

Pennant Software and Services Terms of Supply

1. Introduction

- 1.1. This document sets out the terms and conditions on which Pennant may supply software, and provide related services, to the customers of its Integrated Product Support business (hereafter referred to as these “**Terms**”, which expression, for the avoidance of doubt, includes the Annex hereto).
- 1.2. Software may be provided by Pennant on two alternative bases, as follows:
 - “**Perpetual Basis**” the basis of licensing whereby the Software is provided under an object code licence on a perpetual basis and does not expire (unless terminated in accordance with these Terms);
 - “**SaaS Offering**” the Software being made available via the internet as a paid subscription service (aka ‘Software as a Service’ or ‘SaaS’), incorporating the hosting of Data on the Pennant Cloud (as the case may be).
- 1.3. The Quote will set out the nature of the relevant software products and/or services to be supplied in each specific case.
- 1.4. The provisions of Annex A of these Terms apply to the SaaS Offering only (and not to Software provided on the Perpetual Basis).
- 1.5. The legal contract arising upon your acceptance of these Terms (the “**Contract**”) is formed upon the first of the following to occur:
 - 1.5.1. you click to ‘accept’ these Terms on our website;
 - 1.5.2. you confirm acceptance of our Quote in writing (e.g. by email confirmation or issue of an order);
 - 1.5.3. at your request, we grant you access to the SaaS Offering;
 - 1.5.4. you install the Software.
- 1.6. These Terms accompany each Quote and notice is hereby given that use of the Software other than on these Terms is expressly prohibited.
- 1.7. The Contract comprises these Terms, the Quote and any Agreed SOW (the “**Contractual Documents**”). In the case of any inconsistency or conflict between the Contractual Documents, these Terms shall prevail; as between the Quote and any Agreed SOW, the Agreed SOW prevails.
- 1.8. No other document, correspondence, or statement shall apply to the provision of the Software or the Services, or be incorporated into the Contract, unless expressly agreed by Pennant in writing.
- 1.9. The Contractual Documents constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between the parties (if any), whether written or oral, relating to its subject matter.
- 1.10. You shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contractual Documents.
- 1.11. These Terms were last re-issued on 27 October 2021.



2. **Definitions and interpretation**

- 2.1. In these Terms, the defined terms set out in clause 19 apply throughout. Unless otherwise stated, references in this document to 'clauses' are to clauses of these Terms, and references to 'paragraphs' are to paragraphs of the Annex.
- 2.2. Each obligation of the Customer hereunder shall be deemed to include an obligation on the Customer to procure that its employees and agents and any other Licensed Users perform or comply with such obligation.
- 2.3. "You" (etc) refers to the Customer, "we" (etc) is Pennant.

3. **Licence**

- 3.1. In consideration of payment of the Fees, we hereby grant you a non-exclusive licence to use the Software (on the basis set out in the Quote) upon and subject to these Terms (the "Licence").
- 3.2. The Software may only be used:
 - 3.2.1. by the Licensed Users;
 - 3.2.2. for the Term;
 - 3.2.3. for your own, lawful business purposes;
 - 3.2.4. at the Licensed Site (if applicable) or in the Licensed Territory (if applicable), on the Licensed Hardware (if applicable).
- 3.3. The Licence does not allow you to grant sub-licences (or any other rights in respect of the Software except as expressly provided herein).
- 3.4. The Licence is not assignable or transferable.
- 3.5. Where we provide user documentation, we also grant you a licence to use and re-produce such documentation in connection with your use of the Software subject to any restrictive legends set out in such documentation.

4. **Fees**

- 4.1. You agree to pay the Fees, which shall be payable as specified in the Quote (or upfront upon ordering via the Website). Where a time for payment is not specified in the Quote, we may invoice you for the relevant Fees at any time after formation of the Contract.
- 4.2. You must pay the Fees in accordance with the invoice we issue, and settlement must be in the same currency as the Quote.
- 4.3. The Software will not be made available to you until we have received the Fees in cleared funds without setoff or deduction.
- 4.4. You are responsible for payment of all taxes and duties in respect of the Fees whether included on the invoice or not. This clause does not cover corporate income taxes payable by Pennant in respect of revenue and profits arising from Fees.

5. **Use of the Software**


- 5.1. You must ensure that you do not exceed the maximum number of Licensed Users (which shall be as specified in the Quote or as otherwise confirmed in writing by Pennant).



