



Software License, Services & Reseller Agreement

This Software License, Services & Reseller Agreement, inclusive of the Software as a Service ("SaaS") Addendum and the Reseller Addendum (collectively the "Agreement") is entered into between you and the Integrated Research entity (i) which is a party to the Order agreement (ii) the Integrated Research entity from whom the software license key is issued (either directly or through a reseller) or the Integrated Research entity in your geography, which shall generally be (i) Integrated Research UK Limited (CN 3298802) for all licensees in United Kingdom and Ireland; (ii) Integrated Research Germany GmbH (HRB 220766) for all licensees in Continental Europe; (iii) Integrated Research, Inc. (CN 19941074335) for all licensees in North America and South America; (iv) Integrated Research (Singapore) Pte. Limited (CRN 201226155W) for licensees in Asia; or (v) for all other licensees worldwide, Integrated Research Limited (ACN 003 588 449) (collectively or individually known as "IR" or "Licensor"). As used in this Agreement, "you", and "Licensee" refers to the entity on whose behalf you are agreeing to this Agreement.

1. Grant of License

1.1. License Grant

Upon acceptance of an Order, IR grants Licensee the non-exclusive, non-transferable license(s) as set forth in the applicable Order(s) to use the Software. Except as specified below, Licensee shall operate the Software for internal business purposes only and not use the Software to operate as an Application Service Provider, Managed Service Provider, or provide consulting services, or any other commercial service related to the Software.

- 1.2. If you have obtained a Managed Service Provider license, upon acceptance of an Order, IR grants Licensee the non-exclusive, non-transferable license(s) as set forth in the applicable Order(s) to use the Software for internal business purposes and in the provision of Managed Services to its Customers only ("**Customer**" herein shall mean the Licensee's clients that are managed by the Licensee), provided that, Licensee requires the Customer(s) to agree to abide by terms and conditions at least as protective of IR as in this Agreement. The Software may be installed either at Licensee's facilities or at its Customer's facilities but operated solely by the Licensee for the allowed uses subject to limitations set out in this Agreement. Licensee will provide a current User list to IR on a monthly basis or upon the request of IR. The list must include the number of User(s) or Endpoint(s) being managed by Licensee on behalf of the Licensee's Customer(s).
- 1.3. The Licensee may change the System's location, or name, or may transfer use of the Software to another system, with the prior written consent of IR and payment to IR of any incidental cost to IR arising from such change or transfer. If the Software is transferred to another system in a higher pricing group than the original System, the Licensee will pay the difference between the original License Fee and IR's then current Software License Fee for the new System.
- 1.4. At no time shall the Licensee use or attempt to use the Software without the License Key.

2. Term of Agreement

- 2.1. This Agreement shall become effective upon your first use or installation of the Software or upon acquisition thereof and shall remain in effect for so long as you are licensed to use the Software, except as otherwise specified herein.
- 2.2. 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. If IR terminates this Agreement for cause prior to the expiration of any Order, then the Term of such Order will terminate on the date of termination of this Agreement.

3. Pricing, Ordering, Payment and Delivery

3.1. Pricing

Licensee shall pay IR for licensing Software, Maintenance Support or any Consulting Services as listed in a written Quote, Order, or SOW provided by IR, or its agent, and as then agreed between the Parties and detailed in an Order.



3.2. **Ordering**

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. Licensee shall place orders via the IR order process, which will set out the precise scope of the supply.

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).

The Licensee may place an Order by:

- a) An Order may be prepared by IR or its agent, and executed by both Parties and will incorporate the terms and conditions of this Agreement; or
- b) A written Quote & Order from IR or its agent, once accepted, signed and returned to IR by Licensee can become an Order, incorporating the terms and conditions of the accepted Quote & Order and of this Agreement; or
- c) Licensee may deliver its purchase order document to IR containing the information necessary for an Order, referencing: a Quote & Order, schedule or SOW prepared by IR; and this Agreement.

The terms of this Agreement shall control all procurement of Software and Services by Licensee hereunder (even where an Order lacks an express reference to Agreement) and shall supersede additional or conflicting terms issued by Licensee 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 Licensee in such purchase order or otherwise.

IR may assign any Order to a local IR Affiliate for fulfilment. Such Order will be a separate individual contract between Licensee and the local IR Affiliate and governed by the terms of this Agreement.

3.3. **Payment**

Licensee shall pay each invoice in full as provided in the Order. 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, defences and counterclaims for any reason, except as set out in Section 3.4 below, in the currency specified in the applicable Order. 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. IR specifically disclaims future price guarantees of any kind.

- 3.4. Prices are exclusive of any sales, use, property or other tax, duty, levy or statutory charge ("Taxes"). The Licensee will pay or reimburse to IR, or its agent, an amount equal to any Taxes, including surcharges and penalties caused by Licensee, which may be imposed on IR or Licensee with respect to this Agreement or the transactions hereunder. Licensee is not responsible for any taxes based upon IR's net income.

- 3.5. IR shall invoice Licensee the gross value of the License Fee, Subscription Fee and/or Maintenance Fee, and Consulting Service Fee. Licensee shall remit any applicable withholding tax to the appropriate Taxation/Treasury office on a timely basis and shall promptly provide IR with the requisite Foreign Tax Withholding documentation from the appropriate Taxation/Treasury office. Notwithstanding Section 3.4 above, the Foreign Withholding Tax will be paid by the Licensee on behalf of IR, which will bear this Tax.

- 3.6. 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%.

3.7. **Delivery**

Where Software is supplied under this Agreement, IR will perform the following responsibilities:

- a) IR will fulfil orders by delivering Software to the Licensee electronically or on a CD or DVD, followed by a security key ("License Key") sent via e-mail.



- b) IR will deliver to the Licensee, with the Software, one (1) full copy of all applicable Documentation.

Licensee must install the Software in accordance with IR's instructions and directions. At Licensee's request, IR shall install the Software. This will be deemed a Consulting Service in accordance with Section 25 of this Agreement.

Any risk in the Software immediately passes to Licensee on delivery. If the Software (or any part of them) are lost, corrupted or destroyed after they have been delivered to Licensee, at Licensee's request and sole cost, IR will replace the Software after the receipt of a written request from Licensee of such loss, corruption or destruction.

4. Access to Premises

4.1. Audit Rights

During the term of this Agreement and for two (2) years after termination or expiration, IR has the right to request utilisation reports as well as conduct an annual audit (unless another interval is specified in the Order) of the Licensee System to confirm that Licensee is acting within the scope of its license. IR will respect the security requirements of Licensee and Licensee will provide reasonable access to enable IR to complete the audit.

- 4.2. In the event the audit reveals that Licensee has exceeded the parameters of this Agreement, IR may invoice Licensee, and Licensee shall pay for such excess, from the date that Licensee exceeded the parameters of this Agreement.

5. Copying Rights

- 5.1. Licensee may only make copies of the Software for back-up and archival purposes, provided that the Licensee shall keep a record of each such back-up copy and the location of its storage and provide all such records to IR upon request. Licensee may copy the Documentation provided by IR solely for its internal use. Licensee may not copy any License Key supplied by IR or its agent.
- 5.2. If the Licensee is temporarily unable to use the Software on the System, Licensee may use it on another similar system at the same location(s) or a disaster recovery site designated by the Licensee for such time as the System is unable to be used.
- 5.3. Licensee 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 Licensee's effective control.
- 5.4. Licensee 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.

6. Maintenance Support Services

- 6.1. During the Term of this Agreement, where appropriate Software Maintenance Support services are purchased, IR shall allow the Licensee to download standard releases of any update or modification of the Software, or part thereof, with appropriate amendments to the User Manual within a reasonable time of such release, upon request by the Licensee.
- 6.2. During normal business hours as outlined online at <https://www.ir.com/contact-support> for the region of IR (the applicable Integrated Research entity), (excluding national holidays in the country of IR), IR or its agent, shall answer, by telephone, facsimile or email, questions in relation to the use of the Software by the Licensee.
- 6.3. IR shall optionally provide 24x7 support, coverage, definition and deliverables by both Parties under the arrangement described in the applicable Order. To activate the 24x7 support, Licensee shall pay an additional five percent (5%) of the then Current License List Price annually as shown in the applicable Order.
- 6.4. If the Licensee requires on-site support or design consultation, such Consulting Services may be provided by IR, or its agent pursuant to a separate SOW.
- 6.5. Any update or modification of the Software supplied to the Licensee under this Agreement shall (unless a separate Software License Agreement is entered into in respect of such release) considered as an addition to, as part of or as a replacement of all or part of the Software subject



to the same terms and conditions as the Software, but not so as to create a new Warranty Period under Section 8.2 nor to extend the Term of the applicable Order as defined therein.

