

## Pinnacle Terms and Conditions

### **1 AGREEMENT**

- 1.1 This Agreement is between iPinnacle Ltd, a company registered in England and Wales with company number 6679607 with its registered office at Rostrons, Yare House, 62-64 Thorpe Road, Norwich, NR1 1RY, and the party shown as the Customer on the Order. In this Agreement, the definitions and rules of interpretation set out in the Schedule (Definitions and Interpretations) shall apply.

### **2 BASIS OF AGREEMENT**

- 2.1 Pinnacle's signature on the Order together with the completed Order constitutes an offer by Pinnacle to offer the Customer the relevant Supplied Hardware, Software, Services and/or Equipment in accordance with and subject to this Agreement ("**Offer**"), but subject always to clause 2.2 being satisfied (which shall be a condition precedent). Any Order which includes a quotation (or any quotation given to the Customer separately) shall only remain valid and capable of acceptance by the Customer (pursuant to clause 2.2) for 7 calendar days from being sent from Pinnacle to the Customer. On the expiry of these 7 calendar days Pinnacle may at its discretion provide the Customer with a new Order and/or quotation to which the terms of this Agreement shall apply.
- 2.2 The Offer shall only be deemed to be accepted once the Customer countersigns the Order (and subject to any checks Pinnacle deems necessary on the Customer being carried out to Pinnacle's reasonable satisfaction including but not limited to credit checks etc.) at which point, and on which date, this Agreement shall come into existence ("**Effective Date**"). The Customer acknowledges that by countersigning the Order he or she intends to be bound by the Agreement and these terms and conditions.
- 2.3 Pinnacle agrees to provide the Supplied Hardware, Software, Services and/or Equipment and use reasonable endeavours to provide the Services described or referred to in the Order, in accordance with this Agreement.
- 2.4 Pinnacle shall have no obligation to supply the Customer with Equipment until the Customer has (i) signed a Network Services Agreement; and (ii) been accepted by the Network Operator and Pinnacle for the provision of Mobile Network Services.
- 2.5 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, Services and/or Equipment described in them. They shall not form part of this Agreement or have any contractual force.
- 2.6 These Conditions apply to this Agreement 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.
- 2.7 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.
- 2.8 This Agreement is made up of:

- 2.8.1 the Order (including any annex referred to in such Order); and
  - 2.8.2 these Conditions.
- 2.9 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 SERVICES AND DATA USAGE**

- 3.1 Pinnacle shall use reasonable endeavours to supply the Services as specified in the Order.
- 3.2 Subject to clause 3.4 Pinnacle shall use reasonable endeavours to notify the Customer when 80% and 100% of the Customer's monthly data allowance has been reached by sending the Customer an alert to the email address specified on the Order Form unless stated otherwise. Any alerts of this nature shall apply to mobile services and not fixed services.
- 3.3 A Customer shall not be barred from using their data for the remainder of any month if 100% of the Customer's monthly data allowance has been reached unless the Customer has requested this from Pinnacle within the Order ("**Pre-Barring Request**"). If the Customer does not make a Pre-Barring Request within the Order but would like to make such a request following the Effective Date during the Term, the Customer must request this in writing by emailing [sales.support@pinnaclecoms.com](mailto:sales.support@pinnaclecoms.com) with their barring request ("**Post-Barring Request**"). The Customer acknowledges that a Post-Barring Request will only be effective once Pinnacle confirms this in writing, which shall be between 09:00hrs to 17:30hrs on a Business Day. Barring of data pursuant to this clause only applies to mobile services and not fixed services.
- 3.4 The Customer acknowledges that if a Pre-Barring Request or Post-Barring Request has not been made and they exceed 100% of their monthly data allowance in any month, the Customer shall be liable for any additional Usage Charges associated with such usage above 100%.
- 3.5 Pursuant to clause 3.2, whilst Pinnacle shall use best endeavours to ensure monitoring of the Customer's data usage is accurate, the Customer acknowledges that there might sometimes be delays in receiving data usage information from the Customer's network provider. If a data provider is delayed in providing Pinnacle with details of a Customer's data usage, Pinnacle accepts no liability to the Customer in any regard.
- 3.6 The Customer may request from Pinnacle a spend limit of any value on each number the customer has contracted. If the Customer has requested the number to be barred when the spend threshold is reached, then the bar will remain in place until the 1st of the following month when the spend limit is refreshed.
- 3.7 Pinnacle reserves the right to bar or suspend any Service if in its reasonable opinion it notices an abnormally high spend on the customer's account or believes that fraudulent usage of the Services has or is taking place. Pinnacle shall use all reasonable endeavours to contact the Customer as soon as practicable following the barring or suspension of any Services in this regard.
- 3.8 The Customer shall be responsible and liable for all Usage Charges relating to the Services in full including but not limited to data and call costs and Pinnacle shall not be liable for such usage costs in anyway whatsoever.

#### **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 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 On termination of this Agreement for any reason, the Customer shall comply with its obligations under clause 29.4A in respect of any Supplied Hardware or other equipment provided to the Customer under the Order.

#### **5 SOFTWARE AND DOCUMENTATION**

- 5.1 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 14.

