

## MySQL® Enterprise™ Subscription Agreement

This MySQL Enterprise Subscription 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. if Customer’s address on the Order Form is in any other country.

### **1. Definitions.**

“Backup Server” means a Server that is used only to archive database data or to provide standby capability on systems configured for disaster recovery purposes. If the primary database fails, the standby database is activated to act as the new primary database.

“Commercial Software” means any software other than Database Software made available to Customer as part of Product during the term of this Agreement, including all Upgrades of Commercial Software made generally available during the term of this Agreement.

“Database Software” means the MySQL database software product(s) provided pursuant to the applicable Order Form during the term of this Agreement, including all Upgrades of Database Software made generally available during the term of this Agreement.

“Development Server” means a Server that is used only in a development environment.

“Effective Date” means the date on which Sun transmits written, faxed, or emailed acceptance of Customer’s Product order placed pursuant to the Order Form.

“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.

“GPL License” means version 2 of the GNU General Public License published by the Free Software Foundation.

“Initial Term” means the period set forth on the applicable Order Form, beginning upon the Effective Date.

“Master Server” means a Server that is not a Slave Server.

“MySQL Website” means the website located at [www.mysql.com](http://www.mysql.com).

“Order Form” means the (a) the applicable MySQL Order Form document signed by the parties or otherwise accepted by Sun or (b) Customer’s Product order placed via Sun’s online store accessible from the MySQL Website. If Customer has ordered Product through a third party, such as a reseller, then Order Form means such third party’s order information as provided to Sun.

“Product” means MySQL Enterprise and its components Commercial Software, Database Software, Services, and Upgrades, collectively.

“Renewal Term(s)” means the successive one-year periods set forth in Section 5.1 or as otherwise agreed in writing by the parties.

“Server” means a single machine which processes data using one or more CPUs, and which is owned, leased or otherwise controlled by Customer. In the event such a machine contains Server Blades and/or Server Virtual Operating Environments, each such Server Blade or Server Virtual Operating Environment is a separate Server.

“Server Blade” means a complete computing system on a single circuit board. A Server Blade will include one or more CPUs, memory, disk storage, operating system and network connections. A Server Blade is designed to be hot-pluggable into a space-saving rack; each rack may contain many Server Blades.

“Server Virtual Operating Environment” or “SVOE” means an operating system that has been emulated or does not run directly on physical hardware. A single physical hardware Server or Server Blade can host multiple operating systems and thereby provide multiple SVOEs.

“Services” means the Product services described in this Agreement including, without limitation, technical support, access to MySQL’s knowledge base, and database management services.

“Slave Server” means a Server that is updated by a Master Server in a replication topology.

“Software” means the Commercial Software and Database Software, collectively.

“Subscription Fee” means the fees set forth in the applicable Order Form for Product and as stated in this Agreement.

“Term” means the Initial Term or a Renewal Term (both as defined above), as applicable.

“Test/QA Server” means a Server that is used only in a test or quality assurance environment.

“Upgrades” means bug fixes, updates and/or enhancements for Commercial Software and/or Database Software or other software or software tools that may be provided to Customer as part of Services.

Other capitalized terms may be defined herein in the context in which they appear, and will have the indicated meaning throughout this Agreement (including any attachments, exhibits, addenda and the like, unless otherwise set forth therein).

## **2. Licenses and Services.**

2.1 Sun grants to Customer a license to use Database Software in accordance with the GPL License.

2.2 Sun grants to Customer a license to use Commercial Software on no more than the total number of Servers for which Subscription Fees have been paid or will be paid pursuant to Section 3.2 (collectively “Paid Servers”) in accordance with the following license grant. For each Paid Server during each Term, Sun hereby grants to Customer a limited, non-exclusive and non-transferable right to (a) use Commercial Software in source code form solely for testing purposes; and (b) use Commercial Software in object code form solely in connection with Customer’s internal business operations. Except for reasonable quantities of copies made for backup and archival purposes, Customer may not make copies of Commercial Software except as expressly authorized in this Agreement. Customer shall not: (i) copy Commercial Software onto any public or distributed network or otherwise distribute or disclose Commercial Software to any third parties; (ii) use Commercial Software as a stand alone application or with applications other than Customer’s applications and Database Software; (iii) use Commercial Software on Servers that are not Paid Servers; (iv) change any proprietary rights notices which appear in Commercial Software; or (v) modify Commercial Software. Upon termination of this Agreement Customer shall have no further rights to copy or use Commercial Software and Customer shall immediately destroy all copies of Commercial Software.