- 5.2. You must ensure that all usernames and passwords for your Accounts are kept secure and confidential and comply with Applicable Policies.
- 5.3. You must immediately notify us of any suspected or confirmed unauthorised use of your Accounts or, in the case of the SaaS Offering, any other breach of information security relating to the SaaS Offering or Pennant Cloud of which you become aware.
- 5.4. You must not attempt to:
 - 5.4.1. modify, copy, adapt, reproduce; or
 - 5.4.2. except as may be allowed by any applicable law or regulation which is incapable of exclusion, disassemble, decompile or reverse engineerthe Software or any computer programs used to deliver the SaaS Offering or to operate the Pennant Cloud.
- 5.5. You must ensure that you only use the Software in accordance with all applicable laws and regulations (including, without limitation, any applicable export and re-export control laws and regulations).
- 5.6. Without prejudice to any other right under these Terms, we may terminate the Licence with immediate effect in the event that you breach these conditions.

6. **Support & Maintenance, and other Services**

- 6.1. Where you have purchased a Support & Maintenance package, we will provide Support & Maintenance for the Maintenance Period.
- 6.2. Fees for Support & Maintenance shall be as detailed in the relevant Quote and are payable upfront on or before the commencement of the relevant Maintenance Period.
- 6.3. If your Support & Maintenance coverage has not been continuous, we will require you to pay the fees in respect of any period(s) for which you did not have Support & Maintenance as a condition to initiating Support & Maintenance for a new period and providing applicable software updates ("**Back Maintenance**").
- 6.4. The details of the scope of Support & Maintenance are described in our Support Terms, which detail how you can raise with a support ticket with us. We will use our reasonable endeavours to achieve the standards/turnaround times specified in the Support Terms.
- 6.5. During the Maintenance Period, we will make available to you any Maintenance Release which is published during that period. Purchasing a Support & Maintenance Package will also entitle you to any New Version if one is released during the relevant period. The provision of such new releases/versions is conditional on the payment of any Back Maintenance.
- 6.6. We may also provide Professional Services to you. Where you purchase Professional Services, we will provide them with reasonable care and skill, using suitably qualified and experienced personnel.
- 6.7. We may agree a statement of work between us which sets out any deliverables intended to be provided through the Professional Services. Any such statement of work must be made in writing and be agreed and signed by both parties (such a document being an "**Agreed SOW**").
- 6.8. We will provide the Professional Services in accordance with the applicable Agreed SOW (if any) and will use our reasonable endeavours to achieve any target dates specified in an Agreed SOW.

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- 6.9. We typically charge for Professional Services on a time and materials basis and any Fee(s) set out in a Quote relating to Professional Services shall (unless expressly provided to the contrary) be deemed an estimate, and not a fixed price.
 - 6.10. Where the nature of the Professional Services requires that our personnel travel to deliver the services at a location other than their home or usual place of work, you shall be liable for all reasonable associated travel, accommodation and subsistence costs.
 - 6.11. Fees in respect of Professional Services shall be invoiced monthly in arrears (unless we have agreed a different charging structure and documented it in the Quote or an Agreed SOW) and must be paid in accordance with clause 4.

7. **Customer Dependencies**

- 7.1. In order for us to properly provide the Software and/or Services to you, you must:
 - 7.1.1. give us such documents and information as we may reasonably need (technical or otherwise);
 - 7.1.2. make available relevant personnel to support the provision of the Software and/or Services;
 - 7.1.3. ensure that your computer systems meet any necessary requirements for the operation of the Software or receipt of the SaaS Offering (as applicable);
 - 7.1.4. allow access to your systems and facilities when required,in each case, in a timely manner and as soon as reasonably practicable.
- 7.2. Where we go 'on site' at your premises, you must ensure that our personnel are provided with a safe and secure working environment and are afforded the amenities they may reasonably need.
- 7.3. In the case of training to be delivered to you, we may reasonably specify minimum classroom and/or attendance requirements prior to the relevant session and you agree to meet the same.
- 7.4. We shall not be liable for any failure to provide Software and/or Services to you to the extent that such failure is caused or contributed to by your failure to comply with this clause 7.

