



PENELOPE SOFTWARE AS A SERVICE (SaaS)

Athena Software

Effective Date: July 6, 2018

This Agreement is provided in addition to the Order Form addendum which accompanies it and, governs the purchase and delivery of the Penelope Software as a Service (SaaS). By submitting the Order Form, the Customer agrees to the terms and conditions of this Agreement. Except where this Agreement explicitly states otherwise, the terms of this Agreement are separate from the terms of the Master Agreement. This Agreement only applies to the applicable Products and Services as listed in the applicable Order Form.

Fees for the Service Term are due in advance of the Service Term, unless otherwise stated in the Customer's Order Form. Athena reserves the right to withhold delivery of any services under this Agreement until such payment is made. The Penelope Software as a Service (SaaS) fees are based on annual duration and for the number of Concurrent Users for the service.

The terms and conditions of this Agreement are subject to change at Athena's sole discretion; however these changes will not result in a material reduction in the level of the services provided for the Software during the Service Term.

1. DEFINITIONS

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

- (a) "**Agreement**" means this Penelope Software as a Service (SaaS) agreement.
- (b) "**Athena**" means 1561599 Ontario inc. operating as Athena Software.
- (c) "**Backend Connections**" means the access to the database holding the Customer Data through means other than use of the Software.
- (d) "**Backup**" means a direct copy, at a moment in time, of the Customer Data as used by the Software.
- (e) "**Concurrent User**" means any User that is logged into the Software.
- (f) "**Customer**" means the organization, company or otherwise legal entity that has purchased this Service under the terms and conditions of this Agreement.
- (g) "**Customer Data**" means the electronic data and information (i) collected by the Customer and uploaded to the Software and (ii) collected, processed and generated by the Software from the Customer's use of the Software, excluding the Software application and the Software's dependent or required software.
- (h) "**Documentation**" means the electronic files and printed materials created by Athena that describe the Software and how to properly use the Software.
- (i) "**Downtime**" means the duration of time the Customer attempts, through no fault of the Customer's own connectivity to the service, to use the service and the Software is not accessible for one of the following reasons (i) the Server or Software is not accepting any incoming HTTPS requests, (ii) all Users receive an error message that the Software is not available or a more generic HTTPS error where the host Server can not be found or (iii) the duration of all HTTPS requests are slowed

to such an unreasonable level and so severely impacted that no User can reasonably continue to work.

- (j) **“First Line Support”** means an internal process of the Customer that provides direct support and assistance for the Software to the Customer’s own Users.
- (k) **“Intellectual Property Rights”** shall be defined as any patent, design right, copyright, trademark, service mark (any other application or registration respecting the foregoing), database right, trade secret, know-how and/or other present or future intellectual property right of any type, wherever in the world possible.
- (l) **“License Key”** means an encrypted code, used by the Software, that enforces the Concurrent User limit, Service Term and other specific terms of this Agreement for the Software and/or modules.
- (m) **“Major Upgrade”** means an upgrade to the Software that is signified by a change in a version or release number. For clarity a Major Upgrade does not include any releases where a sub-version or patch number has changed.
- (n) **“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- (o) **“Master Agreement”** means the Master Product and Service Agreement executed between the Customer and Athena.
- (p) **“Minor Upgrade”** means an upgrade to the Software that is signified by a change in a sub-version or patch number. For clarity a Minor Upgrade does not include any releases where a version or release number has changed.
- (q) **“Order Form”** means an ordering document specifying the product and services to be provided hereunder that is entered into between the Customer and Athena, including any addenda and supplements thereto.
- (r) **“Server”** means the physical computer or computers that the Software operates on and on which Customer Data or Backups are stored.
- (s) **“Service Term”** mean duration of time for which the services granted herein is valid and which is more fully defined in paragraph 17.1 of this Agreement.
- (t) **“Services”** means the the rights to access and use the Software provided only to Customer pursuant to paragraph 2.1.
- (u) **“Software”** means specifically Penelope Case Management Software together with any modules listed in an Order Form.
- (v) **“Support Contact”** means a person(s) the Customer designates to act as a liaison between the Customer and Athena for support services provided under this Agreement.
- (w) **“Support Notifications”** means a general or public announcement from Athena to all of Athena’s clients concerning matters related to this Agreement.
- (x) **“Supported Release”** means the specific version of the Software that is the current release or a release made within the last 6 (six) months.
- (y) **“User”** means any employee of Customer and agent of Customer who is permitted to access the Software.

