ENTERPRISEDB PARTNER AGREEMENT

THIS ENTERPRISEDB PARTNER AGREEMENT, together with all applicable Partner Program Addenda (this "Agreement") is entered into between EnterpriseDB Corporation or EnterpriseDB India Private Limited, as designated on the applicable Partner Program Addendum ("EnterpriseDB") and the entity ("Partner") entering into this Agreement. This Agreement is effective upon the execution of a Partner Program Addendum by EnterpriseDB and Partner ("Effective Date"). The rights and obligations of the parties are further described in the applicable Partner Program Guide, which is incorporated into this Agreement. The capitalized terms in this Agreement have the meanings set forth in their context or in Section 13 of this Agreement.

1. LICENSE GRANT

Subject to the limitations and obligations set forth in this Agreement, including the obligations set forth in the applicable Partner Program Addendum, EnterpriseDB grants to Partner the following licenses during the term of this Agreement:

1.1. Internal Use License. A nonexclusive, nontransferable license to install the Products on computers owned or leased by Partner within the Territory and to use the Products solely for evaluation, demonstration and promotional purposes. In no event may Partner use the Products for production or any other commercial purposes.

1.2 Marketing Materials License. A nonexclusive, nontransferable license to use, copy and supply Marketing Materials in printed format to End Users and prospective End Users. If Partner desires to perform any localization of Marketing Materials: (a) Partner must obtain prior written consent from EnterpriseDB; (b) Partner will ensure that the original meaning, quality and intent is preserved in the translation; (c) EnterpriseDB shall own all intellectual property rights to such localized Marketing Materials; and (d) Partner will provide copies of all localized versions of the Marketing Materials to EnterpriseDB prior to distribution.

1.3 Trademark License. A nonexclusive, nontransferable license to use EnterpriseDB's trademarks in accordance with the EnterpriseDB Trademark Standards for Use set forth at http://www.enterprisedb.com/company/legal/copyrights solely in connection with Partner's permitted activities under this Agreement in the Territory. Partner must submit all proposed uses of the EnterpriseDB trademarks to EnterpriseDB for prior written approval. In the event EnterpriseDB believes that a use of an EnterpriseDB trademark by Partner is non-complying, EnterpriseDB will notify Partner, in writing, specifying why the use is non-complying. The parties agree to negotiate in good faith to resolve such issues. All goodwill accruing from Partner's use of EnterpriseDB's trademarks shall inure to the benefit of EnterpriseDB. Partner will at no time contest or aid in contesting the validity or ownership of any of EnterpriseDB's trademarks or take any action in derogation of EnterpriseDB's rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any trademark of EnterpriseDB.

1.4 Open Source Software. The Products and Deliverables may be distributed with open source software programs as described in the licenses directory of the Products and Deliverables. These open source programs are distributed under the applicable open source licenses and not this Agreement.

1.5 License Restrictions. Except as expressly permitted in this Agreement, Partner agrees not to itself or through any parent, subsidiary, affiliate, agent or other third party: (a) copy or use the Products in any manner except as expressly permitted in this Agreement; (b) transfer, sell, rent, lease, distribute, or sublicense the Products; (c) allow access or permit use of the Products by any third party except as authorized by EnterpriseDB in writing, provided that Partner shall be liable for all acts and omissions of such authorized third party users; (d) circumvent the license keys embedded within the Products; (e) modify or create derivative works based upon the Products; (f) use the Products for providing time-sharing services, service bureau services or as part of an application services provider or Products as a service offering; (g) reverse engineer, disassemble, decompile the Products; (h) alter or remove any proprietary notices in the Products; or (i) make available to any third party any analysis of the results of operation of the Products, including benchmarking results, without the prior written consent of EnterpriseDB.

2. ENTERPRISEDB'S OBLIGATIONS

2.1 Services. Partner may purchase Services from EnterpriseDB for Partner's internal use as described in a SOW. Each party will appoint a project manager ("Project Manager") in each SOW with reasonable decision-making authority as well as other personnel in order to facilitate the fulfillment of the parties' obligations under the applicable SOW. Unless otherwise stated in an applicable SOW, all Services will be accepted upon delivery. If Partner cancels on-site services or on-site training events with less than two (2) weeks' notice, Partner will be charged for the originally scheduled services plus any non-refundable travel expenses. If Partner reschedules on-site services or on-site training events with less than 2 weeks' notice, Partner will be charged for: (a) the originally scheduled services or training; (b) any non-refundable travel expenses, and (c) the newly scheduled services or training. The same cancellation or re-scheduling policy applies for remote services or training but with not less than one (1) week notice. If Services are not used within six (6) months of the effective date of the applicable SOW, any fees paid for such Services are forfeited.

