MariaDB Enterprise Subscription Agreement

This MariaDB Enterprise Subscription Agreement ("**Agreement**") is entered into by and between MariaDB USA, Inc., a Delaware corporation, registered at 350 Bay Street, Suite 100-319, San Francisco, CA 94133, and Customer as of the Effective Date, and establishes the terms and conditions pursuant to which MariaDB will provide Subscription Services to Customer.

1.   Definitions.

"**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 MariaDB signs this Agreement.

"**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.

"**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; or (b) the order form submitted electronically by or on behalf of Customer via the online store at the MariaDB Website.

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

"**Server"** means a machine that processes data using one or more CPUs, and which is owned, leased or otherwise used or controlled by Customer. Each Server backup (used only to archive data or to provide standby capability on systems configured for disaster recovery purposes), Server Blade or Server Virtual Machine contained in or emulated on such a machine constitutes a separate Server.

"**Server Blade"** means a complete computing system on a single circuit board. A Server Blade will include one or more CPUs, memory, disk storage, operating system and network connections. A Server Blade is designed to be hot-pluggable into a space-saving rack; each rack may contain many Server Blades.

"**Server Virtual Machine"** means a software implementation of a Server that executes programs like, and emulates, a physical Server. A single physical Server or Server Blade can host multiple operating systems and thereby include multiple Server Virtual Machines.

"**MariaDB Website"** means http://www.mariadb.com

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

"**Support"** means technical support services provided by MariaDB to Customer for Supported Software on the

number of Servers designated on the Order Form, or for which Customer has otherwise paid applicable fees hereunder, at the Support Level.

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

"**Support Policies"** means MariaDB's Support policies set forth on the MariaDB Website at https://mariadb.com/about/legal/technical-support-policies and incorporated herein for the applicable Support Level and the Supported Software, as modified by MariaDB from time to time.

"**Supported Software"** means the specific versions of software on specific platforms for which MariaDB provides Support, as described in the Support Policies.

2.   **Scope .**

2.1   **General Scope of Services.** During the Term and subject to the terms and conditions of this Agreement, the Support Level and the Subscription Services Policies, MariaDB agrees to provide Subscription Services to Customer. All Servers used by the Company with the Software must be subject to a Subscription Agreement.

2.2   **Enterprise Benefits**. MariaDB will use commercially reasonable efforts to provide the 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.

3.   **Term & Termination.**

3.1   **Term.**   The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) 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 in full force and effect to the extent necessary to give effect 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.

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 Terms will be set at MariaDB's then-current fees for the applicable Support.   Fees for Support (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 Renewal Terms are due within thirty (30) days of the commencement of such Renewal Term. 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 will reimburse MariaDB for all reasonable expenses MariaDB incurs in connection with the performance of Support. Client agrees to pay MariaDB the applicable Fees for each Server. Failure to pay Fees when due is a material breach of this Agreement. Fees are non-refundable, non-cancelable, and not changeable. Customer may not decrease the number of Servers subject to Support 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. Customer agrees to pay any and all legal fees, collection fees and other expenses incurred by MariaDB to enforce this Agreement or otherwise due to Customer's failure to pay any amounts due.

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, 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 used by Customer exceeds the number of Servers for which Customer has paid the applicable Fees. In such notice, Customer will include the number of additional Servers and the date(s) on which such Servers were first used. MariaDB will invoice Customer for Subscription Services for the applicable Servers, 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. MariaDB may, at MariaDB's sole expense and up to twice a year upon no less than thirty (30) days advance written notice, examine Customer's facilities, books and records relevant to the number of Servers using Support or any component thereof during the term of this Agreement. Customer will provide MariaDB with reasonable accommodation for such examination. If the actual number of such Servers during any given time period is shown to have exceeded the permitted maximum number of Servers for the then-applicable Support Level, Customer shall immediately pay to MariaDB: (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 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 during any given time period exceeded the permitted maximum number of Servers by five percent (5%) or more, the reasonable out-of-pocket costs of the examination. Customer agrees to retain its books and records relevant to the number of Servers for at least three years following termination or expiration of this Agreement.

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 Support 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 Services, excluding the Supported Software.

5.3 Communications. In the event that Customer provides MariaDB with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback (collectively, "Communications"), Customer grants MariaDB a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to

use, modify, and distribute such Communications in any manner without compensation to Customer or attribution of any kind**.**

5.4   Reservation of Rights. All licenses 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 (i) Customer has the full right and power to enter into and perform this Agreement without the consent of any third party, (ii) 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 (iii) 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 (i) MariaDB has the full right and power to enter into and perform this Agreement without the consent of any third party and (ii) during the Term, MariaDB shall provide Support 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 SUPPORT, SOFTWARE, 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 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 SUPPORT, SUPPORTED SOFTWARE, OTHER 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. Support, Software, and other 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 SUPPORT OR OTHER SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) 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 MONTH PERIOD PRIOR TO THE TIME THE CLAIM AROSE; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY RELIANCE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA, LOSS OF PROFIT OR REVENUE, OR BUSINESS INTERRUPTION, OR OTHER LOSS ARISING FROM THE SUPPORT OR OTHER SERVICES; OR (V) 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.   Endorsement. 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 Support, and clearly marked as confidential or identified in writing to the Receiving Party as confidential at the time of disclosure. 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 purpose 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. 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 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 times the gross annual compensation of the person Customer wrongfully hired or engaged. Gross annual compensation means twelve 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. 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 shall be governed in all respects (without regard to any conflict of laws provisions) by the laws of the State of Delaware and any controlling U.S. federal law. To the extent permissible, the terms of the United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. 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 redigés en anglais. Each party agrees to give the other a written description of any problem(s) that may arise pursuant to this Agreement and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. 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.** For the purposes of any arbitration or court action between the parties relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

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 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. Customer hereby certifies that it is not prohibited by the U.S. government from participating in export or re-export transactions.

11.8 **U.S. Government Restricted Rights.** If software code 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 acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-Department of Defense acquisitions), the government's rights in 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.** MariaDB shall not be liable to Customer 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 Customer, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any other causes beyond the reasonable control of MariaDB.

12. **Entire Agreement.** This Agreement, together with the Order Form and Support Policies, 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, oral and written, between the parties relating to the subject matter of this Agreement. 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, and a facsimile copy 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.