2. SOFTWARE SERVICES

- 2.1. Athena hereby grants to the Customer a non-exclusive, revocable, non-transferable and limited right to use and have access to the Software, subject to the terms and conditions set out in this Agreement. Athena will provide the Customer a single URL (accessible only through HTTPS) to access the Software through the Services. The Software is provided solely as a service and the Customer is not provided with any license rights in or any other right to the Software under this Agreement. Athena has no obligation of any kind whatsoever in providing the Customer with any other right in and to the Software except as expressly permitted in this Agreement.
- 2.2. The Services provided under this Agreement are valid during the Service Term as defined in the Order Form. Specifically where the Order Form states that the Software is provided on:
 - (a) a “subscription basis”, then the Service Term shall be ongoing on a month-to-month basis, subject to either the Customer’s continuous payment of the subscription fees (which may increase from time to time), or until the Customer provides 30 days written notice to end the Service Term, whichever occurs earlier; or
 - (b) a “term basis”, then the service is valid during the period for which the Customer has purchased and paid for such term from Athena. This term is then deemed to be the Service Term and is deemed to be one year from the date on the Order Form unless otherwise agreed to by Athena.
- 2.3. Use of the Software through the Service is subject to a Concurrent User limit where a limited number of Concurrent Users may simultaneously be logged into the Software at any given time. The maximum number of Concurrent Users shall be defined as the total sum of Concurrent Users purchased by the Customer for any specific Service Term which will be specified in the applicable Order Form.
- 2.4. The Customer may, at any time during the Service Term, increase the Concurrent User limit placed in paragraph 2.3 above by submitting an Order Form to Athena for such new Concurrent User limit where Athena shall apply new fees (and support fees if permitted under any support agreement), which will be applicable as of the effective date of the increase to the Concurrent User limit.
- 2.5. The Customer may reduce the Concurrent User limit placed in paragraph 2.3 above provided that the Customer gives written notice of such reduction. The Customer will not be entitled to any refund, credit or receive any compensation for the reduction in the number of Concurrent Users. The Customer may only exercise this right as follows:
 - (a) the number of Concurrent Users after the reduction is not less than 10 (ten) unless previously authorized by Athena; and
 - (b) the notice must only be at the beginning of (not during) any Service Term.
- 2.6. Athena will provide the Customer with a License Key for the Software. In the event that Athena provides a replacement License Key, the Customer shall, without delay, apply the new License Key. The Customer is prohibited from sharing or otherwise distributing any License Key and from using any past or replaced License Key in any way what so ever.
- 2.7. As part of the Services, Athena will notify the Customer upon the release of any updates to the Software. Any updates to the Software will be performed with the server maintenance as defined in paragraph 5.1 of this Agreement where:
 - (a) Minor Upgrades will be applied automatically within 10 (ten) days of such release, with prior notice by Athena; and

- (b) Major Upgrades will be applied automatically, with notice by Athena, 6 (six) months after the date of release unless the Customer has requested in writing that such upgrade is to be made earlier.
 - (c) Notwithstanding (a) and (b) above, Athena reserves the right to automatically apply security updates, with concurrent notice, where such security updates address known vulnerabilities and do not impose new functionality in the Software.
- 2.8. Athena reserves the right to suspend any Services under this Agreement without being required to provide any credit or refund to Customer or otherwise incur any penalty where:
- (a) the Customer has not paid for the Services; or
 - (b) the Customer is in breach of any of the terms of this Agreement.

3. PERMITTED USE AND RESTRICTIONS

- 3.1. The Customer shall be permitted to make such copies of the Documentation to adequately provide to Users and shall not modify, adapt, translate or create derivative works based on the Documentation, in whole or in part, without the prior written consent of Athena where such work is made publicly available.
- 3.2. The Customer shall be strictly prohibited from implementing any technology where the effect is to circumvent, directly or indirectly, the Concurrent User limit defined in paragraph 2.3 above.
- 3.3. Use of the Software is for the Customer's internal purposes and only as permitted pursuant to this Agreement, or as otherwise permitted by prior written consent of Athena, and shall not be used in any unlawful manner whatsoever.
- 3.4. The Customer shall not assign, sublet or transfer any rights granted herein, except as otherwise provided for in this Agreement.
- 3.5. The Customer shall not rent, lease, transfer, assign, distribute, sell or otherwise provide access to the Software provided to the Customer (including through a time-share or through bureau use), in whole or in part, on a temporary or permanent basis, except as otherwise expressly permitted by this Agreement or as otherwise permitted by prior written consent of Athena. The Customer shall not grant any further licenses, sublicenses, or other rights in the Software. The Customer will not purport to be an authorized reseller, licensor, distributor, or provider of the Software to any third party or other organization.
- 3.6. The Customer is strictly prohibited from (i) using the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, (ii) using the Services to store or transmit material in violation of third-party privacy rights, (iii) using the Services to store or transmit Malicious Code (iv) access the Services in order to build a competitive product or service, or (v) reverse engineer the Software (to the extent such restriction is permitted by law).

4. CUSTOMER ACKNOWLEDGEMENTS

- 4.1. The Customer acknowledges and agrees that the Software requires specific third party web browsers in order to function in accordance with the Documentation (herein "**Supported Browsers**"). Certain web browsers or older versions of a web browser may be prevented from being used or have reduced functionality. As web browsers play an integral part of the overall security of the Software and the provision of the Services, Athena continuously updates the inclusion and exclusion of Supported Browsers. Athena is under no obligation to support any web browser other than the Supported Browsers. Any use by the Customer of a web browser other than a Supported Browser shall

immediately release Athena of any warranties or liability with such use. A list of Supported Browsers can be obtained upon request.

