

# SOFTWARE END USER LICENSE AGREEMENT

## Pinnacle Infotech

(For Cloud and Software Products)

Version 1.0

This End User License Agreement, including Product-Specific Terms, Support Terms, and the Order, which by this reference are incorporated herein (this “Agreement”) is a binding agreement between Pinnacle Infotech of S.S.B. Sarani, Bidhannagar, Durgapur West Bengal, India – 713212 (“Licensor” or “Pinnacle” or “Pinnacle Infotech”) and the juristic entity or person identified on the Order as the licensee (“Customer” or “You” or “Licensee”). Certain capitalized terms are defined in Section 17 (Definitions.), and others are defined contextually in this Agreement.

LICENSOR PROVIDES THE PRODUCT(S) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR BY INSTALLING, ACCESSING OR USING ANY PRODUCT(S), YOU: (A) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE PRODUCT(S) TO LICENSEE AND YOU MUST NOT INSTALL THE PRODUCT(S) OR DOCUMENTATION. IF YOU HAVE PAID A FEE FOR USE OF THE PRODUCT(S) AND DO NOT AGREE TO THESE TERMS OF THE AGREEMENT, YOU MAY RETURN THE PRODUCT(S) TO LICENSOR FOR A FULL REFUND, PROVIDED YOU: (A) HAVE NOT INSTALLED, ACCESSED, OR USED THE PRODUCT(S) AND (B) RETURN THE PRODUCT(S) TO THE/ LICENSEE WITHIN 14 DAYS OF THE DATE OF YOUR INITIAL PURCHASE OF THE PRODUCT(S).

Effective Date. The “**Effective Date**” of this Agreement means the earlier of (a) the effective date of the Order, or (b) the date Pinnacle Infotech has first made access to a Product available to Customer, which could be by physical delivery of media (e.g., CD, dongle, etc.) or electronic or access delivery by means of an online provisioning, registration, download or other similar process (“**Initial Product**

**Availability Date**”). This Agreement will govern Customer’s initial purchase(s) on the Effective Date as well as any renewals thereof (unless different terms are specified upon renewal).

Product-Specific Terms. Customer’s use of each Product is also subject to any additional product-specific terms and conditions set forth in referenced in the applicable Order (“**Product-Specific Terms**”). Any conflict or inconsistency will be resolved in the following order of precedence: (1) the applicable Order, (2) the Product-Specific Terms, (3) the Support Terms, and (3) this Agreement.

## 1. **Products.**

1.1. Product Types. The following provisions apply to the applicable Product type (Service or Software) specified in the Order.

- (a) Service. For Product(s) that are a Service, Customer may access and use the Service during the Utilization Term only for its internal business purposes in accordance with the Documentation, Usage Limitations, any applicable Product-Specific Terms and this Agreement. Unless otherwise specified by Pinnacle Infotech, any Software provided with a Service is subject to the terms applicable to Software under this Agreement.
- (b) Software. For Product(s) that are Software, subject to the terms of this Agreement, Pinnacle Infotech hereby grants Customer during the Utilization Term a non-transferable, non-sublicensable, non-exclusive license to install, copy and use the Software on systems under Customer’s control only for its internal business purposes in accordance with the Documentation, Usage Limitations, any applicable Product-Specific Terms and this Agreement. Software is licensed not sold. All copies of the Software made by the Customer will be the exclusive property of the Licensor.
- (c) Intellectual Property Rights. Customer acknowledges and agrees that the Product(s) are provided under license, and not sold, to Customer. Customer does not acquire any ownership interest in the Product(s) under this Agreement, or any other rights thereto, other than to use the same in accordance with the licensed granted and subject to the terms, conditions, and restrictions under this Agreement. Licensor reserves and shall retain its entire right, title, and interest in and to the Product(s) and all intellectual property rights (including all registered and unregistered rights

granted, applied for, or otherwise now or hereinafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world arising out of or relating to the Product(s), except as expressly granted to the Customer in this Agreement. Customer shall use reasonable efforts to safeguard the Product(s) from infringement, misappropriation, theft, misuse, or unauthorized access. Customer shall promptly notify Licensor if Customer becomes aware of any infringement of the Licensor's intellectual property in the Product(s) and fully cooperate with Licensor in any legal action taken by Licensor to enforce its rights.

## 1.2. Authorized Users; Administrators.

- (a) Only an Authorized User of the Customer may access or use the licensed Product(s). Each Authorized User is issued login credentials (such as License Keys and/or User IDs as necessary) to access the Product(s). Each Authorized User will keep its login credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users' compliance with this Agreement and actions taken through their accounts. In the event an Authorized User is no longer an employee or contractor of Customer, Customer will promptly de-activate such Authorized User's access to the Product(s). Only if expressly permitted under the applicable Order, Customer may transfer Authorized User status from one individual to another at any time, provided that the number of the Product(s) used by its Authorized Users in the aggregate remains within the Usage Limitations. Customer will promptly notify Pinnacle Infotech if it becomes aware of any compromise of its Authorized User login credentials.
- (b) If the Product(s) permits administrator access, as described in the Documentation, Customer may designate one or more Authorized Users to be administrators (each an "**Administrator**") with control over Customer's Service account, including management of Authorized Users and Customer Data, as described in the Documentation. Customer is fully responsible for its choice of Administrators and any actions they take. Pinnacle Infotech's responsibilities do not extend to the internal management or administration of the Service for Customer.

## 1.3. API Access and Customer Applications.

(a) API. The Product(s) may include one or more application program interfaces (“**API(s)**”) that allow Customer to develop applications, code or services that communicate with the Product (collectively, “**Customer Applications**”). Such APIs, if any, may be provided upon request and at Licensor’s discretion. Customer may use an API only if such use is authorized in the Documentation or otherwise in writing by Pinnacle Infotech. Use of APIs may be subject to additional terms and conditions. Pinnacle Infotech may modify APIs from time to time, and Pinnacle Infotech is not responsible for the compatibility of any such modifications with applications developed by or are under the control or ownership of the Customer (“Customer Applications”).

(b) Use of Customer Applications. If use of an API is authorized, subject to the terms of this Agreement and in compliance with the applicable Documentation, Customer may develop Customer Applications for use solely by Customer’s Authorized Users. Customer will not develop Customer Applications for the benefit of, or distribute Customer Applications to, any third party. Customer assumes all risk and liability regarding the development and use of any Customer Applications. Other customers or Pinnacle Infotech itself may independently develop applications similar to Customer Applications.

