**End-User License Agreement (EULA)**

**Software license terms and conditions**

BY INSTALLING OR USING THE LICENSED SOFTWARE FROM OPTYS TECH CORPORATION (“OPTYS”), THE INDIVIDUAL IF ACTING ON BEHALF OF HIMSELF OR HERSELF (“INDIVIDUAL CUSTOMER“) OR THE INDIVIDUAL WHO IS ACTING ON BEHALF OF AN EDUCATIONAL OR NONPROFIT INSTITUTION, GOVERNMENTAL AGENCY, OR OTHER FOR-PROFIT INSTITUTIONS AND COMPANIES (“ENTITY CUSTOMER”, THE INDIVIDUAL CUSTOMER AND ENTITIY CUSTOMER TOGETHER ARE ”CUSTOMER”) IS AGREEING TO BE BOUND BY THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”).

IF CUSTOMER DOES NOT AGREE TO THIS AGREEMENT, CUSTOMER MAY NOT INSTALL, COPY, OR USE THE LICENSED SOFTWARE.

THE “EFFECTIVE DATE” FOR THIS AGREEMENT IS THE DAY CUSTOMER INSTALLS THE SOFTWARE.

1. DEFINITIONS.

“**Activation Key**” means, collectively, the specific Serial Number, code, and authorization for each copy of the Licensed Software issued by Optys to Customer.

“**Affiliates**” or “**Affiliate**” means an entity, institution, or organization that controls, is controlled by, or is under common control with another entity, institution, or organization, with at least majority ownership.

“**Authorized Reseller**” means an authorized distributor, authorized reseller, or dealer of the Licensed Software.

“**Authorized User**” means an employee, contractor, registered student, research assistant, or agent of Entity Customer authorized by Entity Customer to use the Licensed Software.

“**Enhancements**” means enhancements to the software for the specific feature requests by the Customer.

“**Confidential Information**” has the meaning set forth in Section 7 of this Agreement.

“**Documentation**” means the user manuals and supporting documentation in electronic form provided with the Licensed Software under this Agreement.

“**License Fee**” means the applicable fee for which Customer licenses the Licensed Software.

“**License Period**” means a perpetual term unless (a) terminated as provided below or (b) a specific fixed term is otherwise set forth in the License and Activation Key

“**Licensed Software**” means the specific software (Pinnacle) licensed to Customer under the terms of this Agreement (as specified in the License and Activation Key issued to Customer), including any Updates and Upgrades thereto.

“**Serial Number**” means a set of unique characters associated with a specific copy of the Licensed Software issued by Optys to Customer (based on the specific configuration and release of the Licensed Software and the license type, license term, and/or number of Concurrent Authorized Users).

“**Software**” means Pinnacle software.

“**Optys Website**” means www.optystech.com.

“**Optys Files**” are files with file extensions of .pncl. These files may only be modified via the software provided by Optys.

“**Third-Party Software**” means certain software supplied by third parties that Optys provides access to as part of the Licensed Software.

“**Update**” means a revision to the Licensed Software or patch that improves the functionality of the Licensed Software, and may contain new features or enhancements, which is not an Upgrade.

“**Upgrade**” means a subsequent version of the Licensed Software that Optys designates as a new release and makes generally commercially available or a different flavor of the Licensed Software that Optys makes generally commercially available.

2. LICENSE AND ACTIVATION KEY, LICENSE GRANTS, THIRD-PARTY RESTRICTIONS AND OWNERSHIP.

2.1 License and Activation Key.  
Optys shall issue Customer a “License and Activation Key” via email, fax, postal mail, or courier (e.g., FedEx, UPS, DHL) that sets forth the specific Licensed Software, the specific number of Concurrent Authorized Users for Entity Customers, and the Activation Key associated with the Licensed Software (the License and Activation Key). The License and Activation Key is hereby incorporated by reference into this Agreement. Certain of the licenses in Section 2.2(b) permit use by Authorized Users of Entity Customer and the Entity Customer is responsible for compliance of all such Authorized Users with the Agreement and shall be liable for the breach of the terms of this Agreement by such Authorized Users.