2.2 Support. EnterpriseDB will provide Support as set forth in the applicable Partner Program Addendum. Notwithstanding any contrary term in this Agreement, in the event an End User requests that EnterpriseDB provide Support directly to such End User, EnterpriseDB has the

option and right to do so under mutually agreeable terms and conditions with such End User.

2.3 **Liaison.** EnterpriseDB agrees to designate a primary relationship manager to act as a liaison with Partner for sales, marketing and technical requests.

2.4 **Notification of Changes**. EnterpriseDB will provide Partner notice within thirty (30) days of any changes in the Products, EnterpriseDB's Certification Program, fees and/or delivery schedules.

3. **PARTNER'S OBLIGATIONS**

3.1 **Partner Program Guide Requirements.** During the term of this Agreement, Partner agrees to comply with the applicable requirements stated in the Partner Program Guide.

3.2 **Liaison.** Partner agrees to designate a primary relationship manager to act as a liaison with EnterpriseDB for sales, marketing and technical requests.

3.3 Partner will not fork or bifurcate the source code for the Products other than the open source software components into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

3.4 Except as provided in this Agreement, Partner will not market, offer or sell any services related to the Products, derivative works of the Products, or any Partner software code made to work with any of the foregoing.

3.5 Partner will not make any representation or warranty on behalf of EnterpriseDB and Partner will not create any obligation on behalf of EnterpriseDB except as specifically agreed to in this Agreement by EnterpriseDB.

3.6 Partner will use reasonable efforts to protect EnterpriseDB's intellectual property rights in the Subscriptions and Services and will promptly report to EnterpriseDB any infringement or other violation of such rights of which Partner becomes aware.

3.7 Partner will defend or settle, indemnify and hold EnterpriseDB harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third party claims based on or otherwise attributable to: (a) Partner's gross negligence or intentional misconduct; (b) any breach of this Agreement or misrepresentations made by Partner with respect to the Agreement, (c) any violations of applicable law, or (d) breach of Section 12.11 (Compliance).

4. **PAYMENTS**

4.1 **Fees.** Partner agrees to pay EnterpriseDB the fees set forth in the applicable Partner Program Addendum, SOWs for Services for Partner's internal use, all Order Forms and purchase orders issued under this Agreement. Partner will pay all invoices within forty-five (45) days from the date of invoice. All fees are exclusive of EnterpriseDB's out-of-pocket expenses incurred in its provision of Services, including, but not limited to, expenses for travel, lodging, and similar items. Except as expressly provided in this Agreement, all payments are non-refundable and are made without right of setoff or chargeback. If Partner does not pay invoices when due, EnterpriseDB may charge interest at up to one percent

(1%) per month on the unpaid balance. If Partner fails to make any payment to EnterpriseDB when due, EnterpriseDB may, at its sole discretion and without affecting its rights under this Agreement, cancel or suspend work on any pending SOWs or any Partner Program Addendum.

4.2 **Taxes; Duties.** Partner will also pay to EnterpriseDB an amount equal to any taxes arising from or relating to this Agreement, including without limitation, sales, service, use or value-added taxes, but excluding any taxes based solely on the net income of EnterpriseDB. EnterpriseDB will separately itemize any applicable taxes and duties of which it is aware on each invoice, unless Partner furnishes EnterpriseDB with a properly executed tax exemption certificate certifying that it does not owe such taxes and duties.

4.3 **Withholdings or Deductions**. If Partner is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to EnterpriseDB, then the sum payable to EnterpriseDB will be increased by the amount necessary so that EnterpriseDB receives an amount equal to the sum it would have received had Partner made no withholdings or deductions; provided that this Section 4.3 does not apply if EnterpriseDB India Private Limited is designated as EnterpriseDB on the applicable Partner Program Addendum.

