



Terms of Service

Effective: 18 October 2020

1. Introduction

Welcome to IR. These Terms of Service (the "Terms") contain the legal terms and conditions that govern your use of and access to Integrated Research's software and online services provided on a subscription basis (the "Service"). These Terms also govern your use of the Integrated Research website, www.ir.com and any related sites (the "Website"), regardless of whether you subscribe to the Service. (The Services and use of the Website may be collectively referred to as the "Services" or the "Service").

These Terms are entered into between you and the Integrated Research entity (i) which has provided you with a written order (hereafter "Order") or (ii) the Integrated Research company from whom the Service Logon Key is issued or the Integrated Research company in your geography, as follows: The Integrated Research entity shall generally be (i) Integrated Research UK Limited (CN 3298802) for all customers in United Kingdom and Ireland; (ii) Integrated Research Germany GmbH (HRB 220766) for all customers in Continental Europe; (iii) Integrated Research, Inc. (CN 19941074335) for all customers in North America, and South America; (iv) Integrated Research (Singapore) Pte. Limited (CRN 201226155W) for customers in Asia; or (v) for all other customers worldwide, Integrated Research Limited (ACN 003 588 449) (collectively or individually known as "IR", "we", "our" or "us"). As used in these Terms, "you", and "your" refers to the company, government, or other entity on whose behalf you are agreeing to these Terms or, if there is no such entity, you as an individual, as specified in the written Order provided by IR, or its agent.

If you have entered into a separate agreement with IR covering your account and use of our cloud Services, then the terms of that agreement controls and supersedes these Terms.

If you have not entered into a separate agreement with us for cloud Services, then by using the Service, completing the registration process, by browsing the Website or downloading any of our Software, and/or submitting an Order you represent that (a) you agree to be legally bound by the Terms, and (b) you have the power and authority to enter into the Terms personally or on behalf of the entity using the Services.

2. Nature of Services

21. **Availability.** IR will make reasonable commercial efforts to make the Services available on a 24 hours per day, 7 days per week basis. However, IR cannot guarantee continuous availability. In the event of an outage, IR will use all commercially reasonable efforts to restore service as soon as possible. IR reserves the right to modify, suspend, or discontinue all or any part of the Services without prior notice or liability. IR may also temporarily restrict your access to parts of the Services for maintenance or system administration purposes without notice or liability.
22. **Warranty.** IR warrants that during the Subscription Term, the Services will perform materially in conformance with the IR product documentation provided (the "Documentation"). Should the Services not perform in accordance with the Documentation (a "Deviation"), IR will use all commercially reasonable efforts to provide a patch, fix or other remedy to correct the Deviation. In addition, IR will apply all updates and upgrades to the Service, as and when IR releases them.
23. **LIMITATION ON WARRANTY.** EXCEPT AS STATED ABOVE, IR PROVIDES THE SERVICE AND ASSOCIATED SOFTWARE "AS IS" AND ON AN "AS AVAILABLE" BASIS. YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. IR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OR CONDITION OF ANY KIND, IN CONNECTION WITH THESE TERMS OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IR MAKES NO WARRANTY RELATED TO THIRD-PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE, OR THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.



24. **Third Party Technology.** The Services may contain links to third party websites or technology (for example, we may host a library of plugins created by entities other than IR) ("Third Party Technology"). IR does not endorse and is not responsible or liable for the products or services provided by third parties. ANY THIRD-PARTY TECHNOLOGY DOWNLOADED OR OTHERWISE OBTAINED IN CONNECTION WITH YOUR USE OF THE SERVICE IS DONE SO AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY THIRD-PARTY TECHNOLOGY.
25. **Open Source Software.** IR may provide you with access to software governed by an open source license. If there are provisions in those open source licenses that conflict with these Terms, the relevant open source license terms will apply.
26. **Software License.** Your use of the Services may require you to download and install certain software (the "Software") that is necessary to facilitate providing the Services. At no time will IR provide you with any tangible copy of the Software. IR shall deliver access to the Software via electronic transfer or download. Unless you have received express written permission from IR to do so, any copying or redistribution of the Software is prohibited. Subject to your compliance with the Terms, IR grants you or your End Users a non-assignable, non-transferable, revocable, non-exclusive license to use the Software for the sole purpose of enabling you to use the Services in the manner permitted by the Terms. You agree to install the Software in accordance with IR's instructions and Documentation.
27. **Add-Ons.** IR may make available through the IR Services additional features, functionality, and services offered by its third-party partners ("Add-ons"). Your use of Add-ons is subject to these Terms, the purchase or use of such Add-ons may also require an agreement between you and the third-party partner providing the Add-on. The partner providing the Add-on is solely responsible for that Add-on, the content therein, and any claims that you or any other party may have relating to that Add-on or your use of that Add-on. By purchasing an Add-on, you grant IR permission to share your Application, User Content, and User Data with the Add-on partner as necessary to provide you the Add-on.

