

Passenger Enterprise End User License Agreement

Version 2016-10-07

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.

If you do not agree with these terms, do not install or use the Software. If you have already installed the Software and do not agree to these terms, please uninstall the software and immediately discontinue its use. If you do not agree to all of the terms in this agreement, please immediately discontinue the download, installation and/or use of the Software.

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:

1013 GL, Amsterdam at the Haarlemmer Houttuinen 15 begane grond, 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.

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 in combination with a Metered Subscription Plan, 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 or through a Phusion salesperson. Credits are only applicable when Licensee is on a Metered Subscription Plan.

Credit Balance

Licensee has a Credit Balance if Licensee obtained a Metered Subscription Plan. The Credit Balance is considered positive if and only if it is non-negative and not zero (0).

Licensee's Data

1. Licensee's Data is, amongst others, the data derived from Licensee, handled by the Licensed Product on behalf of Licensee, and stored by Licensee on Server(s) owned, controlled or operated by Licensee. Licensee's Data does not include personal information. Personal information is explained in section "Personal information".
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, non-transferable, and non-assignable license to use the Licensed Product.

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.

The Licensed Product will only be operational after a valid license key has been entered. A license key is provided by Licensor after Licensee has obtained a Subscription.

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. 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

In order to establish which Server definition is applicable in your situation, the following list shall be applied in order of processing, starting with number 1.

1. If Licensee is hosted on Amazon® Web Services EC2, then a Server is an EC2 Instance.
2. If Licensee makes use of Heroku, then a Server is a Heroku dyno.
3. If Licensee makes use of containerization (e.g. Docker), then a Server is a container host (e.g. Docker host).
4. If Licensee makes use of virtualization, then a Server is a virtual machine.
5. Otherwise, a Server is a physical machine.

Production Server

A Production Server is defined as a Server, which is expressly used in a production environment.

Subscription Term

The concept of “Subscription Term” only applies to Normal Subscription Plans. Metered Subscription Plans do not have this concept because they are perpetual (Metered Subscriptions last until termination).

A monthly Subscription Term recurs on the same day of the month, resulting in 12 payments per year. Over many occurrences the day of the month will be no more than the 28th.

Subscription Plan

The Licensed Product is made available through a Subscription Plan. Subscription Plans are available in two categories:

- **Normal Subscription Plans**, which charge subscription fees according to a per-server basis.
- **Metered Subscription Plans**, which charge subscription fees according to a per-server-per-hour basis, i.e. in a “pay-as-you-go” manner.

Further details concerning subscription plans are made available in the section “Subscription Plans”, as well as on the website www.phusionpassenger.com and/or through Phusion salespeople.

Subscription

A Subscription is the right to use the Licensed Product, on the basis of a Subscription Plan, and either during the Subscription Term (for Normal Subscriptions) or on the basis of a Credit Balance (for Metered Subscriptions).

A Normal Subscription is a Subscription on the basis of a Normal Subscription Plan. It is considered valid if and only if all of the following applies:

1. It is issued by Licensor to Licensee under one of the following conditions:
 - a. Licensee registered with and paid Licensor, after which Licensor grants Licensee a valid Normal Subscription,
 - b. Licensor grants a (free or tailor-made) Normal Subscription, at Licensor’s sole discretion.
2. It is not expired (i.e. the Subscription Term has not yet ended).

A Metered Subscription is a Subscription on the basis of a Metered Subscription Plan. It is considered valid if and only if all of the following applies:

1. It is issued by Licensor to Licensee under one of the following conditions:
 - a. Licensee registered with Licensor, after which Licensor grants Licensee a valid Metered Subscription,
 - b. Licensor grants a (free or tailor-made) Metered Subscription, at Licensor's sole discretion.
2. It is not terminated, or it is terminated but there is a positive Credit Balance.

It is possible for Licensee to obtain multiple Subscriptions, e.g. for the purpose of raising the maximum number of Servers on which the Licensed Product may be installed. More details can be found in the section "Subscription Plans".

