

MySQL End User License and Support Agreement

This MySQL End User License and Support Agreement (“Agreement”) is by and between Sun 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 Sun entity is listed on the Order Form, then the Sun entity will be (a) Sun Microsystems International B.V., with its principle place of business located at Saturnus 1, 3824 ME Amersfoort, the Netherlands if Customer’s address on the Order Form is in EMEA as defined below, or (b) MySQL Americas, Inc., c/o Sun Microsystems, Inc., 4150 Network Circle, Santa Clara, CA 95054, if Customer’s address on the Order Form is in any other country.

Definitions:

“Add-Ons” are Product features, functionality, or add-on components that, unless otherwise stated herein, may be used by Customer only if specifically purchased on the Order Form.

“Application” means the software, hardware, system or other Customer-owned application described on the Order Form, if any.

“Cluster” or “MySQL Cluster” means the generally available version of the MySQL Cluster product as defined in the Order Form. The MySQL Embedded Server and/or MySQL Enterprise Server, if required, is licensed separately from MySQL Cluster by means of an Enterprise Subscription Agreement (<http://www.mysql.com/about/legal/mysqlenterpriseagmt.pdf>).

“CPU” means a single central processing unit within a computer unless the mere purpose of such unit is to manage and make available cluster configuration information to other units, such as data and SQL nodes, and/or to provide arbitration services after a network failure.

“Download Website” means the MySQL website located at <http://oem.mysql.com/>, or an alternative site as Sun may notify to Customer from time to time with respect to subsequent Product downloads by website redirection, email, or as set forth in Section 10.5 below. Notwithstanding any other term of this Agreement, Customer is only entitled to download the Products Customer has purchased pursuant to this Agreement.

“EMEA” means all member states of the European Union as well as Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire, Croatia, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Iceland, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia, Former Yugoslav Rep of Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Republic of Moldova, Mongolia, Morocco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Pakistan, Qatar, Reunion, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Somalia, South Africa, South Georgia & South Sandwich, Swaziland, Switzerland, Tajikistan, Tanzania, United Republic of Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Yemen, Zaire, Zambia and Zimbabwe.

“Maintenance Release” means a new generally-available release of the Product during the Support Term that typically includes fixes and perhaps minor new features or enhancements. Maintenance Release version numbers assigned by Sun are designated by changes to the right of the leftmost decimal point.

“Major Release” means a new generally-available release of the Product during the Support Term that typically includes significant new features and/or enhancements. Major Release version numbers assigned by Sun are designated by changes to the left of the leftmost decimal point.

“Order Form” means (a) the applicable Sun Order Form document signed by the parties or otherwise accepted by Sun, or (b) Customer’s Product order placed in Sun’s online shop accessible from the Sun Website.

“Product” means a complete and unchanged copy of the object code of (a) the generally available version of the MySQL Cluster software product(s) listed on the Order Form, and (b) the Add-Ons listed on the Order Form, limited to the listed version(s) and limited to the code obtained by Customer from the Download Website. Notwithstanding any other term of this Agreement, Product may be provided with Add-ons not

licensed for use by Customer unless such Add-ons have been specifically purchased by Customer; refer to <http://www.mysql.com/products/database/cluster/features.html> for a complete list of features, functionality or add-on components included with each Product edition.

“Supported Add-Ons” means add-on components or features for MySQL Cluster not licensed by Sun, for which Sun provides annual technical support services, as defined in the Order Form.

1. **Grant Of License.** Subject to Customer’s payment for the Product and the other terms and conditions hereof, Sun grants Customer a limited, non-exclusive, non-transferable (except as set forth in this Agreement) right to: (a) download the Product from the Download Website; (b) for each Product unit ordered and paid for by Customer, use one copy of the object code version of the Product generally available from Sun 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. 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 modify, sublicense, or distribute the Product. Each CPU used to operate the Product must be licensed by Customer.

2. **Upgrades.** If Customer has purchased the Product as an upgrade from one Major Release version to the next Major Release version, e.g. from version 6.3 to version 7.0, 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 Maintenance Release and Major Release to the Product, except that from time to time Sun may require Customer’s agreement to supplemental license terms before Customer can receive or use a Maintenance Release or Major Release. This Agreement does not obligate Sun to provide any Maintenance or Major Release.

