

# Pinnacle Terms and Conditions

## 1 INTERPRETATION

In this Contract, the definitions and rules of interpretation set out in the Schedule (Definitions and Interpretations) shall apply.

## 2 BASIS OF CONTRACT

2.1 The Customer's signature on the Order constitutes an offer by the Customer to purchase the relevant Supplied Hardware, Software and/or Services in accordance with this Contract.

2.2 The Order shall only be deemed to be accepted when Pinnacle countersigns the Order at which point and on which date this Contract shall come into existence (**Effective Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Pinnacle, and any descriptions or illustrations contained in Pinnacle's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Supplied Hardware, Software and/or Services described in them. They shall not form part of this Contract or have any contractual force.

2.4 These Conditions apply to this Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Pinnacle shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.6 This Contract is made up of:

2.6.1 the Order (including any annex referred to in such Order); and

2.6.2 these Conditions.

2.7 If there is any conflict or ambiguity between the Order (including any annex referred to in such Order) and these Conditions, the Order will take precedence.

## 3 SCOPE

3.1 Pinnacle will provide the Supplied Hardware and Software and use reasonable endeavours to provide the Services described or referred to in the Order.

3.2 The Customer will pay the Price specified in the Order.

## 4 SUPPLIED HARDWARE

4.1 Pinnacle shall supply all Supplied Hardware as set out in the Order, together with all related documentation provided by third-party manufacturers of such Supplied Hardware again in accordance with the Order.

4.2 Unless otherwise agreed in the Order, the Customer shall provide all cabling and other equipment needed for the installation of the Supplied Hardware at the Site(s), including any equipment needed to connect and interface the Supplied Hardware with Customer Hardware.

4.3 The risk in the Supplied Hardware shall pass to the Customer on delivery to the Site(s).

4.4 Title to the Supplied Hardware shall not pass to the Customer until Pinnacle receives payment in full for such Supplied Hardware or any other hardware that Pinnacle has supplied to the Customer in respect of which payment has become due.

4.5 Until title to the Supplied Hardware has passed to the Customer, the Customer shall:

4.5.1 store any Supplied Hardware separately away from all other goods held by the Customer so that it remains readily identifiable as Pinnacle's property;

4.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to such Supplied Hardware; and

4.5.3 maintain such Supplied Hardware in satisfactory condition and keep it insured against all risks for its full price from the date of delivery.

## 5 SOFTWARE AND DOCUMENTATION

Pinnacle shall provide the Software and Documentation to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer on reasonable request, and the Customer agrees to be bound to the relevant third parties by such licence terms in accordance with clause 11.

## **6 SERVICES**

Pinnacle will use reasonable endeavours to supply the Services as specified in the Order.

## **7 DELIVERY, INSTALLATION AND DELAYS**

7.1 Pinnacle shall use reasonable endeavours to deliver the Supplied Hardware to the Site(s) by the applicable Delivery Dates set out in the Order.

7.2 The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by Pinnacle in advance of each Delivery Date. The Customer may request reasonable assistance from Pinnacle to carry out such preparation but acknowledges that this may increase the Price.

7.3 The Customer shall be responsible for ensuring that each item of Customer Hardware and Customer Software is installed and is in working order and available to Pinnacle no later than the relevant date specified in the Order.

7.4 If any delivery is delayed at the request of, or because of the acts or omissions of, the Customer, Pinnacle shall bear no liability as a result of such delay and any Delivery Dates will be amended accordingly. If Pinnacle can demonstrate that the delay has resulted in an increase in cost to Pinnacle of carrying out its obligations under this Contract, Pinnacle may, at its sole discretion, increase the Price by an amount not exceeding any such demonstrable cost. Pinnacle may invoice the Customer for any additional monies that become payable in this way within 30 days of demonstrating the increase in costs.

## **8 SOFTWARE AND HARDWARE ACCEPTANCE**

8.1 Acceptance of the Software and Supplied Hardware shall be deemed to have occurred on whichever is the earliest of:

8.1.1 the payment of the Price in full;

8.1.2 the expiry of five (5) days after the delivery of the Software or Supplied Hardware; or

8.1.3 the use of the Software or Supplied Hardware by the Customer in the normal course of the Business.

