

such country or on any such list. The Software may also be subject to U.S. laws and export regulations of the U.S. Government that require an explicit export license before any export or re-export of the Software. You will obtain any such explicit export license that may be required.

10.7 U.S. Government End Users. If You are an agency, department, or other entity of the U. S. Government (“Government”), then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and Documentation is restricted in accordance with Federal Acquisition Regulation (“FAR”) 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement (“DFARS”) 227.7202 for military agencies. The Software and Documentation are commercial computer software and commercial computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto. The Contractor/Manufacturer is Pervasive Software Inc., 12365 Riata Trace Parkway, Building B, Austin, Texas, 78727.

10.8 Operating System. It is Your responsibility to fully comply with applicable license agreements for any operating systems or other software You may use with the Software.

10.9 Results of benchmark tests or other performance tests run on the Software may not be disclosed to any third party without Pervasive’s prior written consent.

10.10 English is the controlling language of this Agreement.

10.11 Maintenance and Support Services. If You have selected and paid for maintenance and support services for the Software, then Pervasive will provide maintenance and support services for the Software subject to the terms and conditions of this Agreement and the standard Pervasive maintenance and support services terms applicable to the maintenance and support plan level selected by You. All error corrections, updates, and upgrades provided by Pervasive to You in connection with maintenance and support services are hereby deemed Software and are governed by the terms and conditions of this Agreement.

11. JAVA RUNTIME ENVIRONMENT

Depending on installation options, the Pervasive AuditMaster Software may include the JAVA SE RUNTIME ENVIRONMENT (JRE) 6 from Sun Microsystems, Inc. The Binary Code License Agreement from Sun Microsystems, Inc. governs the JAVA SE RUNTIME ENVIRONMENT (JRE) Version 6. By accepting the Pervasive AuditMaster License Agreement, You also agree to accept the terms and conditions of the Binary Code License Agreement and the Supplemental License Terms from Sun Microsystems, Inc. for the JAVA SE RUNTIME ENVIRONMENT Version 6.

Revision date: May 16, 2008

Pervasive AuditMaster Software License Agreement

IMPORTANT: DO NOT INSTALL THE ENCLOSED SOFTWARE UNTIL YOU HAVE READ THIS PERSASIVE AUDITMASTER LICENSE AGREEMENT (“AGREEMENT”). BY INSTALLING THE SOFTWARE, OR AUTHORIZING ANY OTHER PERSON TO DO SO, YOU, AND SUCH OTHER PERSON, IF APPLICABLE, ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN RETURN THE ENTIRE PACKAGE WITHIN TEN DAYS OF PURCHASE FOR A REFUND.

1. DEFINITIONS

1.1 “Pervasive” means Pervasive Software Inc., a Delaware corporation, 12365 Riata Trace Parkway, Building B, Austin, Texas (U.S.A.) 78727.

1.2 “You” or “Your” means the person or business entity which is licensing the Software pursuant to this Agreement.

1.3 “Software” means all of the software You have received from Pervasive with this Agreement.

1.4 “Database Host” means Your licensed version of Pervasive PSQL database engine that is audited and/or monitored by the Software.

1.5 “Primary Database Host” has the meaning set forth in Section 2.1 below.

1.6 “Guest Database Host” has the meaning set forth in Section 2.3 below.

1.7 “Documentation” means the manuals and any other material provided by Pervasive with the Software in electronic or printed form.

1.8 “Software User Count” means the user count of this Software that You purchased.

2. LICENSE AND PROTECTION

2.1 License Grant. Subject to the terms and conditions of this Agreement, Pervasive grants to You a non-exclusive, nontransferable right to (i) install and use the Software on one (1) Database Host (“Primary Database Host”) where the Software User Count meets or exceeds the Database Host licensed user count, and (ii) use the Documentation in connection with Your use of the Software. You may reproduce copies of the Software solely for this purpose, provided You do not (a) receive any payment, commercial benefit, or other consideration for such reproduction or use, or (b) distribute the same to any third parties.

2.2 Use with Virtualization Technologies. You may use the Software on a virtual (or otherwise emulated) Database Host which is an instance of the Primary Database Host (each a “Guest Database Host”). If You do so, then the Software User Count purchased by You must meet or exceed the licensed user count for each Guest Database Host in addition to the licensed user count for the Primary Database Host.

2.3 Use with Other Products. Your use of the Database Host (and other PSQL products such as Client Server, Workstation, and Workgroup) and any other software products (“Other Products”) from Pervasive or a third party which runs in conjunction with the Software are and will continue to be governed by, and subject to, the terms and conditions of the license agreement provided by Pervasive or such third party when You obtained such Other Products. No rights are granted to You in this Agreement with respect to such Other Products.

2.4 Protection of Software. You will take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of Pervasive or its licensors. The source code and embodied trade secrets are not licensed to You and any modification or addition thereto, or deletion therefrom is strictly prohibited. You will not disassemble, decompile, or otherwise reverse engineer the Software, except and only to the extent that applicable law expressly permits such actions, despite this limitation.

2.5 Pre-Release Software. Notwithstanding anything to the contrary in this Agreement, if the Software provided to You under this Agreement is pre-release or beta Software, then You may not distribute or deploy such pre-release or beta Software outside Your testing environment. Neither Pervasive nor its suppliers will be liable for any damages whatsoever relating to Your use of such pre-release or beta Software.