1.4.Restrictions. Customer shall not (and will not permit, encourage, or assist anyone else, including its Authorized Users): (a) provide access to, distribute, sell, rent, lease, lend, publish, transfer, sublicense, or otherwise make available, the Product(s) or Documentation to a third party, (b) use or combine the Product(s) or any part thereof with or incorporate the Product(s) or any part thereof in any other software or service for the benefit of a third party, (c) use the Product(s) to develop a product or service that is similar to or that is in competition to the Product(s), (d) reverse engineer, decompile, disassemble, decode or otherwise attempt to derive or gain access to the source code or non-public APIs to any element of the Product(s) or any part thereof, (e) modify, translate, adapt, or otherwise create derivative works of the Product(s) or copy any element of the Product(s) (other than in connection with making copies of Software authorized under this Agreement), (f) remove, delete or obscure any copyright, trademark, patent, or intellectual property or proprietary notices provided by the Product(s) or Documentation, (g) publish benchmarks or

performance information about the Product(s), except to the extent expressly permitted by Law, (h) interfere with the Product(s)' operation or its use by others, circumvent its access restrictions or, without the prior written permission of Pinnacle Infotech, conduct any security or vulnerability test of the Product(s), (i) transmit any viruses or other harmful materials to the Product(s), (j) submit to the Product(s) any information that is inappropriate, defamatory, obscene, salacious or unlawful, or use the Product(s) to defame, harass, stalk, threaten or otherwise violate the rights of others, (k) use the Product(s) to advertise, offer to sell or buy goods, or otherwise for business promotional purposes, (l) for Software, unless expressly permitted in the Order, Product-Specific Terms or the Documentation, use or host any Software in a virtual server or "cloud" environment, or (m) use the Product(s) beyond the scope of the license of the Product(s) granted herein.

1.5. Trials and Betas. If Customer receives access to the Product(s) or any features thereof on a free or trial basis or as an alpha, beta or early access offering ("**Trials and Betas**"), use is permitted only for Customer's internal evaluation to determine whether to purchase a full license or subscription to the Product(s) during the period designated by Pinnacle Infotech (or if not designated, 30 days). If Customer purchases a full license or subscription to the Product(s), this Agreement will apply to Customer's use unless otherwise specified in the applicable Order. Trials and Betas are optional and Pinnacle Infotech may cease offering Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features that Pinnacle Infotech may never release, and their features and performance information are Pinnacle Infotech's Confidential Information. If the Product(s) includes a mechanism that limits access to Trials and Betas, Customer will not attempt to circumvent any such mechanism or restriction. Notwithstanding anything else in this Agreement: (a) Pinnacle Infotech has no obligation to retain Customer Data used with Trials and Betas, (b) Pinnacle Infotech provides the Trial and Betas "AS-IS" with no warranty, indemnity, service levels or support and (c) Pinnacle Infotech's liability for Trials and Betas will not exceed \$50.00 USD.

1.6. Educational Versions. Notwithstanding the foregoing, for any version of the Product(s) designated as "educational," or a similar term, Customer may use the Product(s) solely for educational purposes (i.e., by an instructor or a

student at an educational institution and while engaged in educational work). Such educational versions may not be used (a) by any other person, (b) by any educational institution for any non-educational purposes, or (c) for any for-profit purpose, including professional work or training offered for a fee, or by commercial entities.

**1.7. Internet Connection.** The Product(s) may require an active Internet connection or other means of electronic communications to operate, which are not the responsibility of Pinnacle Infotech.

**1.8. Software Delivery and Deployment.** Any Product(s) that are Software, and any applicable Documentation and any applicable License Keys, will be delivered by electronic means unless otherwise specified on the applicable Order. Delivery is deemed to occur on the date on which the Software and License Keys, if any, are first made available to Customer. The Software may gather and transmit to Pinnacle Infotech license compliance and activation data. Customer will not disable, modify or interfere with the operation of any such functionality of the Software. Pinnacle Infotech may use the foregoing information to validate the authenticity of Customer's license to the Software, to register Customer's Software, for license metering and to protect Pinnacle Infotech against unlicensed or illegal use of the Software.

## **2. Privacy and Data Rights.**

### **2.1. Data Usage and Ownership.**

**(a)** Customer acknowledges that Licensor may directly or indirectly collect and store Customer Data. Customer hereby grants to Pinnacle Infotech and its affiliates the non-exclusive, worldwide, irrevocable, royalty-free right: (i) to use Customer Data during the Utilization Term to provide the Product(s) to Customer; (ii) to use and disclose Customer Data as otherwise permitted pursuant to this Agreement or any written consent and/or instructions of the Customer; and, (iii) on a perpetual basis: (A) to create, use and disclose Customer Data that has been anonymized by Licensor ("Anonymized Data") for any purpose; and (B) subject to Pinnacle Infotech's confidentiality obligations in Section 13 (Confidentiality.) and all applicable Data Protection Legislation, to use Customer Data to develop,

maintain and improve the Products(s) and any other products, software, and services of Pinnacle Infotech and/or its affiliates.

**(b)** Except for Pinnacle Infotech's use rights in Customer Data set forth in this Agreement, as between the parties, Customer retains all intellectual property and other rights in Customer Data provided to Pinnacle Infotech. Pinnacle Infotech owns all right, title and interest in Anonymized Data (including, without limitation, any and all intellectual property rights).

**(c)** Customer will not have access to Customer Data after termination or expiration of the Utilization Term, unless otherwise indicated in the application Documentation, Order, Product-Specific Terms, or the parties agree otherwise in writing.

**(d)** In the event of any conflict between the terms of Section 13 (Confidentiality.) and this Section 2.1 (Data Usage and Ownership.), the terms of this Section 2.1 (Data Usage and Ownership.) will control.

**2.2. Personal Information; Data Protection.** The following section applies if Customer is a juristic entity.

**(a)** All applicable laws, rules, and regulations relating to the protection of privacy and data protection are referred to as "Data Protection Legislation". "Personal Information" is defined as in the applicable Data Protection Legislation, or if no definition is provided, any personally identifiable information which is either (i) provided by Customer or on its behalf, or (ii) automatically collected through the Service on Customer's behalf. "**Applicable**", in this context, means the Data Protection Legislation applicable to Customer at Customer's principal place of business or to Pinnacle Infotech at Pinnacle Infotech's principal place of business, and such laws that Customer notifies Pinnacle Infotech in writing of that apply to the parties.

**(b)** Each party will comply with all applicable requirements of the Data Protection Legislation that applies to it. This Section 2.2(b) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the applicable Data Protection Legislation.

**(c)** The parties acknowledge that: (i) if Pinnacle Infotech processes any Personal Information hereunder, it is on the Customer's behalf when

performing its obligations under this Agreement and (ii) the Personal Information may be transferred or stored, and/or accessed from outside of the country where the Customer's principal place of business is located in order to provide the Service and Pinnacle Infotech's other obligations under this Agreement.

**(d)** Without prejudice to the generality of Section 2.2(b), Customer will ensure that it has all necessary appropriate consents and notices in place (i) to enable lawful transfer of the personal information to Pinnacle Infotech for the duration and purposes of the Agreement and (ii) to enable Pinnacle Infotech to lawfully use, process and transfer the Personal Information in accordance with this Agreement, including on the Customer's behalf.