## **9 PAYMENT**

9.1 If the Order states that payment will be made by direct debit, then the Customer shall complete the direct debit mandate attached to the Order. The Customer authorises Pinnacle to take payment of the Price and any additional costs (as set out in clauses 9.6, 9.7, 13.2.1 and 13.2.2) by direct debit, in accordance with the payment terms set out in the Order.

9.2 If the Order states that payment will be made after receipt of an invoice, Pinnacle shall submit invoices in accordance with the Order. The Customer shall make payment of each invoice within 30 days of receipt of the invoice.

9.3 The Price and all other payments stated in the Order are net of tax. The Customer shall, in addition, pay to Pinnacle the amount of any tax, duty or assessment, including any applicable VAT, which Pinnacle is obliged to pay and/or collect from the Customer in respect of any supply under the Conditions (other than tax on Pinnacle's income).

9.4 If the Customer fails to make any payment due to Pinnacle under this Contract by the due date for payment then, without limiting Pinnacle's remedies under clauses 20 and 21, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 9.5 If the Order states that the Price (or a portion of the Price) is a recurring charge, the Customer acknowledges that Pinnacle may increase the Price (or the relevant recurring portion of the Price) from time to time. Pinnacle shall provide reasonable notice to the Customer of such increase and, if the Customer does not agree to such increase, the Customer shall have the right to terminate this Contract by giving with one (1) month's written notice to Pinnacle.
- 9.6 Reasonable out-of-pocket expenses may be charged by Pinnacle on production to the Customer of reasonable evidence of expenditure.
- 9.7 Additional charges may be charged by Pinnacle in the event that the Customer breaches its obligations under clause 13.1.9.2, in accordance with clauses 13.2.1 and 13.2.2.

## 10 CHANGE OF SCOPE AND TECHNOLOGY SUBSTITUTION

- 10.1 The Customer may, by giving written notice to Pinnacle at any time during the Term, request a change to the scope of any Services.
- 10.2 Pinnacle shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase or decrease in the Price resulting from any change of scope requested pursuant to clause 10.1.
- 10.3 Within five (5) Business Days of receipt of the written estimate referred to in clause 10.2 (or such alternative time as may be specified in such estimate), the Customer shall inform Pinnacle in writing of whether or not the Customer wishes the requested change to be made. If the change is required, Pinnacle shall not make the requested change until the Parties have agreed and signed a written agreement specifying, in particular, any changes to the Order, including the Price (**Change Agreement**).
- 10.4 Pinnacle may from time to time offer to the Customer, and the Customer may at any time before the relevant Delivery Date and at its sole discretion choose to obtain from Pinnacle, any item of hardware or software in substitution for any corresponding Supplied Hardware or Software where the substitute item contains new technology or has better performance characteristics than such Supplied Hardware or Software. As part of the offer, Pinnacle shall notify the Customer of any change in the Price which would result from such substitution. If the Customer chooses to obtain any such substitute item, the Parties shall use best endeavours to agree and execute a Change Agreement in accordance with clause 10.3.

## 11 THIRD-PARTY CONDITIONS

- 11.1 The Customer shall comply with the Third-Party Conditions and shall indemnify and hold Pinnacle harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.
- 11.2 Pinnacle may treat the Customer's breach of any Third-Party Conditions as a breach of this Contract.

## 12 PINNACLE PERSONNEL

- 12.1 Pinnacle undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees, as notified in writing to Pinnacle from time to time. Pinnacle shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.
- 12.2 Pinnacle alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of its employees engaged in the provision of Services. Pinnacle assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.
- 12.3 During the Term and for a period of six (6) months thereafter neither Party shall, without the prior written consent of the other, solicit, or permit any Affiliate to solicit, the employment of any person who is employed by the other Party in the course of the provision of the Services.

