



## MariaDB Enterprise Subscription Agreement

This MariaDB Enterprise Subscription Agreement (“**Agreement**”) is entered into by and between MariaDB (“**MariaDB**”) and **Customer** as of the Effective Date, and establishes the terms and conditions pursuant to which MariaDB will provide technical support and maintenance services to Customer. This is a legally binding agreement. Please read it carefully. By clicking “I Accept”, or accessing or using the Software and/or Subscription Services (as defined herein) and/or updates to the same, you: (a) agree to and accept the following terms and conditions on behalf of the Customer with which you are employed, affiliated or associated; (b) represent that you are an authorized user of the Software and/or Subscription Services; and (c) represent that you have the authority to bind the Customer to these terms. **In the event of a negotiated agreement between MariaDB and Customer, the terms of such negotiated agreement shall apply and control over this Agreement’s terms and conditions.** If Customer acquires the Subscription Services or Software (as defined herein) from a Reseller (as defined herein), Customer agrees that this Agreement applies to Customer’s use of such Subscription Services and Software.

**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:

“**Affiliate**” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

“**Customer**” means the entity identified on the Order Form, excluding any Affiliates (unless expressly set forth on the Order Form).

“**Effective Date**” means the date this Agreement is last signed by MariaDB and Customer, or the date that you/Customer accept the terms and conditions herein.

“**Enterprise Benefits**” means the additional benefits made available to Customers at a specified Support Level as described on the MariaDB Website.

“**GPL License**” means the version of the GNU General Public License published by the Free Software Foundation applicable to Supported Software.

“**Initial Term**” means the initial term of an Order Form, as specified on the Order Form, provided that if no Initial Term is specified, the Initial Term will be one (1) year from the Order Form Effective Date.

“**MariaDB**” means MariaDB USA, Inc., a Delaware corporation.

“**MariaDB Website**” means <http://www.mariadb.com>.

“**MaxScale**” means the Software product MariaDB MaxScale, which is subject to the terms and conditions herein, as well as the additional terms and conditions set forth at [mariadb.com/product-terms-conditions](http://mariadb.com/product-terms-conditions).

“**Order Form**” means: (a) the order form set forth on Attachment A hereto; (b) an order form signed by Customer and accepted by MariaDB with reference to this Agreement, substantially in the form set forth on Attachment A hereto; (c) the order form submitted electronically by or on behalf of Customer via the online store at the MariaDB Website, or (d) the ordering document agreed by Reseller and Customer.

“**Order Form Effective Date**” means the effective date of an Order Form as set forth thereon.

“**Reseller**” means a reseller or distributor authorized by MariaDB to make available the Subscription Services or Software to Customer.

“**Server**” means a single MariaDB database daemon on (a) physical machine; (b) virtual machine; or (c) software container. A Server may also be described as an Instance on an Order Form.

“**Software**” means software products made available to Customer by MariaDB as part of the Support Level.

“**Subscription Services**” means the MariaDB technical support and maintenance services set forth at [https://mariadb.com/wp-content/uploads/2019/11/mariadb-subscription-services-v1-04\\_policy\\_1044.pdf](https://mariadb.com/wp-content/uploads/2019/11/mariadb-subscription-services-v1-04_policy_1044.pdf), as modified by

MariaDB from time to time.

**“Subscription Services Policies”** means the MariaDB subscription policies set forth at <https://mariadb.com/subscription-services-policies/>, as modified by MariaDB from time to time.

**“Support Level”** means the level of support subscribed to by Customer, as designated on the Order Form.

**“Supported Software”** means the specific versions of software on specific platforms for which MariaDB provides Subscription Services, as described in the Subscription Services Policies.

**“vCPU”** means virtual central processing unit assigned to every Virtual Machine (“VM”) within a cloud environment.

**“Xpand”** means the Software product MariaDB Xpand, which is subject to the terms and conditions herein, as well as the additional terms and conditions set forth at [mariadb.com/product-terms-conditions](https://mariadb.com/product-terms-conditions).

## **2. Scope.**

2.1 **General Scope of Services.** During the Term and subject to the terms and conditions of this Agreement, MariaDB agrees to provide Subscription Services to Customer solely for Customer’s business operations. Customer agrees that all Servers or vCPUs used by the Customer with the Software must be subject to an agreement with MariaDB for Subscription Services.

2.2 **Enterprise Benefits.** MariaDB will use commercially reasonable efforts to provide the Subscription Services and any applicable Enterprise Benefits to Customer.

