



# Reseller Agreement

Effective: 21 December 2023

## 1. Introduction

Welcome to IR. This Reseller Agreement (the "Agreement") contains the legal terms and conditions that governs the Resell Partner's appointment for the re-sale of IR Software. This Agreement is entered into on behalf of Partner and the Integrated Research entity (i) which has provided you with a written order (hereafter "Order") or (ii) 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 this Agreement, the term Partner means a reseller and this Agreement is not intended to create a legal partnership between the two parties.

BEFORE PARTNER SUBMITS AN ORDER WITH IR PARTNER MUST READ, ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT BELOW. BY SUBMITTING AN ORDER FOR THE IR SOFTWARE PARTNER REPRESENTS THAT PARTNER EXPRESSLY ACCEPTS ALL TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT REFERENCED HEREIN, AND WILL BE LEGALLY BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. IF PARTNER DOES NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PARTNER SHALL NOT ORDER THE IR SOFTWARE. PARTNER WARRANTS THAT IT HAS FULL POWER AND AUTHORITY TO ENTER INTO AND PERFORM THIS AGREEMENT, AND THE PERSON ACCEPTING THIS AGREEMENT ON PARTNER'S BEHALF HAS BEEN DULY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT.

## 2. Background

- A. IR is the licensed distributor of software programs "Software" (as defined below) and provides Services related to the Software.
- B. Reseller wishes to become a business associate of IR with the right to market the Software on a non-exclusive basis in a specified geographic region ("Territory" as further defined below).
- C. Defined terms herein shall have the meaning as described in Section 24 below.

**The Parties** to this Agreement (individually as "Party" and collectively as "Parties") hereby agree as follows:

## 3. Appointment

- 3.1. IR hereby appoints Reseller as a non-exclusive reseller in the Territory and Reseller hereby accepts such appointment for the sale of Software or the provision of related Services. Reseller may sell to Licensees, as defined below,
  - a) license to use the Software,
  - b) Professional Services related to the Software, and
  - c) annual Maintenance Support contracts between IR and the Licensee.
- 3.2. Any Affiliate of the Reseller which places an Order shall become bound by the terms of this Agreement.
- 3.3. **End User Contracts**

All licenses and usage of IR's on premises Software products require a direct Software License Agreement between IR and the Licensee, and the Reseller shall not be a party to that agreement. The Software utilises an electronic "click through" End User License Agreement ("EULA") in the product installation and Reseller shall instruct Licensees of this feature (the EULA is located at: <http://www.ir.com/eula>). The Reseller shall have no authority to make any changes



to the EULA.

All licenses and usage of IR's software as a service products require a direct agreement between IR and the Licensee governing such products, and the Reseller shall not be a party to that agreement. The products utilise an electronic "click through" Terms of Service during product installation and provisioning and Reseller shall instruct Licensees of this feature (the Terms of Service is located at: <https://www.ir.com/legal/terms-of-service>). The Reseller shall have no authority to make any changes to the Terms of Service.

3.4. **Territory**

The Reseller's non-exclusive Territory is: Worldwide Territory. The Territory excludes any embargoed country.

3.5. **Licensing Details**

IR will provide the most recent version of the Software at the date the license is granted. Reseller may not utilise the Software itself in an MSP environment. Major Product Upgrades (i) are included for Subscription purchases or otherwise available via maintenance on a fixed license term or (ii) in exchange for a Major Product Upgrade fee for Licensees with a perpetual term. Maintenance Services are provided on an annual term unless specified otherwise in the Order.

## 4. **Term of Agreement**

4.1. This Agreement shall commence upon the Effective Date, specified in this Agreement, and subject to IR's right to modify the Agreement, shall continue in full force for a term of one (1) year ("Initial Term"). The Agreement shall renew automatically for successive one (1) year terms (each a "Renewal Term"), until terminated pursuant to Section 16 (the "Term").

4.2. The Term for any given Order has effect on and from the Delivery Date or commencement date or as otherwise stipulated in that Order and shall continue, unless terminated earlier in accordance with its terms, for the Order Term.

## 5. **Independent Contractor**

The Parties hereto agree that Reseller will operate as an independent contractor. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Reseller has no authority to bind IR to any obligation, contractual or otherwise, except that Reseller may sell licenses to use the Software and IR provided related Services, as provided herein. IR shall not reimburse Reseller for any expenses or costs incurred by Reseller in its performance under this Agreement.

## 6. **Pricing, Ordering, Payment and Delivery**

6.1. **Pricing**

The price that Reseller shall pay IR shall be as listed in a written Quote & Order or SOW provided by IR, or its agent, inclusive of any discounts.

6.2. **Ordering**

Reseller will solicit and accept a purchase order from the Licensee for each transaction and shall, upon receipt of the purchase order, place an Order with IR. Each Order will be numbered and shall provide relevant details of the license grant or Services to be provided. Orders are non-cancellable once accepted by IR. Reseller shall place orders via the IR order process, which will set out the precise scope of the supply. IR will provide the Software or Services ("Deliverables") to Reseller on the terms and conditions of this Agreement.

- a) Reseller may request IR to prepare a written Quote & Order for the Deliverables required.
- b) Reseller acknowledges that IR will not provide any Deliverables without a properly executed Order. An Order shall reference this Agreement and specify (1) the Software to be licensed, (2) either 8x5 Maintenance Support or 24x7 Maintenance Support, and/or (3) the Services to be provided by IR. The Order will also specify the price, requested license Commencement Date, Licensee name and address and phone number, Licensee e-mail contact, installation location and any other information specified by IR. Licensee may install and use the Software only in the configuration and for the number and scope of licenses acquired by Licensee as set forth in the applicable Order(s).
- c) The Reseller may place an Order in one of three ways:



- i) A schedule or SOW may be prepared by IR or its agent, and executed by both Parties and will incorporate the terms and conditions of this Agreement; or
  - ii) A written Quote & Order from IR or its agent, once accepted, signed and returned to IR by Reseller can become an Order, incorporating the terms and conditions of the accepted Quote & Order and of this Agreement; or
  - iii) Reseller may deliver its purchase order document to IR containing the information necessary for an Order referencing a Quote & Order or schedule or SOW prepared by IR and this Agreement.
- d) The terms of this Agreement and Software License Agreement shall control all procurement of Software and Services by Reseller hereunder (even where an Order lacks an express reference to either agreement) and shall supersede additional or conflicting terms issued by Reseller at any time. No additional or supplementary terms shall be binding on either Party unless agreed to, in writing, and signed by that Party. Neither IR's acknowledgment of any Order, nor its commencement of performance shall constitute its acceptance of any additional, amending or supplementary terms proposed by Reseller in such purchase order or otherwise.
- e) IR may assign any Order to a local IR Affiliate for fulfilment. Such Order will be a separate individual contract between Reseller and the local IR Affiliate.

### **6.3. Payment**

Reseller shall pay each invoice in full within thirty (30) days of the date of IR's invoice. Reseller shall be responsible for collecting payment from the Licensee and will not be relieved of its obligation to pay IR because of non-payment by the Licensee. All payment obligations are absolute and unconditional and 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, except as set out in Section 6.4 below, in the currency EUR - Euro. IR reserves the right to issue the License Key or provide Services only after each payment is received. Interest shall accrue on overdue payments (at the highest rate permitted by law) calculated from and including the due date for payment until full payment of the outstanding amount is made.

- 6.4. Prices are exclusive of any sales, use, property or other tax, duty, levy or statutory charge ("Taxes"). The Reseller will pay or reimburse to IR, or its agent, an amount equal to any Taxes, including surcharges and penalties caused by Reseller, which may be imposed on IR or Reseller with respect to this Agreement or the transactions hereunder. Reseller is not responsible for any taxes based upon IR's net income.
- 6.5. IR shall invoice Reseller the gross value of the License Fee, Subscription Fee and/or Maintenance Fee, and Professional Service Fee. Reseller shall 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. Notwithstanding Section 6.4 above, the Foreign Withholding Tax will be paid by the Reseller on behalf of IR, which will bear this Tax.
- 6.6. For purchases of a fixed license term or a perpetual license, IR may increase the fee for maintenance services, upon renewal of the maintenance term, by the greater of a percentage equivalent to the increase in the last published Consumer Price Index (CPI) over the immediately preceding 12-month period in which the CPI relates or 5%.

## **7. Copying Rights**

- 7.1. Reseller may not copy any License Key supplied by IR, or its agent. Reseller may copy the documentation provided by IR solely for its internal use.
- 7.2. Reseller may only make copies of the Software used for demonstration and training purposes. Reseller must ensure that all copies of the Software made in accordance with this Agreement bear all of the copyright, proprietary and other notices that appear on the original Software and are kept within Reseller's effective control.
- 7.3. Reseller must not make, or permit any other person to make, copies, transcriptions, notes or records, store, translate, sell, lease, or otherwise transfer or distribute any of the Software in whole or in part, except as expressly permitted in this Agreement.

