



Agreement # _____

ACADEMIC LICENSE AGREEMENT

This Academic License Agreement (this “**Agreement**”) is entered into as of _____, 200__, (“**Effective Date**”) by and between _____ (“**Licensee**”), and Pinnacle Systems GmbH (“**Pinnacle**”), and describes the terms and conditions pursuant to which Pinnacle will license to Licensee certain Software (as defined below).

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. Definitions

1.1 “**Documentation**” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software that are generally provided by Pinnacle in connection with the Software, as revised by Pinnacle from time to time.

1.2 “**License Administrator**” is an employee of Licensee who is responsible for managing License Seats and adherence to the license restrictions of this Agreement.

1.3 “**License Seat**” means an activation code or specific serial number allowing a single Seat to use the Software.

1.4 “**Seat**” means a single computer upon which the Software is installed and executed with a central processing unit or multiple processing units which meets the system requirements (as set forth in the Documentation).

1.5 “**Site License**” means a License Seat license for a single Licensee location and for the quantity of Seats purchased by Licensee.

1.5 “**Software**” means the computer software programs specified in **Exhibit A** provided to Licensee pursuant to this Agreement.

1.6 “**Update**” means a release of the Software that contains error corrections or fixes and that is generally made available free of charge to Pinnacle’s licensees.

1.7 “**Upgrade**” means a release or version of the Software that contains functional enhancements or extensions and that is made available for an additional fee.

2. Grant of License

2.1 **Grant.** Subject to the terms and conditions of this Agreement, Pinnacle hereby grants to Licensee a nonexclusive, nontransferable, and version specific license to: (a) use the Software on the number of License Seats purchased under this Agreement for Licensee’s own internal computing needs; and (b) use the Documentation in connection with use of the Software. Licensee

acknowledges that Pinnacle will retain title to the Software and Documentation. Pinnacle hereby reserves all rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

2.2 **Delivery.** Pinnacle shall make the Software and Documentation available to Licensee by delivering (a) a master copy of the Software to Licensee on CD-ROM; or (b) by delivering one or more CD-ROM’s to Licensee for purchased Licensed Seats; and/or (c) by making the Software available for download by Licensee via the Pinnacle Web site. Pinnacle shall provide the purchased quantity of License Seats in printed form to Licensee (email shall be sufficient for such purpose). Pinnacle shall provide Licensee with additional copies of the Documentation at Pinnacle’s then-current charges. Licensee acknowledges that no copy of the source code of the Software will be provided to Licensee.

2.3 **Copies.** Licensee may make copies of the Software as reasonably required to provide each Seat with access to the Software for use under the license grant in Section 2.1, strictly in accordance with the number of License Seats purchased by Licensee. Licensee may make a reasonable number of machine-readable copies of the Software for backup or archival purposes. Licensee shall not copy the Software, except as permitted by this Agreement. All copies of the Software will be subject to all terms and conditions of this Agreement. Whenever Licensee is permitted to copy or reproduce all or any part of the Software, Licensee shall reproduce and not efface any and all titles, trademark symbols, copyright symbols and legends, and other proprietary markings (including those of third parties, if applicable) on the Software.

2.4 **Administrators.** Licensee’s License Administrator(s) are designated in **Exhibit A**. Licensee may change such persons from time to time upon written notice to Pinnacle.

2.5 **License Seat Orders.** Licensee shall deliver to Pinnacle an initial order of License Seats on the Effective Date. During the term of this Agreement, Licensee may purchase additional License Seats by submitting to Pinnacle an order that references this Agreement. Pinnacle

shall invoice Licensee for any such additional orders, and Licensee shall pay such invoices no later than 30 days after the date thereof.

3. License Restrictions

3.1 **Seats.** Licensee shall not allow access to the Software by more than the number of Seats for which Licensee has purchased License Seats. License Seats purchased under a Site License may only be used at the designated Site License location. Licensee may install each License Seat on a single computer and make copies of the Software as necessary only for backup and archival purposes.

3.2 **Site License Location.** Licensee may not transfer or move any Site License from the original Site License location as shown in an approved Exhibit A, (“Designated Site License Location”), without the prior written approval of Pinnacle. Any requests for a transfer of the Designated Site License Location may not materially modify the originally intended scope and use of the Site License.

3.2 **Additional Restrictions.** Licensee shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

(a) rent, sell, lease, loan, license or sublicense the Software or the Documentation;

(b) decompile, disassemble, or reverse engineer the Software, in whole or in part;

(c) modify or adapt the Software or write or develop any derivative works based upon the Software;

(d) use the Software to provide processing services to third parties, or otherwise use the Software on a ‘service bureau’ basis; or

(e) provide, disclose, divulge or make available to, or permit use of the Software by any third party without Pinnacle’s prior written consent.

3.3 **Audits.** Licensee shall maintain accurate and up-to-date records of the number and location of all copies of the Software and License Seats, including serial numbers if requested, and the identity of each Seat, and shall cause its License Administrator to inform Pinnacle in writing of such information. Licensee shall allow Pinnacle, or its representative, during office hours and at reasonable intervals, to inspect and make extracts or copies of such records for the purpose of ascertaining the Licensee’s adherence to the terms of this Agreement.

4. License Fee

4.1 **Payment of Fees.** Exhibit A sets forth the price for each License Seat. In consideration of the license granted pursuant to this Agreement, Licensee shall pay

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Pinnacle or Pinnacle’s distributor, as applicable, the license fees specified in Exhibit A. Unless otherwise indicated therein, the license fee for Licensee’s initial order is due and payable in full upon the Effective Date. All fees payable hereunder are non-refundable.

4.2 **Taxes.** All charges and fees provided for in this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government. Licensee shall pay or reimburse Pinnacle for all federal, state, dominion, provincial, or local sales, use, personal property, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes on the net income of Pinnacle).

4.3 **Maintenance and Updates.** Pinnacle may provide Licensee with all Updates, which are released by Pinnacle at its discretion, for the Software purchased by Licensee under this Agreement. Licensee may order maintenance and support, in accordance with Pinnacle’s then current support programs and offers, on a time and materials basis.

5. Limited Warranty and Limitation of Liability

5.1 **Performance.** Pinnacle warrants to the original Licensee that the Software, as delivered, will perform substantially in accordance with the accompanying Documentation for a period of 2 years from the date of the original purchase. Pinnacle’s entire liability and Licensee’s exclusive remedy for breach of the preceding warranty will be, at Pinnacle’s sole option, repair or replacement of the non-conforming Software. The warranty set forth above is made to and for the benefit of Licensee only. The warranty will apply only if:

(a) the Software has been properly installed and used at all times and in accordance with the instructions for use; and

(b) no modification, alteration or addition has been made to the Software by persons other than Pinnacle or Pinnacle’s authorized representative.

5.2 **Disclaimer.** Statements made for advertising purposes and any other documents, except the Product documentation, cannot be used to determine the characteristics (Beschaffenheit) of the Product, unless otherwise explicitly provided.

5.3 **Without limitation.** Pinnacle is responsible without limitations for intentional and grossly negligent acts committed by its legal representatives or senior staff as well as for damages resulting from the lack of guaranteed quality features and for damages resulting from any harm caused to life, body or health.

5.4 **Slightly Negligent Acts.** In case of slightly negligent acts, irrespective of the legal ground, Pinnacle

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can only be held responsible for a violation of those duties with respect to the compliance with which is of essential importance with respect to the attainment of the purpose of this agreement. In addition, this liability shall be limited to such damages the occurrence of which has typically to be taken into account with regard to the providing of the Product. Insofar as Pinnacle's liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of Pinnacle's employees, representatives and vicarious agents.

5.5 **Total Limitation.** Pinnacle's total liability to Licensee under this agreement will be limited to the aggregate license fee paid by Licensee to Pinnacle under this Agreement or to Euro 25,000, whichever is lower.

5.6 **Product Liability Act.** Liability according to the Product Liability Act (Produkthaftungsgesetz) remains unaffected.

5.7 **Statute of Limitations.** The statute of limitations concerning claims for damages presented by Licensee due to the violation of duties shall be one year after Licensee obtains knowledge of the basis for the claim. The knowledge by Licensee shall be equal to a grossly negligent lack of knowledge.

6. Term and Termination

6.1 **Term.** This Agreement will take effect on the Effective Date and will remain in force until terminated in accordance with this Agreement.

6.2 **Termination at Will by Licensee.** This Agreement may be terminated by Licensee upon 30 days' prior written notice to Pinnacle, with or without cause, provided that no such termination will entitle Licensee to a refund of any portion of the license fees paid or payable.

6.3 **Termination by Pinnacle.** Pinnacle may, by written notice to Licensee, terminate this Agreement if any of the following events ("**Termination Events**") occur:

(a) Licensee fails to pay any amount due Pinnacle within 30 days after Pinnacle gives Licensee written notice of such nonpayment;

(b) Licensee is in material breach of any term, condition or provision of this Agreement not covered by Section 6.4(a), which breach, if capable of being cured, is not cured within 30 days after Pinnacle gives Licensee written notice of such breach; or

(c) Licensee (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority,

or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

6.4 **Effect of Termination.** If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Sections 1, 3, 4.1, 5, 6.5 & 7 will survive termination of this Agreement; all other provisions of this Agreement, including the license grant, will terminate.

6.5 **Return of Materials.** No later than 30 days after the date of termination of this Agreement for any reason whatsoever, Licensee shall, at Pinnacle's request, destroy or return to Pinnacle all copies of Software in its possession or control. Licensee shall also furnish Pinnacle with a certificate signed by an executive officer of Licensee verifying that the same has been done if so requested by Pinnacle.

7. Miscellaneous

7.1 **Nonassignment/Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Pinnacle, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

7.2 **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth above. All notices to Pinnacle shall be addressed to the attention of the Legal Department. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, 5 business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

7.3 **No Warranties.** No employee, agent, representative or affiliate of Pinnacle has authority to bind Pinnacle to any oral representations or warranty concerning the Software. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

7.4 **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond

the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

7.5 Waiver. Any waiver of the provisions of this Agreement or of a party’s rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party’s rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party’s right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

7.6 Severability and Survival. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

7.7 Integration. This Agreement (including the Exhibits) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

Without limiting the foregoing, this Agreement will supersede any conflicting terms in any “click-to-accept” end user license agreement that may be embedded within the Software. This Agreement may not be amended, except by a writing signed by both parties.

7.8 Purchase Orders. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Licensee may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Pinnacle to object to such terms, provisions or conditions.

7.9 Export. Licensee may not export or re-export the Software without the prior written consent of Pinnacle and without the appropriate government licenses.

7.10 Publicity. Licensee acknowledges that Pinnacle may desire to use its name in press releases, product brochures and financial reports indicating that Licensee is a licensee of Pinnacle, and Licensee agrees that Pinnacle may use its name in such a manner, subject to Licensee’s consent, which consent will not be unreasonably withheld.

7.11 Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

7.12 Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the Federal Republic of Germany. The conflict of laws and the UN convention on the sale of goods are excluded. Venue is Braunschweig.

The parties have executed this Agreement below to indicate their acceptance of its terms.

Pinnacle Systems GmbH
(“Pinnacle”)

(“Licensee”)

By : _____

By : _____

Print Name : _____

Print Name : _____

Title : _____

Title : _____

EXHIBIT A

SOFTWARE AND LICENSE FEE

Software:

Number of Licensed Seats:

Designated Site License Location (if applicable):

Licensee's License Administrator(s):

License fees: