HORTONWORKS END USER AGREEMENT AND TERMS OF USE
(FOR CUSTOMERS ACCESSING HORTONWORKS PAID-AMIS ON THE AWS MARKETPLACE)
Last updated October 1, 2016

THIS HORTONWORKS END USER AGREEMENT AND TERMS OF USE (THE "**AGREEMENT**") APPLIES TO PARTIES ("**CUSTOMERS**") THAT EITHER ACCESS OR USE A HORTONWORKS PAID-AMAZON MACHINE IMAGE, INCLUDING ANY INSTANCE LAUNCHED THEREFROM (COLLECTIVELY "**HORTONWORKS PAID-AMIS**," AS FURTHER DEFINED BELOW) FROM THE AMAZON WEB SERVICES ("**AWS**") MARKETPLACE ("**MARKETPLACE**"). CUSTOMERS ARE ADVISED TO READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING ANY HORTONWORKS PAID-AMIS. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE NOR ACCESS ANY HORTONWORKS PAID-AMIS ON AWS.

BY CLICKING TO INDICATE YOUR ACCEPTANCE OF, AND AGREEMENT TO, THE TERMS OF THIS AGREEMENT WHEN PROMPTED UPON ACCESS TO THE HORTONWORKS PAID-AMIS ON AWS, YOU ARE AGREEING TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THIS AGREEMENT IS EFFECTIVE UPON SUCH ACCEPTANCE. IF YOU ARE ACTING ON BEHALF OF A COMPANY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH COMPANY. BOTH YOU AND YOUR COMPANY ARE HEREINAFTER REFERRED TO AS THE "**CUSTOMER**."

IF CUSTOMER IS LOCATED IN THE UNITED STATES, CANADA OR MEXICO (TOGETHER "**NORTH AMERICA**"), THEN THE PARTIES TO THIS AGREEMENT ARE CUSTOMER AND HORTONWORKS, INC. IF CUSTOMER IS LOCATED OUTSIDE OF NORTH AMERICA, THEN THE PARTIES TO THIS AGREEMENT ARE CUSTOMER AND HORTONWORKS B.V., LOCATED AT JACHTHAVENWEG 109h, 1081 KM AMSTERDAM, THE NETHERLANDS. EACH OF HORTONWORKS, INC. AND HORTONWORKS B.V. IS REFERRED TO HEREIN AS "**HORTONWORKS**."

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; (iv) Customer-specific terms set forth in business proposals, this Agreement; and (v) where Hortonworks is the Disclosing Party, (a) Hortonworks' Pre-Existing Intellectual Property, and (b) any and all related Documentation*.
    1.3 "*Documentation*" means any and all Hortonworks documentation, in written, electronic or other format, which describes the use of, maintenance of, guidelines for use, or technical, specification or similar documents regarding the Hortonworks Products.
    1.4 "*HCC for AWS*" means a forum-based support portal through which Hortonworks offers certain optional and free access to support for Customers with active subscriptions to Hortonworks Products.
    1.5 "*Hortonworks Products*" means the Hortonworks Paid-AMI versions found on the Marketplace and associated Documentation.
    1.6 "*Hortonworks Paid-AMI*" means an Amazon Machine Image of a Hortonworks Product, including any instance launched therefrom, made available to Customers, for a fee, on the AWS Marketplace. Hortonworks Paid-AMIs also include: (a) the underlying software, scripts, checkers and other files comprising the Hortonworks Paid-AMIs that are accessed through a network by Customer; (b) any authorization keys or passwords that Hortonworks may provide to Customer, which may work along with access systems provided by AWS, in order for Customer to access and use the Hortonworks Paid-AMIs; (c) any Documentation; (d) any updates and modifications to the foregoing items, and (e) the command line interface made available for download within a Hortonworks Product UI. For clarity, Hortonworks SmartSense is not a Hortonworks Paid-AMI and access and use thereof is subject to separate agreement.
    1.7 "*Intellectual Property*" means any and all rights to any patents, inventions, copyrights, works of authorship, trademarks, trade secrets, know-how, and all other intellectual property (whether an application has been perfected or not, and 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 "*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 under this Agreement and without the use of the other party's Confidential Information.
    1.9 "*SmartSense*" means the Hortonworks SmartSense product, a free and optional software tool that collects, transmits and analyzes certain cluster diagnostic data, facilitates the identification of potential issues in data systems, and can be used by Hortonworks to provide support for Hortonworks Products and recommend specific solutions and actions.

