



HORTONWORKS END USER SERVICES AGREEMENT

(APPLICABLE TO CUSTOMERS PURCHASING THROUGH AUTHORIZED HORTONWORKS RESELLERS)

Last updated September 30, 2015

THIS HORTONWORKS END USER SERVICES AGREEMENT (THE “**AGREEMENT**”) APPLIES TO CUSTOMERS THAT PURCHASE HORTONWORKS SUPPORT, CONSULTING SERVICES OR TRAINING SERVICES THROUGH A HORTONWORKS RESELLER. CUSTOMERS ARE ADVISED TO READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING OR USING HORTONWORKS SUPPORT, CONSULTING SERVICES OR TRAINING SERVICES FROM THE RESELLER. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE HORTONWORKS SUPPORT, CONSULTING SERVICES OR TRAINING SERVICES BEING SOLD OR OFFERED BY THE RESELLER.

THIS AGREEMENT IS EFFECTIVE UPON THE EARLIER OF (A) CUSTOMER’S ACCEPTANCE OF THIS AGREEMENT (EITHER BY CLICKING A BOX TO INDICATE ACCEPTANCE OR BY EXECUTING A SOW OR OTHER DOCUMENT WITH HORTONWORKS THAT REFERENCES THIS AGREEMENT), OR (B) CUSTOMER’S ACCEPTANCE OF AN AGREEMENT WITH RESELLER THAT REFERENCES THE TERMS OF THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF A CUSTOMER ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH CUSTOMER ENTITY.

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 “**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, or any SOW; and (v) where Hortonworks is the Disclosing Party, (a) Hortonworks’ Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, (e) Documentation, and (f) implementation architectures that encompass any of the Hortonworks Products and any of the foregoing items (a) – (e) (“**Implementation Architectures**”).
- 1.3 “**Consulting Services**” means Hortonworks consulting services offerings purchased by Customer through a Reseller, as may be further described in a SOW.
- 1.4 “**Documentation**” means all Hortonworks published user manuals and guides, regardless of media, that explain or facilitate the use of the Hortonworks Products.
- 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 Products.
- 1.6 “**Hortonworks Products**” means the Hortonworks versions of the open source software solutions managed by the Apache Software Foundation, licensed under the terms of the Apache License, Version 2.0, and listed at: www.hortonworks.com/support.
- 1.7 “**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 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 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.
- 1.9 “**Reseller**” means a third party authorized to resell Hortonworks support, consulting services and/or training services offerings pursuant to an agreement between such Reseller and Hortonworks.
- 1.10 “**Services**” means Hortonworks Consulting Services and/or Training Services.
- 1.11 “**Services Materials**” means (a) 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; and (b) utilities, connectors, scripts, tools, implementation code related to Hortonworks Products, and other software (and any updates thereto) that, in each case, are used by Hortonworks to deliver the Services or Support to Customer.
- 1.12 “**Statement of Work**” or “**SOW**” means a statement of work issued by Hortonworks and executed by Customer that describes Services to be provided by Hortonworks to Customer under this Agreement.
- 1.13 “**Support**” means the Hortonworks subscription support services purchased by Customer through a Reseller 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/>.
- 1.14 “**Training Materials**” means Hortonworks training courses, documentation, and other associated training materials, including any and all updates thereto.
- 1.15 “**Training Services**” means Hortonworks’ training services offerings purchased by Customer through a Reseller. Training Services are subject to Hortonworks’ Training Services policies available at: www.hortonworks.com/agreements/.
- 1.16 “**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 (a) Hortonworks’ Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, (e) Documentation, or (f) Implementation Architectures.

