

# Passenger Enterprise Cloud End User License Agreement

Version 2015-10-20

## Thank you for looking into Passenger Enterprise!

Please read these terms and conditions carefully before using Passenger Enterprise (also known as: the Software). We know this is boring, but this is a legal agreement between you (the natural or legal person acquiring the Software) and Phusion B.V.

You acknowledge, upon installation and/or use of the Software, that you have reviewed, understood and agreed to all of the terms and conditions set forth in this agreement. By clicking to accept the agreement, downloading the Software, and/or using the equipment that contains the Software, you consent to be bound by this agreement.

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## The parties

This is an agreement between two parties:

1. **Phusion B.V.**

Incorporated and registered in The Netherlands, under Chamber of Commerce number 63501007, having its principal place of business at:  
7512 EB, Enschede at the Mooienhof 10-83, in The Netherlands,  
*further referred to as: Licensor or Phusion.*

2. **You,**

The natural or legal person that obtains, or desires to obtain, a license to use the

Licensed Product,  
*further referred to as: Licensee.*

These parties agree to the terms and conditions set forth in this document.

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## Definitions

### Agreement

This Agreement: the Passenger Enterprise End User License Agreement between Licensor and Licensee.

### Credits

Credits provide the right to non-concurrently use the Licensed Product, on a particular Server, for a particular time slot. Details about credits, time slots and billing can be found on the website [www.phusionpassenger.com](http://www.phusionpassenger.com).

### Licensee's Data

1. The Licensed Product shall only transfer data via Internet that was made public by Licensee through its web application or using the settings in the Licensed Product itself.
2. Licensee's data can consist of digital information, including but not limited to numbers, text, graphics, photos, audio, video, software, or other information.

### Licensor

The licensor is Phusion B.V., the developer of the application generally known as Passenger Enterprise (the "Licensed Product").

### Licensee

Licensee is the natural or legal person that obtains, or desires to obtain, a limited, non-exclusive, non-sublicensable, nontransferable, and non-assignable license to use the Licensed Product under the terms of the Cloud End Users License Agreement.

### Licensed Product

The Licensed Product is Passenger Enterprise, the enterprise version of Passenger. This includes the software that is installed, will be installed, and/or is already running on the server(s) of Licensee; as well as any associated media, printed and/or (electronic)

documentation. Excluded in the Licensed Product are: any operating system(s) or other necessary software, hosting, any database server(s) and other possible hardware and/or software in order to be able to use Licensee's web application.

## **Passenger Enterprise**

Passenger Enterprise is an application server for web applications. General product information about Passenger Enterprise, and information about supported software, programming languages, platforms and/or server systems can be found on the website [www.phusionpassenger.com](http://www.phusionpassenger.com). Optimal performance of Passenger Enterprise is only possible if the necessary environment (including hardware, software, network, operating systems etc.) is installed and functioning properly. Although Passenger Enterprise contains several features to analyze and reduce problems in Licensee's web application, these features have limitations and they are no substitute for a well-coded web application.

## **Server**

1. If Licensee makes use of virtualization, then a Server is a virtual machine.
2. If Licensee makes use of containerization (e.g. Docker), then a Server is a Docker host.
3. If Licensee makes use of Heroku, then a Server is a Heroku dyno.
4. Otherwise, a Server is a physical machine.

## **Registered User**

The Registered User is the Licensee who:

1. has officially registered and purchased credits, or,
2. obtained credits on the basis of a tailor made agreement with Licensor, or,
3. obtained free credits, approved by Licensor.

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# **License**

## **Grant of license**

1. Licensor does not sell the Licensed Product to Licensee. Licensor grants to Licensee, and Licensee accepts from Licensor, in exchange of payment for credits, a limited, nonexclusive, nontransferable, non-sublicensable and non-assignable license to use the Licensed Product, during the allotted time slot, solely for Licensee's internal business operations.

2. With a valid license only, licensee can access the website [www.phusionpassenger.com](http://www.phusionpassenger.com), in order to download updates. After expiration of the License(s), Licensee will not be able to use the Licensed Product anymore.
3. The license will automatically expire and the Licensed Product must then be deleted from Licensee's machines, if Licensee's credit balance is zero (0) or negative, and at the same time, Licensee has not obtained new credits for a period of one (1) month or longer.
4. All rights not expressly granted to Licensee are reserved to Licensor.

