

# Standard Terms and Conditions

(Master Agreement)



## IDS Enterprise Systems Limited

250 Monroe NW Suite 400

Grand Rapids, MI 49503

USA

Website: [www.pentanasolutions.com](http://www.pentanasolutions.com)

Company No: 90-0742383

Version: 200524

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**Master Licence Agreement**

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**Parties**

1. **IDS Enterprise Systems Limited, Company No: 90-0742383** 250 Monroe NW Suite 400, Grand Rapids, MI 49503, USA, represented herein by its Company secretary (**Pentana Solutions**)

2. **Customer:**

**Customer's Company Name**.....  
**Customer's Company Number**.....  
**Address (Principal Place of Business)**.....  
.....  
.....  
.....

and;

**Address (Registered Office)** .....  
.....  
.....  
.....

**Introduction**

- A. The Customer wishes to obtain a licence for and use the Licensed System and/or a Product.
- B. Pentana Solutions has offered to grant the Customer a non-transferable and non-exclusive licence to use the Licensed System and/or a Product, subject to the terms and conditions set out below.

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**Operative clauses**

**1. Definitions**

1.1 In this Agreement, unless the contrary intention appears:

**Agreement** means:

- a) This agreement and any Proposal or SLA which relates to the Licensed System and/or a Product licensed to the Customer; and;
- b) Any individual agreement entered into between the Parties referring to and incorporating the general terms of business and specific terms of business.

**API** means Application Programming Interfaces;

**Background Intellectual Property Rights** means the Intellectual Property Rights subsisting in any Work owned by the Customer and/or licensed to it, prior to its entry into this Agreement;

**Base Product** means a Pentana product provided by Pentana in the standard, off-the-shelf form of such modules, as they exist prior to the development of, or any modifications to, the Base Product, including the integration of Pentana Solutions into accounting software, POS software and other ERP solutions;

**Commencement Date** means the date the Customer signs the execution clause of this Agreement;

**Confidential Information** means the confidential information of a Party which relates to the subject matter of this Agreement and includes information and documentation relating to:

- (a) the Licensed System, Base Product, API, SaaS or Result;
- (b) the personnel, policies or business strategies of Pentana Solutions;
- (c) the terms upon which the Licensed System is being supplied, serviced and supported pursuant to this Agreement;
- (d) the Customer Data and Customer Technology (which is confidential information of the Customer);
- (e) Any other information of a party that is disclosed in writing or orally and is designated as Confidential or Proprietary at the time of disclosure (and, in the case of oral disclosures, summarised in writing within 30 days of the initial disclosure and delivered to the receiving party), or that due to the nature of the information the receiving party would clearly understand it to be confidential information of the disclosing party; and
- (f) the specific terms and conditions of this Agreement, any SLA, any SOW, and any amendment to these documents agreed between the parties;

**Consequential Loss** means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including the following:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of production;
- (d) loss or denial of opportunity;
- (e) loss of access to markets;
- (f) loss of goodwill;
- (g) loss of business reputation, future reputation or publicity; damage to credit rating;
- (h) loss of use; and
- (i) or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of this Agreement;

**Contractor** means an approved Pentana Solutions representative (and not an employee) who is a person or a company performing work, on behalf of Pentana Solutions and/or the Customer;

**Customer Application** means the Customer's own proprietary software sold directly to its clients;

**Customer Data** means any electronic data uploaded and or inputted by or for the Customer and it's agents, employees and contractors, into the Licensed System;

**Customer Technology** means software, methodologies, templates, business processes, documentation or other material authored, invented or otherwise created or licensed (other than by Pentana Solutions) by the Customer using or for use with the Subscription Service, excluding the Pentana Core Technology;

**Designated Equipment** means any equipment, virtual or physical designated in the SLA, upon which the Licensed System, Base Product, API or SaaS may be used;

**Development Tools** means source code, application programming interfaces (APIs), executable software and tools in human readable format made available by Pentana Solutions for the implementation, customisation, configuration, and use of the Subscription Service, such as scripts, code snippets, sample code, and development tools published by Pentana Solutions;

**Enterprise Subscription** means Pentana Solutions SaaS Service used on a recurring basis by a Customer (possibly via multiple devices) and/or a client/s of the Customer on an occasional basis;

**Escalation Request** is as set out in the SLA;

**Extra Charge** means a charge in accordance with Pentana Solutions' standard rates on a time and materials basis plus Travel Expenses, in cases where additional products or services have been requested over and above those specified in the SLA;

**Force Majeure** means a circumstance beyond the reasonable control of the Parties that results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to:

- (a) acts of God, pandemics, epidemics, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) industrial action and strikes; and
- (d) any network outages attributable to third party infrastructure;

**Intellectual Property Rights** means copyright, trade marks, designs, patents, confidential information, trade secrets or know-how;

**Licence Fee** means the fee specified in the Proposal, Product Overview, the SLA or SOW payable by the Customer to Pentana Solutions, for the use of the Licensed System, Base Product, API, SaaS or Result;

**Licensed System** means the products and/or services and/or systems designated in the SLA or SOW;

**Modifications** means the modifications of the Base Product performed by Pentana or a sub-contractor engaged by Pentana Solutions;

**Normal Business Hours** means between 0900am and 1700pm GMT+7 on any day except Saturday, Sunday or any public holiday in Thailand;

**Party** means either Pentana Solutions or the Customer as the context dictates and includes parties;

**Pentana Affiliates** means any legal entity controlling, controlled by or under common control through the possession of a majority of the shares or votes in Pentana Solutions;

**Pentana Core Technology** means:

- (a) the Licensed System, Software, Development Tools, and Pentana Solutions technology and methodologies (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Commencement Date or otherwise arising outside of work under a SOW;
- (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and
- (c) Intellectual property anywhere in the world relating to the foregoing;

**Pentana Products** means Base Products, to which the Intellectual Property rights are vested in Pentana Solutions and which are defined by Pentana Solutions as being standard products;

**Per Device Subscription** means Pentana Solutions' SaaS Service used on a recurring basis by the Customer and/or a client of the Customer on a frequent basis on a single device such as a mobile device or a tablet device or a PC;

**Personal Data** means any information or data relating to an identified natural person or that can identify a natural person by reference to the facts, data or any other material about that natural person.

**POS** means Point of Sale;

**Privacy Policy** means the privacy policy used by Pentana Solutions as amended from time to time and includes any privacy policies and privacy compliance programs developed by Pentana Solutions as notified in writing by Pentana Solutions from time to time;

**Privacy Officer** means the person within the Customer and/or Pentana Solutions (as applicable) who is responsible for privacy related matters;

**Product / Products** means Base Products including Modifications and Third Party Products delivered under and specified in the Agreements;

**Product Overview** means a description of the ordered products and their functionalities licensed under this Agreement and provided to a Customer;

**Proposal** means an offer to provide the Customer with the supply of or access to the Pentana Core Technology;

**Restraint Period** means:

- (a) 3 years following the termination or expiry of this Agreement for any reason unless determined by a court of competent jurisdiction to be legally unenforceable; then
- (b) 2 years following the termination or expiry of this Agreement for any reason unless determined by a court of competent jurisdiction to be legally unenforceable; then
- (c) 12 months.

