



**Aster Data Systems, Inc.
License and Maintenance Agreement**

IMPORTANT: READ THIS NOTICE BEFORE USING THE SOFTWARE

If you have entered into a written license agreement with Aster Data Systems, Inc. (“Aster Data”), then you may only use this software under the terms of that license agreement. In that event, the terms of this agreement do not apply. If the parties have executed an Order Form, such Order Form represents a binding commitment to purchase certain Aster Data products and the issuance of a purchase order by you is not necessary for Aster Data to bill and collect the fees owed by you. In no event shall any supplemental or inconsistent terms and conditions contained in any purchase order or similar document issued by you be binding upon Aster Data. Aster Data’s delivery of software or services pursuant to such a purchase order or similar document shall not constitute acceptance of the supplemental or inconsistent terms.

If you do not have a written license agreement with Aster Data, then Aster Data is willing to license its software to you only if you accept all the terms in this license agreement. Using the software constitutes your acceptance of these terms. If you do not agree to these terms, you must delete the software from your computers and return the software and documentation to your reseller or to Aster Data Systems, Inc., 959 Skyway Road, Suite 100, San Carlos, California 94070.

EFFECTIVE DATE: This Agreement is effective on the day that this software package is delivered to You (“Effective Date”).

DEFINITIONS: “Technology” means the Aster Data products, components and modules identified in an Order Form or purchase order. The term “Technology” also includes any Error corrections, patches, workarounds, Updates and Upgrades provided by Aster Data to You during any Maintenance Term. “Error” means a failure of the unmodified Technology to operate as described in the Documentation. “Update” means a revision of the Technology to correct one or more Errors. “Upgrade” means a revision of the Technology to improve the existing functionality of the Technology. “Upgrade” does not include (a) any separately priced product or module offered by Aster Data that is not included in an Order Form under this Agreement (i.e., Aster Data products that have not been purchased by You); (b) any new, separately priced Aster Data product or module released during the term of this Agreement; and (c) any product or module that provides substantial new functionality not included in the Technology previously licensed to You. “Workaround” means a modification or patch for a particular version of the Technology, which may be of a temporary or interim nature, to help avoid an Error. “Documentation” means any administration guides, installation and user guides, and release notes that are normally provided by Aster Data to end users of the Technology.

ACTIVE CUSTOMER DATA: “Active Customer Data” means the total volume of data (in Terabytes) in one or more Production Systems, occupied by customer data and associated overhead before any data compression is applied, as denoted in the field “Active Data” of the System’s Aster nCluster Management Console interface. Active Customer Data does not include replica data, disk space used for RAID, spool or temporary space. “Aster nCluster Management Console” or “AMC” means the Aster Data interface used, for among other items, denoting the Active Customer Data in Your Production System(s). “System” means a server cluster under Your control (consisting of its constituent queen, loader and worker components) that is controlled by the Technology and that stores Your data that is analyzed through the use of the Technology. “Production System” means a System that is used for conducting Your business of reporting and analytics, as related to facilitating making decisions or providing insights related to business operations, and on which Active Customer Data may be loaded. A Production System does not include Systems used solely for development, testing, evaluation, and quality control.

GRANT OF LICENSE: Subject to the terms of this Agreement and payment of all fees, Aster Data grants to the legal entity named in the Purchase Order or Aster Data Order Form for this package (in this Agreement called “You”) a perpetual, worldwide, nonexclusive, nontransferable license to: install the Technology on an unlimited number of Production Systems for the purpose of storing and analyzing the amount of Active Customer Data as identified on the Order Form(s). You may store additional Active Customer Data after signing an additional Order Form and paying the additional license fee and Maintenance fee set forth in the Order Form. You may use the Technology on an unlimited number of non-production Systems to support Your internal operations, including, without limitation, for back-up, disaster recovery, test, development and QA purposes. You may copy the Documentation, provided that You do not remove any of Aster Data’s proprietary notices.

RESTRICTIONS: You may NOT sublicense, rent, lease, assign, or distribute copies of the Technology or documentation to others. You *may* authorize the use of the Technology on Your behalf by a third party outsource service provider, upon obtaining Aster Data’s prior written consent, which Aster Data may withhold in its reasonable discretion. The Technology contains trade secrets. You may NOT decompile, reverse engineer, disassemble, or otherwise reduce the Technology to a human readable form. YOU MAY NOT MODIFY, ADAPT, TRANSLATE OR CREATE DERIVATIVE WORKS BASED UPON THE TECHNOLOGY.

PROFESSIONAL SERVICES NOT COVERED: Installation, integration, consulting, training and professional services are not included in this Agreement. They may be purchased under a separate agreement from Aster Data or a third party.

