

Enterprise Modules Open Source License Agreement

This license agreement (“the Agreement”) governs the terms and conditions under which the WLS_CONFIG module (“the Software”) is licensed by Enterprise Modules BV of the Netherlands, Chamber of Commerce 63689537 (“Enterprise Modules”) to NAME_LICENSEE, LICENSEE DETAILS (“Licensee”).

Nothing in this Agreement shall affect any rights or obligations of Licensee (or others) with respect to the community edition of the Software.

Article 1. Grant of license

- 1.1 Enterprise Modules hereby grants to Licensee the right to use the Software for its internal business purposes. This right includes the right to copy, install and use an unlimited number of copies of the Software on an unlimited number of computers within the organization of Licensee.
- 1.2 The license granted in the previous paragraph is limited to managing the number of nodes for which Licensee has paid the applicable fee and whose node names have been registered with Enterprise Modules (“Entitled Nodes”).
- 1.3 Entitled Nodes may be added at any time. An Entitled Node can be cancelled by the end of a twelve-month period from the date the Entitled Node was added (“the Entitled Node Term”). Unless an Entitled Node is cancelled at least one month prior to the end of the Entitled Node Term, the Entitled Node Term shall be extended with additional twelve-month terms each time.
- 1.4 The license includes the right to modify the Software as desired by Licensee. However, Enterprise Modules is under no obligation to provide any support regarding aspects of the Software modified by Licensee.

Article 2. License limitations

- 2.1 All right, title and interest to the Software, the accompanying documentation and all modifications and extensions thereto rest and remain with Enterprise Modules. Licensee only has the rights and permissions explicitly granted by this agreement or granted in writing otherwise. Licensee shall not use, copy, distribute or publish the software in any other manner.
- 2.2 In particular, Licensee shall not:
 - a) provide copies of the Software to third parties, including to entities controlling, controlled by or under common control with Licensee;
 - b) sublicense the Software or otherwise make available the Software to such third parties, including by rental, Software-as-a-Service models or otherwise;
 - c) remove indications of Enterprise Modules as copyright holder of the Software or to remove or render illegible any part thereof.

- 2.3 The Software comprises third-party open source software. The respective third-party rights holders grant Licensee the rights indicated in the applicable open source licenses. These licenses can be found in the documentation. The Agreement does not apply to this open source software, and nothing in this agreement shall be construed as a limitation of any right granted under an open source license.
- 2.4 Licensee shall only provide access to the source code of the Software to employees of Licensee and independent contractors performing work for Licensee if such access is necessary for the use of the Software and only if such employees and contractors have agreed in writing to be bound by terms that are at least as protective of Enterprise Modules's rights as the Agreement.

Article 3. Delivery of software

- 3.1 Enterprise Modules shall make available for download to Licensee a master copy of the Software.
- 3.2 Enterprise Modules shall make available on its website for Licensee an electronic collection of support documents ("Documentation").
- 3.3 From time to time Enterprise Modules may make available updates to the Software and/or Documentation. Enterprise Modules will use its best efforts to notify Licensee about such availability. Licensee is itself responsible for downloading and installing these updates.

Article 4. Support

- 4.1 For the duration of the Agreement Enterprise Modules will provide Licensee with second-level support regarding use of the Software as set out in this article. Support is limited to assistance on Software usage and management of Puppet types. Support for database-related issues is explicitly excluded.
- 4.2 Licensee is itself responsible for first-level support towards end users. Licensee shall appoint a Support Manager within its organization. This Support Manager shall be the sole point of contact with Enterprise Modules for support issues.
- 4.3 Support is offered by e-mail. Support is available between 09:00-17:00 CET on working days, that is the days excluding Saturday and Sunday and Dutch national holidays. Enterprise Modules strives to respond to support requests within one working day.
- 4.4 Licensee is entitled to five support requests per calendar month. Unused support requests cannot be transferred to subsequent months.
- 4.5 Enterprise Modules may refuse to provide support for issues addressed in updates not installed by Licensee, or charge a surcharge for any extra work in such situations.