**Result** means the result of the Services performed by Pentana;

**SaaS** means the API which will be used in conjunction with the Customer's Application to process scanned images;

**SaaS Subscription Fee** means a fee for use of the SaaS service;

**Services** means the services provided by Pentana Solutions to the Customer pursuant to an SLA Product Overview or Proposal including but not limited to maintenance services;

**Service Level Agreement or SLA** means a written or unwritten contract, arrangement or understanding entered into between the parties for specific products, services and systems provided by Pentana Solutions to the Customer; and

- (a) in cases where the SLA is an unwritten contract, arrangement or understanding between Pentana Solutions and the Customer, this SLA will continue in force until superseded by a written contract between Pentana Solutions and the Customer;
- (b) in cases where the SLA is a written contract, the SLA will be copied and form an Appendix to this Agreement;
- (c) in cases where an SLA concerns a different Licensed System or Services provided by Pentana Solutions to the Customer, each SLA will be appended and form a part of this Agreement and each SLA is to be read together with the Master Agreement as the entire agreement pursuant to clause 24, concerning that subject matter; and
- (d) in cases where an SLA is an update of a previously written SLA for the same or substantially similar Licensed System or Services between Pentana Solutions and the Customer, the most up to date SLA is the entire agreement along with the Master Agreement pursuant to clause 24 confirming that subject matter;

**Site** means the location designated in the SLA for delivery, installation and performance of the Licensed System, Base Product, API, SaaS or Services, or the principal place of business of the Customer;

**Software** means software provided by Pentana Solutions to the Customer that operates on the Customer-provided machines or approved environment and/or network solely to facilitate the use of the Licensed System;

**SOW** means a statement of work for the provision of Services;

**Subscription Service** means the Pentana Solutions software as a service (SaaS) offering ordered by Customer under a Proposal or Product Overview;

**Subscription Term** means the term of authorised use of the Subscription Service as set forth in the a Proposal or Product Overview;

**Territorial Limitation** means any geographical territory restriction imposed upon the Customer;

**Third Party** means an entity other than the Parties and Pentana Affiliates and Pentana Solutions. Where Pentana Solutions or a Pentana Affiliate assigns a sub-contractor for the performance of Services, such party will be regarded a sub-contractor and shall not be regarded as a Third Party;

**Third Party Products** means software or hardware owned by Third Parties or made available to Pentana Solutions and/or the Customer by Third Parties, and provided to the Customer by Pentana Solutions under an Agreement;

**Trade Marks** means the registered and/or unregistered trade marks owned and/or used by Pentana Solutions;

**Transactional Service** means a service that is calculated on a per transaction basis and includes but is not limited to any service relating to the SMS services and PareX®;

**Travel Expenses** means any out of pocket expenses reasonably incurred including travel, accommodation, meals, tolls and visas;

**User** means a person using the Base Product by logging in as a user profile in the Base Product;

**Version** means a substantial enhancement which Pentana Solutions, at its own choice, elects to make to a Base Product, which may include new features, functional improvements, or elements of functionality not previously included in the Base Product. and are identified by a change in the figure to the left of the decimal point (e.g. from 3.66 to 4.0);

**Virtual environment** means a computer-generated, three-dimensional representation of a setting in which the user of the technology perceives themselves to be and within which interaction takes place; also called virtual landscape, virtual space, virtual world or cloud. This environment includes the Microsoft Azzure platform and any other Pentana Solutions approved platforms required to deliver the benefit to the Customer;

**Warranty Period** is the period specified in the SLA;

**Work** has the meaning provided for under the Copyright Act 1976.

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## 2. Interpretation

2.1 Some of the clauses in this Agreement shall not apply to the Customer where the Customer will not be supplied nor provided with either the Licensed System, the Products or the Services to which the particular clause in the Agreement relates.

2.2 In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference, provided for the purpose of convenience only and are not relevant to the construction or interpretation of any of their respective provisions;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause is a reference to a clause or subclause;
- (g) a reference to a subclause is a reference to a subclause within the clause in which that reference is made;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) a reference to an Appendix includes a reference to any part of that Appendix which is incorporated by reference;
- (j) the Introduction section to this Agreement is expressly incorporated into and forms part of the Agreement; and
- (k) monetary references are references to the lawful currency for the time being of Thailand.

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## 3. Access, Assistance and Performance

3.1 Pentana Solutions will use its best endeavours to deliver or supply as relevant the Licensed System and/or Products to the Customer, and where relevant install the Licensed System and perform the Services, in accordance with the timeframe specified in the SLA.

3.2 The Customer must, where relevant, ensure Pentana Solutions and any of its Contractors have full and safe access including security clearances, physical and/or electronic as appropriate, to the Licensed System and the relevant equipment upon which the Licensed System and/or Products operates at all reasonable times for the purpose of providing the Services and complying with its obligations pursuant to clause 3.1.

3.3 The Customer must ensure that Pentana Solutions and its Contractors are provided with all information, facilities, assistance and accessories reasonably required by Pentana Solutions to enable Pentana Solutions to comply with its obligations under this Agreement.



- 3.4 The Customer must give Pentana Solutions such reasonable assistance, including the provision of personnel and facilities, as Pentana Solutions considers necessary to ensure satisfactory delivery, installation (if relevant) and performance of the Licensed System and/or Products as relevant. If reasonably requested by Pentana Solutions, the Customer must provide a suitably qualified or informed representative to provide such advice or assistance to Pentana Solutions and its Contractors as may be necessary to access the Licensed System and any Designated Equipment or other equipment and to otherwise effectively perform the Services.
- 3.5 If, in the reasonable opinion of Pentana Solutions, the costs associated with the delivery, installation and performance of the Licensed System and/or Products are greater than Pentana Solutions could have reasonably contemplated on execution of this Agreement and are greater than the costs that would normally be associated with a similar supply and/or installation project, Pentana Solutions may make an Extra Charge.

