

INTEGRATED RESEARCH LIMITED

PROGNOSIS VOIP MONITOR END USER LICENCE AGREEMENT

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This end user licence agreement (“EULA”) is made between **INTEGRATED RESEARCH LIMITED** (ABN 76 003 588 449) of Level 9, 100 Pacific Highway, North Sydney, NSW, Australia (“IR”) and you (whether an individual or a corporation) (“END USER”).

Some words used below have a defined meaning, and this is given in clause 11.

The parties agree as follows:

1 TERM OF EULA

- 1.1 This EULA commences when End User first accepts IR’s conditional offer to supply and license PROGNOSIS VoIP Monitor, by clicking on the button labelled ‘I accept the terms in the Licence Agreement’ or words to that effect incorporated into the PROGNOSIS VoIP Monitor installation procedure.
- 1.2 This EULA continues in effect until terminated in accordance with clause 5 or otherwise in accordance with law.

2 LICENCE

- 2.1 Subject to this clause 2, and in consideration for End User entering into this EULA, IR grants to End User a licence (“Licence”) to use PROGNOSIS VoIP Monitor and the Licence Key (together “the Software”) with effect from when End User activates PROGNOSIS VoIP Monitor with a Licence Key provided by IR.
- 2.2 IR will only provide End User with a Licence Key after End User completes a registration process designated by IR, accepts IR’s commercial terms and conditions applicable to PROGNOSIS VoIP Monitor, and pays IR any Licence fees or other amounts due with regard to the Licence. IR may however in its absolute discretion refuse to grant End User a Licence Key. IR may from time to time issue new Licence Keys in substitution for Licence Keys already issued and this EULA will continue to apply in respect of any new Licence Key.
- 2.3 The Licence is a personal, non-sublicenseable, non-exclusive, non-transferable authorisation to install, use, access, display and run PROGNOSIS VoIP Monitor to monitor the performance of up to the number of Telephony Devices permitted by the Licence Key, on a Network.
- 2.4 The Licence permits End User to make backup copies of PROGNOSIS VoIP Monitor as reasonably required for providing an appropriate level of operational continuity in the event that the copies of PROGNOSIS VoIP Monitor supplied by or on behalf of IR are unable to be used.
- 2.5 IR reserves all rights in the Software not expressly granted to End User in this clause 2.

2.6 End User may:

- (a) use the Software across a network similar to the Network at the Network location or at a disaster recovery site, but only on an emergency basis and until End User's original Network is able to be used; or
- (b) by notice in writing to IR, replace the Network with a similar network at the Network location, or change the location of the Network,

without affecting the Licence.

3 PROHIBITIONS

- 3.1** Except as expressly provided in clause 2, End User must not distribute, provide access to or supply (whether by sale, lease, loan or otherwise) copies of the Software in any form or by any means.
- 3.2** End User must not make, store, possess, distribute, provide access to or supply unauthorised copies of the Software in any form or by any means.
- 3.3** End User must not adapt, modify, tamper with, circumvent, reverse-engineer, decompile, disassemble or make developments or improvements upon the Software, or attempt to do so.
- 3.4** End User must not knowingly access or use PROGNOSIS VoIP Monitor, or attempt to do so, without a Licence Key.
- 3.5** End User must not do any other act that would tend to facilitate the infringement of IR's Intellectual Property by third parties.

4 TITLE

- 4.1** Nothing in this EULA transfers to End User, or any other person, title in any of the Intellectual Property.
- 4.2** End User acknowledges that all title in the Intellectual Property remains the property of IR or its assigns.
- 4.3** End User must keep secure all copies of the Software embodied on any storage media ("**Software Copies**"). End User must also ensure that all employees with access to the Software are suitably trained in the legal obligations typically associated with the use of proprietary software, including obligations not to infringe intellectual property.