## 13 CUSTOMER'S OBLIGATIONS

- 13.1 The Customer shall:
- 13.1.1 ensure that the terms of the Order are complete and accurate;
- 13.1.2 co-operate with Pinnacle in all matters relating to the Services;

- 13.1.3 provide Pinnacle, its employees, agents, consultants and subcontractors with access to the Customer's Site(s), premises, office accommodation and other facilities as reasonably required by Pinnacle;
- 13.1.4 provide Pinnacle with such information and materials as Pinnacle may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 13.1.5 prepare the Site(s) for the supply of the Services;
- 13.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 13.1.7 keep and maintain all materials, equipment, documents and other property of Pinnacle (**Pinnacle Materials**) at the Customer's premises in safe custody at its own risk, maintain Pinnacle Materials in good condition until returned to Pinnacle, and not dispose of or use Pinnacle Materials other than in accordance with Pinnacle's written instructions or authorisation;
- 13.1.8 only use the Supplied Hardware, Services and Software in accordance with the terms of this Contract;
- 13.1.9 not use the Supplied Hardware, Services or Software:
  - 13.1.9.1 in any way which may be fraudulent or unlawful; or
  - 13.1.9.2 in an excessive, abusive or unreasonable manner that is not customary for the type of Services (this may include, but is not limited to, Pinnacle receiving telephony or data traffic from the Customer that originates from a location other than the Site(s), or where the Customer is terminating large volumes of calls to areas in which in which the cost to terminate a call is high or is to a toll-free number);
- 13.1.10 not resell the Services or provide the Services to end-users or customers as a telecommunications provider;
- 13.1.11 comply with all applicable laws and regulations;
- 13.1.12 not, and shall procure that its personnel shall not, be abusive, offensive or behave in an inappropriate manner when dealing with or communicating with Pinnacle's personnel;
- 13.1.13 ensure that it has a basic business or copper line, 999 alarm and other critical functions; and
- 13.1.14 comply with all relevant terms in this Contract, including those relating to payment of the Price.
- 13.2 In the event that the Customer fails to comply with its obligations under clause 13.1.9.2, or a third party uses the Services in the manner described in clause 13.1.9.2, Pinnacle may:
  - 13.2.1 charge the Customer international call charges for such traffic and any additional charges necessary to recoup its administrative costs and charges from other carriers;
  - 13.2.2 charge the Customer an additional price per minute in Pinnacle's discretion for each call that violates 13.1.9.2;
  - 13.2.3 suspend use of the Services in accordance with clause 20.1; or
  - 13.2.4 agree an amendment to this Contract in accordance with clause 10.

## 14 **CONFIDENTIALITY AND PUBLICITY**

- 14.1 Each Party undertakes not to use the other Party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Contract (**Permitted Purposes**).
- 14.2 In relation to the Customer's Confidential Information:
  - 14.2.1 Pinnacle shall treat as confidential all Confidential Information of the Customer supplied under this Contract. Pinnacle shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. Pinnacle shall ensure that its employees are aware of, and comply with, this clause 14; and
  - 14.2.2 Pinnacle may provide any subcontractor authorised under clause 18 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such subcontractor has first entered into a written obligation of confidentiality owed to Pinnacle in terms similar to clause 14.2.1 (which Pinnacle shall use reasonable endeavours to ensure is adhered to).
- 14.3 In relation to Pinnacle's Confidential Information:
  - 14.3.1 the Customer shall treat as confidential all Confidential Information of Pinnacle contained or embodied in the Software or Documentation, or otherwise supplied to the Customer during the performance of this Contract;
  - 14.3.2 the Customer shall not, without the prior written consent of Pinnacle, divulge any part of Pinnacle's Confidential Information to any person other than:

- 14.3.2.1 the Customer Representative; and
- 14.3.2.2 other employees of the Customer who need to know it for the Permitted Purposes; and
- 14.3.3 the Customer undertakes to ensure that the persons mentioned in clause 14.3.2 are made aware, before the disclosure of any part of Pinnacle's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 14.3.1 (which the Customer shall ensure is adhered to).
- 14.4 The restrictions imposed by clause 14.1, clause 14.2 and clause 14.3 shall not apply to the disclosure of any Confidential Information which:
  - 14.4.1 is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 14;
  - 14.4.2 before any negotiations or discussions leading to the formation of this Contract was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or
  - 14.4.3 is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 14.5 Each Party shall notify the other Party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other Party, at that other Party's reasonable cost, in connection with any enforcement proceedings which that other Party may elect to bring against any person.
- 14.6 No Party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.7 This clause 14 shall remain in full force and effect in the event of any termination of this Contract.

