



## **DLT RIDER TO MANUFACTURER END USER TERMS (For Public Sector End Users)**

1. **Scope.** This DLT Rider to Cloudera, Inc. ("Manufacturer") End User Terms ("DLT Rider") establishes the terms and conditions enabling DLT Solutions, LLC ("DLT") to provide Manufacturer's Offerings to Public Sector Government Agencies to include the Federal, State and Local entities (the "Licensee" or "Customer").
2. **Applicability.** The terms and conditions in the attached Manufacturer Terms are hereby incorporated by reference to the extent that they are consistent with Public Sector Laws (e.g., the Anti-Deficiency Act, the Contracts Disputes Act, the Prompt Payment Act, the Anti-Assignment statutes). To the extent the terms and conditions in the Manufacturer's Terms or any resulting Customer Order are inconsistent with the following clauses, they shall be deemed deleted and the following shall take precedence:
  - a. **Advertisements and Endorsements.** Unless specifically authorized by Customer in writing, use of the name or logo of Customer is prohibited.
  - b. **Assignment.** All clauses regarding Assignment are subject to Assignment of Claims and Novation and Change-of-Name Agreements. All clauses governing Assignment in the Manufacturer Terms are hereby deemed to be deleted.
  - c. **Audit.** During the term of a Customer order subject to this Rider: (a) If Customer's security requirements included in the Order are met, Manufacturer or its designated agent may audit Customer's facilities and records to verify Customer's compliance with this Agreement. Any such audit will take place only during Customer's normal business hours contingent upon prior written notice and adherence to any security measures the Customer deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. DLT on behalf of the Manufacturer will give Customer written notice of a desire to verify compliance ("Notice"); (b) If Customer's security requirements are not met and upon Manufacturer's request, Customer will provide a written certification, executed by a duly authorized agent of Customer, verifying in writing Customer's compliance with the Customer order; or (c) discrepancies in price discovered pursuant to an audit may result in a charge by the commercial supplier to the Customer however, all invoices must be: i) in accordance with the proper invoicing requirements of the Customer; ii) if there is a dispute then no payment obligation may arise on the part of the Customer until the conclusion of the dispute process, and iii) the audit, if requested by the Customer, will be performed at the Manufacturer's expense.
  - d. **Confidential Information.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, and any order by a Court with appropriate jurisdiction.
  - e. **Consent to Government Law / Consent to Jurisdiction.** The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States and/or the respective Customer's state. Any Manufacturer Terms that identify the jurisdiction in which a lawsuit may be brought, the law which shall apply to such lawsuit, or the requirements to pursue Alternative Dispute Resolution prior to such lawsuit are deemed to be deleted. All clauses in the Manufacturer Terms referencing equitable remedies are deemed to be deleted.
  - f. **Contractor Indemnities.** DLT shall not be required to indemnify Customer except as explicitly stated in the contract. Any such indemnification requirement shall vest control over the matter with the United States and shall give DLT or the Manufacturer the right to intervene in the proceeding at its own expense through counsel of its own choice.





- g. **Customer.** Customer is the “Ordering Activity”, defined as any entity authorized to use government sources of supply. An individual person shall not be the Licensee or Customer.
- h. **Customer Indemnities.** Customer shall not be required to indemnify DLT except as in accordance with federal statute that expressly permits such indemnification.
- i. **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Terms, unless a Customer determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid order placed by Customer.
- j. **Force Majeure.** Clauses in the Manufacturer Terms referencing Force Majeure and unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- k. **Future Fees or Penalties.** All fees and charges are as explicitly set forth in the Customer’s order. Additional fees or penalties such as liquidated damages or license, maintenance or subscription reinstatement fees be incorporated into the contract only by bilateral written agreement of the parties. Any clauses imposing additional fees or penalties automatically in Manufacturer’s Terms are hereby deemed to be deleted.
- l. **Renewals.** All Manufacturer Terms clauses that violate the Anti-Deficiency Act or which permit automatic renewal are hereby deemed to be deleted.
- m. **Taxes.** Taxes are subject to applicable jurisdiction regulations, which provides that the contract price includes all federal, state, local taxes and duties.
- n. **Termination.** Clauses in the Manufacturer Terms referencing termination or cancellation are hereby deemed to be deleted. Both DLT and Customer’s termination rights shall be governed by Contract Dispute Acts of the jurisdiction in which the transaction occurs.
- o. **Third Party Terms.** No entity shall have privity of contract with the United States with respect to any third-party product or service, referenced in the Manufacture’s Terms unless expressly stated in Customer’s order. Absent agreement by Customer to the contrary, third parties shall have no rights or obligations with respect to such agreements vis-à-vis the United States.
- p. **Waiver of Jury Trial.** All clauses referencing waiver of jury trial in the Manufacturer Terms are hereby deemed to be deleted.

**Incorporation of Manufacturer Terms.** Attached hereto are the Manufacturer Terms. As part of this Rider, the following Terms are incorporated by reference and made a part of this Rider except as modified as set forth above.



**CLOUDERA, INC.**  
**ENTERPRISE SUBSCRIPTION MASTER AGREEMENT**

This Enterprise Subscription Master Agreement (this “ESMA” or “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between Cloudera, Inc., a Delaware company located at 395 Page Mill Road, Palo Alto, CA 94306, and its Affiliates (“Cloudera”) and \_\_\_\_\_, a \_\_\_\_\_ company located at \_\_\_\_\_ (“Customer”) and sets forth the terms under which Customer may purchase and use certain Cloudera Products and Services set forth in Order Forms governed by this ESMA.

**BACKGROUND**

Cloudera is in the business of providing consulting, training and software support and maintenance services related to the various Cloudera Products. Generally, the Cloudera Products are (i) open source solutions subject to applicable open source licenses separate from this ESMA or (ii) online services to which Cloudera grants usage rights hereunder. Where the Cloudera Products include proprietary software (including third-party software), the applicable license terms for this software are set forth or referenced below. Customer desires to purchase certain consulting, training, software licenses (if applicable), and/or support and maintenance services from Cloudera pursuant to the terms of this ESMA.

