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HAVRION PERFORM/ HavrionTV END USER LICENSE AGREEMENT

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ARTICLE 1

DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings indicated below:

1.1 “Affiliate” of a Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the first-mentioned Person. For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by contract

or otherwise, and the terms “controlling” and “controlled by” have meanings correlative to the foregoing.

1.2 “Authorized User” means each of the individuals authorized to use the Software as provided in an Order Form or otherwise agreed to by Licensor.

1.3 “Designated Deployment Location” means Licensee’s designated deployment location(s) for the use of the Software as provided in an Order Form or otherwise agreed to by Licensor.

1.4 “Documentation” means Licensor’s user manuals, handbooks and installation guides relating to the Software that Licensor provides or makes available to Licensee, in any form or medium, which describe the functionality, components, features or requirements of the Software, including, without limitation, any aspect of the installation, configuration, integration, operation or use of the Software.

1.5 “Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.6 “Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

1.7 “Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Software, including, without limitation, any updated Documentation, that Licensor may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any New Version.

1.8 “New Version” means any new version of the Software that Licensor may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Licensor’s designation of a new version number), and which Licensor may make available to Licensee at an additional cost under a separate written license agreement.

1.9 “Open Source Components” means any software component that is subject to any open source license agreement, including, without limitation, any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, MIT License, BSD licenses, or any other license that is approved by the Open Source Initiative.

1.10 “Order Form” means an order form filled out and submitted by or on behalf of Licensee, and accepted by the applicable vendor of the Software (whether Licensor or its distributor or reseller), for Licensee’s purchase of the license for the Software granted under this Agreement.

1.11 “Permitted Use” means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations.

1.12 “Person” means any individual, partnership, firm, corporation, limited liability company, joint-stock company, trust or other entity.

1.13 “Software” means the executable, object code version of HAVRION PERFORM/HavrionTV and Maintenance Releases thereof provided to Licensee pursuant to this Agreement and any New Versions thereof.

1.14 “Subscription Term” means the agreed upon time period for the subscription of the Software, which, with respect to each Software, shall be set forth in the applicable Order Form or otherwise agree to by Licensor.

1.15 “Third-Party Materials” means materials and information, in any form or medium, that are not proprietary to Licensor, including, without limitation, any third-party: (a) documents, data, content or specifications; (b) Open Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

ARTICLE 2

LICENSE

2.1 License Grant. Subject to and conditioned upon Licensee’s strict compliance with all the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, non-transferable limited license during the Term to use, solely by and through its Authorized Users, the Software and Documentation solely for the Permitted Use.

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2.5 Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee’s compliance with the terms of this Agreement and enforce Licensor’s rights, including, without limitation, all Intellectual Property Rights, in and to the Software; (b) Licensor may deny any Person access to and/or use of the Software if Licensor, in its sole discretion, believes that such Person’s use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated such Person as an Authorized User; and (c) Licensor and its employees, agents and other representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including, without limitation, information about Licensee’s computers, devices, systems and software, that Licensor may gather periodically to improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with Licensor’s privacy policy, as amended from time to time, which can be viewed at Licensor’s website.

ARTICLE 3

RESTRICTIONS; RESPONSIBILITY FOR USE

3.1 License Restrictions. Subject to Section 2.4 with respect to Open Source Components, Licensee shall not, and shall not permit any other Person to:

- (a) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Software;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software to any third party;
- (c) reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- (d) bypass or breach any security device or protection used for or contained in the Software or Documentation;
- (e) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software or Documentation;

(f) use the Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or any other right of any Person, or that violates any applicable Law;

(g) use the Software for purposes of (i) benchmarking or competitive analysis of the Software, (ii) developing, using or providing a competing software product or service or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

(h) use (i) the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement or (ii) any Open Source Components in any manner or for any purpose or application not expressly permitted by the controlling Open Source License; or

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3.2 Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, whether such access is directly or indirectly provided by Licensee. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

3.3 Licensee Use.

(a) Internal Use. Subject to the terms and conditions set forth herein, HAVRION authorizes Owner to use the Software for its internal business purposes. Owner acknowledges and agrees that it will be responsible for all end users of the Software, regardless of whether such users are employees, contractors, agents, or third parties, in each case with or without the Owner's permission to use such Software.

