# **Phusion Beta Testing**

# **End User License Agreement**

Version 2018-01-25

# Thank you for participating in the Fuse Panel Beta!

Please read these terms and conditions carefully before using the Fuse Panel Beta (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.

#### General

The Phusion Beta Testing End-User License Agreement ("EULA") is a legal agreement between you (a natural or a legal person) and Phusion B.V. (chamber of commerce number 63501007). The Beta version software (Software product) includes: computer software, programs, its code, objects including their API's, as well as any images, photographs, templates, animations, video, audio, music, text, and "plugins" incorporated into the software, the accompanying printed materials, and "online" or electronic documentation. By installing, downloading, creating a digital copy, or otherwise using the Software product, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install or use the Software product. The Software product should then be deleted from your system(s).

Beta version software products are software products that are still under development and testing, and are not supported. If you download a beta version

software product then you are getting an exclusive look at a new software product and you are also acting as a testing user for this product. Therefore, any bugs, problems or suggested improvements should be reported using the e-mail address: customersuccess@phusion.nl.

#### Grant of license

Phusion grants you a limited, non-transferrable, non-exclusive license to use the Software product solely for testing purposes. As a beta version, the Software product is still under development and is likely to contain bugs. Thus, you are solely responsible for ascertaining the fitness of the Software product for your permitted use, and for checking that it is sufficiently free from error and malfunction for such use. This EULA grants you a license pursuant to the previous sentence only, and is not a sale of the Software product. If Phusion intends to distribute a commercial release of the Software product, Phusion reserves the right at any time to alter prices, features, licensing terms, or other characteristics of the commercial release. Phusion reserves the right at any time to withdraw the license without a particular reason.

## Usage and restrictions

You may install and use the Software product on any computer free of charge for testing purposes without restrictions. You may not incorporate the Software product into any other "commercial" software product, or "resell" or "rent" the Software product as a standalone product or as part of a software product, without Phusion's prior permission.

You agree that you will not use, license, transfer or otherwise dispose of the Software product, the information distributed to you in order to use the product, or documentation in violation of any national or international copyright laws. You undertake also:

- 1. To send fault reports and any questions or suggestions for improvement relating to the beta test software by e-mail only to the e-mail address: customersuccess@phusion.nl.
- 2. Not to disclose the confidential access details of the beta test download site to anyone. Nothing herein contained shall be construed to imply the grant of any license to you of any nature kind or description. All confidential information, and any derivatives thereof created by Phusion remains the property of Phusion and no license of other rights to confidential information is granted or implied hereby.

#### Limitations

The source code underlying the Software product constitutes a trade secret. Thus, you may not reverse engineer, decompile, or disassemble the Software product, except as permitted by applicable law and to the extent that Phusion is not permitted by such applicable law to exclude or limit such rights. Information relating to the Software product, which is necessary to enable the production of software, which is interoperable with the Software product (or with other software) may be available from Phusion.

# Rights

Phusion exclusively owns all rights, title and interest in and to the Software product and any copies of the Software product made by you. The Software product is protected by copyright laws, other laws, and international treaty provisions. Therefore, you must treat and protect the Software product like any other protected material. You may not remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Software product or any copy you make of the Software product. Except as specifically provided for in this EULA, Phusion reserves all of its other rights.

## Indemnity

You will indemnify and hold Phusion, its affiliates, directors, officers and employees, harmless from and against any claims, damages, liabilities, costs and expenses (including reasonable fees of counsel and other professionals), arising from or out of the use of the Software product.

#### Disclaimer

IT IS UNDERSTOOD BY YOU THAT THE SOFTWARE PRODUCT HAS NOT BEEN THOROUGHLY TESTED AND MAY CONTAIN DEFECTS AND THAT PHUSION MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ITS USE, PERFORMANCE, OPERATION, APPLICATIONS PORTABILITY BETWEEN SUBSEQUENT BETA VERSIONS AND FINAL VERSION OR SUPPORT. BY WAY OF EXAMPLE, BUT NOT OF LIMITATION, PHUSION MAKES NO REPRESENTATIONS OR WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IT IS FURTHER UNDERSTOOD BY YOU THAT NO COMMITMENT EXISTS ON THE PART OF PHUSION TO PROVIDE THE SOFTWARE PRODUCT IN A CONDITION SUITABLE FOR USE BY YOU. YOU ACKNOWLEDGE THAT THE SOFTWARE PRODUCT IS DELIVERED ON AN "AS IS" BASIS AND THAT YOUR USE OF THE SOFTWARE PRODUCT SHALL BE AT YOUR SOLE RISK. YOU ALSO AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PHUSION BE LIABLE FOR ANY (i) DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF DATA, LOST PROFITS, OR EXEMPLARY OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEABLE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (ii) ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF

OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE OR PERFORMANCE OF THE SOFTWARE PRODUCT, OR CONTENT DISTRIBUTED THROUGH THE SOFTWARE PRODUCT, WHETHER IN AN ACTION IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.