

HIVEIO INC. END-USER LICENSE AGREEMENT

This End-User License Agreement (the "**Agreement**") is a binding agreement between you, the business entity you represent (except in the case of the Free Evaluation License which is for personal non-production use only,) and HiveIO Inc., a Delaware based company with offices located at 80 River Street, Suite 5E, Hoboken, NJ 07030 ("**HiveIO**"). This Agreement governs Licensee's use of Hive Fabric (the "**Software**") including all related Documentation (as defined below), and any media on which the Software and/or Documentation is supplied to you (collectively, the "**Product**").

HIVEIO IS WILLING TO LICENSE THE PRODUCT TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. BY CLICKING THE "AGREE" BUTTON, DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, OR USING EQUIPMENT THAT CONTAINS THIS SOFTWARE, YOU ARE BINDING YOURSELF AND THE BUSINESS ENTITY THAT YOU REPRESENT (COLLECTIVELY, "**LICENSEE**") TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN HIVEIO IS UNWILLING TO LICENSE THE PRODUCT TO YOU AND (A) DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE AND YOU MUST IMMEDIATELY DELETE ANY COPIES OF THE SOFTWARE ALREADY DOWNLOADED.

The following terms of this Agreement govern Licensee's access to and use of the Product, except to the extent there is a separate software license agreement ("**SLA**") between Licensee and HiveIO, or an authorized distributor or reseller of HiveIO, governing Licensee's use of the Product. To the extent of a conflict between the provisions of this Agreement and the SLA, the order of precedence shall be: (1) the SLA, and (2) this Agreement. The Product is licensed, not sold, to Licensee. HiveIO and Licensee may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

1. **Definitions.**

"**Documentation**" means user manuals, operating manuals, and any other instructions, specifications, documents, and materials, in any form or media, provided by HiveIO to Licensee that describe the functionality, installation, operation, use, maintenance, and support of the Product.

"**Software License Key**" means, if applicable, a serial number issued to Licensee by HiveIO to activate and use the Software. Separate, additional Software License Keys may be required to activate additional users, additional features or Software modules.

"Free Evaluation License" means a Product licensed without charge or for a nominal charge. This includes the Hive Fabric CE Product. The Hive Fabric CE is a free license which provides limited access to the Hive Fabric technology. The license is limited as further detailed in this Agreement, including, without limitation, in the following ways: Only a single server can be run (no ability to cluster), limited to run 5 virtual machines, and Hive Sense must remain enabled at all times.

2. **Grant of License and Restrictions.** Subject to the terms hereof and the terms of the SLA, payment of all Fees (as defined in the SLA), and any applicable Software License Keys or other user/use limitations set forth in this Agreement, HiveIO grants Licensee a non-sublicensable, non-exclusive, and non-transferable, right to use the Software, for the Term (as defined in the SLA or this Agreement), and only in accordance with the Documentation.

HiveIO may require the use of a Software License Key to limit Licensee's usage of the Software accordingly. Free Evaluation Licensee's use of the Software is restricted to: (a) one server and with no clustering; (b) the use of five virtual machines or less; and (c) use only if Hive Sense is enabled at all times. Further, the Free Evaluation License may be used solely for personal, non-commercial use for the purposes of evaluation for a paid license, and not for any production use. LICENSEE ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE TERM AND/OR USE INCONSISTENT HERewith.

Licensee is responsible for obtaining any licenses necessary to operate any third-party software Licensee intends to use

in conjunction with the Software, such as compatible third-party applications or guest operating systems.

Licensee may not copy the Software or Documentation except for a reasonable number of machine-readable (in the case of the Software) copies for backup or archival purposes and except as expressly permitted in this Agreement. Such permitted copies will include all titles, trademarks or trade names, copyright notices, legends, or other proprietary markings. Licensee is not granted any rights to any trademarks or service marks of HiveIO or its affiliates, and HiveIO retains all rights not expressly granted to Licensee in this Agreement.

Except in the case of a Free Evaluation License, which is intended for personal, non-commercial use only, in connection with providing access to the Software to authorized users, Licensee may provide the Software to third parties to operate the Software for the exclusive benefit of Licensee under written terms no less restrictive or protective of HiveIO's rights than the terms and conditions of this Agreement and provided that Licensee remains responsible for strict compliance with this Agreement.

Licensee will not (and will not allow any third party to): (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Product (except to the extent that applicable law prohibits reverse engineering restrictions); (ii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Product; (iii) possess or use the Product, or allow the transfer, transmission, export, or re-export of the Product or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency; (iv) publish or disclose to any third party any opinions relating to, or test results, benchmarking or comparative study involving the Product without the prior written consent of HiveIO; or (v) modify the Product. Prior to disposing of any media containing any part of the Product, Licensee shall completely destroy any Product contained therein. All the limitations and restrictions on Products in this Agreement also apply to documentation and screens. Further, a Product licensed without charge or for a nominal charge will be deemed a "**Free Evaluation License**" and may be used solely for the purpose of evaluation for a paid license, and not for any production use. LICENSEE ACKNOWLEDGES

THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE LICENSE PERIOD AND/OR USE INCONSISTENT HEREWITH.

