



PENELOPE ORS MEASURES

Athena Software

Effective Date: November 14, 2014

This Agreement is provided in addition to the Order Form addendum which accompanies it and, governs the purchase and delivery of the Penelope ORS Measures module. By submitting the Order Form, the Licensee agrees to the terms and conditions of this Agreement.

1. DEFINITIONS

1.1. The following terms shall have the meaning set forth below:

- (a) **“Agreement”** means this Penelope ORS Measures agreement.
- (b) **“Athena”** means 1561599 Ontario inc. operating as Athena Software and its licensors, including GroupNos Technologies Limited for its OpenFit technologies.
- (c) **“Licensee”** means the organization, company or otherwise legal entity submitting an Order Form.
- (d) **“Performance Metrics”** means Performance Metrics, LLC. and its licensors or its designee.
- (e) **“Content”** means the electronic implementation of ORS, SRS, CORS, CSRS, YCORS and GSRS as licensed by Performance Metrics and commonly referred to as “Measures”.
- (f) **“Module”** means the Penelope ORS Measures module developed by Athena that includes the Content and OpenFit.
- (g) **“Module Data”** means the data collected by the Licensee, either through the use of the Content, data returned by the OpenFit technologies or otherwise created by the Module.
- (h) **“Order Form”** means an ordering document specifying the products and services to be provided hereunder that is entered into between the Licensee and Athena, including any addenda and supplements thereto.
- (i) **“OpenFit”** means the API that provides statistical information based on the Content for monitoring and measuring outcomes.
- (j) **“Penelope Software”** means the Penelope Case Management software as licensed by Athena.

2. MODULE AND TERM

2.1. This Module is provided to the Licensee, subject the payment the fees defined the Order Form, for a period of one year from the date of this Agreement unless stated otherwise in the Order Form (herein “Term”). This Module extends the functionality of the Penelope Software to include the Content, as further described in Section 2 of this Agreement, and access the OpenFit technologies. The Licensee acknowledges and agrees that use of this Module requires certain non-identifying information to be transmitted to the OpenFit technologies.

- 2.2. Athena will provide the Licensee with an activation key, in accordance with the Term, to enable the Module within the Penelope Software. This activation key will also disable the Module upon expiry of the Term. The Licensee is prohibited from sharing or otherwise distributing any key and from using any past or replaced key in any way what so ever.
- 2.3. The Licensee is permitted to use the Module Data and any data derived from the Licensee's own statistical analysis or otherwise further interpret the Module Data, solely for the Licensee's own internal operation and shall not be disseminated to any third party without the prior written permission of Performance Metics.
- 2.4. Upon the expiry of the Term or termination, the Licensee will (a) no longer have access to OpenFit through the Module, (b) have no ability to further administer the Content, including completing new assessments and (c) the Module Data will be accessible in view-only (not modifiable) for archival purposes. Athena may terminate this agreement during the Term where the Licensee has not paid the fees or for a violation by the Licensee of any of the restrictions or conditions listed in this Agreement.
- 2.5. The Licensee acknowledges that the license for the Penelope Software executed with Athena, is a separate license agreement that governs the use of the Penelope Software. The terms and conditions of this Agreement apply solely to the Module only and the terms of the Penelope Software license agreement do no apply to this Module.

3. CONTENT LICENSE

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- 3.2. The Licensee may NOT modify, translate into other languages, change the context, wording, or organization of the Content or create any derivative work based on them, aside as provided for by the Module. The Licensee may put the Content into other written, non-electronic, non-computerized, non-automated formats provided that the content, wording, or organization are not modified or changed.
- 3.3. Before using or relying on the Content it is the responsibility of the Licensee to ascertain the suitability of the Content for any and all uses made by the Licensee. The Content is not a diagnostic tool and should not be used as such. The Content is not a substitute for an independent professional evaluation. Any and all reliance on the Content by the Licensee is at the Licensee's sole risk and is the Licensee's sole responsibility. Licensee indemnifies Athena, Performance Metrics and it's officers, directors, employees, representatives, and authors of the Content against, and hold them harmless from, any and all claims and law suits arising from or relating to any use of or reliance on the Content and related products provided by Performance Metrics. This obligation to indemnify and hold harmless includes a promise to pay any and all judgments, damages, attorney's fees, costs and expenses arising from any such claim or lawsuit.

