

Sangoma Technologies

PBXact/PBXtended End User Agreement

1 DEFINITIONS

- 1.1 “**Documentation**” means all Sangoma official technical manuals generally made available to Reseller’s customers or End Users. Documentation shall not include any marketing materials in any form or media or any demonstration materials.
- 1.2 “**Hardware**” means all hardware contained within the System.
- 1.3 “**Licensed Software**” means the object code form of Sangoma’s proprietary software applications and any open source software contained within the System.
- 1.4 “**Products**” means the Hardware, Licensed Software, and Documentation licensed and/or provided by Sangoma pursuant to this Agreement.
- 1.5 “**Sangoma Software**” means the object code form of Sangoma’s proprietary software applications, excluding any open source software contained within the System.
- 1.6 “**System**” means the combination of Products that comprise the Sangoma IP-PBX telephone system.
- 1.7 “**POMPs**” means Peace of Mind Packages which are Sangoma optional Support Contracts that can be purchased and renewed yearly.

2 LICENSE

- 2.1 End User is granted a non-exclusive, non-transferable, non-sublicensable, perpetual (unless terminated in accordance with Section 3) license to use the Sangoma Software contained within the System for End User’s own internal purposes only. This license shall immediately terminate upon termination of this Agreement in accordance with Section 3 of this Agreement.
- 2.2 End User may not copy, reproduce, alter, merge, modify, or adapt the System in any way including but not limited to reverse engineering, disassembling, decompiling or creating derivative works, and may not take any other steps intended to produce a source language statement of the Sangoma Software contained within the System. Any modification of the System not authorized in writing by Sangoma will void any applicable warranty.
- 2.3 The Licensed Software may contain open source software. Any open source software is supplied under version 2 of the GNU General Public License (“**GPLv2**”), which accompanies any open source software contained within the System. For a period of three (3) years from the grant of the license under this Section 2.3, upon End User’s request, Sangoma shall provide a complete machine-readable copy of the source code of any software licensed under the GPLv2, at Sangoma’s then prevailing services rates for physically performing source code distribution services. Sangoma provides no warranties or indemnities on software licensed under the GPLv2 or any other open source license agreements, or for services performed in distributing the source code to the same. In the event of conflict between the GPLv2 and this Agreement, the GPLv2 shall control with respect to open source software contained with the System.

3 TERMINATION

3.1 This Agreement may be terminated upon any breach of Sangoma’s intellectual property rights. Upon termination of this Agreement, End User shall, at Sangoma’s option, return to Sangoma or destroy any Products.

4 OWNERSHIP

4.1 Sangoma retains absolute right, title and interest in and to the Sangoma Software and Documentation, and all other intellectual property in the System which is owned or controlled by Sangoma or under which Sangoma has any rights, including but not limited to patents, trademarks, trade names, copyrights, and all other proprietary rights applicable to the System and the concepts embodied therein. Hardware provided by Sangoma contains computer components in a proprietary configuration. End User shall maintain “warranty void if removed” stickers existing on all Hardware at delivery. If End User opens the Hardware enclosure any applicable warranty shall be void.

5 WARRANTY; REMEDIES; DISCLAIMERS; LIMITATION OF LIABILITY

5.1 Sangoma warrants that for a period of one (1) years from the date of delivery to End User (the “**Warranty Period**”), the Sangoma Software and Hardware will perform materially in accordance with the Documentation. As End User’s exclusive remedy for breach of this warranty and on the condition that End User notifies Sangoma of defects within the applicable Warranty Period, Sangoma shall (a) repair or replace any defective Sangoma Software or Hardware; (b) provide a workaround to correct the defect in a manner that provides End User with reasonably equivalent functionality as described in the Documentation; or (c) if neither (a) or (b) is commercially feasible, provide a refund of the fees paid by End User for the defective Sangoma Software or Hardware. Neither Sangoma nor Sangoma shall have any liability for defects arising from End User’s breach of this Agreement.

5.2 All Sangoma PBX's are designed to be connected to the internet. We require all users to make sure their PBX is behind a Firewall and that all Security measures are taken to ensure the box can not be compromised. Sangoma shall not be liable for any toll calls or fraudulent activity on your PBX since it is up to each customer to secure their PBX and network.

5.3 OTHER THAN AS PROVIDED IN THIS AGREEMENT, THE SYSTEM AND PRODUCTS ARE PROVIDED “AS IS” AND SANGOMA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, CUSTOM, USAGE, OR TRADE PRACTICE. SANGOMA DOES NOT WARRANTS THAT THE SYSTEM OR PRODUCTS WILL BE BUG FREE OR MEET END USER’S REQUIREMENTS OR THAT THE SYSTEM OR PRODUCTS WILL OPERATE IN COMBINATION WITH ANY HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED OR AUTHORIZED IN WRITING BY SANGOMA.

5.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, COST OF COVER, LOSS OF OR DAMAGE TO DATA, LOSS OF GOOD WILL, WORK STOPPAGE OR COMPUTER FAILURE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR IN EQUITY. NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY FOR BREACH OF THIS AGREEMENT SHALL EXCEED THE AMOUNTS PAID FOR THE SYSTEM. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT END USER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

6 INTELLECTUAL PROPERTY INDEMNIFICATION

6.1 Sangoma shall indemnify, defend and hold harmless End User from and against any third-party claim asserted against End User that the Sangoma Software, when used in accordance with this Agreement, directly infringes or misappropriates a patent, trademark, trade dress, trade secret, copyright or other intellectual property right of such claimant (an "**IP Claim**"), and Sangoma will pay those costs and damages finally awarded or settled (upon settlement terms acceptable to Sangoma) against End User based on such IP Claim; provided that: (a) End User promptly notifies Sangoma in writing of such IP Claim, but in no case later than reasonably required to prevent Sangoma's ability to defend such IP Claim from being prejudiced; (b) Sangoma has sole control of and End User reasonably cooperates in all respects in the defense of each such IP Claim and all related settlement negotiations and End User does not make any admission or disclosure or otherwise take any action prejudicial to Sangoma; and (c) such IP Claim does not relate to any act of End User including (without limitation) a change in the Sangoma Software, a combination of the Sangoma Software with or the addition of the Sangoma Software to products or other software which have not been developed and supplied by Sangoma, or any breach of this Agreement by End User.