2.2 Licenses.

(a) Single-User License Grant.  
This Section 2.2(a) applies only to an Individual Customer whose License and Activation Key issued by Optys specifies the “License Type” as “Single User”. A Single-User license is for a named individual who is identified as the only Authorized User. Subject to the terms and conditions of this Agreement, Optys grants to Customer a non-assignable, nontransferable license, without the right to sublicense, to use the Licensed Software, in object-code form only, solely for Customer’s internal business, research, or educational purposes, and solely by the Individual Customer. The Individual Customer may install up to three (3) copies of the Licensed Software, provided that the Individual Customer is the sole user of each copy.

(b) Multi-User License Grant.

(i) Network License Grant — Licensed Software.  
This Section 2.2(b) (i) applies only to a Customer whose License and Activation Key issued by Optys specifies the “License Type” as “Network”. Subject to the terms and conditions of this Agreement, Optys grants to Customer a non-assignable, nontransferable license, without the right to sublicense, to use the Licensed Software, in object-code form only, within a single local geographic location or physical site solely for Customer’s internal business, research, or educational purposes. Customer is authorized by Optys to install the Licensed Software on an unlimited number of machines as long as the specific number of Concurrent Authorized Users for which Customer has paid the applicable License Fee is not exceeded.

(ii) Multi user Research Lab License Grant — Licensed Software.  
This Section 2.2(b) (ii) applies only to a Customer whose License and Activation Key issued by Optys specifies the “License Type” as “Multi User”. Subject to the terms and conditions of this Agreement, Optys grants to Customer a non-assignable, nontransferable license, without the right to sublicense, to use the Licensed Software, in object-code form only, solely by the limited users of that research lab. Customer is authorized to install the Licensed Software on a specified number of machines, which will governed by the license granted to the Customer.

(iii) Customer Obligations.  
This Section 2.2(b) (iii) applies to a Customer whose License and Activation Key issued by Optys specifies the “License Type” as “Network”, or “Multi user Research Lab”. Customer is responsible for managing the usage of the Licensed Software to ensure that such usage does not exceed the specific number of Authorized Users for which Customer has paid the applicable License Fee. Customer may add additional Authorized Users to Customer’s account for the Licensed Software by placing an order with Optys or an Authorized Reseller. One copy of the Licensed Software may be made for backup purposes only.

2.3 Third-Party Software.  
The Third-Party Software is subject to various other terms and conditions imposed by the licensors of such Third-Party Software. A list of the applicable Third-Party Software license terms is provided on the Optys Website. Customer’s use of the Third-Party Software is subject to, and governed by, the specified Third-Party license terms, except that this Section 2.3 (Third-Party Software) and Section 4.4 (No Warranty) and Section 8 (Limitation of Liability) of this Agreement also govern Customer’s use of the Third-Party Software. Customer agrees to comply with such Third-Party license terms.

2.4 Documentation License.  
Subject to the terms and conditions of this Agreement, Optys grants to Customer a non-assignable, nontransferable license, without the right to sublicense, to use the Documentation in connection with Customer’s authorized use of the Licensed Software. Customer may not reproduce or distribute the Documentation in any manner, whether physically or electronically, without the express written permission of Optys. Entity Customer may make the Documentation available on any website or private network administered by the Entity Customer.

2.5 Activation Key.  
Optys shall issue to Customer a License and Activation Key for each copy of the Licensed Software. Customer is entirely responsible for any and all activities that occur under Customer's account and all charges incurred from use of the copy of the Licensed Software assigned by Serial Number to Customer (e.g., maintenance, support, or license or subscription fee charges). The Licensed Software shall be deemed accepted upon the delivery of the Activation Key to Customer by Optys or an Authorized Reseller.

2.6 License to Enhancements.  
If Customer submits feature requests to software, Customer grants to Optys a perpetual, irrevocable, transferable, royalty-free license to modify, reproduce, and distribute the Customer Enhancements, with the right to sublicense through multiple tiers of distribution. THE CUSTOMER ENHANCEMENTS ARE PROVIDED TO OPTYS ON AN ‘AS IS’ AND ‘WHERE IS’ BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. CUSTOMER HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE CUSTOMER ENHANCEMENTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

2.7 Restrictions.  
Customer shall not, nor permit any person (including any Authorized User) to: (i) reverse engineer, reverse compile, decrypt, disassemble, or otherwise attempt to derive the source code of the Licensed Software (except to the extent that this restriction is expressly prohibited by law); (ii) modify, translate, or create derivative works of the Licensed Software; (iii) sublicense, resell, rent, lease, distribute, market, commercialize, or otherwise transfer rights or usage to the Licensed Software (except as expressly permitted under this Agreement); (iv) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Software, or any portion thereof; (v) transfer, use, or export the Licensed Software in violation of any applicable laws, rules, or regulations of any government or governmental agency; (vi) use the Licensed Software or any system services accessed through the Licensed Software to disrupt, disable, or otherwise harm the operations, software, hardware, equipment, and/or systems of a business, institution, or other entity, including, without limitation, exposing the business, institution, or other entity to any computer virus, trojan horse, or other harmful, disruptive, or unauthorized component; or (vii) embed the Licensed Software in any third-party applications, unless otherwise authorized in writing in advance by an officer of Optys.