ASTER DATA OWNERSHIP OF TECHNOLOGY: You acknowledge that Aster Data owns and will retain all right, title, and interest in and to Technology and all copies, modifications, and derivative works of the Technology by whomever produced, including all intellectual property rights in these works. The Technology includes unmodified software and components from the

Gentoo distribution (<http://www.gentoo.org/>). A full list of the software included in the Gentoo distribution is available at <http://sources.gentoo.org/viewcvs.py/gentoo-x86/licenses/>. Some of this software is licensed under the GNU General Public License v2 (“GPL”) (<http://www.gnu.org/licenses/gpl.txt>). The Technology also includes libraries licensed under the GNU Lesser General Public License v.2.1, (“LGPL” - <http://www.gnu.org/licenses/lgpl.txt>) or similar licenses, including the GNU C Library, and the GNU C++ library. Some of the libraries in the Gentoo distribution may be linked with components of the Technology. The Technology also includes certain components licensed under the OpenLDAP Public License (<http://www.openldap.org/software/release/license.html>). Aster Data will, upon written request, provide the source code of software components and libraries included in the Gentoo distribution, as required by their respective license agreements, for a fee equal to the cost of physically performing the source distribution. This offer will expire three years after the date of this Agreement.

UNITED STATES GOVERNMENT USERS: If a user or licensee of the Technology, Deliverables or Tools is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Technology, or any related documentation of any kind, including technical data or manuals, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies. The Technology is commercial computer software and the related documentation is commercial computer software documentation. The use of the Technology and related documentation is further restricted in accordance with the terms of this Agreement, and any modification hereto.

EXPORT LAW ASSURANCES: The Technology and related technical data may be subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. You must comply with all such regulations and obtain all necessary licenses to export, re-export, or import the Technology and related technical data.

LIMITED WARRANTY: Aster Data warrants for a period of thirty (30) days from the Effective Date that the Technology will materially conform to Aster Data’s then current Documentation. This warranty covers only problems reported to Aster Data during this warranty period. In the event of an uncured material breach of this Limited Warranty by Aster Data during the term of this warranty period, Your exclusive remedy is that Aster Data will, at its option, repair or replace the Technology, or refund all or a portion of the fees paid by You hereunder.

EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, ASTER DATA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO THE TECHNOLOGY, OR TO ASTER DATA’S SERVICES. ASTER DATA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. ASTER DATA AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE

UNINTERRUPTED OR ERROR-FREE, OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SOFTWARE OR DOCUMENTATION IN TERMS OF ACCURACY, RELIABILITY, OR OTHERWISE. THESE DISCLAIMERS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

CONFIDENTIALITY: Neither party will use any Confidential Information of the other party except as expressly permitted in this Agreement or as expressly authorized in writing by the other party. "Confidential Information" means all non-public information disclosed in tangible, visual or verbal form by either party to the other, but does not include any information that the receiving party can demonstrate by its written records (1) was rightfully known to it without obligation of confidentiality prior to its disclosure hereunder by the disclosing party; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) has been rightfully received without obligation of confidentiality from a third party authorized to make such a disclosure; or (4) is independently developed by the receiving party without reference to confidential information disclosed hereunder. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than a commercially reasonable standard of care. Neither party may disclose the other party's Confidential Information to any person or entity other than to trained employees and contractors subject to confidentiality obligations and who need access to such Confidential Information solely for the purpose of fulfilling that party's obligations or exercising that party's rights hereunder. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (1) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party prior to such disclosure; and (2) on a confidential basis to its legal and financial advisors. In addition, each party may disclose the terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to private investors in or acquirers of such party.

Exclusion of Certain Damages: EXCEPT FOR BREACHES OF CONFIDENTIALITY PROVISIONS AND LICENSE RESTRICTIONS, IN NO EVENT WILL EITHER ASTER DATA OR YOU BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE LICENSED TECHNOLOGY, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES.

Limitation of Damages: EXCEPT FOR BREACHES OF CONFIDENTIALITY PROVISIONS AND LICENSE RESTRICTIONS, EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE LICENSED TECHNOLOGY (OTHER THAN FOR PAYMENT OF LICENSE FEES AND MAINTENANCE FEES), WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE TO ASTER DATA BY YOU UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE (12) MONTHS. YOU AGREE THAT ASTER DATA'S

SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND UNDER OR AS A RESULT OF THIS AGREEMENT. THIS LIMITATION OF DAMAGES SHALL BE GIVEN FULL EFFECT EVEN IN THE EVENT THAT THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE DEEMED BY AN ARBITRATOR OR COURT OF COMPETENT JURISDICTION TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. This Section does not limit either party's liability for bodily injury, gross negligence or willful misconduct.

SOME STATES AND COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OF LIABILITY MAY NOT APPLY TO YOU.

TERMINATION: Either party may immediately terminate this Agreement and the licenses granted hereunder if the other party (1) becomes insolvent and becomes unwilling or unable to meet its obligations under this Agreement, (2) files a petition in bankruptcy, (3) is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of forty-five (45) days, (4) fails to cure a material breach of any material term or condition of this Agreement within thirty (30) days of receipt of written notice specifying such breach, or (5) materially breaches its obligations of confidentiality hereunder. Upon termination due to material breach of the Agreement by You, the license granted above terminates and You will cease using the Technology, return to Aster Data or destroy all copies of the Technology, and provide Aster Data with written confirmation of Your compliance. Termination will not relieve You or Aster Data from any liability arising from any breach of this Agreement. Neither party will be liable to the other for damages of any sort solely as a result of terminating this Agreement in accordance with its terms. Termination of this Agreement will be in addition to and not constitute a waiver of any other right of either party.

MAINTENANCE PROVISIONS

MAINTENANCE TERM: If You have purchased maintenance, the initial Maintenance Term Agreement will be one (1) year from the Effective Date of this Agreement. If You purchase additional terabytes of Active Customer Data from Aster Data, the Maintenance Term and Maintenance fees for the additional Active Customer Data will start on purchase and will be prorated so that all annual Maintenance Terms expire on the same date. At the end of the initial or any renewal Maintenance Term, a new Maintenance Term will automatically commence for successive periods of one (1) year, unless either party terminates Maintenance by providing written notice of non-renewal to the other party at least sixty (60) days prior to the expiration of the then-current Maintenance Term.

EXCLUSIONS: (A) Aster Data is not responsible for maintaining software, hardware, content or services provided by You or a third party. (B) Aster Data will support Your use of the version prior to the current version for twelve (12) months following release of the current version, but

Aster Data will not provide Error correction to such prior version if the Error is corrected or avoided through the use of the current version.

LICENSEE SUPPORT: During Support Hours, Aster Data will provide telephone and e-mail access to Aster Data’s technical staff. Support Hours are:

Gold Plan:	Normal business days 9 a.m. - 6 p.m. M-F (Your Local Time)
Premium Plan	Severity 0 problems: 24 hours/7 days /365 Days Severity 1-3: Normal business days 9 a.m. - 6 p.m. M-F (Your Local Time)

ERROR CLASSIFICATION:

Errors reported by You during a Maintenance Term will be classified by Aster Data according to their severity, as follows:

- S0 Production System down; or a serious data loss due to system error, which materially impacts customer business. Aster Data Support Engineers will provide an initial response within 1 business hour (Gold) or 1 hour (Premium, requiring phone call to Support). Resolution, workaround, or emergency bug fix may be provided. Patch releases require Aster Quality Assurance and Regression test, unless waived by customer. Same-day escalation to the Director of Support for an action plan included.
- S1 Errors/issues that cause an important component of nCluster to be inaccessible; or non-production system down; or data issue due to human operational error, or data issue which does not materially impact customer business. Aster Data Support Engineers will provide initial response per matrix below, and work toward a resolution, which may be included in follow-on maintenance releases.
- S2 Errors/issues that cause degradation in the functionality of nCluster resulting in operational problems, performance variation, or errors; or configuration, software management issue. Aster Data Support Engineers will provide an initial response per matrix below and work toward resolution, which may be included in follow-on minor release.
- S3 Situation/issues that cause a minor degradation in the functionality of nCluster resulting in an inconvenience; Technology is operational but is experiencing problems or reporting errors. Aster Data Support Engineers will provide an initial response per matrix below and work toward resolution, which may be included in follow-on major release.
- S4 Feature requests; or minor items that do not materially impact the use of nCluster; Technology is operational but is experiencing inconvenience, minor items that do not

materially impact the use, or need a functionality change. Aster Data Support Engineers will provide an initial response per matrix below, and work toward resolution, which may be included in follow-on major release.

PRODUCT CHANGES:

Included: Aster Data will provide a licensed copy of all Updates, Upgrades and Workarounds which Aster Data commercially releases to its customers generally during a Maintenance Term. Updates, Upgrades and Workarounds are subject to the terms and conditions of the License Agreement.

Changes Initiated by Aster Data: Aster Data reserves the right to add new features and functions to the Technology, and the right to discontinue features. Upon Your reasonable request and on mutually agreeable terms, Aster Data may provide reasonable cooperation to You to enable You to continue to use discontinued features or functions.

YOUR RESPONSIBILITIES:

(A) Personnel. You shall devote such personnel and resources as Aster Data reasonably requests as necessary to assist Aster Data in the successful and timely provision of support services. (B) You shall make commercially reasonable efforts to ensure that its personnel are properly trained in the operation and use of the Technology. (C) You shall provide Aster Data with in-person, telephone and secure remote electronic access to Your equipment, software, data and personnel, as reasonably requested by Aster Data to enable Aster Data to perform its Maintenance services. If You decline to permit Aster Data to use remote electronic support, then You will reimburse Aster Data on a Time and Materials basis for on-site support that is required as a result.

GENERAL: This Agreement will be governed by the laws of the State of California, U.S.A., except for that body of law dealing with conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Each party may identify the other in its customer (or vendor) lists in online and print marketing materials.

ACKNOWLEDGMENT: BY USING THIS TECHNOLOGY, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Should you have any questions concerning this License, contact your reseller or Aster Data at the address shown above.