

PinacL Solutions UK Limited Terms & Conditions of Managed Services

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1. Introduction

2.1 This schedule forms an addendum to Pinacl Solutions UK Limited Terms and Conditions of Sale and as such must be read in conjunction with them. For clarity, this addendum takes precedent over Pinacl Solutions UK Limited Terms and Conditions of Sale.

2.2 The definitions set out in Schedule 1 apply to these Conditions and the Contract.

2.3 In these Conditions, unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) reference to a gender includes the other gender and the neuter;
- c) references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- d) any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

1.4 The headings in these Conditions are for ease of reference only and shall not affect its interpretation.

1.5 References to clauses and schedules are unless otherwise provided, references to the clauses and schedules to these Conditions.

2. General

2.1 The contract entered into for service provision shall not be modified except by written amendments signed by both parties.

2.2 Hours of cover unless specified in the contract will be between 09.00 and 17.00 Monday to Friday, excluding public and bank holidays.

2.3 The Customer shall at all times maintain the site in accordance with the equipment manufacturer's specification. Any work carried out as a result of non-conformance may be subject to an additional charge.

2.4 The Customer shall take all reasonable precautions to ensure the health and safety of the Company's personnel whilst on the Customer's premises

2.5 The Customer will ensure that all routine operator procedures and maintenance is carried out in accordance with the manufacturer's recommendations.

2.6 The Customer shall take all reasonable precautions to ensure the security of the Company's personnel and information whilst on the Customer's premises.

2.7 The Customer shall at all times be responsible for the security and reconstruction of its data, multi-user operating systems and networking operating systems.

2.8 The Company shall not be liable for any direct, indirect or consequential loss or damage suffered by the Customer, whether by reason of any component breakdown or otherwise, resulting from any malfunction or in-operation of the equipment or service failure.

2.9 The Company shall be under no obligation to

furnish services under this agreement should repair be required because of:

- a) improper use or treatment or damage caused other than by fair wear and tear.
- b) natural disasters such as floods or earthquakes.
- c) repairs, maintenance or modifications carried out by other than the Company's personnel.
- d) damage caused by relocation of equipment.
- e) unusual shock or electrical damage, accident, fire or water damage, neglect, air conditioning failure, humidity control failure, corrosive atmosphere or cases other than ordinary use.
- f) strikes, riots or acts of war or nuclear disaster.
- g) failure by the Customer to maintain the site specification as recommended by the manufacturer. Services provided as a result of above will be so at the Company's standard rates in effect at the time.

2.10 The Customer shall use the equipment only for such purpose as the manufacturer recommends in accordance with the manufacturers specification.

2.11 Company reserves the right to charge the Customer at the Company's then current rates:

- a) for any visit made at the request of the Customer when it is found that no service is necessary. So called "no fault found".
- b) when the fault is outside of the service scope, such as faults on ancillary equipment, faults on mains electrical supplies or operator error.

3.12 The Company's service does not cover operating supplies and consumables.

3.13 The Customer will provide reasonable access and time for the provision of the service as required by the Company.

3. Term of Contract

3.1 The Managed Service shall continue for the Initial Term and thereafter shall continue for a period of twelve months (automatically renewing for a further twelve months on each anniversary after the Initial Term) unless and until either Party serves written notice on the other Party to terminate the Managed Service.

3.2 A notice to terminate the Managed Service shall only be effective if the Customer provides a minimum of 90-days notice expiring before the expiry of the Initial Term or any anniversary following the Initial Term and has fully paid any sums owing to the Company and discharged all obligations under the Contract. Such termination notice shall be sent to pshd@pinaclsolutions.com and followed by a hard copy to Company's registered address.

4. Transitional Services

5.1 The Parties shall co-operate with each other in connection with the transition and migration of any of the Customer's Services and the Parties agree that where there is a transition to the provision of the Managed Service, there may be a reasonable disruption to the Customer's business. The Company shall use reasonable efforts to ensure the accurate migration, but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of any migrated Data and shall promptly give sufficient details to the Company of any inaccuracies or omissions in order to permit the Company to correct them. The Customer shall also ensure that they take adequate back up of such Data prior to such transition.

5. Managed Services

5.1 The Company shall use its reasonable endeavours to supply to the Customer the Managed Service during the Service Hours and in all material respects pursuant to the Contract from the Commencement Date.

5.2 In the sole opinion of Company, the Company may do a technical audit on Customer's infrastructure during an on-boarding process.

5.3 The Company shall provide a Managed Service for purchased Products and/or Product Releases which are currently supported by the Vendor only.

5.4 The Managed Services may include Technical Advice in relation to the Product, documentation and updates. The Customer shall nominate Key Personnel to whom the Company may be required to provide advice. The Company shall use reasonable endeavours to provide the Customer with Technical Advice within the Response Times detailed in the Service Levels.

5.5 The Company may provide Technical Advice via telephone, at the Customer Premises or any other location as may be mutually agreed between the parties. At the Company's discretion, the provision of Technical Advice at the Customer Premises or any other location may be deemed as an Additional Service resulting in an Additional Service Charge unless otherwise agreed in the Managed Service Definition Document.

5.6 Where Vendor Maintenance has been purchased by the Customer the following applies:

- a) any replacement parts applied to Goods will become the property of the owner of such Goods and all faulty parts will become the property of the Company;
- b) the Company reserves the right to supply new, second hand or reconditioned replacement parts in the performance of the Services.

6.7 The Company shall be entitled to immediately suspend part or all of the Services until further notice in the event of a Customer Cause or in the event of the following, (without limitation):

- a) the Customer's usage patterns harm the Company's and/or other Customer's networks, such as; malware and malicious code;
- b) excessive use (based on similar solutions of equitable size and configuration) such as but not limited to; high central processing Unit (CPU) utilisation high memory use and excessive disk throughput;
- c) any activity or use by the Customer which comprises of:
 - i) fraudulent, criminal or otherwise illegal activities.
 - ii) sending, receiving, publishing, posting, distributing, disseminating, encouraging the receipt of, uploading, downloading, recording, reviewing, streaming or using any material which is offensive, abusive, defamatory, indecent, obscene, unlawful, harassing or menacing or a breach of the copyright, trademark, intellectual property, confidence, privacy or any other rights of any person.
 - iii) sending or uploading unsolicited emails, advertising or promotional materials, offering to sell any goods or services, or conducting or forwarding surveys, contests or chain letters.
 - iv) knowingly or negligently transmitting or uploading any electronic material (including, without limit, files that contain viruses, corrupted files, or any other similar software or programmes) which is known or likely to cause, interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment.

- v) activities that invade another's privacy, cause annoyance, inconvenience or needless anxiety to any person.
- vi) activities that are in breach of any other third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software or other material.
- vii) anything that may disrupt or interfere with the Company's network or services or cause a host or the network to crash.
- viii) launching "denial of service" attacks; "mailbombing" attacks; or "flooding" attacks against a host or network.
- ix) making excessive use of, or placing unusual burdens on, the network, for example by sending or receiving large volumes of email or excessively large email attachments.
- x) circumventing the user authentication or security process of a host or network.
- xi) creating, transmitting, storing or publishing any virus, trojan, corrupting programme or corrupted data.
- xii) collecting, streaming, distributing or accessing any material that it knows, or reasonably should know, cannot be legally collected, streamed, distributed or accessed.