## 15 **DATA PROTECTION**

- 15.1 The following definitions apply:
  - 15.1.1 the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given to them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.
  - 15.1.2 data includes Personal Data.
  - 15.1.3 Customer Personal Data means any Personal Data provided by or on behalf of the Customer.
- 15.2 Pinnacle shall:
  - 15.2.1. only carry out processing of any Customer Personal Data on the Customer's instructions;
  - 15.2.2 implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
  - 15.2.3 only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 15.3 Pinnacle shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.
- 15.4 The Customer acknowledges that Pinnacle will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which Pinnacle carries out under this Contract.
- 15.5 Pinnacle is subject to the requirements of the European Union General Data Protection Regulation 279/2016 ('GDPR') and any data protection laws and regulations implementing, replacing or amending the GDPR, and other applicable data protection laws and regulations in each country in which Pinnacle practices, including in the United Kingdom the Data Protection Act 1998.
- 15.6 Any personal data that we collect about you in connection with our engagement, or which is provided to us by you or others in connection with matters we undertake for you ('Personal Data') will be processed by Pinnacle in providing services to you as described in our Privacy Statement on our website at [www.pinnaclecoms.com/contact-us/privacy-statement](http://www.pinnaclecoms.com/contact-us/privacy-statement)
- 15.7 Pinnacle is a data controller for the Personal Data and each Pinnacle Entity that you have instructed or that is providing services to you or communicating to you is regarded as an independent data controller of your Personal Data.

15.8 Personal Data that you provide to us from others is received on the understanding that it has been collected, processed, and disclosed to us in compliance with the GDPR and/or any data protection laws and regulations applicable to you or to your organisation.

## 16 **WARRANTIES**

16.1 Pinnacle warrants that:

16.1.1 it will perform the Services using reasonable skill and care; and

16.1.2 in respect of any Supplied Hardware:

16.1.2.1 as far as Pinnacle is able, Pinnacle will pass on to the Customer the benefits of any Manufacturers' Warranties; and

16.1.2.2 Pinnacle has the right to sell the Supplied Hardware and such Supplied Hardware is free of all charges and other encumbrances not disclosed or made known to the Customer by Pinnacle prior to the date of the Order.

16.2 The Customer warrants that:

16.2.1 it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this Contract, and that any persons signing this Contract are duly authorised to bind the Customer; and

16.2.2 it has all necessary licences, permissions and consents in relation to its existing system and software which may be required in order for Pinnacle to perform its obligations under this Contract, including supply the Supplied Hardware, Software and/or Services.

16.3 The express provisions of this Contract are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose all of which are hereby excluded to the maximum extent permitted by law). Without limitation, Pinnacle specifically denies any implied or express representation that the Supplied Hardware or Software will operate in conjunction with any other hardware items or software products or operate uninterrupted or error-free.

16.4 Without prejudice to clause 16.3, the Customer acknowledges that:

16.4.1 the Supplied Hardware, Software and/or Services may not operate on an uninterrupted or error free basis;

16.4.2 unless otherwise specified in the Order, the Supplied Hardware, Software and/or Services will not enable the Customer to contact any emergency services or transmit any accurate location data in the event the Customer or its personnel attempt to use the Supplied Hardware, Software and/or Services to contact the emergency services;

16.4.3 Pinnacle shall have no liability for any loss or damage arising out of or in connection with an inability or impairment to access the emergency services using the Supplied Hardware, Software and/or Services;

16.4.4 any unauthorised modifications, use or improper installation of the Supplied Hardware or Software by or on behalf of the Customer shall render all Pinnacle's warranties and obligations under this Contract null and void;

16.4.5 the only warranties in relation to the Software (including Pinnacle's supply thereof) are those contained in the licence from the third-party supplier(s) of the same; and

16.4.6 to the extent that Pinnacle is able to do so, it will pass the benefit of such warranties to the Customer.

## 17 **LIMITATION OF LIABILITY**

17.1 Neither Party excludes or limits liability to the other Party for:

17.1.1 fraud or fraudulent misrepresentation;

17.1.2 death or personal injury caused by negligence;

17.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

17.1.4 any matter for which it would be unlawful for the Parties to exclude liability.