8. **Pennant Warranties**

- 8.1. We warrant that we have the necessary rights and title to grant the Licence on the terms hereof and hold any necessary consents to provide the Services.
- 8.2. We warrant that the Software will, for the Warranty Period, materially conform to the Specification.
- 8.3. You are responsible for evaluating whether the Software and/or any Services (and any particular Package) is suitable for your business needs.
- 8.4. To enable you to make your own assessment, we may offer you a limited trial period. For the avoidance of doubt, these Terms apply to any trial period.
- 8.5. We make no warranty or representation as to whether the Software (or any particular Package) meets your specific requirements and, subject to clause 8.2, the Software and/or the SaaS Offering is made available to you on an 'as is' basis. In particular, and without limitation, we make no warranties of uninterrupted use with respect to the SaaS Offering or that the Software will operate error free.



8.6. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including (without limitation) the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

9. Termination

9.1. During an agreed trial period, you may terminate the Contract at any time by giving us written notice.

9.2. In relation to the SaaS Offering: the SaaS Offering shall cease to be available to you at the end of the Subscription Period (but may be renewed, subject to a Quote being issued for the same). Cessation of the SaaS Offering does not, in itself, affect the delivery of any Professional Services which are being provided in addition thereto.

9.3. Either party may terminate the Contract by written notice with immediate effect if:

9.3.1. the other party is unable to pay its debts generally as they fall due; or

9.3.2. an application is made, or a resolution is passed at a meeting of the other party, for (or to petition for) other party's winding up, dissolution or administration; or

9.3.3. the other party proposes or makes an arrangement with its creditors generally; or

9.3.4. a chargee or any administrative or other receiver or manager takes possession of, or exercises powers of receivership or sale over any assets of the other party; or

9.3.5. there occurs, in relation to other party, in any jurisdiction, any event analogous to those listed above.

9.4. We may terminate the Contract by written notice with immediate effect if you:

9.4.1. fail to pay any invoice when due; or

9.4.2. commit a material breach of these Terms which is not capable of remedy; or

9.4.3. commit a material breach of these Terms which is capable of remedy and which you fail to remedy within 10 business days of notice from Pennant requiring remedy.

9.5. Upon termination, all of your Accounts will be suspended and your Accounts and any Data on the Pennant Cloud may be deleted at any time thereafter.

9.6. On and from termination by Pennant in accordance with clause 9.3 or clause 9.4, we may also terminate the Licence (without prejudice to our other rights and remedies).

9.7. Termination of the Contract shall be without prejudice to either party's accrued rights (including, without limitation, our right to receive all unpaid Fees in respect of any period prior to termination).

10. Confidentiality

10.1. In this clause, "**Confidential Information**" means all confidential or proprietary information, including intellectual property rights of whatever nature, (however recorded or preserved) that is disclosed or made available whether before or after the date hereof (in any form or medium), directly or indirectly, by one party or its subsidiary undertakings (the "**Provider**") to the other party (the "**Recipient**") or its Permitted Persons (as defined in clause 10.5).

10.2. 'Confidential Information' does not include:



- 10.2.1. information which was already in the Recipient's lawful possession before disclosure by the Provider or which becomes public other than through an act or omission of the Recipient;
- 10.2.2. Data uploaded to the Pennant Cloud by the Customer (which is governed by the provisions of paragraph 4 of the Annex).
- 10.3. The parties may disclose Confidential Information to each other for the purpose of performing the Contract (the "**Purpose**").
- 10.4. Each party (as Recipient) undertakes to the other (as Provider) that it shall:
 - 10.4.1. keep the Confidential Information secret and confidential;
 - 10.4.2. hold all Confidential Information on secure IT systems which have appropriate and effective restrictions against unauthorised internal and external access;
 - 10.4.3. take reasonable security precautions in respect of the transfer and storage of the Confidential Information and not remove from any Confidential Information any security classification or other markings (including, without limitation, copyright and confidentiality notices);
 - 10.4.4. not use or exploit the Confidential Information in any way, except for or in connection with, the Purpose;
 - 10.4.5. only disclose the Confidential Information as per clause 10.5 or 10.7 or with Pennant's prior written consent; and
 - 10.4.6. on the Provider's request and/or upon termination of the Contract, immediately destroy, erase or return to the Provider all documents and other records of the Confidential Information held by the Recipient or its Permitted Persons.
- 10.5. Each party shall not disclose to the other any information which is subject to export control or security classification without first notifying the other party and obtaining its consent to receive such information. The intending Provider, in such scenario, shall be responsible for obtaining all necessary authorisations to the provision of such information to the Recipient. Where the Provider fails to comply with this clause, the Recipient shall not be liable for any failure to comply with clause 10.4.2 to the extent that its systems etc do not meet any particular requirements attaching to the controlled/classified information. Furthermore, the Provider shall indemnify the Recipient against any and all losses (including, without limitation, damages, expenses, fines (to the extent permitted by law) and professional fees) suffered or incurred by the Recipient which arise from the Provider's breach of this clause and/or relevant export control or security laws or regulations.
- 10.6. The Recipient may disclose the Confidential Information to any of its officers, employees and advisers to the extent that the same need to know the relevant Confidential Information for the Purpose ("**Permitted Persons**"), but the Recipient shall ensure that each such Permitted Person to whom the Confidential Information is disclosed complies with the obligations in this clause as if they were the Recipient.
- 10.7. The Recipient may disclose Confidential Information to the extent that it is compelled to do so by a Court order or lawful authority but shall inform the Provider immediately and keep it informed if this happens.
- 10.8. These confidentiality obligations shall survive termination of the Contract and endure indefinitely, or so long as is lawful.



