

MARIADB PROFESSIONAL SERVICES AGREEMENT

This services agreement is entered into between the MariaDB specified on the Order Form ("MariaDB"), and Customer and establishes the terms and conditions pursuant to which the Customer wishes to obtain, and MariaDB wishes to provide, Services (as defined herein).

Article 1. DEFINITIONS.

Capitalized terms defined either in this clause, or in the context in which they appear in the Agreement, will have the indicated meaning throughout the Agreement.

"Agreement" means this MariaDB Professional Services Agreement together with the Order Form to which it is attached or from which it is referenced and, if applicable, the Order Modification and/or the Statement of Work.

"Customer" means the single end user legal entity identified on the Order Form, including internal divisions of that entity, but not any subsidiaries or other affiliates of the entity.

"Effective Date" means the date that MariaDB accepts the Services order described in the Order Form, whether this acceptance be by email, fax, or express mail.

"Fees" means the fees for the Services detailed in the Order Form and, if applicable, any Order Modification and Statement of Work.

"Order Form" means the order form signed by the Customer which references this Agreement.

"Order Modification" means modifications to the Statement of Work set in a separate document executed by both parties.

"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).

"Statement of Work" means the description of the Services set forth in a document in the form set forth as Attachment A, a document separately agreed by the parties, or the Services description on the Order Form or Order Modification.

Article 2. SERVICES.

The Services shall be provided according to a mutually agreed-upon schedule and location or locations. Standard working hours are 8-hours per day.

Customer shall cooperate with MariaDB in order to facilitate MariaDB's performance of Services.

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.

It is Customer's sole responsibility to protect and keep an up-to-date recoverable backup of its database(s), files, and software.

Services do not include maintenance or support services.

Article 3. TERM & TERMINATION.

Unless earlier terminated in accordance with this Article 3, the term of this Agreement shall commence on the Effective Date and continue until completion of the Services.

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.

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.

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. Except as set forth in Articles 3 to 11, which shall survive termination, upon termination of this Agreement, all rights and duties of the parties under this Agreement shall expire.

Article 4. FEES, EXPENSES AND PAYMENTS.

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.

They are fixed taking into account the normal working week referred to in Article 2 herein; if the Customer wishes other working schedules, MariaDB will quote alternative fees.

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.

Fees and Expenses shall be paid thirty (30) days MariaDB's date of invoice. Customer shall not be entitled to offset any payment.

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.

Fees shall be payable in immediately available funds, in the same currency in which the Fees are quoted on the Order Form.

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.

Article 5. PROPRIETARY RIGHTS.

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.

Article 6. WARRANTIES; DISCLAIMER

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.

EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 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.

Article 7. LIMITATION OF LIABILITY.

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 ARTICLE 7 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT MARIADB WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

Article 8. CONFIDENTIALITY.

The parties agree to keep this Agreement confidential, and neither party shall disclose the financial or other terms or conditions of this Agreement to any third party without the prior consent of the other party. Any information which is clearly marked as "confidential" or identified in writing to the receiving party as confidential at the time of disclosure shall be kept confidential by the receiving party.

MariaDB may disclose confidential information to subcontractors for the purpose of providing the Services, provided it executes with said subcontractor an agreement to keep information confidential.

The non-disclosure obligations of the first paragraph of this present article shall not apply if the information shall have: (i) first become generally known and published through no fault of the receiving party; (ii) been learned by the receiving party from a third party who is not known by the receiving party to be bound by confidentiality restrictions; (iii) been already known to the receiving party; or (iv) been developed by or for the receiving party, independent of activities under this Agreement.

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.

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.

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.

Article 9. NON-SOLICITATION.