(b) No Reselling. Owner shall not re-sell or re-distribute (whether for a fee or otherwise) access to the Software in any manner other than for Owner's internal business without the express prior written consent of HAVRION.

(c) No Illegal Purpose / Unauthorized Access. Owner shall not use or permit third parties to use the Software for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material.

(d) Applicable Laws. With respect to Owner's use of the Software (including the transmission, access or use of any content via the Software), Owner shall comply with all applicable laws and regulations in addition to the terms of this Agreement. HAVRION shall have the right to audit Owner's use of the Software remotely or otherwise, to ensure compliance with this Agreement.

3.4 Content. Any content that Owner may access or transmit through the Software is provided by independent content providers, over which HAVRION does not exercise and disclaims any control. HAVRION neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through the Services; and assumes no responsibility for content. HAVRION specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Software. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Owner and its authorized users accessing other parties' content through Owner's facilities do so at Owner's own risk, and HAVRION assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

3.5 Third Party Services. The Software may permit users to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When users access third party resources on the Internet, users do so at users' own risk. These other resources are not under HAVRION's control, and users acknowledge that HAVRION is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply HAVRION's endorsement or any association between HAVRION and their operators. Users further acknowledge and agree that HAVRION shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource. It is users' responsibility to protect users' system from such items as viruses, worms, Trojan horses and other items of a destructive nature.

ARTICLE 4

MAINTENANCE RELEASES

4.1 Maintenance Releases. Subject to Section 4.2, during the Term, Licensor will provide Licensee with all Maintenance Releases (including, without limitation, updated Documentation) that Licensor may, in its sole discretion, make generally available to its licensees. All Maintenance Releases provided by Licensor to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as commercially practicable after receipt. Licensee does not have any right hereunder to receive any New Versions of the Software that Licensor may, in its sole discretion, release from time to time. Licensee may license any New Version at Licensor's, or Licensor's distributor's or reseller's, as applicable, then-current list price and subject to a separate license agreement, provided that Licensee is in compliance with the terms and conditions of this Agreement.

4.2 Exceptions. Licensor has no obligation to provide Maintenance Releases: (a) for any but the most current version or release of the Software; (b) for any copy of the Software for which all previously issued Maintenance Releases have not been installed; (c) if Licensee is in breach under this Agreement; or (d) for any Software that has been modified other than by Licensor, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation.

ARTICLE 5

LICENSE FEES

5.1 License Fees. All applicable license fees are payable in advance in the manner set forth in the Order Form and are non-refundable, except as may be expressly set forth herein. Any renewal of the license granted hereunder shall not be effective until the fees for such renewal have been paid in full. If Licensee fails to make payment of amounts owed Licensor (or Licensor's reseller or distributor, as applicable) when due, then Licensor (or Licensor's reseller or distributor, as applicable) reserves the right to charge Licensee and Licensee agrees to pay interest on any such undisputed overdue amounts. Interest will begin to accrue on such undisputed overdue amounts on the date such amounts are originally due at a rate equal to the lesser of 1.5% per month and the maximum rate permitted by law and shall continue to accrue until Licensee pays Licensor (or Licensor's reseller or distributor, as applicable) all such undisputed overdue amounts (together with all accrued interest thereon). Such interest will be recalculated every thirty (30) days thereafter based on Licensee's then-current outstanding balance. In addition, Licensor, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate Licensee's access to or use of the Software until Licensor's (or Licensor's reseller's or distributor's) receipt of all overdue amounts and accrued but unpaid interest thereon. Licensor shall have no liability to Licensee for any such suspension or termination. Licensor (or Licensor's reseller or distributor, as applicable) further reserves the right to seek collection of all overdue amounts and accrued but unpaid interest thereon (including, without limitation, by referral to third party collectors), and its reasonable legal fees (including, without limitation, reasonable attorney's fees and costs) and costs associated with such collection.