3. Managed Services

31. If and solely to the extent that you have received written permission from IR to do so, you may utilize the Services to provide Managed Services to one or more third parties, provided that, as a condition of providing such Managed Services, you require the relevant Managed Services Customer(s) to agree to abide by terms and conditions at least as protective of IR, the Services, the Software, and IR's proprietary rights as in these Terms. You may not make any representations, warranties or binding commitments on IR's behalf to any third party, and you agree that you shall be responsible for all acts and omissions of each Managed Services Customer to the same extent that you are responsible for your own End Users. If you act as a Managed Service Provider, then the term End User, as used in these terms, shall include the end users of your Managed Service Customer(s). Managed Service Providers shall be responsible for all necessary technical support to their End Users in the use of the Services unless otherwise agreed in writing. Additionally, if you act as a Managed Service provider you shall not use the Services for your own internal use unless otherwise agreed in writing.
32. IR may provide for your use in marketing and providing Managed Services, certain Licensed Materials. These include user documentation and marketing materials, such as Service brochures, manuals, technical specification sheets, demonstration presentations including "screen shots", Service education and training materials, Service descriptions for use on Web site pages. Subject to your compliance with the terms and conditions of this Agreement, IR grants you a non-assignable, non-transferable, non-sub-licensable, revocable, non-exclusive license to: (i) modify and create derivative works of the Licensed Materials by creating technically accurate subsets and supersets thereof; and (ii) reproduce and distribute or display the Licensed Materials (in their original form or as modified by you as provided above) to your customers in connection with your provision of Managed Services to such customers; provided, that you will provide IR with samples, and obtain IR's written approval, of all materials that contain the Licensed Materials or otherwise contain any IR trademarks, prior to their public use, distribution or display. At IR's request, you will modify or discontinue any use of IR's trademarks. You must not remove, modify or obscure in any way the proprietary rights notices of IR or its suppliers that appear on or within the Services and Licensed Materials or that appear during use of the Services. From time to time in its sole discretion, IR may reasonably introduce and require you to follow additional branding and/or logo guidelines.



Nothing herein shall restrict IR's legal or equitable rights to protect its trademarks against infringement, dilution, or other misuse. You agree that, as between IR and you, IR owns all proprietary rights in its trademarks, and all goodwill arising from use of its marks will inure solely to the benefit of IR.

4. Accounts and Responsibilities

- 4.1. **Your Account.** To use our Services, you will be asked to create an account. In creating your account, you agree to (a) provide true, accurate, current and complete information about yourself as prompted by our registration form ("Registration Data"); and (b) maintain and promptly update the Registration Data to keep it accurate, current and complete. You agree not to create an account or use the Service if IR has previously removed you, or if you have been previously banned from the Service. You are responsible for maintaining the confidentiality of passwords of your account and for any activities that take place in your account including for the quality and integrity of your User Data and each of Your Applications. You are also solely responsible for all use and for all acts and omissions of anyone that has access to the Service via your account ("End Users"). You agree to take all reasonable precautions to prevent unauthorized access to or use of our Services, terminate any unauthorized use of or access to the Services and you will notify IR promptly of any unauthorized access or use. If your use of the Services exceeds the scope of your Subscription purchase, IR may charge you for the excess, from the date of your initial excessive use.
- 4.2. **Payment Terms.** Invoices are due in full as provided for in the Order. If the payment due date is not specified in the Order, all payments are due hereunder within thirty (30) days of the date of the invoice. Payment obligations are not cancellable and fees are non-refundable. Fees shall be paid to, or at the direction of IR, or its agent, free of all deductions, set-offs, defenses and counterclaims for any reason, in the currency specified in the applicable Order. Subject to a fee dispute made in good faith and without prejudice to IR's other rights and remedies under these Terms, if you are overdue on any payment and fail to pay within ten (10) business days of a written notice of your overdue payment, then a late fee and interest may accrue on overdue payments (at the highest rate permitted by law or 1.5% per month) calculated from and including the due date for payment until full payment of the outstanding amount is made. Subject to a fee dispute in good faith and following the overdue notice, we may also suspend our Services to your account until you pay the amount you are overdue plus the late fee. You shall reimburse IR for all reasonable costs incurred by IR in collecting past due amounts. We will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur in connection with any suspension of our Services pursuant to this Section 4.3.
- 4.3. **Taxes.** You are responsible for and shall pay to IR, or its agent, all applicable sales, use or other tax, levy, statutory charge or duty; imposed on or with respect to our Services whether these taxes are imposed directly on you or on IR. You understand and agree that the detail of taxes charged will be made available to you through IR's invoicing. If you're exempt from any taxes for any reason, send IR an executed, signed and dated valid exemption certificate. Once our tax department has received and approved your exemption certificate, we will exempt you from those taxes on a going-forward basis. If, for any reason a taxing jurisdiction determines that you are not exempt from those taxes and assesses those taxes, you agree to pay IR those taxes, plus any applicable interest, surcharge or penalties caused by you. Foreign Withholding Tax will be paid by you on behalf of IR, which will bear this tax. You will remit any applicable withholding tax to the applicable local country Taxation/Treasury office on a timely basis and shall promptly provide IR with the requisite Foreign Tax Withholding documentation from the applicable local country Taxation/Treasury office. You are not responsible for any taxes on net income, property tax or payroll taxes of IR.

5. Restrictions and Representations

- 5.1. **Your Representations and Restrictions.** You may use the Services solely in accordance with these Terms. The rights granted to you in the Terms are subject to the restrictions provided in this section. In the event of a breach of any restriction, IR shall have the right to terminate the Agreement and Your access to the Services.

