



HORTONWORKS MASTER SERVICES AGREEMENT

PLEASE READ THIS HORTONWORKS MASTER SERVICES AGREEMENT BEFORE PURCHASING OR USING HORTONWORKS SUPPORT, CONSULTING SERVICES OR TRAINING SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE OR BY EXECUTING AN ORDER FORM OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH WILL GOVERN CUSTOMER'S PURCHASE AND USE OF HORTONWORKS SUPPORT, CONSULTING SERVICES OR TRAINING SERVICES. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE HORTONWORKS SUPPORT, CONSULTING SERVICES OR THE TRAINING SERVICES.

This Hortonworks Master Services Agreement ("Agreement") is made by and between Hortonworks, Inc. ("Hortonworks") and the customer identified in an Order Form or Statement of Work ("Customer") and is effective as of the date both parties have signed the Order Form (the "Effective Date").

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings set forth in this Section 1. Certain other terms may be defined in the context of their use elsewhere in the Agreement.
 - 1.1 **"Affiliate"** means an entity that directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the subject entity.
 - 1.2 **"Confidential Information"** means any and all confidential or proprietary information or materials which have been or are hereafter disclosed or made available by one party (the **"Disclosing Party"**) to the other (the **"Receiving Party"**) in connection with this Agreement, whether provided orally or in writing and in any form or media, including without limitation: (i) all trade secrets; (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering techniques, methodologies and concepts and any related information; (iii) information relating to business plans, sales or marketing methods and customer lists or requirements; and (iv) Customer-specific terms or pricing set forth in business proposals, this Agreement or any Order Form or SOW.
 - 1.3 **"Consulting Services"** means Hortonworks consulting services offerings as set forth in an applicable Order Form or SOW.
 - 1.4 **"Documentation"** means all user manuals and guides, regardless of media, that explain or facilitate the use of the Hortonworks Data Platform.
 - 1.5 **"General Enhancements"** means any improvements, modifications, enhancements, or extensions to or derivative works of Hortonworks Pre-existing Intellectual Property that have or could have general applicability to Hortonworks customers, including, but not limited to, any modifications to, or derivative works of, the Hortonworks Data Platform.
 - 1.6 **"Hortonworks Data Platform"** or **"HDP"** means the Hortonworks version of the open source software Apache Hadoop data platform managed by the Apache Software Foundation and licensed under the terms of the Apache License, Version 2.0.
 - 1.7 **"Intellectual Property"** means any and all patents, inventions, copyrights, trademarks, trade secrets, know-how, and all other intellectual property (whether registered or unregistered and including the right to register such intellectual property) that are, in each case, protected under the laws of any governmental authority having jurisdiction.
 - 1.8 **"Order Form"** means an order document executed by the parties that sets forth specific Services and/or Support being purchased by Customer under this Agreement.
 - 1.9 **"Pre-Existing Intellectual Property"** means: (a) Intellectual Property in existence as of the Effective Date of this Agreement, and (b) Intellectual Property that a party creates or develops outside the scope of Services or Support provided by Hortonworks to Customer under this Agreement and without the use of the other party's Confidential Information.
 - 1.10 **"Service Credits"** means credits that may be pre-purchased by Customer and subsequently used toward payment for Services. Service Credits are subject to Hortonworks' Service Credits policy described in the Service Credits Data Sheet available at: www.hortonworks.com/agreements/.
 - 1.11 **"Services"** means Hortonworks Consulting Services and/or Training Services as set forth in an applicable Order Form or SOW.
 - 1.12 **"Services Materials"** means the processes, know-how, proprietary information and methodologies, document templates, and project tools including, but not limited to, best practice guides and reference architecture materials used by Hortonworks to deliver the Services or Support to Customer.
 - 1.13 **"Statement of Work"** or **"SOW"** means a statement of work executed by the parties that describes Services to be provided by Hortonworks to Customer under this Agreement.
 - 1.14 **"Support"** means the Hortonworks subscription support services set forth in an applicable Order Form and described in further detail at: www.hortonworks.com/support. Support is subject to Hortonworks' Support policy available at: <http://hortonworks.com/agreements/support-services-policy/>.
 - 1.15 **"Tools"** means tools, utilities, connectors, scripts, HDP implementation code, and other software (and any updates thereto) that are used by Hortonworks in performing its obligations under this Agreement.
 - 1.16 **"Training Materials"** means Hortonworks training courses, documentation, and other associated training materials, including any updates thereto and all Intellectual Property associated therewith.
 - 1.17 **"Training Services"** means Hortonworks' training services offerings as set forth in an applicable Order Form or SOW. Training Services are subject to Hortonworks' Training Services policies available at: www.hortonworks.com/agreements/.
 - 1.18 **"Work Product"** means all inventions, improvements, modifications, enhancements, derivatives, processes, methodologies, formulas, designs, drawings, data, information, and works of authorship in which any proprietary right exists or may be acquired or asserted, and which are developed, discovered, invented, authored, or first reduced to practice by Hortonworks, alone or jointly with Customer and/or any third party or parties, in the course of performing Services under this Agreement; provided, however, that Work Product shall not include Hortonworks' Pre-Existing Intellectual Property, General Enhancements, Tools, Training Materials, Services Materials, Documentation, or the Hortonworks Data Platform (including any modifications or updates thereto).
2. **SERVICES AND SUPPORT.** Subject to the terms and conditions of this Agreement, Hortonworks will provide to Customer the Services and Support agreed by the parties in applicable Order Forms and/or SOWs. Order Forms and SOWs shall be deemed incorporated herein. Services and Support are only for Customer's internal use. Customer may not use the Services or Support to supply any consulting, training or support services to any third party. All Support and Services delivered under this Agreement are deemed accepted by Customer upon delivery.
3. **FEES AND PAYMENT.**