**(e)** If the processing of Personal Information by Pinnacle Infotech is subject to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 2018 of the United Kingdom, then, in addition, at the request of Customer, then the parties will execute an applicable data processing addendum.

**(f)** If the processing of Personal Information by Pinnacle Infotech is subject to the California Consumer Privacy Act of 2018 (Title 1.81.5, §1798.100 et. seq.) ("**CCPA**"), then in addition, in connection with a verified request by a data subject pursuant to an exercise of rights under CCPA related to Personal Information, Pinnacle Infotech is Customer's service provider, that Customer (and not Pinnacle Infotech) will respond to such request, and that if necessary in connection with such verified request, Customer will utilize the tools and information provided or made generally available by Pinnacle Infotech, such as Pinnacle Infotech's online portals or APIs and standard documentation regarding Pinnacle Infotech's products, software and services. To the extent such tools do not enable Customer to respond to a verified request, upon Customer's request Pinnacle Infotech will provide reasonable assistance with respect to Personal information in Pinnacle Infotech's systems that is required for Customer's response to such request. A Customer's request to delete Personal Information will not require Pinnacle Infotech to delete Personal Information required to provide Customer with the Product(s), which includes any of Pinnacle Infotech's service provider(s) acting on Pinnacle Infotech's behalf to



provide the Product(s); provided, however, that such service provider(s) do not have a separate right to sell or use Customer's Personal Information other than as required for Pinnacle Infotech's business purposes.

### **2.3. Cookie Policy.**

This Agreement incorporates by reference the Cookie Policy, which is provided at: [pivdc.com/cookie-policy](http://pivdc.com/cookie-policy).

### **3. Customer Obligations.**

- 3.1. Compliance with Laws. Customer is responsible for complying with all applicable Laws in its use of the Product(s) and any results derived from the Product(s)
- 3.2. No High Risk Activities. Customer will not use the Product(s) for High Risk Activities. Customer acknowledges that the Product(s) are not intended to meet any legal obligations for High Risk Activities.
- 3.3. No Prohibited Data. Customer will not use the Product(s) with Prohibited Data. Customer acknowledges that the Product(s) are not intended to meet any legal obligations for these uses, including HIPAA requirements, that Pinnacle Infotech is not a Business Associate as defined under HIPAA.
- 3.4. Customer Data. Customer is responsible for its Customer Data, including its content and accuracy and compliance with Laws. Customer represents and warrants that it has made all disclosures and has all rights, consents and permissions necessary to use its Customer Data with the Product(s) and grant Pinnacle Infotech the rights in Section 2.1 (Data Usage and Ownership.), all without violating or infringing Laws, third-party rights (including intellectual property, publicity or privacy rights) or any terms or privacy policies that apply to its Customer Data.

**4. Suspension of Access to Product(s).** Pinnacle Infotech may suspend Customer's access to the Product(s) and/or Support, without liability, and in whole or in part, if Customer breaches Section 1.4 or Section , if Customer's account is 30 days or more overdue, or if Customer's actions risk harm to other customers or the security, availability or integrity of the Product(s). Where practicable, Pinnacle Infotech will use reasonable efforts to provide Customer with prior notice of the suspension. Once Customer resolves the issue requiring

suspension, Pinnacle Infotech will within a reasonable time restore Customer's access to the Product(s) in accordance with this Agreement.

**5. Certain Product Features.** The following provisions apply to the extent applicable to the Product(s).

5.1. Devices. The Product(s) may be compatible with or require use of a device ("**Device**"). Compatible Devices are specified in the applicable Documentation. Pinnacle Infotech makes no warranties regarding the operation of any Device or continued compatibility of the Product(s) with any such Device. Customer is solely responsible for the configuration and operation of its Device. The results obtained from the Product(s) may be affected by, and Pinnacle Infotech will have no liability for, the compatibility, placement, configuration or operation of your Device, as well as any factors outside of Pinnacle Infotech's control that may affect the operation of the Product(s).

5.2. Use with other Pinnacle Infotech Products. The Product(s) may allow Customer to connect with other Pinnacle Infotech products or services. Use of such other products or services by the Customer that are not part of the Product(s) may require payment of a separate fee and are governed by those products or services' respective terms of service, end user license agreement, or other agreement, and not by this Agreement.

5.3. Scripts. The Product(s) may allow Customer to input and/or develop custom scripts, macros and commands (collectively, "**Scripts**") that control the operation of the Product(s). Scripts may be available for download or purchase from Pinnacle Infotech or third parties, or created by Customer. Unless otherwise specified by Pinnacle Infotech in writing, Scripts are not part of the Product. Customer's development and/or use of any Scripts are solely at its own risk. To the extent any Scripts are provided by a third party, such Scripts will be deemed to be Third-Party Materials, and may be subject to Third-Party Terms.

5.4. Third-Party Materials.

(a) Generally. The Product(s) may provide Customer with access to Third-Party Materials. Third-Party Materials are not deemed to be part of the Product(s). To the extent specified by Pinnacle Infotech (including in any Product-Specific Terms or Documentation), use of the Third-Party

Materials may be subject to additional terms or restrictions (“**Third-Party Terms**”). Customer is solely responsible for its compliance with any Third-Party Terms, and failure to comply with such terms may result in termination of Customer’s right to access any features of the Product(s) that utilize such Third-Party Materials. If no Third-Party Terms are specified, Customer may use Third-Party Materials solely in support of Customer’s authorized use of the Product(s) in accordance with this Agreement.

- (b) Open Source. The Software may incorporate third-party open source software (“**Open Source**”), as listed in the Documentation or Product-Specific Terms, or otherwise made available by Pinnacle Infotech. To the extent the terms of the Open Source license prohibit the terms of this Agreement from applying to the Open Source, the terms of the Open Source license will apply to the Open Source on a stand-alone basis instead of this Agreement.
- (c) Content Subscriptions. This Section 5.4(c) applies if the Product makes available Third-Party Materials as a data or content subscription (“**Subscription Content**”). If Customer has a separate agreement with Pinnacle Infotech in place regarding the use of Subscription Content (the "**Subscription Content Agreement**"), then such Subscription Content Agreement governs the use of Subscription Content accessed through the Product, but not the use of the Product itself, which will be governed by this Agreement. If no Subscription Content Agreement is in place, then, unless otherwise authorized by Pinnacle Infotech in writing, such Subscription Content may only be used solely for Customer’s internal purposes during the applicable Utilization Term and only when accessed pursuant to a manual end user request. Customer will not: (i) access, extract or download any Subscription Content, or portions thereof, in batch or mass by any means, (ii) sell, offer to sell, rent, sublicense or transfer any copies of the Subscription Content, or portions thereof, to a third party or allow a third party to use the Subscription Content; (iii) use the Subscription Content to develop services or products for sale or include any portion of the Subscription Content in any product or service; (iv) use any portion of the Subscription Content to create a competitive service, product or technology; (v) recreate the Subscription Content or create otherwise a separate database or other repository of Subscription

Content, (vi) use Subscription Content to train, augment, or correct another database or information repository, or (vii) make any portion of the Subscription Content available to the public in any manner. Upon notice from Pinnacle Infotech and/or any termination or expiration of the Utilization Term, Customer will immediately cease using and delete/destroy all electronic and physical copies of Subscription Content.