3. **Open Source Licenses.** The Software includes components ("**Open Source Components**") that are subject to their own open-source copyright license agreements ("**Open Source Licenses**"). All applicable third party licenses may be found at the following location on the Hive Fabric Host: /opt/hive/thirdparty-licenses. Any use of the Open Source Components by Licensee is governed by, and subject to, the terms and conditions of the applicable Open Source License(s).

4. **Security Measures.** The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) HiveIO may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce HiveIO's rights, including all Intellectual Property Rights, in and to the Software; (b) HiveIO may deny any individual access to and/or use of the Software if HiveIO, in its reasonable discretion, believes that person's use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) HiveIO and its Representatives may collect, maintain, process, and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that HiveIO may gather periodically to improve the performance of the Software or develop Software Releases. This information will be treated in accordance with HiveIO's privacy policy, as amended from time to time, which can be viewed at: <https://www.hiveio.com> or a successor website address.

5. **Support.** While the license (other than a Free Evaluation License for which NO support is offered) for the Product has not been terminated and all applicable fees have been timely paid, HiveIO will use reasonable commercial efforts to provide the support services for the Product as and to the extent described in HiveIO's then applicable standard Support Terms (the current version of which can be found at <https://portal.hiveio.com> or a successor website address).

6. **Maintenance Releases.** During the Term, HiveIO will provide Licensee with all applicable software updates which are released to correct minor issues in the Software or Documentation, and that HiveIO may, in its sole discretion, make generally available to its licensees at no additional charge ("**Maintenance Releases**"), except in the case of a Free Evaluation License, for which Licensee has no rights to any updates, upgrades, maintenance releases, or other modifications. All Maintenance Releases provided by HiveIO to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt. Licensee does not have any right hereunder to receive any major new versions of the Software that HiveIO may, in its sole discretion, release from time to time.

7. **Fees and Payment. License Fees.** Licensee shall pay HiveIO the fees set forth in the SLA in accordance with the terms thereof.

8. **License Audit.** HiveIO or its nominee including its accountants and auditors may, in HiveIO's sole discretion providing at last five (5) days' notice, inspect and audit Licensee's use of the Software under this Agreement at any time during the Term and for one (1) year following the termination or earlier expiration of this Agreement. All audits will be conducted during regular business hours, and no more frequently than once in any twelve (12) month period. Licensee shall make available all such books, HiveIO Inc. End User License Agreement:

records, equipment, information, and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of HiveIO with respect to such audit.

If the audit determines that Licensee's use of the Software exceeded the usage authorized by this Agreement. Licensee shall pay to HiveIO all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 7. If the audit determines that such excess use equals or exceeds 5% of Licensee's authorized level of use, Licensee shall also pay to HiveIO all costs incurred by HiveIO in conducting the audit. Licensee shall make all payments required under Section 8 within 30 days of the date of written notification of the audit results.

9. **Termination.** All licenses will terminate in accordance with the terms of the SLA and this Agreement. All licenses will terminate upon any termination or expiration of the SLA.

10. **Confidentiality.** Licensee shall not reproduce, duplicate, copy, or otherwise disclose, distribute or disseminate the Product provided under this Agreement in any media, other than as expressly provided for herein for the authorized purposes under this Agreement.

Safeguard of Information. Licensee shall take all reasonable steps to safeguard the Product so as to ensure that no unauthorized copies of the Product are made in whole or in part. Licensee expressly acknowledges that the Product is confidential and proprietary to HiveIO and Licensee agrees to receive the information and maintain it as confidential information, using the highest degree of care.

During the term of the Agreement and for five (5) years thereafter, the Parties to this Agreement: (i) shall treat as confidential and proprietary all information disclosed by one Party to the other Party that is appropriately designated as confidential ("**Confidential Information**"); and (ii) shall not disclose such Confidential Information to any employee or subcontractor not having executed a confidentiality agreement with the Party protecting such Confidential Information, having terms no less stringent than those in this Section 10; and (iii) shall not disclose such Confidential Information to any employee or subcontractor not having a specific need to know such Confidential Information for the purpose of this Agreement; and (iv) shall ensure that such employee or subcontractor shall use such Confidential Information only in connection with his or her proper performance of this Agreement. The foregoing shall not apply to: (i) any information in the public domain (except through the fault of the receiving Party); or (ii) any information developed by a Party independently without breach of this Agreement. In addition, a Party may disclose Confidential Information of the disclosing Party only to the extent it is required by law to be disclosed, provided that it provides the disclosing Party with prior written notice of such disclosure in order to permit the disclosing Party an opportunity to take legal action in order to prevent or limit the scope of such disclosure. All Confidential Information remains the property of the disclosing Party.

