

**CLOUDERA, INC.**  
**ENTERPRISE SUBSCRIPTION CLICK-THROUGH AGREEMENT**  
**LAST UPDATED: 09/23/11**

THIS ENTERPRISE SUBSCRIPTION CLICK-THROUGH AGREEMENT (THIS “AGREEMENT”) IS BETWEEN CLOUDERA, INC. (“CLOUDERA”) AND YOU. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER ENTITY, YOU REPRESENT THAT YOU ARE THE EMPLOYEE OR AGENT OF SUCH COMPANY (OR OTHER ENTITY) AND YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH COMPANY (OR OTHER ENTITY).

BY CLICKING ON THE “ACCEPT” BUTTON BELOW, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS SET FORTH BELOW, UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT, DO NOT AGREE TO THESE TERMS.

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**1. Definitions.**

For the purposes of this Agreement the following terms will have the following meanings:

“Cloudera Open Source Distribution” means Cloudera’s open source distribution including Apache Hadoop (CDH), as described at the Web site <http://archive.cloudera.com/docs/cdh.html>.

“Cloudera Products” means the Cloudera Open Source Distribution and the Cloudera Software.

“Cloudera Software” means Cloudera’s proprietary software management applications Activity Monitor, Service & Configuration Manager, Service Monitor, Resource Manager and Authorization Manager.

“Effective Date” means the date upon which you click the “Accept” button below.

“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.

“Node” means any computer apparatus running no more than one each of a NameNode, DataNode, RegionServer, ZooKeeper, JobTracker, TaskTracker, HMaster, Collector or Processor daemon and addressable by a unique network identifier such as a Media Access Control (“MAC”).

“Subscription Fees” means the fees for the Cloudera Products and the Support Services as specified in the applicable order agreed to by you and Cloudera’s authorized reseller or distributor.

“Subscription Period” means the period that you purchase access to the Cloudera Software as specified in your order with Cloudera’s authorized reseller or distributor or, if none specified, a one year period. The initial Subscription Period commences upon on the Effective Date.

“Third Party Software” means the copyrighted, patented and/or otherwise legally protected software of third parties that may be incorporated in the Cloudera Products as set forth at the following URL: <https://ccp.cloudera.com/display/DOC/Third-Party+Licenses>.

**2. Grants, Restrictions and Ownership.**

2.1 Grants. Subject to the terms and conditions of this Agreement, Cloudera grants you (i) a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access, use and

reproduce the Cloudera Software solely for your internal purposes; and (ii) the right to access, use, and reproduce the Cloudera Open Source Distribution solely for your internal purposes.

2.2 **Restrictions.** Except as otherwise expressly set forth in this Agreement, you may not: (i) modify, disclose, alter, translate or create derivative works of the Cloudera Products; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Cloudera Products; (iii) use the Cloudera Products, or allow the transfer, transmission, export or re-export of the Cloudera Products or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; or (iv) cause or permit any other party to do any of the foregoing. In addition, you will not remove, alter or obscure any proprietary notices in the Cloudera Products including copyright notices, or permit any other party to do so.

2.3 **Ownership and Reservation of Rights.** As between the parties and subject to Section 2.1, Cloudera will own all right, title and interest in and to (i) the Cloudera Software, (ii) the Cloudera Open Source Distribution, (iii) all modifications to and derivative works of the Cloudera Software, the Cloudera Open Source Distribution made by Cloudera; and (iv) any and all Intellectual Property Rights embodied in the foregoing. Cloudera reserves all rights not expressly granted in this Agreement, and no licenses are granted by Cloudera to you under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth in this Agreement.

### **3. Delivery and Support Services.**

3.1 **Delivery.** Upon your acceptance of the Agreement, Cloudera will, at its expense, make the Cloudera Products available for download. The Cloudera Products will be deemed delivered when the electronic download is available.

3.2 **Support.** Cloudera will use commercially reasonable efforts to provide the support and maintenance services as set forth at <https://ccp.cloudera.com/display/SUPPORT/Cloudera+Customer+Subscription+Agreement+Exhibit+B#> with respect to the Cloudera Products (the "Support Services").

(i) **Performance.** Cloudera will perform the Support Services in a timely and professional manner using qualified and experienced personnel.

(ii) **Cooperation.** You will cooperate in good faith with Cloudera in the performance of the Support Services including, but not limited to, providing Cloudera with: (a) access to the Cloudera Products (and related systems); and (b) reasonably requested assistance and information.

(iii) **Support Contacts.** You will ensure that your personnel who contact Cloudera are: (a) knowledgeable about the operation of the Cloudera Products and the hardware on which the Cloudera Products are installed; and (b) qualified and trained with respect to the Cloudera Products.

(iv) **Supported Versions.** Cloudera will not be obligated to provide the Support Services for any version of the Cloudera Products more than two years after a subsequent version thereto has been released and made available to you.