1. **Definitions.** Unless otherwise defined in a particular Order Form, for the purposes of this ESMA, including any exhibits hereto and any Order Forms hereunder, the following capitalized terms will have the following meanings:
  - 1.1 “Affiliate” means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. “Control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by management agreement, by contract, or otherwise. Any such entity will be considered an Affiliate for only such time as such interest or control is maintained.
  - 1.2 “Applicable OSS License” means the open source software license that applies to a Supported OSS Product as indicated on the applicable Order Form or otherwise as embedded in the component files for such Supported OSS Product.
  - 1.3 “Authorized Partner” means a reseller or a distributor authorized by Cloudera to resell Services and/or Subscriptions to Cloudera Products.
  - 1.4 “Cloudera Online Services” means online services offerings provided by Cloudera as hosted, cloud-based services, accessible to Customer through a web browser, as set forth in the applicable Order Form.
  - 1.5 “Cloudera Products” means: (i) the Cloudera Software, the Cloudera Online Services, and the Supported OSS Products, that are set forth in the applicable Order Form and (ii) any Third Party Software incorporated in or provided with the foregoing.
  - 1.6 “Cloudera Software” means Cloudera’s proprietary software components set forth in the applicable Order Form. For avoidance of doubt, Cloudera Software does not include software that is subject to an open source license. “Intellectual Property Rights” means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.
  - 1.7 “Metrics” means the licensing metrics or support entitlement metrics, as applicable, for the Cloudera Product as defined in the applicable Order Form and may include, but are not limited to, the following: Nodes, Cores, Unique Identifiers, and Capacity Under Management. Definitions for the various Metrics can be found at: <https://www.cloudera.com/legal/commercial-terms-and-conditions/cloudera-licensed-metrics.html>.
  - 1.8 “Order Form” means an ordering document governed by this ESMA by which Customer purchases Subscriptions to Cloudera Products and/or Services, including order forms, quotes, statements of work, and other transaction documents referencing this ESMA. Order Forms are deemed incorporated herein.
  - 1.9 “Pre-Existing Property” means any and all Intellectual Property Rights owned or controlled by Cloudera prior to the effective date of the applicable Order Form, including, but not limited to, the Intellectual Property Rights in and to Cloudera Products and any and all modifications thereto and derivative works thereof.
  - 1.10 “Professional Services” means the professional services performed or to be performed by Cloudera under this ESMA, in accordance with the applicable Order Form.
  - 1.11 “Services” means collectively the Professional Services, Support Services, and Training Services that may be purchased by Customer under an applicable Order Form.
  - 1.12 “Subscription” means: (i) with respect to Supported OSS Products, a Cloudera offering that provides Customer the right to access and receive Support Services during the applicable Subscription Period for such Supported OSS Products in accordance with the terms of this ESMA and the applicable Order Form, and (ii) with respect to Cloudera Software and Cloudera Online Services, a Cloudera offering that provides Customer the right to access, use and receive such Cloudera Software and/or Cloudera Online Services, along with applicable Support Services, during the applicable Subscription Period in accordance with the terms of this ESMA and the applicable Order Form.
  - 1.13 “Subscription Period” means the period of time as identified in the applicable Order Form for which Customer is purchasing and will be entitled to enjoy the benefits of the applicable Subscription.
  - 1.14 “Support Services” means the technical support and software maintenance provided by Cloudera under this ESMA as further described in Section 3.2 below.
  - 1.15 “Supported OSS Products” means software products that are made available by Cloudera under the terms of Applicable OSS Licenses and for which Cloudera provides Support Services.

- 1.16 "Third Party Software" means certain of the copyrighted, patented and/or otherwise legally protected software and/or material of third parties that is licensed to, sublicensed to, and/or otherwise distributed or made available by Cloudera to Customer.
- 1.17 "Training Materials" means the course slides, OnDemand videos and other documentation including the training exercises and labs provided in conjunction with any Training Services.
- 1.18 "Training Services" means one or more of the then-current Cloudera training offerings listed at <https://www.cloudera.com/more/training/description-of-training-services.html>, as may be updated by Cloudera from time to time, and provided subject to this ESMA, the applicable Order Form, and the policies at the foregoing URL.
- 1.19 "Update" means a new minor release of a Cloudera Product providing patches, bug fixes and other such modifications, resulting in an increase in the release version number to the right of the decimal point, as in x.1 to x.2.
- 1.20 "Upgrade" means a new major release of a Cloudera Product providing substantially new features, functionality, and/or enhancements, resulting in an increase in the release version number to the left of the decimal point, as in 1.x to 2.x.
- 1.21 "Work Product" means all tangible materials (including but not limited to drawings and documentation) delivered by Cloudera in the course of Cloudera's performance of the Professional Services that are created for Customer as set forth in an Order Form for Professional Services; provided, however, Work Product expressly excludes any and all: (i) Pre-Existing Property; (ii) Training Materials; (iii) Documentation; (iv) improvements, modifications, enhancements, or extensions to or derivative works of Pre-Existing Property created or developed by Cloudera during the course of performing Services that have or could have general applicability to Cloudera's customers ("General Enhancements"); and (v) ideas, processes, programs, concepts, business methods, inventions, implementation architectures related to Cloudera Products, and developments of general application throughout all industries or a single industry that are discovered, created or developed by Cloudera during the course of performing the Services ("Cloudera IP"), provided that General Enhancements and Cloudera IP will never include any of Customer's Confidential Information.

