 9,

10.1 to 10.7, 10.9 and 11 will remain in effect.

- 7.7 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.

8 DATA COLLECTION AND PRIVACY POLICY

- 8.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Notice, which can be viewed at: <https://spawn.cc/privacynotice>.
- 8.2 You acknowledge that you determine the nature and content of the data you upload to Spawn. To the extent the Spawn Data contains Personally Identifiable Data which is subject to data protection legislation, we will act as a processor of the Spawn Data on your behalf, and clauses 8.3 – 8.5 shall apply only to such Personally Identifiable Data. The details of the processing are set out in Schedule 2.
- 8.3 As the controller of the Spawn Data, you are responsible for: (i) ensuring you have a lawful basis for uploading the Spawn Data to Spawn, including obtaining any necessary authorisations or consents from data subjects; and (ii) complying with all applicable data protection legislation.
- 8.4 We will:
- 8.4.1 process the Spawn Data only to the extent necessary for the purpose of providing Spawn and in accordance with your written instructions set out in this clause (except where we are required by law to process the Spawn Data other than in accordance with your instructions, in which case, we will inform you of the relevant legal requirement prior to such processing, unless the law prohibits the provision of such information on important grounds of public interest);
 - 8.4.2 implement appropriate technical and organisational measures in accordance with the data protection legislation to ensure a level of security appropriate to the risks that are presented by such processing;
 - 8.4.3 ensure that any employees or other persons authorised to process the Spawn Data are subject to appropriate obligations of confidentiality;
 - 8.4.4 notify you, as soon as reasonably practicable, about any request or complaint received from a data subject (without responding to that request, unless authorised to do so by you) and at your cost, assist you by technical and organisational measures, insofar as possible, for the fulfilment of your obligations in respect of such requests and complaints;
 - 8.4.5 at your request and cost, and taking into account the nature of the processing and the information available to us, use reasonable endeavours to, assist you with your compliance with your obligations under Articles 32 to 36 of the UK GDPR (where applicable);
 - 8.4.6 where we transfer any Personally Identifiable Data outside of the UK, will ensure any such transfer meets the relevant requirements under Articles 44 - 50 of the UK GDPR;
 - 8.4.7 at your request and cost, make available all information necessary to demonstrate our compliance with this clause 8 and on reasonable advance notice in writing otherwise permit, and contribute to, audits carried out by you (or your authorised representative) with respect to the Spawn Data, save that you shall (or shall ensure your authorised representatives shall):
 - sign a non-disclosure agreement in terms acceptable to us prior to undertaking such audit;
 - be accompanied by a Redgate employee at all times whilst on site during the audit;
 - use your reasonable endeavours to ensure that the conduct of any such audit does not unreasonably disrupt our normal business operations; and
 - comply with our relevant IT and security policies whilst carrying out any such audit; and
 - 8.4.8 on termination or expiry of this Agreement, destroy or return (as you direct) all Spawn Data and delete all existing copies of such data unless we are required to keep or store such data by law.
- 8.5 You acknowledge and agree that Redgate affiliates may act as sub-processors. We may also engage third party processors to carry out our processing obligations under this Agreement. Sub-processors will, at all times, be subject to data processing obligations equivalent to those set out in this clause 8.4, and we will remain liable to you for such sub-processors. Our current third party sub-processors are listed in our Privacy Notice: <https://spawn.cc/privacynotice>. We will provide you with notification of any new sub-processors we intend to use. If you object to the use of a new sub-processor, you may terminate the Licence on 30 days' written notice to us.
- 8.6 Any data protection terms used in this clause 8 and not defined in this Agreement shall have the meaning given in the UK GDPR.

9 **THIRD PARTY CLAIMS**

- 9.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that your use of Spawn causes any such loss or damage, except in the circumstances in clause 9.2 below.
- 9.2 If any claim is brought against you alleging that your use of the intellectual property associated with Spawn in accordance with this Agreement infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimise the effect of any claim on the respective businesses. We shall have the right, at our sole choice, to either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing software; or (ii) use reasonable endeavours to amend Spawn to make it non-infringing; or (iii) terminate this Agreement with immediate effect, but no financial disbursement will be given to you in such circumstances.