- 4.2. The Customer acknowledges that the Software includes certain optional functionality that may interface with third party software or services. To the extent that Customer chooses to use such functionality, the Customer is responsible for: (i) the purchase of, (ii) the ancillary requirements related to, and (iii) the licensing obligations related to the applicable third party software and services. It is the Customer's responsibility to ensure the requirements are met in order for the Customer to benefit from the specific functionality made available to the Customer. These interfaces include, but are not limited to:
- (a) one way push to MS Exchange for calendar events (which requires a compatible MS Exchange server);
 - (b) one way external delivery of SMS messages (which requires a subscription to a predefined list of SMS gateway providers);
 - (c) one way external deliver of email messages (which requires a compatible SMTP server);
 - (d) a credit card payment interface (which requires a subscription to a predefined list of payment gateways); and
 - (e) certain features which require a static IP address.

It is the Customer's responsibility to ensure that the requirements are met for specific functionality to be available to the Customer.

- 4.3. The Customer acknowledges that any interface work created by the Customer, or by Customer with the aid of Athena, that relies on the specifications of a specific release of the Software may not be compatible with future releases of the Software. This interface work can be, but is not limited to, SQL views, import or export scripts, or third party reporting tools. Athena is under no obligation to ensure that functionality in one version of the Software is available in a subsequent version of the Software.
- 4.4. It is the Customer's responsibility to obtain any licenses and required consents that pertain to the Customer's own data or content (such as assessment tools and code sets, and any similar types of data or content) that is accessible by the Software and which data is stored on the Server. The Customer warrants that it has all required consents and permissions to use and store the Customer Data through the Software.
- 4.5. It is assumed that Customer Data is owned by Customer. To the extent that Customer Data is not owned by Customer due to the rules, regulations, or other laws related to the Customer Data, then the Customer warrants and represents that it has all of the required consents and licenses as detailed above in paragraph 4.4 of this Agreement.
- 4.6. The Customer acknowledges and agrees that the Customer's purchase of the Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by Athena regarding future functionality or features.

5. SERVICE AVAILABILITY

- 5.1. Athena, and subject to 5.2 below, will make the Software as a service, as defined in paragraph 2.1 during the Service Term, available to the Customer 24 hours a day and 7 days a week (herein "**Service Availability**") except for:
- (a) planned maintenance of Servers as further described in paragraph 5.4 below;

- (b) applying Major Upgrades or Minor Upgrades as further described in paragraph 5.4 below;
- (c) any request, by the Customer, to temporarily take the Service offline;
- (d) any suspension of service by Athena pursuant to paragraph 2.8; and
- (e) any unavailability caused by circumstances beyond Athena’s reasonable control, including, for example, an act of God such as a tornado, an earthquake or flood, an act of government, civil unrest, act of terrorism or sabotage, an internet service provider failure or delay, and any issues related to the telephony infrastructure of either Athena or the Customer (such as fibre optic cables, cable, or telephone wiring).

5.2. Athena will use commercially reasonable efforts to minimize any actual downtime during the Service Availability (wherein any time during which the Customer has access to the Software through the Services is herein “**Uptime**”). In the event that the Uptime is less than 99.99% for any calendar month, the Customer shall be entitled to a non-refundable credit calculated as follows:

Downtime Hours in a Month	Value of Credit
for each whole hour	1/30th of the Fees paid for the applicable month (excluding any overage charges based on usage)

5.3. In the event the Uptime is less than 97% over a three consecutive calendar month period, the Customer has the right to terminate this Agreement and to be refunded the prorated portion of any fees paid in advance (which refund shall form part of any direct damages incurred by the Customer for the purposes of section 14 of this Agreement). Any election of this right must be exercised no later than 90 days from the end of the last month where the 97% Uptime was not maintained.

5.4. Athena may, from time to time, schedule routine maintenance of the Server or Software. This maintenance is required to ensure the Servers and Software are running in the most optimal and secure manner. Any maintenance will be kept to the minimum amount of time needed. Athena will notify the Customer not less than 24 hours in advance of any server maintenance. Additionally Athena may, as subject to paragraph 2.7 above, apply updates to the Software. Unless otherwise agreed to by Athena, any update of the Software will only be applied during the times specific below. The scheduled window to perform any server maintenance and application of Software updates is as follows:

Where Customer is located	Software Update Monday to Friday	Server Maintenance Window - the second Saturday of every third month (Jan, April, July, October)
New Zealand (New Zealand Standard Time)	1am to 5am	1am to 12pm
Australia (Australian Eastern Standard Time)	1am to 5am	1am to 12pm
Asia and Pacific Rim (Japan Standard Time)	1am to 5am	1am to 12pm

Where Customer is located	Software Update Monday to Friday	Server Maintenance Window - the second Saturday of every third month (Jan, April, July, October)
Europe or Africa (GMT)	1am to 5am	1am to 12pm
North or South America (Eastern Standard Time)	4am - 8am	1am to 12pm

6. USE LIMITS AND ADDITIONAL CHARGES

- 6.1. The Services provided under this Agreement contain storage limits for the Customer Data (herein “**Storage Limit**”). The Storage Limit is based on the number of Concurrent Users of this service and is defined as follows:

Number of Concurrent Users	Storage Limit Gigabyte (GB)
up to 24	5
25 to 50	15
over 50	25

Additional storage may be purchased separately by contacting Athena.