5.5. Third-Party Platforms. Customer may choose to use the Product(s) with Third-Party Platforms. Third-Party Platforms are not deemed to be part of the Product(s). Use of Third-Party Platforms is subject to Customer's agreement with the relevant provider and not this Agreement, and may enable data exchange between the Product(s) and Third-Party Platform. Pinnacle Infotech does not control and has no liability for Third-Party Platforms, including their security, functionality, operation, availability or interoperability or how the Third-Party Platforms or their providers use Customer Data. If Customer enables a Third-Party Platform with a Product(s), Pinnacle Infotech may access and exchange Customer Data with the Third-Party Platform on Customer's behalf.

#### 5.6. Third-Party Application Stores.

(a) Purchase from Application Store. If Customer obtained Software through a third-party application store, marketplace or other site or service (each, an "**Application Store**"), such Application Store is considered a "Reseller" under this Agreement, and Customer's use of the Software is subject to Section 7.3 (Purchase from Reseller) of this Agreement. Except as expressly set forth in Sections 7.3 (Purchase from Reseller) and 5.6(c) (Apple-Specific Terms), all fees are non-refundable once paid. Customer's download of the Software may be subject to other terms as specified by the operator of the Application Store from which Customer downloaded the Software.

(b) In App Purchases. The Software may offer Customer the opportunity to purchase additional functions and/or features from within the application (an "**In App Purchase**"). All billing and transaction processes are handled by the provider of the Application Store (the "**App Store Provider**") from whose platform Customer downloaded the Software and are governed by the App Store Provider's terms and conditions. If Customer has any payment related issues with In-App Purchases, then Customer must contact the App Store Provider directly.

(c) Apple-Specific Terms. If Customer downloaded the Software from Apple Inc.'s ("**Apple's**") Application Store, the following terms are part of this Agreement:

- i. This Agreement is between Customer and Pinnacle Infotech, and not with Apple. However, as required by Apple, Apple and its subsidiaries will be third party beneficiaries of this Agreement and will have the right (and will be deemed to have accepted the right) to enforce this Agreement against Customer as a third-party beneficiary.
- ii. As set forth in Section 8 (Warranties and Disclaimers.) of this Agreement, Pinnacle Infotech offers a refund in certain circumstances following a breach of Pinnacle Infotech's limited warranty for the Software. If Customer is entitled to such a refund, Customer may notify Apple, and Apple will refund the purchase price (if any) for the Software to Customer. To the maximum extent permitted by Law, Apple will have no other warranty obligation with respect to the Software, and, as between Apple and Pinnacle Infotech, any other claims, losses, liabilities, damages, costs or expenses attributable to a failure to conform to a warranty will be Pinnacle Infotech's responsibility. Apple has no obligation whatsoever to furnish any maintenance or support services with respect to the Software.
- iii. As between Pinnacle Infotech and Apple, Pinnacle Infotech is solely responsible for the Software and for addressing any claims Customer or any third parties have about the Software or your possession or use of the Software, including without limitation (A) product liability claims, (B) any claim that the Software fails to conform to any applicable legal or regulatory requirement and (C) claims arising under consumer protection or similar legislation. In the event of any third-party claim that the Software or your possession or use of the Software infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement or discharge of such claim.

## **6. Support and Professional Services.**

6.1. Service Support. During the Utilization Term, Pinnacle Infotech will provide the support for the Service ("**Service Support**") and service level

commitments specified on the applicable Order and/or the Product-Specific Terms, if any (“**Service Support Terms**”).

6.2. Software Support. Pinnacle Infotech will provide the support and maintenance services for the Software (“**Software Support**”) specified on the applicable Order and/or the Product-Specific Terms, if any, during such period as Customer has paid the applicable fee. Unless (a) Pinnacle Infotech and Customer have entered into a separate written agreement for Support or (b) different terms and conditions are set forth in the Order or Product-Specific Terms, Support will be provided pursuant to Pinnacle Infotech’s then-current Software Support and Maintenance Terms, available at <https://???> or a successor URL (any such terms and conditions from (a) or (b), “Software Support Terms”).

6.3. Professional Services. Professional Services are not covered by this Agreement. If the applicable Order indicates that Pinnacle Infotech will provide any Professional Services to Customer, then Pinnacle Infotech’s provision of and Customer’s receipt of such Professional Services will be governed by Pinnacle Infotech’s then-current standard Professional Services terms, available at <http://???> or a successor URL, unless otherwise mutually agreed by the parties in writing.

6.4. Updates. Licensor may develop and provide, at its sole discretion, updates, upgrades, bug fixes, patches, and other error corrections (collectively “Updates”) to the Product(s). Customer agrees that all Updates will be deemed Software and related documentation will be deemed Documentation, all subject to the terms and conditions of this Agreement. Licensee agrees that Licensor has no obligation to develop any updates at all.

## 7. Commercial Terms.

7.1. Utilization Term; Utilization Commencement Date; Renewal Opt Out Deadline. Unless otherwise set forth in the Product-Specific Terms or Order, (1) the initial Utilization Term for each Product is 12 months from the Utilization Commencement Date, and each Utilization Term will renew for successive 12-month periods unless either party gives the other party notice of non-renewal by the Renewal Opt Out Deadline; and (2) the “**Utilization Commencement Date**” for each Product means:

- (a) if Customer ordered such Product directly from Pinnacle Infotech, the later of (i) applicable Initial Product Availability Date, or (ii) the start date of the term indicated in the Order; or
- (b) if Customer ordered such Product through a Reseller, the Initial Product Availability Date. (3) The “**Renewal Opt Out Deadline**” is the date that is 30 days before the expiration of the then-current Utilization Term.

7.2. Fees and Taxes. Fees are as described in each Order. Fees are invoiced as specified in the Order and reimbursable expenses are invoiced in arrears. Unless the Order provides otherwise, Customer will pay all fees and expenses within 30 days of the invoice date. Fees for renewal of the Utilization Terms are at Pinnacle Infotech’s then-current rates, regardless of any discounted pricing in a prior Order. Any amount due under this Agreement that remains unpaid after its due date will bear interest at the lower of 1.5% per month or the maximum rate permitted by Law, calculated from the date such amount was due until the date that payment is received. Customer will pay all costs and expenses of collection (including attorneys’ fees) incurred by Pinnacle Infotech collecting any amounts past due under this Agreement. Subject to any mandatory Laws to the contrary, all fees and expenses are non-refundable except as set out in Section 8.2 (Warranty Remedy). Customer will pay any sales, use, GST, value-added, withholding or similar taxes or levies that apply to its Orders, whether domestic or foreign (“**Taxes**”), other than Pinnacle Infotech’s income tax. Fees and expenses are exclusive of Taxes. Customer will pay any foreign exchange transaction fees and any foreign exchange profits or losses incurred on such transactions.