4. USE RESTRICTIONS

- 4.1. The Licensee shall not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Module, in whole or in part, nor publish, distribute, disclose or disseminate, in whole or in part, any element of the Module. The Licensee is strictly prohibited from creating any derivative works based on the Content and any data obtained by the OpenFit technologies through the Module except as provided for in paragraphs 2.3 and 3.3 of this agreement.
- 4.2. The Licensee agrees not to alter, remove, deface, cover or otherwise obscure any copyright, trademark, patent or other proprietary rights, notices, and any other markings Athena may have placed in or on any copy of the Module or documentation, in order that a parties proprietary rights thereto shall be protected.
- 4.3. The Licensee shall not assign, sublet or transfer any rights granted herein, except as otherwise provided for in this Agreement. Furthermore, the Licensee shall not rent, lease, transfer, assign, distribute, sell or otherwise provide access to the Module, in whole or part, on a temporary or permanent basis, except as otherwise expressly permitted by this Agreement. This agreement may not be transferred, bartered, loaned, assigned, leased, or sold by the Licensee.

5. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

- 5.1. THE MODULE AND CONTENT IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE. Athena and its licensors do not warrant the operation of the Modules, including access to OpenFit, will be uninterrupted or error free.
- 5.2. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ATHENA, ITS LICENSORS, PERFORMANCE METRICS, ITS DESIGNEES, OR EMPLOYEES (COLLECTIVELY, "AGENTS") SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. THE CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF SERVICES AND THE APPLICATION OF THE DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE IN ANY FORM OF A UNIFORM COMMERCIAL CODE OR STATUTORY COMMERCIAL.
- 5.3. IN NO EVENT SHALL ATHENA, ITS LICENSORS, PERFORMANCE METRICS, ITS DESIGNEES OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, OF AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, BASED ON ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE MODULE OR CONTENT, OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DISCLAIMER OF DAMAGES SET FORTH IN THIS SECTION IS FUNDAMENTAL TO THE AGREEMENT BETWEEN THE PARTIES AND PERFORMANCE METRICS GRANTS THE LICENSE RIGHTS SET FORTH HEREIN CONDITIONED ON LICENSEE'S ACCEPTANCE OF SUCH DISCLAIMER.

6. MISCELLANEOUS

- 6.1. **CONSTRUCTION:** The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

- 6.2. **ENTIRE AGREEMENT:** This agreement is the entire agreement of the parties relating to the Module, and particularly the Content for the Module.
- 6.3. **GOVERNING LAW:** This Agreement is made and entered into in the State of Illinois and shall be governed by the laws of the State of Illinois. In the event of any litigation or arbitration between the parties, such litigation or arbitration shall be conducted in Illinois and the parties hereby agree and submit to such jurisdiction and venue.
- 6.4. **MODIFICATION:** This Agreement may not be modified or amended.
- 6.5. **TRANSFERABILITY:** This agreement may not be transferred, bartered, loaned, assigned, leased, or sold by the licensee.
- 6.6. **VIOLATIONS:** Violations of any provision or stipulation of this Agreement will result in immediate revocation of this license. Punitive damages may be assessed.
- 6.7. **ASSIGNMENT:** It is the intention of the parties that the Customer is not permitted to assign this Agreement or any rights acquired from any Order Form except with the prior written consent of Athena. The Licensee may only assign the Agreement in the event that the Licensee or substantially all of the assets of the Licensee is/are sold to a third party where the acquiring party affirms prior to the assignment that it will be bound by the terms of this Agreement. Any assignment for which Athena does not give its prior written consent gives Athena the right to terminate this Agreement immediately.
- 6.8. **OTHER:** If any provision of this Agreement, or part thereof, is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect. The controlling language of this Agreement is English, and if the Licensee has received any translation into another language, it has been provided for the Licensee's convenience only. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
- 6.9. **ACKNOWLEDGEMENT:** The Licensee hereby acknowledges having read this Agreement and understood it, and hereby agrees to be bound by its terms and conditions. The Licensee also agrees that this Agreement is the complete and exclusive agreement between the parties, and supersedes all prior agreements, representations and any other communications, oral or written, between the parties relating to the subject matter of the Module, Content and OpenFit provided under any Order Forms. A waiver of any provision in this Agreement by either party of its rights hereunder shall not be binding unless contained in a written notice signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on one occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

LICENSEE

Licensee Name: _____

Signed By: _____

Name (please print): _____

Title: _____

Date: _____