3. **Support.** In the event Customer purchases from Sun annual technical support services for the Product and Supported Add-Ons, the scope of such services (“Support”) shall be subject to the terms of this Agreement and the terms of Sun’s then-current (a) support policies, (b) designation of supported platforms, and (c) description of Support features (<http://www.mysql.com/about/legal/supportpolicies/> includes links to Sun’s MySQL support policies, supported platforms designations, and Support features). Annual Support shall begin upon the date that Sun 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. Sun 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 Sun’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 Sun’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, Sun 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 Sun, Support will be suspended if the reseller fails to pay all amounts due to Sun. 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 Sun’s net income. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing Sun 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 Sun’s prior written consent, at Sun’s sole discretion.

6. **Termination.** Sun 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 Sun, or (c) should the Product become, or in Sun'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 Sun 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. Sun and its suppliers reserve any and all rights not expressly granted in this Agreement. MySQL is a trademark of Sun Microsystems Inc., and shall not be used by Customer without Sun'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. SUN 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. SUN 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. **Indemnification and Infringement.**

9.1 Sun will defend Customer from any unaffiliated third party claim that Customer's use of the object code version of Product furnished by Sun, when used within the scope of this Agreement, infringes or misappropriates a copyright owned by the third party in the U.S., Canada, Japan or any country that is a member of the European Union ("Claim"). Sun will pay (a) counsel hired by Sun to defend the Claim; (b) the reasonable and verifiable out-of-pocket costs incurred directly by Customer in connection with defending the Claim and/or assisting Sun in the defense thereof; and (c) subject to Section 10, any damages finally awarded to such third party by a court of competent jurisdiction (after any appeals) or any settlements of the Claim to which Sun consents. The foregoing obligations shall be subject to Customer notifying Sun promptly in writing of any claim, giving Sun the exclusive control of the defense and settlement of the Claim, and providing all reasonable assistance in connection with the Claim without prejudicing Sun in any manner. Subject to the foregoing conditions, nothing in this Agreement shall prohibit Customer from hiring separate counsel, at its own expense.

9.2 If Sun receives information about an infringement claim related to Product, Sun may, at its expense but without obligation to do so, either: (a) procure for Customer the right to continue to use Product; (b) replace Product with a functional equivalent; (c) modify Product so that it becomes non-infringing (including disabling the challenged functionality); or (d) repurchase the affected licenses less depreciation at the rate of twenty five percent (25%) per year, or pro rata for part of the year, from the date of payment to the date of removal of the Product, and terminate the Agreement. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

9.3 If as a result of a Claim, a court of competent jurisdiction issues a final injunction (which has not been appealed) against Customer's use of any part of Product, Sun will, at its sole option, perform one of the remedy options listed in Section 9.2. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

9.4 Sun shall have no liability for any Claim arising out of or relating to (a) Customer's use of the Product after Sun notifies Customer to discontinue use due to such a Claim; (b) the combination of the Product with a non-MySQL application, product, data or business process; (c) damages attributable to the value of a non-MySQL application, product, data or business process; (d) modifications to Product other than modifications made by Sun; (e) changes made by Sun to Product in accordance with any designs, specifications or instructions

provided to Sun by or on behalf of Customer; (f) continued use or distribution of any Product for which Sun has provided Customer with modifications or substitute Product if use of such modifications or substitute Product would have prevented the Claim; or (g) use of the Product in a manner prohibited under the Agreement. Customer shall reimburse Sun for any costs or damages that result from any of the foregoing actions.

9.5 Customer hereby agrees to indemnify Sun against any damages finally awarded against Sun by a court of competent jurisdiction in connection with: (a) an allegation that one or more of the Customer Applications infringes any copyright owned by the third party in the U.S., Canada, Japan or any country that is a member of the European Union; (b) the use of the Product in a manner prohibited under this Agreement, or in a manner for which the Product was not designed; (c) integration or use of the Product with one or more Customer Applications, where use of the Product alone would not infringe; (d) changes made by Customer to the Product, where use of unmodified Product would not infringe; (e) changes made to the Product by Sun in compliance with any designs, specifications or instructions provided by or on behalf of Customer; or (f) bodily injury, property damage or any other damage or injury due to the use or inability to use an Integrated Product (subject to Sun's indemnification of Customer as provided in Section 9.1); provided that: (x) Customer is given prompt written notice of the claim; and (y) if Customer has elected to pay for defense of the claim and so notified Sun in writing: (i) Customer is given immediate and complete control over the defense and/or settlement of the claim; and (ii) Sun provides cooperation and assistance in the defense of such claim and does not prejudice in any manner Customer's conduct of such claim.