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#### 4. Grant of Licence

- 4.1 In consideration of the payment of the Licence Fee, Pentana Solutions grants to the Customer (as applicable) a non-exclusive, non-transferable licence subject to any Territorial Limitation to the:
- (a) Base Product;
  - (b) SaaS Service;
  - (c) Licensed System;
  - (d) Pentana Core Technology;
  - (e) Pentana Products;
  - (f) Per Device Subscription;
  - (g) Products;
  - (h) Subscription Service;
  - (i) Transactional Service; and
  - (j) Software.
- 4.2 Subject to the terms of this Agreement, Pentana Solutions authorises the Customer to access and use the purchased Subscription Service during the Subscription Term as set out in an applicable Proposal or Product Overview for its business purposes and the Customer must not use or otherwise access the Subscription Service in a manner that exceeds the Customer's authorised use as set forth in this Agreement and the applicable Proposal or Product Overview.
- 4.3 Subject to clause 4.1 Pentana Solutions grants the Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in clause 27), non-exclusive license during the Subscription Term to install and execute Software on machines operated by or for the Customer solely to facilitate the Customer's authorised access to and use of the purchased Subscription Service and this Software may include code that is licensed under third party license agreements, including open source made available or provided with the Software. This Software is licensed and not sold even if for convenience Pentana Solutions makes reference to words such as "sale" or "purchase".
- 4.4 Subject to clause 4.1 in support of the Customer's internal business use of the Subscription Service during the Subscription Term, Pentana Solutions grants to the Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set out in clause 27), non-exclusive license to download and make a reasonable number of copies of the Development Tools, and to use, copy, modify and create derivative works of the Development Tools, in:
- (a) using, implementing and integrating the Pentana Solutions applications with other software and systems; and
  - (b) creating applications on the Pentana Solutions platform (to the extent the Customer has purchased authorised use of the Subscription Service to create applications on the Pentana Solutions platform). The Customer shall not use the Development Tools in a manner that causes it to exceed the limits of its authorised use of the Subscription Service as set forth in this Agreement and the Product Overview or Proposal. From time to time, Pentana Solutions may provide Development Tools subject to the terms and conditions of separate agreements which will be provided to the Customer for review and to which the Customer will be required to agree prior to use of such Development Tools; provided that Pentana Solutions shall not require the Customer to agree to separate terms and conditions for any Development Tool that is necessary for the

Customer's use of its ordered Subscription Service in conformance with the Product Overview unless set out in the Product Overview or in a Proposal.

4.5 The Customer shall not and shall not permit others (whether directly or indirectly) to do any of the following with respect to the Pentana Core Technology:

- (a) use the Subscription Service with external programs in a manner that intentionally circumvents contractual usage restrictions whether imposed pursuant to this Agreement or upon Pentana Solutions by Third Parties;
- (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any of it available for access or use by Third Parties except as otherwise expressly provided in a Proposal;
- (c) access it or use in lieu of the Customer via the Customer's log-in details, user access passwords or credentials or via other similar unique access points;
- (d) access it or use it for the purpose of developing, providing or operating products or services intended to be offered to either the Customer or Third Parties whether in competition with the Pentana Core Technology or otherwise;
- (e) disassemble, reverse engineer or decompile it; except to the extent permitted by law;
- (f) copy, adapt, translate, create derivative works based on or otherwise modify it except as permitted in this Agreement or as otherwise permitted by law;
- (g) remove or modify a copyright or other proprietary rights or restricted use notice in it;
- (h) use it to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property rights (including moral rights, any rights of publicity or privacy or confidentiality) without first obtaining the permission of Pentana Solutions and/or the owner as relevant;
- (i) use it to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation; or
- (i) access or disable any Pentana Solutions or Third Party data, software or network (other than the Customer's instance of the Subscription Service in accordance with this Agreement).

4.6 Before the Customer exercises any of the acts that the Customer believes it is entitled to perform, the Customer must provide Pentana Solutions with 30 days' prior written notice and provide reasonably requested information to allow Pentana Solutions to assess the Customer's request and, at Pentana Solutions' sole discretion (while acting both reasonably and in good faith), either accept or reject that request or provide alternatives that reduce adverse impacts on Pentana Solutions' or Third Parties' Intellectual Property Rights and/or other rights.

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## 5. Licence Conditions

5.1 The Customer may only use the Licensed System and /or Products as advised and notified by Pentana Solutions.

5.2 The Licensed System and/or the Products may only be used pursuant to this Agreement:

- (a) by the Customer; and
- (b) at the Site; ; and
- (c) only in conjunction with the Customer's Application;
- (d) in the case of Software, to make one copy for back-up purposes pursuant to clause 6.1;
- (e) if the number of nominated authorised Users employed and/or engaged by a Customer increases, or the number of Sites increases, or if the size, description or location of the Site changes in the case of Pentana Core Technology or Services,, only after paying an additional Licence Fee, and only with the consent of Pentana Solutions; and
- (f) in the case of Services, or access to systems, only after paying an Extra Charge.

5.3 Pentana Solutions shall determine whether the Customer will use the SaaS Service on a Per Device Subscription basis, on an Enterprise Subscription basis, or on a Transactional basis (or all), as appropriate for the Customer's business.

- (a) Per Device Subscription basis.

In consideration of payment in full of the monthly SaaS subscription fee for use of the SaaS Service, and subject to all the terms and conditions of this Agreement, Pentana Solutions grants to the Customer's clients a right to access and use the SaaS Service only from Customer's Application on a single device during the corresponding subscription period, as well as related materials such as documentation to the extent then available, all made available to the Customer pursuant to the terms of this Agreement.

(b) Enterprise Subscription Basis.

In consideration of payment in full of the Enterprise License Fee for use of the SaaS Service, and subject to the terms of this Agreement, Pentana Solutions grants to the Customer's clients a right to access and use the SaaS only from Customer's Application on any of the client's devices during the term of this Agreement, as well as related materials such as documentation to the extent then available, all made available to Customer pursuant to the terms of this Agreement.

(c) Transactional Basis.

If a Customer pursuant to a Product Overview is granted a license to any Transactional Service the use or supply of any Transactional Service will be governed by the terms of this Agreement and will be invoiced at the end of every calendar month, with payment for the use and/or supply of any Transactional Service payable within 30 days following the date of delivery of an invoice

(d) The type of access used by the Customer is specified in the SLA which is expressly incorporated into and forms part of this Agreement.

(e) A license key will be issued to the Customer either per device using the Customer's Application or a universal key for all Enterprise Subscription Users of the Customer's Application.

(f) Pentana Solutions must provide access to its SaaS service, documentation, sample programs, programming libraries, and other files that are intended to assist the Customer with linking the Customer's Application to the SaaS. This SaaS is licensed to the Customer to be used solely and exclusively with the Customer Application only and may not be transferred to any Third Party without the prior written consent of Pentana Solutions. In no event may the Customer transfer, assign, rent, lease, sell or otherwise dispose of the SaaS on a temporary or permanent basis except as expressly provided for in this Agreement.

(g) Subject to clause 4.1 Pentana Solutions grants the Customer a non-transferable, nonexclusive, terminable, world-wide right to use, sublicense and distribute with the Customer's Application a proprietary interface developed by Pentana Solutions consisting of a series of commands that will enable the Customer's Application to connect to the SaaS Service for processing and the return of data to the device via the same proprietary API. The Customer must provide its clients that may use the SaaS with a software license that contains terms of use at least as restrictive as the terms of this Agreement and Pentana Solutions is entitled to hold the Customer responsible for the enforcement of the terms of the software license by its customers and the Customer must do all things necessary to facilitate Pentana Solutions wishing to exercise this right if requested by it.

(h) Pentana Solutions may remotely review the Customer's use of the Subscription Service, and upon Pentana Solutions' written request the Customer shall provide any reasonable assistance, to verify the Customer's compliance with the Agreement. If Pentana Solutions determines that the Customer has exceeded its permitted use of the Subscription Service then Pentana Solutions will notify the Customer and within 30 days following that notification the Customer must either:

(i) disable any non-permitted use; or

(ii) purchase additional subscriptions commensurate with the Customer's actual use.

5.4 The Customer must not integrate any software including its own Customer Application into the Pentana Core Technology without Pentana's prior written consent.