## 2 Applicable OSS Licenses; License Grant; Restrictions; Ownership.

- 2.1 Applicable OSS Licenses. Unless otherwise set forth in the applicable Order Form, Supported OSS Products are licensed to Customer free of charge solely under the Applicable OSS Licenses.
- 2.2 License Grant. Subject to the terms and conditions of this ESMA and the applicable Order Form, Cloudera grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access and use the Cloudera Software and Cloudera Online Services, and to reproduce the Cloudera Software, for the duration of the applicable Subscription Period, solely for Customer's internal business purposes.
- 2.3 Restrictions. Except as otherwise expressly set forth in this ESMA or the applicable Order Form, Customer may not: (i) modify, disclose, alter, translate or create derivative works of the Cloudera Software; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Cloudera Software; (iii) use the Cloudera Software, or allow the transfer, transmission, export or re-export of the Cloudera Software or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other U.S. government agency; (iv) disassemble, decompile or reverse engineer any of the Cloudera Software; or (v) cause or permit any third party to do any of the foregoing. In addition, Customer will not remove, alter or obscure any proprietary notices in the Cloudera Software including copyright notices, or permit any third party to do so.
- 2.4 Ownership and Reservation of Rights. As between the parties and subject to Sections 2.2 and 0 of this ESMA, Cloudera and its licensors own and retain all right, title and interest in and to: (i) the Cloudera Products, (ii) the Cloudera IP, (iii) the Pre-Existing Property, (iv) the General Enhancements, (v) Training Materials, (vi) all Cloudera logos and trademarks included in any of the foregoing, and (vii) any and all Intellectual Property Rights embodied in the foregoing. Cloudera reserves all rights not expressly granted in this ESMA or the applicable Order Form, and no licenses are granted by Cloudera to Customer, whether by implication, estoppel or otherwise, except as expressly set forth in this ESMA or the applicable Order Form.
- 2.5 License Keys. Any license keys provided by Cloudera to Customer are personal to Customer. Customer may not distribute any license keys provided by Cloudera to any third party. Such license keys are the Confidential Information of Cloudera and are subject to the confidentiality requirements of Section 5 of this ESMA.
- 2.6 Cloudera Trademarks in Supported OSS Products. Unless as otherwise set forth in the applicable Order Form, this ESMA and the applicable Order Form do not permit Customer to distribute Supported OSS Products or any of their components containing Cloudera's trademarks. The "Cloudera" trademark is a registered or unregistered trademark of Cloudera in various countries. Customer may redistribute Supported OSS Products that include Cloudera trademarks only if: (i) permitted under a separate written license agreement with Cloudera authorizing such redistribution, or (ii) Customer removes all occurrences of Cloudera trademarks and logos in such Supported OSS Products prior to any redistribution. Modifying Supported OSS Products may: (i) corrupt the Supported OSS Products, and (ii) adversely affect Cloudera's ability to provide Support Services for the Supported OSS Products.
- 2.7 Affiliate Use. An Affiliate of Customer may access the Cloudera Products and use the Cloudera Software and Cloudera Online Services for which Customer has purchased a Subscription under an applicable Order Form, provided that: (i) such Affiliate (a) agrees in writing with Customer to be bound by and accepts all of the obligations imposed upon Customer under this ESMA (other than payment obligations for which Customer is solely responsible to Cloudera or its Authorized Partner, as applicable) or (b) Customer agrees to be responsible for the acts and omissions of such Affiliate in relation to the applicable Order Form; (ii) the Affiliate is not a Cloudera customer under separate contract, nor actively engaged with Cloudera in discussions for the purchase of Cloudera Products at the time an Order Form is executed pursuant to this ESMA; (iii) the Affiliate is not a direct competitor of Cloudera; and (iv) all of Customer's obligations under this ESMA and the applicable Order Form will remain in force and undiminished.
- 2.8 Third Party Service Provider Rights.
  - 2.8.1 Cloudera grants to Customer the right to permit one or more third-party service providers to access and use the Cloudera Products and Cloudera Online Services for which Customer has purchased a Subscription during the Subscription Period, provided that: (i) any such third party exercises such rights solely to provide goods to or perform services for Customer and/or its Affiliates; (ii) all such use is subject to the terms and conditions of this ESMA and the applicable Order Form; and (iii) such third party is not

a direct competitor of Cloudera. Customer will ensure that any third-party service providers that access or use the Cloudera Products and Cloudera Online Services shall comply with this Section 2.8.1, and Customer will be responsible for the acts and omissions of each such third party as fully as if they were Customer's acts and omissions.

2.8.2 Notwithstanding Section 0 (iii), Customer may use third-party cloud service providers to host Cloudera Products for the benefit of Customer, provided that such third party's platform is supported by Cloudera. Customer will be fully responsible for ensuring that such platform meets Customer's performance and availability requirements and for complying with the applicable terms and conditions of use for such platform.

### 3. Delivery; Services.

3.1 Delivery. Upon Cloudera's acceptance of Customer's Order Form or the Subscription Period start date indicated therein (whichever is later), Cloudera will make the Cloudera Products available for download (or, in the case of any Cloudera Online Services, will make the services available to Customer through Cloudera's web site). The Cloudera Products will be deemed delivered when the electronic download or the online access is initially made available, as applicable. Customer acknowledges that Cloudera does not control the transfer of data over the internet and that Cloudera is not responsible for any delays or delivery failures caused by the internet.

3.2 Support Services. Cloudera will use commercially reasonable efforts to provide technical support and software maintenance services for those Cloudera Products that are Legacy Hortonworks Products (as hereinafter defined) as set forth at <https://www.cloudera.com/legal/hwx/support-services-policy.html> and for all other Cloudera Products as set forth at <https://www.cloudera.com/legal/commercial-terms-and-conditions/support-terms-and-conditions/support-terms-and-conditions-2018-07-15.html>, as such policies and/or support terms may be updated by Cloudera from time to time. Any updates to the terms applicable to Support Services made during any then-current Subscription Period will not apply until the start date of the next Subscription Period. The Support Services include the provision of Updates and Upgrades to the Cloudera Products, when and if such Updates or Upgrades are made generally available. As used herein, "Legacy Hortonworks Products" means those certain Supported OSS Products that are described at: <https://hortonworks.com/products> (whether available as originally branded, or as may have been rebranded by Cloudera such that, by way of example, "Hortonworks DataFlow" or "HDF" is renamed "Cloudera DataFlow" or "CDF"). While Customer has active Subscriptions to Support Services covering any of its computer nodes, cores, etc., Customer agrees that all of its computer nodes, cores, etc. on which Customer has deployed Cloudera Products will be covered by an active Subscription.