4.4 **Audit Rights.** Partner will, during this Agreement and for a period of three (3) years after termination, maintain records relating to contracts, invoices, accounts, complaints and other transactions relating to the Products, Services, Support and EnterpriseDB. Partner agrees that EnterpriseDB may directly or through an agent once per year inspect such accounts, records and information. If an audit reveals an underpayment to EnterpriseDB, Partner will immediately pay the amounts due and will be responsible for the reasonable cost of the audit; otherwise EnterpriseDB will bear the cost of the audit. These audit rights must be extended contractually to any third party relationships where EnterpriseDB products are sold or installed by or with the permission of the Partner.

5. **CONFIDENTIALITY.** Partner and EnterpriseDB agree to maintain the confidentiality of any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information ("Confidential Information") during the term of this Agreement and for a period of three (3) years after the termination of this Agreement; provided that to the extent the Confidential Information constitutes a trade secret(s) under law, the parties agree to protect such information for so long as it qualifies as a trade secret under applicable law. This section will not apply to: (a) any information that was in the public domain at or subsequent to the time such Confidential Information was communicated to the receiving party by the other party, (b) was rightfully in the receiving party's possession free of any obligation of confidence at or subsequent to the

time such Confidential Information was communicated by the other party, or (c) was developed by the receiving party or its employees, contractors or agents independently of and without reference to any Confidential Information. A disclosure of any Confidential Information in response to a valid order by a court or other governmental body or as otherwise required by law will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the receiving party will provide prompt advance written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent such disclosure. The receiving party shall not to use the Confidential Information of the other party for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party will protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party's Confidential Information to the same degree that it takes to protect its own confidential information and in no event less than reasonable care. The receiving party shall not make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The receiving party is liable for all violations of this Section 5 by its employees and consultants. Each party agrees to notify the other party in writing promptly upon discovery of any unauthorized access, disclosure, or use of the Confidential Information. Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of any Confidential Information and that the other party may seek, without waiving any other rights or remedies and without posting any bond, injunctive or equitable relief.

6.   **OWNERSHIP.**
6.1   **Pre-Existing Technology.** Other than the limited rights specifically granted in this Agreement, EnterpriseDB will own all right, title, and interest in and to its pre-existing technology, including without limitation, the Products, Marketing Materials and EnterpriseDB trademarks, and all derivative works thereof. Subject to the foregoing, Partner will own all right, title and interest in and to its pre-existing technology and all derivative works thereof.
6.2   **Deliverables and Training Materials**. EnterpriseDB shall own all right, title and interest in and to all Deliverables provided to Partner in the provision of any Services, and EnterpriseDB hereby grants to Partner a nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute (internally and externally), and transfer any such Deliverables during the term of this Agreement; provided that this license does not include the Products or any open source components of the Deliverables. EnterpriseDB will have the sole right to use and/or to apply for patents, copyrights or other statutory or common law protections for any Deliverable. Partner agrees that nothing in this Agreement will be deemed to prohibit or limit EnterpriseDB's use, now or at any time, of ideas, concepts, know-how, methods, techniques, skill, knowledge and experience, in any way whatsoever that are used or developed in the performance of Support or Services under this Agreement, any SOW or any Order Form, which constitute the intellectual property of EnterpriseDB, subject to EnterpriseDB's obligations with respect to Partner's Confidential Information. Notwithstanding the foregoing, all EnterpriseDB training courses and training materials ("Training Materials") shall not be considered Deliverables under this Agreement. Training Materials and all worldwide intellectual property rights therein, as the same may be amended and/or extended, including the copyright, are wholly owned solely by EnterpriseDB, who shall retain all right, title and interest in and to all Training Materials. Partner shall be entitled to keep and use all Training Materials provided by EnterpriseDB to Partner as part of any training Services, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to EnterpriseDB. In particular and without limitation, Training Materials may not be copied electronically or otherwise whether or not for archive purposes, modified including translated, re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. The use of any Training Materials will be limited to use by the specific persons to whom the training Services are provided. All EnterpriseDB trademarks, trade names, logos and notices present on the Training Materials shall be preserved.