ARTICLE 6

AUDITS

6.1 Audit Procedure. Licensor or its representative (including, without limitation, its accountants and auditors) may, in Licensor's sole discretion, 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 expiration of this Agreement. All audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Licensee's business operations. Licensee shall make available all such books, records, equipment, information and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of Licensor with respect to such audit.

6.2 Costs and Results of Audit. If an audit determines that Licensee's use of the Software exceeds or exceeded the usage permitted by this Agreement, then:

(a) Licensee shall, within ten (10) days following the date of Licensor's written notification thereof, pay to the applicable vendor of the Software (whether Licensor or its distributor or reseller) any applicable retroactive license fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 6.2(c), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the retroactive license fee payable pursuant to the foregoing, (i) unless Licensee can demonstrate otherwise by

documentary evidence in form and substance acceptable to Licensor, all excess use of the Software shall be deemed to have commenced on the Effective Date or, if later, the completion date of the most recent audit (if any) previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (ii) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such excess use been properly licensed prior to its commencement (or deemed commencement).

(b) If the use exceeds or exceeded the use permitted by this Agreement by more than five percent (5%), then Licensee shall pay to Licensor, within ten (10) days following the date of Licensor's written request therefor, Licensor's costs incurred in conducting the audit.

(c) If the use exceeds or exceeded the use permitted by this Agreement by more than ten percent (10%), then Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

ARTICLE 7

CONFIDENTIALITY

7.1 **Confidential Information.** In connection with this Agreement, each Party may make available or disclose (the "**Disclosing Party**") Confidential Information (as hereinafter defined) to the other Party (the "**Receiving Party**"). "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary (whether or not such information is labeled confidential or proprietary), including, without limitation: (a) technology, trade secrets, know-how, business operations, plans, strategies, forecasts, projects and analyses; (b) financial information and fee structures; (c) business processes, methods and models; (d) employee, customer, distributor and supplier information; (e) hardware and system designs, architectures, structure and protocols; (f) product and service specifications; (g) manufacturing, purchasing, logistics, sales and marketing information; and (h) information not expressly designated as confidential but which should reasonably be deemed confidential by reason of its nature or content. For the avoidance of doubt, the Software and Documentation are considered Confidential Information of Licensor and the terms and existence of this Agreement are Confidential Information of each Party.

7.2 **Obligations.** The Receiving Party will use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the Disclosing Party as the Receiving Party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). The Receiving Party may disclose the Disclosing Party's Confidential Information to any of its Affiliates, employees, agents, representatives and other third parties that have a need to know such Confidential Information in connection with this Agreement, provided that such Affiliates, employees, agents, representatives and other third parties are obligated to maintain the confidentiality of the Disclosing Party's Confidential Information upon terms that are no less restrictive than those contained in this Agreement and use the Disclosing Party's Confidential Information solely in connection with this Agreement. Notwithstanding the foregoing, the Receiving Party will be liable for any unauthorized disclosure or use of Confidential Information by any of its Affiliates, employees, agents, representatives and other third parties. The Receiving

Party will promptly report to the Disclosing Party any breaches in security that may materially affect the Disclosing Party and will specify the corrective action to be taken, which corrective action shall be undertaken as promptly as is practicable. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 7.2 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its employees, agents or other representatives.

7.3 Exceptions to Confidential Treatment.

(a) The obligations set forth in Section 7.2 do not apply to any Confidential Information that the Receiving Party can demonstrate: (i) the Receiving Party possessed prior to disclosure by the Disclosing Party, without an obligation of confidentiality; (ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; (iii) is or was independently developed by the Receiving Party without the use of or reference to any Confidential Information of the Disclosing Party; or (iv) is or was received by the Receiving Party from a third party that does not have an obligation of confidentiality to the Disclosing Party or its Affiliates.

(b) If the Receiving Party is legally required to disclose any Confidential Information of the Disclosing Party in connection with any legal or regulatory proceeding, then the Receiving Party will, if lawfully permitted to do so, notify the Disclosing Party within a reasonable time prior to disclosure to allow the Disclosing Party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the Disclosing Party waives compliance with the terms of this Agreement, then the Receiving Party may disclose only that portion of the Confidential Information that it is, according to the written opinion of its legal counsel, legally required to disclose and will exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information.