(v) **Exclusions.** The Support Services do not include: (a) the installation or removal of the Cloudera Products; (b) visits to your site; or (c) training. Cloudera has no obligation to correct any problems with the Cloudera Products or any issues resulting from: (w) use of the Cloudera Products not in accordance with the license agreement or the user documentation applicable thereto; (x) defects or errors in any program or program version not specified by Cloudera as Cloudera Products; (y) defects or errors in any hardware; or (z) any acts or omissions of you and/or any third party.

#### **4. Fees.**

You will pay Cloudera's authorized reseller or distributor all Subscription Fees for any Cloudera Products and Support Services ordered by you through such reseller or distributor. The Subscription Fees do not include taxes. Notwithstanding any terms to the contrary in this Agreement Cloudera will not be obligated to issue to you any refunds for Subscription Fees paid (except as provided in Section 7.1). Any disputes regarding payment of Cloudera Products or Support Services must be addressed to the applicable reseller or distributor that you have ordered such products or services through.

#### **5. Confidentiality and Publicity.**

5.1 Confidentiality. "Confidential Information" means all information disclosed (whether in oral, written, or other tangible or intangible form) by one party (the "Disclosing Party") to the other party (the "Receiving Party") concerning or related to this Agreement or the Disclosing Party (whether before, on or after the Effective Date) that is clearly identified as Confidential Information at time of disclosure. The Receiving Party will, during the term of this Agreement and for three years thereafter, maintain in confidence the Confidential Information of the Disclosing Party and will not use such Confidential Information except as expressly permitted herein. The Receiving Party will use the same degree of care in protecting the Disclosing Party's Confidential Information as the Receiving Party uses to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than reasonable care. 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 Agreement. In addition, the Receiving Party: (i) 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 Agreement; and (ii) will only disclose Confidential Information disclosed by the Disclosing Party to its directors, officers, employees and/or contractors who have a need to know such Confidential Information in order to perform their duties under this Agreement and if such directors, officers, employees and/or consultants have executed a non-disclosure agreement with the Receiving Party with terms no less restrictive than the non-disclosure obligations contained in this Section 5. Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the Receiving Party; (b) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party; (c) 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 (d) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

5.2 Publicity. You consent to Cloudera's use of your name and logo on Cloudera's Web site and publicly-available printed materials, identifying you as a customer of Cloudera and describing your use of the Cloudera Software.

#### **6. Representations and Warranties; Disclaimer.**

6.1 General Representations and Warranties. Each party represents and warrants that: (i) it is validly existing and 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 Agreement; (iii) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement; and (iv) this Agreement is valid, binding and enforceable against it in accordance with its terms.

6.2 Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 6.1, CLOUDERA AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE CLOUDERA PRODUCTS, THE THIRD PARTY SOFTWARE, AND/OR THE SUPPORT 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 AND THE THIRD PARTY SOFTWARE BEING FREE FROM BUGS, ERRORS, OR OMISSIONS. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

## **7. Indemnification Obligations.**

Cloudera Indemnification Obligations. Cloudera, at its sole expense, will defend and indemnify you from and against any damages, settlements, liabilities, costs and expenses (including, but not limited to, reasonable attorney fees) awarded by the court (“Claim”) as a result of the use of the Cloudera Products (in the form delivered to you by Cloudera) infringing any Intellectual Property Rights of any third party, provided that you: (i) give Cloudera prompt notice of the Claim; (ii) grant Cloudera sole control of the defense and settlement of the Claim (except that your prior written approval will be required for any settlement that reasonably can be expected to require an affirmative obligation of or result in any ongoing liability to you); and (iii) provide Cloudera with reasonable cooperation and, at Cloudera’s request and expense, assistance in the defense or settlement of the Claim. In the event of a Claim pursuant to this Section 7, Cloudera may, at Cloudera’s option and at Cloudera’s expense: (a) obtain for you the right to continue to exercise the license granted to you under this Agreement; (b) substitute an equivalent non-infringing product; (c) modify the Cloudera Product(s) to make it non-infringing; or (d) terminate this Agreement. Upon a termination of this Agreement pursuant to this Section 7, you must return the Cloudera Products and, within 30 days of Cloudera’s receipt of all of the Cloudera Products, Cloudera will refund the amount you paid to Cloudera for the Cloudera Products and the Support Services adjusted pro-rata for any period during the applicable Subscription Period when any of the Cloudera Products and/or the Support Services were provided to you. Cloudera’s indemnification obligations do not extend to Claims arising from or relating to: (w) any use of the Cloudera Product(s) in combination with any equipment, software, data or any other materials where the infringement would not have occurred but for such combination; (x) any modification to the Cloudera Product(s) where the infringement would not have occurred but for such modification; (y) the use of the Cloudera Product(s) by you (or any third party) in a manner contrary to the terms of this Agreement (or any other agreement) where the infringement would not have occurred but for such use; or (z) the continued use of the Cloudera Product(s) after Cloudera has provided substantially equivalent non-infringing software. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS SECTION 7.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CLOUDERA AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED MISAPPROPRIATION, VIOLATION AND/OR INFRINGEMENT OF ANY PROPRIETARY AND/OR INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7.1, CLOUDERA EXPRESSLY DISCLAIMS ANY OBLIGATION TO INDEMNIFY OR DEFEND YOU AND/OR ANY OTHER PARTY FROM ANY CLAIM, DEMAND, ACTION OR THREATENED ACTION.