5.5 Unless expressly specified to the contrary in the SLA, the Licensed System and/or Products may not be used on equipment other than Designated Equipment save that at the sole risk of the Customer it may be used on alternative equipment if:

(a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or

(b) Pentana Solutions has otherwise given its consent in writing to such alternate use.

- 5.6 The Customer irrevocably grants Pentana Solutions the right to collect and utilise data inputted by the Customer from the Licensed System and/or Products licensed to the Customer for any and all purposes, subject to this data being used in a manner that does not identify the Customer or any other party.
- 5.7 In addition to any other remedies available to Pentana Solutions under this Agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Licensed System and/or Products will entitle Pentana Solutions to any available equitable remedy against the Customer.
- 5.8 The Customer acknowledges that there is no transfer of title or ownership to the Customer of the Licensed System and/or the Products or any modifications, updates or new releases of the Licensed System and/or to the Products in favour of the Customer.
- 5.9 The Pentana Core Technology (or parts of it) must not be provided or shared with any Third Party for any commercial purposes.

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## **6. Copying of Software**

- 6.1 The Customer may make one copy of the Licensed System and/or the Products for the purpose of backup and security and the Customer acknowledges that any copy made is the property of Pentana Solutions and that the terms of this Agreement, with the necessary modifications, apply to this copy.
- 6.2 Any copy of the Licensed System and/or the Products must be destroyed or returned to Pentana Solutions upon termination of this Agreement or as otherwise directed by Pentana Solutions and proof of the destruction or return must be provided to Pentana Solutions.
- 6.3 The Customer must ensure any copy of the Licensed System and/or Products made pursuant to this Agreement bears notice of Pentana Solutions' ownership of copyright and a notice stipulating that the Licensed System and/or the Products contains information confidential to Pentana Solutions. The Customer must comply with any directions of Pentana Solutions as to the form or content of such notices.
- 6.4 If requested by Pentana Solutions, the Customer must issue a notice in a form approved by Pentana Solutions to all employees and other authorised Users of the Licensed System and/or Products under its direction or control, advising such persons of the Customer's obligations under this clause and also advising of the possible civil and criminal consequences of a breach of this clause.

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## **7. Modification of Software**

- 7.1 The Customer must not modify or alter any part of the Licensed System and/or the Products or merge all or any part of the Licensed System and/or the Products with any other Copyright Work without Pentana Solutions' written permission.
- 7.2 If the Licensed System and/or Products are modified or altered by the Customer with the permission of Pentana Solutions pursuant to subclause 7.1:
- (a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Customer; and
  - (b) the Customer will fully indemnify Pentana Solutions against all liability which may be incurred by Pentana Solutions if such modifications or alterations infringe any Intellectual Property Rights of a Third Party or otherwise cause Pentana Solutions to suffer loss, damages or expense.
- 7.3 The Licensed System, Products, Base Product, API or SaaS as modified or altered remains the property of Pentana Solutions in all respects, whether modified by the Customer, Pentana Solutions or a Third Party and whether or not authorised pursuant to this Agreement. Specifically, the Customer must if necessary assign to Pentana Solutions all Intellectual Property Rights arising out of any modifications to the Licensed System and/or to any Products.
- 7.4 This Agreement applies to the Licensed System and/or any Products as modified or altered.
- 7.5 The Customer must execute such documents and perform such other acts as are necessary in order to give effect to clause 7.3.
- 7.6 Pentana Solutions is not required to provide Services in respect of the Licensed System and/or any Products which have been modified by the Customer, but may at its sole discretion elect to do so for an Extra Charge.

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## **8. Third Party Products**

- 8.1 If Third Party Products are included in any delivery of the Licensed System and/or in connection with any Products or in respect of the performance of Services carried out under any Agreement, the terms applied by the Third Party apply instead of the terms of the Agreement for such Third Party Products, including the terms for the Customer's right to use the Third Party Product. Any claims for redress presented by the Customer due, among other things, to intellectual property infringements, defects, delays, damages or any other consequences arising from the use or implementation of the Third Party Product is the responsibility of such Third Party Product provider and not Pentana Solutions and shall, as such be governed by such Third Party terms and not this Agreement. Pentana Solutions shall in no event and in no respect be liable for defects, delays or damages, whether direct, indirect or consequential caused by Third Party Products.
- 9.2 Pentana Solutions must take reasonable action to influence such Third Party to take action to rectify defects in Third Party Products and undertakes to forward inquiries and complaints to the Third Party in question.

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## **9. Reverse Engineering**

The Customer must not reverse assemble or reverse compile or directly or indirectly allow or cause a Third Party to reverse assemble or reverse compile the whole or any part of the Pentana Core Technology or any Products supplied whether as a part of the Licensed System or otherwise.

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## **10. Security of the Licensed System**

- 10.1 The Customer is solely responsible for the use, supervision, management and control of the Pentana Core Technology.
- 10.2 The Customer must ensure that the Licensed System is protected at all times from misuse, damage, destruction or any form of unauthorised access or use whether remotely or at the Site.
- 10.3 The Customer must keep accurate records of use, copying, any modification permitted pursuant to clause 7.1 and disclosure of the Licensed System. The Customer permits Pentana Solutions to inspect such records at any time during the Customer's normal business hours. If Pentana Solutions requests, the Customer must furnish to Pentana Solutions a copy of all or any part of such records.

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## **11. Nature of Services**

- 11.1 Pentana Solutions must perform such services as it considers reasonable to ensure the Licensed System and/or any Products remains in substantial conformity with the Proposal or SLA. Such support will, at the sole option of Pentana Solutions, take the form of:
- (a) telephone advice;
  - (b) remote connection to Customer site;
  - (c) on-site attendance followed by such advice, programming or re-configuration as Pentana Solutions considers necessary; and/or
  - (d) such services as Pentana Solutions considers are more effectively provided off-site.
- 11.2 Pentana Solutions must provide the Services in response to a report by the Customer of a suspected defect or error in the Licensed System and/or Product, which defect or error allegedly causes the Licensed System to deviate from its normal operating conditions.

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## **12. Services Availability**

- 12.1 Pentana Solutions must provide the Services between 0900 hours and 1700 hours GMT, Monday to Friday.
- 12.2 If the Customer requests Pentana Solutions to provide on-site support, Pentana Solutions will do so as soon as reasonably practicable and an Extra Charge will apply.
- 12.3 Pentana Solutions does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for support which is made outside Pentana Solutions' Normal Business Hours or that it can provide on-site Services outside Pentana Solutions' Normal Business Hours.
- 12.4 Immediately after making a request for Services which may involve error correction or program modification, the Customer must provide to Pentana Solutions a documented example of the defect or error which it alleges prevents conformity of the Licensed System's or Products' normal operating conditions.

- 12.5 The Customer must, if so requested by Pentana Solutions, give Pentana Solutions a listing of output and any other data which Pentana Solutions requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Licensed System and/or Product was discovered.

