

ENTERPRISE SUBSCRIPTION AGREEMENT

THIS AGREEMENT is entered into by and between **Severalnines** and the **CUSTOMER** as of the Effective Date, and establishes the terms and conditions pursuant to which the Customer wishes to obtain, and Severalnines wishes to provide, technical support services.

Article 1. DEFINITIONS.

Capitalized terms defined either in this Section 1, or in the context in which they appear in the Agreement (including the Order Form), will have the indicated meaning throughout the Agreement.

“Agreement” means this Severalnines Enterprise Subscription Agreement, together with the Order Form.

“Customer” means the single end user entity (such as an LLC, corporation, organization or government agency) identified on the Order Form, including internal divisions of that entity, but not any subsidiaries or other affiliates of the entity. Customers may not be a service provider or utility model computing delivery vendor who serves multiple end users.

“Effective Date” means the date that the last required signature is provided on the Order Form.

“GPL License” means any version of the GNU General Public License published by the Free Software Foundation.

“Initial Term” means the initial term of this Agreement, as described on the Order Form.

“Order Form” means either: (a) the order form signed by the customer which references this agreement; or (b) the order form signed by both parties and attached as Attachment A.

“Severalnines” means Severalnines AB, as specified on the Order Form.

“Severalnines Support Subscription” means an annual subscription for Support.

“Severalnines Website” means www.severalnines.com .

“Support” means technical support services provided to Customers for Supported Software, at the Support Level designated on the Order Form.

“Support Policies” means Severalnines’ then-current Support policies displayed on the Severalnines Website for the applicable Support Level and the Supported Software, as modified by Severalnines from time to time.

“Support Level” means the scope of Support to which the Customer is entitled, as designated on the Order Form.

“Supported Software” means specified versions of software for which Severalnines provides support, on specified supported platforms for such software, all as described in the Support Policies.

Article 2. SCOPE OF SUPPORT.

Subject to the terms and conditions of this Agreement, and in exchange for the timely payment of Support fees, Severalnines agrees to provide Support to Customer in connection with its licensed use of Supported Software.

The scope of Support provided to the Customer under this Agreement, and the Supported Software (including applicable versions and platforms) to which that Support applies, is subject to: (a) the Support Level selected by the Customer in the Order Form; and (b) the Support Policies displayed on the Severalnines Website for the applicable Support Level, as updated by Severalnines from time to time. Customer acknowledges that: (a) while Severalnines cannot guarantee Support results, Severalnines agrees to use in good faith commercially reasonable efforts to provide Support in accordance with the Support standards set forth in this Agreement and the Support Policies; and (b) Severalnines Inc. reserves the right to discontinue Support of versions of the Supported Software, other than the most recently released version, at any time. Severalnines does not guarantee that any bug fix will actually be accepted into future versions of the applicable Supported Software; rather, Customer may seek to (i) purchase from Severalnines custom builds to Supported Software (to the extent accepted by Severalnines), for an extra fee, or (ii) upgrade to a Severalnines version that includes the fix.

If Customer desires for Severalnines to provide services outside the scope of Support, such as consulting, training, or engineering, or support for servers, software or platforms not included in Support, Customer shall request those additional services in writing. Severalnines may decline or accept any such request for additional services at its sole and absolute discretion. To the extent Severalnines agrees to provide any such additional services, the scope of those services shall be set forth in a separate agreement signed by both parties and shall be subject to Severalnines' then current fees, terms and conditions for such other services.

Article 3. SUBSCRIPTION TERM & TERMINATION.

Unless earlier terminated in accordance with this Article 3, the term of this Agreement shall: (a) commence on the Effective Date and continue for the Initial Term; and (b) thereafter renew for successive one-year terms, unless either party provides written notice of non-renewal no less than thirty (30) days prior to expiration of the end of the then-current term.

Severalnines may terminate 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, either party may terminate this Agreement in the event that the other party fails to cure a material breach hereof within thirty (30) days after receipt of written notice thereof. Severalnines may terminate the term of this Agreement at any time and for any or no reason upon the provision of sixty (60) days written notice to the Customer, in which case Severalnines shall provide the Customer with a pro rata refund of the applicable fees for the remainder of the months in the then-current term of the Agreement. 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, 4 (solely with respect to fees arising before termination, and related expenses) and 5 to 14, which shall survive termination, upon termination of this Agreement, all rights and duties of the parties under this Agreement shall expire.

Article 4. FEES AND PAYMENTS.

Customer shall pay to Severalnines the Support 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. Severalnines shall endeavor to invoice Customer on or prior to commencement of each renewal term, if any, with applicable fees due within 30 days after the commencement of such renewal term. Fees for renewal terms, if any, will be set at Severalnines' then-current fees for the applicable Support and other service.

Any payment not made when due shall accrue late payment fees either: (a) at the rate automatically imposed, and in the manner established, by applicable European laws (for those Customers organized in Europe); or (b) if European laws do not apply or do not automatically impose late payment fees, then at the rate of 1.5% per month or the highest amount allowable by law, whichever is lower, such interest to accrue on a daily basis after as well as before any judgment relating to collection of the amount due. Late fees shall not constitute an election of, or Severalnines' exclusive, remedy. Late payment shall entitle Severalnines to terminate this Agreement for cause, immediately. Customer agrees to pay any and all legal fees, collection fees or other expenses incurred by Severalnines 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 paid are non-refundable, except to the extent otherwise expressly provided in Section 3.2.

