



PENELOPE SOFTWARE AS A SERVICE (SaaS) AGREEMENT

Agreement Number: _____

This Software as a Service (SaaS) Agreement (this “**Agreement**”) is entered into as of **mmmm dd, yyyy** (“**Effective Date**”) by and between 1561599 Ontario Inc. d/b/a Athena, an Ontario corporation having its registered office at 33 Dupont St. E. Waterloo, Ontario, N2J 2G8 herein called “**Provider**” or “**Athena**” and:

Customer Name

having its principal place of business at

Street Address

City

State

ZIP

Country

herein called “**Customer**”, and together with Provider, collectively the “**Parties**” and each a “**Party**”.

WHEREAS Customer desires to use the Software and related Modules and to engage a service provider who has the capability to provide Customer with enhancements to its communication and marketing materials, certain business process outsourcing services and related services as may be requested by Customer from time to time;

WHEREAS Provider understands Customer’s objectives in entering into this Agreement and agrees to maintain the capability to meet the needs and requirements of Customer and to help achieve those objectives as may be advised by Customer from time to time;

NOW THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INTERPRETATION

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

- (a) “**Affiliate**” means any present or future entity which, either directly or indirectly, or through one or more intermediaries, controls, is controlled by or is under common control of or with a party to this Agreement.
- (b) “**Agreement**” means this Penelope Software as a Service (SaaS) Agreement.
- (c) “**Athena**” means 1561599 Ontario Inc. operating as Athena Software.
- (d) “**Athena IP**” means all Intellectual Property belonging to or licensable by Athena herein, including Software, Modules and Documentation.
- (e) “**Backend Connection(s)**” means access to the database holding Customer Data through means other than use of the Software.

- (f) “**Backup**” means a direct copy, at a moment in time, of Customer Data as used by the Software.
- (g) “**Claim**” means any actual, threatened or potential action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, investigative, regulatory or other, whether at law, in equity or otherwise.
- (h) “**Commencement Date**” means the date when the Software will first be available to Customer.
- (i) “**Customer**” means the organization, company or otherwise legal entity that has subscribed to the Software under the terms and conditions of this Agreement.
- (j) “**Customer Data**” means the electronic data and information (i) collected by Customer and uploaded to the Software and (ii) collected, processed and generated by the Software from Customer’s use of the Software, excluding the Software application and the Software’s dependent or required software.
- (k) “**Documentation**” means the electronic files and printed materials created by Athena that describe the Software and how to properly use the Software.
- (l) “**Downtime**” means the duration of time Customer attempts, through no fault of Customer’s own connectivity, to use the Software, and it is not accessible for one of the following reasons (i) the Server or Software is not accepting any incoming HTTPS requests, (ii) all Named Active Users receive an error message that the Software is not available or a more generic HTTPS error where the host Server cannot be found or (iii) the duration of all HTTPS requests are slowed to such an unreasonable level and so severely impacted that no Named Active User can reasonably continue to work.
- (m) “**Fees**” means the amount payable to Athena for any Software or Modules Athena makes available to Customer for subscription and specifically defined in an Order Form; or the amount payable to Athena for any Professional Services Athena provides to Customer as defined in an Order Form or in a Statement of Work.
- (n) “**First Line Support**” means an internal process of Customer that provides direct support and assistance for the Software to Customer’s own Named Active Users.
- (o) “**Intellectual Property**” or “**IP**” means the protection of works of authorship or expression and copyright (whether or not registered); trademark, trade names, service marks, logos, domain names and trade dress; inventions, discoveries, or improvements (whether patented or able to be patented and whether or not reduced to practice), including patents, patent applications, certificates of invention, utility models, continuations, continuations-in-part, provisionals, divisions, reissues, renewals, re-examinations and extensions thereof; trade secrets, know-how, designs, methodologies, processes, rights in data, and similar rights; and similar rights under any laws or international conventions throughout the world, whether now existing or hereafter arising or developed, including the right to apply for registrations, certificates, or renewals with respect thereto, the rights to prosecute, enforce, and obtain damages.
- (p) “**Intellectual Property Rights**” means the rights in Intellectual Property.
- (q) “**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable legal fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

