

MySQL Enterprise Driver Software License Agreement

PLEASE READ THIS FIRST. THIS IS A LICENSE AGREEMENT.

READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE SELECTING THE "I AGREE" (OR EQUIVALENT) BUTTON BELOW. BY SELECTING THE "I AGREE" BUTTON, YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT AND YOU MAY DOWNLOAD AND USE THE SOFTWARE.

IF YOU ARE NOT WILLING TO BE BOUND BY THIS AGREEMENT AND YOU DO NOT AGREE TO ALL ITS TERMS AND CONDITIONS, SELECT "CANCEL" (OR EQUIVALENT), WHICH WILL CANCEL THE DOWNLOAD OF THE SOFTWARE.

YOUR USE OF THE SOFTWARE INDICATES YOUR ASSENT TO BE BOUND BY THE LICENSE TERMS SET FORTH BELOW.

This MySQL Enterprise Driver Software License Agreement (the "Agreement") is by and between MySQL Americas, Inc., with its principal place of business located at 20450 Stevens Creek Boulevard, Suite 350, Cupertino, CA 95014 USA, if the individual or entity that assents to this license is located in any country other than EMEA (as defined below) or Sun Microsystems International B.V., with its principle place of business located at Saturnus 1, 3824 ME Amersfoort, The Netherlands, if the individual or entity that assents to this license is in EMEA (hereinafter in either case, "MySQL" or "we" or "us") and You. "You" and "your" refers to you as an individual or such entity that you belong to that wishes to use and download certain MySQL driver software or header files, any related explanatory materials and other components (the "Software").

"EMEA" means all member states of the European Union as well as Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire, Croatia, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Iceland, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia, Former Yugoslav Rep of Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Republic of Moldova, Mongolia, Morocco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Pakistan, Qatar, Reunion, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Somalia, South Africa, South Georgia & South Sandwich, Swaziland, Switzerland, Tajikistan, Tanzania, United Republic of Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Yemen, Zaire, Zambia and Zimbabwe.

1. Use of the Software. We grant you a nonexclusive, nontransferable, limited license to download the Software from the password-protected web page(s) that we specify to you ("Download Website"), use the Software for purposes of integrating the Software in object code form in your applications in order to provide operational support for MySQL database system software and then distributing those applications as integrated with the Software to your end users. If you want to use the Software for any purpose other than as expressly permitted under this Agreement You must contact MySQL to obtain the appropriate license. You agree that we may audit your use of the Software. Software documentation is either downloaded with the Software or may be accessed online at the MySQL website.

2. Restrictions.

2.1 You acknowledge that distribution of MySQL driver software or header files not obtained from the Download Website is not covered by this Agreement. If you receive the Software in object code form, you may not reverse engineer or decompile the object code Software or otherwise attempt to discover the source code of the Software except to the extent permitted by law, and you may not decompile the Software if such information is available by licensing any other MySQL software product through MySQL.

2.2 Your end users may only use the Software, as integrated with your applications, to run your applications with MySQL database systems software. Prior to distributing the Software you will require

your end users to execute or otherwise agree to an agreement binding them to terms consistent with the usage and distribution rights and restrictions contained in this Agreement.

2.3 You may not:

- distribute the Software except as expressly permitted in this Agreement;
- distribute the Software documentation;
- modify, adapt, or translate the Software—creating derivatives of the Software is strictly prohibited;
- use the Software for any purpose other than as expressly provided above;
- distribute Software unless accompanied by your application;
- charge your end users for use of the Software;
- remove or modify any markings or any notice of proprietary rights in or on the Software;
- distribute the Software in connection with the distribution of MySQL Community Edition or Community Server software licensed pursuant to the General Public License (GPL) including, without limitation, embedding, linking to or providing it or access to it on any separate media (CD-ROM, etc.);
- distribute “Community Edition” GPL-licensed versions of the MySQL database system software on your application’s media or on separate media;
- provide instructions or directions to download and/or install MySQL Community Edition or Community Server software;
- license the Software to your end users pursuant to an open-source software license agreement; and
- cause or permit others to perform any of the foregoing restricted acts.

2.4 You agree to:

- defend and indemnify MySQL against all claims and damages caused by Your distribution of the Software in breach of this Agreement and/or failure to include the required contractual provisions in your end user agreement as stated above;
- allow us to inspect your end user agreements and related records upon request; and
- enforce the terms of your end user agreements so as to effect a timely cure of any end user breach related to the Software, and to notify us of any breach of such terms.