2.3 **Limitations.** MariaDB does not guarantee that any bug fix provided in connection with Support will actually be accepted into future versions of the applicable Supported Software. In the event a bug fix is not accepted, Customer may (i) purchase technical support from MariaDB for custom builds of the Supported Software (to the extent accepted by MariaDB), for an additional fee, or (ii) upgrade to a MariaDB product or service that includes the bug fix, if any.

2.4 **Restrictions.** Except as otherwise expressly set forth in this Agreement or the applicable Order Form, Customer may not use the Software, or allow the transfer, transmission, export or re-export of the Software or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other U.S. government agency or the European Union. In addition, Customer will not remove, alter or obscure any proprietary notices in the Software including copyright notices, or permit any third party to do so.

2.5 **Affiliate Use.** An Affiliate of Customer may access the Subscriptions Services and use the Software for which Customer has purchased a Subscription under an applicable Order Form, provided that: (a) such Affiliate (i) agrees in writing with Customer to be bound by and accepts all of the obligations imposed upon Customer under this Agreement (other than payment obligations for which Customer is solely responsible to MariaDB), or (ii) Customer agrees to be responsible for the acts and omissions of such Affiliate in relation to the applicable Order Form; (b) the Affiliate is not a MariaDB customer under separate contract, nor actively engaged with MariaDB in discussions for the purchase of MariaDB Subscription Services at the time an Order Form is executed pursuant to this Agreement; (c) the Affiliate is not a direct competitor of MariaDB; and (d) all of Customer’s obligations under this Agreement and the applicable Order Form will remain in full force and effect.

## **3. Term and Termination.**

3.1 **Term.** The term of this Agreement will begin on the Effective Date and will terminate at the expiration of sixty (60) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue to the extent necessary to give validity to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with this Section 3.1. The term of an Order Form begins on the Order Form Effective Date and continues for the Initial Term. Thereafter, each Order Form automatically renews for successive one-year terms (each a **“Renewal Term”** and together with the Initial Term, the **“Term”**), unless either party provides written notice of non-renewal no less than sixty (60) days prior to the end of the then-current Term. If Customer does not renew the Order Form for consecutive periods, then if Customer subsequently seeks to resume Subscription Services provided by MariaDB, in addition to applicable Fees, MariaDB may impose a reinstatement fee of up to eighteen percent (18%) of the Fees in effect in the most recent Term.

3.2 **Termination.** Either party may terminate an Order Form in the event that the other party fails to cure a material

breach thereof within thirty (30) days after receipt of written notice of such breach. In addition, MariaDB may terminate or suspend each current Order Form or this Agreement upon written notice in the event that Customer fails to timely pay any Fees or expenses due hereunder, or any Supported Software applicable to the Support Level for Customer becomes, or is likely to become, the subject of a claim of intellectual property infringement or misappropriation. In addition, 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 each outstanding Order Form immediately.

3.3 Effect of Termination. If this Agreement or an Order Form is terminated for any reason, Sections 1, 3.3, 4, 5, 6.3, 7, 9, 10, 11 and 12 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

#### **4. Fees and Payments.**

4.1 Fees. Customer shall pay to MariaDB the fees and other payments described in the Order Form. Fees for the Initial Term and each Renewal Term, if any, are due on the date that such term commences. Fees for each Renewal Term will be set at MariaDB's then-current fees for the applicable Subscription Services. Fees for Subscription Services (the "Fees") will be identified in an Order Form and are due within thirty (30) days of the Effective Date for the Initial Term. Fees for any Renewal Term are due on the first day of any such Renewal Term. Unless otherwise expressly stated herein, all Fees are non-refundable, non-cancelable and exclusive of indirect Taxes. If MariaDB USA, Inc. is the MariaDB party to this Agreement, Fees are stated in United States Dollars, must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Customer agrees to pay MariaDB the applicable Fees for each Server or vCPUs. Failure to pay Fees when due is a material breach of this Agreement. Customer may not decrease the number of Servers or vCPUs under the Subscription Services during a Term.

4.2 Late Payments. Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less.

4.3 Taxes. All Fees are exclusive of Taxes. Customer will pay MariaDB an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by MariaDB. "Taxes" means any form of sales, use, excise, import, export, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of MariaDB. If Customer is required to withhold or deduct any portion of the payments due to MariaDB, Customer will increase the sum payable to MariaDB by the amount necessary so that MariaDB receives an amount equal to the sum it would have received if Customer had made no withholdings or deductions.