- (r) “**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.
- (s) “**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- (t) “**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.
- (u) “**Module(s)**” means optional functionality that builds on the Penelope Case Management Software as a Service (SaaS), is purchased and/or subscribed to separately and may be governed by its own Secondary Agreement and/or Order Form.
- (v) “**Named Active User**” means a named individual who Customer has granted permission to access the Software.
- (w) “**Order Form**” means an ordering document specifying the Software, Module(s) and/or Professional Services to be provided hereunder that is entered into between Customer and Athena, including any addenda and supplements thereto and forms part of this Agreement.
- (x) “**Professional Services**” means contracted time (and potentially materials) in relation to supporting Customer’s use of the Software and any Module(s). Professional Services may include training, consulting, deployment services, workshops, custom scripts, data migration services but does not include the provision of the Software or any Module(s).
- (y) “**Renewal Term(s)**” means duration of time for which the Software is licensed and accessible for use by the Named Active Users subsequent to the original Service Term and which is more fully defined in Section 21.1 of this Agreement.
- (z) “**Sandbox**” means a non-production version of the Software for the purposes of testing (herein “**Preview Sandbox**”) and training (herein “**Training Sandbox**”).
- (aa) “**Secondary Agreement**” means an agreement, separate from but, unless otherwise stated, subordinate to this Agreement, governing Module(s) and/or Professional Services.
- (bb) “**Server**” means the physical computer or computers that the Software operates on and on which Customer Data or Backups are stored.
- (cc) “**Service Term**” means duration of time for which the Software granted herein is validly licensed and accessible for use by the Named Active Users and which is more fully defined in Section 2.2 of this Agreement.
- (dd) “**Software**” means Penelope Case Management Software together with any related optional offerings Athena makes available to Customer for subscription and listed in an Order Form, and not Module(s) specifically governed by Secondary Agreement(s).
- (ee) “**Support Contact**” means a person(s) Customer designated to act as a liaison between Customer and Athena for technical support services provided under Sections 10 and 11 of this Agreement.
- (ff) “**Support Notification**” means a general or public announcement from Athena to all of Athena’s Customers.

- (gg) “**Supported Release**” means the specific version of the Software that is the current release or a release made within the last six (6) months.
- (hh) “**Suspended Account**” means a Customer whose entitlement to use Software or a Module is suspended.

1.2. Reference to:

- (a) “**Party**” or “**Parties**” refers to one or both Customer or Athena.
- (b) For purposes of this Agreement: (a) the words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; (e) words denoting any gender include all genders; and all capitalized terms are defined in Schedule 1. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

2. SOFTWARE

2.1. Subject to the terms herein and applicable payments by Customer, Athena hereby grants to Customer a non-exclusive, revocable, non-transferable and limited right to use and have access to the Software for the specified number of Named Active Users.

2.2. Software Use Rights.

- (a) The Software is provided solely as a subscription service and 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 Customer with any other right in and to the Software except as expressly permitted in this Agreement.
- (b) Named Active User.
 - (i) Use of the Software through the subscription service is subject to a Named Active User limit. The maximum number of Named Active Users shall be defined as the total sum of Named Active Users subscribed to by Customer for the Service Term as specified on the Order Form. Customer has the right to substitute the actual Named Active User to any alternative Named Active User at any time.
 - (ii) Customer may, at any time during the Service Term, increase the Named Active User limit placed in Section **2.2(b)(i)** above by submitting an Order Form to Athena for such additional new Named Active Users limit. Athena shall apply applicable Fees upon the grant of Software use rights to such Named Active Users.
 - (iii) Customer may reduce the Named Active User limit placed in Section **2.2(b)(i)** above provided that Customer gives advanced written notice of such reduction. Customer will not

be entitled to any refund, credit or receive any compensation for the reduction in the number of Named Active Users. Customer may only exercise this right subject to the following:

- A. the number of Named Active Users after the reduction is less than Athena's minimum list price threshold, Customer must still pay the minimum list price Fee; and
- B. the notice must be given prior to the beginning of (not during) a Service Term or Renewal Term.

2.3. Athena will notify Customer via Support Notification upon the release of any updates to the Software. Any updates to the Software will be performed with server maintenance as defined in Section 7.1 of this Agreement where:

- (a) Minor Upgrades may be applied automatically to Customer's Preview Sandbox upon release and to Customer's production environment within fourteen (14) days of updating Customer's Preview Sandbox, with prior notice by Athena;
- (b) Major Upgrades may be applied automatically to Customer's Preview Sandbox upon release and to Customer's production environment, with notice by Athena, sixty (60) days after the date of updating Customer's Preview Sandbox, unless Customer has requested in writing that such upgrade is to be made earlier; or
- (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.