5.8 For the avoidance of doubt, notwithstanding the suspension of the Services, the Customer shall remain responsible and liable to pay the Company for the Charges during the period of suspension. The Services listed in Base Charges are the minimum contractual commitment.

5.9 The Managed Service shall continue for the Initial Term and thereafter shall continue for a period of twelve months (automatically renewing for a further twelve months on each anniversary after the Initial Term) unless and until either Party serves written notice on the other Party to terminate the Managed Service.

5.10 A notice to terminate the Managed Service shall only be effective if the Customer provides a minimum of 90-days notice expiring before the expiry of the Initial Term or any anniversary following the Initial Term and has fully paid any sums owing to the Company and discharged all obligations under the Contract. Such termination notice shall be sent to pshd@pinaclsolutions.com and followed by a hard copy to Company's registered address.

6. Leased Line and Dark Fibre Planned Maintenance

7.1 When a part of the Service requires to be temporarily taken out of service by either party for necessary planned work, e.g. modification or upgrade, Planned Maintenance, the following procedure will minimise any disruption caused by the outage and reasonable endeavours will be used to accommodate the customer in the timing and duration of outages. Whenever possible, planned work will be carried out with no disruption to Service.

- a) Where it is necessary for the Company to temporarily remove any service provided for the Customer, the Company will provide a minimum of 10 normal business days notice to the Customer prior to the Planned Maintenance.
- b) The Company shall contact the Customer to inform them of the reason for the outage and the date and time of the outage via e-mail.

7.2 The Company has no control over planned maintenance by the Company's suppliers, however, the Company will endeavour to provide as much notice as possible to the Customer to minimise any disruption. Once a planned

outage notification has been received from the Company's Suppliers, the Service Desk will analyse the outage and, identify the Customers affected. The Company shall contact the customer to inform them of the reason for the outage and the date and time of the outage via e-mail.

7.3 Should it be found necessary by the Customer to take any action that might have an effect on the services provided by the Company, then the Customer shall report to the Company's Service Desk all changes to their network, all maintenance and configuration changes which may have an effect on the services provided by the Company.

7.4 The Customer shall confirm when the outage, maintenance or configuration work has commenced with the Company and will advise the Company when the outage, maintenance or configuration work is complete.

7.5 It is the responsibility of the Customer to ensure that the above the Company's defined Planned Maintenance procedures are adhered to at all times.

7. Cancellation of Leased Line and Dark Fibre Services

8.1 Notice of cancellation of services provided by the Customer to the Company must be submitted to pshd@pinaclsolutions.com.

8.2 Once the notice of cancellation has been received by the Company, the Company will raise the relevant cancellation paperwork and email the Customer for authorisation and signature.

8.3 Upon receipt of a completed authorised cancellation form, the Company shall implement the necessary steps to cancel the relevant service. The Company shall notify the Customer once the Service cancellation has been fully processed. Any costs incurred for cancellation, in line with the agreed terms between the Customer and the Company for the relevant service will be detailed on the cancellation form and invoiced on cancellation.

8. Termination of Contract

9.1 Please refer to your Main Contract and Addendum.

9. Training

9.1 If applicable according to the Contract, the Company undertakes to provide the Training to the Customer in consideration of the Charges specified in the Contract.

9.2 Any additional training required by the Customer shall be an Additional Service provided by the Company at the Additional Service Charges.

9.3 Training shall be carried out at either the Customer Premises, Company Premises or such other location as agreed between the parties or as specified in the Contract

10. Additional Services

10.1 The Customer may request the provision of any Additional Service or the Company may advise that an Additional Service is required to enable the Company to perform the Services. If the Customer wishes to take advantage of such Additional Service, then the Customer must make a request for Additional Service.

10.2 The Company acknowledges that the Customer is not obliged to take any Additional Services from the Company and the Company shall not be obliged to provide any Additional Services unless and until the scope of such Additional Services have been agreed between the Parties.

10.3 In the event of any Additional Services being agreed between the Parties for the Managed Services, the Parties recommence the period of the Initial Term, such period commencing from the date of the Additional Services Request.

10.4 The Company shall provide the Additional Services within a reasonable time of the Customer requesting the Additional Services.

10.5 For the avoidance of doubt, the Company reserves the right to charge an Additional Service Charge where (including but not limited to):

- a) the Customer requests an Additional Service to be provided outside of Service Hours including but not limited to logging an Incident and/or requesting technical assistance (whether via telephone or email); and/or
- b) the Customer requests a non-contracted Managed Service; and/or
- c) in the opinion of the Company, more than a reasonable level of Service is being provided as a result of the Customers untrained personnel operating the Supported Assets; and/or
- d) in the opinion of the Company additional time or expense is incurred as a result of a lack of instructions from the Customer, the inaccuracy of the information supplied or any other cause attributable to the Customer, including a Customer Cause; and/or
- e) the Company undertakes remedial action following a Health Check; and/or
- f) the Customer changes the location of the Supported Assets.

10.6 The Customer accepts that the Services are subject to Exclusions and in the event that the Customer requires any Goods and/or Services falling within the Exclusions, the Customer shall pay to the Company an Additional Service Charge.

10.7 In the event that the Customer has requested a service within the Exclusions and or an Additional Service and the Parties have agreed a Confirmed Service Date if the Customer then later amends or cancels that Confirmed Service Date then the Company reserves the right to charge the Customer the Additional Service Charges. In addition the Customer shall indemnify the Company in full against all Loss incurred by the Company as a result of the amendment or cancellation

11. Company Assets

11.1 The Customer shall be liable for loss of or damage to any of the Company's Assets located on Customer Premises which is due to the negligent act or omission of the Customer and the Customer shall indemnify the Company against such loss and/or damage.

11.2 The Customer shall insure the Company's Assets located on Customer Premises against all liability whatsoever arising directly or indirectly out of the possession, use, loss damage or theft of the Company's Assets and all loss or damage to the Company's Assets from all insurable risks for the full cost of replacing it, with a reputable insurance company. The Customer shall arrange for Company interest in the Company's Assets to be endorsed on its insurance policy.

11.3 The Customer shall, on request, show the Company

evidence that such insurance is in place.

11.4 The Customer shall inform the Company immediately of any insurance claim and the Customer shall not settle any claims without the Company's prior agreement.

11.5 On termination or expiry of the Contract, the Customer shall be responsible for the removal of all relevant Company Assets from the Customer Premises, including the cost of packing, carriage and making good the Customer premises following removal.

11.6 For the avoidance of doubt the Customer shall not acquire any right, title or interest in or to the Company's Assets.

12. Customer Assets

12.1 Where any Customer Assets are made available to the Company during the Term, those Customer Assets shall remain the property of the Customer at all times and shall be used by the Company only for the purposes of the Contract.