4.4 Reporting. Customer will notify MariaDB promptly if the actual number of Servers or vCPUs used by Customer exceeds the number of Servers or vCPUs for which Customer has paid the applicable Fees. In such notice, Customer will include the number of additional Servers or vCPUs and the date(s) on which such Servers or vCPUs were first used. MariaDB will invoice Customer for Subscription Services for the applicable Servers or vCPUs, prorated over the then-current Term, and Customer will pay for such Subscription Services no later than thirty (30) days from the date of MariaDB's invoice.

4.5 Audit. During the Term of this Agreement and for two (2) years thereafter, MariaDB may, at MariaDB's sole expense and up to once per year (absent non-compliance in an immediately preceding audit) upon no less than fifteen (15) days advance written notice, audit Customer's facilities, books and records solely relevant to the number of Servers or vCPUs under Subscription Services or any component thereof during the term of this Agreement. Customer will provide MariaDB or its designated auditors, including Resellers, with reasonable accommodation for such audit, and such audit shall occur during Customer's normal business hours and in a manner that does not unreasonably interfere with Customer's normal business operations. Each party will pay the costs that it incurs in the course of the audit. If the actual number of such Servers or vCPUs during any given time period is shown to have exceeded the permitted maximum number of Servers or vCPUs for the then-applicable Support Level, Customer shall immediately pay to MariaDB or Reseller: (a) an amount equal to the difference between the Fees actually paid for such period and the Fees that should have been paid in light of the actual number of Servers or vCPUs utilized by Customer; (b) a service charge on such amount from the date that such amount should have been paid, in accordance with Section 4.2 hereof; and (c) if the actual number of Servers or vCPUs during any given time period exceeded the permitted maximum number of Servers or vCPUs by five percent (5%) or more, MariaDB's reasonable out-of-pocket costs incurred in the audit. Customer agrees to retain its books and records relevant to the number of Servers or vCPUs for at least two (2) years following termination or expiration of this Agreement.

4.6 Resellers. If Customer acquires the Subscription Services or Software via a Reseller, Customer will pay applicable Fees directly to such Reseller, and agrees to seek any applicable refund of Fees directly from such Reseller.

## **5. Proprietary Rights.**

5.1 Licenses. All bug fixes for and other modifications of Supported Software delivered or modified by MariaDB or its suppliers pursuant to the Subscription Services shall be subject to the terms and conditions of the license of the underlying Supported Software, and Customer agrees to comply with such terms. For example, if the licensor of a version of Supported Software makes such version available pursuant to a GPL License (such as MySQL or MariaDB), all bug fixes or other modifications shall be subject to the same version of the GPL License. In the event that the applicable Support Level includes Software, such Software will be subject to the terms and conditions associated with such Software and made available to Customer.

5.2 Title. As between the parties, MariaDB will retain all right, title and interest in and to any software, tools, techniques, and other materials used in connection with this Agreement, including Software, and any work product created as part of this Agreement. As between the parties, Customer will retain all right, title and interest in and to any proprietary or third party software, products, documentation and other materials Customer supplies to MariaDB in connection with the Subscription Services, excluding the Supported Software. Customer agrees to strictly comply with MariaDB's trademark use and policies set forth at <https://mariadb.com/trademarks/>.

5.3 Feedback. In the event that Customer provides MariaDB with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback in connection with the Subscription Services (collectively, "**Feedback**"), Customer hereby grants MariaDB a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, modify, and distribute any such Feedback in any manner without compensation to Customer or attribution of any kind.

5.4 Reservation of Rights. All rights not expressly granted in this Agreement are reserved by MariaDB and no other licenses, immunity or rights, express or implied are granted by MariaDB, by implication, estoppel, or otherwise.

## **6. Representations; Warranties; Disclaimers.**

6.1 By Customer. Customer represents and warrants to MariaDB that (a) Customer has the full right and power to enter into and perform this Agreement without the consent of any third party, (b) neither Customer's entry into this Agreement nor MariaDB's performance hereunder will conflict with any other obligation which Customer may have to any other party, and (c) Customer is not a service provider or utility model computing delivery vendor who serves external end users. Customer will defend, indemnify and hold MariaDB and its Affiliates, and their respective directors, officers, employees, agents, representatives and contractors, harmless from any third party claims and any related costs and expenses that arise from a violation of the foregoing.

6.2 By MariaDB. MariaDB represents and warrants to Customer that (a) MariaDB has the full right and power to enter into and perform this Agreement without the consent of any third party and (b) during the Term, MariaDB shall provide the Subscription Services in a professional and workmanlike manner.