2.4. Customer agrees that Customer's subscription of the Software is not contingent on the delivery of any future functionality or features, nor dependent on any oral or written comments made by Athena regarding future functionality or features, nor assuming the delivery of any future Order Form to be placed or otherwise any deliverable of any kind by Athena.

3. ORDER FORMS AND AGREEMENTS

- 3.1. All orders for a subscription for Software or for any additional service or deliverable by Athena shall be pursuant to an applicable Order Form.
- 3.2. From time to time, Athena may develop Modules which may be purchased by Customer pursuant to Secondary Agreements, subject to the terms and conditions, including fees, therein.
- 3.3. Each Order Form must be signed by an individual authorized by Customer to make such subscription and be submitted to Athena in a single fax, scanned or electronic along with reference to this Agreement or Secondary Agreement (each a "**Governing Agreement**"). Once an Order Form is submitted to Athena, the Order Form is final and is non-cancellable without the express written permission of Athena. By entering into an Order Form, Customer agrees to be bound by the applicable Agreement or Secondary Agreement(s).
- 3.4. Athena may, by way of written notice, reject an Order Form submitted by Customer in the event the Order Form does not conform to Section 3.3 above, or is submitted with terms and conditions which are different from the Governing Agreement. For avoidance of doubt, any Order Form that introduces new or altered terms which differ from the applicable Governing Agreement's terms, shall not be binding, [notwithstanding if such Order Form is executed by the Parties].
- 3.5. Certain services that form part of the Software require Fees to be paid continuously. In the event that these terms lapse for any reason a reinstatement fee ("**Reinstatement Fee**") may be assessed when

placing subsequent Order Forms. The Reinstatement Fee calculation is as follows: 150% of the applicable Fees from the date of the lapse to the date of reinstatement.

4. PROFESSIONAL SERVICES

- 4.1. In the event Athena delivers any Professional Services under this Agreement, the following shall apply:
- (a) Athena will provide the Professional Services to Customer with all necessary care and skill and be performed and/or attended by, suitably trained, skilled and experienced personnel that would be consistent with industry standards;
 - (b) Customer agrees to cooperate reasonably and in good faith with Athena in the performance of Professional Services by (i) allocating sufficient resources; (ii) timely performing the tasks reasonably necessary to enable Athena to perform its obligations; (iii) ensuring the timely delivery of any material and other obligations required; (iv) ensuring the timely response to any inquiries related to the Professional Services; and (v) completing accurately, and in a timely manner, all information, data requests and feedback as reasonably required; and
 - (c) Athena warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with accepted industry standards. For any breach of the above warranty, Customer's exclusive remedy and Athena's entire liability will be to the re-performance of the applicable Professional Services.
- 4.2. In the event Customer requires Athena to perform any Professional Services at Customer's location:
- (a) Customer will reimburse Athena for its reasonable and out-of-pocket expenses; and
 - (b) if Customer cancels or reschedules the requested services and Athena cannot be refunded amounts for the travel arrangements, Customer shall pay those unrecoverable costs incurred by Athena.
- 4.3. In the event the Parties utilize a statement of work for Professional Services ("**Statement of Work**"):
- (a) Customer and Athena shall each designate a project manager to serve as the primary contact related to the Statement of Work;
 - (b) a Statement of Work shall detail (i) the scope of work, including the specific task(s) to be performed and a list of deliverables ("**Deliverable(s)**"), (ii) any acceptance criteria or test plans (mutually agreeable by both parties for such Deliverables), (iii) the estimate ("**Estimated Fees**"), and (iv) major milestones;
 - i. Customer acknowledges and agrees that the Estimated Fees are solely a good faith estimate provided for Customer's own budget/resource planning. Athena shall in the course of performance of services, periodically provide actual fee estimates;
 - (c) where any acceptance test(s) is defined in the Statement of Work, Customer, at their own expense and regardless of outcome, shall perform those tests within ten (10) days of delivery and provide written notification to Athena of either (i) acceptance of each Deliverable where failure to reject any Deliverable will be deemed acceptance or (ii) rejection, where in Customer's reasonable and good faith judgement they determine that any submitted Deliverable does not satisfy the agreed upon acceptance criteria, in which case Athena shall make commercially reasonable efforts to correct such deficiencies and resubmit the Deliverables. In the event the resubmitted Deliverables fail a second time, Customer may either, at Customer's sole and exclusive remedy (x) request Athena to correct the deficiencies or (y) terminate the Statement of Work, upon written notice,