Unless expressly agreed otherwise in writing signed by both parties, you may not:

- a) lease, loan, assign, copy, modify, host, sublicense or resell or otherwise make available our Services or Software or any of the rights granted by these Terms to third parties or



offer them on a standalone basis;

- b) use the Service to provide or operate Application Service Provider (ASP), Managed Service Provider (MSP), service bureau, marketing, training, outsourcing services, or consulting services, or any commercial service related to the Service or to develop training materials to any third party other than expressly permitted hereunder;
- c) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Service, Software, or Documentation except to the extent any restrictions are expressly prohibited by applicable law;
- d) use any manual or automated software devices or other processes (including but not limited to spiders, robots, screen scrapers, crawlers, avatars, data mining tools or the like) in connection with the Services; (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of, and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials);
- e) cause, in IR's sole discretion, inordinate burden on the Services and system resources;
- f) share password, login, or other access information or otherwise authorize any third party to access or use the Services;
- g) access the Services to design, build, market or sell a similar or competitive website, application or services;
- h) remove or destroy any copyright notices or other proprietary markings contained on or in the Service;
- i) access or use the Services for any purpose or by any means other than what IR provides or expressly allows;
- j) transmit any worms or viruses or any code of a destructive nature; or circumvent any use restrictions put into place to prevent certain uses of the Services;
- k) violate any Intellectual Property Right of any third party or behave in a manner that is unlawful, or otherwise in violation of our [Community Guidelines](#);
- l) misrepresent your affiliation with a person or entity;
- m) attempt to disable, impair, or destroy the Services or disrupt or inhibit any other user from using the Services;
- n) market or advertise through the Services;
- o) use the Service to violate any applicable law or to engage in illegal or deceptive, misleading or unethical trade practices and will obtain all authorizations, licenses, permits and consents required (whether from a third party, government or regulatory body) in connection with your access and use of the Service;
- p) misrepresent the relationship with IR;

6. Data Storage and Use

- 6.1. **User Data.** Use of the Services may depend on your transmission of certain data. You may also have to provide us with information about your employees or agents. You are responsible for the quality and integrity of your User Data and each of your software applications that interface with our Services ("Your Applications"). "User Data" is information or data that you provide to us through your use of our Services under these Terms. If you are a Managed Service Provider, "User Data" shall include all such data regarding your customers.
- 6.2. **Right to Use & Ownership.** You retain all rights and ownership in your User Data. We do not claim any ownership rights in the User Data. You grant to us, and our affiliates, a limited, non-exclusive, worldwide, royalty-free right to access, collect, host, use, process, copy, store, transmit, display, and create derivative works of the User Data. We retain all rights and ownership in such derivative works of the User Data. We also own any technical usage data derived from usage of the Services, along with any anonymized and aggregated data which shall not be considered "User Data" under these Terms.
- 6.3. **User Data Obligations.** You also represent and warrant that you have the necessary rights and licenses required to provide your User Data to IR in connection with your use of the Services and that by providing your User Data in this manner, you will not violate any privacy or Intellectual Property Rights of third parties, confidential relationships, contractual obligations, or laws or regulations. Without limiting the generality of the foregoing, you shall provide all



notices to, and obtain any consents from, any data subject as required by any applicable law, rule or regulation in connection with the processing of any personally identifiable information of such data subjects via the Services by IR and/or you. You shall not process or submit to the Services any data that includes any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act, unless you enter into a separate agreement with IR relating to the processing of such data;

(ii) government issued identification numbers, including Social Security numbers, driver's license numbers and other state-issued identification numbers; (iii) financial account information, including bank account numbers; (iv) payment card data, including credit card or debit card numbers; or (v) "sensitive" personal data, as defined under the General Data Protection Regulation (EU)2016/679 ("GDPR"). The IR [Privacy Policy](#) governs any of the personal information that you provide to us. If you do not agree to the terms of IR's Privacy Policy, you must not use our Services.

- 6.4. **Emergency or Legal Access.** You further acknowledge and agree that we may access or disclose User Data, including the content of communications, if necessary to:
- a) investigate, prevent, or take action regarding illegal activities, suspected fraud, violations of IR's terms of use, or as otherwise required to comply with relevant laws, regulation, legal process or a government request (including to meet national security or law enforcement requirements) or to respond to subpoenas or warrants served on IR, its agents or partners; or
 - b) respond to an emergency which we believe in good faith requires us to disclose data to assist in preventing a death or serious bodily injury; or
 - c) protect or defend the rights, security, integrity or property of IR or users of the products or related services or to enforce our agreements and policies.
- 6.5. **User Option to Encrypt.** You acknowledge that it is your responsibility to encrypt the transmission of your Data should you wish to protect it. In the event you decide not to utilize any encryption and transmit your Data unencrypted over a network, you assume all related risks for doing so. IR will not be liable for any liabilities arising from your use of the Services (including your transmission of User Data) over the internet or other network.
- 6.6. You are responsible for backing up all user data and IR shall not be liable for the deletion, correction, destruction, damage or loss of your data not caused directly by IR.