2.6 Open Source Software. The Software includes third party open source code software (“Open Source Software”). Any Open Source Software provided hereunder is provided pursuant to such Open Source Software license terms and conditions. Upon reasonable notice to You, Pervasive has the right to replace software provided to You as part of Open Source Software with software that has similar functionality. The license terms associated with Open Source Software require that Pervasive provide copyright and license information to You. A list of the Open Source Software included in the Software and available to You from Pervasive, the applicable license terms, and how to obtain the Open Source Software (if not already provided to You as part of the Software) are provided in the Software about box or accompanying documentation. Any provisions in this Agreement which differ from any Open Source Software license are offered by Pervasive alone and not by any other party. ALL OPEN SOURCE SOFTWARE IS PROVIDED ON AN “AS IS” BASIS, AND PERVASIVE DISCLAIMS ALL WARRANTIES WITH REGARD TO OPEN SOURCE SOFTWARE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL PERVASIVE OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR ANY OTHER DAMAGES WHATSOEVER, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE OPEN SOURCE SOFTWARE EVEN IF PERVASIVE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THIS LIMITATION WILL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM PERVASIVE’S OR ITS LICENSORS’ NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

3. COPIES. You may make only the number of copies of the Software equal to the Software User Count, and one (1) additional copy for archival purposes only. You may make one (1) copy of Documentation provided in electronic form. All proprietary rights notices must be faithfully reproduced in unaltered form and included on all permitted copies of Software and Documentation. You may not make copies of any Documentation provided to You in print form.

4. OWNERSHIP. Ownership of all right, title, and interest in and to the Software and Documentation (including any copies) and any and all intellectual property rights embodied therein will be vested solely in Pervasive and its licensors. Copies are provided to You only to allow You to exercise Your rights under this Agreement. The Software is being licensed, not sold. Pervasive and its licensors reserve all rights not expressly granted to You.

5. RESTRICTIONS. Except as expressly authorized in this Agreement, You will not use, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, create derivative works of, time share or dispose of the Software or Documentation or any part thereof. You may use the Software and documentation solely for Your internal business purposes in accordance with the Documentation. Except with the express written consent of Pervasive, notwithstanding anything to the contrary herein, You may not use the Software to host applications for third parties or to provide service bureau, time-sharing or other computer services to third parties.

6. ASSIGNMENT. You may not assign or otherwise transfer in whole or in part or in any manner any rights, obligations, or any interest in or under this Agreement without Pervasive’s prior written consent and any attempted assignment will be void. A merger or other acquisition by a third party will be treated as an assignment. Pervasive may at any time and without Your consent assign all or a portion of its rights and duties under this Agreement.

7. TERM AND TERMINATION. This Agreement is effective from the date You open the Software envelope or install the Software and will remain in force until terminated. You may terminate this Agreement at any time by destroying the Documentation and the Software together with all copies and adaptations thereof. This Agreement will automatically terminate if You breach any of the terms or conditions of this Agreement. You will destroy the original and all copies of the Software and Documentation, or return them to Pervasive upon termination of this Agreement. Sections 2.3–2.6, 4, 5, 6, 7, 8.2, 8.3, 9 and 10 of this Agreement, and the terms of Section 11 and any Supplemental License Terms below, as applicable, will survive any termination hereof.

8. LIMITED WARRANTY

8.1 Magnetic Media and Documentation. Pervasive warrants that if the magnetic media or Documentation are in a damaged or physically defective condition at the time that the Software is delivered to You and if they are returned to Pervasive within 10 days of delivery, then Pervasive will provide You with replacements at no charge.

8.2 DISCLAIMER OF WARRANTY. PERVASIVE LICENSES THE SOFTWARE TO YOU UNDER THIS AGREEMENT SOLELY ON AN “AS IS” BASIS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, PERVASIVE MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND DOCUMENTATION; PERVASIVE EXPRESSLY STATES AND YOU ACKNOWLEDGE THAT PERVASIVE DOES NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES, INCLUDING, FOR EXAMPLE, WITH RESPECT TO MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AMONG OTHERS.

8.3 High Risk Activities. The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments regarding fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). Pervasive and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

9. LIMITATION OF LIABILITY

9.1 PERVASIVE’S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR DOCUMENTATION IS LIMITED TO THE TOTAL OF ALL PAYMENTS MADE BY OR FOR YOU FOR THE SOFTWARE UNDER THIS AGREEMENT.

9.2 CONSEQUENTIAL DAMAGES. IN NO EVENT WILL PERVASIVE OR ITS LICENSORS BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER UNDER THEORY OF WARRANTY, TORT, PRODUCTS LIABILITY OR OTHERWISE EVEN IF PERVASIVE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THIS LIMITATION WILL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM PERVASIVE’S OR ITS LICENSORS’ NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

10. GENERAL CONDITIONS

10.1 Governing Law. This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Texas (U.S.A.) exclusive of its choice of law provisions. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods.

10.2 Complete Understanding. This Agreement sets forth the entire understanding and agreement between You and Pervasive with respect to the subject matter hereof and may be amended only in writing signed by both parties. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SOFTWARE.

10.3 Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Pervasive. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

10.4 Audit. You are responsible for ensuring that the number of Concurrent Users accessing the Host Software does not exceed the User Count, and You will maintain sufficient records, logs and other materials (“Records”) sufficient to document that Your use of the Software is in accordance with the terms of this Agreement. Pervasive may audit such Records upon reasonable notice.

10.5 Severability. If any provision in this Agreement is held invalid or unenforceable, then that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

10.6 Export Controls. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, Sudan or any other country to which the U.S. has embargoed goods; or (ii) to any person or entity on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders, or the U.S. Commerce Department’s Entity List of Missile, Nuclear, and Chemical and Biological Weapons Proliferators, or the U.S. Department of State’s Foreign Terrorist Organization List. You agree to the foregoing and You represent and warrant that You are not located in, under the control of, or a national or resident of