5 TERMINATION

- 5.1** IR may terminate this EULA immediately by notice in writing if:
 - (a) End User commits any breach of this EULA or the Licence or IR's commercial terms and conditions applicable to PROGNOSIS VoIP Monitor which End User agreed to, and fails to remedy that breach within 7 days of receiving written notice from IR;

- (b) End User commits any material breach of this EULA or any breach of clause 3;
- (c) End User fails to pay any amount due with regard to PROGNOSIS VoIP Monitor within 7 days after being notified that the payment is overdue;
- (d) End User becomes insolvent, goes into liquidation (otherwise than solely for amalgamation or reconstruction) or if a provisional liquidator is appointed, or if a receiver is appointed over any part of the assets or undertakings of End User, or similar events occur.

5.2 IR may terminate this EULA for any reason with 12 months notice in writing given at any time after the second anniversary of the date this EULA commences.

5.3 The Licence terminates immediately upon termination of this EULA.

5.4 Upon termination of the Licence, End User must return to IR or destroy all Software Copies and certify in writing to IR that they have been returned or destroyed. If End User fails to do so, IR may, with 48 hours notice, retrieve or destroy all Software Copies wherever located.

6 PRODUCT & SUPPORT SERVICE WARRANTIES

6.1 If within 30 days after taking delivery of Software End User gives IR notice that End User is dissatisfied with the Software and returns to IR, or certifies in writing to IR that it has destroyed, all Software Copies in its possession, custody or control, this EULA will be *void ab initio* and IR must refund any fees paid by End User under this EULA.

6.2 For a period of 90 days from the commencement of this EULA (“**Software Copies Warranty Period**”), IR will, at no cost to End User, repair or replace defective Software Copies supplied by IR. For clarity ‘defective Software Copies’ refer to defective storage media.

6.3 For a period of 30 days following the provision of any support service (“**Service Warranty Period**”), IR will, at no cost to End User, re-supply the service if, at any time during the Service Warranty Period, a defect re-appears that was resolved when the service was originally supplied.

6.4 Each of the warranties described in clauses 6.1 to 6.3 (“**Warranties**”) will be void:

- (a) upon End User doing any act that would entitle IR to terminate this EULA; or
- (b) to the extent that the relevant dissatisfaction or defect results from:
 - (i) End User’s or a third party’s negligence, accident or failure to comply with instructions provided in the Software or by an IR representative;
 - (ii) End User or a third party storing or using Software Copies under conditions of unusual physical, environmental or electrical stress; or
 - (iii) fire, flood, water damage, wind, lightning, impact or any other Act of God.

6.5 Except for the Warranties, IR gives no, and disclaims all, warranties whatsoever (including implied warranties and warranties as to the suitability and potential benefits of PROGNOSIS VoIP Monitor to End User) in relation to the Software or related support services.

7 SUPPORT SERVICE

7.1 Subject to clause 7.2, at no time does IR assume any obligation to provide support services in relation to the Software.

7.2 IR will, at no cost to End User, facilitate End User access to community support for the Software via a website.

7.3 If, at its discretion, IR provides telephone, email or other support services in relation to the Software, or repairs or replaces the Software Copies after the Software Copies Warranty Period expires, IR will charge fees for those services at its standard commercial rates and End User must pay those fees.

8 ACKNOWLEDGEMENT, LIABILITY & INDEMNITY

8.1 Without limiting any other acknowledgement that it may make under this EULA, End User expressly acknowledges that:

- (a) no software is error free;
- (b) most software has the capacity to affect the operation of other software and hardware connected to a system or network;
- (c) End User is strongly advised to back-up its files regularly; and
- (d) End User has relied upon its own skill and judgment in the selection of the Software and the performance and outcomes End User expects to encounter by using the Software.

8.2 IR accepts no liability to End User for any loss or damage whatsoever suffered by End User as a result of any fault, tort (including negligence), misrepresentation or breach of this EULA by IR (“**End User Damage**”). End User Damage includes general, special, incidental and punitive damage, consequential loss, pure economic loss and legal costs. End User Damage also includes loss or damage suffered by reason of business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or reasonable care) or legal action brought against End User by a third party or brought by End User against a third party.

