

## Services Terms and Conditions

These Services Terms and Conditions apply to the provision of services by EnterpriseDB Corporation ("EnterpriseDB"), whose principal place of business is 34 Crosby Drive, Suite 100, Bedford, MA, 01730 to the purchaser identified on an Order Form ("Customer"). Together with the Order Form, these terms and conditions form an agreement between EnterpriseDB and Customer ("Agreement"). This Agreement is effective as of the date the Order Form is signed by both parties ("Effective Date").

**1. Services.** EnterpriseDB will provide consulting services and training services ("Services") and deliverables ("Deliverables") for Customer as set forth in an Order Form entered into by the parties that is governed by the terms of this Agreement. In addition, Customer may purchase credits to be redeemed for EnterpriseDB training services as described in Exhibit A ("EnterpriseDB Learning Credits").

### 2. Payment Terms.

**2.1 Payment and Expenses.** Customer agrees to pay EnterpriseDB the fees set forth in the applicable Order Form. Unless an Order Form states otherwise, EnterpriseDB will invoice Customer on the date of the applicable Order Form and Customer will pay all invoices within thirty (30) days from receipt of invoice. Customer will be responsible for reimbursement of EnterpriseDB's out-of-pocket expenses incurred in performing its duties under any Order Form, including, but not limited to, expenses for travel, lodging, and similar items. Customer will reimburse EnterpriseDB's expenses no later than thirty (30) days after the date of EnterpriseDB's invoice. All fees are exclusive of any Taxes. Customer will 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, which are paid by or are payable by EnterpriseDB. "Taxes" means any form of taxation, levy, duty, customs fee, charge, contribution or impost of whatever nature and by whatever authority imposed, including, without limitation, any fine, penalty, surcharge or interest, but excluding any taxes based solely on the net income of EnterpriseDB. If Customer 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 Customer made no withholdings or deductions. If Customer does not pay invoices when due, EnterpriseDB may charge interest at up to one percent (1%) per month on the unpaid balance. If Customer 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 Order Forms.

**2.2 Change of Commencement Date.** Customer may request a change in the commencement date of Service by no more than thirty (30) days, with written notice received by EnterpriseDB at least five (5) business days prior to commencement date of such Service with no penalty. If written notice is received within five (5) business days of the commencement date of the Service, then an additional twenty-five percent (25%) of the original fee will be charged to Customer.

**3. Confidential Information.** Customer 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 two (2) years after the termination of this Agreement. This section will not apply to: (i) 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, (ii) 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, and (iii) 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: (x) in response to a valid order by a court or other governmental body or (y) 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 of any Confidential Information of the other party agrees not to use said Confidential Information 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. 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.

**4. Retention of Rights.** Customer 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 Services under this Agreement or any Order Form. Further, Customer agrees that should EnterpriseDB perform Services on products licensed by EnterpriseDB or used by EnterpriseDB to provide Services, then EnterpriseDB retains, and Customer hereby assigns, all right, title, and interest in and to all modifications, enhancements, customizations, source code, acquired or developed during the performance of the Services under this Agreement or any Order Form. EnterpriseDB hereby grants to Customer a world-wide, non-exclusive, non-transferable, royalty-free licensed right to use all Deliverables solely for its internal use. 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.

## **5. Acceptance and Warranties.**

**5.1 Performance.** All Services and Deliverables will be accepted upon delivery. EnterpriseDB represents and warrants that the Services will be performed in a professional manner consistent with the level of care, skill, practice and judgment exercised by other professionals in performing services of a similar nature under similar circumstances by personnel with requisite skills, qualifications and licenses needed to carry out such work. For any breach of the warranty set forth in Section 5.1, Customer's sole and exclusive remedy, and EnterpriseDB's sole and exclusive obligation, will be for EnterpriseDB to use commercially reasonable efforts to correction of defective work, within a reasonable time, so as to comply with generally accepted industry standards. Any claim based on the breach of the foregoing warranty must be submitted in writing within thirty (30) days from the date of delivery of the Services or Deliverables.

**5.2 Disclaimer.** ENTERPRISEDB DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

**6. Non-Solicitation.** Customer agrees that, during the term of this Agreement and for twelve (12) months thereafter, Customer will not hire, or directly or indirectly solicit or employ, any employee of EnterpriseDB for a period of twelve (12) months after the employee's termination of employment.

**7. Limitation of Liability.** Notwithstanding any other clause in this Agreement, in no event will EnterpriseDB be liable for any special, indirect, incidental, punitive 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 there from or relating thereto, in each case arising from or in connection with this Agreement or the use or performance of any Services or Deliverables 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, in no event will EnterpriseDB's total aggregate liability for any damages arising from or in connection with this Agreement or the use or performance of any Services or Deliverables whether in actions based on contract, tort or any other legal theory, and whether or not EnterpriseDB has been notified of the possibility thereof, exceed the amount paid under this Agreement during 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.

