

# MySQL® Enterprise™ Partner Agreement

**THIS MYSQL ENTERPRISE PARTNER AGREEMENT** (the "Agreement") is entered into as of the Effective Date by and between the MySQL entity identified in the next paragraph ("MySQL") and the person or entity ("Partner") identified on the Program Application. This MySQL Enterprise Partner Agreement, the Program Application, and the Program Guide collectively make up the entire agreement (the "Agreement") of the parties concerning the MySQL Enterprise Partner Program (the "Program").

Unless otherwise indicated in the Agreement the MySQL entity is Sun Microsystems International B.V if Partner's address on the Program Application is in EMEA or MySQL Americas, Inc. if Partner's address on the Program Application is in any country outside of EMEA.

"Effective Date" means the date on which MySQL transmits written, faxed, or e-mailed acceptance of Partner's submitted Program Application.

"Mark" means a trademark, trade name, service mark, logo, designs, trade dress or other brand designations owned by a party to the Agreement.

"MySQL website" means the web pages at domain [www.mysql.com](http://www.mysql.com).

"Program Application" means (a) the applicable Program documentation signed by the parties or otherwise accepted by MySQL, or (b) Partner's Program application submitted on the MySQL website.

"Program Guide" means the then-current Program description at [https://partner-portal.mysql.com/guide/MECA\\_partner\\_program\\_guide.pdf](https://partner-portal.mysql.com/guide/MECA_partner_program_guide.pdf). In the event of any conflict between the Agreement and the Program Guide information applicable to Partner, the Program Guide will control.

## 1. Program.

(a) Program features, fees (if any), rights, and obligations are as set forth in the Agreement, including the Program Guide. The Agreement and Partner's participation in the Program is contingent on MySQL's acceptance of Partner's Program Application, Partner's compliance with this Agreement and the Program Guide and Partner's payment to MySQL of the applicable annual Program fees.

(b) MySQL may add to or modify the Program Guide at its sole discretion on a non-discriminatory basis and the additional or modified rights and obligations shall come into effect sixty (60) days after Partner receives notice of such changes.

(c) MySQL's acceptance of Partner's Program Application will state which Program track and level applies to Partner. Partner's participation in the Program shall be limited, non-transferable (except as expressly stated in the Agreement), and non-exclusive.

**2. MySQL Enterprise Promotion.** As provided in the Program Guide, Partner will promote the MySQL Enterprise offering to its end users and use the term "MySQL Enterprise" in conjunction with Partner's sales and marketing activities for its products and/or services.

## 3. Program Fees; Taxes.

(a) **Program Fees.** Certain levels of the Program are provided on a fee basis as specified in the Program Guide. Any such Program fees are due to MySQL upon the Effective Date and the anniversary thereof during the term of the Agreement. All payments shall be made in the quoted currency without any right of set-off or deduction and are nonrefundable. Any amount not paid when required to be paid under the 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.

(b) **Taxes.** All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind; Partner shall be responsible for payment of such taxes and duties of any kind payable with respect to the Program benefits furnished pursuant to the Agreement, provided however that MySQL shall be responsible for payment of taxes levied or imposed based upon MySQL's net income.

(c) **Audit Rights.** During the term of this Agreement and for a five (5) year period following termination or expiration, MySQL shall have the right (at MySQL's own expense) to conduct periodic reviews of Partner's records relating to this Agreement and Partner's participation in the Program for the purpose of verifying Partner's compliance with the terms of this Agreement. MySQL shall exercise this right upon reasonable prior notice. Partner will provide MySQL with reasonable

accommodation for the review, including reasonable use of available office equipment and access to all relevant Partner personnel and records during normal business hours. MySQL shall deliver to Partner a copy of the results of any such review.

**4. MySQL Enterprise Subscription.** The Program Guide states whether a MySQL Enterprise subscription is available to Partner as a Program benefit. Any such subscription will be subject to the terms of the Agreement and the then-current MySQL Enterprise description ([www.mysql.com/products/enterprise/features.html](http://www.mysql.com/products/enterprise/features.html)) and subscription terms and conditions ([www.mysql.com/company/legal/mysqjenterpriseagmt.pdf](http://www.mysql.com/company/legal/mysqjenterpriseagmt.pdf)); the Program Guide controls in the event of any conflict regarding the MySQL Enterprise subscription features provided under the Program. Partner's use of MySQL Enterprise under the subscription(s) provided as a Program benefit is limited solely to Partner's internal development or MySQL Enterprise certification efforts. Such MySQL Enterprise subscriptions will terminate immediately in the event of termination of the Agreement.