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**13. Exclusions**

- 13.1 Services to be provided by Pentana Solutions under this Agreement do not include:
- (a) correction of errors or defects caused by operation of the Licensed System and/or Product in a manner other than that currently recommended by Pentana Solutions;
  - (b) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Licensed System and/or Product not authorised by Pentana Solutions;
  - (c) correction of errors or defects caused by the use of the Licensed System and/or Product by a person not authorised by Pentana Solutions or the Customer;
  - (d) correction of errors or defects caused by Customer error, fault, negligence or abuse;
  - (e) correction of errors or defects caused by causes external to the Licensed System, Product or Designated Equipment, such as, but not limited to, transportation or the fluctuation of power;
  - (f) correction of errors or defects caused by transportation of the Licensed System, Product or Designated Equipment by personnel other than from Pentana Solutions;
  - (g) correction of errors caused by entities other than Pentana Solutions including third party internet service providers, networks or operating environments;
  - (h) correction of errors caused, by the failure of the Customer to provide suitably qualified and adequately trained operating staff for the operation of the Licensed System and/or Product;
  - (i) rectification of operator errors, or errors caused by incorrect use of the Licensed System and/or Product;
  - (j) rectification of errors caused by an equipment fault, or by a failure to maintain equipment adequately;
  - (k) diagnosis or rectification of faults not associated with the Licensed System and/or Product;
  - (l) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with Pentana Solutions; or
  - (m) correction of errors or defects which are the subject of a warranty under another agreement;
- but each of these services may be provided by Pentana Solutions subject to an Extra Charge being paid by the Customer.

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**14. Updates and New Releases**

- 14.1 Unless stated in the SLA to the contrary, updates and new releases of the Licensed System and/or Product must be provided by Pentana Solutions as they become available and the Customer must accept them. If the Customer does not upgrade the Licensed System and/or Product, Pentana Solutions may request an Extra Charge for its Services in relation to superseded versions of the Licensed System and/or Product.
- 14.2 When reasonably required to do so by the Customer, Pentana Solutions must demonstrate the extent to which an update or new release of the Licensed System and/or Product is capable of providing enhanced functions and performance. Pentana Solutions may make an Extra Charge in respect of any such demonstration.
- 14.3 Where the Customer accepts an update or new release of the Licensed System and/or Product, this Agreement applies in all respects to that update or new release to the extent that it is incorporated or replaces the Licensed System and/or Product.
- 14.4 Customers are required to remain on the current version of the Licensed System and/or Product and an Extra Charge may apply if not.

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**15. Fees, Invoices and Payments**

- 15.1 The Customer must pay the Licence Fees, and any other Pentana Solutions invoices at the rate and in the manner specified in the SLA, Product Overview or Proposal. If no invoice period has been specifically agreed, invoices shall be paid within thirty 30 days from the date of invoice.

- 15.2 In the event that payment terms are not specified in any SLA, Product Overview or Proposal, then the Customer must pay to Pentana Solutions;
- (a) A deposit of 10% upon signing of this Agreement;
  - (b) Amounts invoiced for any hardware, third party software, licences or services purchased by Pentana Solutions pursuant to this Agreement, when this hardware, third party software, licences or services arrive at Pentana Solutions;
  - (c) All amounts relating to hardware and/or software maintenance, Licence Fees and any other recurring fee, seven days from receipt of invoice;
  - (d) An annual price increase applied to all recurring fees to the same extent as the increase in Pentana Solution's general cost level, provided that such adjustments are notified to the Customer in writing 4 weeks in advance.
- 15.3 Unless specifically excluded in an attached Appendix or SLA, Proposal or Product Overview, Travel Expenses will be payable in addition to this Agreement;
- 15.4 Pentana Solutions reserves the right, but not earlier than 6 months following the Commencement Date to vary the Licence Fee by an amount not exceeding the CPI Rate plus 5% following 30 days written notice to the Customer of the proposed change to the License Fee .
- 15.5 If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Pentana Solutions, the Customer must still pay the entire invoice when due, but the amount disputed will be treated as a dispute and escalated in accordance with the Escalation Request provisions set out in the SLA, Proposal or Product Overview or the dispute resolution provisions in clause 29.
- 15.6 If any amount remains outstanding beyond 45 days, after prior written notice, Pentana Solutions may at its discretion remove access via any means at its disposal (including deactivating access to the Pentana Core Technology) to any Pentana Solutions Product whether part of this Agreement or not including suspending its performance of any Services.
- 15.7 Subject to the operation of clause 23, if the supply, installation or performance of the Licensed System is delayed and:
- (a) Pentana Solutions is required to deliver and install the Licensed System or perform services in circumstances other than those expressly or reasonably anticipated to be associated with the delivery or installation or supply of services of a similar nature; or
  - (b) There is a change in the timing or complexity of the delivery, installation of the Licensed System or the supply of Services;
- for reasons other than a breach of this Agreement by Pentana Solutions, then Pentana Solutions is entitled to immediate payment for hardware purchases and any Third Party costs and an Extra Charge on a time and materials basis in respect of additional resources reasonably utilised in order for Pentana Solutions to fulfil its obligations under this Agreement.
- 15.8 The Licence Fees, are exclusive of taxes, duties and charges imposed or levied in Thailand or overseas (including withholding tax) in connection with the supply, installation and support of the Licensed System. Without limiting the foregoing, the Customer is liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the goods and Services which are the subject of this Agreement but excluding taxes based solely on Pentana Solution's net income.
- 15.9 Any amounts due and payable in respect of the supply or delivery of either the Licensed System, any Products or the provision of the Services must be paid by the relevant date nominated on that invoice..

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## 16. Warranty

- 16.1 Pentana Solutions shall not be liable for failure of the Licensed System due to a Force Majeure event.
- 16.2 For the duration of the Warranty Period, Pentana Solutions warrants that the Licensed System will operate in conformity with the Proposal in all material respects, but the Customer acknowledges that the Licensed System is of such complexity that it may have inherent defects.
- 16.3 If at any time during the Warranty Period the Customer believes there is a defect in the Licensed System such that the Licensed System does not comply with or cannot be used in any material respect, the Customer must notify Pentana Solutions of such perceived defect.
- 16.4 Pentana Solutions will investigate the perceived defect notified pursuant to subclause 16.3 and will, upon the verification of the existence of the defect, rectify such defect without additional charge to the Customer.
- 16.5 If due investigation by Pentana Solutions of a defect reported pursuant to subclause 16.3 reveals that no such defect in fact exists, Pentana Solutions may make an Extra Charge in respect of such investigation.