- 4.6 Upon request the parties can discuss the contents, pricing and other terms of more specific support terms to be provided in a separate Service Level Agreement (SLA). If and when such an SLA is concluded, its provisions will prevail over any conflicting provisions in this document.

Article 5. Representations and warranties

5.1 Enterprise Modules represents and warrants the following:

- That it is a company in good standing with the authority to grant the rights hereunder;
- That the Software operates substantially as described in the Documentation;
- That the Software has been developed in a workmanlike manner, and in conformity with generally prevailing industry standards;
- That the Software contains no open source software except as listed in the Documentation;
- That the Software does not infringe on any copyright of any third party;
- That the Software contains no viruses, backdoors or malicious routines.

5.2 To the fullest extent permitted by law, and unless explicitly indicated otherwise in the paragraph above, Enterprise Modules expressly disclaims all conditions, representations or warranties, express or implied, including without limitation any implied warranties of merchantability, fitness for a particular purpose, and non-infringement of third party rights regarding the Software.

5.3 Licensee acknowledges that it is solely responsible for compliance with all applicable laws and regulations, including without limitation all customs, export and import laws and regulations of the European Union and any other country in which Licensee does business.

Article 6. Indemnification

6.1 Enterprise Modules shall defend, indemnify and hold harmless Licensee against any liability arising from any claim by any third party against Licensee that the Software infringes on its copyright or violates its license under such copyright ("a Claim") but only under the provisions of this article.

6.2 Licensee shall promptly notify Enterprise Modules in writing of any Claims it receives, and enable Enterprise Modules (at Enterprise Modules's expense) to control the defense or settlement of the Claim on behalf of Licensee, and provide Enterprise Modules immediately with all support which Enterprise Modules may reasonably require in the defense or settlement of the Claim. Both parties carry their own out-of-pocket costs in connection with these activities.

6.3 To address the Claim, Enterprise Modules may, at its discretion,

- a) procure for Licensee the right to continue using the Software; or

- b) provide Licensee with a modification or update to the Software that avoids or settles the Claim; or
- c) if the above is not possible under reasonable terms and conditions after best negotiation and technical efforts by Enterprise Modules, terminate the Agreement.

6.4 Any costs or license fees associated with options a or b above shall be fully borne by Enterprise Modules.

6.5 Enterprise Modules shall reimburse Licensee in respect of any final award of damages by a court of competent jurisdiction holding that a Claim is valid, or in respect of any monies to be paid under a settlement agreement regarding a Claim, however only if the Claim is directly and solely attributable to the Software.

6.6 No liability or obligation to indemnify shall exist for any modifications or changes to the Software made by Licensee or for Licensee by any third party without the prior written approval of Enterprise Modules or for any Claims that would have been resolved or avoided but for Licensee's refusal of a modification or update provided by Enterprise Modules.

6.7 Enterprise Modules's entire liability and obligation to reimburse under this article shall be subject to the limitation of article 9.

6.8 In all other aspects, Licensee shall release, defend, indemnify and hold harmless Enterprise Modules from and against any and all claims, damages and liability arising in connection with the Software, including from claims, damages or liability from customers of Licensee.

Article 7. Confidentiality provisions

7.1 A party that receives information marked as confidential or under circumstances making it clear the information was intended to be confidential ("Confidential Information") from the other party shall protect the confidentiality of such Confidential Information by a reasonable degree of care against unauthorized disclosure for the term of the Agreement and a period of three years thereafter.

7.2 Each party warrants that any employees that have a need to know Confidential Information are bound to terms and conditions related to the use and disclosure of Confidential Information which are at least as stringent as provided in the Agreement.

7.3 Confidential Information may be disclosed in response to a valid court or other governmental order, provided (if permitted by such order) the disclosing party is notified as soon as possible after receipt of the order and given an opportunity to seek legal redress against such disclosure.