10 **GENERAL**

- 10.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 4 and/or Schedule 1 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.
- 10.2 **Compliance with applicable law.** You agree that, notwithstanding clause 10.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of Spawn in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.
- 10.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.
- 10.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 10.5 **No third party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 10.6 **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to your use of Spawn and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.
- 10.7 **Revisions to terms.** For click-to-agree versions of this Agreement only, we reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. Your continued use of Spawn shall be deemed to constitute acceptance of any revised terms. Any bespoke versions of this Agreement shall continue to apply to all future downloads or installation of Software and shall always take precedence over any click to agree versions presented at download or installation of such Software.
- 10.8 **Notices.** References to notices being "written" or "in writing" includes email.

11 **DEFINITIONS**

- 11.1 In this Agreement, capitalised terms shall have the meanings set out below or the relevant Schedule.
- "Intellectual Property Rights"** means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;
- "Licence"** means the licence to use Spawn, set out in clause 1 and/or Schedule 1 as appropriate, this does not include any license to use Third Party Plug-ins;
- "OSE"** means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;
- "Personally Identifiable Data"** means any information relating to an identified or identifiable natural person;

“Privacy Notice” means the document entitled Privacy Notice on our website <https://spawn.cc/privacynotice>;

“Product Specific Terms” means the terms applicable to Spawn as set out in Schedule 1;

“Spawn Data” means the data you upload to Spawn in accordance with the Licence.

“Third Party Plug-ins” means a third party plug-in to Spawn;

“UK GDPR” means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

“We”, “Our”, “Us” and the non-capitalised versions means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Newnham House, Cambridge Business Park, Cambridge CB4 0WZ, United Kingdom;

“You”, “Your” and the non-capitalised versions means, whether Spawn is obtained directly from us or through a Reseller, (a) where an individual downloads and/or installs Spawn on a OSE for his own personal use, that individual (a **“Consumer”**); or (b) where an individual downloads and/or installs Spawn on a OSE for business use, that individual’s employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation downloads and/or installs Spawn on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of Spawn).

Schedule 1

Product Specific Terms

1 Spawn

- 1.1 You may store data and keep a history of changes using Spawn. You may not upload to Spawn any data that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or is otherwise illegal or causes damage or injury to any person or property.
- 1.2 We will hold a copy of the server, database configurations and Spawn Data on your behalf and will provide you with database instances to be used for development and testing purposes. We will hold the Spawn Data only for the purpose of providing Spawn.
- 1.3 We acknowledge that, where applicable, all rights, title and interest in and to the Spawn Data belongs to you and you agree that you shall have sole responsibility for the legality, reliability, integrity and quality of the Spawn Data.
- 1.4 You acknowledge that:
 - 1.4.1 Spawn may not be available to you all of the time and you are responsible for ensuring you have appropriate back-ups of the Spawn Data; and
 - 1.4.2 except to the extent the Spawn Data is Personally Identifiable Data (in which case clause 6.3 shall apply), we shall not be responsible for any loss, corruption or inaccuracy of the Spawn Data we hold.
- 1.5 You are responsible for:
 - 1.5.1 ensuring you encrypt the Spawn Data prior to uploading it to Spawn; and
 - 1.5.2 maintaining and securing your network connections and telecommunications links from your systems to Spawn, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

Schedule 2

Personally Identifiable Data: details of processing

Controller: You

Processor: Red Gate Software Limited

Nature, purpose and subject matter of processing: Redgate will process Personally Identifiable Data contained within the Spawn Data as necessary to provide Spawn under this Agreement, and as further instructed you in when using Spawn.

Duration of processing: the duration of the Licence.

Categories of data: You are solely responsible for determining what Personally Identifiable Data is contained in the Spawn Data uploaded to Spawn. Any categories of Personally Identifiable Data could be included.

Data subjects: You are solely responsible for determining what Personally Identifiable Data is contained in the Spawn Data uploaded to Spawn. The Personally Identifiable Data of any categories of data subjects could be included.