

## MySQL Services Agreement

This MySQL Services Agreement is by and between "Sun" and "Customer", both as identified on the Order Form. This MySQL Services Agreement and the Order Form collectively make up the entire agreement of the parties concerning Services (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.**

"Change Order" means a document describing applicable Services changes, the reason for such changes, the applicable fees associated with such changes, and the effect such changes will have on any applicable time requirements. All Change Orders must be executed by an authorized representative of each party.

"Credits" means consulting services credits or training credits that Customer may irrevocably purchase from Sun in advance of purchasing Services.

"Effective Date" means the date on which Sun transmits written, faxed, or emailed acceptance of Customer's Services 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.

"Expenses" means all actual and reasonable expenses incurred by Sun in connection with the provision of the Services, including, without limitation, transportation, lodging, meals, long distance telephone charges and shipping expenses.

"Fees" means the fees for the Services as set forth on the Order Form, in a SOW, or in any Change Order.

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

"Order Form" means (a) the applicable MySQL Order Form document signed by the parties or otherwise accepted by MySQL or Sun, or (b) Customer's Services order placed in the online shop accessible from the MySQL Website.

"Services" means the Sun consulting and/or training services described on the Order Form. Services do not include Credits. In addition to the Order Form or as an alternative to the Order Form, Services may be described in a Statement of Work ("SOW") signed by both parties and referencing this Agreement.

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. Services.**

2.1 Sun shall provide the Services at a mutually agreeable location(s), pursuant to a mutually agreeable schedule, and pursuant to the terms and conditions of this Agreement.

2.2 Customer acknowledges that it is Customer's sole responsibility to protect and maintain an up-to-date and restorable backup of any and all databases, files, utilities, software and other systems of Customer.

2.3 Customer will cooperate with Sun and provide the access, resources, materials, personnel, information and consents that Sun may require to perform the Services and comply with its obligations related to the Services.

**3. Changes in Services.** All changes in Services that result in modifications to the schedule, Fees, and/or Expenses applicable to a Services engagement will be documented in Change Orders.

**4. Fees, Expenses, Payment, Taxes.**

4.1 Fees for Sun packaged Services are due upon the Effective Date. Fees for Sun custom Services are due upon the dates set forth in the applicable SOW. Fees are based on a standard (8) hour working day; Monday through Friday. Upon Customer's request, Sun will quote alternative fees for other mutually-agreeable work schedules. Sun local holidays are excluded unless the parties agree otherwise. Expenses are not included in Fees unless expressly stated otherwise in the Order Form, SOW, or Change Order. Expenses shall be invoiced by Sun no more frequently than weekly during the Services and then for any remaining un-invoiced Expenses after the completion of the Services.

4.2 All Fees and Expenses are payable within thirty (30) days from the date of Sun's invoice. Customer may redeem valid, unexpired Credits towards Fees for Services (consulting Credits for consulting Services Fees, and training Credits for training Services Fees). Payment shall be made without any right of set-off or deduction. All payments shall be made in the quoted currency. Fees for Services are non-refundable; prepaid Fees must be used by a specific date, and do not constitute a property interest or a deposit of Customer. 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 to Customer if timely payment is not received for an applicable Fee or Expense, for the period such non-payment continues.

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 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 until the completion of the Services unless terminated earlier as set forth below.

5.2 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 ten (10) days of receipt of notice of material breach.

5.3 This Agreement shall terminate upon any cancellation of Services as set forth in Section 11.

5.4 Upon any termination or expiration, Customer shall pay Sun for all Services provided prior to such termination or expiration, including, without limitation, any incurred Expenses. 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. Hiring.** For a period of one (1) year after the Services, Customer will not, without Sun's prior written consent, solicit for employment or hire any Sun employee or agent who provided the Services.

**7. Warranty and Disclaimer.** Sun warrants that during the performance of Services it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, **SERVICES AND ANY WORK PRODUCT ARE PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND. 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 SERVICES OR ANY WORK PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE PERFORMANCE OR USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE.**

**8. Confidentiality.**

8.1 For a period of three years after termination of this Agreement, Sun and Customer will retain in confidence all information and know-how transmitted by the other party during the Services 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 described in this Agreement. However, 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.

8.2 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.

8.3 The disclosing party acknowledges that the receiving party may currently, or in the future, be developing information internally, or receiving information from other parties, that is similar to the confidential information. Either party is free to use for any purpose the residuals resulting from access to or work with such confidential information, provided that such party shall maintain the confidentiality of the confidential information as provided herein. The term "residuals" means information in non-tangible form, which may be retained in unaided memory by persons who have had access to the confidential information, including ideas, concepts, know-how or techniques contained in the confidential information. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.

**9. License to Work Product.** If, while performing Services, Sun creates and delivers to Customer any software or software tools or any enhancements or modifications to software or software tools (collectively, the "Work Product"), all copyright, patent and other intellectual property rights in and to such Work Product shall be retained by Sun. Notwithstanding the foregoing, in exchange for payment of the Fees, Customer shall receive a non-exclusive, non-transferable license to use such Work Product under the terms, and during the term of, the applicable standard license agreement of the Sun or MySQL product for which the Work Product has been produced. Sun reserves any and all rights not expressly granted herein.

**10. Limitation of Liability.** WITH THE EXCEPTION OF PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE ARISING FROM SUN'S WILLFUL MISCONDUCT UNDER THIS AGREEMENT, (a) 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; AND (b) IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF SUN TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID TO SUN BY CUSTOMER UNDER THIS AGREEMENT.

**11. Cancellation Policy.** Customer must arrange for the Services to be performed within one year of the Effective Date; any unused prepaid Fees will be forfeited after one year. In the event Customer cancels or delays the scheduled Services, Customer must provide prompt emailed notice to Sun at [services-reporting@mysql.com](mailto:services-reporting@mysql.com). Customer will reimburse Sun for all reasonable expenses incurred on Customer's behalf to the point of Sun's receipt of the cancellation notice, including but not limited to non-refundable travel costs. In the case of Customer's cancellation or delay of the Services, (a) no Services Fee will be due if notice is received by Sun ten

(10) or more business days prior to the scheduled start date of the Services; and (b) a portion of the Fees will be due if less than 10 business days notice is provided, as follows:

Notice is provided within 4 to 9 business days – pay 50%

Notice is provided within 0 to 3 business days – pay 100%

## **12. Miscellaneous.**

12.1 Severability; Survival. 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.**

11.4.1 This Agreement shall be governed by the laws of the State of California, United States, 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.

12.4.4 Customer shall comply at its own expense with all relevant and applicable laws related to its receipt of the Services.

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 Independent Contractors. The parties enter into this Agreement as, and shall remain, independent contractors with respect to one another. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the parties.

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

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

12.10 Data Use and Privacy. Each party shall comply with all laws, rules and regulations applicable to such party in the collection, use and protection of data under this Agreement. In connection with Sun's provision of Products and Services, Customer authorizes and has obtained all necessary authorizations for Sun to process and use Customer's data and the personal information of Customer's authorized contact personnel. Customer agrees that its data, such as its addresses, delivery and services specifications will be used and distributed within Sun and its related companies and to certain third parties, such as subcontractors within Customer's country and abroad.

12.11 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.

12.12 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 Sun's web site; 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.