7.3. Purchase from Reseller. If Customer obtained the Product(s) through an authorized dealer, distributor or reseller of Pinnacle Infotech (“**Reseller**”), the following terms are applicable and will prevail in event of any conflict with any other provisions of this Agreement:

- (a) This Agreement is between Pinnacle Infotech and Customer and governs all access and use of the Product(s) by Customer. Resellers are not authorized to modify this Agreement or make any promises or commitments on Pinnacle Infotech’s behalf, and Pinnacle Infotech is not bound by any obligations to Customer other than as set forth in this Agreement. Pinnacle Infotech is not party to (or responsible under) any separate agreement between Customer and Reseller, and Pinnacle

Infotech is not responsible for the Reseller's acts, omissions, products or services. The applicable Product(s) list price for the applicable Utilization Term will be deemed the amount paid or payable by Customer to Pinnacle Infotech under this Agreement for purposes of Section 11 (Limitations of Liability.).

- (b) Instead of paying Pinnacle Infotech, Customer will pay the applicable amounts to the Reseller, as agreed between Customer and the Reseller. If the Reseller fails to pay Pinnacle Infotech the applicable fees for Customer's use of the Product(s), Pinnacle Infotech reserves the right to terminate the applicable Utilization Term for such Product(s) and all related rights granted hereunder. Customer may purchase renewal Utilization Terms for the Product(s) under this Agreement directly from Pinnacle Infotech pursuant to an Order.
- (c) Customer's order details (e.g., the applicable Product(s), the Utilization Term, Usage Limitations, Authorized Users, and any additional scope of use restrictions) will be as stated in the Order issued by Pinnacle Infotech (i.e., entitlement confirmation), and the Reseller is responsible for the accuracy of any such information as communicated to Pinnacle Infotech. Unless otherwise designated by Pinnacle Infotech, the Reseller is solely responsible for delivering to Customer any Product(s), and Pinnacle Infotech has no liability for the Reseller's failure to deliver such materials.
- (d) The Reseller may fulfill Pinnacle Infotech's warranty obligations under Section 8.1 (Limited Warranty) on behalf of Pinnacle Infotech, to the extent authorized by Pinnacle Infotech in writing. Notwithstanding the foregoing, the Reseller has no authority to make any statements, representations, warranties or commitments on Pinnacle Infotech's behalf and any such statements, representations, warranties or commitments are null and void. If the Reseller agrees to provide front-line support or professional services to Customer, Pinnacle Infotech has no responsibility for such Reseller-provided support or professional services.
- (e) In the event Customer is entitled to a refund under this Agreement, Customer must request such refund through the Reseller. Any request sent directly to Pinnacle Infotech may be redirected to the Reseller. Pinnacle Infotech will refund any applicable fees to the Reseller and the Reseller will be solely responsible for refunding such fees to Customer, unless



otherwise specified by Pinnacle Infotech. Pinnacle Infotech will have no further liability to Customer in the event the Reseller fails to refund such fees to Customer.

## **8. Warranties and Disclaimers.**

8.1. Limited Warranty. Unless otherwise specified in the Product-Specific Terms, and subject to any mandatory Laws to the contrary, Pinnacle Infotech warrants to Customer that during the Warranty Period the Product(s) will perform materially as described in the Documentation. The “**Warranty Period**” is (1) for Software that is licensed on a perpetual basis, 90 days from the Subscription Commencement Date, and (2) for any Service and/or Software that is licensed for a limited Utilization Term, the applicable Utilization Term.

8.2. Warranty Remedy. If Pinnacle Infotech breaches Section 8.1 (Limited Warranty) during the Warranty Period and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, then Pinnacle Infotech will use reasonable efforts to correct the non-conformity or provide a work-around. If Pinnacle Infotech determines such remedy to be impracticable, either party may terminate the affected Order to the extent that it relates to the non-conforming Product(s). Pinnacle Infotech will then refund to Customer any pre-paid, unused fees for the terminated portion of the Utilization Term. Subject to any mandatory Laws to the contrary, these procedures are Customer’s exclusive remedy and Pinnacle Infotech’s entire liability for breach of the warranty in Section 8.1 (Limited Warranty). These warranties do not apply to (a) issues caused by misuse or unauthorized modifications, (b) unsupported versions of Software, (c) issues in or caused by Third-Party Platforms or other third-party systems or (d) Trials and Betas or other free educational or evaluation use.

### 8.3. Disclaimers.

(a) General: EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1 (LIMITED WARRANTY), PRODUCT(S) AND SUPPORT ARE PROVIDED “AS IS”. PINNACLE INFOTECH AND ITS SUPPLIERS MAKE NO (AND HEREBY DISCLAIM ALL) OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OR ANY WARRANTIES

ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING ITS EXPRESS OBLIGATIONS IN SECTION 6 (Support and Professional Services.), PINNACLE INFOTECH DOES NOT WARRANT THAT CUSTOMER'S USE OF THE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR-FREE, THAT PINNACLE INFOTECH WILL REVIEW CUSTOMER DATA FOR ACCURACY OR THAT IT WILL MAINTAIN CUSTOMER DATA OR OTHER DATA WITHOUT LOSS. PINNACLE INFOTECH IS NOT LIABLE FOR DELAYS, FAILURES OR PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE PINNACLE INFOTECH'S CONTROL. PINNACLE INFOTECH WILL NOT BE LIABLE IN ANY MANNER FOR THE OUTPUT OBTAINED THROUGH USE OF THE PRODUCT(S) OR CUSTOMER'S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF CUSTOMER'S USE OF THE PRODUCT(S). THIS RESPONSIBILITY INCLUDES THE DETERMINATION OF APPROPRIATE USES FOR THE PRODUCT(S) AND THE SELECTION OF THE PRODUCT(S) AND OTHER PROGRAMS TO ACHIEVE INTENDED RESULTS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE PRODUCT(S). CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

- (b) Customer Applications. Pinnacle Infotech hereby disclaims any warranty, support or other obligations with respect to any Customer Applications.
- (c) Scripts. Subject to mandatory Laws to the contrary, Scripts are provided "AS IS" and Pinnacle Infotech hereby disclaims any warranty, support, or other obligations with respect to any Scripts, including, without limitation, any Scripts provided by Pinnacle Infotech.
- (d) Third-Party Materials and Third-Party Platforms. Third-Party Materials and Third-Party Platforms are provided "AS IS" and Customer assumes all risk and liability regarding any use of (or results obtained through) Third-Party Materials or Third-Party Platforms. Pinnacle Infotech and its suppliers make no warranty or guarantee regarding any Third-Party

Materials or Third-Party Platforms, including regarding their accuracy or continued availability or compatibility.