Price and Function Confidentiality. The Parties also hereby acknowledge that they consider the terms of this Agreement (but not the existence of this Agreement), the performance and function of the Product, and pricing of the Product, as confidential, and require they be treated accordingly as set out in this Section 10.

11. **Indemnification.**

11.1 **HiveIO Indemnification.** Except in the case of a Free Evaluation License, for which HiveIO does not indemnify the licensee in any respect, HiveIO shall indemnify, defend, and hold harmless Licensee from and against any and all losses, damages, liabilities, settlements, awards, penalties, fines, costs, and expenses, including reasonable attorneys' fees ("**Losses**") incurred by Licensee resulting from any third-party claim, suit, action or proceeding (each an "**Action**") alleging that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's U.S. patents or copyrights. This Section 11.1 does not apply to the extent that the alleged infringement arises from:

- (a) Open Source Components or other third-party materials;
- (b) combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by HiveIO or specified for Licensee's use in the Documentation;
- (c) modification of the Software other than: (i) by HiveIO in connection with this Agreement; or (ii) with HiveIO's express written authorization and in strict accordance with HiveIO's written directions and specifications;
- (d) use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update or replacement of the Software made available to Licensee by HiveIO;
- (e) use of the Software after HiveIO's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;
- (f) negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee, Licensee's Representatives, or a third party;
- (g) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to HiveIO's instructions;
- (h) events or circumstances outside of HiveIO's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- (i) Losses for which Licensee is obligated to indemnify HiveIO pursuant to Section 11.2.

11.2 **Licensee Indemnification.** Licensee shall indemnify, defend, and hold harmless HiveIO and its affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors, and assigns (each, a "**HiveIO Indemnitee**") from and against any and all Losses incurred by the HiveIO Indemnitee resulting from any Action by a third party:

- (a) alleging that any intellectual property rights or other right of any entity, or any law, is or will be infringed, misappropriated, or otherwise violated by any: (i) use or combination of the Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by HiveIO nor authorized by HiveIO in this Agreement and the Documentation; and (ii) information, materials, or technology directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;
- (b) relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant, or obligation under this Agreement;
- (c) relating to negligence, abuse, misapplication, misuse or

more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement; or

- (d) relating to use of the Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to HiveIO's instructions.

11.3 **Indemnification Procedure.** Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to this Section 11. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitor's failure to perform any obligations under this Section 11 will relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

12. **Limited Warranty and Disclaimer.** Except in the case of a Free Evaluation License, for which no warranty is provided, HiveIO warrants for a period of ninety (90) days from delivery of a Product that the Product will materially conform to HiveIO's then current Documentation for such Product. The foregoing warranty covers only problems reported to HiveIO during the warranty period. ANY LIABILITY OF HIVEIO WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPAIR OR REPLACEMENT. ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND FROM ANYONE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, HIVEIO DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCTS ARE BUG FREE OR THAT THE PRODUCT'S USE WILL BE UNINTERRUPTED.

13. **Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, HIVEIO SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER HEREOF OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY: (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE PRODUCT DURING THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; OR (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF

USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("**HIGH RISK ACTIVITIES**"). USE OF THE PRODUCT IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. THE PARTIES AGREE THAT THIS SECTION 13 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT HIVEIO WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

14. **Identification.** HiveIO may use Licensee's name and/or logo in client listings. HiveIO may issue a press release announcing the relationship contemplated hereby, subject to Licensee's approval which shall not be unreasonably withheld or delayed.

15. **Miscellaneous.**

15.1 Neither this Agreement nor the licenses granted hereunder are assignable or transferable (and any attempt to do so shall be void); provided that either Party may assign and transfer the foregoing to a successor to substantially all of HiveIO's Product business or assets or Licensee's business for which Products are licensed.

15.2 The provisions hereof are for the benefit of the Parties only and not for any other person or entity.

15.3 Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be in writing and delivered by mail or e-mail. Notices shall be sent to the address the applicable Party has or may provide by written notice or, if there is no such address, the most recent address the Party giving notice can locate using reasonable efforts.

15.4 No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision

shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable.

15.5 This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New York and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Unless otherwise elected by HiveIO in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts located in New York, New York, and both Parties consent to the jurisdiction of such courts.

15.6 This Agreement and the SLA are the complete and exclusive statement of the mutual understanding of the Parties and supersede and cancel all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the Parties after the effectiveness hereof, shall have no force or effect.

15.7 The substantially prevailing Party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

15.8 As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Products and accompanying documentation provided by HiveIO are "commercial items," "commercial computer software," and/or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution thereof by or for the U.S. Government shall be governed solely by these terms and the terms of the SLA and shall be prohibited except to the extent expressly permitted by these terms and the terms of the SLA.