2.3 With respect to each Customer application that utilizes any portion of Product, (a) all of Customer’s Servers running such application must be subscribed to Product, and (b) all Product units running such application must be at the same Product level.

2.4 Sun will provide Services to Customer and Customer agrees it will use or apply such Services on no more than the quantity of Servers set forth in this Agreement (including any quantity increases pursuant to Section 3.2). Any unauthorized use of Services will be deemed to be a material breach of this Agreement. The scope of Services provided to the Customer under this Agreement is subject to the then-current Services details set forth at the following web pages (including sub-pages thereof):

- (a) MySQL Enterprise: <http://www.mysql.com/products/enterprise/features.html>;
- (b) Supported platforms: <http://www.mysql.com/support/supportedplatforms/enterprise.html>; and
- (c) Support policies: <http://www.mysql.com/about/legal/supportpolicies/>.

### **3. Delivery; Additional Servers.**

3.1 Customer shall obtain its first copy of Software by download from the MySQL Website, using a Sun-provided password to an appropriate portion of the MySQL Website.

3.2 If, at any time during a Term, Customer increases the quantity of its Servers utilizing all or part of Product, no later than thirty (30) days after each such addition Customer shall notify Sun and pay the Subscription Fees applicable to such additional Servers beginning from the first date of such utilization. All such additional Servers will be covered under this Agreement coterminous with Customer's then-current Term. Subscription Fees for additional Servers during a Term shall be calculated at the then-current annual per-Server price prorated over the number of days remaining in such Term (based on 365 days per year).

### **4. Price and Payment; Taxes.**

4.1 Subscription Fees are due upon the commencement of each Term and as set forth in Section 3.2 above for additional Servers. Sun will endeavor to invoice Customer at least thirty (30) days prior to the commencement of each Renewal Term. All fees 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.

4.2 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 Services (including Upgrades) to the Customer under this Agreement if timely payment is not received for an applicable Term, for the period such non-payment continues. Further, in the event that Product is purchased through a reseller rather than directly through Sun, Customer's Services (including Upgrades) will be suspended if the reseller fails to pay all amounts due to Sun.

4.3 All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of such taxes and duties of any kind payable with respect to the Software and Services furnished pursuant to this Agreement, provided however that Sun shall be responsible for payment of 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. Term and Termination.**

5.1 This Agreement shall commence on the Effective Date and continue for the Initial Term unless terminated earlier as set forth below. Thereafter, this Agreement shall renew for successive one-year Renewal Terms (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 Term.

5.2 Sun may terminate this Agreement upon written notice to Customer in the event of Customer's (a) unauthorized use of Product, (b) failure to make timely payment to Sun, or (c) subject to its obligations under Section 9 of this Agreement, 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.

5.3 Upon termination of this Agreement, Customer shall have no further rights to (a) receive or use Services, (b) receive further Upgrades under this Agreement, and (c) copy or use Commercial Software. Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of this Agreement shall survive the termination of this Agreement for any reason.

**6. Proprietary Rights.** The intellectual property and proprietary rights of whatever nature in Product and related documentation, including derivative works, are and shall remain the exclusive property of Sun and/or its suppliers, and 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 and the GPL License. MySQL, MySQL Pro, MySQL Network and MySQL Enterprise are trademarks of Sun Microsystems Inc., and shall not be used by Customer without Sun's express authorization.

**7. Warranty and Disclaimer.** Sun warrants that during each Term it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, **PRODUCT IS PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF PRODUCT. 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 PRODUCT 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.

**8. Confidentiality.**

8.1 Sun and Customer will retain in confidence all information and know-how transmitted by the other party during each Term, and for a period of three (3) years beyond the Term, that is clearly designated as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought reasonably to be treated as proprietary and/or confidential, and will make no use of such information and know-how except to further the purposes set forth in this Agreement. Services (including without limitations the MySQL knowledge base), Commercial Software, and Upgrades thereof are the confidential information of Sun.

