



## **PINNACLE ONLINE SERVICE TERMS AND CONDITIONS SCHEDULE**

In addition to the general terms and conditions contained in the service agreement between PAETEC and Customer (the "Agreement"), of which this Schedule is a part, Customer agrees that the following terms and conditions apply to the Pinnacle Online Service provided to Customer by PAETEC.

### **I. RIGHT TO USE**

PAETEC grants to the Customer during the Term of the Agreement and subject to the use restrictions herein a nonexclusive nontransferable license to access and use the Pinnacle Online Service solely for Customer's internal communication management purposes and not for resale or service bureau purposes. The Customer will not acquire any ownership rights to the Pinnacle Online Service or in any Pinnacle Online Service trademark or service mark and all rights to the Pinnacle Online Service will remain the property of PAETEC. Customer shall not: (i) copy, transfer or distribute the Pinnacle Online Service (electronically or otherwise); (ii) reverse assemble, reverse engineer, reverse compile, or otherwise translate the Pinnacle Online Service; or (iii) sublicense, assign or transfer the license for the Pinnacle Online Service or its right to use the same to others. PAETEC will deliver two sets of Pinnacle Online Service documentation to the Customer. The Customer may reproduce related material to enable the Customer to use the Pinnacle Online Service provided. All reproductions of the Pinnacle Online Service must display the Pinnacle Online Service copyright and proprietary rights notices. All modifications, upgrades and enhancements to the Pinnacle Online Service or any related material, whether made by PAETEC, the Customer or others, will be subject to the use restrictions contained herein. The Customer will use its best efforts to prevent any unauthorized use of the Pinnacle Online Service.

### **II. IMPLEMENTATION AND TRAINING SERVICES**

PAETEC will provide implementation and training services as part of this Agreement. Product training will consist of a combination of computer-based and live remote web-based sessions. A summary of implementation and consulting services, along with a description of PAETEC and Customer responsibilities and an implementation checklist is posted at [www.pinnaclecorp.com](http://www.pinnaclecorp.com).

### **III. CONFIDENTIALITY**

A. PAETEC shall preserve in strict confidence all confidential, proprietary or sensitive information ("Confidential Information") received from Customer, including, without limitation, any information learned by PAETEC about Customer, users of Customer's telecommunications services and call details, which shall all be deemed Customer's Confidential Information. PAETEC agrees to take reasonable precautions to prevent any unauthorized disclosure or use of Customer's Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care. Without limiting the foregoing, disclosure of Customer's Confidential Information internally by PAETEC will be limited to those of its officers, directors, employees and agents on a "need to know" basis who must have access to Customer's Confidential Information to enable PAETEC to perform its duties under the Agreement. Access to Customer's Confidential Information is furnished solely for the purposes of assisting PAETEC in the performance of its Services under the



Agreement and shall be used by PAETEC only for the purposes of performing such Services. Without limiting the foregoing, in no event shall PAETEC: (i) release any Customer Confidential Information to any third party; or (ii) duplicate or otherwise reproduce the Customer Confidential Information, except as expressly required in the performance of this Agreement. The data gathered and stored within the Pinnacle Online Service through Customer's use of the Pinnacle Online Service in accordance with this Agreement is the property of Customer.

B. Customer shall preserve in strict confidence all Confidential Information received from PAETEC, including, without limitation, the Pinnacle Online Service, the Pinnacle Online Service Documentation and any nonpublic information learned by Customer about PAETEC and the Pinnacle Online Service, which shall all be deemed PAETEC's Confidential Information. Customer agrees to take reasonable precautions to prevent any unauthorized disclosure or use of PAETEC's Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care. Without limiting the foregoing, disclosure of PAETEC's Confidential Information internally by Customer will be limited to those of its officers, directors, employees and agents on a "need to know" basis who must have access to PAETEC's Confidential Information to enable Customer to perform its duties or exercise its rights (including, without limitation, use the Pinnacle Online Service in accordance with this Agreement) under this Agreement. Access to PAETEC's Confidential Information is furnished solely for the purposes of enabling Customer to evaluate and use the Pinnacle Online Service licensed under this Schedule for its internal data processing applications and shall be used by Customer only for such purpose. Without limiting the foregoing, in no event shall Customer: (i) release any PAETEC Confidential Information to any third party; or (ii) duplicate or otherwise reproduce the PAETEC Confidential Information, except as expressly required in the performance of, or as permitted to enable Customer to exercise its rights under, this Agreement.