2. **HORTONWORKS PRODUCTS.**
    2.1 **Use of Hortonworks Paid-AMIs**. Customer is being provided access to the Hortonworks Products for use solely (a) through the AWS platform or infrastructure Customer obtains pursuant to, and in accordance with the AWS Terms and Conditions, as defined below, and; (b) in accordance with, and subject to, the terms of this Agreement. No other access or use is permitted. Any rights granted to Customer under this Agreement are conditioned on its continued compliance with this Agreement and will be immediately and automatically terminated if Customer does not comply with these Agreement terms.
    2.2 **Optional and Free Support.** Hortonworks offers Customers certain optional and free support services through HCC for AWS. Customer must be a current Hortonworks Product subscriber in order to access or use HCC for AWS. Customer agrees and acknowledges that access to HCC for AWS requires acceptance of the applicable terms and conditions, privacy and forum policies upon registration for access to HCC for AWS.
    2.3 **SmartSense**. SmartSense, made available under a separate agreement, is not a Hortonworks Paid-AMI and is not, therefore, subject to the permissions granted in Section 2.1. Upon acceptance of the terms of this Agreement, Customer will be presented with a SmartSense agreement which includes terms and conditions related to enablement of SmartSense and will be given the opportunity to opt-in to the use of SmartSense to transmit certain Customer data cluster information ("**SmartSense Data**") to Hortonworks. If Customer decides not to opt-in to such data transmission, SmartSense functionality as described in this Section will be disabled and will not transmit SmartSense Data to Hortonworks. If Customer decides, in its sole discretion, to sign up for the free and optional support delivered through HCC for AWS, and also opts-in to the transmission of SmartSense Data to Hortonworks, the SmartSense Data and the resulting analytical information may be used by Hortonworks to provide Customer more detailed support solutions through HCC for AWS. If Customer decides to contact Hortonworks for upgraded or enhanced paid support for the Hortonworks Products, and also opts-in to the transmission of SmartSense Data to Hortonworks, the SmartSense

Data may, in addition, be used by Hortonworks in its efforts to proactively identify potential issues related to Customer's deployment of Hortonworks Products, communicate such issues to Customer and work with Customer on measures intended to avoid potential issues in advance. With enhanced, paid support, SmartSense is also enabled to provide Hortonworks with data to help configure, fix and identify Customer data systems for more detailed and specific Hortonworks Product deployment support on Customer's AWS environment.

2.4 **Data Access and Privacy**. All access, storage, administration, or manipulation of Customer data under this Agreement are controlled solely by Customer within the AWS infrastructure or when using the command line interface, and the Hortonworks Products operate solely as an operating instance on Customer's cloud environment obtained by Customer pursuant to the AWS Terms and Conditions. AWS' security and privacy policies and audited security reports for data security and data privacy compliance may apply to the Customer's data and Customer's data access, storage, or administration. Customer acknowledges and agrees that any such data security or data privacy compliance obligations shall be obtained from AWS directly.

2.5 **Restrictions**. Customer will not use the Hortonworks Products other than as expressly permitted in this Agreement, and in no event, in a way intended to avoid incurring fees or to exceed the limitations agreed to with respect to access and use under applicable AWS terms and policies which may be found at https://aws.amazon.com/legal/?nc1=f_cc ("**AWS Terms and Conditions**"). Customer will not access or use the Hortonworks Products except via Customer's AWS account, which is associated with a valid e-mail address. The Hortonworks Products are only available under this Agreement for access and use through a network connection. No copies will be provided and no distribution of any software is intended. Customer will not modify, distribute any copies of, create derivative works based on, or tamper with, such Hortonworks Products. Notwithstanding the above, and subject to the warranty provisions of Section 7 of this Agreement, Customer may download and run the command line interface made available for download within a Hortonworks Product UI, solely for data Customer owns and in connection with the use of the Hortonworks Products. Customer will not license, sublicense, sell, resell, loan, rent, lease, transfer, assign, or distribute the Hortonworks Products. Customer will not timeshare or otherwise commercially exploit or make the Hortonworks Products available to any third party. Customer will not disassemble, reverse engineer, or decompile the Hortonworks Products. Customer will not access the Hortonworks Products with the intent to build a competitive product or service, or copy or substantially copy any ideas, features, functions, organization, structure, graphics, or user interface of the Hortonworks Product. Customer will not make any use of, disclosure of, or perform any acts with respect to, the Hortonworks Products other than as expressly permitted by the terms of this Agreement. Notwithstanding anything to the contrary, Customer does not have any license, right, or authority to subject the Hortonworks Products, in whole or in part or as part of a larger work, to any terms of any other license agreement.

