

IMPORTANT INFORMATION – READ CAREFULLY

HORTONWORKS END USER TECH PREVIEW EVALUATION AGREEMENT

(APPLICABLE TO CUSTOMERS ACCESSING HORTONWORKS PUBLIC-AMIS THROUGH AMAZON WEB SERVICES)

Last updated June 1, 2016

THIS HORTONWORKS END USER TECH PREVIEW EVALUATION AGREEMENT (THE “**AGREEMENT**”) APPLIES TO CUSTOMERS THAT EITHER ACCESS OR USE A HORTONWORKS PUBLIC-AMAZON MACHINE IMAGE, INCLUDING ANY INSTANCE LAUNCHED THEREFROM (COLLECTIVELY “**PUBLIC AMIS**”) FROM AMAZON WEB SERVICES SHARED AMI SITE (“**AWS**”). CUSTOMERS ARE ADVISED TO READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING THE HORTONWORKS PUBLIC-AMI. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE NOR ACCESS THE HORTONWORKS PUBLIC-AMIS.

THIS AGREEMENT IS EFFECTIVE UPON CUSTOMER’S ACCEPTANCE OF THIS AGREEMENT (BY CLICKING ACCEPTANCE OF THE HORTONWORKS TERMS WHEN PROMPTED UPON ACCESS OF THE PUBLIC-AMIS). 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. 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 “**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 set forth in business proposals, this Agreement.

1.2 “**Evaluation Period**” means the time period in which the Customer may continue to access and evaluate the Public-AMI. The Evaluation Period shall be determined by Hortonworks in its sole discretion. Hortonworks reserves the right to terminate any Evaluation Period at anytime, and as a result, Public-AMIS should be considered non-persistent.

1.3 “**Intellectual Property**” means any and all patents, inventions, copyrights, works of authorship, 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 or protectable under the laws of any governmental authority having jurisdiction.

1.4 “**Public-AMIS**” in addition to the description set forth above, also include: (a) the underlying software, scripts, checkers and other files comprising the Public-AMIS that are accessed through a network by Customer; (b) any authorization keys or passwords that Hortonworks may provide to Customer in order for Customer to access and evaluate the Public-AMIS; (c) any documentation, in written, electronic or other format, which describes the Public-AMIS and their use (“**Documentation**”); (d) and any updates and modifications to the foregoing items.

2. RIGHTS AND RESTRICTIONS

2.1 **Hortonworks Products.** Customer is being provided access and use of the Public-AMIS solely (a) through a network in accordance with this Agreement; (b) as provided by AWS; and (c) for use on the AWS platform and as otherwise set forth in Section 2.4 below. No other access or use is permitted. No distribution of any software is intended and Customer may not make, share or distribute any copies of Hortonworks Public AMIS, in whole or in part, under any circumstances.

2.2 **SmartSense.** Hortonworks SmartSense is a tool that allows Customers access to a unique service that analyzes cluster diagnostic data, identifies potential issues, and recommends specific solutions and actions. These analytics proactively identify unseen issues and helps notify Customers of potential problems before they occur. SmartSense had been enabled to provide Hortonworks with data to help configure, fix and identify Customer data systems for possible HDP deployment. Customer shall be presented upon access of the Public-AMIS, the license and use terms for enablement of SmartSense. Customer shall be given the opportunity to opt-out of SmartSense’s ability to transmit Hortonworks Customer data cluster information, in which case, SmartSense functionality as described in this Section will be disabled and will not transmit such Customer data to Hortonworks.

2.3 Right to Use.

(a) The Customer's representative that registers his/her information upon access and use of the Public-AMIS ("Customer User") hereby instructs Hortonworks to use the Customer User's data collected by Hortonworks upon access and use of the Public-AMI, and consents to the use thereof for the purposes stated below. For the purposes of this Section, the term "**Personally Identifiable Information**" means Customer User's full name, name of the Company, Customer and Customer User's physical address, Customer User's email address and telephone number, or any other personal information that, alone or in combination with other information, identifies the Customer User. Hortonworks collects Personally Identifiable Information knowingly and voluntarily provided by Customer User, when the Customer User registers for, accesses and uses of the Public-AMIS. Hortonworks may use Customer User's Personally Identifiable Information to:

- (i) Carry out sales, sales solicitation, shipment of products, delivery of services, completion of orders, and provide other services performed by us or third parties;
- (ii) Advertise or promote our products or the products of third parties offered through the Website or third party partners to Customer;
- (iii) Provide support, maintenance or respond to inquiries and/or complaints;
- (iv) Carry out marketing data surveys, statistics and/or analysis;
- (v) Create, send and utilize mailing lists;
- (vi) Handle system malfunctions, troubleshoot Customer usage of Hortonworks products or services, or develop additional functionality based on your feedback;
- (vii) Contact Customer User regarding Customer's use of any Hortonworks product or service;
- (viii) Carry out identity verification and authentication services; and/or
- (ix) Other separately and explicitly prescribed purposes.