- 6.6. Licensee is not obliged to accept any update or modification of the Software, but where Licensee elects not to accept any update or modification of the Software, IR will not be liable for any loss or damage that Licensee suffers as a result of defects in the Software, which could be remedied by the update or modification.
- 6.7. IR reserves the right to charge Licensee additional fees (which will have been notified to Licensee by IR and which may vary from time to time) for major technology upgrades to the Software.
- 6.8. Maintenance Support to be provided by IR, or its agent, under this Agreement do not include:
 - a) hardware maintenance services;
 - b) the supply or maintenance of peripheral equipment, accessories or consumables;
 - c) training of operating staff; or
 - d) investigation or corrections of errors in software other than the Software.
- 6.9. Licensee agrees that IR may collect and use Licensee's technical data and related information, including but not limited to technical information about Licensee's usage of the Software, to facilitate the provision of Software updates, Software Maintenance Support, benchmarking and other services related to the Software. IR's collection of technical data is limited to the data or information that Licensee provides to IR via the Software and related services. IR may use Licensee's data to improve its products and services, to provide the Software or services or otherwise to meet its obligations under this Agreement. If Licensee does not want to send usage data to IR, Licensee may opt out following instructions provided by Maintenance Support services.

7. Consulting Services

- 7.1. IR will perform Consulting Services only under and as set forth in an SOW, as defined below. If Licensee schedules Consulting Services outlined in an SOW prior to execution thereof it shall constitute acceptance of the terms of such SOW.
- 7.2. **Consulting Services Deliverables**

Licensee shall provide to IR the information, resources and equipment ("Licensee Deliverables") listed in the SOW. Should Licensee fail to provide proper Licensee Deliverables in a timely fashion, then IR shall be excused for not performing its responsibilities under the SOW in a timely manner. In addition, Licensee shall be responsible for any of IR's costs incurred solely due to any late or defective delivery caused by Licensee.
- 7.3. **Consulting Services Warranty**

IR warrants the Consulting Services will be performed in a timely and professional manner and otherwise in material accordance with each SOW;

IR warrants it will, at its own expense and as its sole obligation and the Licensee's exclusive remedy for any breach of this Consulting Services Warranty, use commercially reasonable efforts to correct any reproducible material problem that is a result of deficiencies in the Consulting Services provided hereunder, as reported to IR by Licensee in writing during the Consulting Services Warranty Period.
- 7.4. **On-Site Services**

If an SOW requires delivery of the Consulting Services on premise at Licensee location, the Licensee will pay or reimburse to IR, or its agent, for any travel expenses required for such Consulting Services.

To provide Consulting Services during on-site engagement, IR may require the following:

 - a) Physical access to a designated LAB, DEV, QA and Production environment(s), including after-hours access.
 - b) A work area and workstation with access to the Prognosis servers, Internet access for email and http/https and/or ftp access for downloading / uploading files, and Telephone access to local and toll-free numbers.
 - c) Licensee technical contacts to be made available with reasonable notice to assist with performance of the SOW. For example; line of business expert, network specialist, server operating system, firewall/security admin, or a specific device/element expert being scheduled for several hours to aid in a particular / relevant element of the deployment.
 - d) Licensee representative(s) for coordination, testing and acceptance.



7.5. Remote Services

IR may also require reliable and responsive remote access to Licensee's environment, as provided in an SOW, to provide Consulting Services, that may be required prior to or after an on-site visit.

7.6. Out of scope work

IR is not required to carry out, and Licensee is not required to pay any amount in respect of, Consulting Services outside the scope of this agreement unless and until a Change Request has been agreed as required by this Section 7.

7.7. Change request

If either Party requests a change to Consulting Services, or to an SOW, both Parties must follow the Change Control Process. IR will evaluate each such Change Request and not later than ten (10) working days following IR's receipt of the Change Request will provide a written response to the Change Request which shall identify any new or revised terms of performance applicable to the Change Request, including, without limitation, adjustments to fees and payment schedules, revised delivery schedules, and recovery of costs of any materials and resources rendered excess or obsolete as a result of the change. If a Change is required as a result of a change in law (including any regulatory regime or industry code of conduct), Licensee acknowledges that IR may charge Licensee for the cost of such change. IR may decline a Change Request for which IR determines it lacks sufficient resources to meet the requirements of the Change Request.