All Support and other quoted fees 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 Severalnines' net income. If Severalnines has the legal obligation to pay or collect such taxes, Customer shall pay the appropriate amount directly to Severalnines.

Support does not include or require travel or Customer site visits, except to the extent otherwise provided in the Support Policies. If Customer requests an on-site visit or other travel that is not included in the applicable Support Level, Customer agrees to pay Severalnines on an hourly basis: (a) at Severalnines' then-current hourly rates for time spent providing Customer site services; and (b) at Severalnines' then-current travel rate, for time spent in travel to or from Customer premises. Customer shall reimburse Severalnines for all reasonable travel-related expenses (e.g., travel, accommodations and meals) incurred while providing services, even for Support Levels that may include site visits, and Severalnines shall provide supporting receipts when requested.

Article 5. PROPRIETARY RIGHTS.

5.1 All Code Subject to License for Underlying Software. All code delivered or modified on behalf of Customer in connection with this Agreement shall be subject to the terms and conditions of the license to which the underlying Supported Software is subject, and Customer agrees to comply with those license terms and conditions at all times.

5.2 Title. As between the parties, Severalnines will retain all right, title and interest in and to any software, tools, techniques, and other materials used in connection with this Agreement 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 software, products, documentation and other materials it supplies.

Article 6. WARRANTIES.

During the term of this Agreement, Severalnines shall provide its commercially reasonable efforts to provide Support services in a professional and workmanlike manner.

The limitation period for all warranty claims is one year and starts with the delivery of the Software either when received by mail or obtained via the download website at the first date such download is made available. Upgrades shall not impact the limitation period. However, in the event of intentional misconduct or gross negligence of Severalnines, fraudulent concealment, personal injury, deficiency in title as well as with respects to claims pursuant to laws and regulations on the security of products, the applicable statutory time limits apply.

Article 7. LIMITATION OF LIABILITY.

The liability of either party shall be limited to the typically foreseeable damage at the Effective Date of the Agreement. Neither party shall be liable for any consequential or indirect damages. The maximum amount of liability for either party is limited to the sums paid by the Customer under this Agreement (including orders not yet paid). However, such maximum amount will not apply to:

- ⌘ damages caused by the intentional misconduct and/or gross negligence of a party;
- ⌘ damages for bodily injury;
- ⌘ any breach of Severalnines' intellectual property rights by Customer;
- ⌘ liability pursuant to laws and regulations concerning the security of products.

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.

However, Severalnines may disclose Confidential Information to employees or contractors with a need to know or who have access to Severalnines' internal web-based systems and tools. Customer acknowledges that Severalnines will store Confidential Information from Customer on Severalnines' 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.

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. 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. Except to the extent of the copyright license that applies to changes in Supported Software described in Article 5, no rights or licenses to trademarks, inventions, copyrights or patents are implied or granted under this Agreement.

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 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 Severalnines. 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, Severalnines shall be entitled to collect liquidated damages from the Customer for breach to compensate Severalnines for locating, recruiting, hiring and training a replacement person. Severalnines' 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 Severalnines including bonuses and benefits. The parties agree and acknowledge that this amount is a reasonable, liquidated amount.

Article 10. AUDIT RIGHTS.

If Customer has subscribed to a Support Level that limits Support to a maximum number of servers, Severalnines may, 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 used by Customer during the term of this Agreement. Customer will provide Severalnines with reasonable accommodation for such examination, at the sole cost of Severalnines. If the number of actual 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 Severalnines: (a) an amount equal to the difference between the Support fees actually paid for such period and the Support fees that should have been paid in light of the actual number of servers; (b) interest on such amount from the date that such amount should have been paid, in accordance with Article 4 § 2 hereof; and (c) the reasonable out-of-pocket costs of the examination, if the number of actual servers during any given time period exceeded the permitted maximum number of servers by five percent (5%) or more. Customer agrees to retain its books and records relevant to the number of servers for two years following termination of this Agreement.

Article 11. 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 addresses set forth on the first page of this Agreement, 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 12. 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. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

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 Severalnines. 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 Severalnines (i.e. an entity providing database products and services).

Customer acknowledges that the Products may be subject to U.S. export control laws, and agrees not to disclose or export, either directly or indirectly, any technology or information or Products obtained pursuant to this Agreement. In particular, Customer agrees that the Products are not being nor will be acquired or re-exported, whether directly or indirectly, to proscribed or embargoed countries or to their nationals, nor will they 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.

This Agreement may be amended or modified only in writing executed by both parties. It may be executed via facsimile, and a facsimile copy 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 Severalnines, the terms and conditions of this Agreement will prevail.

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.

This Agreement shall be governed by the laws of Sweden, without regard to any conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to, or govern, this Agreement.

In the event either party initiates an action in connection with this Agreement, the exclusive jurisdiction of such action shall be in the courts of Stockholm, Sweden. However, the parties will be entitled to sue before other courts for the purpose of implementing an enforceable judgment rendered by the courts of Stockholm; in addition, Severalnines will be authorized to seek before other courts an injunction order or other temporary measure to protect its proprietary rights.