## **8. Representations and Warranties**



- 8.1. Each Party represents and warrants to the other that it complies and will continue to comply with the provision of all applicable laws and regulations, is not aware of any interest or obligation which may conflict with this Agreement and that it is not prohibited by any legal sanction from entering into the transactions contemplated hereunder.
- 8.2. IR provides the warranty regarding the Software directly to the Licensee by virtue of the EULA as specified above and in Section 6(a) of the EULA.

8.3. **Disclaimer**

EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED OR REFERENCED HEREIN, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS," AND IR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, IN CONNECTION WITH THE INSTALLATION AND USE OF THE SOFTWARE, WHETHER EXPRESS, IMPLIED, OR STATUTORY. IR EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IR DOES NOT WARRANT OR REPRESENT THAT USE OF SOFTWARE OR MAINTENANCE WILL MEET YOUR REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. IR MAKES NO WARRANTY RELATED TO THIRD-PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE. IR DOES NOT MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF USE, OF THE SOFTWARE OR SERVICES IN TERMS OF ACCURACY, RELIABILITY, OR OTHERWISE.

8.4. **Reseller Representations and Warranties**

Reseller represents and warrants that Reseller:

- a) will not make any representation or warranty to anyone with respect to the specification, features or capabilities of IR or the Software that is inconsistent with the literature distributed by IR; and
- b) shall protect the Software from unauthorized use, access or disclosure in the same manner as it protects its own similar confidential or proprietary information, and in no event less than the safeguards a reasonably prudent person would exercise under similar circumstances.

9. **Reseller Indemnity**

Reseller will at all times defend indemnify and hold IR and its officers, employees and agents ("Indemnified Parties") harmless from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of the Indemnified Parties arising, from any third-party claim based on or caused by,

- a) a breach by Reseller of its obligations under this Agreement; or
- b) any willful, unlawful or negligent act or omission of Reseller or any of its officers, employees, agents or contractors.

10. **Intellectual Property Rights and Indemnity**

10.1. **Ownership Rights**

Reseller understands and acknowledges that IR and/or its parents, subsidiaries and Affiliates retain all intellectual property rights, in and to the Software and IR's Confidential Information that it discloses hereunder and except as expressly stated herein, Reseller does not acquire any licenses or any other intellectual property rights therein. Reseller shall not attempt to modify, tamper with, disassemble, or merge all or any part of the Software with any other software or item (except the Software), or otherwise attempt to discover or disclose the methods and concepts embodied in the Software or the License Key, or cause or permit any third party to do so. Reseller shall not use the Software, or any Confidential Information obtained from IR hereunder, in the design, development, marketing or sale of any competitive product or for any other purpose not specifically set forth in this Agreement. Without the prior written consent of IR, Reseller shall not permit any other computer program to be written or developed based on the Software or on any IR Confidential Information.

- 10.2. IR may, without prior approval from or notice to Reseller, make changes to the Software and may discontinue the sale of any Software upon ninety (90) days prior written notice to Reseller.

10.3. **Software Indemnity**

IR shall indemnify, defend and hold Reseller harmless from and against any claims, actions, or demands including without limitation all damages finally awarded against the Reseller and costs,



including reasonable attorneys' fees arising from any claim by a third party alleging that the Software, 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 Reseller promptly notifies IR in writing of any such Claim, allows IR sole control of the defense or settlement of such Claim and provides, at IR's request, reasonable information and assistance to IR in the defense of the Claim. Upon notice of any Claim or upon the likelihood of such a Claim, Reseller shall permit IR, at IR's option, to replace or modify any affected Software to avoid infringement, or to procure for Reseller the right to continue to use and remarket such Software or substitute other substantially functionally-equivalent, non-infringing software. If none of these alternatives is reasonably possible, IR may require Reseller to return the affected Software to IR and IR's sole liability regarding such return shall be to refund the License Fee paid by Reseller, for the remaining term of the Order. IR shall have no obligation to indemnify Reseller for any Claim based upon the use of other than a current, unaltered version of the Software if such infringement would have been avoided by using such a current, unaltered version. IR shall have no obligation with respect to Claims to the extent that they are based upon:

- a) the combination of Software with any items not supplied by IR, where, in the absence of such incorporated or combined item, there would not be infringement;
- b) any modification or change to the Software by any entity other than IR or its agent, if, in the absence of such alteration or modification, the Software would not be infringing;
- c) any failure by Reseller or Licensee to implement updated, revised or repaired modifications or replacements distributed by IR to address any alleged infringement; or
- d) any intellectual property right in which Reseller or any Affiliate of Reseller has a proprietary interest.

This Section 10.3 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 Software or any part thereof or by its use or operation.

## **11. Trademarks**

- 11.1. IR grants to Reseller the right to use IR's trademarked "Prognosis" logo and related marks ("Prognosis Trademark") to promote the Software but Reseller shall be required to obtain the approval of IR prior to releasing the same. Such approval will not be unreasonably withheld. Reseller shall not reproduce, reference, or utilize any trade name or trademark of IR except solely for purposes of identifying IR's Software and/or Services. Reseller will not place any name or mark, on any products or packages or other materials which Reseller obtains from IR, other than the names and marks originally appearing thereon without the prior written approval of IR. Reseller agrees not to remove, alter, cover or obfuscate any product identification, trademark, copyright, confidentiality, proprietary, or other notices contained on or within the Software or permit others to do so.
- 11.2. Reseller acknowledges the validity of IR's trademarks and that the same are the property of IR. Reseller will not infringe upon, damage, or contest the rights of IR in any trademarks. Reseller will promptly discontinue all use of IR's trademarks upon termination of this Agreement. Should any such rights accrue to Reseller, Reseller hereby assigns all such rights to IR.

## **12. Insurance**

Reseller shall obtain and maintain in effect, during the term of this Agreement, appropriate Worker's Compensation, Employer's Liability, Commercial General Liability, and Professional Liability (Errors and Omissions) insurance, with limits customary and appropriate to the type of business being conducted by Reseller. Reseller shall provide evidence of such insurance to IR upon request. In addition, Reseller will carry adequate liability and property insurance at its own expense to cover such risks, and, if requested by IR, will supply a satisfactory certificate of such insurance.

## **13. Confidential Information**

### **13.1. Obligations**

The Parties may exchange information for the purposes of this Agreement. During the course of



this Agreement, one Party ("Owner") may disclose to the other Party ("Recipient"), information that it considers proprietary or confidential ("Confidential Information"). Each Party shall use reasonable commercial efforts to label or identify its Confidential Information as "Confidential" or "Proprietary". Each Party shall hold the other's Confidential Information in confidence and not reveal it to any third party. Recipient shall use the Owner's Confidential Information only to further the purposes of this Agreement and shall not use same for its own or any other party's benefit. Reseller will not disclose any Confidential Information, including, without limitation, prices or discounts, or terms of this Agreement to anyone other than personnel (being employees or individual contractors) and legal and accounting advisers, having a need to know in order to pursue the purposes of this Agreement, and who are under non-disclosure obligations no less restrictive than in this Agreement. Recipient will advise such personnel and advisers who receive Confidential Information of its confidential nature, and ensure that such personnel and advisers do not make any unauthorised use or disclosure of it, except as required by law.

- 13.2. Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its Confidential Information. The Recipient shall reproduce the Owner'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.
- 13.3. The obligations under this Confidential Information section 13 shall continue for so long as the Owner treats the Confidential Information disclosed to Recipient hereunder as confidential and for trade secrets, for the period that such information constitutes trade secrets under applicable law. Upon request and direction, each Party agrees to promptly return or destroy all originals and copies of any Confidential Information either may have obtained from the other.

#### **14. Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IR'S AGGREGATE MAXIMUM LIABILITY TO RESELLER , UNDER OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE VALUE OF INVOICES PAID BY RESELLER IN THE TRANSACTION IN THE TWELVE 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 OR IF THE LIABILITY DOES NOT ARISE IN RELATION TO A SPECIFIC ORDER, THE SUM OF THE AMOUNTS PAID BY RESELLER IN THE PREVIOUS TWELVE MONTHS IMMEDIATELY PRIOR TO THE THEN CURRENT CLAIM ARISING FOR THE SOFTWARE OR SERVICES. IN NO EVENT SHALL IR BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE LOSSES, DAMAGES, OR FOR ANY LOSS OF USE OR GOODWILL, INTERRUPTION OF BUSINESS, 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, HOWSOEVER DESCRIBED OR CLAIMED; WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH.