2.8 Ownership.  
The Licensed Software, Enhancements, and Documentation contain copyrighted material and other proprietary material and information of Optys and/or its licensors. Optys shall retain all right, title, and interest, including all intellectual property rights, in and to the Licensed Software, Enhancements, and Documentation. Customer will not remove, alter, or destroy any form of copyright notice, proprietary markings, or confidential legends placed upon or contained within the Licensed Software, Enhancements, or Documentation, or any component thereof.

2.8 Payment.  
Payment for licensed software, hardware component or any services is due within thirty (30) days of the receipt of each invoice. Interest accrues at 1.5% per month thereafter along with a 10% late payment penalty.

3. LIMITED WARRANTY; WARRANTY DISCLAIMER.

3.1 Performance Warranty.  
Optys represents and warrants for a period of 90 days from the date of the order that the Licensed Software substantially conforms to the functional specifications in the software Reference Manual. Optys will repair or replace the Licensed Software if this warranty is breached unless it cannot do so within a reasonable period of time, then Optys will refund the fee paid for that license under the order (this Agreement will then terminate). Customer must notify Optys during the warranty period or 30 days after it ends of any alleged breach of the warranty. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDY AND OPTYS'S SOLE LIABILITY FOR BREACH OF THIS WARRANTY.

3.2 Force Majeure

Optys will not be responsible for any delay or failure in performance resulting from any cause beyond their control.

3.3 No Disabling Code.  
With respect to the Licensed Software (including any Updates or Upgrades) and as of the date of delivery, Optys represents and warrants that (i) it has used commercially reasonable efforts consistent with industry standards to scan for and remove any software viruses, and (ii) it has not inserted any Disabling Code. **“Disabling Code”** means computer code inserted by Optys that is not addressed in the Documentation and that is designed to delete, interfere with, or disable the normal operation of the Products. This Disabling Code warranty does not apply to Optys passwords necessary for the operation of the Licensed Software, to the Licensed Software’s Activation Key requirement, or for any use by Customer outside the scope of the license.

3.4 No Warranty.  
EXCEPT FOR THE WARRANTIES ABOVE, THE LICENSED SOFTWARE, DOCUMENTATION, AND SUPPORT SERVICES ARE PROVIDED TO CUSTOMER ON AN ‘AS IS’ AND ‘WHERE IS’ BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. OPTYS HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ON BEHALF OF ITSELF AND ITS LICENSORS ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS, IMPLIED, OR OTHERWISE, WITH RESPECT TO THE LICENSED SOFTWARE AND SUPPORT SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

4. CONFIDENTIALITY.  
Customer and Optys agree to maintain the confidentiality of any confidential or proprietary information of one party (the “disclosing party”) received by the other party (the “receiving party”) during the term of, or prior to entering into, this Agreement that the receiving party should know is considered confidential or proprietary by the disclosing party based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information (“Confidential Information”). The Licensed Software is copyrighted and shall be deemed Optys’s Confidential Information. The Documentation is copyrighted material of Optys. This section shall not apply to any information that is or becomes publicly available through no breach of this Agreement by the receiving party or is independently developed by the receiving party without access to or use of the Confidential Information of the disclosing party. The foregoing confidentiality obligations will not restrict either party from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable the other party to seek a protective order or otherwise limit such disclosure. The receiving party of any Confidential Information of the disclosing party agrees not to use the disclosing party’s Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party’s Confidential Information with no less than reasonable care. All the disclosing party’s information remains the property of the disclosing party.

5. LIMITATION OF LIABILITY.

WARNING - The Software provided under this Agreement is a tool.  Its successful use and operation is dependent on the skill of the operator, and it is not a substitute for skilled human judgment.  It is possible to obtain erroneous results by giving inappropriate instructions to the Software.