License

Grant of license

1. Licensor does not sell the Licensed Product to Licensee. Licensor grants to Licensee, and Licensee accepts from Licensor, possibly in exchange of a fee, a limited, non-exclusive, non-transferable, non-sublicensable and non-assignable license to use the Licensed Product, solely for the Licensee's internal business operations, at Licensor's sole discretion.
2. Licensee is considered to have a valid License if and only if Licensee is in possession of a valid Subscription.
3. With a valid license only, Licensee is entitled to install and use the Licensed Product, as well as access to updates, upgrades, service and/or support.
4. If Licensee is no longer in possession of a valid license, e.g. because the license expired, then the Licensed Product will technically continue to operate, but Licensee will not have any rights to installation, use, updates, upgrades, service and/or support.
5. All rights not expressly granted to Licensee are reserved to Licensor.

Installation and use (when Licensee is on a Normal Subscription Plan)

1. The maximum number of Servers on which Licensee may install the Licensed Product, as well as other kinds of terms and conditions, depends on the specific Subscription Plan that Licensee has obtained. For an overview of terms and conditions associated with each Subscription Plan, see section "Subscription Plans".
2. Licensee may at any time move the Licensed Product from one Server to another, however the number of concurrent installations of the Licensed Product shall never exceed the number of Servers for which the applicable License Fee has been paid.

3. If Licensee holds more than one (1) Subscription, of which at least one (1) is expired and at least one is still valid, then updates, upgrades and/or support are only valid, and may only be installed, on the Server(s) for which Licensee holds valid Subscription(s).

Installation and use (when Licensee is on a Metered Subscription Plan)

1. Licensee may install the Licensed Product on an unlimited number of machines, provided Licensee has a positive Credit Balance.
2. 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.
3. Additional terms and conditions are applicable, but they depend on the specific Subscription Plan that Licensee has obtained. For an overview of terms and conditions associated with each Subscription Plan, see section "Subscription Plans".

License Key

1. After registration Licensee will receive a license key in order to use the license. Licensee shall install the provided license key on every Server on which Licensee wishes to use the Licensed Product.
2. The Licensed Product will not operate without a valid license key.
3. The provided license key contains a code that can be connected to information about the Licensee who purchased a valid License.

Data

Usage data

1. The Licensed Product is able to produce usage data, which can be used for administrative, billing and analytical purposes. Usage data produced for analytical purposes can be consumed by services such as Union Station.
2. Billing data can currently contain, amongst others,
 - the Server's host name,
 - the Server's IP address,
 - the Server's hardware specifications,
 - a unique identifier for identifying Licensor.
3. The Licensed Product sends billing data to Licensor, only if Licensee is on a Metered Subscription Plan, or if the user has instructed the software to send billing data to Licensor.

4. The usage data can currently contain, amongst others,
 - server memory usage,
 - memory usage of various processes,
 - the time (that would be necessary) to process a browser request,
 - the URL of the request (this may be a secret URL that may contain sensitive information, such as Licensee's password via a GET request. Licensor cannot determine whether this is the case),
 - database queries, and execution time,
 - application specific errors. These errors possibly contain user-generated messages (to facilitate debugging of the application).
5. The Licensed Product does not send any usage data to Licensor, or any third party, unless the user has instructed the software to do so (e.g. by turning on relevant Union Station-related configuration options).

Cookies

Licensor or any third party affiliated with Licensor or contracted by Licensor may use cookies on their website(s). Cookies are small text files to improve the overall performance of the website(s). The cookies are used only to identify the customer, not to identify any specific customer traits. These cookies do not store sensitive data. Cookies are used on e.g. the download page for storing the authentication session.

Personal information

1. Licensor, or any third party contracted by or affiliated with Licensor, 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 Licensor, or through, or on the system(s) of a third party (payment gateway).
4. The license key that Licensor provides to Licensee may contain a limited amount of personally identifiable information about Licensee or any natural person(s) representing Licensee (e.g. name, company name, and the expiration date of the Subscription Term).
5. Personally identifiable information will only be disclosed to be able to execute this Agreement, or if required by law, regulation, or other government authority, or to prevent harm to yourself or others, or to protect against fraud.

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.

Licensee's data

1. Licensee retains at all times ownership of Licensee's data.
2. The Licensed Product shall only transfer data via Internet that was made public by Licensee through Licensee's web application or using the settings in the Licensed Product itself.
3. Licensee is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all Licensee's data.
4. Licensee is responsible for maintaining an archive or back-up copy of all of Licensee's data.
5. Licensee is responsible for making backup copies of the Licensed Product's files, as well as of the application.
6. Licensor is not liable for any loss of Licensee's data or any other data, in any case.
7. Licensor is not responsible or liable for the deletion, correction, destruction, loss, infringement, or failure of the Licensed Product to store any of Licensee's data, or any other data.
8. Licensor will not disclose Licensee's data, unless required by law.

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.
5. The trademarks “Ruby on Rails” and “Rails” are registered trademarks of David Heinemeier Hansson. “Python” is a trademark of the Python Software Foundation. “Node.js” is a trademark van Joyent Inc. “Ruby” is copyrighted free software by Yukihiro Matsumoto. “Amazon” and “EC2” are registered trademarks of Amazon, inc.

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.

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.

Recognition appliance

1. In case Licensee is on a Metered Subscription Plan, Licensor reserves the right to make use of a recognition appliance to determine the presence of various software and hardware on Licensee's machine, in order to provide the best possible service and/or to determine the hourly credits to deduct. The recognition application may report data to Licensor's servers. The data reported is billing data, as described in section "Usage data".
 2. If the recognition appliance is inadvertently blocked, altered, removed or otherwise prevented, Licensee must notify Licensor at once and Licensee should make every effort to eliminate said blockade immediately.
 3. Licensor shall do everything within its power to support Licensee to establish the proper working of the recognition appliance. This could include support about a firewall or other software.
 4. Intentionally blocking, deleting, altering or otherwise obstructing or hindering the proper functioning of the recognition appliance is prohibited.
 5. If Licensee acts contrary to the provisions of paragraph 4, all rights to use the software will expire immediately. User will then be liable for damages to Licensor or any third parties, for any damage caused by the prohibited action.
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Subscription Plans

Trial Subscription Plan

- The Trial Subscription Plan is a Normal Subscription Plan.
- Licensor offers the possibility of a Trial Subscription Plan under the following conditions.
- The Trial Subscription Plan is an additional clause to the Agreement, applicable only if Licensee chooses a Trial Subscription Plan.
- A Trial Subscription does not automatically extend. It may be extended at Licensor's sole discretion.
- The Licensed Product may be installed and used on an unlimited number of Licensee's Servers.
- Licensee and its affiliates, trustees, officers, employees, and agents and their respective successors, heirs and assigns are entitled to one (1) Trial Subscription only.
- Licensee is not entitled to any support, on Licensee's Servers which are using Trial Subscriptions.

Startup Subscription Plan

1. The Startup Subscription Plan is a Normal Subscription Plan.
2. Licensor offers the possibility of a Startup Subscription Plan under the following conditions.
3. The Startup Subscription Plan is an additional clause to the Agreement, applicable only if Licensee chooses a Startup Subscription Plan.
4. The Licensed Product may only be installed and used on a maximum of one (1) of Licensee's Servers, per Subscription, simultaneously.
5. The Startup Subscription Plan is available for startups, students, educational institutions, and other non-profit institutions only.
 - A startup is a commercial entity that is no older than three (3) years and has no more than five (5) people.
 - An educational institution is a (pre)school, college or university, which main aim is to educate students in order for them to receive an official, government controlled, certification, deed, or diploma.
 - A student is the individual who is officially registered at an educational institution (see definition above). In order to receive the discount, the student may have to provide a copy of their registration or student card of the educational institution. Licensor may ask the student to renew the copy of the registration of the educational institution for every Subscription Term.
 - A non-profit Institution is an organization, which is officially labeled as a non-profit organization, and is not conducted or maintained for the purpose of making a profit. Its owners, shareholders, or trustees do not benefit financially.
6. The Startup Subscription Plan will be offered at a discount specified by Licensor. The price is available through the website www.phusionpassenger.com or through a Phusion salesperson.
7. If Licensee does not qualify as a startup, a student, an educational institution, or a non-profit institution (anymore), according to the definition in this clause, then Licensor is entitled to withdraw the Startup Subscription, or offer Licensee the possibility to change to a different Subscription Plan.
8. Licensee is entitled to support for a maximum of one (1) incident per year, on Licensee's Servers which are using Startup Subscriptions.

Pro Subscription Plan

1. The Pro Subscription Plan is a Normal Subscription Plan.
2. Licensor offers the possibility of a Pro Subscription Plan under the following conditions.

3. The Pro Subscription Plan is an additional clause to the Agreement, applicable only if Licensee chooses a Pro Subscription Plan.
4. The Licensed Product may only be installed and used on a maximum of one (1) of Licensee's Servers, per Subscription, simultaneously.
5. Licensee is entitled to support for a maximum of one (1) incident per month, on Licensee's Servers which are using Pro Subscriptions.