7.8. Acceptance of a Change Request

Should Licensee elect to proceed with such Change Request pursuant to the terms of IR's response, Licensee will provide to IR within ten (10) business days a written approval to perform the requested changes. If the approval is not received by IR within such ten (10) day period, IR shall deem the Change Request as having been withdrawn. As soon as reasonably possible after receipt of the approval, IR will commence performance of the Change Request. Upon a Change Request being approved, the Change Request, response and authorisation documents for each change (collectively the "Change Documents") shall be deemed incorporated into and made a part of the applicable SOW. In the event of a discrepancy between the Change Documents and any applicable SOW executed prior to such Change Documents, the terms of the Change Documents shall govern. In the event of a discrepancy between the terms of an SOW or Change Document and the terms of this Agreement (together with any amendments), the terms of this Agreement shall govern. In no event shall the SOW be altered, amended, enhanced or otherwise modified except in writing as set forth above.

7.9. Change in Licensee Policies and Procedures

If there is a material increase in the level of resources required to deliver the Consulting Services as a result of a change to any Licensee policy, project structure or procedure, Licensee acknowledges that IR may charge Licensee for the cost of such change.

7.10. Disputes in relation to Changes

If the parties fail to agree the terms of a change required within sixty (60) days of the date that either IR notifies Licensee of the change or the Change Request is issued (whichever is earlier), either party may refer the dispute for resolution.

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 Software Warranty

Within the Warranty Period, IR warrants that the Software, when used in accordance with the instructions in the Documentation, will perform in all material respects in accordance with IR's written Specifications. IR will, at its own expense and as its sole obligation and the Licensee's exclusive remedy, use commercially reasonable efforts to correct any reproducible error in the Software reported to IR by Licensee in writing during the Warranty Period.

8.3. Section 8.2 shall each not apply to errors where, in the reasonable judgment of IR:

- a) the Licensee does not operate the Software in accordance with the instructions for such operation as provided in the Documentation;
- b) the Software is subjected to hardware malfunctions, unauthorised use, unusual physical, environmental or electrical stress; and



c) the Software is altered without prior written consent of IR.

Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Maintenance Support services, shall not restart or otherwise affect the warranty period.

8.4. **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.

8.5. **Licensee Representations and Warranties**

Licensee represents and warrants that Licensee:

- a) will not use the Software for any purpose or in any manner not expressly permitted by this Agreement;
- b) will obtain all authorisations, licenses, permits and consents required (whether from a third party, government or regulatory body) in connection with Licensee's access and use of the Software;
- c) will be primarily responsible for any collection, use and storage of any data affected by applicable laws through operation of the Software and that Licensee undertakes to ensure that all its employees, agents and contractors will comply with the requirements of any laws that may be applicable to the operation of the Software; and
- d) will protect the Software from unauthorised 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. **Publicity**

- 9.1. 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 website, 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.

10. **Licensee Indemnity**

- 10.1. Licensee 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 Licensee of its obligations under this Agreement; or
 - b) any wilful, unlawful or negligent act or omission of Licensee or any of its officers, employees, agents or contractors; or
 - c) infringement of intellectual property rights by, or resulting from, the Licensee's pre-existing materials provided to IR in accordance with the terms of this Agreement.

11. **Intellectual Property Rights**

11.1. **Ownership Rights**

Licensee 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, Licensee does not acquire any licenses or any other intellectual property rights therein. Licensee shall not attempt to modify, tamper with, disassemble, or merge all or any part of the Software with any other software or item, 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. Licensee 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, Licensee shall not permit any other computer program to be written or developed based on the Software or on any IR Confidential Information.

11.2. Work Product

The Parties acknowledge that the Consulting Services to be provided by IR hereunder involve the installation, implementation and optimisation of IR's proprietary Software. It is not the intention of the Parties that IR create any Work Product or work made for hire that will be owned by Licensee. IR shall retain all right, title and interest in all and any Work Product produced, including the right to re-use any ideas, techniques, methodologies and concepts utilised in providing Consulting Services hereunder, subject, in all cases, to IR's obligations under Section 13 below. IR acknowledges and agrees that Licensee shall have the right to use any such Work Product pursuant to the terms of this Agreement and in any terms of use governing Licensee's licence and use of the Software offerings. Any references to customisation relates only to configuration of standard Software functionality.