- 6.2. In the event that the Customer Data exceeds the Storage Limit, the Customer will pay Athena any overage fees for each whole gigabyte (GB) in excess of the Storage Limit. For the purposes of calculating the Customer Data storage size, the size of the data is the sum of (i) the database files containing the Customer Data (as calculated by the file system); (ii) the unencrypted and uncompressed files uploaded to the Software or generated by the use of the Software; and (iii) excluding any Backups, data files generated by system logs or logs generated by the Software. The storage size of the Customer Data will be assessed on the last day of each month during the Service Term and be invoiced as follows:

For each whole gigabyte (GB) in excess of Storage Limit	\$50 per month
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7. SECURITY AND CUSTOMER DATA

- 7.1. Athena will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards to protect the Customer Data. Safeguards will include, but are not limited to, measures preventing physical or remote access to the Server, monitoring of remote access attempts, firewalls and appropriate software for the purposes or providing security, all of which are to be made in Athena’s sole discretion.
- 7.2. Athena will use industry standard encryption techniques for any data transmissions by the Server. These techniques include, but are not limited to, secure socket layer (SSL), transport layer security

(TLS) and secure shell (SSH). Use of this Service by the Customer will be over HTTPS protocol and Athena will provide the Customer with the required third-party verified SSL certificate.

- 7.3. The Software includes certain optional interfaces with third-party applications or use of external communications such as email or SMS that either does not use any encryption or the data encryption is defined by the third-party interface. Use of these features is at sole discretion and risk of the Customer.
- 7.4. In the event that Athena becomes aware of a successful unauthorized incident resulting in access, use, disclosure, modification, or destruction of Customer Data, Athena shall notify the Customer's Security Contact as soon as practicable, but within no more than 72 hours following discovery. This notification will include (i) the identification of the records that have been or are reasonably believed to have been accessed in the incident, (ii) the date of discovery, and (iii) a general description of the nature of the incident. An incident will be considered discovered by Athena as of the first day on which such incident is known to Athena or, by exercising commercially reasonable diligence, would have been known to Athena.
- 7.5. Athena shall routinely conduct an authorized simulated attack on the Service for the purposes of evaluating the Athena's security measures (herein "Penetration Test"). Any Penetration Test will be performed by a reputable third-party organization with capable skill and expertise to perform such test and occur no less than once per year or when substantial changes have occurred to the Service's security that Athena deems a Penetration Test should occur. Upon completion and within no later than 30 days of a Penetration Test, Athena shall provide details to the Customer of any material security vulnerabilities where Athena is unable to take corrective action within 90 days.
- 7.6. Athena is certified as ISO/IEC 27001:2013 compliant and conducts an annual third-party external audit to maintain its certification. A certification certificate is available upon request.
- 7.7. Athena will, at all times, physically store the Customer Data and any Backups in a designated country. At no point will Athena transfer, electronically or physically, the Customer Data or any Backups to another country. Athena cannot warrant in which countries any data is routed through over the internet in the normal course of carrying out the obligations under this Agreement. Athena may, at any time, without consent and without notice, move the Customer Data to a new location provided that the new location is either within the same country of the Customer or the same designated country. The country in which the Customer Data will reside is as follows:

Where Customer is located	Location of physical Storage of Customer Data (including any copies of)
Australia	Australia
New Zealand	New Zealand
Europe (Including United Kingdom)	United Kingdom
United States	United States
Rest of World	Canada

- 7.8. Athena will ensure Customer Data is backed up each day. Each Backup will be stored, and subject to paragraph 7.4 above, in at least two separate hosting facilities to ensure redundancy. The backup will occur only once each day (or for no more than a 36 hour period). Athena will retain no less than seven Backups at any one time which will be for the last 7 previous days of the Customer Data.

Athena does not provide any warranty on the time of day for when the Backup will occur and Customer accepts all risks associated therewith.

- 7.9. Upon written request by the Customer and subject to the terms of this paragraph, Athena will provide a limited number of backend connections to the Database (herein “**Backend Connection(s)**”). All Backend Connections provided to the Customer will be view only and no access will be granted to manipulate (insert, update, delete) any database records. Some database tables used for system purposes may be excluded. Each Backend Connection will have its own access credentials and only be accessible through a single static IP address provided by the Customer. The number of Backend Connections is defined by the number of Concurrent Users of this service and is defined as follows:

Number of Concurrent Users	Maximum Number of Backend Connections
up to 24	3
25 to 99	5
over 100	10