11. **Data Protection**

11.1. You shall ensure that any personal data provided to you by Pennant is:

- 11.1.1. only processed for the purposes for which it is provided;
- 11.1.2. processed and held strictly in accordance with Data Protection Legislation and any instructions issued by Pennant from time to time;
- 11.1.3. (without prejudice to the generality of the foregoing) treated as if it was Confidential Information in accordance with clause 10.

11.2. You must:

- 11.2.1. not transfer any personal data provided by Pennant to another territory unless you have Pennant's express written consent to such transfer (which may be conditional on, without limitation, the execution of a 'model clauses' agreement) and you do so in accordance with Data Protection Legislation;
- 11.2.2. notify Pennant immediately if you become aware of, or suspect, any loss or unauthorised access of personal data and take all reasonable steps to mitigate the effects of such event and to assist Pennant with any internal or external investigation, claim or procedure which may arise as a result;
- 11.2.3. comply with any Data Protection/Privacy Policy published by Pennant from time to time (as it relates to the Software, Services or matters under the Contract);
- 11.2.4. enable (on reasonable notice) any inspections or audits which Pennant may wish to conduct regarding data protection or confidentiality in relation to the Software, Services or matters under the Contract (including, without limitation, compliance with permitted numbers of Licenced Users); and
- 11.2.5. promptly implement any reasonable requests of Pennant as to the protection of personal data and/or Confidential Information.

11.3. Each party warrants to the other that it has the appropriate consent of the data subject in respect of any personal data which it provides to the other.

11.4. The parties agree to co-operate generally in good faith to ensure compliance with Data Protection Legislation (including, without limitation, any relevant subject access requests) in relation to the Contract.

12. **Indemnity**

You shall indemnify Pennant (in cash, on demand) against any and all losses (including, without limitation, damages, expenses, fines (to the extent permitted by law) and professional fees) suffered or incurred by Pennant arising out of or in connection with any breach by you (or your employees, agents or subcontractors) of clauses 5.5, 10 and/or 11 and/or paragraphs 4.4, 4.5, and/or 4.6 of the Annex.



13. **Intellectual Property Rights**

- 13.1. All Intellectual Property Rights subsisting in the Software and/or the SaaS Offering are owned by Pennant (or its licensors). Any new Intellectual Property Rights in the Software and/or the SaaS Offering arising during the Contract shall automatically vest in Pennant.
- 13.2. Nothing in the Contract shall operate to transfer any Intellectual Property Rights of Pennant (or its Group Companies) to you or any other person.
- 13.3. Without limiting the clause above, the Contract provides for you to use the Software (and the Pennant Cloud, if applicable) in accordance with the Licence and confers no other rights in respect of the Software or the Pennant Cloud.
- 13.4. Any Intellectual Property Rights relating to the Data or any other information which you input into the Pennant Cloud shall remain the property of its respective owner(s).
- 13.5. Pennant shall defend you at its own expense or, at Pennant's option, settle any claim or action brought against you alleging that the possession or use of the Software (or SaaS Offering as the case may be)(or any part thereof) in accordance with the Licence infringes the Intellectual Property Rights of a third party (an “**IP Claim**”) and we shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such IP Claim. We are not responsible for any claims against you to the extent that they are attributable to possession or use of the Software in breach of the Licence and/or these Terms.
- 13.6. Pennant’s obligations under clause 13.5 are conditional upon you: giving Pennant notice (in reasonable detail) of any potential IP Claim as soon as reasonably practicable; not making any admission, agreement or compromise re liability in relation to the IP Claim; providing reasonable co-operation to Pennant (and its professional advisers) including access to relevant employees, officers, records and documents as may be necessary or desirable to assess and/or defend the IP Claim.
- 13.7. At Pennant’s option, in contemplation of, or in response to, an IP Claim, Pennant may procure any necessary rights to ensure that the Software does not infringe any third party Intellectual Property Rights or, alternatively, we may issue you with (and you shall accept) an updated version of the Software which does not commit the (alleged) infringement. The remedies set out in clauses 13.5 to 13.7 are your exclusive remedy in relation to IP Claims.