7.4 Information which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that the receiving party proves by written records that said information:

- a) is or has become publicly available without any wrongdoing by the receiving party;
- b) is known and on record at the receiving party prior to disclosure by the disclosing party;
- c) is lawfully obtained by the receiving party from a third party who is not bound by similar confidentiality obligations; or
- d) is developed by the receiving party completely independently of any such disclosure by the disclosing party.

7.5 Upon first request of the disclosing party, the receiving party shall destroy or return to the disclosing party all Confidential Information received in written or other tangible form, including all copies thereof.

7.6 The receiving party shall use its best efforts to assist the disclosing party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the receiving party shall advise the disclosing party immediately in the event the receiving party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. The receiving party will cooperate with the disclosing party in seeking injunctive or other equitable relief against any such person.

7.7 The parties acknowledge that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the disclosing party for which monetary damages may be difficult to ascertain or an inadequate remedy. The parties therefore agree that the disclosing party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any actual or threatened violation of this Agreement.

Article 8. Limitation of liability

8.1 Enterprise Modules shall be liable to Licensee only for damages arising out of its intentional misconduct towards Licensee or materially negligent performance of any of its obligations under the Agreement.

8.2 Enterprise Modules shall not be liable for any consequential, special, punitive and/or incidental damages, including loss of profits or fines imposed by regulatory bodies, arising out of or in connection with the agreement, even if advised of the possibility of such damages.

8.3 Any liability of Enterprise Modules for an event shall be limited to the amount actually paid by Licensee to Enterprise Modules in the six months preceding the date the event occurred.

8.4 No liability shall exist for damages that have not been reported to Enterprise Modules in writing within two weeks of their occurrence, or for damages where Licensee failed to take appropriate measures to limit such damages.

- 8.5 Neither party may bring an action, regardless of form, arising out of or related to the agreement more than one year after the cause of action has arisen or the date of discovery of such cause, whichever is later. However, in no event can an action be brought more than one year after the date of termination of the agreement.

Article 9. Force majeure

- 9.1 Enterprise Modules shall not be liable for any failure to fulfill any of its obligations under the agreement if that failure is due to force majeure. Force majeure includes without limitation war, riot, fires, floods, epidemics, security bugs in operating system and middleware software parts of the Software, breakthroughs in cryptography and interruption in internet connectivity.
- 9.2 If the force majeure lasts for more than thirty consecutive days, either party is entitled to terminate the agreement with immediate effect. No obligation to reimburse any costs, fees or expenses shall exist for either party in case of such termination.

Article 10. Export control

- 10.1 As the Software contains components implementing cryptography, Licensee hereby agrees to not export, or transfer for the purpose of re-export, any copies of the Software in violation of any European Union, U.S., international or other applicable regulation, treaty, resolution, Executive Order, law, statute or order.
- 10.2 Further, Licensee shall not export and shall not permit the export of any such copies to any prohibited or embargoed country or to any denied, blocked, or designated person or entity as mentioned in any such European Union, U.S., international or other applicable regulation, treaty, resolution, Executive Order, law, statute or order.

Article 11. Payment terms

- 11.1 In consideration for the license granted under the Agreement, Licensee shall pay to Enterprise Modules a license fee for each Entitled Node at the beginning of its Entitled Node Term.
- 11.2 In case Licensee has opted for a premium support package, in consideration for such support Licensee shall pay the associated support fee at the beginning of the Support Term.
- 11.3 Enterprise Modules shall invoice electronically for all fees due. Invoices must be paid within 30 days of receipt.
- 11.4 In case a payment is not received in time, Licensee shall be in default automatically and will owe legal interest over the outstanding balance, payable on a monthly basis. Furthermore, Licensee shall pay any costs, fees and expenses incurred in connection with the collection of the debt, as provided in Dutch law.