### 3.3 Professional Services; Training Services.

3.3.1 Ownership of Work Product. In the event that the performance of Professional Services results in Work Product, all right, title and interest in the Work Product vests in Customer. Such Work Product is deemed to be a work made for hire, and to the extent it may not be considered a work made for hire, Cloudera assigns to Customer all right, title and interest in and to the Work Product and any and all Intellectual Property Rights embodied therein. Notwithstanding any terms to the contrary in this ESMA or the applicable Order Form, Cloudera owns all right, title and interest in and to any and all bug-fixes, extensions, improvements or enhancements to the Cloudera Products (including all Intellectual Property Rights embodied therein), and no rights to the foregoing are granted hereunder. Cloudera grants to Customer a non-exclusive, non-transferable, revocable and limited license to use the Cloudera IP solely in conjunction with Customer's use of the Work Product, provided that Customer may not: (i) modify, disclose, alter, translate or create derivative works of the Cloudera IP; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Cloudera IP; or (iii) disassemble, decompile or reverse engineer any of the Cloudera IP.

3.3.2 Training Services. If Customer orders Training Services, all works of authorship, inventions, improvements, methods, processes, formulas, designs, techniques and information conceived, discovered, developed or otherwise made by Cloudera (as necessary to establish authorship, inventorship or ownership), solely or in collaboration with others, in the course of performing the Training Services, including any and all Training Materials, will be the sole property of Cloudera. No title to or ownership of any property or any associated Intellectual Property Rights are transferred to Customer in the performance of the Training Services. In addition, Customer may not make recordings of any kind of the Training Services. Notwithstanding the foregoing, Customer participants attending the Training Services may retain one copy of the Training Materials for personal use only.

### 4. Ordering; Financial Considerations.

4.1 Orders for Services. Subject to the terms and conditions of this ESMA and the applicable Order Form, Cloudera will provide to Customer the Cloudera Products and Services agreed by the parties in applicable Order Forms. Cloudera Products and Services are only for Customer's internal use. Customer may not use the Services to supply any consulting, training or support services to any third party.

4.2 Affiliate Orders. An Affiliate of Customer may execute an Order Form pursuant to this ESMA, and such Affiliate will be deemed to be the Customer for purposes of such Order Form, including being bound by the terms of this ESMA.

### 4.3 Fees; Taxes.

4.3.1 Fees for Metrics and Cloud Pre-Pay Credits. Customer will pay to Cloudera or its Authorized Partner, as applicable, the total fees due for the applicable Subscription Period, including any renewals thereof pursuant to Section 0. Unless the applicable Order Form provides otherwise, fees set forth in the Order Form are due at the commencement of the Subscription Period. For the avoidance of doubt, with respect to Cloudera Products, all Subscriptions (excluding Subscriptions for Unique Identifiers) for any given cluster must be for the same Cloudera Product(s) and Support Services entitlements, and be procured according to the same Metric.

4.3.2 Fees for Usage Above the Order Form Quantity. During the Subscription Period, Customer may elect to use additional capacity that exceeds the quantity of the applicable Metrics set forth in an Order Form. In such case, Customer must notify Cloudera or its Authorized Partner, as applicable, of its elected use of such additional capacity. In the event that during a Subscription Period, Customer: (i) elects to add capacity, or (ii) exceeds the Metrics set forth in an Order Form, the fees for such additional capacity/usage will be calculated for the period commencing immediately upon: (a) the installation date of the additional Nodes, (b) the date when Capacity Under Management or quantity of Unique Identifiers increased (whether used or not), or (c) the date when additional support entitlement Metrics for Supported OSS Products are required. Unless otherwise agreed in the Order

Form, the Subscription Period of the additional capacity will be pro-rated such that it will terminate on the same date as the existing Subscription Period.

- 4.3.3 Subscription Period Not Cancelable. Except for the provisions of this ESMA allowing for early termination, the Subscription Period is non-cancelable and non-terminable. Unless an Order Form has been terminated by Customer in accordance with Section 9.2, Cloudera reserves the right to invoice Customer for any future payments included in an Order Form and will not be obligated to issue any refunds for Subscription fees paid.
- 4.3.4 Fees for Professional Services and Training Services. The fees associated with the performance of the Professional Services and/or Training Services will be as set forth in the Order Form applicable to such Services. Fees do not include travel and related expenses incurred as a result of delivering the Services, and Customer will be responsible for such travel and related expenses unless indicated otherwise in the applicable Order Form.
- 4.3.5 Payment Terms. Upon receipt of Customer's (or an Authorized Partner's) purchase order or Order Form for a Subscription Period, for Services, and/or for any additional capacity purchased, used or increased during a then-current Subscription Period as provided in Section 4.3.2 above, unless the applicable Order Form includes a billing and/or payment schedule, Cloudera or its Authorized Partner, as applicable, will invoice Customer the applicable fees as described in this Section 4.3. Fees are due to Cloudera within thirty (30) days of the date of Cloudera's invoice. Where a Subscription for a Cloudera Product is purchased through an Authorized Partner, any disputes regarding payment must be addressed to such Authorized Partner.
- 4.3.6 Payment Method and Currency. Except as may otherwise be set forth in any Order Form between Customer and an Authorized Partner, if applicable, all payments due under the Agreement will be made: (i) by bank wire transfer, electronic ACH deposit or company check in immediately available funds to an account designated by Cloudera; and (ii) in the currency as set forth in the applicable Order Form (or USD where no currency is specified).
- 4.3.7 Taxes. The fees for Subscriptions to Cloudera Products and Services do not include taxes. Customer will pay any and all sales, use, excise, import, export, value added, GST or similar taxes ("Transaction Taxes") and all government permit or license fees, and all customs, duty, tariff and similar fees levied upon the sale of Subscriptions to Cloudera Products, Work Product, and the provision of Services under the Agreement, exclusive of income taxes based on Cloudera's net income. Customer will pay any costs associated with the collection of Transaction Taxes, including penalties and interest. If Customer is required to pay any withholding tax, charge or levy with respect to payments to Cloudera ("Withholding Taxes"), Customer agrees to gross up payments actually made to Cloudera such that Cloudera receives sums due in full and free of any deduction of any such Withholding Tax, subject to Cloudera providing documentation to support the lowest legal withholding rate under the applicable double tax treaty. Cloudera will cooperate with Customer to enable Customer to pay the lowest legal withholding rate by providing any available tax documents in its possession to support the lowest applicable withholding rate. Under current United States income tax laws, Cloudera cannot receive any tax benefits or credits for withheld tax amounts by Customer.