8. TECHNICAL SUPPORT

- 8.1. Athena will provide the technical support services to the Customer with all necessary care and skill and be performed and/or attended by, a suitably trained, skilled and experienced personnel that would be consistent with industry standards.
- 8.2. Athena will provide technical support for issues covering configuration and use of Software provided that:
- (a) the Software version is a Supported Release; and
 - (b) the Software is being accessed by a Supported Browser.
- 8.3. Athena may, at its sole discretion, provide technical support services where the conditions of paragraph 8.2 are not met. Any technical support services provided under this paragraph are performed as a courtesy to the Customer and shall in no way create an implied or written waiver of the conditions of paragraph 8.2, or create any obligations relating to further support requests.
- 8.4. The Customer is required to establish and maintain a First Line Support for the Software directly to the Customer’s Users. First Line Support shall include but is not limited to:
- (a) a direct response to the Users with respect to inquiries concerning the performance, functionality or operation of the Software;
 - (b) a direct response to the Users with respect to problems or issues with the Software;
 - (c) a diagnosis of the problem or issue of the Software; and
 - (d) a resolution of problems or issues of the Software.

If after reasonable commercial efforts the Customer is unable to diagnose or resolve the issue of the Software, the Customer may contact Athena for technical support as directed by Athena.

- 8.5. Technical support is solely for the Software, as defined in paragraph 8.2, and does not cover such matters relating to help material readily available to the Customer, an end-to-end support solution for the Customers' deployment of the Software and such. Additional services may be provided by Athena to cover such issues. For clarity, technical support does not include issues such as:
- (a) an explanation of features or abilities that can be found in the Documentation, the help materials or other forms of documentation provided by Athena;
 - (b) training on features, changes or use of the Software;
 - (c) issues with connectivity to the Software such the Customer's own network, firewall, routing, and proxy server;
 - (d) issues with the operating system, browser, any required software or any third party software;
 - (e) issues with ODBC connectivity, Microsoft Excel pivot tables or any third party reporting tools;
 - (f) issues relating to data import or export; or
 - (g) professional services related to the use of the Software including, but not limited to, business and deployment consultation.

9. SUPPORT AVAILABILITY AND RESPONSE TIME

- 9.1. Athena will provide support services to the Customer as posted under the Resources section of the AthenaSoftware.net website (Athena Software Technical Support Hours). Athena reserves the right to adjust support services hours from time to time as necessary; however, changes will not affect response time commitments as outlined in paragraph 9.2 below.
- 9.2. Athena will use commercially reasonable efforts to respond to each technical support request based on the severity of the support request as described below. Athena can not guarantee any resolution time nor the outcome of any resolution of a support request. These response times are defined as:

Severity	Meaning	Response Time
Critical	The Customer's production use of the Software is stopped or so severely impacted that no User can reasonably continue to work. Critical requests have one or more of the following characteristics (a) data corruption, (b) software hangs causing unacceptable delays or (c) the Software is inaccessible to all Users. All critical support requests must be submitted through the means instructed by Athena's Documentation otherwise the support request will not be assigned a critical severity.	1 hour
High	The Customer experiences a severe loss of service. Important features are unavailable with no acceptable workaround, however, operations can continue in a restricted fashion.	1 business day
Normal	The Customer experiences minor loss of service or a feature / operation generated a result that was not expected. The impact is isolated and an inconvenience however the operations can continue.	2 business days

Severity	Meaning	Response Time
Low	The Customer requests information, an enhancement, or documentation clarification regarding the Software but there is no impact on the operation of the Software, no loss of service and the result does not impede the operation of the software.	3 business days

Each support request will be assigned a severity level that determines when the response time is expected. Actual response times may vary and may be responded to earlier than listed.

Any support request may appear to be important to the User's immediate task at hand, however the classification system above is designed to ensure all support requests from Athena's Users are treated fairly and timely with respect to their severity. Athena, at its sole discretion, will assign the severity of any support request. A Customer's own deadline or timeline may be factored in but this would be at the discretion of Athena and Athena is not obligated to alter its response time based on such factors.

- 9.3. Athena will provide the Customer emergency support during off hours for all Critical support requests provided that the Customer notifies Athena of such Critical support request by the means instructed by Athena's support website.

10. TECHNICAL CONTACTS

- 10.1. The Customer's Support Contacts are the sole liaisons between the Customer and Athena. Any Support Contacts must have, at a minimum, initial basic understanding of the Software, a baseline understanding of the environment the Software is deployed in, and, as needed, supplemental training appropriate for the specific role. The Customer is responsible for assigning and communicating to Athena any changes to the Support Contacts. The Customer is permitted to change the Support Contacts from time to time.

- 10.2. The number of Support Contacts is based on the number of licensed Concurrent Users as follows:

Number of Concurrent Users	Primary Support Contacts	Backup Support Contacts
up to 24	2	1
25 to 99	4	2
over 100	5	4

- 10.3. Athena will provide access to a web portal for each Primary Support Contact for the purposes of submitting any support request. Any support request must be submitted through this web portal unless otherwise provided for in the purchased support service. Access to the web portal uses named accounts for each Primary Support Contact and these user accounts cannot be shared with other individuals.
- 10.4. The Customer acknowledges that the Support Contacts may receive news and other general announcements from Athena concerning the matters related to this Agreement. This correspondence is optional, however, opting out of such communications may adversely impact or impair Athena's ability to meet its obligations under this Agreement.

