

Panduit Comprehensive Annual Maintenance Agreement for Physical Infrastructure Manager Software and PanView iQ Hardware Products

This Comprehensive Annual Maintenance Agreement (“Agreement” or “CAMA”) is effective as of September 1, 2010 and describes the technical support and product maintenance services and the Extended Hardware Warranty that Panduit provides to its End User customers during the period for which the applicable Annual Support and Maintenance Fee has been paid.

1. Definitions.

- 1.1. **Approved Source** means either Panduit or a Panduit Certified Software Partner or other third party who has been authorized by Panduit to resell Panduit’s Licensed Software and Support and Maintenance Services.
- 1.2. **Annual Support & Maintenance Fee** means the fee that the End User agrees to pay in exchange for receiving 12 months of an Extended Hardware Warranty and 12 months of Support and Maintenance Services for the Licensed Software from Panduit.
- 1.3. **Documentation** means the product description (including features and functionality), user instructions and operator manual for the Licensed Software and Hardware published by Panduit, as the same may be updated from time to time by Panduit.
- 1.4. **End User** means the company that purchased the Support & Maintenance Services from an Approved Source.
- 1.5. **End User License or EULA** means Panduit's standard End User License Agreement under which the Licensed Software is licensed to End Users, as may be published and amended by Panduit from time to time.
- 1.6. **Extended Hardware Warranty** means the 12 month hardware warranty that Panduit will provide to the End User upon receiving End User’s Annual Support & Maintenance Fee for the Hardware owned or controlled by End User.
- 1.7. **Hardware** means the Panduit PanView iQ-branded hardware (generally, part numbers formatted PVQ-XXXX, such as PVQ-PM) and hardware peripherals associated with the Physical Infrastructure Management System and excludes all other Panduit Electrical and Network Solutions.
- 1.8. **Licensed Software or Software** means the machine readable (object code) version of the Physical Infrastructure Manager (“PIM”) Software that was purchased by the End User.
- 1.9. **Patches** means any bug fixes, error corrections and minor enhancements to the existing functionality of the Licensed Software. In the version numbering scheme “PIM X.Y.Z.,” a patch will be denoted by the “Z.”
- 1.10. **Updates** means any modifications and other minor feature changes and performance improvements of the Licensed Software that are necessary to correct minor problems or other non-conformity of the Software to the Documentation. In the version numbering scheme “PIM X.Y.Z.,” an update will be denoted by the “Y.”
- 1.11. **Upgrades** means any enhancements or new releases of the Licensed Software that significantly add, enhance or increase product features and major functionality of the Licensed Software without materially altering existing features or functionality. In the version numbering scheme “PIM X.Y.Z.,” an upgrade will be denoted by the “X.”
- 1.12. **Support & Maintenance Services** means the technical support and product maintenance services for the Licensed Software.

2. **Support and Maintenance.** Subject to the payment of the applicable Annual Support and Maintenance Fee and compliance by End User with the terms of this CAMA and the EULA, Panduit will provide the following Support and Maintenance Services for the Licensed Software.

- 2.1. **Telephone, Website and Email Support.** Panduit will provide up to forty (40) hours per month of telephone, website and email-based support for the Licensed Software Monday through Friday, from 7:30 A.M. until 5:00 P.M. local time to the End User, excluding government recognized holidays in the End User's country of installation. Such telephone, website and email support will include the opportunity to consult with a member of the Panduit technical support staff that will assist the End User with the Licensed Software capabilities, functionality and characteristics as described in the Documentation. Panduit technical staff will send a response email to the End User confirming its receipt of End User's request for support within one (1) business day of receiving such request by telephone, website or email. Each call, website entry or email will be deemed to be a minimum of .5 hour.

For technical assistance pertaining to the Licensed Software contact Panduit at:

Phone: (866) 721-5302

Website: www.panduit.com/pim

Email: systemsupport@panduit.com

For commercial matters pertaining to this CAMA, contact Panduit at:

Phone: (708) 460-1800 X6936

Website: www.panduit.com/pim

Email: softwareadmin@panduit.com

- 2.2. **Patches, Updates and Upgrades.** Panduit will provide to End User all Patches, Updates and Upgrades to the Licensed Software which are of general interest and which are announced by Panduit as being made available generally to its End Users at no additional charge as part of the standard offerings for the Support & Maintenance Services. All Patches, Updates and Upgrades will be deemed accepted, and treated as Licensed Software under the EULA and this CAMA, upon delivery. End User shall be responsible for applying and/or installing all Patches, Updates and Upgrades to the Licensed Software in accordance with the installation instructions provided by Panduit. In the event that End User requests or requires more than one (1) hour of Support & Maintenance Services for the installation of any Upgrade to the Software or applying a Patch or Update, the End User will be billed for such Support & Maintenance Services at Panduit's standard hourly rates then in effect. Upon issuance of an Update or Upgrade, hereunder, Panduit will continue to support the prior version of the Licensed Software for a time period of six (6) months from the date of issuance of the new Update or Upgrade. Thereafter, Panduit will have no continuing obligation to maintain or support such prior version, unless otherwise mutually agreed in writing.
3. **Extended Hardware Warranty.** Subject to the payment of the applicable Annual Support & Maintenance Fee and compliance by End User with the terms of this CAMA and the Documentation, Panduit will provide End User with the Extended Hardware Warranty. All Hardware is warranted against defects in material and workmanship for the one (1) year

period following Panduit's receipt of End User's Annual Support and Maintenance Fee (the "Extended Warranty Period"). Panduit warrants that its firmware designed by Panduit for use with the Hardware will execute its functions when properly installed during the Extended Warranty Period. Panduit does not warrant that the operation of the Hardware or the firmware will be uninterrupted or error-free. During the Extended Warranty Period. Panduit will, at its discretion, either repair or replace Hardware that proves to be defective. For warranty service or repair, the Hardware claimed to be defective must be returned to a service facility designated by Panduit. End User shall prepay all the shipping charges to Panduit and if, in the opinion of Panduit, the Hardware is defective, Panduit shall pay shipping charges to return the Hardware to End User. However, End User shall pay all shipping charges, duties and taxes for Hardware returned to Panduit from another country. The Hardware is not designed, intended, authorized or warranted to be suitable for use as components in systems used in any life support or critical applications, including but not limited to, any applications intended to support or sustain life, any medical applications, any systems used for commercial transportation or nuclear facilities or any other applications where product failure could lead to personal injury, death or catastrophic property damage. Accordingly, Panduit disclaims any and all liability arising out of the use of the Hardware in any life sustaining or critical application. If End User uses the Hardware in any life support or critical application, End User, not Panduit, assumes full responsibility for such use. Further, Panduit reserves the right to refuse to service any Hardware used in any life support or critical application, and disclaims any and all liability arising out of Panduit's service or refusal to service such product.

The Extended Hardware Warranty shall not apply to defects resulting from improper or inadequate maintenance by End User such as End User-supplied firmware or unauthorized interfacing, modification or misuse of the Hardware, operation outside of the environmental specifications from the Hardware, or improper or inadequate site preparation or maintenance. **NO OTHER WARRANTY IS EXPRESSED OR IMPLIED. PANDUIT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED HEREIN ARE END USER'S SOLE AND EXCLUSIVE REMEDIES. PANDUIT SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY.**

4. **Exclusions from Support and Maintenance Services and the Extended Hardware Warranty.** The following are NOT provided as part of the Support and Maintenance Services or the Extended Hardware Warranty provided herein:
 - 4.1. **On-Site Support.** Any on-site support services may be performed by Panduit in its sole discretion subject to End User's prior payment of additional service fees.
 - 4.2. **Extended Hours Support.** No support services outside Normal Business Hours are offered by Panduit. Any such support may be performed by Panduit in its sole discretion subject to End User's prior payment of additional service fees.
 - 4.3. **New Software Products/Modules.** The Support and Maintenance Services only cover Licensed Software with the part numbers formatted PIM- XXXX, such as PIM-BASE, and do not cover new software products, new software modules or new or alternate operating environments. Support and upgrades for such new software products, modules or new or alternate operating environments shall be available only upon negotiation of separate fees, terms and conditions.