Customer agrees that it shall not, at any time during the term of this Agreement and for a period of one (1) year after the termination of this Services Agreement, whether for its own account or for the account of others, solicit for employment any of the employees or independent contractors of MariaDB. Notwithstanding the foregoing, nothing in this Agreement shall prevent Customer from hiring any person who responds to a general solicitation not personally directed to such person. In the event Customer breaches this Article 9, MariaDB shall be entitled to collect liquidated damages from the Customer for breach to compensate MariaDB for locating, recruiting, hiring and training a replacement person. MariaDB's liquidated damages shall be a sum equal to two times the gross annual compensation of the person Customer wrongfully hired or engaged. Gross annual compensation means twelve times the wrongfully hired person's last full month's compensation from MariaDB including bonuses and benefits. The parties agree and acknowledge that this amount is a reasonable, liquidated amount and not a penalty.

Article 10. NOTICES.

Unless otherwise agreed by the parties, all breach or termination-related notices required or permitted to be given under this Agreement shall be in writing and addressed and delivered (i) in person, (ii) by certified mail return-receipt requested, (iii) by commercial overnight courier providing a receipt. Such notice shall be sent to the address set forth on the first page of this Agreement when notifying MariaDB, or the address on the Order Form when notifying the Customer, or to any other address either party may from time to time specify in writing to the other party pursuant to this present article. All other notices may be sent by email or facsimile, and be deemed given upon acknowledgement of receipt by a reply email or facsimile.

Article 11. SUNDRY.

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.

The headings used in this Agreement are for convenience only and shall not be considered in interpreting this Agreement. 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 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.

Customer may not assign this Agreement without the prior written approval of MariaDB. Such prior approval shall not be needed in case the assignment results from a corporate reorganization, consolidation, merger, or sale of substantially all of its assets, provided that the beneficiary of such assignment is no direct competitor of MariaDB (i.e. an entity providing database products and services).

This Agreement may be amended or modified only in a writing executed by both parties. It may be executed via facsimile, and a facsimile copy or scanned copy sent via email of either party's signature shall be deemed and

be enforceable as an original thereof. In case of conflict or inconsistency between this Agreement and any other document submitted by Customer to MariaDB, the terms and conditions of this Agreement will prevail.

Article 12. EXTERNAL COMMUNICATION.

Notwithstanding the foregoing, nothing in this Agreement shall prevent the parties from agreeing to jointly or independently promote the work externally for technical, publicity or other reasons.

Article 13. FORCE MAJEURE.

Neither party shall be liable to the other for failure to perform its obligations pursuant to this Agreement if the failure is a result of acts of God, acts of governmental authority, strikes by third parties, delays in transportation, riots, revolution, terrorism, war, nuclear explosion or irradiation, fires, unavailability of communications facilities or energy sources, or any causes beyond the reasonable control of that party.

Article 14. APPLICABLE LAW AND JURISDICTION.

If MariaDB USA, Inc. is the MariaDB party to this Agreement: (a) then 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; and (b) for all disputes arising out of this Agreement, the parties consent to the exclusive jurisdiction of the federal and state courts located in San Mateo, California or Northern District of California, as applicable. If MariaDB Corporation Ab is the MariaDB party to this Agreement: (i) then 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 Finland, without giving effect to the conflict of laws provisions; (ii) for all disputes arising out of this Agreement, the parties consent to the exclusive jurisdiction of the courts located in Helsinki, Finland; however, the parties will be entitled to sue before other courts for the purpose of implementing an enforceable judgment rendered by the courts of Helsinki and MariaDB will be authorized to seek before other courts an injunction order or other temporary measure to protect its proprietary rights; and (iii) the United Nations Convention on Contracts for the International Sale of Goods shall not apply to, or govern, this Agreement. If Customer is located in 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. Except for Customer's obligations to pay Fees, 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.

**MariaDB Professional Services Agreement
Attachment A**

Statement of Work

Unless otherwise specified in the Comments or SoW section of the Order Form or attached to the Order Form, the Statement of Work will be Time Hire as described below.

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Time Hire

A MariaDB consultant will help customers in dealing with the technical issues related to the use of a MySQL® or [MariaDB](#) database or an associated and supported third party product in their projects.

Time Hire is delivered on a time and materials basis. The MariaDB consultants will work with the Customer on the dates and times agreed for the number of hours or days specified on the Order Form.

The MariaDB Consultant will send a report of the engagement once completed.