#### **6 SOFTWARE AND HARDWARE ACCEPTANCE**

- 6.1 Acceptance of the Software, Supplied Hardware and/or Equipment shall be deemed to have occurred on whichever is the earliest of:
  - 6.1.1 the payment of the Price in full;
  - 6.1.2 collection or delivery of the Equipment;
  - 6.1.3 the expiry of five (5) days after the delivery of the Software or Supplied Hardware; or
  - 6.1.4 the use of the Software or Supplied Hardware by the Customer in the normal course of the Business.
- 6.2 Should the third party supplier of the Software, Supplied Hardware and/or Equipment cease to supply such Software, Supplied Hardware and/or Equipment during the Term of this Agreement, the Customer shall have the available options made to them:
  - 6.2.1 Pinnacle to replace such Software, Supplied Hardware and/or Equipment with suitable alternative at no additional cost to the Customer and of equal quality;
  - 6.2.2 or the Customer may terminate this Agreement with immediate effect.

#### **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 or any third party, 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 Agreement, 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.
- 7.5 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 38 or the Customer's acts or omissions, including any failure to provide Pinnacle with adequate delivery instructions.

## **8 PRICING - GENERAL**

- 8.1 The Customer will pay the Price specified in the Order and in accordance with clause 10.
  - 8.2 All pricing, unless otherwise stated, excludes VAT at the current rate.
  - 8.3 The Customer acknowledges that Pinnacle may increase the Price (or the relevant recurring portion of the Price) from time to time and in accordance with the Retail Price Index. Pinnacle shall provide reasonable notice to the Customer of such increase. If the Customer does not agree to such increase, the Customer shall notify Pinnacle in writing within 30 days' of notice of such increase and whereupon Pinnacle may at its sole discretion offer the Customer alternative options. Should the Customer still not agree to such increase or any alternative options offered by Pinnacle the Customer shall have the right to terminate this Agreement by giving three (3) month's written notice to Pinnacle.
  - 8.3A In addition to clause 8.3 Pinnacle reserves the right to further increase the Charges (including any call rates) or Prices in any year during which the Services are provided to the Customer by giving the Customer reasonable notice for the following reasons:
    - 8.3A.1 as a result of any increase in charges made to Pinnacle from any third party providers to it including but limited to Network Operators; and/or
    - 8.3A.2 as a result of any increase to the direct cost of providing the Services; and/or
    - 8.3A.3 as a result of any regulatory change which increases the direct cost of providing the Services; and/or
    - 8.3A.4 on each anniversary of the Term
- provided that each such increase shall be capped at (a) the value of the direct increase in costs to Pinnacle; and/or up to an additional 20% extra at the sole discretion of Pinnacle .

- 8.4 The Customer acknowledges that the Price may vary for reasons beyond Pinnacle's control due to changes in legislation, including as a result of the United Kingdom leaving the European Union or due to variations in foreign currency exchange rates ("**External Costs**") and Pinnacle shall provide the Customer with as much reasonable notice as possible should the Price be affected in any way. For the avoidance of doubt, Pinnacle shall be entitled to pass on the cost of any External Costs to the Customer and such costs shall be clearly itemised on an invoice to the Customer.
- 8.5 The Customer is liable for any and all Usage Charges. Pinnacle shall use its reasonable endeavours to provide non-regulatory alerts through its billing system but accepts no liability.
- 8.6 Pinnacle shall be entitled to set-off any funds owed to a Customer against any funds owed to Pinnacle by a Customer. Pinnacle shall also be entitled to set-off any funds a Customer may be in credit in with any of its accounts with Pinnacle against any accounts it may be in debit in with any of its accounts with Pinnacle.

## **9 PRICING – EQUIPMENT**

- 9.1 In respect of Equipment, all pricing applies to both business customers and consumers.
- 9.2 Price plans (tariffs, bolt ons and Usage Charges) are subject to change, although Pinnacle will endeavour to provide 30 days' advance-notice wherever possible. Price changes will become effective whether the Customer has received or acknowledged such changes.
- 9.3 Pinnacle price plans have been proposed on the basis of current usage patterns. Should these levels fall, Pinnacle reserves the right to re-negotiate rates and if agreement cannot be found, then to suspend and/or disconnect the Services (or any part of them).
- 9.4 The Pinnacle price plans are not made available for the purpose of resale. If the Customer is found to be reselling such Services (or any part of them), Pinnacle reserves the right to suspend and/or disconnect the Services (or any part of them).
- 9.5 The Price for a Subsidised Mobile Device may include a subsidy or benefit from a cashback.
- 9.6 The Customer shall indemnify Pinnacle against any costs, losses or charges incurred in the event the Customer experiences fraudulent calls on the Supplied Hardware, Mobile Network Services or Equipment.
- 9.7 In the event that the Customer is in breach of any term of this Agreement or the Mobile Network Services or the Network Services Agreement, the Customer agrees to pay to Pinnacle the full amount of any subsidy or cashback provided to the Customer or received by Pinnacle from the Network Operator, up to a maximum of 24 months line rental (whichever is the greater) under or in relation to any such Subsidised Mobile Device, Mobile Network Services or Network Services Agreement.