14. **Force Majeure**

We shall not be liable to you for any delay or default in performance of the Contract which results from any cause beyond our reasonable control including but not limited to fire, flood, explosion, accident, strike, pandemic or epidemic (including coronavirus), lock out or cyber attack against Pennant or the Cloud Provider (such causes being “**FM Events**”). Any dates specified for delivery or completion of any particular matter shall be extended by the duration of the FM Event and Pennant shall not be liable for non-performance of any obligations hereunder affected by FM Events.

15. **Assignment, Sub-Contracting and Amendments**

- 15.1. We may sub-contract all or part of the provision of the Contract to such parties as we may select.
- 15.2. Neither party may assign the benefit of these Terms and/or the Licence save that Pennant may assign to a Group Company.
- 15.3. You shall, if called upon to do so by Pennant, enter into a novation transferring Pennant’s obligations under the Contract to any other Group Company.



15.4. Save as provided under paragraph 5 of the Annex, all amendments, variations or waivers to these Terms shall only be binding upon Pennant if made in writing and agreed or accepted by a duly authorised signatory of Pennant.

16. Notices

16.1. You may send notices regarding renewal of a Subscription to: sales-ips@pennantplc.com

16.2. Any other notices under the Contract shall be issued to Pennant at: cosec@pennantplc.com.

16.3. We may issue notices to you by emailing the same to any email address from your organisation with which we have previously corresponded.

16.4. A notice takes effect when it is delivered to the recipient's mail server.

17. Limitation of Liability

17.1. Subject only to clause 17.3, our maximum aggregate liability under or in connection with the Contract (including, without limitation, in respect of all contractual breaches or negligence relating to the Contract, provision of the Software, the Services or the Pennant Cloud) shall not exceed the total aggregate Fees paid by you.

17.2. Without prejudice to the generality of clause 17.1, we shall be liable for direct losses only (but excluding any liability for loss of profit, loss of revenue, damage to reputation and loss of anticipated savings) and shall not be liable for any indirect, special or consequential losses.

17.3. This clause 17 shall not operate to limit or exclude any liability of Pennant to the extent that it arises from, or is increased by, the fraud of Pennant, nor shall it apply to limit or exclude the liability of Pennant for death or personal injury caused by its negligence (or any other matter in respect of which it is unlawful to limit liability in the Relevant Jurisdiction).

18. Law and Jurisdiction, Boilerplate

18.1. The Contract shall be construed by and interpreted in accordance with the laws and courts of the jurisdiction specified below (the "**Relevant Jurisdiction**"):

Where Pennant is...	Governing Law	Courts which have exclusive jurisdiction
Pennant America, Inc	New York state	New York state
Pennant Canada Limited	Ontario, Canada	Ontario, Canada
Pennant Australasia Pty Ltd	Victoria, Australia	Victoria, Australia
Pennant International Limited	English	England and Wales

18.2. The Contract is not enforceable by, and does not confer any benefit on, any third party and, without limitation, does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof.

18.3. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.



