

## INTEGRATED RESEARCH

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**3.1 Restricted License.** When the Software is licensed based on designated equipment, or for a specified number of telephones, systems, servers or other hardware or equipment ("Designated Equipment") or on the basis of specified volume of transactions, you have acquired a Restricted License. You may use each licensed copy of the Software only in conjunction with the specific Designated Equipment for which it was provided. Accessing data that is not specifically created or processed by the Designated Equipment is in violation of this license. Restricted Licenses may not be combined with unrestricted licenses in the same Deployment.

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**3.3 Update License.** If you received a patch or a service pack as an update to a previously licensed product, your license to use the patch or service pack is limited to the aggregate number of licenses you have acquired for the previous product. If you choose to use the Software and the previous product simultaneously, the aggregate number of licenses used to access the Software and the previous product may not exceed the aggregate number of licenses you acquired for the previous product.

**3.4 Beta and Evaluation/Not for Resale License.** A Beta, Evaluation or Not For Resale license may be used only for the number and type of licenses specified and for the period specified on the Software packaging, ordering or shipping documentation, or license key letter. Upon expiration of such specified period, the Products associated with a Beta, Evaluation or Not For Resale license will not function unless Licensee has obtained applicable permanent license keys. If the ordering or shipping documentation specifies a particular project, the Software may be used only with that project. A Beta License may be used only to test and evaluate a pre-release Product. An Evaluation License may only be used for evaluation purposes and may not be used for production purposes. Notwithstanding any other provision of this Agreement, Software provided under a Beta, Evaluation or Not for Resale licenses is provided "AS-IS" without warranty of any kind, express or implied. A Beta, Evaluation License or Not for Resale License may be terminated by IR upon written notice at any time. Any future updates, services packs or patches shall be subject to the terms and conditions of this EULA.

**3.5 Entitlement License.** If you received the Software as a special offer or entitlement license ("Entitlement License"), you may only use the Entitlement Licenses with a new Deployment. Entitlement Licenses may not be added to or used with an existing Deployment.

**4. OWNERSHIP.** IR and/or its suppliers retain all right, title and interest in and to the Software and all copies at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. You neither own nor hereby acquire any claim or right of ownership to the Software or to any related patents, copyrights, trademarks or other intellectual property. You agree to retain the Software, the terms of this Agreement as well as any Software benchmark or similar tests (whether performed by you, IR or any third party) in confidence and prevent them from unauthorized disclosure or use except with IR's prior written consent. IR's and/or its suppliers reserve all rights not expressly granted to you. IR's suppliers are the intended third party beneficiaries of this License Agreement and have the express right to rely upon and directly enforce the terms set forth herein.

**4.1 Copyright.** The Software is copyrighted by IR and/or its suppliers and is protected by applicable national copyright and patent laws and international treaty provisions. You may not copy the Software except: (a) to provide a non-production backup copy; or (b) to install the Software components licensed by you, as set forth in Section 2, on to computers as part of

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## **5. RESTRICTIONS.**

**5.1 General Prognosis Restrictions.** Except as expressly permitted by this License Agreement or by applicable law you may not: (a) lease, loan, resell, assign, sublicense, or otherwise distribute the Software or any of the rights granted by this License Agreement without the express written permission of IR; (b) use the Software to provide or operate Application Service Provider (ASP), Managed Service Provider (MSP), service bureau, marketing, training, outsourcing services, or consulting services, or any other commercial service related to the Software or to develop training materials; (c) modify (even for purposes of error correction), adapt, or translate the Software or create derivative works therefrom except as necessary to configure the Software using the menus, options and tools provided for such purposes and contained in the Software; (d) in any way reverse engineer, disassemble or decompile the Software or the data file formats (including reverse compiling to ensure interoperability) or any portion thereof except to the extent and for the express purposes authorized by applicable law notwithstanding this limitation; (e) use the Software to develop a product which is competitive with any IR product offerings; (f) use the Software to develop a product that converts the data file formats to an alternative file format or data analysis that is not the property of IR; (g) use unauthorized license key(s) or distribute license key(s); (h) disclose any Software benchmark results to any third party without IR's prior written approval, (i) permit third party access to, or use of the Software except as expressly permitted herein, and (j) distribute or publish license key(s).

