



Professional Services Agreement

This MariaDB Professional Services Agreement (“**Agreement**”) is entered into by and between MariaDB legal entity identified on the applicable Order Form (“**MariaDB**”) and the customer identified on the same Order Form (“**Customer**”) and sets forth the terms and conditions pursuant to which MariaDB provides Services to Customer.

1. Definitions

Unless otherwise defined in a particular Order Form, for the purposes of this Agreement, including any exhibits hereto, the following capitalized terms will have the following meanings:

- 1.1. “**Effective Date**” means the date that MariaDB accepts the Services order described in the Order Form, whether this acceptance be by email, express mail, or other date specified as the effective date in the Order Form.
- 1.2. “**Fees**” means the fees for the Services detailed in the Order Form and, if applicable, any Order Modification and Statement of Work.
- 1.3. “**Order Form**” means an order form signed by Customer which references this Agreement.
- 1.4. “**Order Modification**” means modifications to the Statement of Work set in a separate document executed by both parties.
- 1.5. “**Services**” means the consulting, training, or other services described in the Order Form (and if applicable by the Order Modification and the Statement of Work).
- 1.6. “**Statement of Work**” means the description of the Services, a document separately agreed by the parties, or the Services description on the Order Form or Order Modification.

2. Services

- 2.1. The Services shall be provided according to a mutually agreed-upon schedule and location or locations. Standard working hours are 8-hours per day.
- 2.2. Customer shall cooperate with MariaDB in order to facilitate MariaDB's performance of Services.
- 2.3. Customer will provide MariaDB with resources, personnel, materials and data that MariaDB may need or require to perform the Services. If the Services are to be carried out in the Customer's premises Customer shall provide MariaDB with reasonable access to said premises.
- 2.4. It is Customer's sole responsibility to protect and keep an up-to-date recoverable backup of its database(s), files, and software.
- 2.5. Services do not include maintenance or support services.

3. Term and Termination

- 3.1. Unless earlier terminated in accordance with this Section 3, the term of this Agreement shall commence on the Effective Date and continue until completion of the Services.
- 3.2. Either party may terminate this Agreement in the event that the other party fails to cure a material breach hereof within twenty (20) days after receipt of written notice thereof.
- 3.3. MariaDB may terminate this Agreement if the Customer has not arranged for the Services to be carried out within one (1) year of the Effective Date through no fault of MariaDB, in which case any prepaid Fees shall not be reimbursed.
- 3.4. In the event either party becomes liquidated, dissolved, bankrupt or insolvent, whether voluntarily or involuntarily, or shall take any action so declared, the other party shall have the right to terminate this Agreement immediately.
- 3.5. Except as set forth in Sections 1, 3.5, 4, 5, 6.2, 7, 8 and 9, which shall survive termination, upon termination of this Agreement, all rights and duties of the parties under this Agreement shall expire.

4. Fees, Expenses and Payments

- 4.1. Fees for the Services are due by Customer to MariaDB on the Effective Date or on the dates specified on the payment schedule of the Order Form.
- 4.2. Fees are fixed taking into account the normal working week referred to in Section 2 herein; if the Customer wishes other working schedules, MariaDB will quote alternative fees.
- 4.3. Customer shall owe MariaDB all actual and reasonable expenses (the “**Expenses**”) incurred by MariaDB to provide the Services such as, without limitation: lodging, transportation, meals, shipping expenses. Fees do not include Expenses unless expressly stated in the Order Form, the Order Modification or the Statement of Work.
- 4.4. Fees and Expenses shall be paid thirty (30) days MariaDB’s date of invoice. Customer shall not be entitled to offset any payment.
- 4.5. Any payment not made when due shall accrue late payment fees at the rate automatically imposed, and in the manner established, by applicable laws. Late fees shall not constitute an election of, or MariaDB’s exclusive, remedy. Late payment shall entitle MariaDB to immediately terminate this Agreement for cause. Customer agrees to pay any and all legal fees, collection fees or other expenses incurred by MariaDB due to Customer’s failure to pay any amounts due.
- 4.6. Fees shall be payable in immediately available funds, in the same currency in which the Fees are quoted on the Order Form.
- 4.7. Fees and expenses are exclusive of local, state, federal and international sales, value added, excise, withholding and other taxes and duties of any kind. Customer shall be responsible for, and agrees to pay, any and all taxes and duties arising out of or in connection with this Agreement, other than taxes levied or imposed based upon MariaDB’s net income. If MariaDB has the legal obligation to pay or collect such taxes, Customer shall pay the appropriate amount directly to MariaDB.