19. Defined Terms

“Account”	an account, assigned to a Licensed User, through which the Software may be accessed and used.
“Agreed SOW”	has the meaning given in clause 6.
“Applicable Policies”	policies published by Pennant from time to time relevant to the Software and/or Services as available at: www.pennant-ips.com
“Back Maintenance”	has the meaning given in clause 6.
“Confidential Information”	has the meaning given in clause 10.
“Contract”	has the meaning given in clause 1.5.
“Contractual Document”	has the meaning given in clause 1.7
“Cloud Provider”	has the meaning given in paragraph 1.3 of the Annex.
“Customer”	the person, firm, company or organisation to whom the Quote is addressed. For the avoidance of doubt, this is the person to whom the Licence is granted and is alternatively referred to as “you” herein.
“Customer Care Portal”	the customer support web portal operated by Pennant, available at: www.pennant-ips.com
“Data”	data owned or controlled by the Customer.
“Data Protection Legislation”	in the UK: the Data Protection Act 2018 and the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018 and all legislation enacted from time to time in the UK in respect of the protection of personal data or any analogous legislation or regulation in a Relevant Jurisdiction.
“Fees”	the fees set out in the Quote (and any other fees which you agree to pay from time to time).
“Group Company”	Pennant International Group plc, or any company which is its subsidiary undertaking.
“Intellectual Property Rights”	intellectual property rights of any and every type anywhere in the world, including, without limitation, copyright, design rights, rights in database, patents, and any designs, inventions or similar, whether or not capable of protection by registration.
“Licence”	has the meaning given in clause 3.
“Licensed User”	an individual licensed to use the Software in accordance with these Terms.
“Licensed Hardware”	specific computer hardware on which the Software may be installed, as specified in the Quote.
“Licensed Territory” or “Licensed Site”	the specific location or area at which the Software may be used, as specified in the Quote.



"Maintenance Period"	<p>a period in respect of which Pennant provides Support & Maintenance.</p> <p>Unless specified otherwise in the Quote, the relevant period is one year from the date the Contract is formed in accordance with clause 1.3.</p>
"Maintenance Release"	<p>a release of the Software which corrects a fault, adds functionality or otherwise amends or upgrades the application but which does not constitute a New Version.</p>
"New Version"	<p>any new version of the Software which from time to time is publicly marketed and offered for sale by Pennant in the course of its normal business, being a version which contains such significant differences from the previous versions as to be represented (or reasonably regarded) as a new product.</p>
"Package"	<p>the particular elements/modules of the Software (to be delivered through the SaaS Offering) as selected by the Customer, specified in the Quote (or as otherwise confirmed in writing by Pennant).</p>
"Pennant"	<p>the Group Company in whose name the Quote is issued (which, for the avoidance of doubt, is the company responsible for Pennant's obligations hereunder).</p>
"Perpetual Basis"	<p>the basis of licensing whereby the Software is provided under an object code licence on a perpetual basis and does not expire (unless terminated in accordance with these Terms);</p>
"personal data"	<p>has meaning ascribed to it by the Data Protection Legislation.</p>
"Pennant Cloud"	<p>the cloud hosting solution through which the SaaS Offering is delivered.</p>
"Professional Services"	<p>consultancy services such as BREX and stylesheet development.</p>
"Quote"	<p>the written quotation or proposal issued by Pennant in respect of the proposed supply to the Customer of the Software and/or Services (and where multiple such quotations/proposals have been issued in relation to the same matter, the latest dated).</p> <p>Where an order is placed via the Website, the 'Quote' is the final summary page, before the order is placed, detailing the relevant goods and/or services.</p>
"Service Notice"	<p>has the meaning given in paragraph 2 of the Annex.</p>
"Services"	<p>any services provided hereunder (which may include one or more of the SaaS Offering, Support & Maintenance and/or the Professional Services).</p>
"Specification"	<p>the specification for the Software extant at the date of the Quote as published on www.pennant-ips.com or contained within the Quote itself.</p>
"Software"	<p>the software application(s) specified in the Quote (which may include, without limitation, R4i, OmegaPS, OmegaPS Analyzer, GenS and any modules or variants thereof as listed in the Quote) and including any Maintenance Release made available to the Customer during the Term.</p>



"Subscription"	a subscription by a Customer to receive access to the SaaS Offering in return for payment of the Fees.
"Subscription Period"	the period for which a Subscription is valid which, unless specified otherwise in the Quote, is one year from the date the Contract is formed in accordance with clause 1.3.
"Support & Maintenance"	support and maintenance services in respect of the Software as contemplated by the Support Terms.
"Support Terms"	the document which details the nature and scope of the support and maintenance for the Software available from Pennant as published on www.pennant-ips.com
"Term"	the period during which the Licence is subsisting and valid, which is: a) for Software provided on the Perpetual Basis, forever unless the Licence is terminated in accordance with these Terms; b) for Software provided through the SaaS Offering, the Subscription Period unless the Licence is terminated earlier in accordance with these Terms.
"Warranty Period"	for Software provided on the Perpetual Basis, 12 months from the date the Licence is first granted hereunder. for Software provided through the SaaS Offering, the Subscription Period.



ANNEX – TERMS APPLICABLE TO THE SAAS OFFERING ONLY

The provisions of this Annex apply to the SaaS Offering only and, for the avoidance of doubt, do not apply to Software licenced on the Perpetual Basis.