12.2 The Company shall notify the Customer within 30-days of receipt (or as otherwise agreed between the Parties) where any Customer Asset is not in satisfactory condition when received by or on behalf of the Company.

12.3 The Company shall at all times during the Term, keep a record of any Customer Assets in its possession from time to time and shall make that record available to the Customer upon request by the Customer.

12.4 On termination or expiry of the Contract the Customer shall be responsible for the removal of all relevant Customer Assets from the Company Premises, including the cost of packing, carriage and making good the Company's premises following removal.

12.5 The Company recommends that the Customer insures the Customer's Assets located on the Company Premises against all liability whatsoever due to loss or damage. For the avoidance of doubt, the Company will not insure the Customer's Assets located on the Company's premises.

13. Customer Responsibilities

14.1 In order to enable the Company to provide the Goods and/or Services under these Conditions and the Contract the Customer agrees that it shall (at its own expense) pursuant to these Conditions and the Contract, (including but not limited to):

- a) provide the Company with all necessary co-operation in relation to the Contract; and
- b) provide the Company with all necessary access to such information as may be required by the Company in order to render the Services, including but not limited to Customer Data, security access information and software interfaces, to the Customer's other business applications; and provide such personnel assistance, including the Customer Representatives and other Customer personnel, as may be reasonably requested by the Company from time to time; and
- c) observe Company's directions and implement any changes as directed by the Company, in the event that the customer fails to do, then Service Levels under the Contract shall become null & void. The Company may reasonably require so as to enable it to provide the Services to the Customer under the Contract; and
- d) comply with all applicable laws and regulations with respect to its activities under this Contract; and
- e) carry out all other Customer Responsibilities as set out in the

Contract or otherwise communicated to the Customer in an efficient manner; and

- f) ensure timely completion of 3rd party actions and/or responsibilities so as to not impact upon project and contractual timescales; and
- g) provide the Company with access to data and systems that allow for an accurate assessment of timescales for data migration/management; and
- h) provide the Company with unfettered access to current infrastructure and systems; and
- i) provide the Company with access to incident/call data to assess the likely Managed Service demand; and
- j) ensure timely procurement of the licenses needed for each project stage; and
- k) ensure Customer attendance to any project definition workshops and timely review of documentation and materials needed for project progression; and
- l) employ suitably trained personnel; and
- m) be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer; and
- n) be responsible for preparing the Customer Premises for the supply of the Services; and
- o) prior to or within 30 days of the commencement of the Services, if applicable at the sole discretion of the Company, undertake remedial action for any Customer Equipment not in a Supportable Condition or accept the Company undertaking such remedial action. In the event that the Company undertakes such remedial action, the Customer agrees that it has requested Additional Services and has agreed to be subject to any Additional Service Charges thereof; and
- p) provide the Company with all necessary co-operation, information and Data as may be required including but not limited to Customer Data, security access information, and software interfaces to the Customer's other business applications. The Customer shall ensure the accuracy of all data and information; and
- q) make such parts of the Customer's Operating Environment available to the Company as the Company may reasonably require; and
- r) carry out all other Customer responsibilities set out in these Conditions or in the Contract (including any Pre-Requisites) in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Company may adjust any timetable or delivery schedule set out in the Contract as reasonably necessary; and
- s) make no alteration or modification to the software element of the Product covered by the Contract without the prior written approval of the Company; and
- t) In the event that the Company collects hardware from the Customer, for example for a trade in, the Customer shall be responsible for:
 - i) Decommissioning the Company Assets including; deleting any data, advising the Company of any potential security risks;
 - ii) Packing the hardware in suitable containers;
 - iii) Making all the Company Assets available for collection within a pre-agreed time between the parties.

14.2 In the event that the Customer fails to perform any provisions of Clause 11.1.a (i-iii), where it relates to a Vendor Trade-In offer, the Company reserves the right to retract any or charge Additional Charges.

14.3 The Customer shall request permission from the Company in writing in the event that the Customer wishes to change the location of the Customer Assets and/or Company Assets from the address specified in the Contract.

14.4 Where the Managed Service is "as a Service", the Customer shall ensure that all software above the Hypervisor is appropriately licenced and allow the Company such access that is necessary to verify that the appropriate licences are in place.

14.5 The failure of the Customer to adhere to the Customer

Responsibilities shall result in a breach of these Conditions which shall in turn allow the Company to invoke any or all of the remedies outlined in these Conditions, including Customer Cause.

14. Location of Equipment

15.1 Subject to clause a & b below, the Customer shall maintain the equipment at the equipment location.

- a) the Company must be informed of any movement of equipment.
- b) The Company reserves the right to suspend services (without loss of payment) to any relocated equipment until they are satisfied of the continued integrity of the equipment/network.
- c) the Company reserves the right to withdraw services to any relocated item if such relocation has fundamentally changed the scope of the support contract without penalty. Any such withdrawal may incur termination charges subject to "Term of Contract" above.

15. Effect of Customer Cause

16.1 If the Company fails to provide the Goods and/or Services in accordance with the Contract and pursuant to these Conditions or the provision of the Services is delayed as a result of a Customer Cause the Company shall at its sole discretion, invoke any or all of the following:

- a) Determine that such delay or failure shall not be treated as being in breach of these Conditions or the Contract; and/or
- b) in measuring the performance of any affected Services be treated as though the relevant Service had not been delayed and had met the applicable Service Level; and/or
- c) in the event a Customer Cause result in a Service failure, the Company reserves the right to step in and remedy the failure at Customer's costs; and/or
- d) determine that the Service Levels become null and void until the Customer has remedied its Customer Cause; and/or
- e) determine that any Service Credits are not payable to the Customer until the Customer has remedied its Customer Cause; and/or
- f) adjust any timetable or delivery date as set out in these Conditions and/or the Contract as reasonably necessary; and/or
- g) be entitled to the Charges for the relevant Services affected by the Customer Cause as if it had not occurred and recover from the Customer any Additional Service Charges that the Company may incur by reason of the Customer Cause; and/or
- h) In the instance where there has been a delay of more than one month due to a Customer Cause, resulting in the Company not being able to perform further Services then the Company may invoice the Charges for Services completed to date; and/or
- i) If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Company on demand all reasonable costs, charges or/and Loss sustained, subject to the Company confirming such costs, charges and losses to the Customer in writing; and/or
- j) Suspend the Service until the Customer has remedied its Customer Cause.

16.2 Any Disputes about or arising out of whether a Customer Cause applies to the Company's failure to provide the Services in accordance with the Contract shall be resolved through the Dispute Resolution Procedure. Pending the resolution of such Dispute both Parties shall continue to attempt to resolve the causes of, and mitigate the effects of such failure.

16. Service Levels

16.1 The Company shall use its reasonable endeavours to

provide the managed Service in all material respects in accordance with the Managed Service Definition Document.