#### **15. Non-Solicitation**

Each Party agrees not to recruit any member of the other's staff, nor directly or indirectly encourage or solicit them to leave the employ of the other Party, during the period of this Agreement and for a period of one (1) year following its termination.

#### **16. Termination**

- 16.1. Each Software License will terminate at the end of the Term specified in the applicable Order. This Agreement may be terminated,
  - a) by an agreement in writing duly signed by the Parties hereto; or,
  - b) by either Party at will, with or without cause, upon not less than ninety (90) days' notice in writing, given, in accordance with Section 23, at any time after the first anniversary of the Effective Date; or
  - c) by IR under any of the following conditions:





- i) at any time if Reseller breaches any of the terms or conditions of this Agreement (other than the payment of money) or in the event of other acts of Reseller that will seriously or adversely affect the sales of Software and fails to remedy such breach within ten (10) days after written notice from IR; or
- ii) if Reseller fails to make any payment required under this Agreement and does not cure the same within ten (10) days of its due date.

#### 16.2. **Consequences of Termination**

- a) All rights and obligations to support any of the Software by Reseller will cease on termination of this Agreement. All rights to any further maintenance payments under all existing Software License Agreements will belong to IR and the Reseller agrees to pay to IR its portion of maintenance fees collected in advance from all existing Licensees for the period from the date of termination to the next date at which advance maintenance payments are due from the Licensees.
- b) Upon termination of this Agreement for any reason, any amounts that were payable to IR under this Agreement will be immediately due and payable, specifically the License Fee and the Maintenance Fee for the balance of the Order Term, all rights granted to Reseller under this Agreement will immediately cease. The termination of this Agreement shall not affect any End-User Licenses granted to Licensees, which shall survive in accordance with their terms. Upon termination of this Agreement, IR will have no obligation to refund to Reseller any fees paid by Reseller.
- c) IR will not, by reason of termination or non-renewal of the Reseller relationship hereby created, be liable for compensation, reimbursement or damages.
- d) All demonstration copies, sales instructions, undistributed price lists, data sheets, blueprints, advertising matter and any other data pertaining to IR or its customers, that may be furnished by IR to Reseller remain the property of IR. When requested by IR or upon termination of this Agreement, the Reseller will discontinue use of the Software, erase all copies of the Software from the Reseller's computers, and return to IR or destroy all copies of the Software on tangible media and certify in writing to IR that it has fully complied with these requirements.
- e) Termination of this Agreement, whether by lapse of time or otherwise, shall be without prejudice to any right or remedy which may have accrued to IR or Reseller or may thereafter so accrue.

16.3. All provisions of this Agreement, which by their nature should survive, shall survive termination or expiration of Licenses and Services, including without limitation confidentiality obligations, ownership provisions, warranty disclaimers and limitations of liability, and will continue to the benefit of and be enforceable by IR.

### 17. **Force Majeure**

17.1. Where any failure, interruption or delay by a Party in the performance of its obligations (except the payment of money owed) under this Agreement is caused, directly or indirectly, by a Force Majeure Event, the Party:

- a) is not liable for that failure or delay; and
- b) its obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

17.2. The Party seeking the benefit of this Section 17 shall give notice to the other as soon as practicable after becoming aware of the Force Majeure and shall proceed with all reasonable dispatch after the cessation of the circumstances giving rise to the Force Majeure to resume performance under this Agreement.

### 18. **Assignment**

18.1. This Agreement shall not be assigned or otherwise transferred by Reseller (whether voluntarily, involuntarily, by way of merger, by operation of law, or otherwise), in whole or in part, except with the prior written consent of IR, which IR may withhold in its sole discretion. Any Reseller or Licensee attempts to assign or otherwise transfer this Agreement or the Software without IR's prior written consent, shall be null and void and IR may terminate this Agreement upon written notice



to Reseller.

18.2. IR shall have the unqualified right without notice to or the consent of Reseller:

- a) to assign, pledge, transfer or otherwise convey any or all of IR's right, title and interest in any fees due and owing under the terms this Agreement and its right to enforce this Agreement in accordance with its terms, and
- b) to assign its rights to receive payment of all or any portion of the fees due and payable under the terms of this Agreement.