1. Provision and Use of the SaaS Offering

- 1.1. The SaaS Offering will be made available to you when we have received payment of the Fees for the relevant Subscription Period in accordance with clause 4.
- 1.2. The features of the SaaS Offering as made available to you will depend on the Package which you have selected. For clarity, the base price for the SaaS Offering includes maintenance as standard within each Package, with support available as an optional extra.
- 1.3. The Pennant Cloud will operate on a cloud hosting platform from a reputable provider chosen at our discretion (the “**Cloud Provider**”). As at the issue date of these Terms, the default Cloud Provider was Amazon Web Services. We reserve the right to switch Cloud Provider from time to time and/or bring the hosting ‘in house’.
- 1.4. The SaaS Offering will cease to be available at the end of the Subscription Period (unless the Subscription Period is renewed on or before the end thereof). We will aim to contact you before the end of the Subscription Period to agree renewal but we recommend that you diarise renewal (with advance reminders) in order to ensure continuity of the SaaS Offering.
- 1.5. You must only use the SaaS Offering and Pennant Cloud for your own lawful business purposes and must do so in accordance with these Terms and any Service Notices from time to time.
- 1.6. You must comply with the Applicable Policies for the duration of the Term.
- 1.7. When accessing and using the SaaS Offering, you must not:
 - 1.7.1. attempt to undermine the security or integrity of the Pennant Cloud;
 - 1.7.2. use, or misuse, the SaaS Offering in any way which might impair the functionality of the SaaS Offering and/or the Pennant Cloud;
 - 1.7.3. attempt to gain unauthorised access to any elements of the SaaS Offering other than those within your Package;
 - 1.7.4. transmit, or input into the Pennant Cloud, any of the following: files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including, without limitation, data or other material protected by copyright or trade secrets which you do not have the right to use).
- 1.8. Upon our request, you must take all actions that we reasonably deem necessary to maintain or enhance the security of the SaaS Offering and/or the Pennant Cloud.
- 1.9. We may amend the features of any particular Package from time to time as the SaaS Offering changes and develops. Where such change is likely to materially affect your use of the SaaS Offering, we will endeavour to provide advance notice in accordance with paragraph 2 save where there are technical or commercial reasons not to do so, or the change could not reasonably be regarded as disadvantageous to users generally.
- 1.10. Where any such change has a material adverse effect on your use of the SaaS Offering, you may terminate the Contract on 30 days’ written notice subject as follows: if we further update the SaaS Offering during such notice period such that the adverse effect is nullified or substantially mitigated, no termination shall take effect. If the Contract is terminated under this paragraph, we shall make a pro-rata refund of the Fees in respect of the remainder of the Subscription Period.



- 1.11. Without prejudice to any other remedies we may have, we may suspend operation of any or all of your Accounts without notice in the event that you fail to comply with the provisions of this paragraph 1 (or we reasonably suspect such non-compliance). We may continue any suspension until we are satisfied that there is no continuing non-compliance. There will be no rebate of Fees in respect of any period during which one or more Accounts are suspended.

2. **Notices re the SaaS Offering**

- 2.1. We may provide notices and updates about the SaaS Offering from time to time ("**Service Notices**") and these will be posted on the Customer Care Portal. We recommend that you check the Customer Care Portal regularly for Service Notices.
- 2.2. In the event that a Service Notice requires you to take specified action in relation to your use of the SaaS Offering and/or your Accounts, you must take such action as soon as reasonably practicable and, in any event, on or before any date and time specified in the Service Notice.

3. **Service Availability**

- 3.1. We aim to ensure that the SaaS Offering is available at all times but we do not offer any warranty or guarantee as to the percentage of time during any given period for which the SaaS Offering will be available.
- 3.2. The SaaS Offering may be unavailable from time to time to allow for maintenance or other activities carried out by Pennant or the Cloud Provider. We will endeavour to give notice via the Customer Care Portal of any planned period of unavailability.
- 3.3. Furthermore, you acknowledge and accept that the availability and/or operation of the SaaS Offering may be impacted from time to time by issues affecting telecommunications networks and/or the internet generally.
- 3.4. Limitations or restrictions may be placed on access to the SaaS Offering from time to time (either generally or for specific users) if there are unusual or unsustainable demands made on the SaaS Offering. The imposition of such limitations or restrictions will be at our discretion but we will endeavour to give prior notice where possible and to minimise the duration of such periods.
- 3.5. If you encounter apparent technical issues relating to the SaaS Offering and/or Customer Care Portal, you must make reasonable efforts to investigate and diagnose problems before contacting Pennant (including, without limitation, establishing that the issue is not caused by your system configurations). If you cannot resolve an issue, you should refer to the Customer Care Portal and use the support ticketing system there to escalate the matter as appropriate.