- 3.1 **Fees and Expenses.** In consideration for the Services and Support, Customer will pay Hortonworks the fees set forth in the applicable Order Form and/or SOW. Customer will also reimburse Hortonworks for all reasonable out-of-pocket travel, living, and other reimbursable expenses incurred by Hortonworks in the provision of the Services or Support.
- 3.2 **Payment Terms.** Customer will pay all invoiced amounts in full within thirty (30) days of the date of each invoice, without setoff, counterclaim, or deduction of any kind. All invoiced amounts not paid by Customer when due will accrue interest at the rate of one percent (1%) per month or the maximum amount permitted by law, whichever is lower. Hortonworks may, in its sole discretion and upon ten (10) days prior written notice to Customer, suspend the provision of Services or Support, as applicable, if any invoice is more than thirty (30) days past due. This right of suspension will not limit any other of Hortonworks' rights or remedies related to Customer's failure to pay.
- 3.3 **Taxes.** All fees and expenses charged by Hortonworks under this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government, and Customer agrees to pay for any and all federal, state, or local sales, use, excise, privilege, or other taxes, duties or assessments, however designated or levied, relating to this Agreement, exclusive of taxes based on Hortonworks' net income. If Customer is required to pay any withholding tax, charge, or levy in respect of any payments due to Hortonworks hereunder, Customer agrees to gross up payments actually made to Hortonworks such that Hortonworks receives sums due hereunder in full and free of any deduction for any such withholding tax, charge, or levy.