7. IR Proprietary Rights

- 7.1. **IR Proprietary Rights.** "Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright (including rights in software and databases), trademarks, service marks, trade secrets, patents, patent applications, rights in Confidential Information, any work product or code created in the provisioning of supplemental services, and all other intellectual property conferred by statute, at common law or in equity and wherever existing. Except with respect to your User Data, IR and our suppliers own and retain all rights, title and interest, including all Intellectual Property Rights in the Services and any proprietary Software. IR's Software and other technology that may be used to provide the Services are protected by copyright, trademark, and other laws of both the United States and other countries. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Service. IR's and/or its suppliers reserve all rights not expressly granted to you. IR owns and retains all rights in and to its trademarks and trade names and these Terms do not grant you any license to use the IR trademarks, logos, domain names, or other brand features except as expressly permitted for Managed Services provision.
- 7.2. **Violations.** Despite the restrictions herein, if you invent or develop or cause or permit any person to invent or develop any variation, adaption or improvement to the Service, or any computer program based upon the Service (hereinafter "Restricted Development") all rights, title and interest in any portion of the Service incorporated in the Restricted Development are the sole property of IR. You agree that all right, title and interest to all Intellectual Property Rights in any Restricted Development are hereby assigned to IR.
- 7.3. **Copying Rights.** You may only make a reasonable number of copies of portions of the Documentation included with the Service solely for internal business purposes, provided such copies bear all of IR's or its supplier's copyright, trademarks, proprietary and other notices that appear on the original. Except as expressly permitted, you must not make, nor permit



any other person to make, copies, transcriptions, notes or records, store, translate, sell, lease, or otherwise transfer or distribute any of the Documentation in whole or in part.

8. Confidentiality

8.1. **Confidentiality.** As part of your Subscription to the Services or whilst using and performing the Service, the Parties may exchange confidential information and one Party (the "Owner") may disclose to the other Party (the "Recipient"), information that it considers proprietary or confidential. "Confidential Information" means any information or data, regardless of whether it is in tangible form, disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure. "Confidential Information" does not include any information which:

(i) is publicly available through no fault of the Recipient; (ii) was properly known to the Recipient, without restriction, prior to disclosure by the disclosing party; (iii) was properly disclosed to the Recipient, without restriction, by another person without violation of the Owner's rights; (iv) is independently developed by the Recipient without use of or reference to the Owner's Confidential Information; or (v) Information publicly known that is generally employed by the trade, business or industry at or after the time either Party first learns of such information, or generic information or knowledge, which either Party would have learned in the course of its work in the trade, business or industry. Each party agrees that it will use the Confidential Information of the other party only to further the purposes of the Services and shall not use same for its own or any other party's benefit or for the benefit and it will not disclose such information to any third party without the Owner's prior written consent. Each party may only disclose Confidential Information to its personnel (being employees or individual contractors) and legal and accounting advisers having a need to know, and who are under non-disclosure obligations no less restrictive than in these Terms. Each party agrees to exercise no less than a reasonable degree of care in protecting the Confidential Information from unauthorized use and disclosure. Either party may disclose the Confidential Information of the other party as required by law, upon prior written notice to the other party (where allowed by law); provided that such party will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law. Each party shall reproduce the other's proprietary and confidential markings on any authorized copy it makes of the Confidential Information. Each party shall promptly notify the other if it becomes aware of any unauthorized access, use or disclosure of Confidential Information and must give Owner all reasonable assistance in connection with any action, demand, claim or proceeding attempting to reclaim or restrict the disclosure of such Confidential Information. Due to the unique nature of the Confidential Information, each Party understands and agrees that equitable relief may apply in addition to any other rights available, to enforce the rights and obligations set forth in these Terms.

9. Indemnity

9.1. **Indemnification.** You agree to defend, indemnify and hold IR, its parents, subsidiaries, affiliates, officers, agents, employees, resellers or other partners and licensors ("Indemnified Parties") harmless from and against any actual or threatened third party claim, demand, loss, liability, proceeding or liability incurred or suffered or damages, including reasonable legal costs, proceeding or liability incurred or suffered by any of the Indemnified Parties arising directly or indirectly from or related to:

- a) your User Data, or the use thereof, including but not limited to allegations that any processing of your Data by IR and/or you under these Terms violates any applicable law or regulation, or infringes the privacy or Intellectual Property Rights of a third party;
- b) your User Content;
- c) your use or any unauthorized use of the Service;
- d) your breach of these Terms, or
- e) your violation of any applicable law

IR and its affiliates will cooperate as fully as reasonably required in the defense of any claim, at your expense. We reserve the right, at your expense, to retain separate counsel for ourselves in connection with any claim or, if you have not responded reasonably to the



applicable claim, to assume the exclusive defense and control of any claim in which you are a named party and that is otherwise subject to indemnification under this Section 9.1. You will pay all costs, reasonable attorneys' fees and any settlement amounts or damages awarded against us in connection with any claim. You will also be liable to us for any costs and attorneys' fees we incur to establish or enforce our right to indemnification under this Section 9.1.