4. **Your Data**

- 4.1. You acknowledge and agree that it is your responsibility to satisfy yourself that the hosting arrangements are appropriate to the Data and meet your requirements. Your own due diligence should include, without limitation, investigation and satisfaction of any requirements you or any relevant person may have as to the geographical location of the hosting servers and any requirements arising from security or other classification attaching to the Data ("**Data Requirements**").
- 4.2. We will, on request, provide you with further details as to the hosting arrangements which underpin the Pennant Cloud to aid your due diligence.
- 4.3. As standard, we offer two options for the geographical location of the hosting servers: in the United States of America, or in Germany. You may specify in which of these two territories you wish your Data to be hosted.



- 4.4. Without prejudice to the generality of paragraph 4.1, you must ensure that uploading the Data to the Pennant Cloud and accessing (and downloading) it via the SaaS Offering:
- 4.4.1. satisfies any Data Requirements; and
 - 4.4.2. will comply with all applicable laws and regulations,
- and that you have and maintain all necessary licences, consents and permissions to upload the Data to the Pennant Cloud and access (and download) it via the SaaS Offering.
- 4.5. Where you inform us, prior to utilisation of the SaaS Offering, that any of your Data may be ITAR controlled or has any other classification/status attached which regulates the territories in which it can be held and/or the security measures that must be applied to its storage (“**Controlled Data**”) we may, on request, be able to provide government-approved hosting arrangements in place of the default Cloud Provider. You must not use the SaaS Offering for the hosting of Controlled Data without first fully disclosing your intention to do so and obtaining our prior agreement thereto. You shall remain responsible for ensuring, and shall ensure, that any obligations or duties relating to the Controlled Data are satisfied notwithstanding any agreement by Pennant in relation to the use of the SaaS Offering.
- 4.6. The Software is specifically designed for the management of equipment data and/or the creation and publication of technical documents based on such data. Neither the Software nor the SaaS Offering is designed, or intended, for the hosting of data relating to individuals. It is a condition of these Terms that you do not use the Pennant Cloud for the hosting of databases/datasets containing data pertaining to individuals.
- 4.7. We will arrange the set-up of the hosting arrangements in accordance with the specification detailed in the Quote.
- 4.8. We will instruct the Cloud Provider to take regular back-ups of your Data but we also recommend that you keep your own secure back-ups.
- 4.9. You are able to export your Data from the Pennant Cloud at any time. It is your responsibility to export your Data before the end of your Subscription Period. If you renew your subscription prior to the end of the Subscription Period, the hosting of the Data will continue from one Subscription Period to the next. Following expiry of the Subscription Period (and if there is no renewal), any Data may be deleted from the Pennant Cloud at any time.
- 4.10. We will not use or access your Data unless you instruct us to and we will not transfer the hosting of your Data to another territory without obtaining your prior agreement.
- 4.11. We do not accept any liability:
- 4.11.1. which arises from any acts or omissions of the Cloud Provider;
 - 4.11.2. for any loss or corruption of Data howsoever occurring;
 - 4.11.3. for any unauthorised accessing, or misuse, of Data by any third party.
5. **Changes to these Terms**
- 5.1. From time to time, we may consider that it is necessary or desirable to amend these Terms as they relate to the SaaS Offering in order to:
- 5.1.1. reflect changes to: the way the SaaS Offering is provided; law and regulation; market practice; industry good practice (including, without limitation, information security); or
 - 5.1.2. clarify matters relating to the SaaS Offering and/or how it is provided; or



- 5.1.3. take into account commercial or economic matters which are relevant to the SaaS Offering or our business generally.

- 5.2. We can amend these Terms by publishing a revised version of this document on the Customer Care Portal or sending it to you via email. The amended terms shall become effective one month thereafter unless we specify a different date upon which they shall become effective (in either case, the “**Effective Date**”). We will only specify an Effective Date earlier than one month where it is necessary to ensure compliance with law and regulation. On and from the Effective Date, we shall each be bound by the revised terms, with your continued use of the SaaS Offering after the Effective Date deemed to signify acceptance of the revised terms.