- 11.3. Extended Solutions are not included in existing Product Assurance or Maintenance Support. Break/fix resolution and enhancement requests can be accomplished at the time of need by utilising available Consulting Services hours, or by pre-purchasing a reserved block of hours that can be drawn down as required over the course of a year.

12. Trademarks

- 12.1. Licensee acknowledges the validity of IR's trademarks and that the same are the property of IR. Licensee will not infringe upon, damage, or contest the rights of IR in any trademarks. Should any such rights accrue to Licensee, Licensee hereby assigns all such rights to IR.
- 12.2. IR may provide for Licensee's use in marketing and providing Managed Services, certain materials including user documentation and marketing materials, such as Software brochures, manuals, technical specification sheets, demonstration presentations including "screen shots", Software education and training materials, Software descriptions for use on website pages ("Licensed Materials"). Subject to Licensee's compliance with the terms and conditions of this Agreement, IR grants Licensee 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 Licensee as provided above) to its Customers in connection with its provision of Managed Services to such Customers; provided, that Licensee 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, Licensee will modify or discontinue any use of IR's trademarks. Licensee must not remove, modify or obscure in any way the proprietary rights notices of IR or its suppliers that appear on or within the Software and Licensed Materials or that appear during use of the Software. From time to time in its sole discretion, IR may reasonably introduce and require Licensee to follow additional branding and/or logo guidelines. Any such additional branding will be specified by IR. Nothing herein shall restrict IR's legal or equitable rights to protect its trademarks against infringement, dilution, or other misuse. Licensee agrees that, as between IR and Licensee, 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.

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. Licensee 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 authorised copy it makes of the Confidential Information. Each party shall promptly notify the other if it becomes aware of any unauthorised 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 LICENSEE, UNDER OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE VALUE OF INVOICES PAID BY LICENSEE 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 LICENSEE 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 IR under any of the following conditions:
 - i) at any time if Licensee breaches any of the terms or conditions of this Agreement and fails to remedy such breach within ten (10) days after written notice from IR; or
 - ii) if Licensee 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. The Licensee may terminate this Agreement at any time when it is not in breach hereunder upon



at least thirty (30) days' prior written notice to IR; provided that, except as provided in Section 8.2, Licensee will not be entitled to a refund of any fees that were paid and will pay IR in full any remaining unpaid License Fees, Subscription Fees, Maintenance Fees and Consulting Services Fees specified in the applicable Order that become payable prior to the effective date of such termination, specifically the fees for the remainder of the Term. Where Licensee terminates an SOW in part or in full, or delays the project progress beyond three (3) months at any point once the project has commenced, Licensee shall pay all valid outstanding invoices and for work provided up to and including the date of delay or termination.

When an Initial License Fee option with separate subsequent Maintenance Fees is selected as defined in the applicable Order, the Licensee may terminate maintenance as defined in Section 6, with effect from the anniversary date when the next annual Maintenance Fee is due, provided that all outstanding fees are paid, and provided IR receives written notice of termination from the Licensee ninety (90) days prior to this anniversary. Upon such termination, any unpaid amount of the License Fee for the balance of the Order Term shall become due and payable in full.

16.3. Either Party may terminate this Agreement by thirty (30) days written notice to the other Party if all Order's formed under this Agreement have been terminated or have expired.

16.4. **Consequences of Termination**

- a) 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 Licensee under this Agreement will immediately cease. Upon termination of this Agreement, IR will have no obligation to refund to Licensee any fees paid by Licensee.
- b) IR will not, by reason of termination or non-renewal of the Licensee relationship hereby created, be liable for compensation, reimbursement or damages.
- c) Upon termination of this Agreement, the Licensee will discontinue use of the Software, erase all copies of the Software from the Licensee'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.
- d) 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 Licensee or may thereafter so accrue.
- e) Licensee acknowledges and agrees that no property right accrues to Licensee in its right to license Software and services.

16.5. 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 17.1 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 and Access

18.1. The Licensee may use the services of third parties for the installation of new licensed Software, upgrades to existing licensed Software and other changes; provided, however, that prior to rendering any services, each such third party must agree to be bound by terms and conditions at least as protective of and beneficial to IR as those set forth herein. For purposes of determining



the Licensee's liability and compliance with this Agreement, any action or omission by any such third party shall be treated the same as if the action or omission was that of the Licensee.