5. Proprietary Rights

- 5.1. Any result of Services, or the findings, analyses, programs, tools, applications, interfaces, enhancements, software, works, and other technical information, collectively defined as the “**Product**”, created by MariaDB pursuant to performing the Services is the property of MariaDB. Without paying further fees, Customer will nonetheless have a non-exclusive, non-transferable license for the Product. If Products are made available under an open source license, the applicable open source software license will apply to Customer’s use of Products.

6. Warranties; Disclaimer

- 6.1. MariaDB represents and warrants that it has the necessary experience, knowledge, skill and resources to carry out its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices.
- 6.2. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, MARIADB MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER IN CONNECTION WITH SERVICES, PRODUCTS, OR OTHER SERVICES PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, ALL OF WHICH ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. MARIADB EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATED HERETO INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SYSTEM INTEGRATION, AND ACCURACY OF INFORMATIONAL CONTENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MARIADB DOES NOT WARRANT RESULTS OR THAT ANY SOFTWARE, SUBSCRIPTION SERVICES OR WORK PRODUCT WILL BE FREE FROM ERRORS, DEFECTS OR BUGS. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER’S SOLE RESPONSIBILITY AT ALL TIMES TO PROTECT AND MAINTAIN AN UP-TO-DATE AND RESTORABLE BACKUP OF ANY AND ALL CUSTOMER’S DATA, DATABASES, FILES, UTILITIES, SOFTWARE AND OTHER SYSTEMS.

7. Limitation of Liability

- 7.1. NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE TO THE CONTRARY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER MARIADB NOR ITS AFFILIATES, LICENSORS, CONTRACTORS OR SUPPLIERS, SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO THE SERVICES, PRODUCTS, OR OTHER SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER

LEGAL OR EQUITABLE THEORY (A) FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE OF THE FEES PAID BY CUSTOMER PURSUANT TO THE ORDER FORM GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE TIME THE CLAIM AROSE; (B) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (C) FOR ANY RELIANCE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES; (D) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA, LOSS OF PROFIT OR REVENUE, OR BUSINESS INTERRUPTION, OR OTHER LOSS ARISING FROM THE SERVICES, PRODUCTS, OR OTHER SERVICES; OR (E) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE PARTIES AGREE THAT THIS SECTION 7 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT MARIADB WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

8. Confidentiality

8.1. **Definition.** “**Confidential Information**” is any information disclosed by one party or its affiliate (the “**Disclosing Party**”) to the other (the “**Receiving Party**”) under this Agreement, and clearly marked as confidential or identified in writing to the Receiving Party as confidential at the time of disclosure, or information which, given the nature of the information and the circumstances surrounding disclosure, should reasonably be understood by the Recipient to be confidential.

8.2. **Obligations.** The Receiving Party shall: (a) not disclose Confidential Information to any third party without Disclosing Party’s prior consent except to employees, affiliates, contractors, agents, or professional advisors (“**Workers**”) who need to know it and who have a legal obligation to keep it confidential; and (b) use the Confidential Information only to perform this Agreement, and ensure that such Workers use the Confidential Information only to perform this Agreement while using the same degree of care as the Disclosing Party uses to protect its own Confidential Information of a similar nature, but not less than reasonable care. The provisions of this Section **Error! Reference source not found.** shall survive for one (1) year after expiration or termination of the Agreement except for obligations to keep trade secrets and know-how confidential, which shall survive for the full period of their legal protection.

8.3. **Exclusions.** A Receiving Party shall have no obligation concerning information that: (a) is generally known to the public except as a result of acts by the Receiving Party; (b) is independently developed by the Receiving Party; (c) is disclosed to Receiving Party by a third party with no duty of confidentiality to the Disclosing Party; or (d) is required to be disclosed by lawful process, provided that, to the extent legally permissible, the Receiving Party provides the Disclosing Party with timely notice to enable the Disclosing Party to seek a protective order or otherwise object.