6.2 If a final judgment is entered against End User on any such IP Claim, or if in Sangoma's reasonable opinion End User is likely to become subject to a successful IP Claim, then End User shall permit Sangoma, at Sangoma's option and expense, either to: (a) procure for End User the right to continue using the Sangoma Software; or (b) replace or modify the same so that it becomes non-infringing, with functionality essentially being equal. If neither (a) nor (b) is commercially practicable, Sangoma shall remove the Sangoma Software and provide a pro rata refund of the fees paid by End User to Sangoma pursuant to this Agreement after an appropriate deduction for depreciation over a thirty-six month period based on End User's usage prior to such removal. Sangoma shall have no authority to compromise or settle any IP Claim on terms that would obligate End User to make any payment or would have a material adverse effect on End User,

without End User's prior written consent, which shall not be unreasonably withheld or delayed.

- 6.3** Sections 6.1 and 6.2 set forth the entire and exclusive liability of Sangoma with respect to any claimed infringement or misappropriation by the Licensed Software of any patent, trademark, trade dress, trade secret, copyright or other intellectual property rights of any third party.

7 MISCELLANEOUS

- 7.1 Entire Agreement.** THIS AGREEMENT AND ANY ATTACHMENTS AND ADDENDA CONSTITUTE THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. THERE ARE NO REPRESENTATIONS, PROMISES, WARRANTIES OR UNDERSTANDINGS RELIED UPON BY END USER THAT ARE NOT CONTAINED HEREIN. This Agreement may be modified only in writing by mutual agreement.
- 7.2 Enforceability.** If any provision of this Agreement or the application of such provision to any person, entity, or circumstance is found invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the other provisions of this Agreement and all other provisions of this Agreement shall be deemed valid and enforceable. Any provision deemed unenforceable shall automatically be revised with the least changes necessary to effect, to the fullest extent permitted by law, the intent of the parties as set forth in this Agreement.
- 7.3 Assignment.** Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred in whole or in part by End User, and any such attempted assignment shall be void and of no effect without the prior written consent of Sangoma.
- 7.4 Export.** End User shall comply with all laws and regulations of the United States governing the use, access or export of the System or Products or any part thereof. Without limitation, the System or Products or any part thereof may not be used or accessed within or by, or otherwise exported to, (a) any United States embargoed country; or (b) anyone on the United States Treasury Department's list of Specially Designated Nations, the United States Department of Commerce's Table of Denial Orders, or other similar list.
- 7.5 Third Party Beneficiary.** End User acknowledges and agrees that Sangoma Com, Inc. ("**Sangoma**") is a third party beneficiary of this Agreement with full right and authority to exercise any and all of the rights and remedies of Sangoma and/or its successors and assigns, in coordination with or apart from and with or without the consent of Sangoma or its successors or assigns, and any waiver of any of the rights and/or remedies of Sangoma and/or its successors and assigns, shall not be valid or enforceable unless agreed to in writing by Sangoma. Nothing in this Agreement shall create any rights or remedies of End User against Sangoma, or its successors or assigns. End User has no direct right of action against Sangoma related to this Agreement and is barred from alleging or asserting any claims against Sangoma pursuant to this Agreement. End User may only assert a claim against Sangoma by transferring such claim to Sangoma to assert on End User's behalf.

- 7.6 Phone Home Features.** Each Sangoma system has a few built in phone home functions. They are as followed and are required to keep the operation of your phone system stable
- 7.6.1 IP Address Change-** The system will keep the Sangoma User portal updated with the most current IP address but having the PBX notify Sangoma when there is a change. This is needed to provide support and also for license check purpose
 - 7.6.2 License Checks.** Each Sangoma PBX has licensed software. This license software has a hardware lock to your specific hardware such as but not limited to Network Card, MotherBoard, Hard Drives. In the event of replacement or failure of any of these hardware items your license will become inactive if the hardware items are replaced and will require reset of the license once it has been verified that you are not trying to clone or receive a second license for another hardware machine.. The license mechanism also requires checking into the Sangoma Com servers on a regular basis across the internet to check for updated license files and to renew its license. If this check fails 2 consecutive months in a row the license will expire and the phone system will continue to operate but you will not be able to make or save changes until the license check has succeeded.
 - 7.6.3 Automatic Updates.** If covered under a POMP's with auto updates you have the ability to set the system to check weekly, monthly, quarterly or yearly for new updates and the system will than install them. You can also turn off auto updates and just check manually any time you want for updates and have the update installed.
 - 7.6.4 Remote Offsite backups.** If your are covered under a active POMP's that has Remote Offsite Backups included your Sangoma system will perform the backup and send a copy of the backup to Sangoma's secure servers based on the time intervals as defined in your POMP's agreement.
- 7.7 Modifications** SANGOMA RESERVES THE RIGHT, AT OUR SOLE DISCRETION, TO CHANGE, MODIFY OR OTHERWISE ALTER THIS END USER AGREEMENT AT ANY TIME. YOU CAN FIND THE MOST RECENT VERSION OUR WEBSITES SUCH MODIFICATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING SUCH TO OUR WEBSITES