6.3 DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.2 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, MARIADB MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER IN CONNECTION WITH THE SOFTWARE, SUBSCRIPTION SERVICES, ENTERPRISE BENEFITS, 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, NON-INFRINGEMENT, 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 DATA, DATABASES, FILES, UTILITIES, SOFTWARE AND OTHER SYSTEMS OF CUSTOMER.

6.4 Limitations on Use. The Software and Subscription Services are not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the product could lead directly to death, personal injury, or significant physical or environmental damage, such as in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical devices.

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 SOFTWARE, SUBSCRIPTION SERVICES 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 SOFTWARE, SUBSCRIPTION SERVICES 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. **Publicity.** MariaDB may use Customer's name and logo in MariaDB's customer listings, wherever such lists may appear, and marketing materials, and issue press releases referencing Customer's name, provided that such use is in accordance with Customer's publicly available trademark usage guidelines.

9. **Confidentiality.**

9.1 **Definition.** "Confidential Information" is any information disclosed by one party (the "**Disclosing Party**") to the other (the "**Receiving Party**") in connection with the Subscription Services, and clearly marked as confidential or identified in writing to the Receiving Party as confidential at the time of disclosure. For clarity's purposes, Enterprise Benefits are MariaDB's Confidential Information.

9.2 **Obligations.** The Receiving Party shall: (a) not disclose Confidential Information to any third party without Disclosing Party's prior consent (except that MariaDB may disclose Confidential Information of Customer to employees or contractors with a need to know in connection with this Agreement or who have access to MariaDB's internal web-based systems and tools on which Customer information is maintained); and (b) not use or reproduce Confidential Information except as required to accomplish the purposes discussed. Customer acknowledges that MariaDB may store Confidential Information from Customer on MariaDB's own servers and systems, which may be located in multiple nations. The provisions of this Section shall survive for one (1) year after expiration or termination of the Agreement.

9.3 **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. The terms of this Section 9 shall not be construed to limit either party's right to independently develop or acquire products or services without use of the other party's Confidential Information. 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, or working with a competitor of the Disclosing Party.

9.4 **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.

9.5 **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.

10. **Non-Solicitation.** Customer agrees that it shall not, at any time during the term of this Agreement and for a period of six (6) months after the termination of this 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 hires or engages an employee or contractor of MariaDB in violation of this Section 10, MariaDB shall be entitled to collect liquidated damages from 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 (2) times the Gross Annual Compensation of the person Customer wrongfully hired or engaged. For purposes herein, "**Gross Annual Compensation**" means twelve (12) times the subject employee or contractor'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.

## **11. Miscellaneous.**

11.1 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.

11.2 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.

11.3 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. 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.

11.4 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. 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.

11.5 Attorneys' Fees; Collection Expenses. For the purposes of any enforcement or dispute arising between the parties relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, collection expenses and costs incurred in such enforcement or dispute proceeding, including for any failure to pay Fees hereunder.

11.6 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.

11.7 Compliance with Laws; Export Law Assurances. Each party agrees that it will comply with all applicable federal, state or local laws, ordinances, regulations, rules, decisions, orders, or requirements in connection with this Agreement. In addition, Customer acknowledges that software code delivered in connection with this Agreement, including the Software, may be subject to export and import control laws, and agrees to comply fully with those laws in connection therewith. Customer agrees that such code is not being, or 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 or the European Union. Customer hereby certifies that it is not prohibited by the U.S. Government or the European Union from participating in export or re-export transactions.

**11.8 U.S. Government Entity.** If Customer is a U.S. Government entity, the following applies: any software code provided hereunder is provided with RESTRICTED RIGHTS as customarily provided to the public as set forth in this Agreement. This commercial subscription and license is provided in accordance with FAR 2.101 (Definitions), FAR 12.211 (Technical Data) and FAR 12.212 (Software), and for Department of Defense transactions, in accordance with DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), and in similar clauses in the NASA FAR Supplement. The Government's rights in any such code and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose such code or documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

**11.9 Independent Contractors.** The parties hereto are independent contractors with respect to one another. Nothing in this Agreement shall create a partnership, joint venture, agency, franchise, or employment relationship between the parties.

**11.10 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 Customer, acts of a governmental authority, pandemic, epidemic, fires, strikes, delays in transportation, riots, terrorism, or war.

**12. Entire Agreement.** This Agreement, together with the Order Form, the, the Subscription Services Policies, 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 executed by both parties. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties. This Agreement may be 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. All Customer documents, whether signed or unsigned, including purchase orders, shall not be given any effect which is in addition to or inconsistent with this Agreement. 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 Order Form; (b) this Agreement; and (c) the Subscription Services Policies.