**5.2 Extension Restrictions.** You may use the extension software functionality within the Prognosis software (such as, but not limited to Pace, Extractors, Custom Collector (ADI+), User Collector) as well as any separately licensed software module identified by IR as Extension Software (collectively "Extension Software") only to create new monitoring, measurement and reporting solutions ("New Solutions.") You may not use the Extension Software to copy or modify solutions existing within the Prognosis Software. To do so is a violation of the restrictions within Section 5.1 above and will, in addition, void all warranties regarding the Prognosis Software. While you may create and use New Solutions, you may only use New Solutions to monitor devices already being monitored by the Prognosis Software. If you use the New Solution to monitor additional devices, you must obtain a Prognosis license of sufficient scope to monitor all of devices that you are monitoring. You may only use your New Solution with a copy of Prognosis for which you own the license rights. You may not, under any circumstances, sell, license or otherwise provide New Solutions to any third party without having a separate written agreement with IR.

## **6. LIMITED WARRANTY AND REMEDY.**

**(a)** IR warrants to you that: (i) for a period of thirty (30) days from delivery of the Software, the Software will substantially conform to the functional description set forth in the standard documentation accompanying the Software; and (ii) for a period of thirty (30) days from delivery the physical media (e.g., CD-ROM), such physical media will be free from defects in materials and workmanship. Any implied warranties on the Software and media are limited to thirty (30) days from delivery, to the extent such warranties cannot be disclaimed under Section 6(c) below. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. IR does not warrant that the Software will operate uninterrupted or error free. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Support Services, shall not restart or otherwise affect the warranty period.

**(b)** Your exclusive remedy for breach of the above-stated limited warranty shall be, at IR's option, either: (i) correction or replacement of the Software with product(s) which conform to the above-stated limited warranty; or (ii) return of the price paid for the Software and termination of this License Agreement with respect to those copies not in compliance. Such remedy shall be provided to you by IR only if you give IR written notice of any breach of the above-stated limited warranty, within thirty (30) days of delivery of the Software.

**(c)** EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 6, IR AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR (IV) AGAINST HIDDEN DEFECTS. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. YOU ACKNOWLEDGE THAT IN ENTERING INTO THIS AGREEMENT, YOU HAVE RELIED UPON YOUR OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE THE SOFTWARE AND THAT YOU HAVE SATISFIED YOURSELF AS TO THE SUITABILITY OF THE SOFTWARE TO MEET YOUR REQUIREMENTS.

**7. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL IR OR ITS DISTRIBUTORS, SUPPLIERS OR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR REVENUES, LOSS OR INACCURACY OF ANY DATA, OR COST OF SUBSTITUTE GOODS, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF IR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IR AND ITS SUPPLIERS' AGGREGATE LIABILITY TO YOU FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE SOFTWARE LICENSE FEES PAID BY YOU FOR THE SOFTWARE OR THE FEES PAID BY YOU FOR THE SERVICE DIRECTLY CAUSING THE DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THIS LICENSE AGREEMENT. SOME STATES/JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CIRCUMSTANCES INCLUDED IN THIS SECTION, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU ONLY IN SUCH CIRCUMSTANCES.

**8. SUPPORT SERVICES.** If you purchased Support Services, IR will provide to you product support services for the Software in accordance with IR then current Support Services terms and conditions. If you purchase Support Services for the Software, you must purchase Support Services for all authorized copies of said Software in your possession.

**9. TERM.** The term of this Agreement shall be designated in the applicable License Key. Subject to the terms and conditions herein, (i) a Perpetual License shall mean a license right granted in perpetuity for a software license fee; (ii) a Fixed Term License shall mean a license granted for a specified period of time (e.g. 5 years) which is renewable upon written agreement of the parties; (iii) a Subscription license which, unless otherwise set out in an applicable License Key, is billed on an annual basis and renews automatically for subsequent one-year terms.

**10. TERMINATION.** This Agreement is effective until terminated. You may terminate this License Agreement at any time by providing IR with written notice, provided that you have complied with the return and/or destruction policy set forth below. However, you shall receive a refund of your license fee only if this Agreement is terminated pursuant to Section 6(b) (ii) hereof. If you received a Beta or Evaluation License for the Software that is time disabled, this Agreement will automatically terminate after the Beta or Evaluation Period, and you agree not to avoid, or attempt to avoid, any applicable time limitation. This Agreement may be terminated by IR if: (i) you fail to pay the license fees and other charges set forth at the time of your order; or (ii) you fail to comply with any of the terms and conditions set forth in this Agreement and do not remedy such failure within thirty (30) days after receiving notice