2.6 **Acceptable Use**. Customer's access and use of the Hortonworks Products must comply with the then current AWS Acceptable Use Policy, found at https://aws.amazon.com/aup/, which may change from time to time.

2.7 **Reservation of Rights**. Hortonworks Products, including all full and partial copies thereof, are and remain the exclusive property of Hortonworks or its licensors. Except for the limited access and use rights expressly set forth in this Agreement, no license or other rights in or to the Hortonworks Products or to Hortonworks intellectual property rights therein, are granted to Customer. Hortonworks may change, discontinue, or deprecate the Hortonworks Products or change or eliminate features or functionality from time to time. All rights not explicitly granted in this Agreement are expressly reserved.

2.8 **Responsibilities.** Without limiting the disclaimers in Section 7 of this Agreement, Hortonworks has implemented reasonable and appropriate measures to test the Hortonworks Products. Customer is responsible for configuration and secure operation of, as well as secure connectivity to, the Hortonworks Products, which may include the use of encryption technologies, and for taking steps to maintain appropriate security and to back up its data. Customer is responsible for keeping its login credentials and any private keys secure and under its control at all times. Customer is responsible for secure transmission, population, maintenance, security, protection, loss prevention, and backup of Customer data and other content. Customer will ensure that its data and other content are free of all viruses or other types of malware, which could harm the systems or software used on AWS and the Hortonworks Product. Customer will ensure that it collects, maintains and handles all data in compliance with all applicable data privacy and protection laws, rules and regulations. Notwithstanding any assistance or consulting that Hortonworks may provide, Hortonworks is not responsible for any aspect of the AWS services, including its availability, reliability, security, and privacy. Customer is responsible for monitoring its access to, and use of, the Hortonworks Products and the AWS services, including payment of all fees and/or taxes related to such access and use, and is responsible for all activities that occur under Customer's account. Customer is responsible for ensuring that any end users under its account comply with the terms of this Agreement, and shall immediately terminate access of any end user it knows of or reasonably should know of who is violating this Agreement or accessing or attempting to access Hortonworks Products without authorization. Customer agrees that Hortonworks is permitted to request and receive information from AWS related to your use of the Hortonworks Products for auditing purposes.

3. **FEES; PAYMENT TERMS.** Current prices for the Hortonworks Products are as set forth on the Marketplace page for Hortonworks Products and may change at anytime. For existing Customer's paying on an annual subscription basis, any new pricing will not apply to Customers that are still within the term of their current annual subscriptions. The price changes shall apply to any new subscriptions and renewals of annual subscriptions. Payment terms related to Customer's payment of fees for access to, and usage of, the Hortonworks Products will be as agreed to between Customer and AWS, and Customer agrees to pay any such agreed upon fees pursuant to the agreement between Customer and AWS. Other than as set forth in Section 4, all disputes related to the payment or collection of fees and other expenses shall be between AWS and Customer. Hortonworks is not liable for any damages or liabilities arising from any disputes between AWS and Customer. Notwithstanding the above, Hortonworks reserves the right to pursue legal action against Customer for non-payment of any fees due and payable to Hortonworks. Refunds are not supported unless purchases of subscriptions to the Hortonworks Products are due to mistake, error or an upgrade or downgrade of Customer's subscription levels. These refund conditions are time-limited and are subject to Customer's payment terms with AWS and the AWS Terms and Conditions. Please contact AWS Customer Support for any specific refund requests.

4. **TERM AND TERMINATION.**
    4.1 **Term.** Unless otherwise terminated in accordance with Section 4.2 below, this Agreement will remain in effect for the applicable term of Hortonworks Product access and usage by Customer that are governed by this Agreement.
    4.2 **Termination.** Each party will have the right to terminate this Agreement for cause upon written notice to the other party: (a) if the other party breaches any material term of this Agreement, 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. Additionally, Hortonworks will have the right to terminate this Agreement, and deny access to and use of the Hortonworks Products, if AWS notifies Hortonworks that Customer is in material breach of fee and payment obligations under Customer's agreement with AWS for access to and use of the Hortonworks Product, or if AWS is in material breach of fee and payment obligations to Hortonworks with respect to access to and use of the Hortonworks Products by Customer under this Agreement.
    4.3 **Effects of Termination.** Sections 1, 3, 4.3, 5, 6, 7, 8, and 9 will survive any termination of this Agreement.

5. **PROPRIETARY RIGHTS.**

5.1 **Customer Data**. Customer shall be the sole owner of any Customer data it has placed on its AWS environment.

5.2 **Feedback.** Customer may, in its sole discretion, provide Hortonworks with suggestions, enhancement requests, recommendations, or other feedback related to the Hortonworks Products provided hereunder ("**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.