Non-Production Subscription Plan

1. The Non-Production Subscription Plan is a Normal Subscription Plan.
2. Licensor offers the possibility of a Non-Production Subscription Plan under the following conditions.
3. The Non-Production Subscription Plan is an additional clause to this Agreement, applicable only if Licensee chooses a Non-Production Subscription Plan.
4. The Licensed Product may only be installed and used on a maximum of one (1) of Licensee's non-production Servers, per Subscription, simultaneously. A non-production Server is defined as a Server, which is expressly not used in a production environment, e.g. a developer machine, a staging machine or testing machine.
5. Licensee is not entitled to any support, on Licensee's Servers which are using Non-Production Subscriptions.

Cloud Subscription Plan

- The Cloud Subscription Plan is a Metered Subscription Plan.
- Licensor offers the possibility of a Cloud Subscription under the following conditions.
- The Cloud Subscription Plan is an additional clause to this Agreement, applicable only if Licensee chooses a Cloud Subscription Plan.
- The Licensed Product may be installed and used on an unlimited number of Licensee's Servers.
- Licensee is entitled to support for a maximum of one (1) incident per month, on Licensee's Servers which are using Cloud Subscriptions.

Prices, credits and payment

Payment of Subscription Fees (in case of Normal Subscription Plans)

1. Subscription fees are non-refundable in any case.

2. Subscription fees shall be prepaid before the beginning of each Subscription Term, unless specified otherwise by Licensor or unless otherwise negotiated.
3. In case of non-payment of the subscription fee, the Subscription will terminate automatically. Licensee's license to use the software will immediately expire.
4. Licensee has the possibility to pay the subscription fee:
 - a. through a third party payment gateway (e.g. FastSpring), by making use of a credit card. After expiration of the Subscription Term, the third party payment gateway will automatically charge the prepaid Subscription Fee for the upcoming Subscription Term from Licensee's account.
 - b. using another payment method, other than through a third party payment gateway or payment by credit card.
5. After payment of the Subscription Fee, Licensee receives a message that the Subscription Fee has been debited from their account.

Credits (in case of Metered Subscription Plans)

1. Credits can be purchased on the website www.phusionpassenger.com or through a Phusion salesperson.
2. Details about credits, time slots, payment and billing can be found on the website www.phusionpassenger.com or through a Phusion salesperson.
3. Credits will expire after a period of one (1) year if they are not used.
4. Licensee charges Credits on a per-Server-per-hour basis. Credits are deducted from Licensee's Credit Balance.

Payment of Credits (in case of Metered Subscription Plans)

1. Payments for Credits are non-refundable in any case.
2. Payments for Credits shall be prepaid before the Credit Balance is incremented, unless specified otherwise by Licensor or unless otherwise negotiated.
3. Licensee has the possibility to pay the Credits:
 - a. through a third party payment gateway (e.g. FastSpring), by making use of a credit card.
 - b. using another payment method, other than through a third party payment gateway or payment by credit card.
4. After payment for Credits, Licensee receives a message that the Subscription Fee has been debited from their account.

Prices

1. Licensor retains the right to change the amount of subscription fees and Credit prices for any Subscription Plan at any time.

2. The new price(s) for Normal Subscription Plans will come into effect after expiration of the Subscription Term of a specific Subscription.
3. The new price(s) for Metered Subscription Plans will come into effect on a date as communicated with Licensee.
4. Licensor is allowed to automatically increase the subscription fees and Credit prices for existing Subscription Plans up to 10% per year, if Licensor can provide credible reasoning that the price defining factors have increased between billing terms. Price defining factors could be:
 - a. inflation,
 - b. the exchange rate risk and currency fluctuations, or,
 - c. the hiring of additional employees necessary for maintaining the Licensed Product.
5. Licensee will be notified of any subscription fee or Credit price increases at least one month in advance.
6. In case of price increments, Licensee can choose not to purchase more Credits or not to extend the Subscription past the current Subscription Term.

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, and before payment, Licensee will be informed if VAT will be charged.

Miscellaneous

With respect to any (invoice) amounts not paid in full within 30 days (or any other agreed upon payment term with Licensor) of receipt, a finance charge of 5% per week, payable from the date of the invoice to the date payment is received, shall be due and payable to Licensor. In addition, Licensee shall indemnify Licensor for its costs, including reasonable attorneys' fees and disbursements, incurred to collect any unpaid amount.