5. Confidentiality; Personal Data; Publicity.

5.1 Confidentiality.

- 5.1.1 "Confidential Information" means all information disclosed (whether in oral, written or other tangible or intangible form) by one party or its Affiliate (the "Disclosing Party") to the other party or its Affiliate (the "Receiving Party") concerning or related to the business relationship (or potential business relationship) between the parties or the Disclosing Party (whether before, on or after the Effective Date) that is: (i) characterized as confidential information at the time of disclosure or within a reasonable time after disclosure; or (ii) that due to the nature of the information and circumstances surrounding its disclosure would be reasonably understood by a person with no knowledge of the relevant trade or industry to be confidential or proprietary. Confidential Information will not include information that: (i) is in or enters the public domain without breach of the Agreement and through no fault of the Receiving Party; (ii) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party; (iii) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information; or (iv) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.
- 5.1.2 Period of Confidentiality. The Receiving Party will, during the term of this ESMA and for three (3) years thereafter, be required to maintain the confidentiality of the Disclosing Party's Confidential Information by using the same degree of care to maintain the confidentiality of such Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Notwithstanding the foregoing, where the Confidential Information disclosed is: (i) the Disclosing Party's trade secret, the Receiving Party will treat such information as Confidential Information for as long as the Confidential Information remains the Disclosing Party's trade secret; or (ii) required by law to be protected for a duration beyond that provided hereunder, the Receiving Party will maintain such information in confidence for the duration required by law.
- 5.1.3 Use; Disclosure. Any Confidential Information of the Disclosing Party will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party's obligations under this ESMA. In addition, the Receiving Party will not reproduce Confidential Information disclosed by the Disclosing Party, in any form, except as required to accomplish the Receiving Party's obligations under this ESMA. The Receiving Party may disclose Confidential Information to the extent compelled to do so pursuant to a judicial or legislative order or proceeding; provided that, to the extent permitted by applicable law, the Receiving Party provides to the Disclosing Party prior notice of the intended disclosure and an opportunity to respond or object to the disclosure, or if prior notice is not permitted by applicable law, prompt notice of such disclosure; and provided further that the Receiving Party must limit the scope of Confidential Information that is disclosed to only that which is required to be disclosed by the applicable order or proceeding.
- 5.1.4 Remedy for Breach. The parties agree that damages may be an inadequate remedy in the event of a breach of this Section 0. Therefore, the parties agree that a party is entitled, in addition to any other rights and remedies otherwise available, to seek injunctive and other equitable relief in the event of a breach or threatened breach by the other party of this Section 0.