16.2 If there is a Service Failure, the Company shall conduct an Impact Assessment and assess the Priority. The Company shall use its reasonable endeavours to respond to the Service Failure within the target timescales specified in the Managed Service Definition Document.

16.3 Subject to the Managed Service purchased by the Customer, if there is a Service Failure, the Company shall at its sole discretion take such further remedial action as is reasonable to rectify and prevent the Service Failure from taking place or recurring save in the event that there is Customer Cause. The Customer shall co-operate with the Company in the event of a Service Failure.

16.4 In the event of a Business Critical Issue, the Company shall at its sole discretion and if it is deemed appropriate, undertake a Root Cause Analysis.

16.5 The Company shall use its reasonable endeavours to provide the Technical Advice via the telephone; however the Company does not warrant that such advice shall be on a guaranteed fix basis. The Customer accepts that there is a limitation to the Service Levels that can be given over the telephone compared with the Company being present at the Customer Premises.

16.6 For the avoidance of doubt, any and all Service Levels are void on any Supported Asset that doesn't have a valid vendor warranty/maintenance contract with the Vendor or a suitable equivalent third party.

16.7 Any unavailability of the following services shall not place the Company in Default and therefore no Service Credits shall be payable when:

- a) during Scheduled Maintenance or Emergency Maintenance; or
- b) power failure on Customer's Premises.

17. Service Credits

17.1 In the event of a Service Level Failure, a Service Credit may apply, which shall be accounted for to the Customer only in accordance with clause 15.3 and shall always be subject to clause 15.4.

17.2 Service Credits prescribed in respect of any Service Level Failure pursuant to this clause 15 (if any) shall be the Customer's sole and exclusive remedy for a Service Level Failure, save to the extent stated otherwise in the Contract.

17.3 The Customer may claim a Service Credit by giving written notice to the Company by the end of the calendar month following the month in which the relevant Service Level Failure occurred. Upon receiving such notice, the Company shall either:

- a) specify the Service Credit sum as a credit against the next invoice which is issued by the Company to the Customer under the Contract; or
- b) in the event that the Company has not or cannot comply with clause 15.3.a, the Company shall pay the Customer the Service Credit sum upon demand.

17.4 Service Credits are not cumulative and shall not exceed 10% of the monthly Base Charge.

17.5 The Company shall not be liable to account to the

Customer for those Service Credits which arise during, a period of time when the Customer is late in making a payment due under clause 18 (and for the avoidance of doubt the Customer shall not be late in making payment for these purposes for the duration that the relevant amounts are the subject to a bona fide dispute).

17.6 The Company shall not be liable to account to the Customer for Service Credits arising during or related to Scheduled Maintenance or Emergency Maintenance.

17.7 The Company confirms that Service Credits have been taken into account in the setting of the Charges and both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect a Service Level Failure.

18. Change Management

18.1 If either Party requests a Change to the scope or execution of the Services, via a Change Request; at the Company's discretion, it shall be subject to the Change Management process or Change Control Procedure.

18.2 Where a change is subject to an Additional Service Charge and in the sole discretion of the Company, the Company shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the Change;
- b) any variations to the Company's Charges arising from the Change;
- c) the likely effect of the Change on the Contract and if the Contract shall be terminated and the parties shall enter into a new contract or whether the existing contract shall be amended in the form of an addendum;
- d) any impact of the Change on the these Conditions

19. Continual Service Improvement

19.1 The Company shall use reasonable endeavours to keep the Customer informed of the emergence of new and evolving relevant technologies that could improve the Managed Service, and those technological advances potentially available to the Company and the Customer that the Parties may wish to adopt. If requested by the Customer, the Company shall provide details to enable the Customer to evaluate properly the benefits of the new technology or process.

19.2 If the Customer wishes to incorporate any improvement identified by the Company the customer shall send the Company a Change Request and the Parties shall observe the Change Management process. The Company reserves the right to revise the Charges accordingly. The Company shall:

- a) develop a plan for the Professional Services of the improvement within a reasonable time of the Customer's Change Request;
- b) implement the improvement in accordance with the provisions of the Contract Payment & Invoicing

19.3 Service charges are outlined within the contract detail. Where no payment schedule is outlined within the contract, payments will be due annually in advance.

19.4 Payment of the charges shall be made by the Customer within 30-days from the date of invoice.

19.5 The Charge for the Services shall be at the Company's quoted Charge as stated within the Quotation. Unless

otherwise agreed all Charges quoted are valid for 10-day only. Thereafter once accepted by the Customer, the Charges shall be contained within the Contract and be binding on the Parties from the Effective Date.

19.6 Where the Company has agreed a fixed Charge and confirmed a date for the Services to be Provisioned to the Customer then such Charge will remain fixed until such date, subject to the following exceptions; any change in delivery dates, quantities or specifications for the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions may result in the Company charging the Customer an Additional Service Charge and/or invoking any of the remedies under Customer Cause.

19.7 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the Charge of the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions may result in the Company charging the Customer an Additional Service Charge and/or any of the remedies under Customer Cause.

19.8 Unless otherwise agreed in writing between the Parties, the Charges shall be invoiced as follows:

- a) Professional Service Charges shall be invoiced at 50% on the Effective Date and the remaining 50% over mutually agreed Milestones;
- b) Managed Service Base Charges shall be invoiced in full on delivery of the Goods;
- c) Managed Service Flex Charges shall be invoiced when they arise;
- d) Goods are invoiced 100% on delivery (whether delivered to Customer Premises or Company Premises). In the case of special manufactured Goods, these shall be invoiced 100% on receipt of Customer Order;
- e) Consultancy Credits (pre-paid days) and Training 100% invoiced on receipt of Customer Order;
- f) Additional Service Charges shall be invoiced when they arise.

20.9 Managed Service Charges (both Base Charge and Flex Charge) shall be paid by Direct Debit.

20.10 Unless otherwise agreed in the Contract, reasonable out-of-pocket expenses may be charged by the Company on production of reasonable evidence of expenditure to the Customer.

20.11 All quoted Charges are-exclusive of VAT, which shall be invoiced to and paid by the Customer at the rate and in a manner for the time being prescribed by Law.

20.12 In consideration of the provision of the Services the Customer shall pay the Charges in accordance with the terms stated in these Conditions and/or the Contract.

20.13 Unless otherwise agreed in Contract and subject to Customer's satisfactory credit check, payment is due 30 days from the invoice date (without any deduction or right of set off

whatsoever).

20.14 The time of payment of the Charges for Services under these Conditions shall be of the essence. No payment for the Services shall be considered made until received in cleared funds by the Company.

20.15 In the event that the Customer amends or cancels the Confirmed Service Date within 14 days prior to that date then the Customer shall be liable to pay the Company the following Charges:

- a) where the Company is not able to utilise its personnel on other chargeable work a full day will be charged at the Company's Published Rates; or where the Company is able to utilise its personnel on alternative equivalent chargeable work with another customer one quarter of a day will be charged at the Company's Published Rates.

20.16 Failure by the Customer to pay for part delivery of the Services when payment is due shall entitle the Company to withhold further delivery of Goods and/or Services.