thereof. Termination shall not relieve you from your obligation to pay fees that remain unpaid and shall not limit IR from pursuing other available remedies. Upon termination by IR of this Agreement, IR will have no obligation to refund to you any fees paid by you and you agree to waive in perpetuity and unconditionally any and all claims for refunds. Upon any termination of this Agreement, you agree to: (i) immediately cease all use of the Software, including the use and distribution of any Custom Applications incorporating the Software; and (ii) either return the Software to IR or destroy same, and certify to IR, in writing, that all copies and partial copies thereof have been returned or completely destroyed and are no longer being used. Sections 4, 5, 6(c), 7, 9, 10, 11, 12, 15, 17 and 18 shall survive any termination of this Agreement.

**11. AUDIT.** During the term of this Agreement and for two (2) year after termination or expiration, IR may audit, upon reasonable notice to you and at IR's expense, your usage of the licensed Software products and functionalities, books and records to determine your compliance with this Agreement, including the configuration and number of licenses purchased, as provided in Section 2 above. In the event the audit reveals that you have exceeded the number of licenses you have purchased, IR may invoice you, and you shall pay for such excess licenses, from the date that you exceeded your purchased license amount. In the event any such audit reveals that you have underpaid IR by an amount greater than five percent (5%) of the amounts due IR in the period being audited, or that you have knowingly breached any material obligation hereunder, then, in addition to such other remedies as IR may have, you shall pay or reimburse to IR the cost of the audit.

**12. GENERAL.** If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. This Agreement constitutes the entire agreement between you and IR, and supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement. Integrated Research may assign this Agreement, without prior notice, to any affiliate entity in the Integrated Research group of companies. This Agreement may not be modified except by an instrument in writing duly signed by an authorized representative of each of the parties. If you are acquiring the Software on behalf of an entity, you represent and warrant that you have the legal capacity to bind such entity to this Agreement. All terms of any purchase order or other ordering document submitted by you shall be superseded by this Agreement. In the event you and IR have executed a mutually agreed upon and separately executed and signed end user license agreement ("EULA") or master software license agreement ("MLA") or software license agreement ("SLA") (collectively, "Base Agreement") and acquired the Software pursuant to such Base Agreement respectively, the terms of the Base Agreement may govern your use of the Software and the terms of this EULA shall be superseded by those of the Base Agreement. The product name for the Software is a trademark or registered trademark of IR. Should you have questions concerning this Agreement, please contact your local IR sales office or authorized reseller, or write to: Integrated Research Limited. Attn: CFO, Level 9, 100 Pacific Hwy, North Sydney NSW 2060 Australia.

**13. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Software with only those rights set forth herein. Manufacturer is Integrated Research Limited, Level 9, 100 Pacific Hwy, North Sydney NSW 2060 Australia.

**14. EXPORT CONTROLS.** You acknowledge that the Software is of U.S. origin. You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

**15. FCPA Compliance.** You understand and acknowledge that international law, binding on IR, as well as IR's corporate FCPA policy,

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

You agree that you 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 ("IR Business"). For purposes of this clause, 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. You agree that you shall keep books and records that accurately and fairly reflect the nature of its corporate expenditures if you have any related to IR Business. Consistent with IR's corporate policy, you understand that you may be required to certify in writing to IR on an annual basis that you have read and agree to comply with IR's FCPA policy.

For the purposes of this section 15, "**FCPA**" means the United States Foreign Corrupt Practices Act, or similar corresponding legislation in other jurisdictions, such as the U.K. Anti-Bribery Act.

**16. ORDER TERMS.** Purchase orders conforming to IR purchase order requirements may be accepted from qualified companies. All pre-printed terms of any purchase order not approved in writing by IR shall have no effect. Payment terms are net-30 days from date of invoice. Delivery is Ex Works,(EXW, IncoTerms 2010) IR facility. IR specifically disclaims price guarantees of any kind. You are responsible for payment of all applicable sales, use, consumption, VAT, GST, and other taxes and all applicable export and import fees, custom duties and similar charges, excluding taxes based on IR net income.

**17. GOVERNING LAW.** **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 (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.** Exclusive jurisdiction and venue shall be in the capital city of the state (for the US and Australia) or country whose laws govern the Agreement. There shall be no reference to **conflict of law provisions** or the United Nations 1980 Convention on Contracts for the International Sale of Goods or any amendments thereto.