4. PROPRIETARY RIGHTS.

- 4.1 **Customer Retained Property.** Customer owns and retains all worldwide right, title, and interest in and to all of Customer's Pre-existing Intellectual Property and Customer's Confidential Information (together, the "**Customer Retained Property**"). Except as expressly set forth herein, nothing in this Agreement conveys any right, title, or interest in or to the Customer Retained Property to Hortonworks or any other third party.
- 4.2 **Hortonworks Retained Property.** Hortonworks owns and retains all worldwide right, title and interest in and to all Hortonworks' Pre-existing Intellectual Property, Hortonworks' Confidential Information, General Enhancements, Tools, Training Materials, Services Materials, and Documentation (together, the "**Hortonworks Retained Property**"). To the extent that any Hortonworks Retained Property is included in a deliverable provided to Customer as part of any Support or Services, Hortonworks hereby grants to Customer a non-exclusive, non-transferable, worldwide right and license to internally use, execute, reproduce, display, and perform such Hortonworks Retained Property solely for use with the Hortonworks Data Platform and related Services and Support. The use of Training Materials must be limited to use by the specific individuals to whom the training Services are provided, and Training Materials may not be copied electronically or otherwise (whether or not for archive purposes), modified, 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 above license to Hortonworks Retained Property expressly excludes the Hortonworks Data Platform (including General Enhancements thereto) and any other open source software included in Services deliverables or provided to Customer as part of Support that are licensed under the terms of the applicable open source license. Any General Enhancements to the Hortonworks Data Platform will be made available to Customer under the terms of the Apache License, Version 2.0. Except as expressly set forth herein, nothing in this Agreement conveys any right, title, or interest in or to the Hortonworks Retained Property to Customer or any other third party.
- 4.3 **Work Product.** Customer shall own all worldwide right, title, and interest in and to all Work Product delivered to Customer (including without limitation all related Intellectual Property) from the time that it is created, authored, invented, discovered, or first reduced to practice. Hortonworks hereby assigns to Customer all worldwide right, title, and interest in and to any and all Work Product (including without limitation all related Intellectual Property) that Hortonworks has or may hereafter acquire.
- 4.4 **Feedback.** Customer may, in its sole discretion, provide Hortonworks with suggestions, enhancement requests, recommendations, or other feedback related to Services or Support provided hereunder or the Hortonworks Data Platform ("**Feedback**"). Customer hereby assigns to Hortonworks all right, title, and interest in and to any Feedback, including all Intellectual Property rights therein or relating thereto.
- 4.5 **Residual Rights.** The parties acknowledge and agree that Hortonworks is in the business of providing training, consulting, and support services to third parties that are or may be substantially similar to the Services and Support being provided to Customer. Customer agrees that Hortonworks, its employees, and agents will be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any Services or Support performed under this Agreement, subject to its obligations respecting Customer's Confidential Information pursuant to Section 5.

5. CONFIDENTIALITY.

- 5.1 **Obligations.** For a period of three (3) years from the date of disclosure of the applicable Confidential Information, the Receiving Party will (i) hold the Confidential Information of the Disclosing Party in trust and confidence and avoid the unauthorized disclosure or release thereof to any other person or entity by using the same degree of care as the Receiving Party uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature, but, in any event, not less than a reasonable degree of care, and (ii) not use Confidential Information for any purpose except as expressly contemplated under this Agreement or any Order Form or SOW; provided that, to the extent Confidential Information constitutes a trade secret under applicable law, the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret. Notwithstanding any other provision of this Agreement, the Receiving Party may disclose Confidential Information to those of the Receiving Party's employees and contractors having a need to know such Confidential Information, provided that the Receiving Party takes reasonable measures to ensure that such employees and contractors comply with the provisions of this Section 5. Each party shall be liable for all violations of this Section 5 by its employees and contractors.
- 5.2 **Exclusions.** The obligations of the Receiving Party under this Section 5 will not apply to information of the Disclosing Party that the Receiving Party can demonstrate (i) was in the possession of the Receiving Party at the time of disclosure without any restrictions as to confidentiality of such information, (ii) was generally available to the public at the time of disclosure or became generally available to the public after disclosure through no breach of this Agreement or other wrongful act by the Receiving Party, (iii) was rightfully received by the Receiving Party from a third party without restriction on disclosure, or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information. The Receiving Party may disclose Confidential Information to the extent required to comply with binding orders of governmental entities that have jurisdiction over it; provided that, to the extent legally permitted, the Receiving Party gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, discloses only such Confidential Information as is required by the governmental entity, and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.
- 5.3 **Return and Destruction.** Upon the written request of the Disclosing Party, the Receiving Party shall promptly return or destroy the Confidential Information, including all copies thereof (certifying the fact of such destruction to the Disclosing Party).
- 5.4 **Equitable Relief.** The parties acknowledge and agree that any breach of the obligations of this Section 5 may cause the non-breaching party irreparable harm for which an adequate remedy at law may not be available and that, therefore, the non-breaching party shall be entitled to seek injunctive relief, in addition to all other remedies available at law.