Reseller acknowledges and agrees that it shall not assert against IR or any assignee of IR any claim or defense Reseller may have against IR regarding its obligations to make payment of the fees due and owing under the terms of this Agreement. Reseller 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 this Agreement and to collect any fees due and payable herein.

18.3. This Agreement binds and benefits the Parties and their respective successors and permitted assigns under Section 18.1.

## 19. Anti-Corruption

Reseller understands and acknowledges United States and International laws, binding on IR and its Affiliates, as well as IR's corporate Foreign Corrupt Practices Act ("FCPA") compliance policy, which:

- a) prohibits any actual or attempted bribery of governmental officials for the purpose of gaining or retaining a business advantage on behalf of IR; and
- b) requires Reseller to maintain books and records that accurately and fairly record corporate expenditures made by Reseller to obtain business on IR's behalf.

Reseller understands that it may be requested to certify in writing to IR on an annual basis that it complies with 19.a) and 19.b) above. Reseller agrees that it shall not, directly or indirectly, make, cause, offer or promise to make payments of anything of value to any governmental official for the purpose of obtaining or retaining business related in any way to the Software and Services of IR or its Affiliates ("IR Business"). For purposes of this Section 19, the term "governmental official" includes: (1) both paid and unpaid government employees and officials; and (2) the employees and officials of: (i) state-owned businesses (whether wholly or partially owned); and (ii) quasi-governmental instrumentalities. Reseller agrees that it shall keep books and records that accurately and fairly reflect the nature of its corporate expenditures related to IR Business.

## 20. Export Regulations

Both Parties shall comply with all applicable laws, regulations and rules relating to the export of technical data, and shall not export or re-export any technical data, any products received from the disclosing Party or the direct product of such technical data in violation of such applicable laws, regulations and rules. Each Party represents that it is not named on any U.S. government denied-party list. Reseller shall not permit through resale, any Licensee access or use Software in an embargoed country or in violation of any export law or regulation.

## 21. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and interpreted in accordance with the laws of the applicable Integrated Research entity: If the Partner is Integrated Research UK Ltd., these Terms shall be governed by the laws of England and Wales. If the Partner is Integrated Research, Inc., these Terms shall be governed by the laws of the State of Colorado, United States of America. If the Partner (Singapore) Pte Ltd, these Terms shall be governed by the laws of Singapore. If the Partner is Integrated Research Limited, these Terms shall be governed by the laws of the State of . If the Partner 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.

## **22. Miscellaneous**

### **22.1. 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.

### **22.2. Rights Cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

### **22.3. Severability**

Any provision that is finally determined to be illegal, contrary to public policy, unenforceable, invalid, or void under any law in any jurisdiction ("Invalid Term") must, in relation to that jurisdiction: a) be read down to the minimum extent necessary to achieve its validity, if applicable; b) be severed from this Agreement in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction. The remaining provisions of this Agreement will remain in full effect.

### **22.4. Entire Agreement**

This Agreement and each fully executed Order hereto contain the entire and complete agreement between IR and Reseller and supersedes and replaces any other prior 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, whether oral or written. This Agreement creates no third-party beneficiary rights.

### **22.5. No right of set off**

Neither Party has a right of set-off against a payment due to another Party.

### **22.6. Variation**

Any variation to this agreement must be made in a signed writing between the Parties.

## **23. Notices**

Reseller may give notice to IR 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](mailto:legal@ir.com) Attn: Legal. Any notice demand, certification or other communication given or required by Reseller as contained in this Agreement will be in writing, in the English language and must be signed by an 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). All such notices shall be effective when delivery is made or upon signed delivery.

## **24. Definitions**

**"Agent"** means a person that is configured on a contact center System being managed by the Software. Where a contact center system does not have configurable agents, the number of unique extensions or resource identifiers will be a substitute.

**"Affiliate"** means, with regard to a given Party, any company or legally recognizable entity that directly or indirectly: (a) controls that Party; (b) is controlled by that Party; or (c) is under common control with that Party, where control is defined as possession of the power to direct or cause the direction of the management and policies of a such entity, through direct or indirect majority ownership or minimum percentage ownership that would grant the Party a controlling interest in such entity. An entity will be deemed an Affiliate only so long as such control exists.

**"Professional Services"** means any software related services requested by Licensee which will be provided by IR, or its agent, but does not include Maintenance Support Services, as specified in an Order. Formal requirements, Deliverables and pricing for Software Professional Services must be defined in a separate SOW or EO. IR will only schedule the project upon receipt of a signed SOW. IR reserves the right to change daily Professional Services rates from time to time.