17.2 Subject to clause 17.1, under no circumstances shall Pinnacle be liable to the Customer for any of the following types of loss or damage arising under or in relation to this Contract (whether arising for breach of contract, tort (including but not limited to negligence), breach of statutory duty, misrepresentation (whether tortious or statutory), restitution or otherwise):

- 17.2.1 any loss of profits, business, contracts, business opportunities, anticipated savings, wasted expenditure, revenue, turnover, reputation or goodwill, or any loss or corruption of data or information or any loss or liability under or in relation to any other contract (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- 17.2.2 any indirect or consequential loss or damage whatsoever, even if Pinnacle was aware of the possibility that such loss or damage might be incurred by the Customer.
- 17.3 Subject to clause 17.1 and 17.2, under no circumstances shall the total aggregate liability of Pinnacle to the Customer (however arising) under or in relation to this Contract, including (but not limited to) liability for breach of contract, tort (including but not limited to negligence), breach of statutory duty, misrepresentation (whether tortious or statutory), restitution or otherwise, exceed the lesser of:
- 17.3.1 £10,000 (ten thousand pounds); and
- 17.3.2 the total Price paid by the Customer under this Contract.
- 17.4 Any dates quoted for delivery of the Supplied Hardware, Software and/or Services are approximate only, and the time of delivery is not of the essence. Pinnacle shall not be liable for any delay in delivery of the Supplied Hardware, Software and/or Services that is caused by an event, circumstance or cause within the scope of clause 31 or the Customer's acts or omissions, including any failure to provide Pinnacle with adequate delivery instructions.
- 17.5 The Customer shall make any claim relating to this Contract no later than two (2) years after the first act or omission alleged to give rise to the claim.

## 18 **ASSIGNMENT AND CONTRACTING**

- 18.1 Subject to clause 18.3, this Contract is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 18.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 18.3 Pinnacle may assign or subcontract any or all of its rights and obligations under this Contract to an Affiliate for so long as that company remains a member of Pinnacle's group.
- 18.4 Notwithstanding clause 14, a Party assigning any or all of its rights under this Contract may disclose to a proposed assignee any information in its possession that relates to this Contract or its subject matter, the negotiations relating to it and the other Party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 18.4 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

## 19 **DURATION**

- 19.1 Subject to clause 19.2, this Contract shall commence on the Effective Date and, unless terminated earlier in accordance with clause 21, shall continue for the Term (as specified in the Order).
- 19.2 If the Order states that this Contract will renew automatically then, unless terminated earlier in accordance with clause 21, this Contract shall continue for the Initial Term and shall automatically extend for a period of one (1) year or, if an alternative period is specified in the Order, for such alternative period (each an "Extended Term") at the end of such Initial Term and at the end of each such Extended Term.
- 19.3 Either Party may give written notice to the other Party, not later than three (3) months before the end of the Initial Term or the relevant Extended Term, to terminate this Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 19.4 If the Order states that this Contract will not renew automatically then, unless terminated earlier in accordance with clause 21, this Contract shall continue for the Term specified in the Order following which it shall terminate automatically without notice.

## 20 **SUSPENSION OF SERVICE**

- 20.1 Without limiting its other rights or remedies, Pinnacle may suspend provision of the Services under this Contract or any other contract between the Customer and Pinnacle if the Customer:
- 20.1.1 becomes subject to any of the events listed in clause 21.1.1 to clause 21.1.3 or Pinnacle reasonably believes that the Customer is about to become subject to any of them;
- 20.1.2 does not comply with its obligations listed in clause 13.1.8 to clause 13.1.14; or

- 20.1.3 fails to pay any amount due under this Contract on the due date for payment.
- 20.2 The suspension of Services pursuant to clause 20.1 shall have no effect on the Customer's obligation to pay the Price under this Contract.
- 21 TERMINATION**
- 21.1 Without prejudice to any rights that have accrued under this Contract or any of its rights or remedies, Pinnacle may at any time terminate this Contract with immediate effect by giving written notice to the Customer if:
- 21.1.1 the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 21.1.2 the Customer commits a material breach of any term of this Contract; or
- 21.1.3 an Insolvency Event affecting the Customer occurs.
- 21.2 Without limiting its other rights or remedies, Pinnacle may terminate this Contract by giving the Customer one (1) month's written notice.
- 21.3 The Customer may terminate this Contract if:
- 21.3.1 Pinnacle commits a material breach of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- 21.3.2 the Customer is entitled to do so under clause 9.5.
- 21.4 On termination of this Contract, the Customer shall either return to Pinnacle or, at Pinnacle's option, destroy all material copies of the Software and Documentation, and shall ensure that any copies of the Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.
- 21.5 Other than as set out in this Contract, neither Party shall have any further obligation to the other under this Contract after its termination.
- 21.6 Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after its termination, including clause 1, clause 14 to clause 17, and this clause 21 shall remain in full force and effect.
- 21.7 Termination of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 21.8 Notwithstanding its obligations in this clause 21, if a Party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 21.9 On termination of this Contract for any reason, each Party shall as soon as reasonably practicable:
- 21.9.1 return, destroy or permanently erase (as directed in writing by the other Party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other Party containing, reflecting, incorporating or based on Confidential Information belonging to the other Party;
- 21.9.2 permanently delete any proprietary software belonging to the other Party and not the subject of a current licence granted by the other Party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other Party; and
- 21.9.3 subject to clause 21.9.2, return all of the other Party's equipment and materials, failing which, the other Party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 21.9.3, that the Customer has (if appropriate) paid Pinnacle in full for such equipment and materials. Until these are returned or repossessed, the Party in possession shall be solely responsible for their safe-keeping.
- 21.10 On termination of this Contract for any reason, Pinnacle shall: as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it.
- 21.11 On termination of this Contract for any reason, the Customer shall immediately pay any outstanding unpaid sums and interest due to Pinnacle. Pinnacle shall submit invoices for any Supplied Hardware, Software and/or Services that it has supplied, but for which no payment has been received and/or invoice submitted, and the Customer shall pay these invoices immediately on receipt.
- 21.12 The following activities are not envisaged under this Contract:
- 21.12.1 transferring the Services to the Customer or to a replacement supplier on termination of this Contract; and



21.12.2 transferring the Supplied Hardware, Software and/or Services to any Site(s) other than those listed in the Order, and shall be agreed between the Parties in a separate contract.

## 22 **FRAUD**

22.1 In accordance with clause 20.1.2, Pinnacle shall be entitled to suspend the Services if it suspects any use of the Supplied Hardware, Software or Services for fraudulent, illegal or improper uses.

22.2 The Customer shall indemnify Pinnacle against all losses, claims and damages it may incur arising out of or in connection with (a) the exercise of its rights under clause 22.1 and (b) any use of the Supplied Hardware, Software or Services for fraudulent, illegal or improper uses.

## 23 **WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 24 **RIGHTS AND REMEDIES**

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## 25 **ENTIRE AGREEMENT**

25.1 This Contract constitutes the entire agreement between the Parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the Parties, whether oral or written, in relation to that subject matter.

25.2 Each Party acknowledges that in entering into this Contract it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject-matter of this Contract at any time before its signature (together "Statements"), other than those which are set out in this Contract.

25.3 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Statements.

25.4 Nothing in this clause shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## 26 **VARIATION**

No variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 27 **SEVERANCE**

27.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

27.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 28 **COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

29 **THIRD-PARTY RIGHTS**

No person other than a Party to this Contract shall have any rights to enforce any of its terms.

30 **NO PARTNERSHIP OR AGENCY**

30.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

30.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

31 **FORCE MAJEURE**

31.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two (2) months, either Party may terminate this Contract by giving 10 days' written notice to the other Party.

31.2 Nothing in clause 31.1 shall affect the Customer's liability to pay the Price under this Contract as and when it falls due.

32 **NOTICES**

32.1 Any notice required to be given under this Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to the addresses set out in the Order or as otherwise specified by the relevant Party by notice in writing to each other Party.

32.2 Any notice shall be deemed to have been duly received:

32.2.1 if delivered personally, when left at the address and for the contact referred to in this clause 32;

32.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

32.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

32.3 The provisions of this clause 32 shall not apply to the service of any proceedings or other documents in any legal action.