6. TERM AND TERMINATION.



- 6.1 **Term.** The term of this Agreement will commence on the Effective Date and will continue until terminated as set forth herein. The term for the provision of Support or Services provided under individual Order Forms or SOWs will be as set forth in such Order Form or SOW.
- 6.2 **Termination.** If there are no active Order Forms or SOWs in place, either party may terminate this Agreement for convenience by providing written notice to the other party. Each party will have the right to terminate this Agreement or any individual Order Form or SOW for cause upon written notice to the other party: (a) if the other party breaches any material term of this Agreement or the applicable Order Form or SOW, and, if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days of its receipt of notice of the breach from the non-breaching party, or (b) if (i) the other party becomes insolvent or makes an assignment for the benefit of creditors, (ii) a trustee or receiver is appointed for such other party or for a substantial portion of its assets or (iii) bankruptcy, reorganization or insolvency proceedings are instituted by or against such other party. Termination of a specific Order Form or SOW will not result in the termination of any other Order Forms or SOWs. Termination of this Agreement for cause will result in the immediate termination of all active Order Forms and SOWs.
- 6.3 **Effects of Termination.** Upon any termination, Hortonworks will be entitled to payment for all Services and Support rendered, and expenses incurred, through the effective date of termination, including for work in progress. Sections 1, 3, 4, 5, 6.3, 7.2, 8, 9 and 10 will survive any termination of this Agreement.

7. WARRANTY.

7.1 Limited Warranties.

- (a) Each party represents and warrants that it has the right, power, and authority to enter into, and perform its obligations under, this Agreement and each Order Form and SOW.
- (b) Hortonworks warrants that the Services and Support will be performed by qualified personnel in a professional and workmanlike manner consistent with applicable industry standards. Customer must notify Hortonworks in writing of any alleged failure by Hortonworks to perform Support or Services in accordance with the foregoing warranty within thirty (30) days of the delivery of the affected Services or Support. Hortonworks' entire liability and Customer's sole remedy for Hortonworks' failure to perform in accordance with the above warranty shall be for Hortonworks to: (i) use commercially reasonable efforts to cure or correct such failure, or (ii) if Hortonworks is unable to cure or correct such failure, terminate the affected Services or Support and refund that portion of fees paid by Customer to Hortonworks that corresponds to such failure to perform.

- 7.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, HORTONWORKS DOES NOT MAKE OR GIVE ANY REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND, WHETHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE SUPPORT OR SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HORTONWORKS EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION, WARRANTY, OR COVENANT BASED ON COURSE OF DEALING OR USAGE IN TRADE.