**18. COUNTRY UNIQUE TERMS.** If you purchased the Software in any territory specified below (the "Local Territory"), this section sets forth specific provisions as well as exceptions to the above terms and condition. To the extent any provision applicable to the Local Territory (the "Local Provision") set forth below is in conflict with any other term or condition in this Agreement or Base Agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Territory.

#### **Australia**

**(a) Limited Warranty and Remedy (Section 6):** *The following is added:*

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

**(b) Limitation of Liability (Section 7):** *The following is added:*

To the extent permitted by law, where IR is in breach of a condition or warranty implied by the Trade Practices Act 1974 or the equivalent State or Territory legislation which cannot be excluded, IR's liability is limited, at IR's sole election: (i) in case of the Software: (a) (i) to repair or

replacement of the goods, or the supply of equivalent goods, or (ii) payment of the cost of such repair or replacement or of acquiring equivalent goods; and (ii) in case of Support Services: (x) re-supply of the Support Services; or (y) the cost of having the services supplied again. In calculating IR's aggregate liability under this Agreement, the amounts paid or the value of any goods or services replaced, repaired, or supplied by IR pursuant to this paragraph shall be included.

**(c) Governing Law (Section 17):** *The following replaces the terms of this section in its entirety:*

This Agreement is governed by the laws of the State or Territory in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

### **Belgium and France**

**(a) Limitation of Liability (Section 7):** *The following replaces the terms of this section in its entirety:* Except as otherwise provided by mandatory law:

1. IR's liability for any damages and losses that may arise as a result of the performance of its obligations in connection with this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IR is at fault), for a maximum amount equal to the charges You paid for the Software that has caused the damages. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IR is legally liable.

2. UNDER NO CIRCUMSTANCES IS IR, OR ANY OF ITS SOFTWARE DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IR but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which IR as well as its suppliers and Software developers, are collectively responsible. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IR is legally liable.

**(b) Governing Law (Section 17):** *The following replaces the terms of this section in its entirety:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

### **Germany and Austria**

**(a) Warranty (Section 6):** *The following replaces the terms of this section in its entirety:*

IR warrants that the Software provides the functionalities set forth in the associated documentation ("Documented Functionalities") for the Limited Warranty Period following receipt of the Software when used on the recommended hardware configuration. Limited Warranty Period means one year if you are a business user and two years if you are not a business user. Non-substantial variation from the Documented Functionalities does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE

OF CHARGE (FOR EXAMPLE, UPDATES, BETA, PRE-RELEASE, EVALUATION, OR NOT FOR RESALE) OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, you must return, at IR's expense, the Software and proof of purchase to the company from whom you obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, IR is entitled, by way of re-performance and at its own discretion, to repair or replace the Software. If that fails, you are entitled to a reduction of the purchase price or to cancel the purchase agreement.

**(b) Limitation of Liability (Section 7):** *the following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IR's intentional or by gross negligence. In addition, IR shall be responsible up to the amount of the typically foreseeable damages from any damage that has been caused by IR or its agents due to the slightly negligent breach of a material contractual duty. This limitation of liability shall apply to all damage claims, irrespective of the legal basis thereof and in particular, to any pre-contractual or auxiliary contractual claims. This limitation of liability shall not, however, apply to any mandatory statutory liability under the product liability act nor to any damage which is caused due to the breach of an express warranty to the extent the express warranty was intended to protect you from the specific damage incurred. This clause shall not be intended to limit liability where the extent of liability is provided by mandatory law.

**(c) Governing Law (Section 17):** *The following replaces the terms of this section in its entirety:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

**Italy**

**(a) Limitation of Liability (Section 7):** *the following replaces the terms of this section in its entirety:*

Apart from damages arising out of gross negligence or willful misconduct for which IR may not limit its liability, IR's liability for direct and indirect damages related to the original or further defects of the Software, or related to the use or the nonuse of the Software or related to any case whatsoever for breach of the Agreement, shall be limited to the fees paid by you to IR for the Software or for the part of the Software upon which the damages were based.

**(b) Governing Law (Section 17):** *The following replaces the terms of this section in its entirety:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

**United Kingdom**

**(a) Governing Law (Section 17):** *The following replaces the terms of this section in its entirety:*

This Agreement is governed by the laws of England and Wales, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts Rights of Third Parties) Act 1999 or otherwise in favor of any person not a party hereto.

This EULA is publically available at [www.ir.com/eula](http://www.ir.com/eula)