and recover all Fees paid under the Statement of Work for such deficient Deliverables only; all other Fees related to Professional Services previously delivered and which passed the applicable acceptance tests are non-refundable. In the absence of written acceptance within 10 (ten) days of delivery, the Deliverables will be deemed accepted. Only acceptance tests that are pre-defined in the Statement of Work may be used to determine acceptance or rejection of the Deliverable(s);

- (d) if the Parties determine that any Deliverable's functional requirement(s) specified in the Statement of Work require modification (for example, due to incorrect assumptions, change in requirements), they will in good faith execute a change order for such revised requirements, timeframe and any associated Estimated Fees (herein "**Change Order**");
- (e) any Change Order shall be signed by both parties before any work is performed for the revised requirements;
- (f) Athena is under no obligation to accept any Change Order that alters the original scope of the Statement of Work;
- (g) any delays caused by Customer may result in changes to the scheduled Deliverables;
- (h) acceptance of any Deliverables will not affect Customer's rights or remedies for any "Warranty"; and
- (i) in addition to the limitation of liabilities set out in Section **18**, in no event will Athena's liability or Customer's remedy for any work performed under the Statement of Work exceed the value of the Estimated Fees or actual Fees paid, whichever is less.

5. PERMITTED USE AND RESTRICTIONS

- 5.1. Customer shall be permitted to make such copies of the Documentation to adequately provide to each Named Active User and shall not modify, adapt, translate or create derivative works based on the Documentation, in whole or in part, where such work is made publicly available without the prior written consent of Athena.
- 5.2. Customer shall be strictly prohibited from implementing any technology where the effect is to circumvent, directly or indirectly, the Named Active User limit defined in Section **2.2(b)(i)** above.
- 5.3. Use of the Software or any Module is for Customer's internal purposes and only as permitted pursuant to this Agreement or the applicable Secondary Agreement, and shall not be used in any unlawful manner whatsoever.
- 5.4. Customer shall not rent, lease, transfer, assign, distribute, sell or otherwise provide access to the Software (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. Customer shall not grant any further licenses, sublicenses, or other rights in the Software. Customer will not purport to be an authorized reseller, licensor, distributor, or provider of the Software to any third party or other organization. Customer shall not under any condition extend the access and license rights to the Software to entities within its affiliate or partner network where separate legal entities are involved without the express written permission of Athena.
- 5.5. Customer is strictly prohibited from (i) using the Software to store or transmit infringing, libellous, or otherwise unlawful or tortious material, (ii) using the Software to store or transmit material in violation of third party privacy rights, (iii) using the Software to store or transmit Malicious Code (iv) access the Software in order to build a competitive product or service, or (v) reverse engineer the Software (to the extent such restriction is permitted by law).

6. CUSTOMER ACKNOWLEDGEMENTS

- 6.1. Customer acknowledges having read this Agreement and the applicable Secondary Agreement(s) and understood it, and agrees to be bound by its terms and conditions. Customer also agrees that this Agreement or the applicable Secondary Agreement(s) is the complete and exclusive agreement between Customer and Athena, and supersedes all prior agreements, representations and any other communications, oral or written, between Customer and Athena relating to the subject matter of the Software provided under the Order Form(s). This Agreement shall be a binding agreement and enforceable against both parties once the applicable Order Form has been signed. A waiver of any provision in this Agreement or the applicable Secondary 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 or any applicable Secondary Agreement.
- 6.2. 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 and provision of the Software, 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 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 may be found on the AthenaSoftware.net website (System Requirements).
- 6.3. 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, 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 Customer’s responsibility to ensure the requirements are met in order for Customer to benefit from the specific functionality made available to 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 delivery of email messages (which requires a compatible SMTP server);
 - (d) 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 Customer’s responsibility to ensure that the requirements are met for specific functionality to be available to Customer.
- 6.4. Customer acknowledges that any interface work created by 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 include, 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.