8.4. **Ownership.** All Confidential Information shall remain the property of the Disclosing Party and shall be returned (or, at the Disclosing Party’s option, destroyed) within ten (10) business days upon written request; provided, however, the parties acknowledge that copies of Confidential Information deleted from a Receiving Party’s systems may remain in a backup file until such system is overwritten. The terms of this Agreement are Confidential Information of both parties. The Disclosing Party acknowledges that the Receiving Party may have or receive from third parties, either at present or in the future, information that is similar to the Confidential Information. Either party is entitled to make use of any information in non-tangible form such as concept, know-how, ideas included in the Confidential Information which can be retained by memory.

8.5. **Equitable Remedies.** The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that each party may, without waiving any other rights or remedies, seek injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, without obligation to post any bond.

9. Miscellaneous

9.1. **Interpretation.** The headings used in this Agreement are for convenience only and shall in no case be considered in construing this Agreement. 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. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

9.2. **Assignment.** Subject to the following, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and any permitted assigns of the

parties. MariaDB may assign this Agreement in connection with a merger, acquisition, asset sale, or corporate reorganization of all or substantially all of its assets or a majority of its voting stock. Customer shall not assign this Agreement or any of its rights or obligations hereunder (whether by operation of law or otherwise) without the prior written consent of MariaDB. Any attempt by Customer to assign this Agreement without MariaDB's prior written consent shall be null and void. There are no intended third party beneficiaries of this Agreement.

9.3. **No Waiver; Limitations.** No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Except for Customer's obligations to pay Fees and to the extent permitted by applicable law, no claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

9.4. **Governing Law; Disputes.** This Agreement and any dispute relating to, or arising out of this Agreement or its formation or termination or actions or omissions contemplated by this Agreement, will be governed by and in accordance with the laws of California, without giving effect to the conflict of laws provisions. For all disputes arising out of this Agreement, the parties consent to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to, or govern, this Agreement.

9.5. **Consent and Notices.** Unless otherwise expressly indicated, any consent or authorization required under this Agreement shall be at the sole discretion of the party from whom such consent is required. Notice shall be deemed to have been received by a party, and shall be effective on the day received. All breach-related notices permitted or required under this Agreement shall be in writing and shall be delivered by recognized postal or courier services who provide delivery confirmation to the other party's address set forth on the Order Form, or such other address as the parties may subsequently provide in writing. All other notices may be sent by email with notice deemed given upon acknowledgment of receipt by a reply email.

9.6. **Publicity.** No public communication concerning this Agreement and relationship between the parties will be published or caused to be published by either party without the other party's prior written consent. Notwithstanding the foregoing, Customer agrees that its company name and its logo may be mentioned in a list of customers of MariaDB on a website at mariadb.com, public filings, and other materials of MariaDB for potential customers, partners and investors.

9.7. **Independent Contractors.** The parties hereto are independent contractors and nothing in this Agreement shall create a partnership, joint venture, agency, franchise, or employment relationship between the parties.

9.8. **Force Majeure.** Except for Fees, neither party shall 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 (including blackouts or brownouts), acts of God, acts of government, pandemic, epidemic, fires, strikes, delays in transportation, riots, terrorism, war or other events outside a party's reasonable control and not caused by its fault or negligence.

9.9. **Entire Agreement.** Unless otherwise agreed in a separate written agreement signed by both parties, this Agreement, the Order Form(s) and any attachments or exhibits hereto, comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior and contemporaneous proposals, understandings and all other agreements, whether oral and written. This Agreement may be amended or modified only in a writing by an authorized officer of each party. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement. This Agreement may be incorporated by reference into an Order Form, executed via facsimile or electronic signature, and a facsimile copy or electronic version of either party's signature shall be deemed and be enforceable as an original thereof. The terms of any purchase order or other documents supplied to MariaDB will be null and void. MariaDB's acceptance of any such document 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 officer of each party. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the applicable Statement of Work, (b) the applicable Order Form; and (c) this Agreement.

9.10. **Quebec Entity.** This Section 9.10 applies only to a Customer located in Quebec, Canada: 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.