## **10 PAYMENT**

- 10.1 If the Order states that payment of the Price 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 10.4, 10.5, 13.2.1 and 13.2.2) by direct debit, in accordance with the payment terms set out in the Order.

The Customer acknowledges that should they not make payment by direct debit and instead another form of payment is used, Pinnacle reserves the right to charge the Customer 2% of the recurring invoice value capped at £50 per month of the Term.

- 10.2 If the Order states that payment of the Price 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 or by such other payment date as notified on the invoice. If the Order states that payment is to be made by direct debit and the Customer elects to make payment by another means, Pinnacle reserves the right to charge the Customer 2% of the recurring invoice value capped at £50 per month of the Term.
- 10.3 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).
- 10.4 Reasonable out-of-pocket expenses may be charged by Pinnacle on production to the Customer of reasonable evidence of expenditure.
- 10.5 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.
- 10.6 Where the Order is for, or includes, the supply of Equipment, Pinnacle shall be entitled to render an invoice to the Customer for the Equipment on collection by or delivery to the Customer.
- 10.7 The Customer will pay the Price for the Equipment within 30 days of the invoice date or within such other time as notified on the invoice. All invoices are payable immediately unless a Hardware Credit Fund has been pre-arranged.
- 10.8 If the Customer is offered a Hardware Credit Fund, Pinnacle will carry out a credit check using a recognised credit reference agency. Any and all sums for which credit is provided shall become due and payable within the agreed terms. Without prejudice to the foregoing, Pinnacle reserves the right to withdraw, suspend or vary the terms of the Customer's Hardware Credit Fund account at any time. If the Customer's Hardware Credit Fund is terminated, the Customer shall become immediately liable to pay all sums for which credit has been provided.
- 10.8A If the Customer is entitled to a Hardware Credit Fund and during the Term suffers an Insolvency Event, goes into administration or terminates the Agreement, Pinnacle shall be entitled to apply any unused Hardware Credit Fund towards full or partial settlement of any unpaid invoices of the Customer including any outstanding costs or charges for the remainder of the Term. If the Customer owes a debt to Pinnacle and has a Hardware Credit Fund with available credit during the Term Pinnacle may at its sole discretion apply any credit within the Hardware Credit Fund at its discretion and without notice to the Customer to settle any such debt. If the Customer fails to make payment of any invoice by its due date in accordance with this clause 10, Pinnacle shall be entitled to suspend access to and use of the Hardware Credit Fund until such time as payment of the outstanding invoice(s) has been received in full.
- 10.9 Pinnacle shall have no obligation to replace, repair or accept back Mobile Device(s) and/or SIM Card(s) or associated equipment once supplied and used, except as provided for in clause 11.

- 10.10. If the Customer fails to make any payment due to Pinnacle under this Agreement by the due date for payment then, without limiting Pinnacle's remedies under clauses 27 and 28, 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.

## **11 TITLE, RISK AND INSURANCE**

- 11.1 Title to the Equipment which has not been subsidised or benefitted from cashback will pass to the Customer when payment in full has been received by Pinnacle in relation to the Equipment. Title to the Equipment and Supplied Hardware remains with Pinnacle unless specified otherwise or provided for by this Agreement
- 11.2 Title to the Subsidised Mobile Device(s) will pass to the Customer at the end of the Minimum Contract Term unless the Customer is or has been in breach of this Agreement or the Network Services Agreement during the Minimum Contract Term.
- 11.3 Pinnacle shall be entitled to recover the Mobile Device from the Customer if the Customer is in breach of any term of this Agreement and title has not yet passed to the Customer.
- 11.4 Risk in the Mobile Device(s) will pass to the Customer on receipt of the Mobile Device(s). It is the Customer's responsibility to insure the Mobile Device(s) for its full unsubsidised replacement value for the Minimum Contract Term with an insurer of repute and with Pinnacle's interest noted on the policy.
- 11.5 The Customer must notify Pinnacle within 7 days of any loss of, or material damage to Subsidised Mobile Devices.
- 11.6 The Customer will be required to pay for a new SIM Card if it should be lost or damaged within the Minimum Contract Term at a minimum cost of £15.00 (+ VAT). The Customer shall also be required to pay for the delivery costs of a new Sim Card which shall be quoted to the Customer in advance at the prevailing rates.
- 11.7 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.
- 11.8 Until title to the Supplied Hardware has passed to the Customer, the Customer shall:
- 11.8.1 store any Supplied Hardware separately away from all other goods held by the Customer so that it remains readily identifiable as Pinnacle's property;
  - 11.8.2 not remove, deface or obscure any identifying mark or packaging on or relating to such Supplied Hardware; and
  - 11.8.3 maintain such Supplied Hardware in satisfactory condition and keep it insured against all risks for its full price from the date of delivery.
- 11.9 The risk in the Supplied Hardware shall pass to the Customer on delivery to the Site(s).

## **12 CHANGE OF SCOPE AND TECHNOLOGY SUBSTITUTION**

- 12.1 The Customer may, by giving written notice to Pinnacle at any time during the Term, request a change to the scope of any Services.
- 12.2 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 12.1.
- 12.3 Within five Business Days of receipt of the written estimate referred to in clause 12.2 (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).
- 12.4 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 12.3.