- 9.2. **Service Indemnity.** IR shall indemnify, defend and hold you harmless from and against any claims, actions, or demands including without limitation all damages and costs, reasonable attorneys' fees, finally awarded against you and arising from any claim by a third party alleging that the Service, or any part thereof, directly infringes or misappropriates any patent, trademark, copyright, or Trade Secret right of any third party in effect in the United States, UK, Germany, Australia, Singapore (hereinafter referred to collectively as "Claim"), provided that you promptly notify IR in writing of any such Claim, allow IR sole control of the defense or settlement of such Claim and provide at IR's request, reasonable information and assistance to IR in the defense of the Claim. Upon notice of any Claim or upon reasonable belief of a likelihood of such a Claim, you shall permit IR, at IR's option, to replace or modify any affected Service to avoid infringement, or to procure for you the right to continue to use such Service or substitute other suitable, substantially functionally- equivalent, non-infringing software. If none of these alternatives is reasonably possible, IR may as its sole liability in regard to such return refund the license fee paid by you, for the remaining term of the Order. IR shall have no obligation with respect to Claims to the extent that they are based upon:
- a) the combination of any portion of the Service (including Software) with any items not provided by IR, where, in the absence of such incorporated or combined item, there would not have been infringement;
 - b) any modification or change to the Service by you or any third party, if in the absence of such alteration or modification the Service would not be infringing;
 - c) your failure to implement updated, revised or repaired modifications or replacements to Software, or any portion of the Services provided by IR to address any alleged infringement; or
 - d) any Intellectual Property Right in which you, or any affiliate of yours, has a proprietary interest.

This Section 9.2 states the entire liability of IR with respect to indemnification or liability for any Claim of infringement of patents, copyrights or other proprietary rights by the Service or any part thereof or by its use or operation.

10. Limitation of Liability

- 10.1. **Own Skill and Judgment.** You acknowledge that in acquiring and licensing the Service that you relied on your own skill and judgment in the selection of the Service and in determining the use and result, which you intend to obtain from the Service. You further acknowledge that no promise, representation or warranty has been made by IR, or any other person, in respect of the profitability, benefits or any other consequence in the use of the Service, or in respect of the suitability of the Service to your operations and business. Without limitation, you acknowledge that IR Documentation contains adequate information for the proper use by you of the Service.
- 10.2. **IR's Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL IR, ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES OR COSTS (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS), OR FOR ANY LOSS OF USE OR GOODWILL, INTERRUPTION OF BUSINESS, COMPUTER FAILURE OR MALFUNCTION, LOSS OR INACCURACY OF BUSINESS INFORMATION OR DATA, LOST OR ANTICIPATED LOSS OF PROFITS OR SAVINGS, REVENUE, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ADVANTAGE OR DATA HOWSOEVER DESCRIBED OR CLAIMED; REGARDLESS OF LEGAL THEORY, WHETHER IN CONTRACT OR IN TORT INCLUDING NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT IR HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN THE POSSIBILITY OF SUCH, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IR'S MAXIMUM AGGREGATE LIABILITY FOR ANY PROVEN CAUSE OF ACTION UNDER OR RELATED TO THESE TERMS SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE AMOUNTS YOU PAID TO IR IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING



THE INCIDENT GIVING RISE TO THE CLAIM AS IDENTIFIED IN THE PARTICULAR ORDER THAT IS THE SUBJECT OF THE CAUSE OF ACTION. IF THE LIABILITY DOES NOT ARISE IN RELATION TO A SPECIFIC ORDER, THE LIMITATION IS THE SUM OF THE AMOUNTS PAID BY YOU IN THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE THEN CURRENT CLAIM ARISING FOR THE SERVICE. THIS LIMIT IS FOR ONE OR MORE CLAIMS AND THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THE LIMIT. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN IR AND YOU AND THAT, IN ITS ABSENCE, THE ECONOMIC TERMS OF THESE TERMS WOULD BE SUBSTANTIALLY DIFFERENT.

- 10.3. **Non-excludable rights implied by statute.** Nothing in these Terms excludes, restricts or modifies any condition, warranty, right or remedy, obligation or liability which is implied or conferred on either Party by any applicable law insofar that it cannot be lawfully excluded, restricted or modified by agreement. To the fullest extent permitted by law, the liability of IR for a breach of a non-excludable condition or warranty referred to in this Section 10, is limited to any one or more of the following, at IR's absolute option to the supplying of the services again, or the payment of the cost of having the services supplied again.

11. Term and Termination

- 11.1. **Term.** These Terms shall govern any Subscription that you acquire to the Services or any other use by you of the Services. These Terms shall become effective upon your first use of the IR Website or Subscription and, subject to IR's right to modify the Terms as described in Section 11.2 below shall remain in effect for so long as you use or subscribe to IR Services.
- 11.2. **Termination.** The Service will terminate at the end of the Subscription Term specified in the applicable Subscription Order.
- 11.3. **IR May Modify these Terms.** IR may update these Terms from time to time. The most current version of these Terms will be posted on the Website. When changes are made, IR will make a new copy of the Terms available at the Website. We will also update the "Last Updated" date at the top of the Terms of Service. Revised Terms will supersede prior versions. Unless we say otherwise, revisions will be effective upon the "Last Updated" date; provided, however, that if you have a committed Subscription to the Services, the Revised Terms will not be applicable until the end of the Term and will be applicable to any renewal Term. We may require you to provide consent to the updated Terms in a specified manner before further use of the Service is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Service. Otherwise, your continued access or use of the Service constitutes your acceptance of such change(s).
- 11.4. **Termination for Non-compliance.** We may suspend or terminate your use of the Service if you are not complying with these Terms, or if you use the Services in any way that could cause us legal liability or disrupt others' use of the Services, or in the event the you make a general assignment for the benefit of creditors, file a voluntary petition in bankruptcy or for reorganization under the bankruptcy laws or if any such petition is filed against you, or if a receiver or trustee is appointed for you, or if you do not continue to transact business as a going concern or takes any steps to cease business, dissolve, or liquidate. If we suspend or terminate your use under this Section 11.4, we will make commercially reasonable attempts to let you know in advance. IR will not have any liability whatsoever to you for any suspension or termination, including for deletion of your User Data. You will not be entitled to a refund of any fees that were paid and you will pay IR in full any remaining unpaid amounts specified in the applicable Order that become payable prior to the effective date of such termination specifically the Subscription Fee for the remainder of the Term.
- 11.5. Termination of these Terms, whether by lapse of time or otherwise, shall be without prejudice to any right or remedy which may have accrued to IR or you or may thereafter so accrue.
- 11.6. **Survival of Obligations.** All provisions of these Terms, which by their nature should survive, shall survive termination or expiration of Services, including without limitation ownership provisions, confidentiality obligations, warranty disclaimers and limitations of liability, and will continue to the benefit of and be enforceable by IR.