3. Proprietary Rights. The intellectual property and proprietary rights of whatever nature in the Software and all related textual elements and documentation, including all copies and derivative works thereof, are and shall remain the exclusive property of MySQL and/or its suppliers and may not be copied, published, or distributed except as expressly permitted in this Agreement. Except as expressly set forth in this Agreement, nothing in this Agreement should be construed as transferring any aspects of such rights to you or any third party. MySQL and its suppliers reserve any and all rights not expressly granted in this Agreement. MySQL is a trademark of MySQL, and shall not be used by you except as permitted at <http://www.mysql.com/about/legal/trademark.html> or in a separate agreement between MySQL and You.

4. Upgrades; No Technical Support. This Agreement applies to each bug fix, hot fix, service pack or other update or upgrade to the Software which may be provided to you by MySQL in its sole discretion, unless MySQL provides other terms and conditions along with the bug fix, hot fix, service pack, or other update. This Agreement does not obligate MySQL to provide any bug fix, hot fix, service pack, or other update for the Software. MySQL will not provide technical support, phone support or updates or new releases to you for the Software licensed under this Agreement except as MySQL may wish to do so in its sole discretion.

5. Termination.

5.1 Either party may terminate this Agreement (a) upon ninety (90) days prior written notice, for any or no reason; or (b) immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.

5.2 MySQL may terminate this Agreement immediately upon written notice to you if it becomes aware of an intellectual property claim or security issue associated with the Software that potentially subjects either party to liability. In such event, if MySQL makes replacement driver software generally available you will be eligible to license such software pursuant to the then-current MySQL Enterprise Driver Software License Agreement.

5.3 In any event, this Agreement will expire upon the date you permanently discontinue use of the Software. Except as stated in Section 5.4, your rights to use and distribute the Software terminate upon expiration or termination of this Agreement. Section 1 (for as long as Section 5.4 applies) and Sections 2 through 8 shall survive expiration or termination of this Agreement for any reason.

5.4 If termination of this Agreement was not for your uncured breach or pursuant to Section 5.2, then pursuant to this Agreement you may continue to use and distribute the Software as integrated in your application versions existing as of the termination date or generally-released within 60 days thereafter for so long as such you continue to make such application versions available to your end users.

6. No Warranty. **THE SOFTWARE IS PROVIDED TO YOU "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE SOFTWARE. MYSQL AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. MYSQL AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. Without limiting the generality of the foregoing disclaimer, Software is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.**

7. Limitation of Liability. IN NO EVENT SHALL MYSQL OR ITS SUPPLIERS HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF MYSQL FOR ANY REASON AND UPON ANY CAUSES OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO NO MORE THAN \$500.00.

8. Miscellaneous.

8.1 Severability. 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.

8.2 Assignment. You may not assign this Agreement or your rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without MySQL's prior consent (at MySQL's sole discretion). Any attempt by you to assign this Agreement or the Software without MySQL's prior consent, where such consent is required, shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

8.3 No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by you more than one (1) year after the cause of action has accrued.

8.4 Governing Law.

8.4.1 This Agreement shall be governed by the laws of the State of California, United States, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement. In the event either party

initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in Santa Clara County, California.

8.4.2 Notwithstanding Section 8.4.1, either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and MySQL may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

8.4.3 Any action brought under this Agreement shall be conducted in the English language. If You are located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais.

8.4.4 You shall comply at your own expense with all relevant and applicable laws related to the use and distribution of Software as permitted in this Agreement.

8.5 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent ("Notice") required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address set forth above, to the attention of "Legal". Notices to MySQL must also be copied to Sun Microsystems, Inc. at 4150 Network Circle, Santa Clara, California 95054, Attn: MySQL Legal Group. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the fifth business day after which such Notice is deposited prepaid in the local postal system; or (b) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for receipt of Notice purposes upon issuance of Notice thereof in accordance with this Section.

8.6 Export Law Assurances. You acknowledge that the Software may be subject to export and import control laws, and agrees to comply fully with those laws in connection with the Software. You agree that the Software is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. You hereby certify that you are not prohibited by the U.S. government from participating in export or re-export transactions.

8.7 U.S. Government Restricted Rights. If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Software and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Software or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

8.8 Entire Agreement. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. Except as otherwise set forth herein, this Agreement may be amended or modified only in a writing executed by both parties. MySQL's acceptance of any document submitted by You to MySQL 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 or this Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of MySQL.

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