#### **5. Trademarks.**

(a) The Program Guide states which, if any, MySQL Marks may be used by Partner as a Program benefit and how any such MySQL Marks may be used. MySQL reserves all rights in the MySQL Marks and Partner granted no right title or license to, or an interest in, any MySQL Mark. Partner agrees that MySQL owns all right, title and interest in the MySQL Marks and should Partner acquire any rights in the MySQL Marks (by operation of law or otherwise), it shall immediately at no expense to MySQL assign to MySQL all such rights and associated goodwill, applications and registrations. The MySQL Marks may be used only as expressly authorized by MySQL in the Program Guide and in MySQL's then-current trademark policy ([www.mysql.com/company/legal/trademark.html](http://www.mysql.com/company/legal/trademark.html)) and only during the term of the Agreement.

(b) MySQL reserves the right to change the MySQL Marks that may be used by Partner as a Program benefit from time to time, and Partner will update its use of the applicable MySQL Marks as soon as possible (in the case of authorized use with a Partner application, no later than the next release of such application).

(c) During the term of the Agreement, Partner grants to MySQL a non-transferable, non-exclusive, license to reproduce and display Partner's Marks so that MySQL may refer to Partner as a participant in the Program should MySQL so desire, such as on a portion of the MySQL website, in press releases and in other marketing materials.

(d) Each party represents it has all the rights and power to license its Marks as set forth in the Agreement. Each party will not (i) alter, modify or change any Mark of the other party in any way; (ii) assert the invalidity or unenforceability, or contest the other party's ownership, of the other party's Marks in any action or proceeding of any kind or nature; and (iii) take any action that may prejudice the other party's rights in their Marks, render such Marks generic, or otherwise weaken their validity or diminish their associated goodwill. Any and all goodwill arising from a party's use of the other party's Marks will inure exclusively to the benefit of the other party.

(e) Partner agrees that the domain name for Partner's web site(s) does not and will not contain the "MySQL" Mark, or any variation of "My" and "SQL". Partner's sites will not frame any portion of the MySQL website and will not in any way copy any content from, or resemble the look and feel of, the MySQL website, nor will Partner create the impression that any of Partner's sites are the MySQL site or are part of the MySQL site. Partner also agrees not to purchase or otherwise contract with a third party to exploit any of the MySQL Marks for the purpose of causing Partner's sites to appear as a search engine result or for any other reason unless explicitly permitted in a separate writing from MySQL.

(f) Partner acknowledges that a material breach of its obligations in this clause 5 is likely to cause irreparable harm to MySQL for which damages would not be an adequate remedy. Therefore, in addition to its rights and remedies available at law, including without limitation, the recovery of damages for breach of this Agreement, MySQL shall be entitled to seek (i) immediate equitable relief, specifically including, but not limited to, both interim and permanent restraining orders and injunctions; and (ii) to such other and further equitable relief as the court may deem proper under the circumstances.

#### **6. Partner Conduct.**

(a) Partner will not send unsolicited commercial e-mail ("spam") that makes reference to MySQL or any products, services or programs of MySQL, or that includes a link to MySQL, a Partner referral code or all or any part of a MySQL URL. Partner also will not force visitors to the MySQL website via any mechanism that acts as an automatic transport, such as "meta refresh" or "forced exit" scripts.

(b) Partner will (i) conduct business in a manner which reflects favorably at all times on the products, goodwill and reputation of MySQL; (ii) avoid deceptive, misleading or unethical practices which are or might be detrimental to MySQL or its products; and (iii) refrain from making any false or misleading representations, warranties, or guarantees with regard to MySQL or its products.

(c) Products, services, technology, materials, tools and technical data may be subject to U.S. export controls or the trade laws of other countries. Partner and MySQL agree to comply with all export control regulations and acknowledge that they have the responsibility to obtain such licenses to export, re-export or import as may be required. Partner and MySQL agree not to export or re-export to countries on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or

terrorist controls as specified in the U.S. export laws. Partner and MySQL will not use or provide products, services, technology, materials, tools and technical data for nuclear, missile or chemical and biological weaponry end uses.

(d) Partner will comply with the U.S. Foreign Corrupt Practices Act and other laws implementing the Convention on Combating Bribery of Foreign Officials in International Business Transactions, and Partner warrants that neither it nor any person representing it will make, offer, promise or authorize, directly or indirectly, any payment or transfer of anything of value to an official, representative, or employees of any governmental agency or instrumentality, any political party or candidate for public office, or make any payment to anyone who Partner knows or should know will make a payment to any of the foregoing, in order to promote or retain business or assist Partner in performing its obligations and/or providing information to MySQL under the Agreement.

(e) Partner will comply with all applicable laws and regulations in performing its obligations under the Agreement including, without limitation, all applicable data privacy laws and regulations.

(f) The Agreement will terminate immediately without written notice if Partner breaches any portion of this Section 6.

#### **7. Term & Termination.**

(a) Unless terminated earlier, the initial one-year term of the Agreement shall commence upon the Effective Date and, unless otherwise terminated in accordance with the Agreement, thereafter shall be automatically renewed for separate but successive one (1) year periods.