## **8. Limitation of Liability.**

8.1 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, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT 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. FURTHER, IN NO EVENT WILL EITHER PARTY’S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT

PAID BY YOU TO RESELLER UNDER THIS AGREEMENT IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE ACCRUAL OF THE FIRST CLAIM.

8.2 THE LIMITATIONS OF LIABILITY IN SECTION 8.1 WILL NOT APPLY WITH RESPECT TO (I) ANY ACTS OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) BREACHES OF SECTIONS 2.1 OR 2.2 OR (III) CLOUDERA'S INDEMNIFICATION OBLIGATIONS. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL CLOUDERA'S TOTAL LIABILITY WITH RESPECT TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND INCLUDING, WITHOUT LIMITATION, ITS INDEMNIFICATION OBLIGATIONS HEREUNDER) EXCEED TWO TIMES THE AMOUNT PAID BY YOU TO RESELLER IN THE 24 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. SECTION 8 WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **9. Term and Termination.**

9.1 Term and Termination. Unless terminated as provided in this Agreement, the term of this Agreement will commence on the Effective Date and continue for the first Subscription Period. Thereafter, this Agreement may be renewed and the term extended only as may be agreed to in writing by Cloudera and you. Either party may terminate this Agreement for cause: (i) if the other party breaches this Agreement and does not remedy such failure within 30 days after its receipt of written notice of such breach; or (ii) 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.

9.2 Effect of Termination. Upon any expiration or termination of this Agreement: (i) all rights and licenses granted to you under this Agreement will immediately terminate; and (ii) you will promptly return to Cloudera all Confidential Information then in your possession or destroy all copies of Confidential Information, at Cloudera's sole discretion and direction. You shall immediately confirm in writing that you have complied with Section 9.2(ii) at Cloudera's request. The following Sections will survive any expiration or termination of this Agreement: 1, 2.2, 2.3, 4, 5, 6.2, 7.1 (solely for the 12 month period commencing upon the effective date of termination of this Agreement), 8, 9.2 and 10.

## **10. General Provisions.**

10.1 Entire Agreement and Conflicts. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes 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.

10.2 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.

10.3 Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by you, 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. Cloudera may freely transfer, assign or delegate this Agreement or its rights and duties under this Agreement. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns.

10.4 Third Party Software. Notwithstanding any terms to the contrary in this Agreement, you acknowledge and agree that: (i) the Cloudera Products contain Third Party Software; and (ii) you agree to comply with the third party licenses applicable to the Third Party Software. Further, you hereby acknowledge that such third party suppliers 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 your use or inability to use the same.

10.5 Modifications. Cloudera reserves the right to modify or replace this Agreement at any time and in Cloudera's sole discretion. Cloudera will indicate at the top of this Agreement the date such document was last updated. Cloudera will post the revised version on the Cloudera Web site or make such modified or new Agreement available through the URL furnished to you during your initial ordering process or such other methods as determined by Cloudera. Any modifications or replaced terms will be effective following your renewal of this Agreement. Your continued use of the Cloudera Products or renewal of this Agreement following the posting or availability of any changes to this Agreement will constitute your acceptance of such changes. If you do not agree to the changes, you must stop using the Cloudera Products and Support Services.

10.6 Notices. Any notice or communication required or permitted to be given to Cloudera hereunder must be in writing signed or authorized by you, and may be delivered by hand, deposited with an overnight courier, sent by confirmed email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, to Cloudera, Inc. 210 Portage Avenue, Palo Alto, CA 94306, attention Stephanie Wu, Assistant Controller as the same may be updated by Cloudera pursuant to this Section. Any notice or communication required or permitted to be given by you hereunder must be submitted to the email address, physical address or facsimile provided by you during registration, as the same may be updated by you pursuant to this Section. Any notice given pursuant to this Section will be deemed to have been given as of the date it is delivered.

10.7 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, insurrection, sabotage, labor shortages or disputes, 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.

10.8 Section Headings. The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

10.9 Governing Law; Venue. This Agreement is 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 Agreement 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.

10.10 Government Customers. If you are 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.

10.11 Severability. If any provision of this Agreement is held by a court or arbiter to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by this Agreement 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 Agreement 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.

<b>ACCEPT</b>	<b>DO NOT ACCEPT</b>
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