20.17 If the Customer shall fail to make any payment by or on its due date then, without prejudice to any other right of the Company, the Company may apply any payment made by the Customer for the Services (or any other Services supplied under any other contract between the Customer and the Company) as the Company may see fit (notwithstanding any purported appropriation by the Customer); and interest shall accrue on a daily basis on the amount outstanding from the due date until payment is received at the rate of 2% per calendar month (or as the Company deems appropriate, according to the maximum allowed as prescribed at Law), accruing daily until the debt is paid in full.

20.18 The Company may adjust the price of the Managed Service with effect from the date which is 12 months from the Commencement Date and on each anniversary thereafter (each the „Anniversary“ as appropriate) to reflect increases in the cost of Raw Materials, increases in the Consumer Price Index and any increased power usage costs during the previous year. The Company shall give the Customer not less than one month's prior notice in writing of the proposed adjustments. If the Customer objects to a proposed adjustment it shall have the right to write to the Company giving reasons for its objections and the Parties shall seek to agree to the price adjustment. In the event that the Parties cannot agree the proposed price adjustment within 15-Working Days of the date on which the Company received the written reasons for objection from the Customer the Customer may refer the matter to an „Independent Expert“ (which shall mean an independent firm of chartered accountants agreed on by the Parties, or, if agreement cannot be reached within five Working Days of either Party giving notice to the other that it wishes to refer a matter to an Independent Expert, such independent firm of chartered accountants as may be nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales) who shall determine the appropriate adjustment. If the Customer does not refer the matter to the Independent Expert within five Working Days of it being entitled to refer the matter to the Independent Expert it shall be deemed to accept the price adjustments.

20.19 Pending agreement or determination of a proposed adjustment to the prices of the Managed Service the prices then in force shall continue to apply. Once agreement of the

price adjustment has been reached or once the Independent Expert determines the appropriate adjustment, the adjusted price shall be deemed to apply with effect from the Anniversary date in respect of which the adjustment relates (the „Anniversary Date“). Within one month of the appropriate adjustment being agreed or determined the Customer shall pay the Company any outstanding sums due in respect of its purchases of the Managed Service since the Anniversary Date, together with any applicable VAT.

20.20 To enable the Independent Expert to make a determination in accordance with this clause 17:

- a) the Parties are entitled to make submissions to the Independent Expert and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply the other Party with all information and give access to all documentation and personnel as the other Party reasonably requires to make a submission under this clause 17; and
- b) the Parties agree that the Independent Expert may in its reasonable direction determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.

20. Licenses Granted by the Company

21.1 Subject to the other provisions of these Conditions, the Company hereby grants, or shall procure the direct grant, to the Customer of a license on a non-exclusive basis to Use the Company's Background IPRs and the Company's Software during the Initial Term, and/or Term, and/or Renewal to the extent necessary for the performance of the Services.

21.2 In the event of the termination or expiry of the Contract, the licence referred to and granted in accordance with this clause 18, shall terminate automatically and the Customer shall deliver to the Company all Background IPRs licensed in its possession or control

21. Licenses Granted by the Customer

22.1 The Customer hereby grants to the Company a royalty-free, non-exclusive, non-transferable licence during the Initial Term, or Renewal or Term (whichever is applicable, in the sole discretion of the Company), to Use:

- a) Customer's software;
- b) Customer's documentation, processes and procedures;
- c) Customer's Know-How; and
- d) Customer's data.

22.2 The license granted in clause 19.1:

- a) includes the right to grant sub-licenses to Subcontractors provided that any relevant Subcontractor has entered into a confidentiality undertaking with the Company on the same terms; and
- b) is granted solely to the extent necessary for performing the Services in accordance with these Conditions. The Company shall not use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

22.3 In the event of the termination or expiry of the Contract, the licenses and any sub-licenses referred to and granted in accordance with this clause 19, shall terminate automatically and the Company shall deliver to the Customer all material licensed in its possession or control.

22. Customer Data

22.1 For the avoidance of doubt, the Company shall not acquire any right in, or title to, any part of the Customer Data, whether existing prior to the Effective Date or created after such date.

22.2 The Company shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

22.3 The Company shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Company of its obligations under these Conditions or as otherwise expressly authorised in writing by the Customer.

22.4 To the extent that Customer Data is held and/or processed by the Company, the Company shall supply that Customer Data (at the Customers cost) to the Customer as requested by the Customer from time to time.

22.5 The Company shall preserve, so far as reasonably possible the Customer Data and prevent the corruption or loss of Customer Data, but for the avoidance of doubt the Customer shall ensure that back-up copies of such Data are made. The responsibility for the integrity of the Customer Data shall at all times remain wholly a Customer Responsibility.

22.6 The Customer acknowledges that any Data backup is not 100% reliable and the Company makes no representations or warranties in relation to any Data Backup. The Customer shall remain responsible to put in place policies and procedures in order to verify if the Data Backup have taken effect.

22.7 The Company shall use reasonable endeavours to ensure that any system on which the Company holds any Customer Data, including Data Backup materially complies with the Company's Information Security Policy.

22.8 If the Customer Data is corrupted, lost or is deleted accidentally the Company shall notify the Customer immediately on detection, and where possible shall co-operate with the Customer (and any third party experts that the Customer may appoint) to take reasonable steps to renew or restore such Customer Data (at the Customer's cost if the corruption, loss or deletion is due to the Customer's actions), and if the corruption, loss or deletion is due to the Company's action or infrastructure, to take such reasonable steps to prevent such error re-occurring.

22.9 The Customer warrants that the Customer has been at all times prior to and will continue after entering into and acting in accordance with the Contract be compliant with the legislation, rules and requirements provided and required by any Authority in regard

23. Assignment

23.1 The Company may at any time assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under these Conditions without the consent of the Customer.

23.2 The Customer shall not, without the consent of the Company, assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under the Contract.

24. Waiver & Cumulative Remedies

24.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

24.2 Unless a right or remedy of either Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

24.3 The rights and remedies provided by the Contract are cumulative and, unless otherwise provided in these Conditions, are not exclusive of any

25. Limitations on Liability

25.1 In no circumstances shall the Company be liable for any incidental or consequential loss (including but not limited to loss of data and loss of profits) expense or damage whatsoever.

25.2 The Company shall indemnify the Customer for direct damage to property caused by the negligence of the Company's officers, employees or agents attending to the equipment in accordance with this Agreement providing that the Company's total liability shall not exceed £500,000 for any one event or connected events.

25.3 The Company will indemnify the Customer for direct personal injury or death of persons caused by negligence of the Company's officers, employees or agents attending to the equipment in accordance with the agreement.

25.4 The Customer shall indemnify and keep indemnified the Company, its officers, employees and agents against any claims of any kind which arise from or in connection with any action requested by the Customer.

25.5 Except as expressly and specifically provided in these Conditions or Special Terms and Conditions, this clause 24 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and Subcontractors) to the Customer in respect of:

- a) any breach of these the Contract;
- b) any use made by the Customer of the Goods and/or Services; and
- c) any representation, misrepresentation (whether innocent or negligent), statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.