8.2 Notwithstanding Section 8.1, Sun and Customer shall not have an obligation to maintain the confidentiality of information that (a) is now or subsequently becomes generally known or available by publication, commercial use or otherwise through no fault of the recipient; (b) is known by the recipient at the time of disclosure and is not subject to restriction; (c) is independently developed by the recipient without use of the discloser's confidential information; (d) is not designated as proprietary and/or confidential or would not reasonably be considered as such; or (e) is lawfully obtained from a third-party who has the right to make such disclosure. Further, the recipient may disclose confidential information as required by government or judicial order, provided the recipient gives the disclosing party written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

**9. Indemnification.**

9.1 Sun will defend Customer from any unaffiliated third party claim that Customer's use of the MySQL-certified binary version of Software, when used within the scope of this Agreement during a Coverage Period (as defined below), infringes or misappropriates a copyright, patent, trademark, or trade secret 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 "Coverage Period" means (a) any Term(s) for which Customer subscribed to Product at the Platinum or Gold levels and pre-paid Sun (excluding payments of any applicable taxes) an amount equal to an annual average of at least One Hundred Thousand U.S. Dollars (\$100,000 USD) (or the then-equivalent amount in the Agreement's quoted currency) for Product; or (b) any twelve-month period in which Customer subscribed to Product at the Platinum or Gold levels and Customer paid Sun (excluding payments of any applicable taxes) amounts equal to at least One Hundred Thousand U.S. Dollars (\$100,000 USD) (or the then-equivalent amount in the Agreement's quoted currency) for Product.

9.3 If Sun receives information about an infringement claim related to Software, Sun may, at its expense but without obligation to do so, either: (a) procure for Customer the right to continue to use Software; (b) replace Software with a functional equivalent; (c) modify Software so that it becomes non-infringing (including disabling the challenged functionality); or (d) refund the unused portion of the Subscription Fees paid by Customer for the allegedly infringing Software during the then-current Term, and terminate the Agreement. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Software.

9.4 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 Software, Sun will, at its sole option, perform one of the remedy options listed in Section 9.3. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Software.

9.5 Sun shall have no liability for any Claim arising out of or relating to (a) Customer's use of the Covered Software after Sun notifies Customer to discontinue use due to such a Claim; (b) the combination of the Covered Software 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 Software other than modifications made by Sun; (e) Customer's distribution of Software to any third party; (f) changes made by Sun to Software in accordance with any designs, specifications or instructions provided to Sun by or on behalf of Customer; (g) continued use of any Software for which Sun has provided Customer with modifications or substitute software if use of such modifications or substitute software would have prevented the Claim; or (h) use of the Covered Software in a manner prohibited under the Agreement. Customer shall reimburse Sun for any costs or damages that result from any of the foregoing actions.

9.6 Notwithstanding any other provision of this Agreement, the obligations of Sun under this Section 9 constitute Customer's exclusive remedy for Claims, 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. Audit Rights.** During the term of this Agreement and for a five (5) year period following termination or expiration, Sun shall have the right (at Sun's own expense) to conduct periodic reviews of Customer's records relating to its reproduction and use of the Product for the purpose of verifying Customer's compliance with the terms of this Agreement. Sun shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide Sun with reasonable accommodation for the review, including reasonable use of available office equipment and access to all relevant Customer personnel and records during normal business hours. Sun shall deliver to Customer a copy of the results of any such review. If an underpayment is identified, Customer shall immediately pay the full amount of any underpayment. Customer shall also pay Sun the cost of any review, including (without limitation) travel expenses and the costs of any attorneys and consultants, if the review determines that Customer has underpaid fees for the period audited in excess of five percent (5%) of the proper amount owed to Sun.

**12. Miscellaneous.**

12.1 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.

12.2 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.

12.3 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.

12.4 Governing Law.

12.4.1 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.

12.4.2 Notwithstanding Section 12.4.1, 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.

12.4.3 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.

12.4.4 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.

12.5 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.

**12.6 Attorneys Fees.** Subject to Section 10, 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.

**12.7 Export Law Assurances.** Customer acknowledges that Product may be subject to export and import control laws, and agrees to comply fully with those laws in connection with Product. Customer agrees that 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.

**12.8 U.S. Government Restricted Rights.** If Software 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 Software and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Software or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

**12.9 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.

**12.10 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. Sun reserves the right to amend or modify this Agreement at any time and in any manner by providing reasonable notice to the Customer. Customer agrees that such reasonable notice may be provided by posting on MySQL's Website; the Customer's start, registration, or download pages; email; or other written notice. 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.

**13. Endorsement.** This Section 13 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 subscription 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 subscribed 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.