5.1 Consequential Damages Waiver.  
IN NO EVENT SHALL OPTYS OR ITS LICENSORS HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ANY REPRESENTATIVE OF OPTYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

5.2 Limitation of Liability.  
IN NO EVENT SHALL OPTYS’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED: (I) IF THE LICENSED SOFTWARE IS LICENSED FROM OPTYS DIRECTLY, THE LICENSE FEES PAID BY CUSTOMER TO OPTYS FOR THE LICENSED SOFTWARE, OR (II) IF THE LICENSED SOFTWARE IS LICENSED THROUGH AN AUTHORIZED RESELLER, THE LICENSE FEES PAID BY CUSTOMER TO THE APPLICABLE AUTHORIZED RESELLER, AS APPLICABLE. IN NO EVENT WILL OPTYS’S LICENSORS HAVE ANY LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT.

5.3 Use

OPTYS ASSUMES NO RESPONSIBILITY FOR THE USE OF THE SOFTWARE AND DOCUMENTATION BY THE CUSTOMER OR ANY OTHER PARTY, AND OPTYS SHALL NOT BE LIABLE FOR LOSS OF PROFITS, USE, BUSINESS, REVENUES, DATA, INFORMATION OR GOODWILL OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES AS A RESULT OF SUCH USE, EVEN IF OPTYS IS EXPRESSLY MADE AWARE OF THE POSSIBILITY THEREOF OR ARE NEGLIGENT.  Optys cannot and does not guarantee or warrant that the Software or files available for downloading through any Optys download Web Site are or will be free of infection or viruses, worms, Trojan horses or other code that manifest contaminating or destructive properties.  Customer is responsible for implementing sufficient procedures and checkpoints to satisfy its particular requirements for accuracy of data input and output, and for maintaining a means external to the Site for the reconstruction of any lost data.  It is solely Customer's responsibility to evaluate the accuracy, completeness and usefulness of all Software. Optys does not warrant the accuracy, currency, and completeness of Software or that the Software is error-free, will accomplish any particular result or will operate without interruption.

5.4 Indemnification

Customer agrees to indemnify, defend and hold harmless Optys from and against any and all claims of third parties arising out of or related to Customer's use of the Software, regardless whether such claims were foreseeable by Optys.

5.3 Limitation of Remedies.  
THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

6. U.S. GOVERNMENT END USERS.  
The Licensed Software under this Agreement is “commercial computer software” as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.111(Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

7. GENERAL.  
Except as expressly provided herein, Customer may not assign or transfer any of its rights under this Agreement (including its licenses with respect to the Licensed Software and Documentation) without the prior written consent of Optys. Unless the Customer is required by statute or regulation to apply the law of a state other than Pennsylvania, this Agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania and the federal U.S. laws applicable therein, excluding any conflicts of law provisions, and the Customer and Optys agree to submit to the personal and exclusive jurisdiction of the courts located in Harris County, Texas. If the statute or regulation applying to the Customer requires the application of a law of a state other than Texas, the parties agree that the terms of this Agreement shall be governed and construed in accordance with the law specified in such statute or regulation, and the Customer shall give written notice of such requirement to Optys. The application of such different law shall be effective upon the receipt of such written notice by Optys. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If any provision of this Agreement is found void and unenforceable, it will be replaced to the extent possible by Optys with a provision that comes closest to the meaning of the original provision. This Agreement and the documents referenced in this Agreement constitute the entire agreement between Customer and Optys relating to its subject matter and all terms herein and supersede all prior or contemporaneous agreements or understandings. This Agreement may be modified or changed only in writing signed by authorized representatives of Customer and Optys. Notices hereunder shall be in writing and addressed to Customer at the address provided when purchasing this license or, in the case of Optys, when addressed to Optys Tech Corporation.

8. AUDIT

Customer grants Optys the right to audit, during regular business hours, Customer's use of the Software and Documentation to ensure compliance with this Agreement.

9. TERMINATION

Optys may, in addition to its other legal rights and remedies and upon written notice to Customer, terminate this Agreement in the event Customer breaches any term of this Agreement or becomes insolvent, files or has filed against it a petition in bankruptcy or undergoes a reorganization pursuant to a petition in bankruptcy filed with respect to it.  Upon termination, Customer will, unless otherwise agreed to in writing by Optys, immediately return to Optys the Software and Documentation, and all copies thereof, and will erase all electronic storage of copies of the Software.  Termination of this Agreement will not affect any obligation or liability of Customer arising prior to termination.