## **Installation and use**

1. After expiration of the License(s), Licensee will lose access rights to the Licensed Product's download page.
2. Licensee may install the Licensed Product on an unlimited number of machines, provided Licensee has a positive credit balance.
3. The installation, configuration and overall working of third party software is the responsibility of Licensee.
4. For optimal operation of the software a well-functioning and stable Internet connection is indispensable. Licensor is not responsible for the purchase, installation and configuration of this Internet connection.
5. Updates and upgrades are only valid, and may only be installed, if Licensee has a positive credit balance (non-negative and not zero (0)).

## **Registration**

1. Legitimate use of the Licensed Product is made solely available for Registered Users.
  2. After registration and payment, the Registered User will receive a license key in order to use the Licensed Product. Licensee shall install the provided license key on a Server on which Licensee wishes to use the Licensed Product, and which Server is owned or legitimately controlled by Licensee.
  3. The Licensed Product will not operate without a valid license key.
  4. The provided license key contains a code that can be connected to information about the Licensee who purchased a valid License.
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## **Data**

### **Data**

1. The Licensed Product is able to produce usage data, which can be used for administrative and analytical purposes. Usage data produced for analytical purposes can be consumed by services such as Union Station.
1. Licensee retains at all times ownership of Licensee's data. Licensors retain all rights concerning usage data.
2. Licensee is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all of Licensee's data.
3. Licensee is responsible for maintaining an archive or back-up copy of all of Licensee's data.
4. Licensors are not liable for any loss of Licensee's data or any other data, in any case.
5. Licensors are not liable for the failure of the Licensed Product to store, transmit or publish any of Licensee's data, or any other data.
6. Licensors will not disclose Licensee's data, unless required by law.
7. Licensors may access and use Licensee's data to respond to a support issue.
8. Licensors reserve the right to limit: the network bandwidth, the memory, or the storing, publishing or transmitting of data.

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### **Personal information**

1. Licensors, or any third party contracted by or affiliated with Licensors, may share Licensee's personal information with partners or suppliers in order to fulfill the service or product Licensee has ordered. The information may include Licensee's (company) name, (company) address, e-mail address, credit card information, VAT-number, country, or the companies used to process credit card or other payment types.
2. This data is used only for the purpose of fulfilling orders or communicating with customers, partners, or suppliers regarding orders.
3. The aforementioned information can be stored on the system(s) of Licensors, or through, or on the system(s) of a third party (payment gateway).

4. Personally identifiable information will only be disclosed if required by law, regulation, or other government authority, to prevent harm to yourself or others, or to protect against fraud.
  5. Licensor is not liable for inadvertently disclosed personal information, as in case of bugs, hacks, or other external perils.
  6. Personally identifiable information may be transferred to a successor entity upon a merger, consolidation, or other corporate reorganization in which Licensor, or any third party contracted by or affiliated with Licensor, participates or to a purchaser of all or substantially all of Licensor's assets. Such successor entity shall be bound by the terms and conditions of this Agreement.
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## **Software**

### **Ownership and intellectual property**

1. Licensee acknowledges that Licensor holds, or holds on behalf of the legal proprietor, all and any rights concerning the Licensed Product, including all associated copyrights, patents, trademarks, trade secrets and other intellectual property and proprietary rights, registered or unregistered.
2. Licensee may create a backup copy of the Licensed Product for safekeeping reasons only. Licensee may not distribute, resell, or share, the Licensed Product or any portions of the Licensed Product.
3. Licensor may use the trademark and / or trade name of Licensee for promotional purposes on websites and / or printing, unless explicitly agreed otherwise.
4. All trademarks contained in the Licensed Product are trademarks or registered trademarks of Licensor, or Licensor is entitled to hold and use such trademarks on behalf of the legal proprietor, unless stated otherwise.
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### **Confidential Information**

1. Licensee acknowledges that the Licensed Product, (including e.g., source code, processing methods, design, benchmark results or other performance related measurements), constitute valuable trade secrets of Licensor.

2. Licensee will hold all confidential information in strict confidence and will not disclose the information, except if the information is in the public domain, or if disclosure is mandatory by law or a tribunal.

## **Updates and upgrades**

Licensor will provide, upgrades, updates, modifications, and enhancements at no additional cost, at the sole discretion of Licensor. These will be made available through the website [www.phusionpassenger.com](http://www.phusionpassenger.com).

## **Third party software**

1. Licensee acknowledges that operation of the Licensed Product might require use of certain third party software (e.g. server software, applications, operating systems).
2. Licensor will not provide, install nor configure such third party software, or other software of Licensor, to Licensee. Licensee will have the sole responsibility to obtain valid licenses to such third party software, or other software of Licensor, at Licensee's sole expense.

## **General limitations**

The Licensed Product is not intended for use in the operation of nuclear facilities, aircraft navigation or communication systems, espionage operations, air traffic control systems, life support machines or other equipment in which the failure of the Licensed Product could lead to death, personal injury, or severe physical or environmental damage.

## **Additional restrictions**

1. Use of the Licensed Product with other software than the supported software is strongly discouraged. Licensor is not liable in case of damage using unsupported software.
  2. Licensee may not copy, modify, merge, sublicense, and create derivative works of, the Licensed Product, in whole or in part.
  3. Licensee will not attempt, or allow others under its control to attempt, to obtain or derive information from or about the Licensed Product through disassembly, decompiling, reverse engineering or any other means.
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## Prices and payment

### Payment

1. The Licensed Product will only be available after credits have been purchased.
2. Credits can be purchased on the website [www.phusionpassenger.com](http://www.phusionpassenger.com).
3. Details about credits, time slots, payment and billing can be found on the website [www.phusionpassenger.com](http://www.phusionpassenger.com).
4. Credits will expire after a period of one (1) year.
5. Paid for, and / or unused credits are nonrefundable.
6. Licensee will not be relieved of its payment obligation in case Licensee's credit card payment is cancelled by a chargeback. In case of a chargeback, the license will automatically expire.

### Prices

1. Licensor retains the right to change the price for credits at any time.
2. The price of credits can be found on the website [www.phusionpassenger.com](http://www.phusionpassenger.com).

### VAT

1. Licensee may be charged VAT (value added tax) according to the Dutch VAT laws.
2. The third party payment gateway (e.g. FastSpring) may collect VAT on behalf of Licensor. If the third party payment gateway does not collect VAT on behalf of Licensor, then Licensor will collect VAT from Licensee if so required by Dutch VAT laws.
3. During the sign up procedure, Licensee will be informed if VAT will be charged.

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## Security and passwords

1. At all times, Licensor shall use commercially reasonable endeavors to keep your data protected and to secure and safeguard important (data) connections.
2. Licensor retains the right to operate the Licensed Product using a third party provider and/or hosting facility.
3. Despite the use of highly secure data (connections), Licensor cannot and does not guarantee the privacy, security, or authenticity of any information so transmitted over the Internet.
4. Licensee's login data is strictly personal and shall not be forwarded to anyone else. Licensor does not know and is not able to retrieve Licensee's login data.



5. Licensor is not responsible or liable for any lost login data, or for any loss or damage arising from Licensee's failure to comply with the requirements in this paragraph.
  6. Licensee agrees to immediately notify Licensor of any unauthorized use or any other breach of security.
  7. Licensee shall use all commercially reasonable endeavors to secure and protect the Server on which the Licensed Product is installed.
  8. Licensee is entirely responsible for any and all activities by using the Licensed Product.
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## **Warranty, Indemnity and Liability**

### **Warranty**

1. Licensor represents and warrants that it holds, or holds on behalf of the legal proprietor, all and any rights concerning the Licensed Product and has the authority to grant the license. To the best of Licensor's knowledge, use of the Licensed Product, within the scope of such license, does not infringe upon the intellectual property rights of any third party and it did not receive any alleged infringement thereof.
2. Licensor warrants that the Licensed Product shall perform substantially in accordance with any representations made by Licensor. The entire and exclusive remedy for breach of this Limited Warranty shall be, at Licensor's option, either:
  - the return of the monetary value of the currently remaining credits , or
  - to repair, upgrade, or otherwise enhance the performance of the Licensed Product to address the failure of performance.
3. Except as stated above, the Licensed Product and its related material are provided "AS IS" and are without warranty of any kind. Licensor therefore expressly disclaims all warranties, whether express, implied or statutory, including but not limited to, warranties of merchantability and fitness for a particular purpose, design, condition, capacity, performance, title and non-infringement of third party rights.
4. The aforesaid warranties and disclaimer shall survive acceptance and payment.

### **Indemnity**

Licensee will indemnify and hold Licensor, its affiliates, directors, officers and employees, harmless from and against all damages, liabilities, costs and expenses (including reasonable fees of counsel and other professionals), arising from or out of Licensee's

operation, third party agreements, conduct, and responsibility for its use of the Licensed Product.

## **Liability**

1. In no event will Licensor be liable to Licensee for loss of profits, loss of revenues, loss of savings, loss of use, loss or corruption of data or any indirect, incidental, special, exemplary, punitive or consequential damages, whether under tort, contract or other theories of recovery, even if Licensor had been advised of the possibility of such damages.
2. Licensee exclusively bears full and complete liability and responsibility for the selection of the product to achieve Licensee's intended purposes, for the proper installation, use, or reliance, or for verifying the results obtained from use, of the Licensed Product, even if such were to produce incorrect information or erroneous results.
3. In no event will Licensor's total liability under this Agreement, or as a result of the license and use of the Licensed Product, exceed the total amount of the used and unused credits of the month in which Licensee has made the complaint.
4. Licensor is not liable in case it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of any computer, or utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that Licensee is notified of such an event and its expected duration.

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## **Service and support**

1. Service and support will only be provided on the basis of a positive credit balance. This means that if Licensee has no outstanding credits, support will not be provided.
2. Service and support of the latest version of the Licensed Product is included, at no additional cost for Licensee. Versions older than the most recent version of the Licensed Product will be supported for a maximum of two (2) years after the date of release.
3. Service and support is limited to the Licensed Product only. Licensor does not provide any form of support or service concerning Licensee's software and/or

- hardware configuration, like e.g. its network, operating system, third party software, applets, scripts, or other code.
4. Licensee may purchase priority support services separately at the Licensor's then current rates. For further details please contact Licensor.
  5. The Licensed Product will be installed and used on Servers maintained and secured by Licensee, or contracted for by Licensee.
  6. Licensor reserves the right, to only provide service and support to the Licensed Product on the basis of certain versions of any supportive software (web servers, plugins etc.).
  7. Licensee can make use of online technical support, made available via [www.phusionpassenger.com](http://www.phusionpassenger.com).
  8. Service and support shall include the following:
    - the diagnosis of errors in the Licensed Product and the rectification of such errors (remotely) by the issue of fixes of the Licensed Product,
    - any other support service offered to Licensee by Licensor.
  9. Service and support shall not include the diagnosis and rectification of any errors resulting from:
    - any alteration or modification to the Licensed Product not made by Licensor,
    - any incorrect or improper use of the Licensed Product,
    - the failure by Licensee to implement recommendations in respect of any solutions to errors previously advised by Licensor,
    - the use of the Licensed Product for any purpose for which it was not designed.
  10. Possible support questions and/or inquiries from Licensee may be stored on third party systems.
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## Miscellaneous

1. Licensee will comply with all applicable laws and regulations in its use of the Licensed Product.
2. Any rights granted under this Agreement are immediately revoked if Licensee:
  - illegally acquires access to the Licensed Product by circumventing, hacking or cracking the serial code or by breaking any other protective measures,
  - illegally acquires credits,
  - fails to inform Licensor about an important alteration in Licensee's business structure,
  - provides Licensor with falsified or fraudulent information during, as a part of, or in an update to, the registration process, or for lack of compliance with any provision of this Agreement.

3. Licensee is responsible for paying all sales, use, excise valuated, value added tax, or other taxes or governmental charges in addition to distribution, insurance and installation charges or other duties, unless expressly agreed otherwise in writing.
4. If a court of competent jurisdiction declares any term or provision of this Agreement invalid or unenforceable, the remaining provisions shall remain in full force and effect.
5. In the event that any of the provisions contained in this Agreement are held to be unenforceable, such provisions will be narrowed (or deleted if necessary) to the minimum extent necessary to make them enforceable.
6. No alteration, modification, or amendment of this Agreement shall be effective or enforceable unless it is made in writing and signed by the parties or if the Subscription Term will be extended.
7. Licensee acknowledges to be bound by all of the provisions of this Agreement.
8. In the case of any dispute between Licenser and Licensee, Dutch law, in the Dutch language, shall be applicable and the district court of Almelo, The Netherlands, will be the single competent court, unless another court has jurisdiction.

## More information

To learn more about Passenger Enterprise, please visit the website:

<https://www.phusionpassenger.com/>

### Contact us

*Phusion B.V.*

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### General information

European Union VAT number: NL855263180B01  
Dutch Chamber of Commerce number: 63501007



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