- 4.4. Services resulting from reconfiguration, misuse or modifications to the Licensed Software by End User or others.
 - 4.5. Services required for the removal, installation and/or configuration of Hardware that is the subject of a Warranty claim.
 - 4.6. Services required due to the failure or interruption of any electrical power, or any accident or cause external to the Licensed Software, including, but not limited to, problems or malfunctions related to End User's network, database, third party software products, and/or End User's hardware, operator error, or End User's negligence or willful misconduct.
 - 4.7. **Consulting Services.** Implementation, installation, training, and technical integration services also are excluded under the Comprehensive Annual Maintenance Agreement but may be quoted separately by Panduit.
5. **End User Responsibilities.** End User shall designate two points of contact who shall be the only persons authorized to submit support requests or otherwise make inquiries to Panduit regarding the Support and Maintenance Services or Extended Hardware Warranty. End User is responsible for notifying Panduit of any material failure, malfunction or error in the Licensed Software or Hardware that End User detects and for following Panduit's standard problem determination, problem analysis, and service request procedures, as published from time to time by Panduit, including without limitation, testing and verifying any documented and reproducible errors in the Licensed Software or Hardware, and to provide Panduit with a description of the problem and the conditions under which it occurred. Any such error reports shall be treated as Panduit's Confidential Information under the EULA. End User is solely responsible for maintaining procedures external to the Licensed Software for reconstruction of lost or altered files, data or programs to the extent that it deems necessary and for performing any such reconstruction. End User acknowledges that its failure to promptly implement all Patches, Updates and Upgrades supplied by Panduit may render the Licensed Software unusable or non-conforming to the Documentation and otherwise will void any warranty and/or indemnification set forth in the EULA. End User is solely responsible for any problems related to use of the Licensed Software on equipment other than the specific equipment designated in the Documentation.
6. **Term, Termination, Reinstatement.**
- 6.1. Panduit's Support and Maintenance Services obligations under this CAMA (including the Extended Hardware Warranty) will begin upon the date that Panduit receives the Annual Support and Maintenance Fee and continues for an initial term of 12 months ("Initial Term").
 - 6.2. Provided that Panduit receives End User's Annual Support & Maintenance Fee prior to the expiration of the then current term, Panduit will automatically provide Support and Maintenance Services and another Extended Warranty for consecutive one (1) year periods (each a "Renewal Term") unless either party notifies the other party of its intent not to renew, in writing at least thirty (30) days prior to the last day of the current term.
 - 6.3. Support and Maintenance Services during Renewal Terms will be subject to Panduit's Comprehensive Annual Maintenance Agreement in effect for the Licensed Software at the time of such renewal and the then current Annual Support and Maintenance Fee. The Annual Support and Maintenance Fee is subject to annual increases not to exceed five percent (5%) over the previous year's Annual Support and Maintenance Fee.

Panduit will provide End User with notice of any such rate increase at least sixty (60) days prior to the increase.

- 6.4. Annual Support & Maintenance Fees will be invoiced in advance on an annual basis. Panduit reserves the right to withhold Support and Maintenance Services in the event that the Annual Support & Maintenance Fees are more than thirty (30) days overdue or if End User is in breach of any term of this CAMA or of the EULA. Panduit reserves the right to not offer Support & Maintenance Services for any new software products.
- 6.5. End User may cancel Support and Maintenance Services at any time during the Initial Term or a Renewal Term for any reason by providing Panduit with thirty (30) days prior written notice but in such event End User shall not be entitled to a refund of any Annual Support & Maintenance Fees paid in advance. Notice of cancellation of Support and Maintenance Services must be sent by the End User to softwareadmin@panduit.com.
- 6.6. End User may terminate the Support and Maintenance Services upon Panduit's material breach of the terms of this CAMA if such default continues for thirty (30) days after written notice, in which case End User's sole and exclusive remedy shall be to receive a refund in an amount equal to the most-recent Annual Maintenance and Support Fee times a fraction, the numerator of which is the number of months remaining in the current term and the denominator of which is 12 (the "Refund").
- 6.7. Panduit may stop providing Support and Maintenance Services to the End User at any time if Panduit decides to no longer offer Support and Maintenance Services to its End Users in general, subject to the Refund set forth above under Section 6.6. Panduit may stop providing Support and Maintenance Services without Refund upon End User's material breach of the terms of this CAMA if such default continues for thirty (30) days after written notice.
- 6.8. In the event that additional licenses and/or other software products (such as customizations, modules, integrations, etc., to the Software) are purchased by End User during the Initial Term or any Renewal Term, Panduit shall not be obligated to provide Support and Maintenance Services for such additional Licensed Software unless and until End User pays Panduit the Annual Support & Maintenance Fees for the additional Licensed Software prorated for the remaining months of the then current term. The pro rata amount is due and payable in advance by End User as of the effective date of the order and payment for the additional Licensed Software. Any additional Hardware purchased during the Initial Term or any Renewal Term will receive the Extended Warranty for as long as the End User is paying the Annual Support & Maintenance Fees.
- 6.9. Panduit reserves the right to charge for any services attributable to any Excluded Services under Section 4 or any other technical support services that is not covered by, or outside the scope of the Support and Maintenance Services provided under this CAMA. Such services shall be billed at Panduit's then current time and materials charges or hourly rates (as applicable). If Panduit performs on-site services at End User's facility, End User shall pay actual travel, living and out-of-pocket expenses reasonably incurred by Panduit. If Panduit is unable to resolve a problem off-site within a reasonable period of time, then Panduit, at its option, may send personnel on-site to resolve the problem. A Statement of Work must be completed and signed prior to engagement of Panduit for these services.
- 6.10. Panduit may, at its sole discretion, reinstate lapsed or terminated Support and Maintenance Services, at a later time provided that End User pay Panduit the Annual Support & Maintenance Fees for the Licensed Software at Panduit's list prices then in