### **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 in order to provide the Services;
  - 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 and up to date 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, Software and Equipment in accordance with the terms of this Agreement;



13.1.9 not use the Supplied Hardware, Services, Software or Equipment:

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 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 Agreement, 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, the Vendor 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 the Vendor's discretion for each call that violates 13.1.9.2;

13.2.3 suspend use of the Services in accordance with clause 25.1; or

13.2.4 agree an amendment to this Agreement in accordance with clause 10.

#### **14 THIRD PARTY CONDITIONS**

14.1 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.

14.2 Pinnacle may treat the Customer's breach of any Third-Party Conditions as a breach of this Agreement.

#### **15 HOSTED SOLUTIONS – INSTALLATION AND MAINTENANCE**

15.1 Where it is necessary for Pinnacle or its suppliers to effect installation and/or maintenance of Cloud Services, Equipment or any other Supplier Hardware products at the Customer's Site(s), the Customer shall provide full access to such Site(s) and to the Customer's personnel, and

any technical help reasonably required by Pinnacle or its suppliers for the installation and maintenance of the Cloud Services, Equipment or other Supplier Hardware products.

- 15.2 The Customer shall use any equipment belonging to Pinnacle or its suppliers and associated software in strict accordance with any instructions or software licence communicated or made available by Pinnacle or its suppliers from time to time, including any Third Party Conditions, and Pinnacle 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, and Third Party Conditions.

## 16 INSURANCE

- 16.1 The Customer shall be responsible for insuring any equipment belonging to Pinnacle 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.
- 16.2 The Customer shall be responsible for insuring itself against all loss of or damage/corruption to data. In no event will Pinnacle 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 Supplied Hardware products.

## 17 IMPROPER USE

- 17.1 Any network and/or Cloud Services supplied by Pinnacle or its suppliers may only be used by the Customer for lawful purposes, and the Customer agrees to be bound by the Virtual1 Acceptable Use Policy in relation to the use of the Cloud Services and any network.
- 17.2 The Customer shall not (and shall not authorise or permit any other party to):
- 17.2.1 use the Cloud Services or any network supplied by Pinnacle 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**");
  - 17.2.2 use the Cloud Services or any network supplied by Pinnacle 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;
  - 17.2.3 use the Cloud Services or any network supplied by Pinnacle 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
  - 17.2.4 attempting to gain unauthorised access to any account or computer resource not belonging to the Customer, or attempt the unauthorised accessing, altering, interfering with, or destruction of any network, system, equipment or information by any means or device.

- 17.3 Any breach of this clause 17 shall be deemed to be a material breach of this Agreement and shall entitle Pinnacle to terminate this Agreement forthwith and for this purpose it shall be irrelevant whether the Customer is aware of the content of any information, data or material so transmitted or not. Pinnacle may suspend the Cloud Services without notice with immediate effect if in Pinnacle's reasonable opinion the Customer is in breach of this clause 17.
- 17.4 The Customer acknowledges that Pinnacle 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 Pinnacle or its suppliers, and/or the Cloud Services, and Pinnacle and its suppliers hereby exclude all liability of any kind for the transmission or reception of Prohibited Material of whatever nature.
- 17.5 The Customer hereby agrees to indemnify and hold Pinnacle 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 Pinnacle or its suppliers, and/or the Cloud Services by the Customer, 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 Customer shall pay all costs, damages, awards, fees (including reasonable legal fees) and judgements awarded against Pinnacle and/or its suppliers arising from such claims, and shall provide Pinnacle 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 Customer's sole expense. Such actions will be taken in consultation with the Customer.

## **18 NETWORK SERVICES AGREEMENT**

- 18.1 No contract for the provision of a Subsidised Mobile Device will become binding unless and until the Customer enters into a Network Services Agreement directly with the Network Operator, or a Contract with Pinnacle.
- 18.2 The Network Services Agreement will be between the Customer and the Network Operator, and Pinnacle shall have no responsibility or liability under or in relation to such agreement or for providing network services.
- 18.3 It is the Customer's responsibility to ensure that the chosen Network Operator, tariffs and bolt-ons provides sufficient network coverage and quality of service, features, support and services to meet the Customer's needs and are suitable for the Customer's needs and usage. It is also the Customer's responsibility to ensure that the tariff and/or package chosen is suitable for the Customer's needs. Pinnacle gives no advice and makes no recommendation in this respect and Pinnacle's employees, staff and other representatives have no authority to make any such recommendations or to give advice.
- 18.4 Whilst Pinnacle will analyse the Customer's previous usage and propose tariffs and associated bolt-ons this is offered on a reasonable endeavours basis and no guarantee is offered or implied. The Customer must perform its own due diligence prior to committing to these terms and conditions by signing the Pinnacle Contract or Invoice.
- 18.5 Whilst Pinnacle will make reasonable efforts to ensure the accuracy and completeness of the tariff analysis results, the Customer should not rely on them and Pinnacle accepts no liability

for errors or omissions or for any direct, indirect, incidental or consequential damages arising as a result of the use of the results by the Customer.