- 5.2 **Personal Data.** Subject to applicable law, in connection with the performance of any Services under this ESMA and Customer's use of the Cloudera Products: (i) beyond Account Data (as defined in the Data Policy) which may include limited Personal Data and that may be collected incident to Cloudera's provision of Services, Cloudera agrees that it will not require Customer to deliver to Cloudera any "Personal Data" (as defined by the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 – General Data Protection Regulation); and (ii) Customer agrees not to deliver any Personal Data to Cloudera; provided, however, that Customer's Account Data may include Personal Data and will be governed by the Data Policy. To the extent that Cloudera processes any Personal Data as a data processor on behalf of Customer, the terms of the Data Protection Addendum included in Cloudera's Privacy Policy will apply.
- 5.3 **Policies.** Cloudera's Data Policy and Privacy Policy, located at <http://www.cloudera.com/legal/policies.html>, as may be updated by Cloudera from time to time (the "Data Policy" and the "Privacy Policy," respectively), will apply to Customer's use of any Cloudera Products and Services.
- 5.4 **Publicity.** Subject to Customer's express prior written approval in each instance, which may for the purposes of this Section only be provided via e-mail, the parties may agree from time to time to collaborate on any or all of the following co-marketing deliverables: (i) inclusion of Customer's name and logo on Cloudera's website and public customer lists; (ii) publication of a press release describing Customer's election to use the Cloudera Products or Services; and/or (iii) publication of a written or video success story describing Customer's use of the Cloudera Products or Services.
6. **Warranties; Disclaimer.**
- 6.1 **General Warranties.** Each party warrants that as of the Effective Date: (i) it validly exists and is in good standing under the laws of the place of its establishment or incorporation; (ii) it has full corporate power and authority to execute, deliver and perform its obligations under this ESMA; (iii) the person signing this ESMA (or an Order Form referencing this ESMA) on its behalf has been duly authorized and empowered to do so; and (iv) this ESMA is valid, binding and enforceable against it in accordance with its terms.
- 6.2 **Cloudera Software Warranty.** Cloudera warrants that for a period of thirty (30) days following initial delivery (the "Warranty Period"), the Cloudera Software will perform in all material respects in accordance with the applicable documentation as provided by Cloudera at <http://www.cloudera.com/content/support/en/documentation.html> (the "Documentation"). Customer must notify Cloudera of any non-conformance with this warranty during the Warranty Period, and as Cloudera's sole obligation and Customer's exclusive remedy for breach of warranty, Cloudera will either: (i) repair the Cloudera Software such that it conforms to the Documentation; or (ii) replace the Cloudera Software with an equivalent product that conforms to the Documentation; provided, however, if neither (i) nor (ii) is reasonable or practicable, Customer may return the applicable Cloudera Software and obtain a pro-rated return of the Subscription fees Customer paid to Cloudera for the defective Cloudera Software.
- 6.3 **Professional Services and Training Services Warranty.** Cloudera warrants that it will perform the Professional Services and the Training Services in a professional and workmanlike manner and consistent with applicable industry standards. For any Professional Services or Training Services that do not conform to this warranty, Customer must notify Cloudera within thirty (30) days of the delivery of any non-conforming Professional Services or Training Services, and as Cloudera's sole obligation and Customer's exclusive remedy, Cloudera, at its sole discretion, will either: (i) re-perform such non-conforming Professional Services or Training Services at no additional charge to Customer, or (ii) refund any Professional Services or Training Services fees paid to Cloudera for such non-conforming Professional Services or Training Services, and terminate all or a portion of the applicable Order Form at Cloudera's discretion.
- 6.4 **Disclaimer.** EXCEPT FOR THE EXCLUSIVE WARRANTIES SET FORTH IN THIS SECTION 6, CLOUDERA AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE CLOUDERA PRODUCTS AND THE SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (I) WARRANTIES OF MERCHANTABILITY; (II) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CLOUDERA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); AND (III) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. CLOUDERA AND ITS SUPPLIERS MAKE NO WARRANTIES WITH RESPECT TO THE CLOUDERA PRODUCTS OR SERVICES BEING FREE FROM BUGS, ERRORS, OR OMISSIONS. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF ANY OF THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 FAIL OF THEIR ESSENTIAL PURPOSE.
7. **Cloudera's Indemnification Obligations.**
- 7.1 Subject to this Section 7, Cloudera agrees, at its own expense, to pay all Damages (as defined below) and defend Customer from (or at Cloudera's option, settle) any claim instituted by a third party and asserted against Customer after the Effective Date that any Work Product (if any) or Cloudera Software when used in accordance with the applicable Documentation infringes any United States patent, copyright, trade secret or other proprietary right of a third party (each an "IP Claim"), provided that Customer: (i) promptly notifies Cloudera in writing of any such IP Claim; (ii) gives Cloudera sole control over the investigation, defense and settlement of the IP Claim; and (iii) assists and fully cooperates with Cloudera in the defense of same. Cloudera agrees to pay any damages awarded by a court of competent jurisdiction against Customer (or agreed to in a settlement by Cloudera) resulting from the IP Claim, including any awarded costs and awarded attorneys' fees (collectively "Damages"). Cloudera will not be responsible for any settlement (and the associated Damages agreed to in such settlement) that it does not approve in writing prior to such settlement.
- 7.2 Following notice of an IP Claim or any facts which may give rise to such IP Claim, Cloudera may, in its sole discretion and at its option: (i) procure for Customer the right to continue to use the Cloudera Software or Work Product (as applicable); (ii) replace the Cloudera Software or Work Product; (iii) modify the Cloudera Software or Work Product to make it non-infringing; or (iv) if Customer's use of the Cloudera Software or Work Product is enjoined in a non-appealable judgment and Cloudera determines that it is not commercially reasonable to perform any of alternatives (i) through (iii), Cloudera may (a) terminate the license for the allegedly infringing Cloudera Software and refund the pre-paid and unused Subscription fees paid by Customer for the use of such allegedly infringing Cloudera Software or (b) terminate the Order Form under which the Work Product had the alleged infringement. Upon such Order Form termination, Customer must, at Cloudera's option, return or destroy such Work Product and any and all Pre-Existing Property and

Cloudera IP, and Cloudera will provide a refund of all Services fees paid under such Order Form for the allegedly infringing Work Product.

- 7.3 In no event will Cloudera have any obligations under this Section 7 or any liability for any IP Claim if the IP Claim is caused by, or results from: (i) Customer's combination or use of the Cloudera Software or Work Product with non-Cloudera software or services, or any equipment, data or other materials, if such IP Claim would have been avoided absent such combination or use; (ii) modification of the Cloudera Software or Work Product by anyone other than Cloudera if such IP Claim would have been avoided by use of the unmodified Cloudera Software or Work Product; (iii) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement; (iv) Customer's use of the Cloudera Software or Work Product in a manner not strictly in accordance with this ESMA and the applicable Order Form; (v) Cloudera's modification of the Cloudera Software or Work Product in compliance with Customer's written instructions, requests or specifications; (vi) use of a release other than Cloudera's most current release of the Cloudera Software if the IP Claim would have been avoided by use of the most current release, provided Customer is given an opportunity to use such most current release for no additional fee, or (vii) any software made available under an open source license.
- 7.4 THIS SECTION 7 STATES CLOUDERA'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

8 Limitation of Liability.

- 8.1 (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF DATA, ANY INTERRUPTION OF BUSINESS, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS ESMA OR ANY ORDER FORMS HEREUNDER WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. (B) A PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS ESMA AND ALL ORDER FORMS HEREUNDER WILL NOT EXCEED THE TOTAL AMOUNT PAID TO CLOUDERA FOR SUBSCRIPTIONS TO THE CLOUDERA PRODUCTS AND THE SERVICES AS SPECIFIED IN THE APPLICABLE ORDER FORM(S) UNDER THIS ESMA IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE ACCRUAL OF THE FIRST CLAIM.
- 8.2 EXCLUSIONS. THE LIMITATIONS OF LIABILITY IN SECTION 8.1 DO NOT APPLY TO: (I) CLAIMS ALLEGING FRAUD OR WILLFUL MISCONDUCT; OR (II) BREACHES OF SECTIONS 2.2, 2.3, 2.4, 2.5 OR 2.6. THE LIMITATIONS OF LIABILITY IN SECTION 8.1(B) DO NOT APPLY TO: (I) CLOUDERA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; OR (II) CLAIMS FOR NON-PAYMENT.
- 8.3 SECTION 8 WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS ESMA IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9 Term and Termination.