- 6.5. It is Customer's responsibility to obtain any licenses and required consents that pertain to 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 is stored on the Server. Customer warrants that it has all required consents and permissions to use and store Customer Data through the Software.
- 6.6. 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 Customer Data, then Customer warrants and represents that it has all of the required consents and licenses as detailed above in Section 6.5 of this Agreement.
- 6.7. Where Customer is regulated by the European Union General Data Protection Regulation (herein "**GDPR**"), the customer acknowledges and agrees that Athena accepts no responsibility for receiving "Personally Identifiable Information" as defined in the GDPR and provided by Customer about its Named Active Users. Customer further agrees:
- (a) Where applicable under the rules of the GDPR, Customer will obtain Named Active User consent prior to sharing Named Active User Personally Identifiable Information with Athena. Such consent shall permit third party product review as applicable in Section 12.10 below; and
 - (b) Customer assumes all liability under the rules of the GDPR relating to sharing and distributing Named Active User Personally Identifiable Information with Athena.
- 6.8. Customer acknowledges and agrees that Customer's subscription to the Software 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.

7. SOFTWARE AND SERVER AVAILABILITY

- 7.1. Athena, and subject to 7.2 below, will make the Software, as defined in Section 2.1 during the Service Term, available to Customer 24 hours a day and 7 days a week (herein "**Service Availability**") except for:
- (a) planned maintenance of Servers as further described in Section 7.4 below;
 - (b) applying Major Upgrades or Minor Upgrades as further described in Section 2.3 above;
 - (c) any request, by Customer, to temporarily take the Software offline;
 - (d) any suspension of Software by Athena pursuant to Section 20.5; and
 - (e) a Force Majeure Event.
- 7.2. Athena will use commercially reasonable efforts to minimize any actual Downtime during the Service Availability (wherein any time during which 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, Customer shall be entitled to a non-refundable credit calculated as follows: for each whole hour of Downtime in a month, the value of the credit shall be one thirtieth (1/30th) of the Fees paid for the applicable month (excluding any overage charges based on usage).
- 7.3. In the event the Uptime is less than 97% over a three consecutive calendar month period, 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 Customer for the purposes of Section 18 of this Agreement). Any election of this right must be exercised no later than ninety (90) days from the end of the last month where the 97% Uptime was not maintained.

- 7.4. Athena may, from time to time, schedule routine maintenance of the Servers 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 Customer via Support Notification not less than 24 hours in advance of any Server maintenance. Additionally Athena may, as subject to Section 2.3 above, apply updates to the Software. Unless otherwise agreed to by Athena, any Software updates or Server maintenance will only be applied during the times specified under the Resources section of the Athena Software.net website (Software Updates and Server Maintenance Windows).

8. CONFIGURATION AND USE

- 8.1. The Software provided under this Agreement include storage for Customer Data up to a limit (herein “**Storage Limit**”) of five hundred Gigabytes (500 GB). Additional storage may be purchased separately by contacting Athena.
- 8.2. In the event that Customer Data exceeds the Storage Limit, Customer will pay Athena a volume-based overage fee for each month Customer Data exceeds the Storage Limit. For the purposes of calculating Customer Data storage size, the size of the data is the sum of (i) the database files containing 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. Volume-based overage fees will be assessed on the last day of each month during the Service Term or subsequent Renewal Term(s).
- 8.3. If Customer’s usage of resources including bandwidth, CPU and memory is excessive (as determined solely by Athena), Athena reserves the right to:
- (a) immediately disable Customer’s Software services, or throttle Customer’s Software services until Customer can reduce resource consumption; and/or
 - (b) impose an appropriate fee commensurate with such excess usage.
- 8.4. Should unintended or undesirable performance impact on desired or promised service level response times and/or overall performance to the Customer or other Athena customers’ experience, the Customer agrees to work on a best efforts, good faith basis to design, reconfigure and implement changes to remedy the unintended or undesirable consequences.

9. SECURITY AND CUSTOMER DATA

- 9.1. Athena will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards to protect 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.
- 9.2. 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 Software service by Customer will be over HTTPS protocol and Athena will provide Customer with the required third party verified SSL certificate.
- 9.3. 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 Customer.