11. ADDITIONAL SERVICES

- 11.1. Athena will make Documentation available to the Customer that describes the Software and how to properly use the Software. This Documentation may come in various media forms and will be updated as Upgrades are released.
- 11.2. The Customer's Users may attend any webinars conducted by Athena (herein "**Penelope Webinars**"). Penelope Webinars are held periodically and have a limited capacity. Participation is based on a first come first served basis. The numbers of Users that can attend at no charge is equal to the number of Primary Support Contacts. Additional Users may attend for an additional fee.
- 11.3. The Customer may purchase a second SaaS service, for the sole purposes of testing and training Users (in a non-production environment), for the same number of Concurrent Users at an annual fee of \$2,500.00 (herein "**SaaS Sandbox**"). With the SaaS Sandbox, Athena will replicate the production environment on creation, go live date and upon any Major Upgrade of the SaaS Sandbox (additional fees will apply for replication at other intervals). For any SaaS Sandbox service, Athena is relieved from the following obligations:
- (a) any credits related to Downtime and Service Availability in paragraph 5.2;
 - (b) providing any data Backup under paragraph 7.5;
 - (c) providing any Backend Connection in paragraph 7.6;
 - (d) providing any Support Available and Response Times in Section 9;
 - (e) providing any additional services under this section 11;
 - (f) providing the Customer Data of the SaaS Sandbox to the Customer under paragraph 15.1; and
 - (g) any warranties, and all liabilities, except as provided for safeguarding the Customer Data.
- 11.4. If the Customer has purchased the "Premium Support" as defined in the Order Form, then the Customer will be entitled, during this Service Term, to the additional services:
- (a) Athena will provide a periodic review of the Customer's utilization of the Software and provide guidance on the Customer's use of the Software in terms of best practices for the Software (herein "**Strategic Business Review**"). The Strategic Business Review does not include the delivery of any professional services (such as training). Strategic Business Reviews will be conducted 2 times a year.
 - (b) Up to twice as many additional Users (as defined in paragraph 11.2) may be able to attend Penelope Webinars for no additional charge. Participation is based on a first come first served basis and Premium Support does not allow for any priority of any kind except for the additional participation.
 - (c) The Customer will have a total of 14 days over a 12 month period where the Customer may exceed its maximum number of Concurrent Users without cost (herein "**Uplift**"). On any specific day where this Uplift is needed, there is no limit of Concurrent Users. Uplift is enabled via a License Key provided by Athena upon purchase of Premium Support and only available for Supported Releases.
 - (d) Athena will provide the Customer some level of cost certainty with respect to subsequent and continuous purchases of Premium Support (herein "**Price Protection**"). The Customer may

purchase additional Concurrent Users for the Software, excluding any modules, and related Premium Support at the per unit rate in effect at the beginning of Service Term irrespective of any list price increases during the Service Term. These rates will remain in effect for the next continuous support term purchase of Premium Support (or equivalent plan with similar Price Protection wording) by the Customer. This Price Protection ends when the Customer elects not to purchase the Premium Support (or equivalent plan with similar Price Protection wording) for any period or after eight (8) years of continuous Price Protection, at which time Athena can offer the Customer rates in effect at that time.

- (e) The Customer may purchase the SaaS Sandbox, as defined in paragraph 11.3 of this Agreement, at the reduced annual fee of \$1,875.00.

12. OWNERSHIP AND INTELLECTUAL PROPERTY

- 12.1. The Software is the proprietary property of Athena. Athena shall at all times retain the right, title and interest, including all copyrights and Intellectual Property Rights, in and to the Software including all upgrades. Athena expressly reserves all rights with respect to the Software not expressly granted by this Agreement. The Customer shall acquire no right in or title to the Software other than the rights to use and access the Software and the rights in the Documentation as specifically set out herein. The Software is protected by Canadian and United States copyright laws, the Berne Copyright Convention, the Universal Copyright Convention and other intellectual property laws and treaties.
- 12.2. The Customer shall not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, in whole or in part, nor modify, adapt, translate or create derivative works based on the Documentation, in whole or in part, without the prior written consent of Athena.
- 12.3. The Customer 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 Software, Documentation or the media on which the Software are supplied, in order that Athena's proprietary rights thereto shall be protected.
- 12.4. Athena agrees to defend, indemnify and hold harmless the Customer including its employees, and officers from any and all third party claims, liabilities, damages, and / or costs (including reasonable attorneys' fees and disbursements) where a third party initiates a claim or threatens to initiate a claim against Customer claiming that the Customer's use of the Software pursuant to the Services infringes the third party's Intellectual Property Rights.