- (e) High Risk Activities and Prohibited Data. Pinnacle Infotech and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Product(s) in connection with High Risk Activities or with any Prohibited Data.
- (f) Global Positioning Data. Pinnacle Infotech and its suppliers are not responsible for the operation or failure of operation of any Global Positioning System (“GPS”) or Global Navigation Satellite System (“GNSS”) satellites or base stations, or the availability of GPS or GNSS satellite signals. Customer acknowledges that use of the Product(s) is subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service, and other natural or manmade conditions. Additionally, motor and ignition noise, metal shielding, and interference by users of the same or adjacent radio channels may limit or interfere with coverage.

## **9. Term and Termination.**

- 9.1. Term. This Agreement starts on the Effective Date specified in the applicable Order and continues until expiration or termination of all Utilization Terms for all Product(s).
- 9.2. Termination. Either party may terminate this Agreement (including all Orders) if the other party (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after notice, (b) ceases operation without a successor or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors’ arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.
- 9.3. Effect of Termination. Upon expiration or termination of this Agreement or an Order, Customer’s right to use the Product(s) (including its license to any Software) will cease and Customer will immediately cease any and all use of and access to the Product(s) and will delete (or, upon request by Pinnacle, return) all copies of any Software. At the disclosing party’s request upon expiration or termination of this Agreement, the receiving party will delete

all of the disclosing party's Confidential Information (excluding Customer Data, which is addressed in Section 2.1 (Data Usage and Ownership.)). Customer Data and other Confidential Information may be retained in the receiving party's standard backups after deletion but will remain subject to this Agreement's confidentiality restrictions.

9.4. Survival. These Sections survive expiration or termination of this Agreement: 1.4 (Restrictions), 2.1 (Data Usage and Ownership), 3 (Customer Obligations), 7.2 (Fees and Taxes), 8.3 (Disclaimers), 9.3 (Effect of Termination), 9.4 (Survival), 10 (Ownership), 11 (Limitations of Liability), 12 (Indemnification), 13 (Confidentiality), 14 (Required Disclosures), 16 (General Terms) and 17 (Definitions). Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.

**10. Ownership.** Neither party grants the other any rights or licenses not expressly set out in this Agreement. Except for Customer's use rights in this Agreement, Pinnacle Infotech and its licensors retain all intellectual property and other rights in the Product(s), Documentation, other deliverables and related Pinnacle Infotech technology, templates, formats and dashboards, including any modifications or improvements to these items made by Pinnacle Infotech. If Customer provides Pinnacle Infotech with any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the Products ("**Feedback**"), Customer hereby grants to Pinnacle Infotech and its Affiliates a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and otherwise exploit the Feedback.

**11. Limitations of Liability.**

11.1. Consequential Damages Waiver; Liability Cap. EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW), TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF A PARTY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY OR OTHERWISE, IN NO EVENT WILL (A) EITHER PARTY (OR ITS SUPPLIERS) BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, FAILURE OF SECURITY MECHANISMS,

INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, OR ANY SPECIAL, INCIDENTAL, RELIANCE, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR (B) EACH PARTY'S (AND ITS SUPPLIERS) ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO PINNACLE INFOTECH DURING THE PRIOR 12 MONTHS UNDER THIS AGREEMENT FOR THE APPLICABLE PRODUCT(S) GIVING RISE TO THE LIABILITY. SOME JURISDICTIONS DO NOT ALLOW A LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS OR CERTAIN INTENTIONAL OR NEGLIGENT ACTS, OR VIOLATION OF SPECIFIC STATUTES, OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH AN EVENT THE FOREGOING LIMITATION(S) WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11.2. Excluded Claims. “**Excluded Claims**” means: (a) Customer’s breach of Section 1.3 (API Access and Customer Applications.), 1.4 (Restrictions), 3 (Customer Obligations.), or 5.4 (Third-Party Materials.), (b) either party’s breach of Section 13 (Confidentiality.) (but excluding claims relating to Customer Data); (c) amounts payable to third parties under Customer’s obligations in Section 12 (Indemnification.) or (d) any liabilities that cannot be excluded or limited by Laws.

11.3. Nature of Claims and Failure of Essential Purpose. The waivers and limitations in this Section 11 (Limitations of Liability.) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

## 12. Indemnification.

12.1. Indemnification by Customer. Customer will defend, indemnify and hold harmless Pinnacle Infotech from and against any and all third-party claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys’ fees and costs) arising out of or in connection with (a) any Customer Data, Third-Party Platforms, or third-party Devices, (b) Customer’s breach or alleged breach of 3 (Customer Obligations.) or 5.4 (Third-Party Materials.) or (c) any service or product offered by Customer (including any Customer Application) in connection with or related to the Product(s) (each, a “**Claim**”).

12.2. Procedures. Pinnacle Infotech will give Customer prompt written notice of any Claim and will cooperate in relation to the Claim at Customer's expense. Customer will have the exclusive right to control and settle any Claim, except that Customer may not settle a Claim without Pinnacle Infotech's prior written consent (not to be unreasonably withheld) if the settlement requires Pinnacle Infotech to admit any liability or take any action or refrain from taking any action (other than ceasing use of infringing materials). Pinnacle Infotech may participate in the defense of any Claim at its expense.

### 13. Confidentiality.

13.1. Definition. "**Confidential Information**" means information disclosed to the receiving party under this Agreement that is designated by the disclosing party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Pinnacle Infotech's Confidential Information includes the terms and conditions of this Agreement and any technical or performance information about the Product(s). Customer's Confidential Information includes Customer Data.

13.2. Obligations. As a receiving party, each party will use reasonable care to protect the disclosing Party's Confidential Information from being disclosed to third parties except as permitted in this Agreement, including, without limitation, in Section 2.1 (Data Usage and Ownership.), and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose Confidential Information to its employees, agents, Affiliates, contractors, attorneys and other representatives having a legitimate need to know (including, for Pinnacle Infotech, the subcontractors referenced in Section 16.9 (Subcontractors)), provided it remains responsible for their compliance with this Section 13 (Confidentiality.) and they are bound to confidentiality obligations no less protective than this Section 13 (Confidentiality.).

13.3. Exclusions. These confidentiality obligations do not apply to information that the receiving party can document (a) is or becomes public knowledge through no fault of the receiving party, (b) it rightfully knew or possessed prior to receipt under this Agreement, (c) it rightfully received from a third party without breach of confidentiality obligations or (d) it independently developed without using the disclosing party's Confidential Information.

13.4. Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 13 (Confidentiality.).