**8. Term and Termination.** This Agreement is effective as of the Effective Date and will continue until terminated as set forth in this Section. Either party may terminate this Agreement by giving written notice to the other, in the event the other party (i) ceases to do business in the ordinary course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency, which proceeding, if involuntary, is not dismissed within sixty (60) days, (iv) makes an assignment for the benefit of its creditors, or (v) 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. Sections 2 - 9 of this Agreement will survive the termination of this Agreement. In addition, Customer will pay EnterpriseDB all monies that become due prior to the date of termination.

## **9. Miscellaneous.**

**9.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer to place orders or otherwise effect transactions hereunder. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter of this Agreement. No amendment, modification or waiver of any provision of this Agreement will be effective unless in

writing and signed by both parties. Unless the parties expressly state that a term of this Order Form supersedes the terms of this Agreement, the terms of this Agreement will control and supersede the terms of the Order Form.

**9.2 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 5 and 7 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety.

**9.3 Force Majeure.** Neither party will be liable or deemed to be in breach for any delay or failure in performance of this Agreement or any Order Form (except for the payment of money) or interruption of services resulting directly or indirectly from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquake, floods, strikes, lock-outs, labor disturbances, foreign or governmental order, or any other cause beyond the reasonable control of such party.

**9.4 Governing Law and Venue.** This Agreement will be governed by the laws of New York without regard for its choice of law provisions. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue.

**9.5 Export Regulations.** Customer will comply fully with all export control laws and regulations of the United States and all other jurisdictions.

**9.6 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, provided that no consent will be necessary if this Agreement is being assigned by a party to an acquirer of all or substantially all of the party's assets (or the assets of the party's applicable business unit), whether by merger, sale or exchange of stock, sale of assets or otherwise and in this case, the party may assign this Agreement by providing written notice to the other party.

**9.7 Marketing.** EnterpriseDB may use Customer's name and company logo on its customer list and web site, and link to Customer's web site.

**9.8 Independent Contractor.** The relationship of the parties is that of independent contractors. Neither party will be deemed to be the legal representative of the other nor will it have any right to bind the other party to any contract or commitment. This

Agreement does not, and will not, be construed to create an employer-employee, agency, joint venture or partnership relationship between the parties. Each party agrees to assume complete responsibility for its own employees regarding federal or state laws, including employers' liability and tax withholding, worker's compensation, social security, unemployment insurance, and OS HA requirements.

**9.9 Notice.** All notices and other communications herein permitted or required under this Agreement will be sent by postage prepaid, via registered or certified mail or overnight courier, return receipt requested, or delivered personally to the parties at their respective addresses, or to such other address as either party will give to the other party in the manner provided herein for giving notice. Notice will be considered given upon receipt.

## **EXHIBIT A**

### **ENTERPRISEDB LEARNING CREDITS**

#### **1. Redeeming EnterpriseDB Learning Credits.**

**a. Training Courses.** One (1) EnterpriseDB Learning Credit Point may be redeemed for one (1) day of an EnterpriseDB training course, either via live, public classes or web-based, on-demand courses. The number of EnterpriseDB Learning Credit Points required for the web-based course will be equal to the number of EnterpriseDB Learning Credit Points required for the live, public class on the same topic.

**b. Certification Exams.** One (1) EnterpriseDB Learning Credit Point may be redeemed for one (1) attempt at passing an EnterpriseDB Certification Exam. Certification Exams may only be taken after fulfillment of the pre-requisites as defined on the EnterpriseDB website.

**c. Registration.** To redeem EnterpriseDB Learning Credits, Customer must send a request via email sent to [trainingcoordinator@enterprisedb.com](mailto:trainingcoordinator@enterprisedb.com). Classes are filled on a first come, first served basis.

**2. Validity.** EnterpriseDB Learning Credits will be valid for a period of one (1) year from the date of the initial purchase. EnterpriseDB Learning Credits not utilized before the end of the one (1) year period will expire.

**3. Combining EnterpriseDB Learning Credit Points.** If Customer does not have a sufficient number of EnterpriseDB Learning Credit Points purchase a certain class, Customer cannot pay for the remaining amount to take the class, but instead must

purchase additional EnterpriseDB Learning Credit Points. EnterpriseDB Learning Credit Points from different contracts may be combined and redeemed together.

**4. Fees.** Fees for EnterpriseDB Learning Credits Points must be paid for at the time of purchase and are non-refundable.

**5. Training Cancellation.** EnterpriseDB reserves the right to cancel a public training class with at least one (1) day notice prior to the start of the training class.

Version 2.2 ([www.enterprisedb.com/ba/services-terms-v2-2](http://www.enterprisedb.com/ba/services-terms-v2-2))