33 **GOVERNING LAW**

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

34 **JURISDICTION**

The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**HOSTED SOLUTIONS**

35 **INSTALLATION AND MAINTENANCE**

35.1 Where it is necessary for the Reseller or its suppliers to effect installation and/or maintenance of Cloud Services, equipment or any other Products at the End User's site, the End User shall provide full access to such site and to the End User's personnel, and any technical help reasonably required by the Reseller or its suppliers for the installation and maintenance of the Cloud Services, equipment or other Products.

35.2 The End User shall use any equipment belonging to the Reseller or its suppliers and associated software in strict accordance with any instructions or software licence communicated or made available by the Reseller or its suppliers from time to time, and the Reseller and its suppliers will not be liable for any repairs

whatsoever or howsoever arising other than as a result of normal and proper use in accordance with those instructions and software licences.

## 36 **INSURANCE**

- 36.1 The End User shall be responsible for insuring any equipment belonging to the Reseller or its suppliers on its site, against loss or damage from all risks, such insurance to be for an amount equal to the full replacement value of the equipment.
- 36.2 The End User shall be responsible for insuring itself against all loss of or damage/corruption to data. In no event will the Reseller or its suppliers be liable for loss or damage/corruption to any data stored/transmitted on/using the Cloud Services or any equipment or other Products.

## 37 **IMPROPER USE**

- 37.1 Any network and/or Cloud Services supplied by the Reseller or its suppliers may only be used by the End User for lawful purposes, and the End User agrees to be bound by the Virtual1 Acceptable Use Policy in relation to the use of the Cloud Services and any network.
- 37.2 The End User shall not (and shall not authorise or permit any other party to):
- (a) use the Cloud Services or any network supplied by the Reseller or its suppliers for the transmission of any information, data or other material which is in violation of any law or regulation, or which is defamatory, menacing, obscene, in breach of any third party intellectual property right (including copyright) or in breach of trade secrets ("Prohibited Material");
  - (b) use the Cloud Services or any network supplied by the Reseller or its suppliers for the transmission of any material that contains software viruses or any other computer code, files or programs designed or intended to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications
  - (c) use the Cloud Services or any network supplied by the Reseller or its suppliers for mail-bombing or spamming (i.e. the act of sending a large number of unsolicited e-mail messages within a short period of time to one or more individual e-mail accounts) or sending one unsolicited e-mail message to ten or more individual e-mail users, where the message could reasonably be expected to cause complaints from some of the recipients; or
  - (d) attempting to gain unauthorised access to any account or computer resource not belonging to the End User, or attempt the unauthorised accessing, altering, interfering with, or destruction of any network, system, equipment or information by any means or device.
- 37.3 Any breach of this clause 3 shall be deemed to be a material breach of this Agreement and shall entitle the Reseller to terminate this Agreement forthwith and for this purpose it shall be irrelevant whether the End User is aware of the content of any information, data or material so transmitted or not. The Reseller may suspend the Cloud Services without notice with immediate effect if in the Reseller's reasonable opinion the End User is in breach of this clause 3.
- 37.4 The End User acknowledges that the Reseller and its suppliers are unable to exercise control over the content of the information, data and other material passing over any network and/or connections supplied by the Reseller or its suppliers, and/or the Cloud Services, and the Reseller and its suppliers hereby exclude all liability of any kind for the transmission or reception of Prohibited Material of whatever nature.
- 37.5 The End User hereby agrees to indemnify and hold the Reseller and its suppliers harmless from and against any claim brought by a third party resulting from the use of any network and/or line supplied by the Reseller or its suppliers, and/or the Cloud Services by the End User, including but not limited to infringement of any intellectual property right of any kind, and breach of any legislation or regulation, or otherwise arising out of or in connection with any Prohibited Material. The End User shall pay all costs, damages, awards, fees (including reasonable legal fees) and judgements awarded against the Reseller and/or its suppliers arising from such claims, and shall provide the Reseller and/or its suppliers with prompt notice of such claims, full authority to defend, compromise or settle such claims and all reasonable information, assistance and cooperation necessary to defend such claims, at the End User's sole expense. Such actions will be taken in consultation with the End User.