This indemnity is subject to the following:

- (a) the Customer must immediately notify Athena that the Customer has received or become aware of a claim for which the Customer will seek the protection of the indemnity provided above;
- (b) the Customer must not make any admission or conduct any settlement negotiation with the third party or anyone else without Athena's prior written permission;
- (c) Athena being given control over the defence thereof using counsel of its own choosing;
- (d) Customer provides reasonable cooperation in the defence at Athena's expense, including all reasonable legal fees necessary for Customer to comply with its legal obligations and otherwise as a result of requests made by Athena; and
- (e) the claim to which the Customer seeks to be indemnified is in no way a result of Customer's use of the Software or of the Services contravenes any aspect of this Agreement.

To the extent that any aspect of the alleged infringement is not related to the Software or the Services, Athena's indemnity shall only be the proportional amount that Athena's liability was determined to be either via a final judgement rendered by a court or tribunal or as agreed to in any final settlement.

- 12.5. Nothing in this Agreement in any way restricts Athena's ability under paragraph 12.4 to settle any such claim in any manner as Athena determines in its sole discretion.
- 12.6. The Customer agrees to fully co-operate with Athena and will provide Athena with any and all information that is requested by Athena as a result of any third party claims or accusations.

13. DISCLAIMER OF WARRANTY

- 13.1. Athena warrants that the Software is capable of materially performing in accordance with the Documentation. This warranty period shall apply for ninety days (90) after the effective date of this Agreement. Athena does not warrant the operation of the Software will be uninterrupted or error free.
- 13.2. Customer's only rights in association with a breach of the warranty provided in paragraph 13.1 above is for Athena to correct such breach within thirty (30) days of being provided with notice of such breach of warranty, or such additional time as may be required given the nature of the breach.
- 13.3. The Software and related Services are a tool for the use by qualified professionals and are not intended to provide a diagnosis or to replace qualified professional's judgment in assessing and treating patients. The Software and Services are not meant to replace the Customer's general protocols and other redundancies that are required when the Software or Services are unavailable for any reason; the Software and the Services are not meant to be the sole source for the information and services provided by the Software and Services.
- 13.4. OTHER THAN AS PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, ATHENA MAKES NO WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY TO THE CUSTOMER.
- 13.5. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ATHENA, ITS DEALERS, DISTRIBUTORS, AGENTS 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 THE SOFTWARE OR SERVICES AND THE APPLICATION OF THE DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BOTH PARTIES EXPRESSLY WAIVE THE APPLICABILITY OF THE UNIFORM COMMERCIAL CODE AND ANY OTHER STATUTORY COMMERCIAL TERMS.

14. LIMITATION OF LIABILITY

- 14.1. THIS SECTION APPLIES ONLY IN RELATION TO THE SOFTWARE AND SERVICES SUBJECT TO THIS AGREEMENT; ATHENA IS NO WAY LIABLE IN ANY WAY FOR THE SOFTWARE AND SERVICES PROVIDED HEREUNDER UNDER THE MASTER AGREEMENT AND ANY SECONDARY AGREEMENTS. ANY LIABILITY FOR PROFESSIONAL SERVICES REQUIRED UNDER THE ORDER FORM SHALL BE SUBJECT TO THE MASTER AGREEMENT AND NOT THIS AGREEMENT.

- 14.2. IN NO EVENT SHALL ATHENA AND ITS AGENTS BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT DAMAGES, SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, OR INCIDENTAL DAMAGES, LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, DATA LOSS, AND THE LIKE, ARISING OUT OF THE USE OR INABILITY TO EITHER USE OR ACCESS THE SOFTWARE (OR SERVICES) OR DOCUMENTATION EVEN IF ATHENA OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OR SUCH DAMAGES OR CLAIM.
- 14.3. EXCEPT IN RELATION TO THE INDEMNITY PROVIDED ABOVE IN SECTION 12.4 WHICH IS NOT SUBJECT TO THIS SUBSECTION 14.3, IN NO EVENT SHALL ATHENA'S AGGREGATE LIABILITY EXCEED THE SUBSCRIPTION FEES PAID BY THE ORGANIZATION DURING THE TWELVE (12) MONTH PERIOD DIRECTLY PRECEDING THE DATE ON WHICH SUCH LIABILITY AROSE FOR THE SERVICES RELATED TO THE SOFTWARE PROVIDED UNDER THIS AGREEMENT EVEN THOUGH THE FEES MAY BE COLLECTED PURSUANT TO THE MASTER AGREEMENT.
- 14.4. THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM AGREEMENT.
- 14.5. THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM THAT THE CAUSE OF ACTION TAKES, INCLUDING FOR BREACH OF CONTRACT, RESCISSION OF CONTRACT, TORT, NEGLIGENCE, OR UNDER ANY EQUITABLE DOCTRINE.
- 14.6. EACH SUBSECTION ABOVE IS AN INDEPENDENT LIMITATION OF LIABILITY. TO THE EXTENT THAT ANY SUCH LIMITATION OF LIABILITY DOES NOT APPLY DUE TO A STATUTORY PROVISION, THE OTHER SUBSECTIONS SHALL CONTINUE TO BE IN FORCE DESPITE THE INAPPLICABILITY OF THE OTHER SUBSECTION.
- 14.7. IN NO EVENT SHALL ATHENA BE LIABLE, IN ANY WAY, FOR THE DELETION OF THE CUSTOMER DATA UNDER PARAGRAPH 15.2 OF THIS AGREEMENT. IT IS SOLELY THE CUSTOMER'S RESPONSIBILITY TO REQUEST THE CUSTOMER DATA AND VERIFY THE ACCURACY OF THE CUSTOMER DATA PRIOR TO THE DELETION OF THE CUSTOMER DATA UNDER PARAGRAPH 15.1 OF THIS AGREEMENT.