7.   **WARRANTIES AND DISCLAIMER.** EnterpriseDB represents and warrants that: (a) for a period of thirty (30) days from the date of initial licensing by the End User, the Products shall substantially conform to the description contained in its Documentation; and (b) the Support and Services will be performed in a professional and workmanlike manner. The warranty given in Section 7(a) will only apply if: (i) the Products have been properly installed and used at all times in accordance with the instructions in their Documentation, and (ii) no modification, alteration or addition has been made to the Products. For any breach of the foregoing warranties, Partner's sole and exclusive remedy, and EnterpriseDB's sole and exclusive obligation, will be for EnterpriseDB to repair or replace the Products or re-perform the Support or Services as warranted, as applicable; provided that these remedies are only available if EnterpriseDB receives notice of such breach within thirty (30) from the date of initial licensing of the Products by the End User or ten (10) days from the date of delivery of the Support or Services, as applicable. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, ENTERPRISEDB DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. EXCEPT AS PROVIDED IN THIS SECTION 7, ENTERPRISEDB PROVIDES, AND PARTNER ACCEPTS, THE PRODUCTS,

DOCUMENTATION, SUPPORT AND SERVICES "AS IS", AND ENTERPRISEDB DOES NOT WARRANT THAT THE PRODUCTS, SUPPORT OR SERVICES WILL MEET PARTNER'S OR ITS END USER'S REQUIREMENTS OR WILL OPERATE IN COMBINATION WITH THE HARDWARE, SOFTWARE OR DATA NOT PROVIDED BY ENTERPRISEDB, EXCEPT AS SPECIFIED IN THE DOCUMENTATION OR THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ALL OPEN SOURCE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. PARTNER ACKNOWLEDGES THAT ENTERPRISEDB'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF PARTNER ONLY.

8.   INDEMNIFICATION. If a claim is brought against Partner by an unaffiliated third party claiming that Partner's distribution of Products licensed by EnterpriseDB under this Agreement infringes such third party's U.S. intellectual property right ("Claim"), EnterpriseDB will defend the Claim and indemnify Partner from the resulting costs and damages awarded against Partner to the third party making the Claim, by a court of competent jurisdiction or agreed in settlement. If Partner's distribution of the Products hereunder is enjoined due to a Claim, then EnterpriseDB may, at its sole option and expense: (a) procure for Partner the right to continue distributing the Products under the terms of this Agreement; (b) replace or modify the Products so that they are non-infringing; or (c) request return of the applicable Products and, upon receipt thereof, the corresponding licenses are terminated and EnterpriseDB shall refund the prepaid but unused fees paid for the infringing Products by Partner under this Agreement. EnterpriseDB's obligations under this Section 8 are contingent upon: (i) Partner giving prompt written notice to EnterpriseDB of the Claim; (ii) Partner allowing EnterpriseDB to control the defense and any related settlement of the Claim; and (iii) Partner furnishing EnterpriseDB with reasonable assistance in the defense of the Claim. EnterpriseDB shall have no liability under this Section 8 if the alleged infringement is based on: (A) combination with non-EnterpriseDB products, data or business processes, (B) use for a purpose or in a manner for which the Products were not designed, (C) use of any older release of the Products when use of a newer EnterpriseDB revision would have avoided the infringement, (D) any modification or alteration of the Products, (E) any intellectual property right owned or licensed by Partner or its End User, excluding the Products, (F) EnterpriseDB's compliance with any materials, designs, specifications or instructions provided by Partner or its End User, (G) use of the Products after EnterpriseDB notifies Partner of a Claim, or (H) open source software. THIS SECTION 8 STATES PARTNER'S SOLE AND EXCLUSIVE REMEDY AND ENTERPRISEDB'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

9.   LIMITATION   OF   LIABILITY. Notwithstanding any other clause in this Agreement, in no event will EnterpriseDB be liable for any special, indirect, incidental, punitive, exemplary or consequential damages (including, without limitation, any failure to realize savings or other benefits; any loss of use; or any claims made by or any payments made to any third person), any loss of revenue or profits, any loss and/or damage arising from or in connection with a virus, or any loss of data and/or damage arising therefrom or relating thereto, in each case arising from or in connection with this Agreement or the use or performance of any Products, Support or Services whether in an action based on contract, tort or any other legal theory, whether or not EnterpriseDB has been notified of the possibility thereof. Notwithstanding any other clause in this Agreement, EnterpriseDB's total aggregate liability arising from or in connection with this Agreement or the use or performance of any Products, Support or Services whether in actions based on contract, tort or any other legal theory, and whether or not EnterpriseDB has been notified of the possibility thereof, will be limited to proven direct damages caused by EnterpriseDB's sole negligence in an amount not to exceed the amount paid under this Agreement the twelve (12) month period preceding the date of the claim. The foregoing limitations, exclusions and disclaimers are an allocation of the risk between the parties and will apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.