7.4 Return or Destruction. Each Party will return or destroy, as requested by the other Party, any and all Confidential Information of such other Party within thirty (30) days after request thereof or the termination or expiration of this Agreement. At the request of the Disclosing Party, the Receiving Party will provide the Disclosing Party with a certificate, signed by an officer of the Receiving Party, certifying that all of that Confidential Information has been returned or destroyed, as applicable.

ARTICLE 8

INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property Ownership. Licensee acknowledges and agrees that:

(a) the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;

(b) subject to the limited license granted to Licensee under this Agreement, and except for the Open Source Components under Open Source Licenses, Licensor is the sole and exclusive owner of all right, title and interest in and to the Software and Documentation, including, without limitation, all Intellectual Property Rights relating thereto; and

(c) Licensee hereby unconditionally and irrevocably assigns to Licensor or Licensor's designee, its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now have or hereafter acquire in or relating to the Software or Documentation (including, without limitation, any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

8.2 License Cooperation and Notice of Infringement. Licensee shall, during the Term:

(a) safeguard the Software and Documentation (including, without limitation, all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;

(b) at Licensor's expense, take all such steps as Licensor may reasonably request to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Software and Documentation;

(c) promptly notify Licensor in writing if Licensee becomes aware of (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Software or Documentation or (ii) any claim that the Software or Documentation, including, without limitation, any production, use, marketing, sale or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and

(d) fully cooperate with and assist Licensor in all reasonable ways in the conduct of any investigation or action by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any claims relating to, the Software or Documentation, including, without limitation, having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

8.3 No Implied Rights. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title or interest in or to any of the Software or Documentation.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing as a corporation, limited liability company or other entity under the Laws of the jurisdiction of its incorporation or organization;

(b) it has the full right, power and authority to enter into and perform its obligations under this Agreement and, if applicable, to grant the rights, licenses and authorizations it grants and is required to grant under this Agreement;

(c) the individual agreeing to this Agreement has been duly authorized by all necessary corporate, limited liability company or organizational action of such Party; and

(d) when agreed to as provided herein, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

9.2 Limited Warranty. Subject to the limitations and conditions set forth in Sections 9.3, 9.4 and 9.6 and Article 11, Licensor warrants to Licensee that for a period of sixty (60) days from the initial date of installation of the Software (which such initial date of installation of the Software shall be the first date on which the Software is installed and used by Licensee but shall not include any future or additional installations of the Software by Licensee) (the “Warranty Period”) the Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as set forth in the Documentation and in accordance with this Agreement.

9.3 Licensee Requirements. The limited warranty set forth in Section 9.2 applies only if Licensee: (a) notifies Licensor in writing of a warranty breach before the expiration of the Warranty Period; (b) has at all times during the Warranty Period installed, operated and used the Software as set forth in the Documentation and in accordance with this Agreement; (c) has promptly installed all Maintenance Releases to the Software that Licensor previously made available to Licensee; and (d) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including, without limitation, the payment of all license fees then due and owing).

9.4 Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 9.2 does not apply to problems arising out of or relating to:

(a) Software, or the media on which it is provided, that is modified or damaged by Licensee;

(b) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including, without limitation, any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including, without limitation, any software, hardware, firmware, device, system or network) or service not specified for Licensee’s use in the Documentation;

(c) Licensee’s or any third party’s negligence, abuse, misapplication or misuse of the Software, including, without limitation, any use of the Software other than as specified in the Documentation;

(d) Licensee's failure to promptly install all Maintenance Releases that Licensor has previously made available to Licensee;

(e) the operation of, or access to, Licensee's or a third party's system, hardware, software, firmware, device or network;

(f) any Open Source Components, beta software, software that Licensor makes available for testing or demonstration purposes, temporary software modules or software for which Licensor does not receive a license fee;

(g) any unauthorized access to, or modification of, the Software or Documentation or Licensee's network by Licensee or any third party;

(h) Licensee's breach of any provision of this Agreement; or

(i) any other circumstances or causes outside of the reasonable control of Licensor (including, without limitation, abnormal physical or electrical stress).