8.3 To the extent that clause 9 affects the operation of clause 8.2, IR’s liability is limited to any one or more of the following, as determined by IR in its absolute discretion:

- (a) in the case of any goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;

- (iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; and
 - (iv) the payment of the costs of having the goods repaired; or
- (b) in the case of any services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the costs of having the services supplied again.

8.4 Subject to clause 8.3, at no time and in no event will the total liability of IR to End User exceed the total amount of monies paid to IR by End User.

8.5 End User indemnifies IR and will keep IR indemnified against any loss or damage whatsoever suffered by IR as a result of any fault, tort (including negligence), misrepresentation or breach of this EULA by End User (“**IR Damage**”). IR Damage includes general, special, incidental and punitive damage, consequential loss, pure economic loss and legal costs. IR Damage also includes loss or damage suffered by reason of business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or reasonable care) or legal action brought against IR by a third party or brought by IR against a third party.

9 EFFECT OF STATUTE

The terms of this EULA do not exclude, restrict or modify, or attempt to, any condition, warranty, obligation or liability implied or imposed by any applicable statute, statutory rule or regulation to the extent that such condition, warranty, obligation or liability cannot lawfully be excluded, restricted or modified.

10 ASSIGNMENT

10.1 End User cannot assign this EULA. End User may novate this EULA, but only with IR’s prior written approval.

10.2 IR may assign the benefit of, or novate, this EULA without End User’s approval or notice to End User.

11 DEFINED TERMS & INTERPRETATION

11.1 “**Communications Manager**” means IP telephony software produced by Avaya Inc or an affiliate and branded by that name or a derivation of it. “**Documentation**” means all electronic user manual and related documentation files accompanying copies of PROGNOSIS VoIP Monitor. “**Intellectual Property**” means all rights of intellectual property, including copyrights, patents, designs, trade marks, circuit layouts, subsisting in, registrable or registered in relation to the Software. “**Licence Key**” means an encrypted code provided by or on behalf of IR to End User that enables End User to access PROGNOSIS VoIP Monitor. “**Network**” means a unified network of Telephony Devices across which Communication Manager is operating. “**PROGNOSIS VoIP**

Monitor” means the IR software bearing that name for monitoring voice quality, faults and performance of Communication Manager, having the functionality and specifications detailed in the Documentation and including any upgrades or revisions. **“Software”** has the meaning given in clause 2.1. **“Telephony Device”** means an IP phone or other telephony end point.

11.2 Unless expressly to the contrary and as appropriate in the context: a reference to software means any, some or all, or part or whole, of the software, including object and source code; an expression in the plural may be read in the singular, and vice versa; a reference to an act includes an omission and to the causing to be done of that act or omission; a reference to one alternative does not, of itself, exclude any other alternative; and an expression of the exercise of right means the exercise of that right at the sole and absolute discretion of the relevant party.

12 GENERAL

12.1 Whole Agreement

Except as expressly contemplated in this agreement, this EULA is the entire agreement between IR and End User in relation to its subject matter and supersedes all prior or contemporaneous oral or written communications, proposals and representations in relation to its subject matter.

12.2 Severance

If any term of this EULA is held to be illegal, contrary to public policy, unenforceable, invalid or void under any law, the validity, legality and enforceability of the remaining terms will not in any way be affected or impaired.

12.3 Survival

Clauses 3, 4, 5.4, 8, 9, 11, 12.3, 12.4 and 12.6 survive the termination of this EULA.

12.4 Waiver

Any time or other indulgence granted by either party, or any failure of either party to exercise any rights provided for in this EULA, will not be deemed a waiver of any such rights.

12.5 Notices

Any notice required to be served or given under this EULA will be in writing signed by a duly authorised representative of the party giving the notice and addressed to the party to be served at its principal place of business or corporate head office.

12.6 Governing law and jurisdiction

This EULA is governed by and will be construed in accordance with the laws of the state of New South Wales, Australia, and the parties irrevocably submit to that jurisdiction for the determination of any disputes arising under or in relation to this EULA.