10.   TERM AND TERMINATION
10.1   Term. This Agreement will commence on the Effective Date, and remain in effect for a period of one (1) year. Thereafter, this Agreement will automatically renew for terms of one (1) year unless one party gives the other notice of its intention to terminate at least sixty (60) days prior to the end of the then-current term.
10.2   Termination for Cause. Either party may terminate this Agreement by giving written notice to the other, in the event the other party (a) ceases to do business in the ordinary course, (b) becomes or is declared insolvent or bankrupt, (c) is the subject of any proceeding related to its liquidation or insolvency, which proceeding, if involuntary, is not dismissed within sixty (60) days, (d) makes an assignment for the benefit of its creditors, or (e) materially breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days after receipt of written notice of such breach given by the non-breaching party.
10.3   Effect of Termination. Upon termination of this Agreement by either party (a) all rights and licenses of Partner and EnterpriseDB under this Agreement will terminate; (b) subject to its obligations under the applicable Partner Program Addendum, each party will immediately return to the other party all Confidential Information in its possession, custody or control in whichever form held (including all copies or embodiments of the Confidential Information); and (c) each party will cease using all trademarks, service marks and other designations of the other party. Neither party will be liable

to the other for damages, losses, costs or expenses of any kind due to the termination or expiration of this Agreement, including those arising from the loss of prospective sales, any expenses incurred or investments made in connection with establishing, developing or maintaining either party's business. In addition, Partner will pay EnterpriseDB all monies that become due prior to the date of termination.

10.4 **Survival.** Sections 1.5 ("License Restrictions"), 4 ("Payments"); 5 ("Confidentiality"); 6 ("Ownership"); 7 ("Warranties and Disclaimer"); 9 ("Limitation of Liability"); 10.3 ("Effect of Termination"); 10.4 ("Survival"); 11 ("Non-Solicitation"); 12 ("Miscellaneous") and 13 ("Definitions") shall survive expiration or termination of this Agreement.

11. **NON-SOLICITATION.** Neither party may hire, or directly or indirectly solicit or employ, any employee or contractor of the other party during the term of this Agreement and for one (1) year thereafter; provided, however, that nothing contained herein will prevent a party from hiring any such employee or contractor who responds to a general hiring program conducted in the ordinary course of business or who approaches such party on a wholly unsolicited basis.

12. **MISCELLANEOUS**

12.1 **Force Majeure.** A party will be relieved from liability for a failure to perform any obligation under this Agreement (except payment obligations) during such period, and to the extent that the due performance thereof by either party is prevented by reason of any circumstance beyond the control of that party, such as war, warlike hostilities, civil war, fire, floods, earthquakes or other circumstances of similar importance which the party could not have reasonably foreseen.

12.2 **Relationship of Parties.** This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

12.3 **Notices.** All written notices required by this Agreement must be delivered to the addresses specified on the applicable Partner Program Addendum either in person or by a means evidenced by a delivery receipt. All notices will be effective upon receipt.

12.4 **Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent will not be unreasonably withheld; provided, however, upon notice to the other party either party may assign this Agreement to its successor in the case of a merger or sale of all or substantially all of its assets or stock.

12.5 **Waiver or Delay.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

12.6 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable provided, however, that if Sections 7 and 9 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety.

12.7 **Construction.** This Agreement has been negotiated by the parties, each of which has been represented by counsel. This Agreement will be fairly interpreted in accordance with its terms, without any strict construction in favor of or against either party.

12.8 **Agreement for Benefit of Parties.** This Agreement is made for the benefit of the parties hereto, and not for the benefit of any third parties.