- 18.2. This Agreement shall not be assigned or otherwise transferred by Licensee (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 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 Licensee.
- 18.3. IR shall have the unqualified right without notice to or the consent of Licensee:
- 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.
- Licensee acknowledges and agrees that it shall not assert against IR or any assignee of IR any claim or defence Licensee may have against IR regarding its obligations to make payment of the fees due and owing under the terms of this Agreement. Licensee 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.
- 18.4. This Agreement binds and benefits the Parties and their respective successors and permitted assigns under Section 18.1.

19. Anti-Corruption

Licensee 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 Licensee to maintain books and records that accurately and fairly record corporate expenditures made by Licensee to obtain business on IR's behalf.

Licensee 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. Licensee 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, 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. Licensee 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. Licensee shall not permit any access or use Software in an embargoed country or in violation of any export law or regulation.

21. Dispute Resolution

The Parties shall attempt in good faith to negotiate a settlement to a dispute under this Agreement. In the event a negotiated settlement is not reached between the Parties within a commercially reasonable timeframe, in advance of commencing formal legal proceedings the Parties agree to attend mediation to be held in the capital city of the applicable jurisdiction and venue under this agreement. The Parties may mutually agree to pursue



arbitration in advance of commencing formal legal proceedings, with such arbitration proceedings to be held in the capital city of the applicable jurisdiction and venue under this agreement.

22. Governing Law, Jurisdiction and Venue

This Agreement 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., this Agreement shall be governed by the laws of England and Wales. If the Licensor is Integrated Research, Inc., this Agreement shall be governed by the laws of the State of Colorado, United States of America. If the Licensor is Integrated Research (Singapore) Pte. Ltd, this Agreement shall be governed by the laws of Singapore. If the Licensor is Integrated Research Limited, this Agreement shall be governed by the laws of the State of New South Wales, Australia. If the Licensor is Integrated Research Germany GmbH, this Agreement 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 this Agreement, 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 this Agreement, its performance or subject matter. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

23. Miscellaneous

23.1. 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.

23.2. 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.

23.3. 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.

23.4. Entire Agreement

This Agreement and each fully executed Order hereto contain the entire and complete agreement between IR and Licensee 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.

23.5. No right of set off

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

23.6. Variation

IR may amend or modify this Agreement from time to time, in which case the new agreement will supersede prior versions. IR will notify Licensee via e-mail not less than 30 days prior to the effective date of any such amendment or modification and will inform Licensee about the intended amendments or modifications. If Licensee does not object to the amendment or modification within 30 days from aforementioned notice, such non-objection may be relied upon by IR as Licensee's consent to any such amendment.

24. Notices

Licensee 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 Attn: Legal. Any notice demand, certification or other communication given or required by Licensee as contained in this Agreement will be in writing, in the English language and must be signed by an authorised 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.

25. Definitions

“Agent” means a person that is configured on a contact centre System being managed by the Software. Where a contact centre 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 recognisable 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.

“Consulting 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. IR reserves the right to change daily Consulting Services rates from time to time.

“Consulting Services Warranty Period” means the thirty (30) day period from the provision of the Consulting Services.

“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.

“Endpoint(s)” means a unique extension or resource identifier.

“Extended Solution” means an extension of Software by IR through Consulting Services in order to provide monitoring functionality for a vendor platform or device that is not already supported in the Software or to add additional monitoring capabilities or metrics, which can then be leveraged for alerting, troubleshooting, or reporting. The Extended Solution will typically include one or more database collections, dashboards, thresholds or alerts.

“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 to Licensee.

“Maintenance Support” means any support services requested by Licensee which will be provided by IR, or its agent, in accordance with the IR then current Customer Support Guide and specified in an Order but does not include Consulting 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. Web Support Portal: <http://support.ir.com>. If you purchase Maintenance Support Services for the Software, you must purchase Maintenance Support Services for all authorised copies of the Software in your possession.

“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.

“Managed Services” means that the Licensee is operating the Software for the benefit of one or more of its Customers and is using the functionality of the Software to manage the Customers'



networks, usually in conjunction with the Customer providing other information technology services regarding the Customer's internal information technology assets. The Software may be installed at the Licensee's site or at the Customer's site, provided that (1) the Licensee remains the entity that operates the Software and (2) the Users (as defined below) who are being monitored are the Licensee's Customers' Users.