Article 12. Compliance and audits

- 12.1 The Software contains a module designed to limit operation to Entitled Nodes. This module validates the presence of digital certificates signed by Enterprise Modules for each Entitled Node. Licensee shall not disable or circumvent this module for any reason, nor shall Licensee acquire such certificates except from Enterprise Modules.
- 12.2 Once every calendar year Enterprise Modules may have an independent reputable third party auditor audit in confidence Licensee's deployment and use of the Software and Documentation for compliance with this Agreement.
- 12.3 If Licensee's use of the Software or Documentation is found to be greater than contracted for, Licensee will be invoiced for the additional use from the time this additional use started or, if in Enterprise Modules's opinion, such time cannot be easily established, from the starting date of the Agreement.
- 12.4 If the resulting adjustments are greater than five (5) percent compared to what has been paid by Licensee under this Agreement, Licensee will pay the costs associated with such audit in addition to the additional amount to be paid.

Article 13. Duration and termination

- 13.1 The parties enter into this agreement on the date the Software is first made available to Licensee and remains in force until terminated.
- 13.2 In case a party blamefully fails to comply with the material obligations under the Agreement, the other party may terminate the Agreement at any time, but only after the party that failed to comply has not remedied the failure within a reasonable time period after having received a written notice of default that is adequate and as detailed as possible.
- 13.3 Either party may terminate this agreement by means of written notice to the other party with effect on the date the last Entitled Node Term expires. Licensee must provide one month's notice; Enterprise Modules must provide six month's notice.
- A party may immediately terminate the agreement by written notice to the other party, without the requirement for notice of default or intervention of the Court, in the event of the following:
 - if the other party has been granted suspension of payments, whether provisionally or not;
 - if a petition for bankruptcy has been filed with respect to the other party and the petition has not been revoked within in seven days;
 - if the other party files for bankruptcy itself; or
 - if the other party's enterprise is dissolved or terminated, except for the purpose of a merger with or absorption by another company.

Article 14. Changes to the Agreement

- 14.1 Enterprise Modules has the right to adapt or add to the Agreement once every calendar year. Such adapted or additional terms shall be communicated at least six months prior their taking effect.
- 14.2 If Licensee does not wish to accept an adapted or additional term, Licensee must raise its objection to Enterprise Modules within four months after being notified about these terms. Enterprise Modules then may, at its discretion, withdraw the adaptation or addition. If does not do so, Licensee has the right to terminate the agreement at the end of the six-month period. Failure to terminate so constitutes acceptance of such terms.

Article 15. Choice of law and venue

- 15.1 The law of the Netherlands governs the agreement and these terms and conditions.
- 15.2 Any disputes arising between Enterprise Modules and Licensee in connection with the agreement will be settled by the competent courts in the Netherlands for the principal place of business of Enterprise Modules.
- 15.3 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

Article 16. Miscellaneous provisions

- 16.1 The Agreement shall not be assigned or otherwise transferred by Licensee without the prior written consent of Enterprise Modules, which shall not be unreasonably withheld. Any such assignment without such consent will be null and void. However, no consent of Licensee is necessary for an assignment or transfer of the Agreement to any company controlling, controlled by or under common control with Enterprise Modules or to any company that succeeds to substantially all of Enterprise Modules's business. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.
- 16.2 The failure of either party at any time to require performance by the other party of any provision of the agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of the agreement be taken or held to be a waiver of any further breach of the same provision.
- 16.3 Any requirement for a "written" statement can be fulfilled by using a digitized version communicated by electronic means such as facsimile or e-mail, provided the identity of the sender and integrity of such electronic means can be determined with sufficient certainty.
- 16.4 The section headings in this Agreement are for convenience only and shall not be used in construing or interpreting either.

- 16.5 The applicability of any general terms and conditions supplied by Licensee is explicitly rejected. Any terms, conditions or exceptions that deviate from this Agreement are binding upon Enterprise Modules only if explicitly confirmed in writing by an authorized officer of Enterprise Modules.
- 16.6 In the event that any part of the agreement or these terms and conditions become or are declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect the rest of this agreement. The parties shall in such a case determine one or more replacement provisions that most closely approximate the clause concerned and which is legal under applicable law.