



HORTONWORKS SMARTSENSE ON AMAZON WEB SERVICES EVALUATION AGREEMENT

PLEASE READ THIS HORTONWORKS SMARTSENSE ON AMAZON WEB SERVICES (“AWS”) EVALUATION AGREEMENT (“**AGREEMENT**”) BEFORE ACCESSING OR USING HORTONWORKS SMARTSENSE. BY AGREEING TO ACCESS OR USE SMARTSENSE AND BY NOT AFFIRMATIVELY OPTING-OUT OF THE SMARTSENSE EVALUATION, CUSTOMER IS INDICATING ACCEPTANCE OF THIS AGREEMENT AND AGREES TO THE TERMS AND CONDITIONS HEREIN. IF CUSTOMER AFFIRMATIVELY OPTS-OUT OF THE SMARTSENSE EVALUATION, SMARTSENSE WILL NOT PROVIDE THE FUNCTIONALITY AS DESCRIBED IN SECTION 1.0 OF THE AGREEMENT AND WILL NOT TRANSMIT CUSTOMER DATA TO HORTONWORKS. 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.

This Agreement is made by and between the Customer and (a) if Customer is located in the United States, Canada or Mexico (together “**North America**”), Hortonworks, Inc., or (b) if Customer is located outside of North America, Hortonworks B.V. (each of Hortonworks, Inc. or Hortonworks B.V. referred to herein as “**Hortonworks**”). This Agreement is effective as of the date Customer accepts the terms of this Agreement (the “**Effective Date**”).

PURPOSE

WHEREAS, Customer wishes to participate in a Hortonworks SmartSense on AWS evaluation and

WHEREAS, Customer wishes to access and use SmartSense functionality during the evaluation, and provide feedback and/or data including providing Hortonworks machine data and other information as provided below that Hortonworks can use to identify issues and make improvements.

NOW THEREFORE, the parties hereby agree as follows:

AGREEMENT

1.0 GRANT OF RIGHTS.

Hortonworks grants to Customer and Customer accepts, free of charge a non-exclusive, non-transferable, limited right, to access and use Hortonworks SmartSense in accordance with the terms and conditions of this Agreement subject to your full compliance with the terms and conditions set forth in this Agreement. Customer shall not allow any third parties or persons other than its employees or authorized contractors to use or have access to Hortonworks SmartSense. “Hortonworks SmartSense” or “SmartSense” consists of (i) software bundled with the version of a Public-AMI that Customer accesses through network connection to an authorized AWS site, and which will operate in connection with Customer’s AWS account and (ii) provides on-line functionality and data to (a) quickly capture relevant cluster metric data and (b) perform on-going machine and/or log data collection. No software distribution is intended. For the purposes of this Agreement, “Public-AMI” shall mean a Hortonworks Public-Amazon Machine Image, which may be offered on the AWS shared AMI or community board sites. Hortonworks reserves all other rights.

2.0 RESTRICTIONS.

2.1 Customer shall access and use SmartSense only as specifically authorized by Hortonworks herein and shall not use, link or interface SmartSense with any equipment, software, data, network or communications system, in any manner or in connection with any function, not specifically authorized by Hortonworks.

2.2 Customer may not: (i) use SmartSense to provide services to third parties; (ii) obtain, or assist others in obtaining, access to SmartSense, other than as required for the permitted use hereunder; (iii) transfer, modify, reverse engineer, disassemble, decompile, incorporate or use in any other works, or create derivative works of SmartSense, (iv) reproduce, republish or offer any part of SmartSense (or compilations based on any part of SmartSense) for sale or distribution in any form, over or through any medium whether in hard copy, electronically or otherwise, including, without limitation, wireless communications, via cable or broadband services, hyperlink, framing or in any other manner on the Internet, any public or private bulletin board system or other electronic network without the prior written consent of Hortonworks or (v) use, transfer, distribute, or dispose of any Hortonworks information contained in or provided through SmartSense in any manner that could compete with the business of Hortonworks.

2.3 Customer shall be responsible for any unauthorized access to or use of SmartSense and the Hortonworks Confidential Information (as defined below) provided to Customer hereunder. Customer shall: (i) notify Hortonworks promptly of any unauthorized access, possession, use, loss, disclosure, or attempt to gain unauthorized access, possession or use, of SmartSense and/or the Hortonworks Confidential Information by any person or entity which may become known to Customer; (ii) promptly furnish to Hortonworks full details of any attempted or actual unauthorized access, possession, use, loss, or disclosure, and use reasonable efforts to assist Hortonworks in any related investigation or mitigation; (iii) use reasonable efforts to cooperate with Hortonworks in any litigation and investigation against any third parties deemed necessary by Hortonworks to protect its proprietary rights; and (iv) promptly use all reasonable efforts to mitigate or prevent a recurrence of any unauthorized access, possession, use, loss, knowledge, or disclosure of SmartSense and/or the Hortonworks Confidential Information. Any and all information related to SmartSense or performance thereof, as well as any technical, or other information provided by Hortonworks to Customer (including, without limitation, the terms of this Agreement) (“**Confidential Information**”) shall be held in confidence and not disclosed or, except as provided in the next sentence, used by Customer except as permitted by Hortonworks in writing. This obligation will not apply to information that is generally and freely publicly available through no fault of Customer, that

Customer independently developed without use of or reference to Hortonworks' Confidential Information, or that Customer otherwise rightfully obtains from third parties without restriction on disclosure.