25.6 Except as expressly and specifically provided in these Conditions:

- a) the Customer assumes sole responsibility for results obtained from the use of the Goods and/or Services, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Customer in connection with the Service or any action taken by the Company at the Customers direction; and
- b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Law, excluded from the Contract. Customer agrees that it had considered its need for remedies and has obtained all remedies it requires from the Company in the Contract and thus the foregoing exclusion is fair and reasonable.

26.7 The Service Levels state the Customer's full and exclusive right and remedy, and Company's only obligation and liability in respect of the performance and/or availability of the Service, or its non-performance and non-availability.

26.8 Subject to clause 23.3:

- a) the Company shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty, however arising), contract, misrepresentation (whether innocent or negligent), or otherwise for; any loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of Goods or
- b) equipment, loss of Contract, loss of use, loss or corruption of Data or information or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and this limitation applies even if the loss was foreseeable or in the contemplation of either party;
- c) the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty, however arising), misrepresentation (whether innocent or negligent) restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or otherwise arising in favour of the Customer shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.

26. Warranties

27.1 Each Party warrants, represents and undertakes that:

- a) it has full capacity and authority to enter into and to perform the Contract;
- b) the Contract is executed by a duly authorised representative of that Party;
- c) there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under the Contract; and
- d) once duly executed the Contract will constitute its legal, valid and binding obligations;
- e) except as expressly stated in these Conditions, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law. Customer agrees that it has considered its need for remedies and has obtained all remedies it requires from the Company in the Contract and thus the foregoing exclusion is fair and reasonable.

27.2 The Company shall use its reasonable endeavours to ensure that:

- a) the Services are performed with reasonable skill and care save to the extent that any non-conformance is caused by a Customer Cause, including the Customer's use of the Services contrary to the Company's instructions and subject to the Customer complying with the Customer's Responsibilities.
- b) it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations.

27.3 The warranties set out in clause 24 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to these Conditions and/or the Contract. Without limitation, the Company specifically denies any implied or express representation that the Goods and/or Services (including Customer Operating Environment):

- a) operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified by the Company as being compatible with the System; or
- b) Customer's use of the Goods and/or Services will be uninterrupted

or error-free. Or warrant that the Goods and/or Services will cause the Equipment to operate without interruption or error.

27.4 The Company does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the supported software will be corrected before the issue of the next Product Release.

27.5 Any unauthorised modifications, use or improper installation of the System by or on behalf of the Customer shall render all the Company's warranties and obligations under these Conditions and/or the Contract null and void.

27. Termination & Suspension

28.1 Without prejudice to any other rights or remedies to which the Company is entitled, the Company shall be entitled to terminate the Contract in part or in full and/or suspend any of the Services or delivery of Goods forthwith by notice in writing in the following circumstances:

- a) whereby the Company deems it necessary to enter into a new Contract under the Change Control Procedure, subject to the agreement of both parties;
- b) If the Customer fails to pay an undisputed sum due to the Company (whether under these Conditions or under the Contract) which either singly or in aggregate, exceeds the Charges due and payable in the previous month and/or if the Charges are not paid within 30 days from the invoice date;
- c) If the Customer commits any breach of these Conditions incapable of remedy or which if the same be capable of remedy it fails to remedy within 14 days of the Company's written notice;
- d) If there is any Change of Control of the Customer.

28.2 The Company shall, without prejudice to its right to terminate, be entitled to suspend further provision of the Services if an event mentioned in this clause 26 occurs.

25.3 Notwithstanding any termination or suspension the Customer shall pay to the Company all Charges which fell due for payment prior to termination or suspension (including the Charges for the period whilst the Services were suspended) in full without refund including sums for Services already provided to the date of such termination or suspension. In addition the Customer shall indemnify the Company against any resulting Loss by the Company as a result of the early termination of the Contract due to a Customer Cause.

28.4 Either party may terminate this agreement by giving written notice to the other party if any of the following events occurs:

- a) a winding-up order or bankruptcy order is made against the other party; or
- b) the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
- c) the other party has appointed to it an administrator or an administrative receiver; or being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
- d) being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners.
- e) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
- f) the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- g) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
- h) the other party ceases, or threatens to cease, to carry on business; or
- i) the other party shall dispose of all or any material part of its assets; or
- j) there shall be any material change in the shareholding control of the other party;
- k) any event analogous to those described in clause 25.4.a to clause 25.4.k occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.

28.5 Clause 25.4 shall not apply in circumstances where the insolvent business is sold as a going concern within 30-days from an appointment of an administrator (i.e. in circumstances where the insolvent business is sold as a pre-pack in administration).

28.6 Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

28. Exit

28.1 In the event of the termination or expiry of the Contract for any reason the Company shall provide Exit Assistance Services to the Customer in accordance with the requirements of the Exit Plan jointly agreed between the parties. If the Parties are unable to agree the contents of the Exit Plan, either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure in Pinacl Solution's Terms and Conditions of Sale.

28.2 The Customer shall pay the Transitional Assistance Service Charges in respect of the provisions of the Transitional Assistance Service.

28.3 For the avoidance of doubt, the Contract shall be active until the completion of the Exit Assistance Services.

29. Schedule 1 - Definitions

In these terms and conditions, the following words and phrases have the meanings set out below:-

Term	Definition
"Additional Service Charge"	A Charge relating to any Additional Services, at the Company's Published Rates unless otherwise agreed;
"Additional Services"	Any Services not covered within the Managed Service Definition Document and/or Statement of Work and/or Solution Design Document and/or Conditions and/or Contract;
"Assumptions"	Actions performed by the Customer that the Company relies upon to perform the Services;
"Authority"	Any authoritative body or its successor or replacement body which has regulatory or enforcement powers against person who store, control, use or process Data, including but not limited to the Financial Services Authority (FSA) and the Information Commissioner's Office.
"Base Charges"	The Charges listed in the Managed Service Definition Document which are contractually committed and cannot be reduced;
"Data Backup"	Copies of customer data (if applicable in the Contract) backed up to magnetic media from the Commencement Data including but not limited to individual files, folders, databases and virtual machines;
"Business Critical Issues"	An Incident following an Impact Assessment where in the opinion of the Company the Incident is materially affecting the operation of the Customers business;
"Change Control Procedure"	Where applicable, the procedure for changing these Conditions and/or the Contract;
"Change Management"	Are the processes and procedures governing any Standard, Normal or Project Changes to the Managed Services. The Company is able to make such Changes without the approval of the Customer;
"Change of Control"	A change in control of a Party;
"Change Request"	A request for Change in the configuration of the Services provided by the Customer;
"Change"	Any change to the Managed Services under Change Management Process;
"Charges"	Any amounts due to the Company under the Contract;
"Commencement Date"	The date on which the Managed Services commence as stated in the Managed Service Definition Document (such date is an estimated date and is subject to change). The Commencement Date shall be the date the Goods (or part of them) are shipped (in such instances the date will be confirmed on delivery note) or the date the first virtual resource(s) are Provisioned;
"Company Director"	A member of the board of directors of a company, appointed or elected to control and govern the affairs and policies of a corporation;
"Conditions"	These standard Terms and Conditions to include any Special Terms and Conditions as set out in the Contract;
"Confidential Information"	All information or data disclosed (whether in writing, orally or by any other means) to one party by the other party or by a third party on behalf of the other party and shall include but not be limited to; (a) any information ascertainable by the inspection or analysis of samples, (b) the information described in these Conditions as having been disclosed prior to the date hereof and (c) any information relating to that party's business, operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs, IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not marked "confidential") or which ought reasonably be considered to be confidential;
"Confirmed Service Date"	The date for delivery of the Professional Services communicated by the Company to the Customer via the Contract, email or otherwise. The Customer will be sent an email with a confirmation;
"Contract"	The Company's acceptance of the Customer's Order and/or Customer's acceptance of the Quotation, Statement of Work, Solution Design Document, Managed Service Definition Document;
"Control"	Means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the