9.5 Remedial Efforts. If Licensor breaches, or is alleged to have breached, the warranty set forth in Section 9.2, then Licensor may, at its sole option, take any of the following steps to remedy such breach:

(a) replace any damaged or defective media on which Licensor supplied the Software;

(b) amend, supplement or replace any incomplete or inaccurate Documentation;

(c) repair the Software; and/or

(d) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder).

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RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

ARTICLE 10

INDEMNIFICATION

10.1 Indemnification by Licensor.

(a) Subject to Article 11, Licensor shall indemnify, defend and hold harmless Licensee from and against any damages, claims, suits, actions, causes of action, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements and court costs) (collectively, “Losses”) resulting from, arising out of or otherwise relating to (i) any material breach or violation by Licensor of any representation, warranty, covenant or agreement made by Licensor in this Agreement or (ii) any allegation by a third party that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement and without any modification thereof, infringes or misappropriates such third party’s United States Intellectual Property Rights.

(b) Notwithstanding anything to the contrary in this Agreement, Section 10.1(a) shall not apply to the extent that the breach or violation or the alleged infringement or misappropriation arises from:

- (i) Open Source Components or other Third-Party Materials;
- (ii) combination, operation or use of the Software in or with, any technology (including, without limitation, any software, hardware, firmware, device, system or network or any service not provided by Licensor;
- (iii) modification of the Software other than (A) by Licensor in strict accordance with this Agreement or (B) with Licensor’s express written authorization and in strict accordance with Licensor’s written directions and specifications;
- (iv) 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;
- (v) use of the Software after Licensor’s notice to Licensee of such activity’s alleged or actual infringement, misappropriation or other violation of a third party’s rights;
- (vi) negligence, abuse, misapplication or misuse of the Software or Documentation by or on behalf of Licensee;

(vii) 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 Licensor's instructions;

(viii) events or circumstances outside of Licensor's commercially reasonable control (including, without limitation, any bugs, defects, malfunctions or other events or circumstances in connection with any third-party hardware, software, firmware, device, network or system, or any breaches or malfunctions of Licensor's hardware, software, firmware, device, network or system); or

(ix) third-party Losses for which Licensee is obligated to indemnify a Licensor Indemnitee (as hereinafter defined) pursuant to Section 10.2.

10.2 Indemnification by Licensee. Subject to Article 11, Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates and each of their respective officers, directors, managers, members, employees, agents, representatives, successors and assigns (each, a "Licensor Indemnitee") from and against any and all Losses resulting from, arising out of or otherwise relating to: (a) any material breach or violation by Licensee of any representation, warranty, covenant or agreement made by Licensee in this Agreement; (b) any allegation by a third party that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated or otherwise violated by any (i) combination, operation or use of the Software by or on behalf of Licensee with any hardware, software, firmware, device, network or system, or service or other matter whatsoever, that is not provided by Licensor or (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; (c) any allegation by a third party relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including, without limitation, recklessness or willful misconduct) by or on behalf of Licensee with respect to the Software or Documentation or otherwise in connection with this Agreement; or (d) any allegation by a third party relating to the 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 the Documentation, or in any manner contrary to Licensor's instructions.

10.3 Mitigation. If the Software, or any part of the Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, Licensor may, in its sole discretion:

(a) obtain the right for Licensee to continue to use the Software in substantially the same manner as contemplated by this Agreement; and/or

(b) modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Software under this Agreement; or

(c) if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth in the above Section 10.3(a) or Section 10.3(b) is reasonably available to

Licensors, Licensor may, in its sole discretion and without any liability therefor, terminate this Agreement in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event Licensee shall cease all use of the Software and Documentation immediately on receipt of Licensor's notice.

10.4 Sole Remedy. THIS ARTICLE 10 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 11

LIMITATION OF LIABILITY

11.1 Disclaimer of Certain Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DAMAGES FOR HARM TO BUSINESS, LOST SAVINGS OR LOST REVENUES, RESULTING FROM, ARISING OUT OF OR OTHERWISE IN CONNECTION WITH THE SOFTWARE, THE DOCUMENTATION OR THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LICENSOR SHALL NOT BE LIABLE IN ANY RESPECT FOR ANY LOSSES (AS SUCH TERM IS DEFINED IN SECTION 10.1) RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATING TO (A) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER OR (B) ANY COMBINATION, OPERATION OR USE OF ANY TECHNOLOGY, SOFTWARE, HARDWARE, FIRMWARE, DEVICE, SYSTEM OR NETWORK NOT PROVIDED BY LICENSOR.