Terms, termination and refunds

Term (in case of Normal Subscription Plans)

1. Available Subscription Terms are communicated during the sign up process. The Subscription Term is agreed upon during the sign up process. The sign up process is effected either through the sign up forms at www.phusionpassenger.com or through communications with a Phusion salesperson.
2. Subscriptions will be automatically extended with the Subscription Term, unless:
 - Licensee terminates the Subscription, or
 - the specific Subscription Plan does not automatically extend.
3. Extension of the Subscription includes Licensor's right to issue a new version of this Agreement.

Termination

1. Licensee may terminate a Subscription at any time without any cancellation costs.
2. Any remaining and unpaid subscription fees, and other amounts that accrued prior to the effective date of termination, shall be paid before termination takes effect.
3. Termination of this Agreement shall rescind the license granted and revoke all rights granted to or accrued by Licensee to use the Licensed Product.
4. Licensor may terminate this Agreement, if Licensee fails to perform any of its obligations, or otherwise breaches this Agreement, and fails to cure the failure or breach within fifteen (15) days after written notice.
5. Termination of a Subscription implies complete removal of the software, without the possibility of a refund.
6. Termination of this Agreement will not limit either party from any remedies or rights.
7. The following provisions of this Agreement will survive any termination of this Agreement: Confidentiality, Indemnity, Liability, Prices, Credits and Payment, and Warranty.

Refunds

1. Licensor maintains a no refund policy.
2. Licensee will not be relieved of its payment obligation in case Licensee's credit card payment is cancelled using a chargeback. If Licensee uses a chargeback, the License will automatically expire, and Licensee is obliged to fully remove the Licensed Product from Licensee's servers.

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 Subscription. 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 paid subscription fee(s) of the last Subscription Term, or
 - the return of the paid credit(s) of the past month, 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 aggregate amount of the fees actually paid under this Agreement by Licensee to Licensor, taken ratably for licenses in use by Licensee in the Subscription Term preceding a claim.
4. This limitation of liability may not apply to Licensee in some jurisdictions, which do not permit limitations on liability of this nature.
5. 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.

Third parties

Third party agreement

1. Licensee acknowledges that in order to use the Licensed Product on a third party hosting provider (e.g. on Amazon EC2), a separate agreement with this third party should be concluded. Licensor is not part of said agreement or legal relationship between Licensee and the third party and will not become involved in any way.
2. In addition to said agreements with any third party (e/g/ Amazon), this license between Licensor and Licensee remains unimpaired.
3. In case of conflicting clauses between this License and any third party agreements between Licensee and any third parties, the clause of this license will always prevail.
4. Licensor is not responsible or liable for the loss of any data, including login data, of any third party provider.

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.

Third party hardware

1. Licensee acknowledges that in order to use the Licensed Product it is possibly necessary to install the Licensed Product on third party hardware.
2. Licensor is not liable for the installation, settings, or any use of the Licensed Product on the servers of third parties.

Service and support

1. Licensee is entitled to support from Licensor. The support level depends on the Subscription Plan. Please refer to section "Subscription Plans" for details.
2. Licensor retains the right to provide more support than the standard support, as described in the section "Subscription Plans", but Licensor can never be obliged to provide this extra support.
3. Service and support will be provided on the basis of a valid Subscription only.
4. Service and support is provided for the latest version of the Licensed Product. 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.
5. 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, third party Servers such as Amazon EC2 instances, applets, scripts, or other code.
6. Licensee may purchase premium support services separately at the Licensor's then current rates. For further details please contact Licensor.
7. The Licensed Product will be hosted on Servers maintained and secured by Licensee, or contracted for by Licensee.
8. 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.).
9. Licensee can make use of online technical support, made available via www.phusionpassenger.com.
10. 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.
11. 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.
12. Possible support questions and/or inquiries from Licensee may be stored on third party systems.

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,
 - fails to inform Licensor about an important alteration in Licensee's business structure, e.g. losing the qualification "startup company",
 - 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 case of any disputes between Licensor and Licensee, Dutch law, in the Dutch language, shall be applicable and the district court of Amsterdam, The Netherlands, will be the single competent court, unless another court has jurisdiction.
9. In case of any disputes, the parties will firstly try to amicably settle the dispute by fully exploiting alternative dispute resolution methods such as renegotiation and mediation, before starting litigation.

More information

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

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

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General information

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