**14. Required Disclosures.** Nothing in this Agreement prohibits either party from making disclosures, including of Customer Data and other Confidential Information, if required by Law, subpoena or court order, provided (if permitted by Law) it notifies the other party in advance and reasonably cooperates in any effort to obtain confidential treatment.

**15. Publicity.** Neither party may publicly announce this Agreement without the other party's prior consent. However, Pinnacle Infotech may include Customer and its trademarks in Pinnacle Infotech's customer lists and promotional materials but will cease this use at Customer's written request.

**16. General Terms.**

16.1. Assignment. Pinnacle Infotech may assign this Agreement upon notice to Customer. Customer may not assign or transfer this Agreement (by operation of law or otherwise) without the prior consent of Pinnacle Infotech. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

16.2. Notices. Except as set out in this Agreement, any notice or consent under this Agreement must be in writing and will be deemed given: (a) upon receipt if by personal delivery, (b) upon receipt if by certified or registered mail (return receipt requested) or (c) one day after dispatch if by an internationally reputable commercial overnight delivery service. If to Pinnacle Infotech, notice must be provided to the address in Section 16.15 (Pinnacle Infotech Entity; Governing Law; Jurisdiction) below, with a copy to Pinnacle Infotech Inc., Attn: General Counsel – Important Notice, ????. If to Customer, Pinnacle Infotech may provide notice to the address Customer provided at registration or on the Order. Either party may update its address with notice to the other party. Pinnacle Infotech may also send general and operational notices to Customer by email or through the Product(s).

16.3. Entire Agreement. This Agreement (which includes the Order and all applicable, the Product-Specific Terms, Support Terms, Product Policies,

Cookie Policy) is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. The terms in any Customer purchase order, business form, or other similar documents will not amend or modify this Agreement and are expressly rejected by Pinnacle Infotech; any of these Customer documents are for administrative purposes only and have no legal effect.

16.4. Modifications to Agreement. Subject to Section 16.5 (Modifications to Product Policies) below, Pinnacle Infotech may modify this Agreement from time to time with notice to Customer. Modifications take effect at Customer's next Utilization Term, if any, for an existing Order, or from the start of a new Order, unless Pinnacle Infotech indicates an earlier effective date. If Pinnacle Infotech requires modifications with an earlier effective date and Customer objects in writing within 10 days of receiving notice, then Pinnacle Infotech may permit such modifications to take effect at the date indicated above. If Pinnacle Infotech declines to do so, Customer's exclusive remedy is to terminate this Agreement with notice to Pinnacle Infotech, in which case Pinnacle Infotech will provide Customer a refund of any applicable pre-paid Product fees for the terminated portion of the current Utilization Term. To exercise this termination right, Customer must notify Pinnacle Infotech of its objections within 30 days after Pinnacle Infotech's notice of the modified Agreement. Once the modified Agreement takes effect Customer's continued use of the Product(s) constitutes its acceptance of the modifications. Pinnacle Infotech may require Customer to click to accept the modified Agreement.

16.5. Modifications to Product Policies. Product Policies are not subject to Section 16.4 (Modifications to Agreement). With notice to Customer, Pinnacle Infotech may modify the Policies to reflect new features or changing practices, but the modifications will not materially decrease Pinnacle Infotech's overall obligations during a Utilization Term.

16.6. Amendments. Except as otherwise provided herein (see Section 16.4), any amendments, modifications or supplements to this Agreement must be in writing and signed by each party's authorized representatives or, as



appropriate, agreed through electronic means provided by Pinnacle Infotech.

- 16.7. Waivers and Severability. Waivers must be in writing signed by the waiving party's authorized representative and cannot be implied from conduct. Each provision contained in this Agreement constitutes a separate and distinct provision severable from all other provisions. If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law or is held by a court of competent jurisdiction or arbitrator to be invalid, void or unenforceable, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Agreement; and, all the remaining provisions of this Agreement will remain unimpaired.
- 16.8. Force Majeure. Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, Internet or utility failures, refusal of government license, pandemics or natural disaster.
- 16.9. Subcontractors. Pinnacle Infotech may use subcontractors and permit them to exercise Pinnacle Infotech's rights in connection with this Agreement, including for hosting purposes. Pinnacle Infotech remains responsible for compliance of any such subcontractors with this Agreement and for its overall performance under this Agreement.
- 16.10. Independent Contractors. The parties are independent contractors, not agents, partners or joint venturers.
- 16.11. Compliance; Export Control.
- (a) Compliance with Laws. Customer is responsible for complying with all applicable Laws in its use of the Product(s).
  - (b) Export Restrictions. Customer acknowledges that the Product(s) are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer will not, and will not allow any third-party to, remove or export from the United States or allow

the export or re-export of any part of the Product(s) or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, Laws of any United States or foreign agency or authority. Customer warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Product(s) are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. Customer will defend, indemnify and hold Pinnacle Infotech harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this provision. Customer's obligations under this paragraph will survive the termination of this Agreement for any reason whatsoever.

16.12. Government End-Users. Elements of the Product(s) are commercial computer software. If the user or licensee of the Product(s) is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product(s) or any related documentation of any kind, including technical data and manuals, is restricted by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Product(s) were developed fully at private expense. All other use is prohibited.

16.13. No Third Party Beneficiaries. This Agreement does not confer any rights or remedies upon any third party except to the extent expressly set forth in this Agreement. The parties to this Agreement may rescind or vary this Agreement without the consent of any such third party beneficiaries.

16.14. Official Language. The official language of this Agreement is English. If there is a conflict between versions of this Agreement in any other language, the English language version controls.

16.15. Pinnacle Infotech Entity; Governing Law and Venue. Unless a different entity is specified in the applicable Order or the Product-Specific Terms or in this Agreement, “Pinnacle Infotech” for purposes of this Agreement will mean the “Pinnacle Infotech Entity” set forth below. The Agreement is governed exclusively by, and construed and enforced exclusively in accordance with, the laws of the applicable jurisdiction set forth below under “Governing Law”, without regard to or application of its conflicts of laws provisions and without regard to or application of the United Nations Convention on the International Sale of Goods. The parties agree that any legal proceeding arising out of or related to this Agreement will be subject to the sole and exclusive jurisdiction and venue set forth below under “Exclusive Venue/Jurisdiction,” to the exclusion of all others. Each party irrevocably consents and hereby submits to the personal jurisdiction thereof. Customer Location\* Pinnacle Infotech Entity and Notice

Customer Location*	Pinnacle Infotech Entity and Notice Address	Governing Law	Exclusive Venue/Jurisdiction

**Notes:**

\* Customer location determined by Customer’s billing address specified on the Order, or if none, then the address provided by Customer to Pinnacle Infotech when registering its online account.

\*\* See additional required notice address for Pinnacle Infotech in Section 16.2 (Notices).