- 16.6 Pentana Solutions will not be liable under this clause to the extent that a defect is caused by the Customer or a Third Party, including the failure of the Customer or a Third Party to maintain the operating environment or any part of it, the failure of a Customer or a Third Party to maintain the hardware or network, or to otherwise use the Licensed System in accordance with recommendations made by Pentana Solutions from time to time.
- 16.7 When any hardware or network product (provided in respect of any Licensed System or Product) is no longer supported, or serviced by its supplier and has effectively reached its end of life, the cost of replacement is the responsibility of the Customer. The Customer may at its election either:
- (a) purchase replacement equipment from Pentana Solutions; or
  - (b) pay for continued support by Pentana Solutions at an Extra Charge determined by Pentana Solutions acting reasonably and in good faith.
- 16.8 Any warranty supplied by Pentana Solutions applicable to the Licensed System does not apply to any hardware or networks that allow the Customer to use the Licensed System.
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## **17. Confidentiality**

- 17.1 A Party must not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 17.2 A Party will not be in breach of subclause 17.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 17.3 Each Party must take all reasonable steps to ensure that its employees, agents, consultants, board members, related body corporate and any sub-contractors engaged for the purposes of this Agreement and who are in direct need of access to such information in order to carry out obligations under the Agreement, do not make public or disclose the other Party's Confidential Information.
- 17.4 Notwithstanding any other provision of this clause, Pentana Solutions may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants.
- 17.5 This clause does not apply to Confidential Information that:
- (a) has been independently developed by the other Party;
  - (b) has been rightfully obtained by the other Party without restriction upon the Third Party;
  - (c) is publicly available other than through the fault or negligence of the other Party or has been released without restriction to anyone; or
  - (d) must be disclosed pursuant to applicable law, or by order of a court or other authority, provided that the disclosing Party gives prompt notice to the other party of such obligation of disclosure.
- 17.6 Notwithstanding any other provision of this clause, the Parties are entitled to make public the business relationship of the Parties.
- 17.7 This clause survives the termination of this Agreement.
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## **18. Intellectual Property Rights**

- 18.1 All Intellectual Property Rights in the Result and other Work developed by Pentana Solutions or its sub-contractors in performing the Services, shall be the property of Pentana Solutions. However, the Customer is granted the right to use the Result for use in its own business once full payment has been received for the Services in question for the Subscription Term.
- 18.2 All Intellectual Property Rights subsisting in the Licensed System and/or in the Products remain the property of Pentana Solutions. 18.3 All Intellectual Property Rights subsisting in any Third Party Products remain the property of that third party and is licensed for use by the Customer via a licence agreement in place between Pentana Solutions and that respective third party. The Customer must not take any action that may cause Pentana Solutions to be in breach of any contractual obligations owed by it to any third party in respect of any Third Party Products and the Customer must indemnify Pentana Solutions for all losses, costs, damages, expenses and Consequential Losses associated with any breach of this obligation.



- 18.4 All rights and title to and interest in any Background Intellectual Property Rights are and shall remain the property of the Customer or the Customer's licensors and the Customer grants Pentana Solutions the right to use such Background Intellectual Property Rights for the fulfilment of its obligations owed to the Customer under any applicable Agreement.
- 18.5 Subject to clauses 18.6, 18.7, 18.8, and 20 Pentana Solutions indemnifies the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Licensed System, Base Product or Result constitutes an infringement in Thailand of any Intellectual Property Rights in the Licensed System, Base Product or Result.
- 18.6 Pentana Solutions is not required to indemnify the Customer as provided in subclause 18.5 unless the Customer:
- (a) notifies Pentana Solutions in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
  - (b) gives Pentana Solutions the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
  - (c) provides Pentana Solutions with reasonable assistance in conducting the defence of such a claim; and
  - (d) permits Pentana Solutions to modify, alter or substitute the infringing part of the Licensed System, Base Product or Result at its own expense in order to avoid continuing infringement, or authorises Pentana Solutions to procure for the Customer the authority to continue the use and possession of the infringing Licensed System Base Product or Result.
- 18.7 Pentana Solutions does not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
- (a) use of the Licensed System, Base Product or Result in combination by any means and in any form with other goods or equipment not specifically approved by Pentana Solutions;
  - (b) use of the Licensed System, Base Product or Result in a manner or for a purpose not reasonably contemplated or not authorised by Pentana Solutions or otherwise in a way that deviates from the permitted use according to the applicable Agreement or the instructions of Pentana Solutions regarding the use of the Licensed System, Base Product or Result;
  - (c) modification or alteration of the Licensed System, Base Product or Result without the prior written consent of Pentana Solutions; or
  - (d) any transaction entered into by the Customer relating to the Licensed System, Base Product or Result without Pentana Solutions' prior consent in writing.
- 18.8 If proceedings are brought or threatened by a Third Party against the Customer alleging that the Customer's use of the Licensed System, Base Product or Result constitutes an infringement of Intellectual Property Rights, Pentana Solutions may at its option and at its own expense conduct the defence of such proceedings. The Customer must provide all necessary co-operation, information and assistance to Pentana Solutions in the conduct of the defence of such proceedings.
- 18.9 Should the Licensed System, Base Product or Result furnished to the Customer under an Agreement become, or in Pentana Solution's opinion be likely to become, the subject of a claim for infringement, Pentana Solutions may, at its sole discretion and expense:
- (a) Procure for the Customer the right to continue using the Licensed System, Base Product or Results;
  - (b) Modify the Licensed System, Base Product or Result so that it is no longer infringing or;
  - (c) Replace the Licensed System, Base product or Result by other software of equal or superior functional capability.
- If none of the foregoing is, in Pentana Solutions' opinion, commercially reasonable, Pentana Solutions may terminate any and all licenses and sublicenses to such Licensed System, Base Product or Result whereby all license fees paid for such Licensed System, Base Product or Result shall be refunded, however, with a reasonable deduction there from corresponding to the benefits enjoyed by the Customer for the period during which the Licensed System, Base Product or Result is used.
- 18.10 The Customer must indemnify Pentana Solutions against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- (a) the claim arises from an event specified in subclause 18.9; or
  - (b) the ability of Pentana Solutions to defend the claim has been prejudiced by the failure of the Customer to comply with any requirements of subclauses 18.7 or 18.9.

- 18.11 The Customer has a limited licence only to use Pentana Solutions' Trade Marks in the manner that Pentana Solutions has approved on the signing of this licence, or in a manner subsequently approved by Pentana Solutions in writing and there is no transfer of ownership or general right of use of the Pentana Solutions Trade Marks as a result of this licence.
- 18.12 Unless expressly otherwise agreed in writing by Pentana Solutions, the Intellectual Property Rights subsisting in any Work created or commissioned by the Customer that are run on and/or operate in conjunction with Pentana Core Technology for the purpose of adding functionality and/or improving the Pentana Core Technology, vest upon creation in Pentana Solutions and to the extent these Intellectual Property Rights are not owned by the Customer, the Customer must use its best endeavours to acquire the Intellectual Property Rights in this Work for Pentana Solutions, at no cost to Pentana Solutions.

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## 19. Implied Terms

- 19.1 Subject to subclause 19.2, any condition or warranty which would otherwise be implied in this Agreement is expressly excluded.
- 19.2 Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement. However, the liability of Pentana Solutions for any breach of such condition or warranty is limited, at the option of Pentana Solutions, to one or more of the following:
- (a) if the breach relates to goods:
    - (1) the replacement of the goods or the supply of equivalent goods;
    - (2) the repair of such goods;
    - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (4) the payment of the cost of having the goods repaired; and
  - (b) if the breach relates to services:
    - (1) the supplying of the services again; or
    - (2) the payment of the cost of having the services supplied again.