C. For the purposes of this Section C, Confidential Information does not include information that a party can demonstrate by competent evidence (i) is or has become generally available to the public other than as a result of a disclosure or improper action by such party or any of its directors, officers, employees, affiliates, agents, subcontractors, or consultants or of any third party, (ii) was in such party's possession or known by it prior to receipt from the other party, (iii) was rightfully disclosed to such party by an authorized third party without restriction, provided such party has complied with any restrictions imposed by the third party, or (iv) was independently developed without use of or access to any Confidential Information of the other party.

#### **IV. WARRANTY**

PAETEC warrants to the Customer that the Pinnacle Online Service will perform the functions described in the Pinnacle Online Service documentation provided by PAETEC to the Customer. PAETEC does not warrant that the Pinnacle Online Service is error free. PAETEC's sole obligation under this warranty will be to address the correction of program errors and malfunctions reported to PAETEC by the Customer only during a 90-day period commencing upon Acceptance of the Pinnacle Online Service to the Customer.

#### **V. INDEMNITY**

PAETEC will defend Customer at PAETEC's expense if litigation or other action is brought against Customer for infringement of a U.S. patent, copyright, or trade secret applicable to use of all or part of the Pinnacle Online Service. PAETEC further undertakes to indemnify Customer for any costs of defense,



including reasonable attorney's fees, and damages which it is ordered to pay by the court, in settlement, or otherwise in connection with such proceedings. This undertaking shall take place when: (i) PAETEC is immediately notified by Customer in writing of any claims made or legal actions instituted, (ii) PAETEC alone is allowed to conduct the defense of the action with counsel selected by PAETEC and has authority to make all decisions concerning settlement or other disposition, and (iii) Customer cooperates fully with PAETEC in the defense of the action. If Customer has complied with its obligations under the above paragraph, and an infringement is found to have been committed, or if PAETEC deems it probable that such an infringement has been committed, PAETEC may, at its own expense (i) procure for Customer the right to continue to use the infringing Pinnacle Online Service, (ii) replace the infringing Pinnacle Online Service with equivalent Pinnacle Online Services whose use does not involve infringement, (iii) modify the Pinnacle Online Service so that infringement is not committed, or (iv) if neither of the foregoing obligations are available in PAETEC's reasonable judgment, terminate this Agreement and cease providing access to the Pinnacle Online Service. PAETEC shall not be liable to Customer for infringement claims based on the fact (i) that the Pinnacle Online Service has been used together with a Pinnacle Online Service that was not delivered by PAETEC, or (ii) that the Pinnacle Online Service has been altered or used contrary to PAETEC's specifications.

## **VI. LIMITATIONS OF LIABILITY**

The fee to be charged reflects the following additional limitations of liability, which are in addition to those provided in the PAETEC Standard Terms and Conditions. Any claim arising out of or in any way connected with this Pinnacle Online Service must be commenced within one (1) year from the date of Pinnacle Online Service availability to the Customer. PAETEC SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY MATTERS ARISING BETWEEN THE CUSTOMER AND CUSTOMER'S COMMUNICATIONS VENDORS, INCLUDING WITHOUT LIMITATION FOR THE QUALITY OF SUCH VENDOR'S SERVICES, THE TIMELINESS OR ACCURACY OF SUCH VENDOR'S INVOICES, THE PAYMENT OR NON-PAYMENT OF ANY INVOICES OR THE DISCONNECTION OR TERMINATION OF SERVICES BY ANY SUCH VENDORS FOR ANY REASONS WHATSOEVER (INCLUDING WITHOUT LIMITATION THE FAILURE TO TIMELY PAY INVOICES).

## **VII. MISCELLANEOUS**

For addition information related to such matters as customer support, professional and managed services, service issue management and categorization, reporting and escalation procedures, and customer satisfaction, please refer to the Pinnacle Customer Care Guide, which is incorporated herein by this reference and posted at [www.pinnaclecorp.com](http://www.pinnaclecorp.com). This Schedule to the Agreement constitutes an agreement to provide services and will not be construed as a contract for the sale of goods subject to the provisions of the Uniform Commercial Code.