- 9.4. 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 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.
- (a) Where required by law in certain jurisdictions, Athena will also notify the designated regulatory body, adhering to regulations as they pertain to notification timing and content.
- 9.5. Athena shall routinely conduct an authorized simulated attack on the Software 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 shall occur no less than once per year or when substantial changes have occurred to the Software’s security that Athena deems a Penetration Test should occur. Upon completion and within no later than thirty (30) days of a Penetration Test, Athena shall provide details to Customer of any material security vulnerabilities where Athena is unable to take corrective action within the following ninety (90) days. Customer is prohibited from performing its own Penetration Test, vulnerability scan or other such automated processes for determining vulnerabilities within the Software service unless expressly permitted by Athena in writing.
- 9.6. Athena is certified as ISO/IEC 27001:2013 compliant and undergoes an annual third party external audit to maintain its certification. A copy of Athena’s ISO Certificate is available under the Resources section of the AthenaSoftware.net website.
- 9.7. Athena will, at all times, physically store Customer Data and any Backups in a designated country. At no point will Athena transfer, electronically or physically, 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 Customer Data to a new location provided that the new location is either within the same country of Customer or the same designated country. The country in which 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

- 9.8. Athena will ensure Customer Data is backed up each day. Each Backup will be stored, and subject to Section 9.7 above, in at least two separate hosting facilities to ensure redundancy. The backup will occur at least 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 seven previous days of 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.

- 9.9. Athena will provide access to a reporting database that replicates Customer’s production database in near time, via a limited number of Backend Connections. Backend Connections to one or more database schemas for reporting purposes will be view only and no access will be granted to manipulate (insert, update, delete) alter the schema or store any database records either permanently or in a temporary state. Access to a custom reporting schema with permissions to create custom reporting views may be provided at Athena’s discretion for a separate fee. Unless intended for integration with a Business Intelligence application, each Backend Connection must be assigned to a single named individual. Some database tables used for system purposes will be excluded, and server resource consumption may be limited through use of query timeouts, throttling, rate limits or other techniques to ensure sufficient performance. Each Backend Connection will have its own access credentials and will only be accessible through a single static IP address owned and provided by Customer. To minimize the potential for breach, Customer agrees to notify Athena immediately upon a backend connection no longer being required. Customer must verify their Backend Connections each year with Athena as they will otherwise remain active. The number of Backend Connections is determined by the number of Named Active Users of this service and is defined as follows:

Number of Named Active Users	Maximum Number of Backend Connections
up to 74	5
75 to 150	15
over 150	30

10. TECHNICAL SUPPORT

- 10.1. Athena will provide the technical support services to 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.
- 10.2. 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.
- 10.3. Athena may, at its sole discretion, provide technical support services where the conditions of Section 10.2 are not met. Any technical support services provided under this Section are performed as a courtesy to Customer and shall in no way create an implied or written waiver of the conditions of Section 10.2, or create any obligations relating to further support requests.
- 10.4. Customer is required to establish and maintain a First Line Support for the Software directly to Customer’s Named Active Users. First Line Support shall include but is not limited to:
- (a) a direct response to the Named Active Users with respect to inquiries concerning the performance, functionality or operation of the Software;
 - (b) a direct response to the Named Active 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 Customer is unable to diagnose or resolve the issue of the Software, Customer may contact Athena for technical support as directed by Athena.

10.5. Technical support is provided solely for the Software, as defined in Section **10.2**, and does not cover such matters relating to help material readily available to Customer, an end-to-end support solution for Customers' deployment of the Software and such. Additional services may be provided by Athena to cover such issues at Athena's sole discretion. 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 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.

11. SUPPORT AVAILABILITY AND RESPONSE TIME

11.1. Athena will provide technical support services to Customer as posted under the Resources section of the AthenaSoftware.net website (Technical Support Hours). Athena reserves the right to adjust technical support services hours from time to time as necessary; however, changes will not affect response time commitments as outlined in Section **11.2** below.

11.2. Athena will use commercially reasonable efforts to respond to each technical support request based upon the severity of the support request as described below. Athena cannot 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	<p>Customer's production use of the Software is stopped or so severely impacted that no Named Active 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 Named Active Users.</p> <p>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.</p>	1 hour

Severity	Meaning	Response Time
High	Customer experiences a severe loss of Software service. Important features are unavailable with no acceptable workaround, however, operations can continue in a restricted fashion.	1 business day
Normal	Customer experiences minor loss of Software 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
Low	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 Named Active User's immediate task at hand, however the classification system above is designed to ensure all support requests from Athena's customers 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.