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## 20. Liability of Pentana Solutions

- 20.1 Except in relation to liability for personal injury (including sickness and death), Pentana Solutions is under no liability to the Customer in respect of any indirect, special, incidental loss or damage (including Consequential Loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Licensed System, Base Product, Services or Result furnished under or related to the Agreement, including, without limitation, damages for loss of profits, goodwill, work stoppage, computer failure or malfunction, loss or alteration of data or any and all other commercial damages or losses, supplied pursuant to this Agreement or in respect of a failure or omission on the part of Pentana Solutions to comply with its obligations under this Agreement even if Pentana Solutions is advised of the possibility of the loss occurring.
- 20.2 Subject to subclause 20.3, Pentana Solutions' entire liability under any individual agreement entered into with the Customer, shall not exceed the contractual value of each individual agreement under which the damages directly occurred.
- 20.3 In order not to forfeit their rights to make a claim against each other, the Parties must make any claim for damages within 12 months from the time when the damage was discovered or should have been reasonably discovered.
- 20.4 Subject to subclause 20.5, the Customer warrants that it has not relied on any representation made by Pentana Solutions which has not been, stated expressly in this Agreement, or upon any descriptions, representations, illustrations or specifications contained in any document including catalogues or publicity material produced by Pentana Solutions.
- 20.5 The Customer acknowledges that to the extent Pentana Solutions has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 20.6 The Customer at all times indemnifies and holds harmless Pentana Solutions and its officers, employees and agents (those indemnified) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Customer of its obligations under this Agreement;

- (b) any wilful, unlawful or negligent act or omission of the Customer.
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## 21. Termination

- 21.1 Without limiting the generality of any other clause in this Agreement, Pentana Solutions may terminate this Agreement immediately by notice in writing if:
- (a) the Customer is in breach of any term of this Agreement and has not remedied the breach within 30 days following written notice of its intention to do so;
  - (b) the Customer for any reason destroys or disposes of or loses custody of the Licensed System, Base Product or Result;
  - (c) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
  - (d) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
  - (e) the Customer, being a natural person, dies; or
  - (f) the Customer cease or threaten to cease conducting its business in the normal manner,
- 21.2 If notice is given to the Customer pursuant to subclause 21.1, Pentana Solutions may, in addition to terminating the Agreement:
- (a) repossess any copies of the Licensed System, Base Product or Result in the possession, custody or control of the Customer;
  - (b) retain any moneys paid;
  - (c) raise an invoice payable by the Customer for all fees forming part of this Agreement for the full term of this Agreement (including any renewal of it) including all third party costs, and other fixed term contract costs, incurred by Pentana Solutions as part of this Agreement;;
  - (d) be regarded as discharged from any further obligations under this Agreement; and
  - (e) pursue any additional or alternative remedies provided by law.
- 21.3 Without limiting the generality of any other clause in this Agreement, a customer can terminate this Agreement immediately by notice in writing if:
- (a) Pentana Solutions is in breach of any terms of this Agreement and has not remedied the breach within 30 days following written notice to do so;
  - (b) Pentana Solutions becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
  - (c) Pentana Solutions ceases or threatens to cease conducting its business in the normal manner.
- 21.4 If notice is validly given by Customer pursuant to clause 21.3, the Customer may in addition to terminating the Agreement:
- (a) be regarded as discharged from any further obligations under this Agreement; and
  - (b) pursue any additional or alternative remedies provided by law.
- 21.5 If notice is validly given by Customer pursuant to clause 21.3, the Customer must also cease (upon expiry of the notice period) any further use of the Pentana Core Technology.
- 21.6 A Customer can terminate this Agreement at will, by giving Pentana Solutions 30 days notice in writing after a period of 6 months from the date of commencement of this Agreement has passed.
- 21.7 If a customer terminates this Agreement pursuant to clause 21. 6, the customer is responsible for the payment of all fees forming part of this Agreement for the full term of this Agreement including Third Party costs, and other fixed term contracts, incurred by Pentana Solutions as part of this Agreement.

- 21.8 Pentana Solutions shall provide Customer Data in its standard database export format, excluding the Pentana Solutions Core Technology, to the Customer upon the Customer's written request for its Customer Data at an additional cost payable by the Customer. After 45 days following the expiration or termination of this Agreement for the Subscription Service (including any Transition Subscription Service term, if applicable), if the Customer has not requested the return of its Customer Data, Pentana Solutions shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete the Customer's instances of the Subscription Service.
- 21.9 All provisions concerning payment, confidentiality, non-solicitation, limitation of liability, intellectual property, waiver, assignment and severability shall remain in effect despite the termination of this Agreement.
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## **22. Force Majeure**

- 22.1 Neither Party is liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.
- 22.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- 22.3 In the event of Force Majeure, each Party shall promptly notify and furnish the other Party in writing with all relevant information relating to the incident.
- 22.4 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 22.5 If this Agreement is terminated pursuant to subclause 22.4, Pentana Solutions must refund money previously paid by the Customer pursuant to this Agreement for goods or services not provided by Pentana Solutions to the Customer.
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## **23. Sub-Contracts**

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- 23.1 Pentana Solutions may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of any part of this Agreement.
- 23.2 Pentana Solutions will be liable for the work performed by any individuals engaged on a sub-contract or consultancy basis to the same extent as Pentana Solutions would be liable for its own work. Pentana Solutions shall ensure that any individuals engaged on a sub-contract or consultancy basis comply with the confidentiality provisions set forth in clause 17 of this Agreement.
- 23.3 In no event shall Pentana Solutions be deemed an employee, agent, joint venture or partner of the Customer. Nothing in any Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee by and between Pentana Solutions and the Customer or as creating an exclusive arrangement between them.
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## **24. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties concerning this subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

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## **25. Precedence**

- 25.1 The documents comprising this Agreement are to be read in the following order of precedence:
- (a) the clauses of this Agreement;
  - (b) and Addendum/s; and
  - (c) any SLA.
- 25.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
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**26. Assignment and Novation**

- 26.1 The benefit of this Agreement must not be assigned by the Customer without Pentana Solutions' written consent.
- 26.2 Pentana Solutions may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.
- 26.3 Pentana Solutions may, without the consent of the Customer, assign the Agreement:
- (a) to another Pentana Affiliate;
  - (b) to a purchaser of all or substantially all of Pentana Solutions' assets;
  - (c) to a purchaser of a Pentana Affiliate's assets, or;
  - (d) to a purchaser of individual Pentana Solutions Products.
- 26.4 Pentana Solutions may further assign the right to receive payments under an Agreement to another party.
- 26.5 The Customer may, with the consent of Pentana Solutions assign the Agreement to another Affiliate.
- 26.6 In the event of an assignment by the Parties, the rights and obligations of the Agreement bind and benefit any successors and assigns of the Parties.

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**27. Waiver**

- 27.1 No right under this Agreement is deemed to be waived except by notice in writing signed by each Party.
- 27.2 A waiver made by Pentana Solutions pursuant to clause 27.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.
- 27.3 A waiver of one provision of the Agreement shall not be deemed a waiver of any other provision therein, nor shall the waiver be construed as a continuing waiver of the Agreement.
- 27.4 Subject to clause 27.1, any failure by Pentana Solutions to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Pentana Solutions to the Customer, will not be construed as a waiver of Pentana Solutions' rights under this Agreement.