15. CUSTOMER DATA

- 15.1. Upon written request by the Customer and within fifteen (15) days from the end of the Service Term, the Customer may request a copy of the Customer Data. Upon receipt of such request, Athena shall provide instructions to the Customer on how to receive the Customer Data. It is the sole and absolute responsibility of the Customer upon receipt of the Customer Data to verify that the data is not corrupt, is free of defects and is accessible. The Customer is required to notify Athena of any defects within two (2) days of the Customer's receipt of the Customer Data. Athena is under no obligation to notify the Customer concerning the return of the Customer Data. At any time after fifteen (15) days have passed from the end of the Service Term, Athena is permitted to delete all Customer Data in its possession. Customer hereby gives its consent for Athena to delete all Customer Data as of the fifteenth (15th) day from the end of the Service Term.
- 15.2. **AT NO POINT WILL ATHENA RETAIN THE CUSTOMER DATA BEYOND 15 DAYS FROM THE END OF THE SERVICE TERM. ATHENA WILL HAVE NO OBLIGATION TO MAINTAIN OR PROVIDE THE CUSTOMER DATA, AND WILL THEREAFTER DELETE OR DESTROY ALL COPIES OF THE CUSTOMER DATA IN SERVERS OR OTHERWISE IN ATHENA'S POSSESSION OR CONTROL, UNLESS PROHIBITED BY APPLICABLE LAW.**

15.3. The Customer Data returned in paragraph 15.1 will be in a form at the discretion of Athena, which, as of the date of this Agreement, is in form of a PostgreSQL database script file, associated files that may have been uploaded by the Customer or generated by the Software and certain log files. These files are in its natural form, native to the Software itself. The Customer acknowledges that use of the PostgreSQL database file returned will require the Customer to install and use the PostgreSQL application. Further, the Customer acknowledges that a certain level of expertise in the SQL Language will be required to extract out information from these files. Athena is under no obligations to provide the Customer alternate views, simplified data structures, amalgamated data or otherwise alterations to the data itself.

16. OTHER TERMS

16.1. The defined terms of the Master Agreement apply to this Agreement except to the extent that such defined terms are defined in this Agreement. The following paragraphs and sections from the Master Agreement shall be included as part of this Agreement as if they were originally written in as part of this Agreement:

- (a) the section titled "Payment of Fees, Invoicing and Sales Tax";
- (b) the section titled "Confidentiality"; and
- (c) the section titled "Miscellaneous".

17. TERM AND TERMINATION

17.1. Athena will provide the Customer with the Penelope Software as a Service (SaaS) for one year, effective the date of the purchase of this service, unless otherwise stated in the Customer's Order Form, herein defined as the "**Service Term**". Once the Service Term lapses, Athena is not obligated to provide any services and Athena is relieved of all obligations under this Agreement.

17.2. During the Service Term, the Services provided under this Agreement can only be terminated pursuant to the following terms:

- (a) Athena has the right to terminate the Services provided hereunder upon the occurrence of any of the following events, which shall be deemed a breach of the terms of this Agreement:
 - (i) Failure of the Customer to pay all or any part of the fees.
 - (ii) A violation by the Customer of any of the restrictions or conditions listed in Sections 2, 3 and 4 of this Agreement.
- (b) Without waiving, removing, limiting or restricting any legal or equitable right and remedy otherwise available to Athena attendant upon such a breach, Athena shall have the right and option to terminate the Services provided under this Agreement by providing written notice to the Customer of such termination. Upon receipt of such notice, the Customer shall immediately cease using the Software through the Services, and shall return the Documentation and any and all copies thereof to Athena within ten (10) days of receipt of such notice from Athena.
- (c) Customer shall have the right to terminate the Services provided for under this Agreement where Athena is in breach of this Agreement and fails to cure such breach within thirty (30) days. Customer must provide Athena with written notice of the alleged breach in sufficient detail to permit Athena to easily ascertain its obligations in remedying the breach and in determining whether or not Athena is in breach of the terms in this Agreement.

- 17.3. The provisions of Section titled “Ownership and Intellectual Property”, “Disclaimer of Warranty” and “Limitation of Liability” set out in this Agreement shall continue in force after any termination or expiry of the Service Term of this Agreement.
- 17.4. Athena is permitted to block access from Users and to change any License Keys related to the Customer’s access to the Software upon the effective date of termination of this Agreement or the expiration of this Agreement.
- 17.5. Except as otherwise expressly stated in this Agreement, Athena shall under no circumstances be under any obligation to refund to the Customer any amount paid by the Customer by way of fees upon termination of this Agreement for a breach of the terms of this Agreement.