8. INDEMNIFICATION.

- 8.1 **General.** Each party (the "Indemnitor") agrees, at its own expense, to (a) defend the other party (the "Indemnitee") from and against any third party claim, suit, or action brought against the Indemnitee for death, bodily injury, or damage to or loss of any real or tangible personal property to the extent arising out of the Indemnitor's (including its employees and agents) gross negligence or willful misconduct in the performance of this Agreement (each a "General Claim"), and (b) indemnify the Indemnitee against any and all liabilities, losses, damages, costs, and expenses finally awarded by a court of competent jurisdiction or agreed by the Indemnitor in settlement with regard to any such General Claim.
- 8.2 **Intellectual Property Infringement.** Subject to the remainder of this Section 8, Hortonworks shall, at its own expense (a) defend Customer against any third party claim, suit, or action brought against Customer alleging that any Work Product or Hortonworks Retained Property set forth as a deliverable in the applicable Order Form or SOW and delivered to Customer in connection with Services provided under this Agreement, or any part thereof, infringe such third party's United States patent, trademark, or copyright, or misappropriate such third party's trade secrets under the laws of the United States (each an "Infringement Claim"), and (b) indemnify Customer from the resulting costs and damages finally awarded against Customer to the third party making such claim by a court of competent jurisdiction or agreed to in settlement with regard to any such Infringement Claim. Notwithstanding any other terms or conditions of this Agreement, Hortonworks shall have no liability or obligations under this Section 8.2 if the alleged infringement is based on (i) combination of the Work Product or Hortonworks Retained Property with non-Hortonworks products, (ii) use of the Work Product or Hortonworks Retained Property for a purpose or in a manner for which it was not designed or beyond its reasonably intended use, (iii) use of any older version of the Work Product or Hortonworks Retained Property when use of a newer version provided by Hortonworks would have avoided the infringement, (iv) any modification or alteration of the Work Product or Hortonworks Retained Property by a party other than Hortonworks or without Hortonworks written and express direction, (v) Hortonworks' compliance with any materials, designs, specifications or instructions provided by Customer, (vi) Customer using the Work Product or Hortonworks Retained Property after Hortonworks notifies Customer to discontinue use due to an infringement claim, or (vii) open source software. THIS SECTION 8.2 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND HORTONWORKS' ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.
- 8.3 **Conditions to Indemnification.** As conditions to indemnification under this Section 8, the indemnified party must (a) notify the indemnifying party promptly in writing of the General Claim or Infringement Claim, as applicable, for which the indemnified party is seeking indemnification, (ii) grant the indemnifying party sole control over the defense and settlement of each General Claim or Infringement Claim, as applicable, and (iii) provide the indemnifying party with reasonable cooperation in response to such party's requests for assistance. The indemnified party may not settle or compromise a General Claim or Infringement Claim, as applicable, except with prior written consent of indemnifying party.

9. **LIMITATION OF LIABILITY.** EXCEPT (A) WITH REGARD TO EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5 ("CONFIDENTIALITY"), (B) WITH REGARD TO CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF HORTONWORKS' INTELLECTUAL PROPERTY IN AND TO SERVICES MATERIALS, TOOLS, OR TRAINING MATERIALS LICENSED TO CUSTOMER UNDER THIS AGREEMENT, OR (C) TO THE EXTENT THAT AN AMOUNT IS INCLUDED IN A COURT AWARD OR SETTLEMENT RELATED TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF INCOME, OR LOSS OF BUSINESS ADVANTAGE), WHETHER OR NOT FORESEEABLE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH REGARD TO (A) EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5 ("CONFIDENTIALITY"), (B) CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF HORTONWORKS' INTELLECTUAL PROPERTY IN AND TO SERVICES MATERIALS, TOOLS OR TRAINING MATERIALS LICENSED TO CUSTOMER UNDER THIS AGREEMENT, OR (C) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH LIABILITY AROSE. THESE LIMITATIONS OF LIABILITY WILL REMAIN IN FULL FORCE AND EFFECT, REGARDLESS OF WHETHER EITHER PARTY'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE ABOVE LIMITATIONS WILL NOT, HOWEVER, LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.