- 9.1 Term; Automatic Renewal. Unless earlier terminated as provided in herein, the term of this ESMA will commence on the Effective Date and continue for as long as Customer has an active Subscription to Cloudera Products and/or an active Order Form for Services, and each Order Form for Professional Services and/or Training Services expires one year from the initial effective date of such Order Form unless both parties agree in writing to extend the term of such Order Form. Unless a party provides written notice of non-renewal at least thirty (30) days in advance of the expiration of a Subscription Period as set forth in an Order Form, the Subscription will automatically renew for successive twelve (12) month Subscription Periods thereafter at Cloudera's then-current list price (unless otherwise mutually agreed upon between the parties in writing), with the applicable fees due on the first day of the renewal, payable pursuant to Section 4 above.
- 9.2 Termination for Cause. Either party may terminate: (i) this ESMA for cause: (a) if the other party materially breaches this ESMA or the applicable Order Form and does not remedy such breach within thirty (30) days after its receipt of written notice of such breach; or (b) if the other party terminates its business activities or becomes insolvent, admits in writing to inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; or (ii) any individual Order Form if the defaulting party fails to perform any material provision of such Order Form and does not cure the breach within thirty (30) days after receipt of written notice thereof. Termination or expiration of an individual Order Form will not affect any other Order Form or this ESMA except with respect to such terminated Order Form.
- 9.3 Effect of Termination; Non-Renewal. Upon any expiration or termination of this ESMA or an applicable Order Form: (i) all rights granted to Customer under this ESMA or an applicable Order Form will immediately terminate; (ii) Customer must immediately delete any associated license keys provided by Cloudera and cease any use of such keys; (iii) upon request from Cloudera, Customer must confirm in writing Customer's compliance with the foregoing provisions in (i) and (ii); and (iv) each of Customer and Cloudera will promptly return to one another all of the other party's Confidential Information then in its possession or destroy all copies of Confidential Information; provided, however, that each party may retain sufficient copies of the Confidential Information of the other party solely as may be required for compliance with internal backup policies or applicable law; and provided further that such retained Confidential Information remains subject to the requirements of Section 0 and is used for no other purpose. Each of Customer and Cloudera will immediately confirm in writing that it has complied with Section 9.3(iv) if requested by the other party. In the event that Customer elects not to renew a Subscription for any Cloudera Products, should Customer purchase a new Subscription for the same Cloudera Products at some future time, Subscription fees will be charged for the period beginning as of the end of the Subscription Period of the original Subscriptions which Customer elected not to renew. The following Sections will survive any expiration or termination of this ESMA: 0, 2.3, 2.4, 2.5, 2.6, 3.3.1, 3.3.2, 4, 0, 6.4, 8, 9.3, 10 and 11.

10 Third-Party Software.

- 10.1 Notwithstanding any terms to the contrary in this ESMA or applicable Order Forms, Customer acknowledges and agrees that: (i) the Cloudera Products contain Third-Party Software; and (ii) Customer agrees that, in addition to the terms of this ESMA and applicable Order Forms, its use is further subject to the terms of such third-party licenses applicable to the Third-Party Software, which may be



licensed to Customer directly from the applicable third party. Customer hereby acknowledges that Cloudera makes a list of Third-Party Software available to Customer: (i) on Cloudera's website, (ii) in the Cloudera Product source code and/or the third-party notice file that accompanies the Cloudera Product, and/or (iii) in another reasonable manner. Further, Customer hereby acknowledges that such third-party suppliers may disclaim and make no representation or warranty with respect to such Third-Party Software or any portion thereof, and assume no liability for any claim that may arise with respect to such Third-Party Software or Customer's use or inability to use the same.

- 10.2 NOTWITHSTANDING ANY OF THE TERMS IN THE THIRD-PARTY LICENSES, THIS ESMA, APPLICABLE ORDER FORMS OR ANY OTHER AGREEMENT CUSTOMER MAY HAVE WITH CLOUDERA: (I) CLOUDERA PROVIDES THIRD-PARTY SOFTWARE TO CUSTOMER AS-IS, WITHOUT WARRANTIES OF ANY KIND; (II) CLOUDERA DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THIRD-PARTY SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; (III) CLOUDERA IS NOT LIABLE TO CUSTOMER, AND WILL NOT DEFEND, INDEMNIFY, OR HOLD CUSTOMER HARMLESS FOR ANY CLAIMS ARISING FROM OR RELATED TO THIRD-PARTY SOFTWARE; AND (IV) WITH RESPECT TO THE THIRD-PARTY SOFTWARE, CLOUDERA IS NOT LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES RELATED TO LOST REVENUE, LOST PROFITS, LOSS OF INCOME, LOSS OF BUSINESS ADVANTAGE OR DAMAGE TO, OR UNAVAILABILITY, LOSS OR CORRUPTION OF DATA.