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

12. CONTACTS

- 12.1. Customer will be assigned an Account Manager by Athena. This Account Manager will be the main contact for any inquiry other than any technical support related matters, such as requesting an Order Form.
- 12.2. Customer will designate a single Security Contact as defined in "Security Contact" of the Key Customer Contacts Form. The Security Contact will be the sole liaison between Customer and Athena for matters relating to the security and privacy of Customer's data. These may include, but are not limited to:
- (a) authorizing Athena to access Customer's server or data;
 - (b) authorizing security policies for any back-end configuration of the server;
 - (c) notification of a data breach or known unauthorized access to their data; and
 - (d) receiving, upon request or by contractual obligation, any data backup that may be delivered to Customer.
- 12.3. Customer will designate a single, suitably qualified, Information Technology Contact as defined in "Information Technology Contact" of the Key Customer Contacts Form. The Information Technology Contact will be the main liaison for, but not limited to, Software installation and Software upgrades.

- 12.4. Customer will designate a single, Accounts Payable Contact as defined in “Accounts Payable Contact“ of the Key Customer Contacts Form. The Accounts Payable Contact will be the main liaison for, but not limited to, invoicing, collections of fees and such.
- 12.5. Customer will designate a single Primary Contact as defined in “Customer Contacts” of the Key Customer Contacts Form. The Primary Contact will be the main liaison for, but not limited to, the following:
 - (a) scheduling training, installations and other deployment activities;
 - (b) receipt of any license keys;
 - (c) notices on Software releases;
 - (d) notices on support service expiration;
 - (e) notices on changes to terms and conditions of services; and
 - (f) notices on changes to system requirements.
- 12.6. Customer’s Support Contacts are the sole liaisons between Named Active Users 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. Customer is responsible for assigning and communicating to Athena any changes to the Support Contacts. Customer is permitted to change the Support Contacts from time to time.

12.7. The number of Support Contacts is based on the number of licensed Named Active Users as follows:

Named Active Users	Primary Support Contacts	Backup Support Contacts
up to 74	2	1
75 to 150	4	2
over 150	5	4

- 12.8. 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.
- 12.9. 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.
- 12.10. Except where Customer opts out of doing so in writing, Customer allows Athena to share Support Contact email addresses with a third party product review firm for the purpose of soliciting feedback about Customer’s purchase and product experience.

13. ADDITIONAL SERVICES

- 13.1. Athena will make Documentation available to Customer that describes the Software and how to properly use them. This Documentation may come in various media forms and will be updated as Upgrades are released.
- 13.2. Athena will provide access to online learning tutorials to Customer via a key that allows access for a number of users equal to the number of Named Active Users subscribed to by Customer.
- 13.3. Customer's Named Active 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 Named Active Users that can attend at no charge is equal to the number of Primary Support Contacts. Additional Named Active Users may attend for an additional fee.
- 13.4. Customer may subscribe to two (2) additional Software services, for the sole purposes of testing (herein "**Preview Sandbox**") and training (herein "**Training Sandbox**"). These additional services will permit the same number of Named Active Users as currently valid for the production environment. The Preview Sandbox will contain generic/fake data that is unrelated to data stored in the production database. The Preview Sandbox will be updated automatically upon release of a Software upgrade and automatic updates to Customer's production database will occur in relation to the Preview Sandbox as described in Section 2.3. The Training Sandbox will be populated with production data that has been altered to remove common identifying information (e.g. individual name, date of birth, address) and will have some functionality disabled. Updates to the Training Sandbox may occur automatically or upon request as per the preference of Customer as defined in the Order Form. For the Preview and Training Sandbox services, the terms of this Agreement also apply to the additional subscription services, however, Athena is relieved from the following obligations:
 - (a) any credits related to Downtime and Service Availability in Section 7.2;
 - (b) providing any data Backup under Section 9.8 for the Training Sandbox;
 - (c) providing any Backend Connection in Section 9.9;
 - (d) providing any Support Availability and Response Times in Section 11;
 - (e) providing any additional services under this Section 13;
 - (f) providing Customer Data of the Software Sandbox to Customer under Section 19.1; and
 - (g) any warranties, and all liabilities, except as provided for safeguarding Customer Data.