(b) By providing Personally Identifiable Information to Hortonworks, Customer User "opts-in" to receive the electronic communications and targeted marketing referenced herein. Customer User may "opt-out" of any communications using the "Unsubscribe" feature contained in electronic communications. Where required by law, Hortonworks will provide an "opt-in" feature requiring the Customer User to affirmatively agree to receive the electronic communications referenced herein.

(c) Hortonworks may collect non-Personally Identifiable Information Customer User chooses to provide, such as Customer affiliated companies, Company User's occupation, and general location. Additionally, we may collect the following information: IP address, host name, domain name, and system and software logs. Customer hereby consents to and instructs Hortonworks to use this information to identify and diagnose issues and to improve any services Customer has requested.

(d) Hortonworks expressly requests that Customer User does not provide Hortonworks with any protected health information ("PHI"), as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Social Security numbers, information related to racial or ethnic origin, political opinions, religious or other beliefs, health, sexual orientation, criminal background, or trade union membership.

(e) Except as set forth in this Privacy Policy, Hortonworks will not provide Personally Identifiable Information to third parties without Customer User's permission. Customer User consents to Hortonworks sharing your Personally Identifiable Information with third parties for the following reasons:

- (i) Hortonworks may share Customer User's Personally Identifiable Information with Hortonworks' partners for Hortonworks' marketing and analytics purposes (we do not sell the information for commercial purposes of third parties);
- (ii) Hortonworks may provide Customer User's Personally Identifiable Information to employees and contractors who owe Hortonworks a duty of confidentiality in connection with a legitimate business purpose of Hortonworks;
- (iii) Hortonworks may provide Customer User's Personally Identifiable Information to third parties, including, but not limited to, law enforcement agencies, state, local or federal governments, private litigants, and other companies, as may be required to (1) comply with lawful requests such as subpoenas or court orders, (2) comply with applicable state, federal, or local law, (3) prevent fraud or other illegal activities, or (4) protect the property, safety, or legal rights of Hortonworks and others;
- (iv) Hortonworks may provide Customer User's Personally Identifiable Information to any third party whom Customer User has consented to receive your Personally Identifiable Information; and
- (v) Hortonworks may provide Customer User's Personally Identifiable Information to affiliated companies or business successors of Hortonworks for the same purposes as stated herein.

(f) Hortonworks may share Personally Identifiable Information and non-Personally Identifiable Information for the purposes set forth in this Privacy Policy with partners and third parties who are based outside of the United States. No matter where Customer User is located, Customer User consents to the processing and transferring of your information in and to the U.S. and other countries. The laws of the U.S. and other countries governing data collection and use may not be as comprehensive or protective as the laws of the country where Customer User lives, where Customer may utilize Hortonworks services, or accesses and uses the Public-AMIS. Additionally, Customer User's information may be made available pursuant to government or law enforcement requests.

(g) Customer User consents to the worldwide transfer of Personally Identifiable Information for the purposes set forth above to third party or cloud marketing service providers or systems which Hortonworks utilizes to store, organize, and analyze both Customer and Customer User's information which has been provided to Hortonworks through the registration process prior to accessing the Public-AMIS.

(h) Hortonworks will use commercially reasonable measures to safeguard Personally Identifiable Information stored in Hortonworks servers and databases against loss, theft, and unauthorized disclosure or use. Please be aware that no security measures are perfect. Furthermore, Hortonworks cannot control the actions of third parties with whom Customer User chooses to share information. Hortonworks is not responsible for circumvention of any security measures by third parties or for any unauthorized access or use of Customer User's Personally Identifiable Information or non-Personally Identifiable Information made by third parties. Any disclosures that Customer User makes of Customers User's own volition is made at Customer User's own risk.

(i) Should Customer User ask us to delete Personally Identifiable Information from Hortonworks records, Hortonworks will use commercially reasonable efforts to do so while retaining any record necessary to comply with governmental authority requirements or applicable federal, state, or local law. Even after removal, however, copies of Customer User's Personally Identifiable Information may remain viewable in cached or archived pages or if other users have copied or stored such information. Any questions or concerns about the Personally Identifiable Information Customer User has provide Hortonworks may be submitted to: legal@Hortonworks.com.

(j) Hortonworks does not knowingly collect or solicit Personally Identifiable Information from anyone under the age of thirteen (13). If Hortonworks learn that Hortonworks has inadvertently obtained Personally Identifiable Information from a child under the age of thirteen (13), Hortonworks will delete that information as soon as practicable. If Customer User believes that a child under the age of thirteen (13) has submitted Personally Identifiable Information in connection with the Public-AMI, please contact Hortonworks at legal@hortonworks.com.