5.3 **Residual Rights.** The parties acknowledge and agree that Hortonworks is in the business of providing software solutions and related support to third parties that are or may be substantially similar to the Hortonworks Products and related services 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 Customers access to and use of the Hortonworks Products or the provisions of any related support and retained in the unaided memory of Hortonworks' employees or agents, subject to its obligations respecting Customer's Confidential Information pursuant to Section 6.

6. **CONFIDENTIALITY.**

6.1 **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 no event, less than a reasonable degree of care, and (ii) not use Confidential Information for any purpose except as expressly contemplated under this Agreement; 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 6. Each party shall be liable for all violations of this Section 6 by its employees and contractors.

6.2 **Exclusions.** The obligations of the Receiving Party under this Section 6 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.

6.3 **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), with the exception that the Receiving Party (a) may retain an archival copy of the Confidential Information and (b) is not required to destroy or alter computer-based back-up files generated in the normal course of its business. Any Confidential Information contained in such archival copies or back-up files shall, however, remain subject to the confidentiality obligations of this Section 6.

6.4 **Equitable Relief.** The parties acknowledge and agree that any breach of the obligations of this Section 6 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.

7. **WARRANTY, COVENANTS.**

7.1 Each party represents and warrants that it has the right, power, and authority to enter into, and perform its obligations under, this Agreement.

7.2 Customer represents and warrants that it has complied with the AWS Terms and Conditions, any applicable AWS Terms and Conditions, as well as with all applicable laws and regulations. Customer covenants that it will continue to be in compliance with the AWS Terms and Conditions, Marketplace terms, conditions and policies, as well as with all applicable laws and regulations for so long as Customer uses the Hortonworks Products.

7.3 **Disclaimer**. HORTONWORKS DOES NOT MAKE OR GIVE ANY REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND, INCLUDING ANY WARRANTY THAT THE HORTONWORKS PRODUCTS WE BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT THE HORTONWORKS PRODUCTS OR CUSTOMER DATA WILL BE SECURE OR NOT OTHERWISE LOST OF DAMAGED, WHETHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE HORTONWORKS PRODUCTS PROVIDED HEREUNDER, AND THE HORTONWORKS PRODUCTS ARE PROVIDED "AS-IS" AND "AS-AVAILABLE". WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HORTONWORKS EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO 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. THE ABOVE DISCLAIMER SHALL ALSO APPLY, IN ADDITION TO HORTONWORKS PRODUCTS, TO THE SOFTWARE AND RELATED SUPPORT AS DESCRIBED IN SECTION 2 ABOVE.

8. **INDEMNIFICATION AND LIMITATIONS ON LIABILITY.**

8.1 **General.** Each party (the "**Indemnitor**") agrees, at its own expense, to (a) defend the other party, and their respective directors, officers, employees, and agents (the "**Indemnitees**") from and against any third party claim, suit, or action brought against any of the Indemnitees 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 Indemnitees 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, and their respective directors, officers, employees, and agents ("**Customer Indemnitees**") against any third party claim, suit, or action brought against any of the Customer Indemnitees alleging that any Hortonworks Products 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 each of the Customer Indemnitees from the resulting costs and damages finally awarded against such Customer Indemnitees 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 Hortonworks Products with non-Hortonworks products, including any other product that Customer has chosen to use with its AWS environment, (ii) use of Hortonworks Products

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 Hortonworks Products when use of a newer version provided by Hortonworks would have avoided the infringement, (iv) any modification or alteration of the Hortonworks Products 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 Hortonworks Products 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 Section 8.1 and 8.2, 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 indemnifying party may not settle or compromise a General Claim or Infringement Claim, as applicable, without the prior written consent of indemnified party if such settlement includes an admission of liability on the part of the indemnified party.

