

MySQL End User License and Support Agreement

This MySQL End User License and Support Agreement (“Agreement”) is by and between MySQL and Customer, both as identified on the Order Form. This Agreement and the Order Form collectively make up the entire agreement of the parties concerning Product (the “Agreement.”) This Agreement is effective as of the Effective Date of the Order Form.

Notwithstanding the first sentence in the preceding paragraph, if no MySQL entity is listed on the Order Form then the MySQL entity will be (a) MySQL Americas Inc. if Customer’s address on the Order Form is in the United States, Canada, or Japan (b) MySQL AB if Customer’s address on the Order Form is in any country other than the United States, Canada or Japan.

Definitions: “Order Form” means the portion of the Agreement so titled preceding the signatures of the parties. “Product” means a complete and unchanged copy of the object code of the MySQL database software product(s) listed on the Order Form, limited to the listed version(s) and limited to the code obtained by Customer from a MySQL-designated portion of the MySQL website.

1. **Grant Of License.** Subject to Customer’s payment for the Product and the other terms and conditions hereof, MySQL grants Customer a limited, non-exclusive, non-transferable (except as set forth in this Agreement) right to: (a) download the Product from a MySQL-designated portion of the MySQL website; (b) for each Product license ordered and paid for by Customer, use one copy of the object code version of the Product generally available from MySQL as of the Effective Date for internal business purposes on a single CPU; and (c) make one additional copy of the Product for backup and archival purposes only. “CPU” means a single central processing unit within a computer. Customer may use the Product only as expressly provided in this Section. Without limiting the foregoing, Customer may not use the Product to provide time-sharing, outsourcing, managed service provider, service bureau or service provider applications, and Customer may not rent, lease, license, modify or distribute the Product.

2. **Upgrades.** If Customer has purchased the Product as an upgrade, Customer must first have a current and valid commercial license to use the previous major release of the Product. After upgrading, Customer may no longer use the previous release of the Product, and the terms and conditions of this Agreement shall supersede the terms and conditions of Customer’s license to use the previous major release. This Agreement applies to each bug fix, supplement or other update to the Product which may be provided to Customer by MySQL in its sole discretion, unless MySQL provides other terms and conditions along with the bug fix, update or supplement. This Agreement does not obligate MySQL to provide any bug fix, supplement or other update.

3. **Support.** In the event Customer purchases from MySQL annual technical support services for the Product, the scope of such services (“Support”) shall be subject to the terms of this Agreement and the terms of MySQL’s then-current (a) support policies, (b) designation of supported platforms, and (c) description of Support features (<http://www.mysql.com/company/legal/> includes links to MySQL’s support policies, supported platforms designations, and Support features). Annual Support shall begin upon the date that MySQL accepts Customer’s order for such Support and shall extend for one (1) year. Such Support shall thereafter renew for successive one-year periods (unless an alternative period is agreed in writing by the parties) unless either party gives at least sixty (60) days notice of non-renewal prior to the expiration of the applicable Support period. MySQL will endeavor to invoice Customer at least thirty (30) days prior to the commencement of each Support renewal. The Support fee for any subsequent years during the term of this Agreement may be increased, at MySQL’s sole option, provided that such Support fee shall not exceed the then-current list price for MySQL support. .

4. **Fees, Payment Terms, and Taxes.** All purchases under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from the date of MySQL’s invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in the quoted currency and are nonrefundable. Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid. Upon written notice, MySQL may elect to discontinue Support to Customer if timely payment is not received, for the period such non-payment continues. Further, in the event that Product is purchased through a reseller rather than directly through MySQL, Support will be suspended if the reseller fails to pay all amounts due to MySQL. All fees are exclusive of applicable taxes or duties. Customer shall be responsible for payment of taxes and duties of any kind payable with respect to the licensing of Software or the purchase

of Support arising out of or in connection with this Agreement, other than taxes levied or imposed based upon MySQL's net income. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing MySQL with an exemption certificate acceptable to the applicable authorities.

5. **Transfers.** Customer may move the Product from one CPU to another within Customer's organization, provided that Customer first removes the Product from the first CPU. No other transfers of the Product are permitted without MySQL's prior written consent, at MySQL's sole discretion.