(k) Once a year, Customer Users who are California residents may request from Hortonworks, free of charge, certain information about the Personally Identifiable Information disclosed to third parties for marketing purposes by Hortonworks (if any). Hortonworks will provide a basic report including, as applicable, the type of Personally Identifiable Information that was shared and the names and addresses of all third parties who received such Personally Identifiable Information in the previous calendar year. If Customer User is a California resident and would like to make such a request, please submit such request in writing to legal@hortonworks.com. Hortonworks is under no obligation to provide such reports absent a written request or more than once per calendar year.

(l) Customer User, by accepting the terms of this Agreement, represents and warrants that he/she has the authority to bind the Customer to the provisions of these privacy policies, that the Company has obtained all necessary consent, provided its employees and other potential users of the Public-AMIS with the proper notices and disclosures for the release, transfer and use of Personally Identifiable Information pursuant to this Agreement, and has the authority to bind the Customer to the release, transfer and use of Customer's information submitted to Hortonworks in the course of evaluating the Public-AMIS under this Agreement.

2.4 Limited Rights. Subject to Customer's compliance with the terms and conditions of this Agreement, Hortonworks grants Customer a nonexclusive, non-transferable right, solely during the Evaluation Period, to access and use the Public-AMIS through a network with no transfer of a copy to Customer, solely for the purpose of evaluating the Public-AMIS' capabilities. The rights granted under this Agreement shall be limited as follows: (a) Customer may use the results of analysis of the Public-AMIS for review and evaluation purposes only; such results may not be used in connection with the development of any competing software, product or service; and (b) Customer may share the results of the operation of the Public-AMIS only with Customer's employees, if any, who need to know for the purpose of evaluating the Public-AMIS. Customer's rights to the Public-AMIS are limited to those expressly granted above and Hortonworks reserves all rights not expressly granted in this Agreement.

2.5 Reverse Engineering/Conditions. (a) Customer will not copy, transfer, disassemble, decompile, reverse engineer, modify or create derivative works of the Public-AMIS or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law; (b) Customer will not disclose to any third party any comparison of the results of operation of Public-AMIS with other products; (c) Customer will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Public-AMIS; (d) Customer will not access or use the Public-AMIS should Customer's Evaluation Period terminate. When such period expires, Customer will delete from its systems all copies of any Public-AMIS in all forms and types of media, to the extent any copies were intentionally or inadvertently made.

2.6 Feedback. Customer may, in its sole discretion, provide Hortonworks with suggestions, enhancement requests, recommendations, or other feedback related to the Public-AMIS 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.

2.7 Residual Rights. The parties acknowledge and agree that Hortonworks is in the business of providing data platforms to third parties that are or may be substantially similar to the data platforms and related support that maybe 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 development or support performed under this Agreement and retained in the unaided memory of Hortonworks' employees or agents, subject to its obligations respecting Customer's Confidential Information pursuant to Section 3.

3. CONFIDENTIALITY.

3.1 **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 3. Each party shall be liable for all violations of this Section 3 by its employees and contractors.

3.2 **Exclusions.** The obligations of the Receiving Party under this Section 3 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.

3.3 **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 5. Hortonworks will, at the conclusion of the evaluation or at any time, in its sole discretion, delete and/or make unavailable the Public-AMIS.

3.4 **Equitable Relief.** The parties acknowledge and agree that any breach of the obligations of this Section 3 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.

4. **NO WARRANTY; NO MAINTENANCE OR SUPPORT.** Hortonworks has no obligation to provide maintenance or support services in connection with the Public-AMIS. The Public-AMIS ARE provided "AS IS" AND "AS AVAILABLE." HORTONWORKS AND ITS AFFILIATES AND ITS VENDORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, AND NON-INFRINGEMENT. HORTONWORKS, ITS AFFILIATES AND ITS VENDORS AND SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

5. **LIMITATION OF LIABILITY.** 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 IN EXCESS OF ONE HUNDRED DOLLARS (\$100.00 USD). Customer acknowledges that Hortonworks would not be able to provide the Public-AMIS without the limitations set forth in Section 5 herein.

6. **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 or access from, export, re-export, or transfer the Public-AMIS 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. GENERAL.

7.1 Customer has no right to assign this Agreement.

7.2 If the Hortonworks entity contracting under this Agreement is Hortonworks, Inc., the terms of this Section 7.2 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 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.

7.3 If the Hortonworks entity contracting under this Agreement is Hortonworks B.V., the terms of this Section 7.3 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.

7.4 The availability of the Hortonworks Public-AMIS is subject to Hortonworks' sole discretion and maybe taken down or terminated at anytime. If a Public-AMI is terminated, it is the sole responsibility of the Customer to stop the use and access of its instance of the terminated Public-AMI.

[END OF HORTONWORKS END USER TECH PREVIEW EVALUATION AGREEMENT]