effect and a reinstatement fee, as determined by Panduit, which reinstatement fee will not exceed the amount that End User would have paid during the unsupported period.

- 6.11. The expiration or termination of Support and Maintenance Services shall not terminate or otherwise affect the EULA.
7. **Limitation of Liability.** IN NO EVENT SHALL PANDUIT'S AGGREGATE LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THE SUPPORT & MAINTENANCE SERVICES AND THE EXTENDED HARDWARE WARRANTY EXCEED THE TOTAL ANNUAL SUPPORT & MAINTENANCE FEE PAID TO PANDUIT BY END USER WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THAT SUCH CLAIM AROSE. IN NO EVENT SHALL PANDUIT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, OR FOR ANY LOSS DUE TO DELAY OF PERFORMANCE, OR FOR ANY LOSS OR INACCURACY OF DATA, LOSS OF USE OF ANY PROPERTY, COSTS OF CAPITAL, DOWNTIME COSTS, COSTS OF INTERRUPTION OF BUSINESS, LOST PROFITS OR REVENUE OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING FROM THIS THE PROVISIONS OF SUPPORT & MAINTENANCE OR PROVISION OF THE EXTENDED HARDWARE WARRANTY OR ANY QUOTATION RELATED TO THIS CAMA, EVEN IF PANDUIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDIES PROVIDED IN THIS COMPREHENSIVE ANNUAL MAINTENANCE AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
8. **Proprietary Rights.** Panduit retains all right, title and interest in and to the Licensed Software, Hardware and any products, tools, techniques, and other materials used in connection with providing the Support and Maintenance Services and the Extended Hardware Warranty under this CAMA.
9. **Arbitration.** All disputes arising out of or in connection with this CAMA shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted before a panel of three arbitrators. Each party shall select one arbitrator within 30 days of the filing of the Demand for Arbitration. The parties shall then attempt to agree on the third arbitrator (the "Chairman") within 30 days of the confirmation of the second arbitrator. If the parties fail to agree on the Chairman within such period, then such Chairman shall be appointed by the ICC. The arbitration shall take place in Chicago, Illinois, USA and be governed by the laws of the State of Illinois without regard to principles of conflicts of law. The arbitration shall be conducted exclusively in the English language. Any award rendered by the arbitrators shall be final and binding on the parties, and each party hereto waives to the fullest extent permitted by law any right it may otherwise have under the laws of any jurisdiction to any form of appeal of, or collateral attack against, such award. The arbitrators shall have the power to grant any remedy or relief that they deem just and equitable, including but not limited to injunctive relief, whether interim and/or final, and any provisional measures ordered by the arbitrators may be enforced by any court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Agreement shall prevent either party from seeking any provisional/preliminary relief (including, but not limited to, injunctions, attachments or other such orders in aid of arbitration) from any court of competent jurisdiction, and any such application to a court for provisional/preliminary

relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

10. **Miscellaneous.** This is the entire Agreement between End User and Panduit with respect to the Support and Maintenance Services and the Extended Hardware Warranty, and supersedes any prior agreement, whether written or oral, relating to the subject matter of Support and Maintenance Services and the Extended Hardware Warranty provided herein (but does not amend or supersede the EULA). The parties disclaim the application of the United Nations Convention on the International Sale of Goods. This Comprehensive Annual Maintenance Agreement is governed by the laws of the State of Illinois without regard to choice of law principles, and the applicable Federal laws and international treaties of the United States of America. This CAMA, which is in English, shall be interpreted in accordance with the commonly understood meaning of the words and phrases in the United States of America. The Comprehensive Annual Maintenance Agreement for Physical Infrastructure Manager Software and PanView iQ System Hardware is subject to change from time to time as Panduit updates its support offerings.