6. **Termination.** MySQL may terminate this Agreement upon written notice to Customer in the event of (a) Customer's unauthorized use of Product, (b) Customer's failure to make timely payment to MySQL, or (c) should the Product become, or in MySQL's reasonable opinion is likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation. Otherwise, either party may terminate this Agreement immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach. In the event of such termination, Customer must destroy all copies of the Product and its component parts. Otherwise, this Agreement shall expire only at such time as Customer permanently discontinues use of the Product. Sections 6, 7, 8, 9, and 10 shall survive termination of this Agreement for any reason.

7. **Proprietary Rights.** The intellectual property and proprietary rights of whatever nature in the Product and related documentation, including derivative works, are and shall remain the exclusive property of MySQL and/or its suppliers. Except as expressly set forth in this Agreement, nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. MySQL and its suppliers reserve any and all rights not expressly granted in this Agreement. MySQL is a trademark of MySQL, and shall not be used by Customer without MySQL's express written authorization.

8. **Disclaimer of Warranties.** **THE PRODUCT AND SUPPORT ARE PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE PRODUCT OR SUPPORT. MYSQL AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. MYSQL AND ITS SUPPLIERS DO NOT WARRANT THAT THE PRODUCT OR SUPPORT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.**

9. **Limitation Of Liability.** IN NO EVENT SHALL MYSQL OR ITS SUPPLIERS HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF MYSQL FOR ANY REASON AND UPON ANY CAUSES OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID TO MYSQL UNDER THIS AGREEMENT.

10. **Miscellaneous.**

10.1 **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

10.2 **Assignment.** Customer may not assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without MySQL's prior consent (at MySQL's sole discretion). Any attempt by Customer to assign this Agreement without MySQL's prior consent, where such consent is required, shall be null and void. In the event of the direct or indirect taking over or assumption of control of Customer or of substantially all of its assets by any government, governmental agency or other third party, MySQL may terminate this Agreement upon written notice to Customer. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit

of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

10.3 No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

10.4 Governing Law.

10.4.1 If this Agreement is by MySQL Americas Inc., this Agreement shall be governed by the laws of the State of California, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in Santa Clara County, California.

10.4.2 If this Agreement is by MySQL AB, this Agreement shall be governed by the laws of Sweden, without regard to any conflict of laws provisions thereof. In no event shall the United Nations Convention on Contracts for the International Sale of Goods apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the courts of Stockholm, Sweden.

10.4.3 Notwithstanding Sections 10.4.1 and 10.4.2, either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and MySQL may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

10.4.4 Any action brought under this Agreement shall be conducted in the English language. If the Customer is located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais.

10.4.5 Customer shall comply at its own expense with all relevant and applicable laws related to the use and distribution of Product as permitted in this Agreement.

10.5 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address set forth on the Order Form (or, for any Customer orders on MySQL's online shop, to MySQL Americas, Inc. at 20450 Stevens Creek Boulevard, Suite 350, Cupertino, CA 95014 USA, and to Customer at the address given in Customer's order). Notices to MySQL shall be addressed to "Contracts Administration." Notice shall be deemed to have been received by a party, and shall be effective: (a) on the day given, if sent by confirmed facsimile transmission; (b) on the fifth business day after which such notice is deposited prepaid in the local postal system; or (c) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this Section.

10.6 Attorneys Fees. Subject to Section 9, for the purposes of any action between the parties relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

10.7 Export Law Assurances. Customer acknowledges that the Product may be subject to export and import control laws, and agrees to comply fully with those laws in connection with the Product. Customer agrees that the Product is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certifies that it is not prohibited by the U.S. government from participating in export or re-export transactions.

10.8 U.S. Government Restricted Rights. If Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Product and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Product or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

10.9 Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.

10.10 Confidentiality. Neither party shall disclose the financial or other terms of this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, MySQL shall have the right to identify Customer as a commercial licensee of MySQL software, including by making reference thereto on the MySQL website (www.mysql.com).

10.11 Entire Agreement. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. Except as otherwise set forth herein, this Agreement may be amended or modified only in a writing executed by both parties. MySQL's acceptance of any document submitted by Customer to MySQL shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of MySQL. This Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.