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**28. Variation**

- 28.1 The provisions of this Agreement must not be varied, except by agreement in writing signed by the Parties.
- 28.2 If either Party wishes to vary the Agreement, the proposing Party must submit a copy of the proposed variations to the other Party (the receiving Party), specifying a reasonable period in which the receiving Party is to provide written notice of acceptance or rejection of the proposal.
- 28.3 If the receiving Party accepts the variations, the Agreement between those parties is deemed to be amended from the date of acceptance.
- 28.4 If the receiving Party rejects the proposed variations, each Party must perform the Agreement in accordance with the unvaried terms.

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**29. Disputes**

- 29.1 Upon any dispute arising under this Agreement, a Party may give written notice to the other that a dispute exists ("Dispute Notice").
- 29.2 The Dispute Notice shall provide the recipient with the full particulars of the matters in dispute.
- 29.3 Where both Parties wish to utilise a dispute resolution process, the timetable and process for resolving a dispute pursuant to a Dispute Notice is as follows:
- (a) within 5 working days of receipt of a Dispute Notice, the recipients shall hold discussions in good faith in an attempt to resolve the dispute;

- (b) if the dispute is not resolved within 20 days of the commencement of the meeting referred to in the previous sub-clause or if the meeting referred to in the previous sub-clause has not taken place within the 5 working day period, the parties to the dispute shall refer the matter to mediation;
- (c) within 5 working days following the expiry of the relevant period in the previous sub-clause, the parties to the dispute must attempt to agree on the appointment of a mediator. In the absence of agreement on the appointment of a mediator, a mediator is to be appointed by the then current President of the State Bar of Michigan or nominee, with the costs of the mediation to be borne equally by the parties to the dispute; and
- (d) the parties to the dispute shall use their best endeavours to ensure the mediation takes place within 30 days of a mediator being appointed.

29.4 Any mediation that takes place pursuant to the operation of this clause is to take place in the Michigan, USA..

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**30. Survival of Agreement**

- 30.1 Subject to any provision to the contrary, the benefit and the obligations of this Agreement shall be only for the Parties and their successors, trustees, permitted assigns or receivers, but shall not enure to the benefit of any other persons.
- 30.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

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**31. Severability**

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

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**32. Governing Law**

The laws governing this Agreement will be the laws of Michigan and the Parties irrevocably submit to the exclusive jurisdiction of the Circuit Courts of Michigan and the Courts of appeal from them.

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**33. Notices**

- 33.1 Notices under this Agreement may be delivered by hand, by mail or by facsimile to the addresses specified in the Registered Office at the front of this Agreement and must be in writing.
- 33.2 Notices are deemed to be given:
  - (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
  - (b) in the case of posting, 3 days after despatch;
  - (c) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission;
  - (d) In the case of email, upon receipt by the sender of an automatic confirmation that the e-mail has been received;
  - (e) In the case of courier, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party.

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**34. Privacy**

- 34.1 The Customer acknowledges that granting Pentana Solutions access pursuant to clause 3 of this Agreement and other provision of information to Pentana Solutions as contemplated under this Agreement, will involve disclosure to Pentana Solutions of Personal Data of the Customer's

directors, employees, suppliers and customers including but not limited to via electronic means, to remotely ensure compliance with the terms of this Agreement.

- 34.2 The Customer acknowledges that it has read and understood the Privacy Policy and consents to and authorises the collection, use and disclosure of the Customer's Personal Data, the Personal Data of the Customer's directors, employees, suppliers and customers in accordance with the Privacy Policy, this Agreement and the SLA.
- 34.3 The Customer warrants and represents to Pentana Solutions that, if required by law, it complies with any and all relevant laws in relation to privacy.
- 34.4 Irrespective of whether the Customer is required by law to comply with any laws, the Customer agrees to take reasonable steps to ensure that each of the Customer's directors, employees, suppliers and customers is aware that their Personal Data and all other data entered into the Pentana Core Technology by the Customer will be accessible by and disclosed to Pentana Solutions and:
- (a) that the Customer may require Pentana Solutions to disclose their Personal Data to other third parties for the purposes for which Pentana Solutions may be required to disclose this information; and
  - (b)\_ that Pentana Solutions may disclose that Personal Data and other data in an anonymised form to third parties for the purposes of commercial gain;
- 34.5 The Customer shall provide full details in writing to Pentana Solutions' Privacy Officer of any and all requests for amendment to Personal Data held by Pentana Solutions, all complaints about alleged breaches of any applicable laws involving Pentana Solutions, and all opt-out notifications, immediately upon becoming aware of them.
- 34.6 Without limiting the effect of clause 20.6 the Customer agrees to indemnify Pentana Solutions for any loss or damage, including legal costs, it suffers or incurs as a result of a breach of any applicable laws or this clause 34 by the Customer.

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**35. Non-solicitation**

The Parties agree not to actively solicit for employment or in any other way directly or indirectly hire any of the other Party's employees during the term of any Agreement and for a period of 6 months thereafter. If either Party is in breach of this obligation, such Party shall be liable to pay the other Party a penalty equivalent to the yearly salary of the solicited employee.

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**36. Restraint**

The Customer must not (whether directly or indirectly) following the expiry or termination of this Agreement for any reason during the Restraint Period, procure any Third Party Products from any party that licences or supplies those Third-Party Products.

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**37. Execution**

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed is deemed to be an original and all of which taken together constitute one and the same agreement, provided that this Agreement is of no force and effect until the counterparts are exchanged.

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**38. Modern Slavery**

- 38.1 Each Party warrants that it does not, and agrees that it will, not engage in any form of Modern Slavery.
- 38.2 Each Party will take all reasonable steps to ensure that its suppliers do not engage in any form of Modern Slavery (including undertaking due diligence in its selection of suppliers, and continually monitoring and auditing its suppliers for this purpose).
- 38.3 Each Party may audit the other party to verify compliance.
- 38.4 Any breach of this clause 38 will entitle a Party to:

- (a) suspend performance of its obligations under his agreement until it is satisfied (acting in good faith and reasonably) that the breach has been adequately addressed and rectified; or
- (b) terminate this agreement by giving 5 business days' written notice.

38.5 In the event of suspension or termination pursuant to this clause 38, a Party will not be required to pay any compensation to the other party for that suspension or termination or any consequential damages.

38.6 Each Party will indemnify and hold harmless the other Party in relation to any losses it suffers (including with respect to brand damage or loss of reputation and any consequential damages) or liabilities or penalties (including statutory penalties) it incurs, as a result of any breach of any of this clause 38.

**39. Renewal**

This Agreement (subject to the provisions of clause 21) will automatically be renewed for a 3 year period at the end of the defined initial term, unless either party gives to the other party written notice of intention to terminate the Agreement 90 prior to its termination date.

Executed by Pentana Solutions

**PENTANA SOLUTIONS - SIGN HERE**

.....

Pentana Solutions Company Director – Signature

.....

Pentana Solutions Company Secretary – Name

(please print)

.....

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Executed by the Customer

**CUSTOMER - SIGN HERE**

.....

Customer's Company Director-- Signature

.....

Customer's Company Director - Name (please print)

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_