- 18.6 The Customer is responsible for ensuring that its chosen Network Operator provides sufficient network data speeds.
- 18.7 Connection to the network of a Network Operator is outside the responsibility of Pinnacle. However, it is understood that Connection can take up to 72 hours in ordinary circumstances but will be subject to the checks (including, without limitation, credit checks) of the Network Operator and Pinnacle.
- 18.8 The Network Services Agreement will start on the date of Connection and shall continue for the Minimum Contract Term and thereafter until terminated by the Customer in accordance with the Network Services Agreement.
- 18.9 If Pinnacle has agreed to pay contract termination fees (in respect of the Customer's previous incumbent), all line rental rebates are automatically provided on request after the Customer has paid its third Network Airtime bill, providing all contract paperwork is complete and the Network Airtime account is paid up to date. The payment is made by monthly BACS transfer over the contract term.

## **19 CUSTOMER CONTRACT**

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

## **20 PERSONNEL**

- 20.1 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.
- 20.2 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.
- 20.3 During the Term and for a period of six 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.

## **21 CONFIDENTIALITY AND PUBLICITY**

- 21.1 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 Agreement (Permitted Purposes).
- 21.2 In relation to the Customer's Confidential Information:
- 21.2.1 Pinnacle shall treat as confidential all Confidential Information of the Customer supplied under this Agreement. 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 21; and
- 21.2.2 Pinnacle may provide any subcontractor authorised under clause 25 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to Pinnacle in terms similar to clause 21.2.1 (which Pinnacle shall use reasonable endeavours to ensure is adhered to).
- 21.3 In relation to Pinnacle's Confidential Information:
- 21.3.1 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 Agreement;
- 21.3.2 the Customer shall not, without the prior written consent of Pinnacle, divulge any part of Pinnacle's Confidential Information to any person other than:
- 21.3.2.1 the Customer Representative;
- 21.3.2.2 other employees of the Customer who need to know it for the Permitted Purposes;
- 21.3.3 the Customer undertakes to ensure that the persons mentioned in clause 21.3.2 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 Pinnacle in terms similar to clause 21.3.1 (which the Customer shall ensure is adhered to).
- 21.4 The restrictions imposed by clause 21.1, clause 21.2 and clause 21.3 shall not apply to the disclosure of any Confidential Information which:
- 21.4.1 is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 21;
- 21.4.2 before any negotiations or discussions leading to the formation of this Agreement 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
- 21.4.3 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).

- 21.5 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.
- 21.6 No Party shall make, or permit any person to make, any public announcement concerning this Agreement 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.
- 21.7 This clause 21 shall remain in full force and effect in the event of any termination of this Agreement.

## **22 DATA PROTECTION**

- 22.1 The following definitions apply:
- 22.1.1 the terms "data controller", "data processor", "data subject", "processing" and "data protection principles" bear the respective meanings given to them in the Data Protection Legislation;
  - 22.1.2 data includes Personal Data;
  - 22.1.3 Customer Personal Data means any Personal Data provided by or on behalf of the Customer.
- 22.2 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 operates, including in the United Kingdom the Data Protection Act 2018.
- 22.3 Pinnacle shall:
- 22.3.1 only carry out processing of any Customer Personal Data on the Customer's instructions;
  - 22.3.2 implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
  - 22.3.3 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.
- 22.4 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.
- 22.5 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 Agreement.

- 22.6 Any personal data that Pinnacle collects about the Customer in connection with this Agreement, or which is provided to Pinnacle by the Customer or others in connection with matters Pinnacle undertakes on their behalf ('Personal Data') will be processed by Pinnacle in providing services to the Customer as described in Pinnacle's Privacy Statement located on its website at [www.Pinnaclecoms.com/contact-us/privacy-statement](http://www.Pinnaclecoms.com/contact-us/privacy-statement).
- 22.7 Personal Data that the Customer provides to Pinnacle from others is received on the understanding that it has been collected, processed, and disclosed in compliance with the GDPR and/or any data protection laws and regulations applicable to the Customer or to its organisation.
- 22.8 The Customer consents Pinnacle using its Personal Data for the purposes of:
- 22.8.1 Assessing the level of credit to be extended to the Customer; and
  - 22.8.2 Marketing of related products and services.
- 22.9 The Customer may opt out of clause 22.8.2 at any time by giving Pinnacle notice in writing.

## **23 WARRANTIES**

- 23.1 Pinnacle warrants that:
- 23.1.1 it will perform the Services using reasonable skill and care; and
  - 23.1.2 in respect of any Supplied Hardware:
    - 23.1.2.1 as far as Pinnacle is able, Pinnacle will pass on to the Customer the benefits of any Manufacturers' Warranties; and
    - 23.1.2.2 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.
- 23.2 The Customer warrants that:
- 23.2.1 it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this Agreement, and that any persons signing this Agreement are duly authorised to bind the Customer;
  - 23.2.2 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 Agreement, including supply the Supplied Hardware, Software and/or Services;
  - 23.2.3 it shall comply with the Third Party Conditions together with any recommendations notified by Pinnacle and/or third party providers in relation to the handling and updating of the Software, Equipment and/or Supplied Hardware as appropriate and shall hold Pinnacle harmless in relation to any losses incurred as a result of the Customer failing to handle or update the Software, Equipment and/or Supplied Hardware as advised.