\*\*\* In the event arbitration under an ICC process is specified above, except as provided in this paragraph with respect to injunctive relief, all disputes regarding the Product(s) or this Agreement will be finally resolved by binding and final arbitration before a single arbitrator, selected in accordance with the rules of the ICC. Any arbitration will be conducted at the indicated location in the English language. After each party has been afforded a reasonable opportunity to present

written and testimonial evidence in support of its position in any such arbitration proceeding, the arbitrator will issue his/her decision and award, which will (i) be in writing, stating the reasons therefore, (ii) be based solely on the terms and conditions of the Agreement, and (iii) except as provided in this paragraph regarding injunctive relief, be final and binding upon the parties. The arbitrator will not award punitive or exemplary damages. The parties, their representatives, and any other participants will hold the existence, content, and result of arbitration in confidence. The provisions of this paragraph may be enforced by any court of competent jurisdiction. Notwithstanding the foregoing, (A) either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief), and (B) Pinnacle Infotech may bring suit against Customer in the courts at Customer's place of business for infringement of intellectual property rights, over usage of Product(s) and breach of restrictions of license or usage limitations and misappropriations of confidential information and trade secrets or other intellectual property rights.

16.16. Australia-Specific Terms. For Customer who purchase Product(s) in Australia, the following provisions apply:

- (a) For the purposes of this Section 16.16 (Australia-Specific Terms), **“Australian Consumer Law”** means the Competition and Consumer Act 2010 (Cth) and **“Non-excludable Condition”** means certain consumer guarantees, warranties, rights, or remedies under the Australian Consumer Law that cannot be limited, excluded, restricted, or modified, and to which Customer may be entitled. For purposes of the following limitation of liability statement, the Parties intend for the following: “service” means a Service and “goods” means Software.
- (b) To the extent permitted by law, Pinnacle Infotech’s liability in relation to breach of any such Non-excludable Condition shall be limited as follows (and in which “our” “or “us” means Pinnacle Infotech, and “you” means Customer):
- i. in the case of the goods, to repairing or replacing the goods, supplying equivalent goods, or paying the costs of repairing or replacing the goods or acquiring equivalent goods; and
  - ii. in the case of the services, to re-supplying the services or paying the cost of re-supplying the services.

- (c) Nothing in these terms excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified.
- (d) Nothing in these terms is intended to derogate from Pinnacle Infotech's obligations under the *Privacy Act 1988* (Cth) as amended from time to time.

## 17. Definitions.

**"Affiliate"** means an entity that, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with a party, where "ownership" means the beneficial ownership of fifty percent (50%) or more of an entity's voting equity securities or other equivalent voting interests, and "control" means the power to direct the management or affairs of an entity. **"Anonymized Data"** means any data collected in connection with the Product(s) (including Customer Data) that has been aggregated and/or de-identified in such a manner that neither Customer nor any of its Authorized Users or any other individual can be identified from the data when it is shared outside of Pinnacle Infotech or its Affiliates.

**"Authorized User"** means (a) any employee or contractor of Customer that Customer allows to use the Product(s) for its sole benefit, and/or (b) any other party(ies) expressly permitted to be "Authorized Users" in this Agreement (including the Order or any Product-Specific Terms), if any.

**"Customer Data"** means any information, documents, materials, or other data of any type that is input by or on behalf of Customer into the Product(s), including without limitation information or data that is submitted manually by Authorized Users or through a Third-Party Platform, or that Customer may provide to Pinnacle Infotech in connection with receipt of Support.

**"Documentation"** means Pinnacle Infotech's then-current usage guidelines and standard technical documentation applicable to the Product(s).

**"High Risk Activities"** means any mission critical, hazardous, strict liability or other activity(ies) where use or failure of the Product(s) could lead to death, personal injury or physical or environmental damage. Examples of High Risk Activities include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable

medical equipment, motor vehicles, autonomous vehicles, air traffic control, emergency services, weaponry systems. High Risk Use does not include utilization of Cloud Service for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

**“Law(s)”** means all applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications and export of technical or personal data.

**“License Keys”** means electronic passwords or other enabling mechanisms provided for use with Software.

**“Order”** means (a) any ordering documents, proposals, quotations, sales agreement or similar documents issued by Pinnacle Infotech or executed by both parties or, or (b) any Pinnacle Infotech-issued entitlement confirmation or online order acknowledgement, in each case of (a) or (b) for the Product(s) or Support for Software.

**“Product(s)”** means the applicable Software or Service licensed under this Agreement.

**“Product Policies”** means the applicable Support Terms, acceptable use policies, service level commitments, or other policies referenced in this Agreement (including, without limitation, the Order or Product-Specific Terms) for a Product.

**“Professional Services”** means any training, enablement, configuration or other professional consulting services provided by Pinnacle Infotech related to the Product(s), as identified in the Order.

**“Prohibited Data”** means any (a) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation, (b) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) (**“HIPAA”**), (c) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (PCI DSS), (d) other information subject to regulation or protection under specific Laws such as the Children’s Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations), (e)

social security numbers, driver's license numbers or other government ID numbers or (f) any data similar to the above protected under foreign or domestic Laws.

**"Service"** means a Pinnacle Infotech proprietary cloud service, as identified in the relevant Order and as modified from time to time. The Service includes Documentation but does not include Third-Party Materials or Third Party Platforms.

**"Software"** means the object code form of Pinnacle Infotech's proprietary installed software product, as identified in the relevant Order. The Software includes the Documentation, and any maintenance releases of the same Software product provided by Pinnacle Infotech (or a Reseller) to Customer under this Agreement, and optional software component module(s) that provides specific features and functionality enhancements for the Software not available in the standard configuration of the Software. Software does not include Third-Party Materials or Third Party Platforms.

**"Support"** means the Service Support or Software Support, as applicable.

**"Support Terms"** means the Service Support Terms or Software Support Terms, as applicable.

**"Third-Party Materials"** means any third-party data, content or proprietary software.

**"Third-Party Platform"** means any platform, add-on, service or product not provided by Pinnacle Infotech that Customer elects to integrate or enable for use with the Product(s).

**"Pinnacle Infotech"** means the Pinnacle Infotech entity identified in Section 16.15 (Pinnacle Infotech Entity; Governing Law and Venue); provided that (ii) for purchases made through a Reseller located in the United States, "Pinnacle Infotech" means Pinnacle Infotech Inc., and (iii) for purchases made through a Reseller located outside the United States, "Pinnacle Infotech" means Pinnacle Infotech Europe B.V.

**"Usage Limitations"** means Customer's authorized scope of use for the Product(s) as specified in the applicable Order or Product-Specific Terms, which may include any specified number of users, seats, copies, instances, CPUs, computers, as well as field of use, location or other restrictions.

**“Utilization Term(s)”** means the period of time, as identified in an Order, for which Customer is at any point in time currently authorized to use a Service or licensed to use a Software (including if perpetual).