2.4 Customer acknowledges that the information that SmartSense gathers for analysis of Customer's data systems may include machine data such as truncated IP addresses and personally identifiable information ("PII") of users who access Customer's data systems. Customer represents and warrants that it has provided its employees and potential users with all necessary notices, and obtained any necessary consent for the release and use of such information to Hortonworks purely for the purposes of analyzing Customer's data systems. No PII gathered by SmartSense shall be used for any marketing, advertising, or other purposes not related to the analysis of Customer's data systems, and commercially reasonable attempts shall be made by Hortonworks to anonymize any such information.

3.0 **TERM AND TERMINATION.** The term of this Agreement will commence on the Effective Date and will continue until terminated as set forth herein. Hortonworks may, in its sole discretion, terminate this Agreement or stop providing SmartSense access or functionality at any time, for any reason or no reason. Upon expiration or termination of this Agreement, Customer will return to Hortonworks all copies of SmartSense it may have obtained (including backup copies) in any and all media, and delete any such copies that are resident in the memory or hard disks of computers owned or controlled by Customer. CUSTOMER MAY DISABLE THE SMARTSENSE DATA TRANSFER CAPABILITY AT ANYTIME. IT IS THE CUSTOMER'S SOLE RESPONSIBILITY TO DISABLE SUCH DATA TRANSFER CAPABILITY IF IT DECIDES TO DO SO AT A LATER DATE. CUSTOMER SHALL BE PROVIDED DOCUMENTATION WITH INSTRUCTIONS ON HOW TO STOP SUCH DATA TRANSFER CAPABILITY.

4.0 HORTONWORKS SMARTSENSE AND OWNERSHIP

SmartSense is not sold, but rather is provided for Customer's internal use only and must be used solely in accordance with the use restrictions set forth in this Agreement and in strict accordance with any applicable documentation. Hortonworks and its licensors own all right, title and interest in and to SmartSense (including any updates thereto) and reserve all rights to SmartSense that are not expressly granted hereunder by Hortonworks. Except for the limited rights granted in this Agreement, Customer shall not receive, and Hortonworks does not grant to Customer, any ownership rights, title or interest to; (a) any content provided by Hortonworks herein or within the SmartSense software; (b) any technologies used to create SmartSense; or (c) any of the underlying intellectual property rights thereto, including, but not limited to, any worldwide patent, copyright, trademark, trade dress, trade name, know-how, or trade secrets ("**Intellectual Property**"). The ownership rights set forth in this Section apply with respect to any and all languages, formats and media throughout the world, including all present and future rights in and to the information, content data, designs, material and all Intellectual Property rights and other proprietary rights of any type inherent therein or appurtenant thereto.

5.0 FEEDBACK.

5.1 Customer may, in its sole discretion, provide Hortonworks with suggestions, enhancement requests, recommendations, or other feedback related to SmartSense ("**Feedback**").

5.2 Customer agrees that Hortonworks shall own all Feedback and have the right to use Feedback in any manner and for any purpose in its sole discretion. Customer hereby assigns to Hortonworks all right, title, and interest in and to Feedback, including all Intellectual Property rights therein and thereto. Customer agrees to execute such further instruments as Hortonworks may reasonably request confirming Hortonworks' ownership of Feedback as agreed herein.

5.3 Customer instructs Hortonworks and consents to the use of Customer's data collected from SmartSense for the functionality as set forth in Section 1.0 above.

6.0 WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY.

6.1 CUSTOMER ACKNOWLEDGES AND AGREES THAT HORTONWORKS SMARTSENSE, AND ANY DATA OF INFORMATION PROVIDED BY THE USE OF SMARTSENSE, IS PROVIDED "AS-IS" AND "AS-AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. NEITHER HORTONWORKS NOR ITS SUPPLIERS MAKES (AND HAS NOT AUTHORIZED ANYONE TO MAKE) ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6.2 IN NO EVENT WILL HORTONWORKS, ITS AFFILIATES, AND ITS VENDORS AND SUPPLIERS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE OR CORRUPTION OF DATA, DAMAGE TO EQUIPMENT, LOSS OF BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT APPLICABLE LAW DOES NOT ALLOW FOR NO LIABILITY FOR TRANSACTIONS OF THIS KIND, HORTONWORKS SHALL NOT BE LIABLE FOR ANY DAMAGES TO THE FULLEST EXTENT PERMITTED BY SUCH LAW. Customer acknowledges that Hortonworks would not be able to provide SmartSense and its capabilities without the limitations set forth in Section 6 herein.

7.0 GENERAL.

7.1 **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 specifically agree that this Agreement 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. Hortonworks SmartSense is a "Commercial Item" 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. Neither this arrangement nor the licenses granted hereunder are assignable or transferable by Customer (and any attempt to do so shall be void). Hortonworks may freely assign, delegate, license and/or transfer this Agreement, in whole or in part, without consent.

7.2 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 achieve the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

7.3 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.

7.4 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; (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; and (3) it shall not use, access from, export, re-export, or transfer the Public-AMIS or Smartsense to sanctioned countries and regions (i.e., Crimea, Cuba, Iran, North Korea, Sudan, or Syria) or to the governments of these countries, wherever located. 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.

7.5 The following provisions shall survive termination or expiration of this Agreement: Sections 2, 3, 4, 5, 6 and 7.

[END OF HORTONWORKS SMARTSENSE ON AMAZON WEB SERVICES EVALUATION AGREEMENT]