- 23.3 The express provisions of this Agreement 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.
- 23.4 Without prejudice to clause 23.3, the Customer acknowledges that:
- 23.4.1 Pinnacle makes no warranty, representation or guarantee in relation to the Supplied Hardware, Software, Equipment and/or Services beyond the warranty (including the Manufacturers' Warranties), representation or guarantee offered by the third party supplier of the Supplied Hardware, Software, Equipment and/or Services and the Customer acknowledges that any Apple branded Supplied Hardware, Equipment or products have a 12 month warranty;
  - 23.4.2 the Supplied Hardware, Software and/or Services may not operate on an uninterrupted or error free basis;
  - 23.4.3 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;
  - 23.4.4 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;
  - 23.4.5 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 Agreement null and void;
  - 23.4.6 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
  - 23.4.7 to the extent that Pinnacle is able to do so, it will pass the benefit of such warranties to the Customer.

## **24 LIMITATION OF LIABILITY**

- 24.1 Neither Party excludes or limits liability to the other Party for:
- 24.1.1 fraud or fraudulent misrepresentation;
  - 24.1.2 death or personal injury caused by negligence;
  - 24.1.3 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
  - 24.1.4 any matter for which it would be unlawful for the Parties to exclude liability.



- 24.2 Subject to clause 24.1, 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 Agreement (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):
- 24.2.1 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
  - 24.2.2 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.
- 24.3 Subject to clause 24.1 and 24.2, under no circumstances shall the total aggregate liability of Pinnacle to the Customer (however arising) under or in relation to this Agreement, 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:
- 24.3.1 £10,000 (ten thousand pounds);
  - 24.3.2 the total Price paid by the Customer under this Agreement; or
  - 24.3.3 in respect of Equipment only, six months rental for one or more related claims arising in any one six month period.
- 24.4 It is the Customer's responsibility to effect insurance to cover all risks relating to the Supplied Hardware, Software, Services and/or Equipment that are not covered by this Agreement.
- 24.5 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 38 or the Customer's acts or omissions, including any failure to provide Pinnacle with adequate delivery instructions.

## **25 ASSIGNMENT AND CONTRACTING**

- 25.1 The Customer shall not 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 Agreement without the prior written consent of Pinnacle (such consent not to be unreasonably withheld or delayed).
- 25.2 Pinnacle may assign or subcontract any or all of its rights and obligations under this Agreement without prior permission from the Customer.
- 25.3 Notwithstanding clause 21, a Party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement 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.

## **26 DURATION**

- 26.1 Subject to clause 26.2, this Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with clause 28, shall continue for the Term as specified in the Order. Pinnacle shall endeavour to commence the Services on the Estimated Start Date.
- 26.2 Unless terminated earlier in accordance with clause 28, this Agreement 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**"). Each Extended Term will further automatically renew by the same period as stated within the Order unless terminated earlier in accordance with clause 28.
- 26.3 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 Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 26.4 If the Order states that this Agreement will not renew automatically then, unless terminated earlier in accordance with clause 28, this Agreement shall continue for the Term specified in the Order following which it shall terminate automatically without notice.

## **27 SUSPENSION OF SERVICE**

- 27.1 Without limiting its other rights or remedies, Pinnacle may suspend provision of the Services under this Agreement or any other contract between the Customer and Pinnacle if the Customer:
- 27.1.1 becomes subject to any of the events listed in clause 28.1.1 to clause 28.1.3 or Pinnacle reasonably believes that the Customer is about to become subject to any of them;
- 27.1.2 does not comply with its obligations listed in clause 13.1.8 to clause 13.1.14; or
- 27.1.3 fails to pay any amount due under this Agreement on the due date for payment.
- 27.2 The suspension of Services pursuant to clause 27.1 shall have no effect on the Customer's obligation to pay the Price under this Agreement.
- 27.3 In accordance with clause 27.1.2, 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.
- 27.4 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 27.3 and (b) any use of the Supplied Hardware, Software or Services for fraudulent, illegal or improper uses.

## **28 TERMINATION**

- 28.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, Pinnacle may at any time terminate this Agreement (or any Service) with immediate effect by giving written notice to the Customer if:

- 28.1.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 28.1.2 the Customer commits a material breach of any term of this Agreement; or
  - 28.1.3 an Insolvency Event affecting the Customer occurs.
- 28.2 Without limiting its other rights or remedies, Pinnacle may terminate this Agreement by giving the Customer one (1) month's written notice.
- 28.3 The Customer may terminate this Agreement by giving Pinnacle 90 days' written notice by way of email to terminations@Pinnaclecoms.com and completing the applicable termination notice. For the avoidance of doubt, the notice period of 90 days shall be considered to have begun at the point at which the termination notice is signed and returned by the Customer, and not at the point the Customer emails their intention to terminate. The Customer is minded to pay particular attention to the automatic email receipt following their notice of intention to terminate for further information.
- 28.4 The Customer may terminate this Agreement if:
  - 28.4.1 Pinnacle commits a material breach of this Agreement 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
  - 28.4.2 the Customer is entitled to do so under clause 8.3.
- 28.5 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after its termination, including clause 1, clause 21 to clause 24, and this clause 28 shall remain in full force and effect, otherwise neither Party shall have any further obligation to the other under this Agreement after its termination.
- 28.6 Termination of this Agreement 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 Agreement which existed at or before the date of termination.
- 28.7 Notwithstanding its obligations in this clause 28, 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.
- 28.8 Where the Customer has entered into a Network Services Agreement and terminates before the end of the Minimum Contract Term, the Customer will be liable to repay a termination charge to Pinnacle that will be based on the reduction of the total fixed monthly costs that would have been received had the contract continued for the whole of the Minimum Contract Term.
- 28.9 Where a target minimum spend has been agreed, the Customer shall pay Pinnacle any outstanding minimum spend in full upon:
  - 28.9.1 Expiry of the minimum agreement term;
  - 28.9.2 Early termination of this agreement (under clause 28.9);

- 28.9.3 Early termination of this agreement by Pinnacle where the customer has committed a material or persistent breach (under clause 28.9). The customer shall pay Pinnacle any outstanding minimum spend calculated on a pro-rated basis in accordance with the proportion of the minimum agreement term elapsed in full upon;
- 28.9.4 (i) a request by Pinnacle during the minimum agreement term, where a review by Pinnacle has revealed an underperformance of actual customer expenditure as measured against the anticipated target minimum spend at that point in time and/or (ii) early termination of this agreement by Pinnacle where the customer has undergone a change of control (under clause 28.9) or (iii) early termination of this agreement by the customer where Pinnacle has committed a material or persistent breach (under clause 28.9) or varied terms/increased charges to the material detriment of the customer (under clause 28.9).
- 28.10. The Customer may not withdraw any remaining Hardware Credit Fund in the period 90 days prior to the end of the Minimum Contract Term or during the notice period (if any) provided for by either party in accordance with this clause 28, unless agreed otherwise with Pinnacle. If the Customer re-signs a new Agreement with Pinnacle using the same Network Service Provider, then the Customer's Hardware Credit Fund can be carried forward and used in the next contract term.
- 28.11 All Hardware Credit Funds include VAT at the current rate unless otherwise stated.

## **29 POST-TERMINATION**

- 29.1 On termination of this Agreement, the Customer shall either return to Pinnacle or, at Pinnacle's option, destroy all material copies of the Software and Documentation in its possession, 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.
- 29.2 On termination of this Agreement for any reason, each Party shall as soon as reasonably practicable:
- 29.2.1 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;
- 29.2.2 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
- 29.2.3 subject to clause 29.2.2, 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 29.2.3 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.

- 29.3 On termination of this Agreement for any reason, Pinnacle shall (if relevant): 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.
- 29.4 On termination of this Agreement 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.
- 29.4A On termination of this Agreement for any reason, the Customer shall comply with all reasonable instructions of Pinnacle with regards to returning any Supplied Hardware, Equipment or other equipment provided to the Customer under the Order. The Customer shall package and return any Supplied Hardware, Equipment or other equipment provided to the Customer under the Order at its own cost and return it to either Pinnacle or any third-party provider on the written instructions of Pinnacle.
- 29.5 The following activities are not envisaged under this Agreement:
- 29.5.1 transferring the Services to the Customer or to a replacement supplier on termination of this Agreement; and
- 29.5.2 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.

### **30 WAIVER**

- 30.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement 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.
- 30.2 Any express or implied waiver by Pinnacle of any term or condition of this Agreement or of any breach or default by the Customer may be terminated by Pinnacle at any time. No such waiver shall constitute a continuing waiver, nor shall it prevent Pinnacle from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Agreement.

### **31 RIGHTS AND REMEDIES**

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

### **32 ENTIRE AGREEMENT**

- 32.1 This Agreement 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.

32.2 Each Party acknowledges that in entering into this Agreement 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 Agreement at any time before its signature (together "Statements"), other than those which are set out in this Agreement.

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

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

### **33 VARIATION**

33.1 With the exception of changes specified under clause 33.2, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

33.2 Pinnacle may change this Agreement (including changing or introducing new Charges or changing or withdrawing the Services or services of third parties where required:

33.2.1 to comply with applicable law or regulation;

33.2.2 because of a change imposed by a third party supplier; or

33.2.3 due to a change in Pinnacle's operations or services.

### **34 SEVERANCE**

34.1 If any provision or part-provision of this Agreement 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 Agreement.

34.2 If any provision or part-provision of this Agreement 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.

### **35 COUNTERPARTS**

35.1 This Agreement 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.

### **36 THIRD-PARTY RIGHTS**

36.1 Any person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

### **37 NO PARTNERSHIP OR AGENCY**

37.1 Nothing in this Agreement 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.

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

### **38 FORCE MAJEURE**

38.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement 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 Agreement by giving 10 days' written notice to the other Party.