12. General Website Terms

- 12.1. **Copyright Infringement.** IR respects the Intellectual Property Rights of others and we expect our End Users to do the same. We respond to notices of copyright infringement consistent with



the Digital Millennium Copyright Act ("DMCA"). If you believe that your work has been infringed in connection with the Services or access to your content was disabled or removed by IR as a result of an improper copyright infringement notice, please notify us at legal@ir.com.

122. **Forums.** Your IR account provides you access to the IR Community Forums and other public areas on the Service (collectively, the "Forums"). By accessing the Forums, you acknowledge that you are solely liable and responsible for how you use the Forums, as well as any damages that may result from the disclosure of your User Content. You also acknowledge that it is possible that you will be exposed to User Content from others that you may consider offensive, indecent, or otherwise objectionable. Views expressed on the Forums do not necessarily reflect IR's views. IR does not endorse User Content posted by you or others. Certain User Content from others may be incorrectly labelled, rated, or categorized. Your use of the Forums is subject to these Terms and our [Community Guidelines](#).
123. **License to Your Content.** You grant IR a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive and fully sub-licensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display, User Content (in whole or in part) for the purposes of operating and providing the Services to you. Please remember that other users may search for, see, use, modify and reproduce any of your User Content that you submit to any Forum or other "public" areas of the Service. You warrant that the holder of any worldwide Intellectual Property Right, including moral rights, in your User Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not IR, are responsible for all your User Content.
124. **No Obligation to Pre-Screen User Content.** You acknowledge that IR has no obligation to pre-screen any information, data, text, software, music, sound, photographs, video, messages, tags or other materials submitted by you or other End Users ("User Content") posted or otherwise made available by End Users and accessible through the Service ("IR Content"), although we reserve the right in our sole discretion to pre-screen, refuse or remove any User Content. By entering into the Terms, you provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of your User Content and that we reserve the right to remove any User Content that violates the Terms or is otherwise objectionable. If we pre-screen, refuse or remove any User Content, you acknowledge that we will do so for our benefit, not yours.
125. **Storage.** Unless expressly agreed by IR in writing elsewhere, we have no obligation to store any of your content that you upload, post, email, transmit or otherwise make available on or through the Service. We have no responsibility or liability for the deletion or accuracy of any User Content, including the failure to store, transmit or receive transmission of your User Content; or the storage or transmission of other communications originating with or involving use of the Service.
126. **Feedback.** We appreciate your ideas, comments, suggestions, documents and/or proposals that you choose to share with us for any purpose, ("Feedback"). Feedback specifically excludes User Data or User Content. You agree that IR owns all right, title and interest including all Intellectual Property Rights to the Feedback that you or any End Users authorized by you provide in the use of the Service. We are not under any obligation of confidentiality with respect to your Feedback.

13. Trials and Beta Services.

- 13.1. You may be provided beta, trial, early adopter, proof of concept, evaluation, or other promotional services ("Trial" or "Trial Services") that provides you with access to the Services. Such Trial Services will be governed by these Terms and an accompanying letter or order which will outline the specifics of the Trial Services. A Trial Service may be used only to test and evaluate a pre-release. A Trial Service may be terminated by IR upon written notice at any time. A Trial Service may only be used for evaluation purposes and may not be used for production purposes. TRIAL SERVICES ARE NOT GENERALLY AVAILABLE AND MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS. SUCH TRIAL SERVICES ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND EXPRESS OR IMPLIED, AND MAY BE MODIFIED OR DISCONTINUED AT ANY TIME AT OUR SOLE DISCRETION. NOTWITHSTANDING ANY PUBLISHED DOCUMENTATION THAT STATES OTHERWISE, IR DOES NOT WARRANT THAT THE TRIAL SERVICES WILL BE ERROR-FREE OR THAT



THEY WILL MEET ANY SPECIFIED SERVICE LEVEL, OR WILL OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

14. Export Regulations

- 14.1. Our Services, which includes any Software or data we may provide in connection with those Services, may be subject to applicable export control laws, regulations, and rules and economic sanctions regulations in the United States and other jurisdictions. In receiving this Software or our Services, you agree to comply strictly with all domestic and international export laws and economic sanctions regulations as they apply to this Software and our Services, and to the extent consistent with these Terms, to obtain at your own expense any necessary license or other authorization to export, re-export, or transfer such Software or our other aspects of our Services. We shall have no liability or obligation if the responsible government authorities decline to issue any required export licenses, or if such licenses are not issued in a timely manner, but shall use commercially reasonable efforts to inform you of such decline. These laws include restrictions on destinations, End Users, and end use. You shall not permit End Users to access or use the Service in an embargoed country. Without limitation, you may not transfer any such Software or other aspect of our Service without U.S. government authorization to any entity on a U.S. government exclusion list. You represent that you are not on a U.S. government exclusion list or under the control of or an agent for any entity on such a list, and you further warrant that you will immediately discontinue use of our Software and Services if you become placed on any such list or under the control of or an agent for any entity placed on such a list.
- 14.2. You represent that you are not a person barred from using the Service under the laws of the United States, your place of residence or any other applicable jurisdiction and are not prohibited by any legal sanction from entering into the transactions contemplated hereunder.