(b) Either party may provide the other party with notice of its intent not to renew at least thirty (30) days prior to the expiration of the existing term. Further, MySQL may terminate the Agreement immediately in the event Partner fails to pay Program fees when required to be paid. Either party may terminate the Agreement immediately in the event that (i) the other party commits a non-remediable material breach of the Agreement; or (ii) the other party commits a remediable material breach of the Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach. Either party may terminate the Agreement at any time and for any or no reason upon the provision of at least thirty (30) days notice to the other. In the event that MySQL terminates the Agreement without cause, or Partner terminates the Agreement for an unacceptable modification (as set forth in Section 10(g)), MySQL will provide Partner with a pro rata refund of any applicable Program fees paid for the remainder of the months in the then-current term of the Agreement.

(c) This Agreement will terminate automatically if Partner ceases to do business in the normal course, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to the liquidation or insolvency of Partner which is not dismissed within ninety (90) days or makes an assignment for the benefit of its creditors.

(d) MySQL may terminate Partner's authorization to participate in the Program, or to do so in a given location, immediately by written notice (i) if Partner fails to meet the applicable criteria and obligations set out in the Program Guide to a material degree, or (ii) if Partner fails to meet the applicable criteria and obligations set out in the Program Guide to a non-material degree and fails to cure such failure within thirty (30) days of being notified in writing of the requirement to do so.

(e) Upon the termination of the Agreement for any reason, Partner will immediately cease (i) use of MySQL Marks and other Program benefits and return to MySQL any and all copies of all promotional materials provided by MySQL; and (ii) marketing the MySQL Enterprise offering. Sections 5 (except for subsection (d)), 8, 9, and 10 will survive any termination of the Agreement.

**8. Disclaimer of Warranties. MySQL MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROGRAM, THE MYSQL MARKS, THE MYSQL WEBSITE, OR ANY PRODUCTS, SERVICES OR OTHER ITEMS OFFERED, SOLD OR LICENSED THROUGH THE PROGRAM, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND ACCURACY OF INFORMATIONAL CONTENT.**

#### **9. Limitation of Liability.**

IN NO EVENT WILL EITHER PARTY OR THEIR SUPPLIERS HAVE ANY LIABILITY UNDER THE AGREEMENT 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, SERVICES FAILURE, OR ANY OTHER CAUSE), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR PARTNER'S INFRINGEMENT OR MISAPPROPRIATION OF MYSQL'S INTELLECTUAL PROPERTY RIGHTS, IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT, THE AGGREGATE LIABILITY OF A PARTY FOR ANY REASON AND UPON ANY CAUSES OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO (i) FOR MYSQL'S LIABILITY, THE AMOUNT PAID TO MYSQL UNDER THIS AGREEMENT; AND (ii) FOR PARTNER'S LIABILITY, THE AMOUNT PAID OR OWING TO MYSQL UNDER THIS AGREEMENT.

## 10. Indemnity

Partner agrees to indemnify and hold MySQL, its employees and agents harmless from and against all claims from third parties arising out of any acts and/or omissions of Partner and its employees or agents. Partner shall carry liability insurance at a sufficient level to protect MySQL, its employees and agents from all such claims naming MySQL as additional insured.

## 11. Miscellaneous.

(a) Severability. If any part of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of the 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.

(b) Assignment. Partner may not assign the Agreement or its rights or obligations under the 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 Partner to assign the Agreement without MySQL's prior consent shall be null and void. In the event of the direct or indirect taking over or assumption of control of Partner 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 Partner. Subject to the foregoing conditions, the 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 the Agreement.

(c) No Waiver; Limitations. Failure by either party to exercise any right or remedy under the Agreement does not signify acceptance of the event giving rise to such right or remedy.

(d) Governing Law.

(i) The Agreement shall be governed by the laws of the State of California, without regard to the conflict of laws provisions thereof. In the event either party initiates an action in connection with the 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.

(ii) 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 (or equivalent legislation) apply to, or govern, the Agreement.

(iii) Notwithstanding the foregoing subsections, either party may enforce any judgment rendered by such court in any court of competent jurisdiction and may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

(iv) Any action brought under the Agreement shall be conducted in the English language. If the Partner is located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that the 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.

(v) The parties shall comply at their own expense with all relevant and applicable laws related to the subject matter of the Agreement.

(e) Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under the Agreement shall be in writing and addressed and delivered to Partner at its address listed on the Program Application and to MySQL at the applicable address listed below. 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 paragraph.

MySQL Americas Inc.  
4150 Network Circle  
Santa Clara, CA 95054  
Attn: Contracts Administration  
Fax: +1 (408) 516-5795

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

(g) Entire Agreement. The 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 the Agreement. MySQL reserves the right to amend or modify the Agreement at

any time and in any manner by providing reasonable notice to the Partner. Partner agrees that such reasonable notice may be provided by posting on the MySQL web site, email, or other written notice. Except as otherwise set forth herein, the Agreement may be amended or modified only in a writing executed by both parties. MySQL's acceptance of any document submitted by Partner 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, the Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of MySQL. The 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. The Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.