8.4 **Customer Indemnity**. To the full extent permitted by applicable law, Customer shall defend, indemnify and hold harmless Hortonworks, its affiliates and its licensors, and each of their respective employees, officers, directors, and representatives ("**Hortonworks Indemnitees**") from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) Customer's use of the Hortonworks Product; (b) breach of this Agreement, the terms of the licenses governing such Hortonworks Products, or violation of applicable law by Customer; (c) any content in Customer's AWS account or the combination of such content with other applications, content or processes (including combination with the Hortonworks Products), including any claim involving alleged infringement or misappropriation of third-party Intellectual Property rights or misappropriation third party's trade secrets; (d) breach of any obligation or duty Customer owes to a third party including, but not limited to, any breach of an agreement between Customer and AWS or the Marketplace terms and conditions; or (e) damage to the AWS platform, networks or services caused by Customer's use of the Hortonworks Products, including but not limited to, data breach or the introduction of viruses, trojan horses, or similar malicious software onto the AWS platform, networks or services (collectively, "**Hortonworks Claim**"). For the purposes of this Section 8.4 only, Hortonworks will promptly notify Customer of any Hortonworks Claim, but failure to promptly notify Customer will only affect Customer's obligations to the extent that such failure prejudices Customer's ability to defend the Hortonworks Claim. Customer may: (i) use counsel of its own choosing to defend against any Hortonworks Claim; and (ii) settle the Hortonworks Claim so long as such settlement is for money damages only and does not involve any admission by Hortonworks of any fault, liability or guilt with regard to such Hortonworks Claim..

8.5 **LIMITATION OF LIABILITY.** EXCEPT: (A) WITH REGARD TO EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 ("**CONFIDENTIALITY**"), (B) WITH REGARD TO CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF HORTONWORKS' INTELLECTUAL PROPERTY IN AND TO HORTONWORKS PRODUCTS, OR (C) TO THE EXTENT THAT AN AMOUNT IS INCLUDED IN A COURT AWARD OR SETTLEMENT RELATED TO EITHER PARTIES' INDEMNIFICATION OBLIGATIONS ("**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: (1) WITH REGARD TO CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF HORTONWORKS' INTELLECTUAL PROPERTY IN AND TO HORTONWORKS PRODUCTS, OR (2) EITHER PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY AWS TO HORTONWORKS FOR THE PURCHASE AND USAGE OF THE HORTONWORKS PRODUCTS BY SUCH CUSTOMER 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. NOTWITHSTANDING THE ABOVE, HORTONWORKS SHALL HAVE NO LIABILITY TO CUSTOMER IF ANY CLAIM IS RECEIVED OR DAMAGES INCURRED DURING CUSTOMER'S USE OF A HORTONWORKS PRODUCT DURING ANY FREE, TRIAL, OR EVALUATION PERIOD. NOTHING IN THIS SECTION IS INTENDED TO EXCLUDE OR LIMIT HORTONWORKS' LIABILITY, TO THE EXTENT APPLICABLE LAW DOES NOT PERMIT EXCLUSION OR LIMITATION OF LIABILITY, FOR: (I) DEATH OR PERSONAL INJURY, (II) FRAUD, (III) FRAUDULENT MISREPRESENTATION, OR (IV) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. HORTONWORKS IS NOT LIABLE FOR ANY DAMAGES STEMMING FROM OR RELATED TO CUSTOMER'S USE OF HORTONWORKS PRODUCTS IN CONJUNCTION WITH THE AWS PLATFORM OR OTHER PRODUCTS PROVIDED BY OTHER VENDORS ON AWS.

9. **GENERAL.**

9.1 **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 9.1; provided that, in both cases (i) and (ii), the entity to which 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 9.1 shall be null and void.

9.2 **Governing Law and Venue.**

    (a) If the Hortonworks entity contracting under this Agreement is Hortonworks, Inc., the terms of this Section 9.2(a) apply. This Agreement is governed by and will be construed in accordance with the laws of the State of California, without regard to conflict of law. 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.

    (b) If the Hortonworks entity contracting under this Agreement is Hortonworks B.V., the terms of this Section 9.2(b) apply. This Agreement is governed by and will be construed in accordance with the laws of England and Wales whose courts shall have exclusive jurisdiction over any and all disputes arising out of or in connection with it, and each party irrevocably waives any objections to such venue. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded. The parties acknowledge and agree that this Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

9.3 **Independent Contractors.** The relationship between the parties established under this Agreement is that of independent contractors, and nothing in this Agreement shall be construed to create an employment, partnership, joint venture, or agency relationship between the parties.

9.4 **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 to the Customer will be sent to the Customer address provided to Hortonworks by AWS or the Customer. Notices to Hortonworks must be sent to the attention of the Hortonworks Legal Department, 5470 Great America Parkway, Santa Clara, California, 95054.

9.5 **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.

9.6 **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.

9.7 **Force Majeure.** Neither party shall be liable to the other, including for any delay or failure to perform, due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riots, strikes or labor disputes, embargoes, government orders, terrorist acts, and denial of service, virus or hacking attacks.

9.8 **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.

9.9 **Compliance with Export and Other 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.

9.10 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No terms contained in any agreement, document, or form by and between AWS and Customer shall be made a part of this Agreement, except as specifically referenced herein. 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.

[END AGREEMENT]