## 38 **END USER CONTRACT**

The End User acknowledges and agrees that the Cloud Services are provided pursuant to this Agreement which is exclusively between the End User and the Reseller and that there is no privity of contract and therefore no contractual relationship between the End User and the Reseller's suppliers, and that where a supplier acts it does so on the Reseller's behalf.

## **SCHEDULE (Definitions and Interpretation)**

### **1.1**

Definitions:

"Affiliate" means any entity of Pinnacle or the Customer that directly or indirectly Controls, is Controlled by, or is under common Control with another entity of that Party;

"Business" means the normal business of the Customer;

"Business Days" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"Change Agreement" means an agreement made under clause 10.3;

"Conditions" means clauses 1 to 34 of and the Schedule to this Contract;

"Confidential Information" means information of commercial value, in whatever form or medium, disclosed by the Party (or any of its Affiliates) to the other Party (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of Pinnacle's information), information pertaining to customers, pricing and marketing information relating to the System or any of its constituent parts, the source code relating to the System or any such parts;

"Contract" means these Conditions and the attached Order, as may be amended from time to time;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls and controlled shall be construed accordingly;

"Customer" means the person or firm named on the Order who purchases Supplied Hardware, Software and/or Services from Pinnacle;

"Customer Hardware" means all the computers and other equipment supplied by the Customer;

"Customer Representative" means a person duly authorised by the Customer to act on its behalf for the purposes of this Contract and identified to Pinnacle by written notice from the Customer;

"Customer Software" means the software programs supplied by the Customer;

"Data Protection Law" means all applicable data protection law and regulations in any jurisdiction;

"Delivery Date" means the estimated delivery date for Supplied Hardware, Software and/or Services as set out in the Order;

"Documentation" means the software operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied to Pinnacle by the relevant third party suppliers of Supplied Hardware and/or Software;

"Effective Date" shall have the meaning given to it in clause 2.2;

"Extended Term" shall have the meaning given to it in clause 19.2;

"Force Majeure Event" means any circumstance not within a Party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by suppliers or subcontractors; and (i) interruption or failure of utility service;

"Initial Term" shall have the meaning given to it in the Order;

"Insolvency Event" shall mean:

(a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Customer;

(e) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

(g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraph (a) to (h) (inclusive) of this definition;

(i) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(j) the Customer's financial position deteriorates to such an extent that, in Pinnacle's opinion, the Customer's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy;

"Manufacturers' Warranties" means the warranties given by any third-party manufacturer in relation to any item of Supplied Hardware;

"Order" means the details set out in the order form section of this Contract;

"Parties" means Pinnacle and the Customer;

"Permitted Purposes" shall have the meaning given to it in clause 14.1;

"Personal Data" means data subject to protection under Data Protection Law in any jurisdiction;

"Pinnacle" means iPinnacle Ltd, registered in England and Wales with registration number 6679607 with its registered office at Rostrons, Yare House, 62-64 Thorpe Road, Norwich, NR1 1RY;

"Pinnacle Materials" shall have the meaning given to it in clause 13.1.7;

"Price" means the aggregate price for the Supplied Hardware, Software and Services, as specified in the Order;

"Services" means the services to be provided by Pinnacle under this Contract as specified in the Order;

"Site(s)" means the location(s) at which the System is to be installed and/or Services are to be delivered as specified in the Order;

"Software" means the software programs proprietary to third parties, which are to be provided to the Customer under this Contract as specified in the Order;

"Supplied Hardware" means the hardware to be supplied by Pinnacle as specified in the Order;

"System" means the system consisting of the Supplied Hardware, the Software and the Documentation;

"Term" means either: (a) where the Order specifies that this Contract will renew automatically, the Initial Term and each Extended Term; or (b) where the Order specifies that this Contract will not renew automatically, the period specified in the Order;

"Third-Party Conditions" means: (a) the Third-Party Licences; and (b) any other third party terms and conditions that may be set out or referred to in the Order;

"Third-Party Licences" means the third party proprietary licences to the Software, as referred to in clause 5;

"VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this Contract.
- 1.8 Clause and schedule headings do not affect the interpretation of this Contract.
- 1.9 Writing or written includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.10 Any reference to this Contract means the Order and these Conditions together with all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.
- 1.11 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.