**"Deliverables"** means Software, the Maintenance Support Services and Professional Services as specified in an Order.



**"Delivery Date"** means the date on which IR has furnished or shipped to the Licensee both the Software and the License Key, which enables use of the Software.

**"Documentation"** means all documentation relating to guidance and instruction in the use of the Software, provided with the current version of the Software by IR, to the Licensee or developed by IR in conjunction with the Licensee, which is the basis for all performance warranties.

**"Effective Date"** means the date upon which this Agreement is signed by both Parties and becomes effective.

**"Endpoint(s)"** means a unique extension or resource identifier.

**"Force Majeure Event"** means any act, event or cause, other than a lack of funds: (i) as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this Agreement or an Order; and (ii) that is beyond the reasonable control of that Party.

**"License Key"** means a security key, provided by IR, or its agent, which must be entered by the Licensee, upon installation of the Software, to activate the Software program(s) and any updates or modifications, which may be supplied by IR.

**"Licensee"** means an entity, as named in Order, situated in the Territory with whom the Reseller has contracted to supply the Software and/or Services.

**"Maintenance Support"** means any support services requested by Licensee which will be provided by IR, or its agent, and specified in an Order but does not include Professional Services. It includes Minor Product Upgrades, Major Product Upgrades, and technical support. For complete details on IR Support, please refer to the appropriate Customer Support Guide for (i) 8x5 Maintenance Support or (ii) 24x7 Maintenance Support located at the IR Reseller Portal. If you need access to the Reseller Portal, please ask your IR Channel Manager. Web Support Portal: <http://support.ir.com>.

**"Major Product Upgrades"** are new versions of Software, which may include bug fixes, enhancements and new features. They are indicated by an increase in version number to the left of the first decimal point (E.g. 10.2 to 11.0). Specifically, they do not include access to new Modules or new Platforms.

**"Minor Product Upgrades"** are new versions of Software, which may include bug fixes, enhancements and new features. They are indicated by an increase in the version number to the right of the first decimal point (E.g. 10.2 to 10.3). Specifically, they do not include access to new Modules or new Platforms.

**"Module"** is a separately licensed set of features, available within Software. There is no separate installation for a Module.

**"Order"** means a document agreed by IR and Reseller, in accordance with Section 6.1 of this Agreement, which provides the details of the particular software and software license term to be acquired by Licensee and the relevant Licence Fee and Maintenance Fee.

**"Platforms"** are the third-party devices and applications monitored by Software. When the Software is licensed, it includes a license for the current Platforms supported by the Software at that time.

**"Product Assurance"** is a subscription to all Major Product Upgrades for the licensed Software during the subscription period.

**"Product Upgrade Fee"** is a one-time purchase of the latest Major Product Upgrade for the licensed Software.

**"Services"** means any Professional Services and/or Maintenance Support and/or managed services.

**"Software"** means the software and software as a service program(s) (which are subject to change from time to time at the sole discretion of IR), the License Key, all accompanying Documentation and any updated or modified release that may be supplied by IR to the Licensee.



“**SOW**” or “**EO**” means a Statement of Work or Engagement Order respectively, defining requirements, deliverables and pricing for Professional Services.

“**Software License Agreement**” means a license agreement, referenced in Section 3.3 above, governing the use, by a Licensee, of the Software. The End User License may be described using the terminology of EULA (end user license agreement), MSLA (managed service software license agreement), or SLSA (software license and services agreement).

“**Subscription**” means a license to use the Software for a definitive period of time, that is not perpetual, as described in the relevant Order.

“**Subscription Fee**” means the fee specified in the Order that Licensee is charged for a Subscription to the Software for a defined period. The Subscription Fee includes both the License Fee and the Maintenance Fee, as stipulated in the Order.

“**System**” means the configuration of central processing units, terminals and other peripherals referred to in the applicable Order.

“**User(s)**” means a person or place (i.e. non-personal, common space, such as a conference room, reception foyer or server room) that is configured on a System being managed by the Software. Where a System does not have configurable Users, the number of unique extensions or resource identifiers will be a substitute.

## **25. BINDING EFFECT**

The Reseller acknowledges that it has read and understands the whole of this Agreement and agrees to be bound by its terms and conditions upon the acceptance of an Order from IR.