9.6 The foregoing provisions of Section 9 state the parties' entire obligations and liability with respect to the infringement or violation of any third-party property right, and shall be subject to the limitations in Section 10 of this Agreement.

10. **Limitation Of Liability.**

10.1 IN NO EVENT SHALL SUN OR ITS SUPPLIERS HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT, LOST DATA, OR BUSINESS INTERRUPTION, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 EXCEPT WITH RESPECT TO SUN'S OBLIGATIONS PURSUANT TO SECTION 9, IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT OTHER THAN SECTION 10.3, THE AGGREGATE LIABILITY OF SUN FOR ANY REASON AND UPON ANY CAUSE OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID TO SUN BY CUSTOMER DURING THE TWELVE MONTHS PRIOR TO WHEN THE CAUSE OF ACTION AROSE.

10.3 WITH RESPECT TO SUN'S OBLIGATIONS PURSUANT TO SECTION 9, IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF SUN FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE LESSER OF (i) ONE HUNDRED TWENTY FIVE PERCENT (125%) OF THE AMOUNT PAID TO SUN BY CUSTOMER DURING THE PREVIOUS TWELVE MONTHS OR (ii) ONE MILLION FIVE HUNDRED THOUSAND U.S. DOLLARS (\$1,500,000 USD) (OR THE THEN-EQUIVALENT AMOUNT IN THE AGREEMENT'S QUOTED CURRENCY).

11. **Miscellaneous.**

11.1 **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.

11.2 **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 Sun's prior consent (at Sun's sole discretion). Any attempt by Customer to assign this Agreement without Sun's prior consent, where such consent is required, shall be null and void. 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.

11.3 **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.

11.4 Governing Law.

11.4.1 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.

11.4.2 Notwithstanding Section 11.4.1, either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and Sun may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

11.4.3 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.

11.4.4 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.

11.5 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent ("Notice") 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, to the attention of "Legal". Notices to Sun must also be copied to Sun Microsystems, Inc. at 4150 Network Circle, Santa Clara, California 95054, Attn: MySQL Legal Group. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the fifth business day after which such Notice is deposited prepaid in the local postal system; or (b) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for receipt of Notice purposes upon issuance of Notice thereof in accordance with this Section.

11.6 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.

11.7 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.

11.8 U.S. GOVERNMENT RIGHTS IN SOFTWARE AND DOCUMENTATION. In accordance with FAR 12.212(a) and DFARS 227.7202-3(a), use, duplication, and disclosure of the Product and its documentation by or for the U.S. Government are subject to the terms and conditions set forth in this End User License and Support Agreement. No other rights are granted to the U.S. Government.

11.9 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.

11.10 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, Sun 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).

11.11 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. Sun's acceptance of any document submitted by Customer to Sun 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 Sun. 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.

12. **Endorsement.** This Section 12 does not apply if Customer purchases Product through Sun's online shop on the MySQL Website. During the term of this Agreement, Customer agrees to be a reference for Sun and participate in a MySQL case study, and participate in a press release regarding Customer's license to Product, as follows: (a) Reference. As a reference, Customer agrees to speak in good faith with media and/or Sun customers or prospects from time to time about its use of MySQL products and services. Such reference opportunities will be limited to a reasonable quantity and mutually agreed content; (b) Case Study. Customer agrees to make appropriate personnel available to be interviewed for a MySQL case study that describes Customer's successful use of Product. Sun may publish the case study without limitation with respect to quantity and form. Prior to publishing the case study, Sun will provide the same to Customer for Customer's review and approval, which approval shall not be unreasonably withheld or delayed; and (c) Press Release. Sun may issue a press release in which Sun announces that Customer has purchased a license to Product. Customer, at its discretion, may also issue a press release about the mutually agreed content. Neither party shall release its press release without first providing such press release to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed.