



END USER AGREEMENT

IMPORTANT: PLEASE READ THIS END USER AGREEMENT (“**AGREEMENT**”) BEFORE INSTALLING OR USING THE PAVILION DATA PRODUCT, INCLUDING THE HARDWARE AND SOFTWARE COMPONENTS THEREOF (“**PRODUCT**”). THIS AGREEMENT APPLIES TO THE PRODUCTS AND SERVICES THAT YOU OR THE ENTITY THAT YOU REPRESENT (“**END USER**”) OBTAIN FROM PAVILION DATA, INC. (“**PAVILION**”) OR FROM ANY THIRD PARTY AUTHORIZED BY PAVILION TO RESELL THE PRODUCTS AND SERVICES. BY INSTALLING OR USING THE PRODUCT OR SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND END USER AND AGREE THAT END USER IS BOUND BY THIS AGREEMENT WITH PAVILION, UNLESS A SEPARATE WRITTEN AGREEMENT IS IN EFFECT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF. IF END USER DOES NOT HAVE A SEPARATE WRITTEN AGREEMENT WITH PAVILION AND DOES NOT AGREE TO THIS AGREEMENT, THE END USER MAY, WITHIN 30 DAYS OF INITIAL RECEIPT OF THE PRODUCT, RETURN THE UNUSED PRODUCT FOR A REFUND.

1. SOFTWARE LICENSE.

1.1 Software License. Subject to End User’s compliance with the terms of this Agreement, Pavilion Data grants to End User (and any third party authorized by End User to perform services with respect to the Products solely for the benefit of the End User), a nontransferable, nonexclusive, perpetual license to use and execute the Pavilion software provided with, or incorporated in, the Product (the “Software”), in executable object code format only, and solely for the purpose of operating the Products in accordance with the applicable Product documentation for Customer’s business purposes. Pavilion may make Software updates and new releases available for installation by the End User and such updates will be subject to the terms of this Agreement.

1.2 Termination of Software License. The license in Section 1.1 and End User’s rights to use the Software will terminate immediately in the event that End User returns the Product to Pavilion as provided herein or in the event that End User materially breaches any provision of this Agreement. Upon termination, End User shall promptly discontinue all use of the Software and Sections 2, 3.2, 4.4, 6, 7, and 9 will survive.

2. PRODUCT RESTRICTIONS AND TITLE

2.1 Restrictions. End User shall not nor allow any third party to: (i) modify, adapt, alter, translate, or create derivative works from the Software or Documentation; (ii) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software or Documentation to any third party; (iii) reverse-engineer the Products or decompile, disassemble, or otherwise attempt to derive the source code for the Software (except to the extent applicable law prohibits reverse engineering restrictions); (iv) access or use the Software (or Products) for any competitive purpose, including but not limited to designing or developing a competitive product or service; or (v) otherwise use or copy the Software except as expressly permitted hereunder. End User must reproduce, on all copies made by it, and must not remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Pavilion Data and its licensors on or within the copies of the Software and Documentation.

2.2 Title. Pavilion and its suppliers shall exclusively retain all right, title and interest, in all intellectual property rights, including patent, trademark, trade name and copyright, whether registered or not registered, in and to the Software and related documentation. Pavilion and its suppliers reserve all rights not expressly granted herein, and no other license or other implied rights of any kind are granted or conveyed. Any non-public information

relating to, or derived from, the Products and related services, including technical features, benchmark results, or performance results, is the confidential information of Pavilion, and End User shall not use or disclose such information except as expressly authorized in this Agreement. In the event that items of software code provided with the Product are subject to “open source” or “free software” licenses, nothing herein limits End User’s rights under, or grants rights that supersede, the applicable license therefor.

3. PRE-RELEASE PRODUCTS AND END USER FEEDBACK

3.1 Pre-Release Products. Pavilion may make available to End User a beta or pre-release version of the hardware and/or software (“Pre-Release Products”). End User acknowledges that the Pre-Release Products (i) are not at the level of performance or compatibility of final, generally available products; (ii) may not operate correctly; (iii) may be modified prior to being made generally available; (iv) may not be made available for general release; and (v) may not be used in a production environment. End User agrees to notify Pavilion of any bugs or problems in the Pre-Release Products.

3.2 End User Feedback. End User is encouraged to provide feedback to Pavilion regarding the functionality, operation, use and performance of the Products and Pre-Release Products, including identifying potential errors and improvements (“Feedback”). End User grants to Pavilion a perpetual, irrevocable, worldwide, sublicenseable, fully paid-up and royalty-free right to modify and use the Feedback in any manner, provided that Feedback is anonymized and does not identify End User.

4. WARRANTY AND DISCLAIMER

4.1 Limited Warranty. Pavilion warrants that the Hardware will perform in substantial accordance with the corresponding Product documentation for three years from the date of shipment by Pavilion of all Products purchased from Pavilion pursuant to a Purchase Order, and that the Software will perform in substantial accordance with the corresponding Product documentation for 90 days from the date of shipment by Pavilion.

4.2 Limited Warranty Process. End User may contact Pavilion via email at support@pavilion.io or by phone for warranty service. If a return is required, End User must obtain a return material authorization number from Pavilion and return the product in secure packaging, freight prepaid, as instructed by Pavilion. Pavilion, at its option, either

(i) will repair or replace any defective Product with a new or refurbished Product or components of equal or greater functionality as the returned Product, or (ii) will refund to Customer for the purchase price actually paid

by Customer for such Product, reduced for depreciation, which is calculated on a straight-line basis over a three-year useful life. Replacement Products or components will continue to be warranted for the remainder of the applicable warranty term. Repair, replacement or refund is the sole and exclusive remedy for breach of this warranty. For Software, Pavilion will provide End User access to bug fixes and emergency patches. This warranty is provided to the original End User only and is not transferable. This warranty does not cover defects or damages resulting from (a) any modifications, alterations, or servicing of the Hardware by any party other than Pavilion or its authorized representatives; (b) handling, storage, installation, or use not in accordance with the applicable Documentation; (c) damage from accidents, abuse, misuse, or negligence, or any factors beyond Pavilion's controls such as fire or flood; (d) any breakdowns, fluctuations, or interruptions in electric power, air conditioning, the telecommunications network, or any combination with products not supplied by Pavilion; (e) any defect or nonconformance that is not reproducible by Pavilion; or (f) any violation of these Terms. End User will not extend on Pavilion behalf any representation or warranty from Pavilion.

4.3 No Warranty or Support for Pre-Release Products or Third Party Products. Pavilion provides Pre-Release Products for evaluation only on an "AS IS" basis (without warranty of liability of any kind), for use at End User's own risk. Pavilion will, at its discretion, use reasonable efforts to resolve problems identified in Pre-Release Products. In addition, Pavilion does not provide warranty for any Third Party Products not purchased from Pavilion or shipped to the End User by Pavilion, including any media used in the Product that was not purchased from Pavilion. Furthermore, Pavilion does not provide warranty or support for Pavilion products used with any Third Party Products not Certified by Pavilion.

4.4. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 4.1, PAVILION DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO THE EXTENT WARRANTIES MAY BE DISCLAIMED UNDER APPLICABLE LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAVILION DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED FOR ERROR FREE. EXCEPT AS EXPRESSLY STATE IN SECTION 5.1, PAVILION PROVIDES THE PRODUCTS (INCLUDING ANY SOFTWARE) ON AN "AS IS" BASIS. THE PRODUCT IS NOT DESIGNED OR INTENDED FOR USE WHERE FAILURE OF THE PRODUCT COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE OR PROPERTY DAMAGE.

5. MAINTENANCE AND SUPPORT

5.1 Fees. Subject to End User's payment of fees for the applicable Maintenance and Support Services, Pavilion or its designated support partners will provide the support Services to End User for the support term determined in accordance with Section 5.2:

5.2 Support Term; Termination. The term of the Maintenance and Support Services will commence on the earlier date of the following: a) 14 calendar days after shipment by Pavilion (or the date specified in the Quotation) of all Products pursuant to Purchase Order, or, b) the date of commission of Product and will continue for the period specified in the Quotation or application order documentation, unless earlier terminated in accordance with the Terms of this Agreement. Maintenance and Support services will end upon the expiration of the original term unless a Renewed Maintenance and Support agreement is authorized by End User and received by Pavilion.

6. INDEMNIFICATION. Pavilion will defend at its own expense any action against End User brought by a third party to the extent that the action is based upon a claim that the Product infringes any patents, copyrights, trademarks or trade secrets, and Pavilion will pay those damages finally awarded against End User in any such action that are specifically attributable to such claim or those damages agreed to by Pavilion in a monetary settlement of such action. The foregoing obligation is conditioned on: (i) End User notifying Pavilion promptly in writing of such action, (ii) End User giving Pavilion sole control of the defense thereof and any related settlement negotiations, and (iii) End User cooperating with Pavilion and, at Pavilion's request and expense, assisting in such defense. If any Software becomes, or in Pavilion opinion is likely to become, the subject of an infringement claim, Pavilion may, at its option and expense, either (a) procure for End User the right to continue using the Software, (b) replace or modify the Software so that it becomes non-infringing, or (c) accept return of (1) the Product incorporating the affected Software and effect a refund to End User the fees actually paid by End User for the affected Products, reduced for depreciation, which is calculated on a straight-line basis over a three-year useful life, in which case End User's right to use such affected Software will be terminated. Notwithstanding the foregoing Pavilion will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (i) any use of the Software not in accordance with these Terms or the applicable Documentation or for purposes not intended by Pavilion, (ii) any use of Software in combination with other products, equipment, software, or data not supplied by Pavilion or (iii) any modification or alteration of the Software or Product by any person other than Pavilion or its authorized representatives. THIS SECTION 6 STATES PAVILION DATA'S ENTIRE LIABILITY, AND END USER'S SOLE AND EXCLUSIVE REMEDY, FOR INFRINGEMENT CLAIMS AND ACTIONS.

7. LIMITATION OF LIABILITY. OTHER THAN PAVILION'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PAVILION'S AGGREGATE LIABILITY UNDER OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY END USER FOR THE PRODUCTS OR SERVICES THAT GAVE RISE TO SUCH CLAIM. IN NO EVENT WILL PAVILION BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, (INCLUDING LOST PROFITS, ANTICIPATED SAVINGS OR REVENUES), LOST OR CORRUPTED DATA, OR INTERRUPTION OF BUSINESS ARISING IN CONNECTION WITH THE USE OF THE PRODUCT OR SERVICES OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF PAVILION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. PRODUCT DIAGNOSTIC REPORTING. End User acknowledges that the Product will store certain diagnostic information about the routine operations of the Product (including performance, capacity usage, configuration data, and hardware faults) and will periodically transmit this diagnostic information to Pavilion and authorized End User partners. No actual user data of End User is accessed, transmitted or provided to Pavilion or any third party as part of this process, and no interruption of service is required to gather such detailed diagnostics. End User will control Pavilion or any third party's physical access to the Product. End User agrees that the collection and transmission of such Product information is necessary to facilitate the delivery of both Warranty and Maintenance and Support Services.

9. GENERAL PROVISIONS

9.1 Governing Law. This Agreement will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles. The parties expressly consent to the personal jurisdiction and venue in the state and federal courts in Santa Clara County, California for any lawsuit filed there arising from or related to this Agreement. The UN Convention on Contracts for the International Sale of Goods will apply only to the extent that it establishes the provisions of these Terms as exclusively binding the parties with respect to the subject matter of these Terms.

9.2 Notices. Except as specifically stated, all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt requested) and shall be deemed given upon personal delivery or upon confirmation of receipt.

9.3 Compliance with Laws. The parties agree to comply with all laws applicable to the distribution and use of the Product and performance of its obligations under this Agreement.

9.4 Severability; Waiver. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver or failure to enforce any provision of this

Agreement on one occasion will not be deemed a waiver of any other provision or such provision on any other occasion.

9.5 Export. The Product, Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. End User agrees not to export, re-export, or transfer, directly or indirectly, any technical data acquired from Pavilion, or any products incorporating such data, in violation of applicable export laws or regulations.

9.6 No Assignment. This Agreement, and End User's rights and obligations herein, may not be assigned by End User without Pavilion's prior written consent, which consent will not be unreasonably withheld, and any attempted assignment in violation of the foregoing will be null and void.

9.7 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of acts of God (i.e.: flood, storm, earthquakes, volcanic eruption) strikes, shortages, riots, insurrection, fires, explosions, war, terrorism, governmental action, labor conditions, material shortages or any other cause that is beyond the reasonable control of the party.

9.8 Entire Agreement; Modification. This Agreement, including any terms referenced herein, is the entire agreement between the End User and Pavilion with respect to the subject matter hereof. Any varying or additional terms relating to the subject matter hereof in any purchase order, discussion, or other written document will be of no effect. This Agreement, including any rights hereunder, may be extended or amended by the parties in writing.