12.9 **Governing Law.** Any disputes arising out of or related to this Agreement shall be governed by the laws of the jurisdiction set forth below, without regard to its conflicts of laws rules, the Uniform Computer Information Transactions Act or United Nations Convention on the International Sale of Goods and will be submitted to the exclusive jurisdiction of the courts set forth below, and each party hereby irrevocably consents to such jurisdiction and waives all objections thereto:

EnterpriseDB Contracting Entity	Governing Law	Jurisdiction
EnterpriseDB Corporation	Commonwealth of Massachusetts	State and Federal Courts located in the Commonwealth of Massachusetts
EnterpriseDB India Private Limited	India	Courts located in Mumbai, India

12.10 **Entire Agreement.** This Agreement is the parties' entire agreement relating to its subject matter which does not include the use or distribution of the Products, Services or Support in violation of the terms of this Agreement. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations, and warranties, and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Products, Support and Services to be provided under this Agreement and all other terms in purchase orders are rejected. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.

12.11 **Compliance.** Partner agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to EnterpriseDB or the Products and agrees to comply with all applicable federal, state and local laws and regulations (including, without limitation, anti-bribery, data protection, privacy and import and export compliance laws and regulations) while performing

its duties under this Agreement. Further, Partner agrees to make no disparaging comments about the Subscriptions, Services or EnterpriseDB. Partner acknowledges that the Products are subject to export restrictions by the U.S. government and import restrictions by certain foreign governments. Partner may not export or re-export the Products except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. Partner shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any Products or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Partner agrees to the foregoing and warrants that it: (i) is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list; and (ii) it has appropriate systems and processes in place designed to ensure its compliance with (a)–(d) above. The Products are further restricted from being used for: (A) terrorist activity, or (B) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government.

12.12 Government Rights. The Products and Documentation are "commercial computer Products" and "commercial computer Products documentation", respectively, as those terms are described in DFAR 252.227-7014(a). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer Products and/or commercial computer Products documentation subject to the terms of this Agreement as specified in 48C.F.R. 12.212 (Computer Products) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer Products and/or commercial computer Products documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

12.13 Remedies. Except as expressly set forth in the Agreement, the exercise by either party of any of its remedies under the Agreement will be without prejudice to its other remedies under the Agreement or otherwise.

12.14 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

13.   DEFINITIONS

"Certification Program" means the EnterpriseDB technical certification programs for the Products.

"Documentation" means the user manuals related to the Products which are provided by EnterpriseDB with the applicable Products.

"**Deliverables**" means the deliverables provided to the Partner or End User as applicable in the provision of Services.

"End User" means any end customer licensed to use, but not to further distribute, the Products.

"End User Agreement" means the agreement entered into by Partner and the End User which complies with the requirements of each Partner Program Addendum.

"LSSA" means EnterpriseDB's standard terms and conditions for the sale of its products and services which are set forth at www.enterprisedb.com, as amended by EnterpriseDB from time to time.

"List Price" means the applicable EnterpriseDB list price in the Territory in which the Products, Support and Services are installed or delivered as applicable, as modified by EnterpriseDB from time to time upon at least thirty (30) days' prior written notice to Partner.

"Marketing Materials" means the marketing materials provided by EnterpriseDB to Partner describing EnterpriseDB products and services.

"Non-Utilization Forfeiture Date" means the date that is six (6) months after the effective date of the applicable Order Form.

"Order Form" means an order form entered into by the parties incorporating the terms of this Agreement.

"Partner Program Addendum" means the addendum to this Agreement setting forth the terms of the applicable partner program.

"Partner Program Guide" means the EnterpriseDB Partner Program Guide based on the partner program entered by Partner as set forth on the partner portal at http://enterprisedb.com/partner-programs, and as amended by EnterpriseDB from time to time. In the event of a conflict between the terms of this Agreement and the Partner Program Guide, the terms of the Partner Program Guide will control.

"Products" means the object code form of the EnterpriseDB products specifically identified in the applicable Partner Program Addendum, including any related Documentation provided by EnterpriseDB.

"SOW" means a statement of work which specifies Services to be performed by EnterpriseDB.

"Services" means consulting and/or training services provided by EnterpriseDB.

"Subscription" means a term license to the applicable Products and related Support during such term, provided End User complies with the applicable End User Agreement.

"Support" means support and maintenance for the Products.

"Territory" means the location limitations specified on each Partner Program Addendum which refer to the principal place of business of the applicable End User.