15. Governing Law and Jurisdiction

- 15.1. **Governing Law.** These Terms and any action related thereto will be governed and interpreted by and under the law of the applicable Integrated Research entity: If the Licensor is Integrated Research UK Ltd., these Terms shall be governed by the laws of England and Wales. If the Licensor is Integrated Research, Inc., these Terms shall be governed by the laws of the State of Colorado, United States of America. If the Licensor (Singapore) Pte. Ltd, these Terms shall be governed by the laws of Singapore. If the Licensor is Integrated Research Limited, these Terms shall be governed by the laws of the State of New South Wales, Australia. If the Licensor is Integrated Research Germany GmbH, these Terms shall be governed by the laws of the Federal Republic of Germany. Each Party irrevocably submits that the exclusive jurisdiction and venue shall be in the capital city of the state (for the US and Australia) or country whose laws govern these Terms, without giving effect to any principles that provide for the application of the law of another jurisdiction, in respect of all matters arising out of or relating to these Terms, its performance or subject matter. These Terms will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.



16. Mediation and Arbitration

- 16.1. **Referral to the ICC.** In the event of any dispute arising out of or in connection with these Terms, if not resolved informally through negotiation between the parties, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for Mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled under the Rules of Arbitration of the International Chamber of Commerce, administered by the ICC, by a single arbitrator appointed in accordance with the said Rules of Arbitration. The arbitrator shall have no right to declare any Intellectual Property Right of either Party to be void or invalid. The mediation and arbitration shall take place in the in the capital city of the state (for the US and Australia) or country whose laws govern these Terms. Other than those matters involving injunctive relief or any action to protect our Intellectual Property Rights or any action necessary to enforce the award of the arbitrator, the Parties agree that the provisions of this Section 16 are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any jurisdiction or venue in any Dispute. Nothing in this Section 16 prevents the Parties from exercising their right to terminate these Terms subject to the provisions of these Terms. Any award entered by the arbitrator(s) shall be final and judgment thereon may be entered in any court having jurisdiction. The prevailing Party shall be entitled to recovery of costs, fees (including reasonable attorney's fees) and/or taxes paid or incurred in obtaining the award. Furthermore, any costs, fees or taxes involved in enforcing the award shall be fully assessed against and paid by the Party resisting enforcement of the award.
- 16.2. **Class Action Waiver.** Both you and your affiliates, on one hand, and IR and its affiliates on the other hand, agree that any claims or controversies between us must be brought against each other on an individual basis only. That means neither you and your affiliates on one hand nor IR and its affiliates on the other hand can bring a claim as a plaintiff or class member in a class action, consolidated action, or representative action. The arbitrator cannot combine more than one person's or entity's claims into a single case, and cannot preside over any consolidated, class or representative proceeding (unless we agree otherwise). And, the arbitrator's decision or award in one person's or entity's case can only impact the person or entity that brought the claim, not other IR customers, and cannot be used to decide other disputes with other customers.
- 16.3. **Interim Relief.** Notwithstanding the foregoing, either party shall have the right to seek immediate judicial relief, prior to mediation or arbitration, to prevent irreparable harm to such party pending resolution of the matter.

17. General Terms

- 17.1. **Entire Agreement.** These Terms and each fully executed Order hereto constitute the entire and exclusive agreement between IR and you with respect to the Service and supersede and replace any other agreements, terms and conditions, proposals (oral or written), arrangements, representations, conditions, warranties, covenants and all other communications or understandings that may have existed or may exist applicable to the Services. Purchase orders placed by you shall be for the sole purpose of specifying the Services that you wish to purchase. Any other terms stated in any purchase order delivered to IR by you shall have no effect. These Terms create no third- party beneficiary rights.
- 17.2. **No Waiver.** Failure of a Party to exercise a right, does not waive that right or prevent its exercise later. No waiver shall be effective unless in writing and signed by IR.
- 17.3. **Severability.** If a provision is finally determined to be illegal, contrary to public policy, unenforceable, invalid, or void under any law in any jurisdiction ("Invalid Term"); the remaining provisions of these Terms will remain in full effect. Such Invalid Term(s) must, in relation to that jurisdiction: a) be read down to the minimum extent necessary to achieve its validity, if applicable; and b) be severed from these Terms in any other case; without invalidating or affecting the remaining provisions of these Terms or the validity of that



provision in any other jurisdiction.