11.2 Limitation of Liability. THE AGGREGATE LIABILITY OF LICENSOR TO LICENSEE FOR ANY CLAIM RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE SOFTWARE, THE DOCUMENTATION OR THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF ANY LICENSE FEES PAID BY LICENSEE IN CONNECTION WITH THIS AGREEMENT FOR THE SOFTWARE AND DOCUMENTATION DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.

ARTICLE 12

TERM AND TERMINATION

12.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for the duration of the Subscription Term (the "Term"), unless terminated sooner in accordance with this Agreement.

12.2 Termination. In addition to any other termination rights set forth in this Agreement, Licensor may terminate this Agreement as follows:

(a) Termination for Cause. Subject to Sections 6.2(c), 10.3(c) and 13.7, Licensor may terminate this Agreement as of the date specified in a notice of termination if Licensee materially breaches its obligations under this Agreement and, if curable, does not cure such breach within thirty (30) days after receiving a written notice of such breach from Licensor.

(b) Termination for Financial Insecurity. Licensor may terminate this Agreement as of the date specified in a termination notice if Licensee: (i) files for bankruptcy; (ii) becomes or is declared insolvent; (iii) is the subject of any proceedings (not dismissed within thirty (30) days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for such other party; (iv) makes an assignment for the benefit of its creditors; (v) takes any corporate action for its winding-up, dissolution or administration; (vi) enters into an agreement for the extension or readjustment of all or substantially all of its obligations; or (vii) recklessly or intentionally makes any material misstatement as to financial condition.

12.3 Effect of Termination or Expiration. On the termination or expiration of this Agreement, all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate and Licensee will (a) immediately cease all use of and other activities with respect to the Software and Documentation, (b) within five (5) days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and the Licensor's Confidential Information, including, without limitation, all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials and (c) certify to Licensor in writing that it has complied with the requirements of this Section 12.3.

12.4 Survival. The provisions set forth in Articles 1, 6, 7, 8, 10, 11 and 13 and Sections 9.6, 12.3 and 12.4, and any other right, obligation or provision of this Agreement that, by its nature, should survive the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

ARTICLE 13

MISCELLANEOUS

13.1 Further Assurances. The Parties shall deliver any and all other instruments or documents required to be delivered pursuant to, or reasonably necessary or proper in order to give effect to, all of the terms and provisions of this Agreement.

13.2 Interpretation. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

13.3 Independent Contractors. Each Party will at all times be an independent contractor. Neither Party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other Party. This Agreement will not be interpreted or construed to create an association, joint venture or partnership or agency relationship between the Parties or to impose any agent or partnership obligation or liability upon either Party.

13.4 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld.

13.5 Notices. All consents, requests, notices and other communications hereunder must be in writing and in the English language and will be deemed given only when (a) hand-delivered, (b) sent by certified or registered United States mail (return receipt requested, postage pre-paid), (c) sent by internationally recognized overnight delivery service for next day delivery, or (d) exclusively with respect of Licensor's delivery of consents, requests, notices and other communications hereunder, sent by email, in each case, to the Party to whom the consent, request, notice or other communication is directed at such Party's address (and with respect of Licensee, Licensee's email address), indicated in the signature page of this Agreement. For the avoidance of doubt, where this Agreement states that notice will be given "promptly" after an event occurs, the notifying Party will give such notice within five (5) business days. Such consents, requests, notices and other communications hereunder shall be deemed given when actually received, or in the case of certified or registered United States mail (return receipt requested, postage pre-paid), five (5) days after deposit in the United States mail, or in the case of internationally recognized overnight delivery service for next day delivery, the next day, or in the case of email, if sent before 5:00 PM at the location of the sender, that same day, and if sent after 5:00 PM at the location of the sender, the next day. A Party may change its address for notices by sending a change of address notice using this notice procedure.