10. GENERAL.

- 10.1 **Subcontractors.** Hortonworks may engage third parties to furnish services in connection with Services or Support, provided that such third parties have executed appropriate confidentiality agreements with Hortonworks. In addition, Services and Support may be performed by Affiliates of Hortonworks. No engagement by Hortonworks of a subcontractor or an Affiliate will relieve Hortonworks from any of its obligations under this Agreement.
- 10.2 **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, except that (i) either party may assign this Agreement or rights granted hereunder to its Affiliate without the consent of the other party, and (ii) the transfer of this Agreement or rights granted hereunder to a successor entity in the event of a merger, corporate reorganization, or acquisition of all or substantially all the assets of a party shall not constitute an assignment for purposes of this Section 10.2; provided that, in both cases (i) and (ii), the entity to whom the Agreement is being assigned or transferred: (a) is not a direct competitor of the other party, and (b) agrees in writing to be bound by the terms and conditions of this Agreement. Any attempted assignment or transfer in violation of this Section 10.2 shall be null and void.
- 10.3 **Governing Law and Venue.** This Agreement is governed by the laws of the State of California, without regard to conflict of law principles. The parties acknowledge and agree that this Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code. In addition, the provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All Services and Support provided hereunder are "Commercial Items" as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in Santa Clara County, California, and the parties expressly consent to personal jurisdiction and venue therein.
- 10.4 **Independent Contractors.** The relationship between the parties established under this Agreement is that of independent contractors, and nothing in this Agreement, SOWs or Order Forms shall be construed to create an employment, partnership, joint venture, or agency relationship between the parties.
- 10.5 **Notices.** All notices required or permitted under this Agreement must be in writing. Notices will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices must be sent to the addresses set forth above. Notices to Hortonworks must be sent to the attention of the Hortonworks Legal Department.
- 10.6 **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party may hire, or directly or indirectly solicit, any employee of the other party; provided, however, that nothing herein will prevent a party from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business or who approaches the other party on a wholly unsolicited basis.
- 10.7 **Publicity.** Customer agrees that Hortonworks may reference and use Customer's name and trademarks in Hortonworks marketing and promotional materials, including, but not limited to, the Hortonworks website, solely for purposes of identifying Customer as a customer of Hortonworks. Otherwise, neither party may use the trade names, trademarks, service marks, or logos of the other party without the express written consent of the other party.
- 10.8 **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 achieve the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.
- 10.9 **No Waiver.** The failure of a party to enforce any provision or exercise any right under this Agreement shall not constitute a waiver of such provision or right and shall not preclude such party from enforcing such provision or exercising such right at any later time.
- 10.10 **Force Majeure.** Except for the obligation to pay sums due hereunder, neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control.
- 10.11 **No Third Party Beneficiaries.** The terms of this Agreement are intended to be, and are solely for the benefit of, Hortonworks and Customer and do not create any right in favor of any third party.
- 10.12 **Compliance with Laws.** Customer acknowledges that items provided hereunder are of United States origin, are provided subject to the U.S. Export Administration Regulations, and may be subject to other applicable national and international laws. Diversion or distribution contrary to applicable export control laws is prohibited. Customer represents that (1) it is not, and is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions, or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Denied Persons List or Denied Entity List; and (2) it will not permit items delivered under this Agreement to be used for any purposes prohibited by law, including, but not limited to, any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons. Additionally, each of the parties agrees that it will not engage in any illegal, unfair, deceptive, or unethical business practices whatsoever, including, but not limited to, any act that would constitute a violation of the U.S. Foreign Corrupt Practices Act.
- 10.13 **Counterparts and Signature.** Order Forms and SOWs may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Facsimile and electronic copies of signatures shall have the same effect as originals. If a party elects to sign Order Forms or SOWs electronically, it expressly acknowledges and agrees that such electronic signature is the legal equivalent of, and has the same force and effect as, a manual signature.
- 10.14 **Entire Agreement.** This Agreement, together with any Order Forms or SOWs, constitutes the entire agreement between the parties concerning the subject matter hereof. If Customer issues a purchase order related to Services or Support provided hereunder, any and all terms contained in such purchase order are hereby expressly rejected and shall have no force or effect on the terms of this Agreement or any Order Form or SOW. This Agreement supersedes all prior or contemporaneous discussions, proposals, and agreements between the parties, whether written or oral, relating to the subject matter hereof. No amendment, modification, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.
- 10.15 **Precedence.** In the event of a conflict between the terms of any Order Form or SOW with the terms of this Agreement, the terms of the Order Form or SOW shall control but (a) only with respect to the specific Services or Support purchased under such Order Form or SOW, and (b) only if the Order Form or SOW specifically references the conflicting provision(s) of this Agreement with the intention to supersede such provision(s).