174. **Assignment.** You may not assign any of your rights, in whole or in part, in these Terms (whether voluntarily, involuntarily, by way of merger, by operation of law, or otherwise), and any such attempt is void, but IR may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services. IR may assign, pledge, transfer or otherwise convey any or all of IR's right, title and interest in any or all the fees and rights to receive payment and its right to enforce these Terms in accordance with its terms. You acknowledge and agree that you will not assert against any assignee of IR any claim or defense you may have against IR regarding your obligations to make payment of the fees. You will reimburse IR for all costs of collection, including but not limited to reasonable attorney's fees, incurred by IR or its assignee in any action to enforce its rights under these Terms and to collect any fees due and payable herein. These Terms binds and benefits the Parties and their respective successors and permitted assigns.
175. **Force Majeure.** IR will not be responsible for any failure to perform or delay in performing any of its obligations under these Terms where and to the extent that such failure or delay results directly or indirectly from an event beyond IR's reasonable control. IR's obligations under these Terms are suspended, to the extent to which they are affected by the relevant Force Majeure event, for the duration of the Force Majeure event
176. **Publicity.** Both Parties shall obtain the other's written consent before publicly using any advertising, written sales promotion, press releases or other publicity matters relating to these Terms; provided, however, that IR shall have the right, at its own expense to refer to you and a factual description of the IR Services provided under these Terms and reproduce, publicly display, and otherwise use your logo(s) in one press release announcing you as a customer and in IR's list of references, promotional materials (including on IR's Web site, blogs, or social media), internal business planning documents, annual report to shareholders and whenever necessary to comply with generally accepted accounting principles or applicable laws.
177. **No Future Product Guarantee.** Any information provided by IR regarding potential future products, features, or functionality is intended to outline our general product direction and should not be relied upon by you in making a purchasing decision. Any information shared with you regarding potential future products is not a commitment, promise, or legal obligation to deliver any material, code, or functionality. The development, release, and timing of any future features or functionality described for our products remains at IR's sole discretion and may be altered or withdrawn at any time without notice.

18. Notices

181. Where IR requires that you provide an e-mail address, you are responsible for providing us with your most current e-mail address. If the last e-mail address you provided to us is not valid, or for any reason is not capable of delivering to you any notices required/permitted by the Terms, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to us at the following address: Integrated Research Limited, Level 9, 100 Pacific Highway, North Sydney, NSW 2060, Australia. Notices to IR shall be copied to legal@ir.com Attn: Legal. Any notice demand, certification or other communication given or required by you as contained in these Terms will be in writing, in the English language and must be signed by your authorized representative. It must be forwarded by registered or certified airmail (postage prepaid, and return receipt requested) or courier or other delivery service (which can provide evidence of delivery), to IR. All such notices shall be effective when delivery is made or upon signed delivery.
182. **Electronic Communications.** The communications between you and IR use electronic means, whether you visit the Service or send us e-mails, or whether we post notices on the Service or communicate with you via e-mail. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. Your consent in this Section 18.2 does not affect your statutory rights.
183. **Government Use.** If you are a U.S. government entity, you acknowledge that any Services provided are "Commercial Items" as defined at 48 C.F.R. 2.101, and are being provided as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212. We provide our Services, including related Software and technology, for ultimate



federal government end use solely in accordance with the terms of these Terms. If you (or any of your End Users) are an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of our Services, or any related documentation of any kind, including technical data, Software, and manuals, is restricted by these Terms. All other use is prohibited and no rights other than those provided in these Terms are conferred. Our Services were developed fully at private expense.

19. For Customers who reside in the European Union only:

- 19.1. You will ensure that IR is enabled to use all User Data as necessary to provide the Services.
- 19.2. The primary characteristics of the Services, as agreed upon between you and IR will remain available to you during the Term.
- 19.3. For Customers who reside in Germany, the following shall apply in relation to Warranties.
 - a) IR warrants that for a period of 12 months from that date on which you enter into these Terms, the Services will materially comply with the specifications as agreed upon between you and IR; All further warranties are excluded.
 - b) You will have a reasonable period from the date of any charge to dispute such charge.
- 19.4. The following shall apply in relation to the limitation of liability:
 - a) The Parties shall only be fully liable for intent and gross negligence as well as damages caused by injury to life, body or health;
 - b) In an event of slight negligence, the Parties shall be liable only for breaches of a material contractual obligation (cardinal duty). A "cardinal duty" in the sense of this provision is an obligation whose fulfilment makes the processing of these Terms possible in the first place and on the fulfilment of which the other Party may therefore generally rely;
 - c) In any of the above-mentioned cases, the Parties shall not be liable for any lack of commercial success, loss profits and indirect damages
 - d) Liability in accordance with the above clauses shall be limited to the typical, foreseeable damages; and
 - e) Except where otherwise stated in these Terms, the Parties shall not be liable for any loss or damage or any costs, expenses or other claims including without limitation loss of profit, business, revenue, goodwill or anticipated savings, loss of any data or information and/or special or indirect loss or consequential loss or otherwise which arise out of or in connection with these Terms.
- 19.5. IR may amend or modify these Terms from time to time, in which case the new agreement will supersede prior versions. If we determine the update is material, IR will notify Customer via e-mail not less than 30 days prior to the effective date of any such amendment or modification and will inform you about the intended amendments or modifications. If you do not object to the amendment or modification within 30 days from aforementioned notice, such non-objection may be relied upon by IR as your consent to any such amendment.

If you have any questions, you can reach the IR team at legal@ir.com or contact us at the following address:

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