## 11 General Provisions.

- 11.1 Entire Agreement and Conflicts. This ESMA, Order Forms, and any exhibits, attachments, or addendums thereto set forth the entire agreement and understanding of the parties relating to the subject matter of this ESMA, and supersede all prior or contemporaneous agreements, proposals, negotiations, conversations, discussions and understandings, written or oral, with respect to such subject matter and all past dealing or industry custom. This ESMA and Order Forms hereunder will prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order furnished by Customer, and any additional terms and conditions in any such purchase order will have no force or effect, notwithstanding Cloudera's acceptance or execution of such purchase order. In the event of a conflict between the terms of any Order Form with the terms of this ESMA, the terms of the Order Form will control, but (a) only with respect to the specific Cloudera Product(s) or Services purchased under such Order Form, and (b) only if the Order Form specifically references the conflicting provisions(s) of this ESMA with the intention to supersede such provision(s).
- 11.2 Independent Contractors. Neither party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other party, and the relationship between the parties will only be that of independent contractors. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.
- 11.3 Diagnostics and Reporting. Customer acknowledges that the Cloudera Products contain a diagnostic functionality as their default configuration. The diagnostic function collects configuration files, Metrics count, software versions, log files and other information regarding Customer's environment and use of the Cloudera Products, and reports that information to Cloudera for use to proactively identify potential support issues, to understand Customer's environment, to enhance the usability of the Cloudera Products, and for other internal Cloudera purposes. While Customer may elect to change the diagnostic function in the Cloudera Products in order to disable regular automatic reporting or to report only on filing of a support ticket, Customer agrees that, no less than once per quarter, it will run the diagnostic function and report the results to Cloudera no later than thirty (30) days prior to the end of the applicable quarter (where, for the avoidance of doubt, such quarter-end dates are January 31, April 30, July 31, and October 31).
- 11.4 Assignment. Neither this ESMA or any Order Forms hereunder, nor any right or duty under this ESMA or any Order Forms hereunder, may be transferred, assigned or delegated by Customer, by operation of law or otherwise, without the prior written consent of Cloudera, and any attempted transfer, assignment or delegation without such consent will be void and without effect; provided that Customer may assign this ESMA and/or any Order Form(s), including all rights and duties thereunder, to any of its Affiliates, upon written notice to Cloudera, provided further that such Affiliate agrees in writing to assume all obligations of Customer hereunder, and that such Affiliate is, in the sole judgment of Cloudera, adequately capitalized and credit-worthy. Cloudera may freely transfer, assign or delegate this ESMA and/or any Order Form(s) or its rights and duties under this ESMA and any Order Forms. Subject to the foregoing, this ESMA and any Order Forms will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns.
- 11.5 Amendments and Waivers. No modification, addition or deletion or waiver of any rights under this ESMA or an Order Form hereunder will be binding on a party unless made in writing, clearly understood by the parties to be a modification or waiver and signed by a duly authorized representative of each party. No failure or delay (in whole or in part) on the part of a party to exercise any right or remedy hereunder will operate as a waiver thereof or effect any other right or remedy. Except as otherwise expressly set forth herein, all rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.
- 11.6 Notices. Any notice or communication required or permitted to be given hereunder must be in writing signed or authorized by the party giving notice, and may be delivered by hand, deposited with an overnight courier, sent by email to a confirmed address identified in an Order Form, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as identified on an Order Form or at such other address as may be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered. Notices provided to Cloudera will include a copy sent to Cloudera's Legal Department at the address set forth in the first paragraph of this ESMA.
- 11.7 Force Majeure. Except for payments, neither party will be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, government actions, war, civil disturbance, terrorist acts, insurrection, sabotage, labor shortages or disputes, issues with subcontractors, transportation difficulties or shortage of energy, raw materials or equipment. In the event of any such delay, the date of delivery will be deferred for a period equal to the time lost by reason of the delay.

- 11.8 Section Headings. The section headings contained in this ESMA are for reference purposes only and will not affect in any way the meaning or interpretation of this ESMA.
- 11.9 Attorneys' Fees. In any action to enforce this ESMA or Order Forms hereunder, the prevailing party will be entitled to costs and attorneys' fees from the non-prevailing party.
- 11.10 Governing Law; Venue. This ESMA and Order Forms hereunder are made and will be governed by and construed in accordance with the laws of the State of California, excluding its choice of law principles to the contrary. The parties agree that the venue for any dispute, obligation or action of any kind arising under this ESMA or Order Forms hereunder will be in the state or federal courts located in the County of Santa Clara, California, and the parties irrevocably consent to the exclusive jurisdiction of the state and federal courts of the State of California for any dispute, obligation or action hereunder and agree not to commence or prosecute any suit, proceeding or claim hereunder, except in such courts.
- 11.11 Government Contracts. If Customer is a unit or agency of the United States Government, the following applies: The Cloudera Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in Subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in Subparagraph 252.227-7013 (c)(1)(ii) of the Rights in Technical Data and Computer Software at DFARS, and in similar clauses in the NASA FAR Supplement.
- 11.12 Severability. If any provision of this ESMA is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this ESMA will nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by any Order Form hereunder is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify this ESMA so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.
- 11.13 Counterparts. This ESMA, and any Order Form, may be executed: (i) in two or more counterparts, each of which will be deemed an original and all of which will together constitute the same instrument; and (ii) by the parties by exchange of signatures by electronic means or scanned and emailed signature service where legally permitted. For clarity, electronic, digital, machine-generated or images of signatures will create a valid and binding obligation of the party so signing.
- 11.14 Anti-Corruption Compliance. Each party will comply with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Anti-Bribery Act, and all other applicable anti-corruption laws. Each party acknowledges and agrees that no payment or gift of money or anything of value has been or will be offered, authorized, promised, provided or paid, directly or indirectly, to any government official, state-owned enterprise official, public international organization official, political party official (or candidate for such office) or political party for the purpose of influencing official acts and decisions (including failures to act or decide) in order to assist the other party in obtaining or retaining an improper business advantage. Each party will promptly notify the other party if it receives a request to take any action which may violate its obligations under this Section.
- 11.15 Audit. During the term of this ESMA and for two (2) years thereafter, Cloudera and/or an independent auditor on behalf of Cloudera will have the right to audit Customer's applicable systems, books and records, no more than once every calendar year (absent non-compliance in an immediately preceding audit), during Customer's normal business hours and in a manner that does not unreasonably interfere with Customer's normal business operations, to ensure Customer's compliance with the terms and conditions of this ESMA and applicable Order Forms. Each party will pay the costs that it incurs in the course of the audit. If the audit reveals an underpayment, or a failure by Customer to fully comply with all the payment terms and conditions of this ESMA and applicable Order Forms, then Customer will immediately pay Cloudera the underpaid amount, with interest accruing at the rate of 1.5% per month, or the highest rate permitted by law, whichever is lower, from the date such amount is due until the date such amount is finally paid in full. In addition, if any audit reveals an underpayment of more than three percent (3%) for any reporting period, then, without limiting Cloudera's other rights and remedies at law or in equity, Customer will also reimburse Cloudera for its reasonable costs incurred in conducting such audit.

In witness whereof, the parties' authorized representatives with their signatures below acknowledge and agree that this Enterprise Subscription Master Agreement is effective as of the Effective Date.

**CLOUDERA**

**Cloudera, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_