"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 Licensee, in accordance with Section 3.2 of this Agreement, which provides the details of the particular software and software license term to be acquired by Licensee and the relevant License 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 Consulting Services and/or Maintenance Support and/or managed services.

"Software" means the Prognosis software 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. Software also includes any Work Product.

"Specifications" means the Software specifications as published and updated by IR from time to time.

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

"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.

"Work Product" includes, but is not limited to, notes, drawings, designs, technical data, ideas, know how, research, reports computer software, software Documentation and the like developed during, or resulting from, any Consulting Services.

"Warranty Period" means the thirty (30) day period commencing with the Delivery Date.



SaaS Addendum

1. Introduction

This SaaS Addendum governs the use of IR's cloud services (the "Service") and is an addendum to the Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall be controlling as it pertains to the use of IR's cloud services.

2. Nature of Services

- 2.1. **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.
- 2.2. **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.
- 2.3. **LIMITATION ON WARRANTY.** EXCEPT AS STATED ABOVE, IR PROVIDES THE SERVICE AND ASSOCIATED SOFTWARE "AS IS" AND ON AN "AS AVAILABLE" BASIS. IR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OR CONDITION OF ANY KIND, IN CONNECTION WITH THESE TERMS OR THE SERVICES.

3. Managed Services

- 3.1. If you utilise the Services to provide Managed Services to one or more third parties, 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.

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 unauthorised access to or use of our Services, terminate any unauthorised use of or access to the Services and you will notify IR promptly of any unauthorised 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.

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) 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;
- b) 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);
- c) cause, in IR's sole discretion, inordinate burden on the Services and system resources;
- d) share password, login, or other access information or otherwise authorize any third party to access or use the Services;
- e) access the Services to design, build, market or sell a similar or competitive website, application or services;
- f) remove or destroy any copyright notices or other proprietary markings contained on or in the Service;
- g) access or use the Services for any purpose or by any means other than what IR provides or expressly allows;
- h) 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;
- i) attempt to disable, impair, or destroy the Services or disrupt or inhibit any other user from using the Services;
- j) use the Service to violate any applicable law or to engage in illegal or deceptive, misleading or unethical trade practices and will obtain all authorisations, licenses, permits and consents required (whether from a third party, government or regulatory body) in connection with your access and use of the Service;
- k) 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. The IR Privacy Policy governs any of the personal information that you provide to us.
- 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 which shall be in an anonymized form. 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. You will indemnify IR for any third party claims against IR for your breach of the obligations set forth in this section.

- 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.
 - 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 utilise 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. Export Regulations

- 7.1. 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.



Reseller Addendum

1. Introduction

This Reseller Addendum governs the resell of IR's software and services. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall be controlling, as it pertains to the resell of IR's software and services.

2. Appointment

- 2.1. IR hereby appoints You (or "**Reseller**" for purposes of this Reseller Addendum) as a non-exclusive reseller 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 or cloud services,
- b) Professional Services related to the Software, and
- c) annual Maintenance Support contracts between IR and the Licensee.

- 2.2. Any Affiliate of the Reseller which places an Order shall become bound by the terms of this Agreement.

2.3. **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. For the purposes of this Reseller Addendum, "**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. The Software utilizes an electronic "click through" End User License Agreement ("EULA") in the product installation and Reseller shall instruct Licensees of this feature or pass through IR's EULA to the Licensee (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 or pass through IR's Terms of Service to the Licensee (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.

2.4. **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. 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.

3. 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.



4. Pricing, Ordering, Payment and Delivery

4.1. 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.

4.2. 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.

4.3. 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, defences and counterclaims for any reason, except as set out in Section 3.4 above, in the currency provided in the order. 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.

4.4. 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.

4.5. 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 3.4 above, the Foreign Withholding Tax will be paid by the Reseller on behalf of IR, which will bear this Tax.

- 4.6. 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%.

5. Representations and Warranties, Software Indemnity

- 5.1. IR provides the warranty regarding the Software directly to the Licensee by virtue of the EULA between IR and the Licensee per Section 1.3 (End User Contracts) of this Reseller Addendum.

5.2. Reseller Representations and Warranties

- 5.3. 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.

5.4. 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 defence or settlement of such Claim and provides, at IR's request, reasonable information and assistance to IR in the defence 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 5.4 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.

6. 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.