2. SERVICES AND SUPPORT. Subject to the terms and conditions of this Agreement, Hortonworks will provide the Services and Support purchased by Customer through the Reseller. SOWs signed between Hortonworks and Customer shall be deemed incorporated herein. Services and Support are for Customer’s internal use only, and



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; PAYMENT TERMS.** All terms related to Customer's payment of fees for Support and/or Services will be directly between Customer and Reseller, and Customer agrees to pay any such agreed fees pursuant to the agreement between Customer and Reseller. Other than as set forth in Section 6, all disputes related to the payment of fees and other expenses shall be between Reseller and Customer only. Hortonworks is not liable for any damages or liabilities arising from any disputes between Reseller and Customer.
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: (a) Hortonworks' Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, (e) Documentation, and (f) Implementation Architectures (together, the "**Hortonworks Retained Property**"), including any and all Intellectual Property therein and thereto. 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 Products and related Services and Support. Training Materials may only be used by the specific individuals to whom the Training Services are provided and may not be copied electronically or otherwise (whether or not for archive purposes), modified, translated, re-distributed or 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 Products (including General Enhancements thereto) and any other open source software included in Services deliverables or provided to Customer as part of Support. Such open source software is licensed under, and its use by Customer is subject to, the terms of the applicable open source license. Any General Enhancements to the Hortonworks Products, if and when available, will be licensed 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 all Intellectual Property therein and thereto, 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 all Intellectual Property therein and thereto, 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 Products ("**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 and retained in the unaided memory of Hortonworks' employees or agents, 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 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 or an 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), 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.
 - 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.** Unless otherwise terminated in accordance with Section 6.2 below, this Agreement will remain in effect for the applicable term of Support and/or Services purchased by Customer that are governed by this Agreement.
 - 6.2 **Termination.** Each party will have the right to terminate this Agreement, and any Support or Services governed by this Agreement, for cause upon written notice to the other party: (a) if the other party breaches any material term of this Agreement or an applicable 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. Additionally, Hortonworks will have the right to terminate this Agreement, and any Support or Services governed by this Agreement, if the Reseller notifies Hortonworks that Customer is in material breach of fee and payment obligations under Customer's agreement with Reseller for the applicable Support or Services, or if Reseller is in material breach of fee and payment obligations to Hortonworks with respect to Support or Services being delivered to Customer under this Agreement.

6.3 **Effects of Termination.** 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.
- (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 work, in good faith, with the Reseller to refund that portion of fees paid by Customer 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, 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.

8. INDEMNIFICATION.

8.1 **General.** Each party (the "Indemnitor") agrees, at its own expense, to (a) defend the other party, its Affiliates, 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, Customer's Affiliates, 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 Work Product or Hortonworks Retained Property set forth as a deliverable in the applicable Documentation 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 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 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 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.

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 HORTONWORKS RETAINED PROPERTY 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) CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF HORTONWORKS' INTELLECTUAL PROPERTY IN AND TO HORTONWORKS RETAINED PROPERTY LICENSED TO CUSTOMER UNDER THIS AGREEMENT OR (B) 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 RESELLER TO HORTONWORKS FOR THE PURCHASED SUPPORT AND/OR SERVICES 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.

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 of 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 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 10.2 shall be null and void.
- 10.3 **Governing Law and Venue.**
- (a) If the Hortonworks entity contracting under this Agreement is Hortonworks, Inc., the terms of this Section 10.3(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 principles and the terms of this Section 10.3.1 apply. 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 10.3(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.
- 10.4 **Independent Contractors.** The relationship between the parties established under this Agreement is that of independent contractors, and nothing in this Agreement or a SOW 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 to the Customer will be sent to the Customer address provided to Hortonworks by the Reseller 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.
- 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.** 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.
- 10.11 **Insurance.** Hortonworks agrees to maintain, throughout the term of this Agreement, commercially reasonable levels of insurance in relation to its obligations hereunder and under any SOWs.
- 10.12 **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.
- 10.13 **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.
- 10.14 **SOW Counterparts and Signatures.** 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 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.
- 10.15 **Entire Agreement.** This Agreement, together with any applicable SOWs, constitutes the entire agreement between the parties concerning the subject matter hereof. No terms contained in any agreement, document, or form by and between the Reseller and Customer shall be made a part of this Agreement. 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.
- 10.16 **Precedence.** In the event of a conflict between the terms of an SOW and the terms of this Agreement, the terms of the executed SOW shall control but (a) only with respect to the specific Services purchased under such SOW, and (b) only if the SOW specifically references the conflicting provision(s) of this Agreement with the express intention to supersede it.