38.2 Nothing in clause 38.1 shall affect the Customer's liability to pay the Price under this Agreement as and when it falls due.

### **39 NOTICES**

39.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or signed for post or by commercial courier, to the UK address set out in the Order or as otherwise specified by the relevant Party by notice in writing to each other Party, provide such address is within the UK.

39.2 In the event the Customer resides outside the UK, with the exception of legal action, any time limits for undertaking action in relation to this Agreement shall be unaffected.

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

39.3.1 if delivered personally, when left at the address and for the contact referred to in this clause 39;

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

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

39.4 The provisions of this clause 39 shall not apply to the service of any proceedings or other documents in any legal action.

### **40 SET-OFF**

40.1 Pinnacle may, at any time, without notice to the Customer, set off any liability of the Customer to Pinnacle against any liability of Pinnacle to the Customer.

#### **41 GOVERNING LAW**

41.1 This Agreement 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.

#### **42 JURISDICTION**

42.1 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

42.2 The submission by the parties to such jurisdiction shall not limit the right of Pinnacle to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.

### **SCHEDULE - Definitions and Interpretation**

#### **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;

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

"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 12.3;



<b>"Charges"</b>	means the Basic Charge(s) and, where applicable, the Supplementary Charges and Escalated Response Charge;
<b>"Conditions"</b>	means clauses 1 to 41 above and the Schedule to this Agreement;
<b>"Confidential Information"</b>	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;
<b>"Control"</b>	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;
<b>"Customer"</b>	means the person or firm named on the Order who purchases the Supplied Hardware, Software, Equipment and/or Services from Pinnacle;
<b>"Customer Representative"</b>	means a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and identified to Pinnacle by written notice from the Customer;
<b>"Customer Software"</b>	means the software programs supplied by the Customer;
<b>"Data Protection Legislation"</b>	means all applicable data protection law and regulations in any jurisdiction including the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679;
<b>"Delivery Date"</b>	means the estimated delivery date for Supplied Hardware, Software, Equipment and/or Services as set out in the Order;
<b>"Documentation"</b>	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, Equipment and/or Software;

<b>"Effective Date"</b>	shall have the meaning given to it in clause 2.2;
<b>"Estimated Start Date"</b>	means the anticipated commencement date of the provision of the Services as detailed on the Order but which Pinnacle provides no guarantee of meeting and which is similarly determined by the installation of the Customer Hardware and/or Customer Software;
<b>"Force Majeure Event"</b>	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;
<b>"Hardware Credit Fund"</b>	means a sum calculated by reference to (i) either the value of a piece (or pieces) of hardware including but not limited to a Mobile Device or (ii) its value as part of a deal being offered as part of a qualifying Service which a qualifying Customer would be entitled to under a qualifying Service should they not elect to obtain a piece (or pieces) of hardware at the time of receiving a qualifying Service from Pinnacle (" <b>Credit</b> "), such Credit then being set aside by Pinnacle for use by the Customer to purchase Supplied Hardware up to the value of the Credit at a later date during Term;
<b>"Initial Term"</b>	shall have the meaning given to it in the Order;
<b>"Insolvency Event"</b>	shall mean: <ul style="list-style-type: none"> <li>(a) 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;</li> <li>(b) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or</li> <li>(c) the Customer's financial position deteriorates to such an extent that, in Pinnacle's opinion, the Customer's capability</li> </ul>

to adequately fulfil its obligations under this Agreement has been placed in jeopardy;

- "Manufacturers' Warranties"** means the warranties given by any third-party manufacturer in relation to any item of Supplied Hardware;
- "Minimum Contract Term"** means the later of the minimum contract term set out in the Network Services Agreement or 24 months;
- "Mobile Device"** means a mobile communications device and/or associated hardware;
- "Mobile Network Services"** means the network services for communication of data and voice over a cellular radio network;
- "Network Operator"** means the operator of the Mobile Network Services;
- "Order"** means the details set out in the order form section of this Agreement detailing the Services to be provided by Pinnacle to the Customer;
- "Price"** means the price payable by the Customer to Pinnacle as set out in the Order for the Services specified in the Order pursuant to clause 8 and 10 of this Agreement;
- "Service"** means the service or services listed in the Order to be provided to the Customer by Pinnacle;
- "SIM Card"** means the subscriber identification module card provided by a Network Operator in a Mobile Device;
- "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;
- "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 Agreement will renew automatically or an extension(s) has been granted, the Initial Term and each Extended Term; or (b) where the Order specifies that

this Agreement will not renew automatically and no extension has been granted, 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 relating to a third party supplier;
- "Third-Party Licences"** means the third party proprietary licences to the Software, as referred to in clause 5;
- "Usage Charges"** means the Mobile Network Service charges incurred by the Customer including, but not limited to, data charges, roaming charges and international charges and including any outbound call charges resulting from fraudulent or unauthorised use;
- "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.

## **2 Interpretation**

- 2.1 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.3 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.
- 2.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.6 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 Agreement.
- 2.7 Clause and schedule headings do not affect the interpretation of this Agreement.
- 2.8 Writing or written includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 2.9 Any reference to this Agreement 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.

2.10. 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.