	ownership of voting shares, by agreement or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Customer Assets"	Means the specially written material, the Customer infrastructure and any other data, software, assets, Equipment or other property which is either owned or leased by the Customer or otherwise and which is or may be used in connection with the provision or receipt of the Services;
"Customer Cause"	Any breach by the Customer of any of these Conditions and/or the Contract and/or Customer's default;
"Customer Data"	Means; (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and/or; (b) any Personal Data for which the Customer is Data Controller in each case which are: (i) supplied to the Company by or on behalf of the Customer; or (ii) which the Company is required to generate, process, store or transmit pursuant to these Conditions;
"Customer Operating Environment"	The Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Service and which interfaces with the Company's System in order for the Customer to receive the Services;
"Customer"	The person, firm or company whose Order for the Goods and/or Services is accepted by the Company and detailed in the Contract;
"Customer's Responsibilities"	The responsibilities of the Customer as specified in the Contract or as set out in Clause 11 of these Conditions;
"Data"	Means data in its electronic form, stored and processed by a computer, including but not limited to individual files, folders, databases and virtual machines;
"Deliverable"	An item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Company at any stage during the performance of the Contract;
"Demarcation Zone"	The demarcation of where the Services are performed, as defined in the Managed Service Definition Document;
"Dispute Resolution Procedure"	The dispute resolution procedure set out in the (Dispute Resolution Procedure);
"Dispute"	Any dispute, difference or question of interpretation arising out of or in connection with these Conditions, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where these Conditions directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Effective Date"	The date when the Contract comes into force and is binding upon both Parties. The effective date is the date of the Contract.
"Emergency Change"	A Change which is required in order to resolve or implement a workaround for a Priority 1 incident. All Emergency Changes are subject to approval by both the ANS Emergency CAB and the customer before implementation.
"Emergency Maintenance"	Any maintenance where repair is needed urgently;
"Employee Liability Information"	the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE: (a) the identity and age of the employee; and (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought; and (e) information about any collective agreement that will have effect after the Effective Date in relation to the employee under regulation 5(a) of TUPE
"Employment Liabilities"	All claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses

	reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
"Equipment"	Any hardware or software which the Customer or Company either owns or is responsible for as located at the Customer Premises, Company Premises or otherwise;
"Escalation Contacts"	The names and email addresses to enable the process of communication in the event of an Incident;
"Exclusions"	Any service which is outside the scope of the Contract. If the Customer requests such services that are deemed by the Company to fall under the Exclusions or the Company notifies the Customer that such Exclusions are required to enable the Company to perform their duties under these Conditions, then this shall be an Additional Service and the Company reserves the right to Charge the Customer an Additional Service Charges;
"Exit Assistance Services"	Assistance services provided by the Company to the Customer in the event of the expiry or termination of an Operation Service (for any reason whatsoever) to facilitate the transfer of the Services to the Customer or a Replacement Company;
"Exit Plan"	The plan for the provisions of the Exit Assistance Services in the event of the expiry or termination of an Managed Service for any reason, which is to be developed by the parties pursuant to clause 26;
"Flex Charges"	The Charges listed in the Managed Service Definition Document which can be flexed up or down depending on the Customers requirements. The Flex Charges will be levied if any of Services listed in the Managed Service Definition Document are used or Provisioned for use at any time within a calendar month. For the avoidance of doubt where a Service is used or Provisioned for use in a calendar month a Charge will be levied for the whole of that month.
"Goods"	Means any apparatus goods (not being the Equipment) purchased by the Customer ;
"Health Check"	A system review of the Supported Assets by the Company in order to ensure Customer Equipment is capable of receiving the Managed Service;
"Impact Assessment"	Within the Company's sole discretion, the determination of the impact of an Incident on the Customer Operating Environment;
"Impact"	Means the impact on the Customer Operating Environment following an Incident;
"Incident Escalation"	The process of communication to enable Escalation Contacts to receive appropriate information concerning an incident;
"Incident Management"	the Company's processes and procedures for management of an Incident;
"Incident"	An unplanned interruption to the Managed Services;
"Initial Term"	The duration of the Managed Services commencing on the Commencement Date as detailed in the Managed Service Definition Document;
"Know-How"	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Company's or the Customer's possession before these Conditions and/or Contract;
"Law"	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
"Loss"	Claims, demands, fees, costs or damages (including the cost of all labour and materials used), damages, charges and expenses, including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere;
"Managed Service"	Managed service as described in the Managed Service Definition Document;
"Managed Services Handbook"	The document providing the customer with detailed processes and procedures relating to the Managed Service;
"Managers"	The personnel with management responsibility (excluding Directors) within both the Customer and Company;
"Month"	A calendar month, and "monthly" shall be interpreted accordingly;
"Named Contacts"	The persons who are authorised to notify the Company of an Incident, for the avoidance of doubt the Company will only supply Service to the Named Contacts and only when the person's identity can be verified;
"Normal Change"	Normal Changes are all Changes that are not classified as Standard or Emergency. Once logged, all Normal Changes are assessed against the Company's Risk Matrix, reviewed by a Subject Matter Expert (SME) and before formal Approval at the Company's Change Advisory Board (CAB). Normal Changes may incur mutually agreed additional charges in some cases.
"Operating Environment"	The Customer software, hardware, systems, locations, sites, passwords or any other items