13.6 Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent. No assignment, delegation or transfer shall relieve Licensee of any of its obligations or performance under this Agreement. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

13.7 Force Majeure. In no event will Licensor be liable or responsible to Licensee, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused

by any circumstances beyond Licensor's reasonable control (a "Force Majeure Event"), including, without limitation, acts of God, flood, fire, pandemic, epidemic, virus, bacteria, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including, without limitation, imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. In the event of a Force Majeure Event affecting Licensor's performance under this Agreement, Licensee may suspend its performance hereunder until such time as Licensor resumes its performance. Licensor may terminate this Agreement by written notice to Licensee if a Force Majeure Event affecting Licensor's performance hereunder continues substantially uninterrupted for a period of sixty (60) days or more.

13.8 Export Regulation. The Software may be subject to United States export control laws, including, without limitation, the United States Export Control Reform Act and its associated regulations. Licensee will not directly or indirectly export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or Person to which export, re-export or release is prohibited by applicable Law. Licensee will comply with all applicable Laws and complete all required undertakings (including, without limitation, obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing or otherwise making the Software available outside the United States.

13.9 United States Government Rights. Each of the Documentation and the software components that constitute the Software is a "commercial item" as such term is defined under 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Accordingly, if Licensee is an agency of the United States Government or any contractor therefor, then Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other United States Government licensees and their contractors.

13.10 Headings. The headings in this Agreement are for convenience of reference only. They are not to affect the interpretation of this Agreement.

13.11 Amendment. This Agreement may be amended or changed by Licensor from time to time. If Licensor decides to change this Agreement, then Licensor will post any changes it makes or a new Agreement at [[Terms and Conditions - Havrion](#)] ("EULA Website") with a notice that this Agreement has been updated and/or notify Licensee with an in-Software alert the first time Licensee uses the Software after Licensor makes the change. Any changes to this Agreement will become effective when Licensor posts the revised Agreement or upon Licensee's continued use of the Software. Licensee is responsible for periodically visiting the EULA Website, Software and this Agreement to check for any changes. Licensee's clicking of the "accept" button, compliance with any other means for acceptance or deemed acceptance provided by Licensor or use of the Software following these changes is deemed to be acceptance of those changes and means that Licensee accepts the revised Agreement. Notwithstanding the foregoing, Licensor

reserves the right to unilaterally amend this Agreement to (a) comply with (to the sole satisfaction of Licensor) any law, rule or regulation affecting Licensor or the subject matter hereof, whether in effect as of the Effective Date or thereafter, or (b) reflect a change to the terms of Licensor's agreement with one or more third party ("Mandatory EULA Changes"). Such Mandatory EULA Changes shall be effective as of the date the modified Agreement is posted to the EULA Website or included within the Software regardless as to whether Licensee has received notice thereof.

13.12 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, then that provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties and to be valid and enforceable in accordance with applicable law. The remaining provisions of this Agreement and the application of the challenged provision to Persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each of those provisions will be valid and enforceable to the fullest extent permitted by law.

13.13 Third Party Beneficiaries. Except as set forth in Section 10.2, no third party will be deemed to be an intended or unintended third party beneficiary of this Agreement.

13.14 Waivers. The failure of either Party to enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver to any extent of that Party's right to assert or rely upon any provision of this Agreement or right in that or any other instance. A delay or omission by either Party to exercise any right or power under this Agreement will not be construed to be a waiver of such right or power. Waiving one breach will not be construed to waive any succeeding breach. All waivers must be in writing and signed (not in electronic form) by the Party waiving rights.

13.15 Entire Agreement. This Agreement, together with an Order Form, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, both written and oral, among the Parties with respect to such subject matter.

13.16 Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the principles of that state relating to conflicts of laws. Any suit, action or proceeding arising out of or related to this Agreement or the license granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Florida in each case located in Broward County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

13.17 Waiver of Jury Trial. EACH PARTY AGREES TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY DISPUTE OR CLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT.

13.18 Immediate Injunctive Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Sections 2.5 and 3.1 and Articles 7 and 8 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including, without limitation, a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

13.19 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.