	as required to enable the Company to provide the Service;
“Order”	An Order from the Customer to the Company for the Goods and/or Services to which these Conditions apply;
“Parties”	Means the Customer and the Company, and includes their permitted successors and assigns;
“Personal Data”	Shall have the same meaning as set out in the Data Protection Act 1998;
“Premises”	Premises or other locations from and to which Services are to be provided;
“Planned Maintenance”	An outage agreed between the Company and the Customer to perform upgrades/changes or general maintenance to the Service by either the Company or the Company’s 3 rd party Supplier, or any action by the Customer which affects the delivery of the Service.
“Pre-Requisites”	A customer responsibility as detailed in the Contract prior to the commencement of the Services;
“Priority”	The priority and category given to an Incident, following an Impact Assessment;
“Product Originator”	The Third Party that created or manufactured the Product;
“Product Releases”	Third Party hardware or software releases that are not end of life;
“Product”	Third Party hardware or software;
“Published Rate”	The Company’s normal Charges as located on the Company’s website within the Managed Services Handbook or otherwise documented as amended from time to time at the sole discretion of the Company, for the avoidance of doubt these charges will be applied to any Additional Services unless otherwise agreed between the parties;
“Quotation”	Document signed or authorised by the Customer detailing the Goods and/or Services to be supplied;
“Renew” , “Renewal”	The automatic extension of the Managed Services after expiry of the Initial Term as defined in clause 4 of these Conditions;
“Replacement Services”	Any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract;
“Replacement Company”	Any third party service provider of Replacement Services appointed by the Customer from time to time;
“Resolution”	The time from an Incident being logged by the Customer to request an assistance to the time that the Company is able to re-establish the impaired service or provide a work around it;
“Response”	In relation to an Incident, it shall mean the time from an Incident being logged by the Customer to request an assistance to the time that the Company responds with a suitably qualified Employed person whether via a telephone call, email or in person; In relation to a Change Request it shall mean the time from the Change Request being made by the Customer to the time the Company provides an estimate of the time required to perform the change;
“Retail Price Index”	The Retail Price Index (all items, excluding mortgages) as published by the Office of National Statistics from time to time, or failing such publication that other index as the parties may agree most closely resembles such index;
“Root Cause Analysis”	Identification of the root cause of an Incident within the Demarcation Zone;
“Scheduled Maintenance”	Any work scheduled in advance that is required to be carried out which will cause the Services to be suspended. Scheduled Maintenance shall be determined by the Company and accepted by the Customer as to when the maintenance should take place;
“Security Incident”	An Incident following a cyber attack from the internet such as a denial of service attack or similar;
“Service Credits”	Means any credits payable to the Customer in the event of a Service Level Failure;
“Service Definition Document”	The Document detailing the scope of the Managed Services and the obligations of the Company and Customer as specified in the Managed Service Definition Document, updated as agreed between the Parties from time to time;
“(MANAGED SERVICE DEFINITION DOCUMENT)”	
“Service Failure”	A failure of the Supported Assets resulting in an Impact on the Managed Environment;
“Service Hours”	The time within which the Managed Services shall be available to the Customer as provided within the Managed Service Definition Document;
“Service Level Failure”	Failure by the Company to meet the Service Levels;
“Service Levels”	The service levels to which the Managed Services are to be provided as set out in the Managed Service Definition Document;
“Service Review Meeting”	Such meeting between the parties as detailed in the Managed Service Definition Document in order to discuss and review the Managed Services;

“Services”	The services to be delivered by or on behalf of the Company under the Contract pursuant to these Conditions, including the Professional Services, the Managed Services, any agreed Exit Assistance Services and/or any Additional Services. Service means any of the Services (or any part of any of them);
“Special Terms and Conditions”	Additional terms and conditions as agreed between the Parties and as specified in the Contract;
“Standard Change”	a pre-approved change that has been through the full Change Management Process, including Change Advisory Board (CAB) approval at least once. Standard Changes are added to the Standard Changes list and can be implemented without requiring approval from the CAB.
“Sub-Contract”	Any contract between the Company and a third party pursuant to which the Company agrees to source the provision of any of the Services from such third parties;
“Sub-Contractors”	Those persons with whom the Company enters into a Sub-Contract or their servants or agents, and any third party with whom that third party enters into a sub-contract or its servants or agents;
“Company Assets”	Means all assets and rights (whether owned, leased or otherwise) used by the Company to provide the Services in accordance with the Contract; including but not limited to the hardware, computer and telecoms devices and equipment supplied (but not hired, leased, loaned or sold to the Customer) by the Company or its Sub-contractors for the provision of the Services;
“Company Documentation”	Including but not limited to; descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: (a) is required to be supplied by the Company to the Customer under these Conditions; (b) is required by the Company in order to provide the Services; or (c) has been or shall be generated for the purpose of providing the Services;
“Company Sales and Marketing Documents”	The documents and/or information that the Company may provide to the Customer in relation to the Goods and/or Services, including but not limited to proposals, leaflets, documents Companies website, Company Welcome Pack, Managed Services Handbook;
“Company Service Desk”	It is the function under the Company’s sole control and discretion which is provided as deemed appropriate by the Company for the interface to the Customer for the Operation Service;
“Company Software”	The software which is owned or licensed by the Company and which is to be used by the Company and/or the Customer in the context of the provision or receipt of any of the Services;
“Company System”	The information and communications technology system to be used by the Company in performing the Managed Service, including the Software, Company’s Assets and communications links between the Company’s Assets;
“Company”	Means Pinacl Solutions UK Limited;
“Supported Assets”	Customer Assets, Company Assets or otherwise as determined by the Company, that the Services are performed upon;
“Supportable Condition”	where software or hardware is currently supported by the manufacturer or vendor, and/or where software or hardware is configured to best practice, and/or where software or hardware is performing normally;
“Target Resolution Time”	The time period within which the Company sets a target to provide a resolution. The Customer accepts that due to the nature of the Services provided the Company will, but is not under any obligation to, use its reasonable endeavours to provide the Services a Target Resolution Time;
“Technical Advice”	The advice given relating to the Company’s obligations as detailed in the Contract;
Term”	The time period within which the Statement of Work and/or the Solution Design Document remain valid and until the Customer accepts the Company’s final Deliverable in accordance with the Acceptance Criteria. The parties may, in accordance with these Conditions, mutually agree in writing to terminate the Statement of Work and/or the Solution Design Document;
“Third Party Software”	Software and any documentation which is proprietary to any third party;
Vendor Trade In	Any Goods that the Customer is returning to the Vendor via the Company in exchange for credits to be used for the purchase of Goods.
“Training”	The purchase of Professional Service for the transfer of knowledge, skills and competencies from the Company via vocational or practical methods;
“Transitional Assistance Service Charges”	The Charges payable by the Customer to the Company for the provision of the Exit Assistance Services at the Company’s Published Rates;

“UK”	The United Kingdom;
“Urgency”	The urgency of the Incident and/or the Change Request based upon the Impact Assessment, within the Company’s sole discretion;
“Use”	With respect to each of the following IPRs and, in each case, in connection with the Services: a) the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) the Third Party Software and the Company’s Background IPRs; b). the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate and otherwise utilise the Company’s Software;
“VAT”	Value added tax as provided for in the Value Added Tax Act 1994;
“Vendor Maintenance”	Relates to hardware and software support provided by the applicable third party vendor. This support usually includes the ability to request replacement hardware components and/or software updates. Included services vary depending on the third party vendor involved.
“Working Day”	Any day other than a Saturday, Sunday or public holiday in England and Wales;