14. OWNERSHIP AND INTELLECTUAL PROPERTY

- 14.1. Athena owns all rights, titles and interests in and to the Software, Modules, the Documentation, and any Athena IP. Subject to the limited rights expressly granted to Customer in this Agreement, Athena reserves all rights, titles and interest in and to the Services and the Documentation. No rights are otherwise granted to Customer simply by Customer's utilization of any deliverable.
- 14.2. Customer hereby grants Athena:
 - (a) a non-exclusive and non-transferable right to handle Customer Data to the extent necessary to provide Customer the Athena IP pursuant to this Agreement, provided this right is sublicensable solely to the extent necessary to enable Athena Subcontractor to fulfill Athena's obligations under an applicable Order Form or Statement of Work; and

- (b) a royalty-free, worldwide, transferrable, sublicensable, irrevocable, perpetual license to use or incorporate into its Intellectual Property any suggestions, recommendations, requests for enhancements or other feedback (collectively the “**Feedback**”), provided Customer shall have no obligation to provide such Feedback.

14.3. Customer will not:

- (a) modify, translate or copy or create any derivative works based on Athena IP;
- (b) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms in Athena IP;
- (c) rent, lease, distribute, license, sublicense, sell, resell, assign, transfer, timeshare, offer in a service bureau, or otherwise make the Athena IP available to any third party, other than to Authorized Personnel as permitted herein;
- (d) publish or disclose to third parties any evaluation of it without Athena’s prior written consent;
- (e) create any link to or frame or mirror any content contained or accessible from Athena IP;
- (f) access Athena IP in order to build a commercially available product or service which competes with Athena;
- (g) copy any features, functions, integrations, interfaces or graphics which are part of Athena IP;
- (h) violate any Laws;
- (i) wilfully tamper with the security of the Software or Module(s) or tamper with other Athena customer accounts;
- (j) attempt to probe, scan or test the vulnerability of any Athena IP;
- (k) wilfully render any part of the Athena IP unusable;
- (l) use the Athena IP to store or transmit infringing, libellous, or otherwise unlawful or tortious material;
- (m) without prior written consent, allow any sensitive Customer Data which, in the normal course of events, would demand special handling and introduce a security burden that may not be agreed upon by Athena; and
- (n) 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 Athena IP or the media on which such IP is supplied.

14.4. As noted in Section 6.6, it is assumed Customer owns all Customer Data. However, Customer acknowledges that Athena may compile, use and disclose usage statistics in aggregate, de-identified form only in compliance with applicable privacy and security legislation. Under no circumstances will Athena share or disclose Customer Data in individual or identifiable form to any third party without the prior written consent of Customer, except as required by this Agreement, or as otherwise required by law. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right of use of all Customer Data.

15. INDEMNIFICATION

- 15.1. **Indemnity by Athena.** Athena shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by such Customer Indemnitee arising out of or relating to any Claim by a third party (other than an Affiliate of a Customer Indemnitee) to the extent that such Losses arise from any allegation in such Claim that Customer's use of Athena IP (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the Specifications) infringes the Intellectual Property Rights of a third party. The foregoing obligation does not apply to any Claim or Losses arising out of or relating to any:
- (a) use of Athena IP in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Documentation or otherwise in writing by Athena;
 - (b) modification of the Athena IP by any other than: (i) by or on behalf of Athena; or (ii) with Athena's written approval in accordance with Athena's written specification; or
 - (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Athena.
- 15.2. **Indemnity by Customer.** Customer shall indemnify, defend and hold harmless Athena and its subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "**Athena Indemnitee**") from and against any and all Losses incurred by such Athena Indemnitee in connection with any Claim by a third party (other than an Affiliate of a Athena Indemnitee) to the extent that such Losses arise out of or relate to any:
- (a) Customer Data, including any handling of Customer Data by or on behalf of Athena in accordance with this Agreement;
 - (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer, including Athena's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Athena;
 - (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
 - (d) negligence or willful misconduct by Customer or any third party on behalf of Customer in connection with this Agreement.
- 15.3. **Indemnification Procedure.** Each Party shall promptly notify the other Party in writing of any Claim for which such Party believes it is entitled to be indemnified pursuant to Section 15.1 (Indemnity by Athena) or Section 15.2 (Indemnity by Customer), as the case may be. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 15.3 (Indemnification Procedure) will not relieve the Indemnitor of its obligations under this Section 15.3 (Indemnification Procedure) except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. To the extent that any aspect of an alleged infringement is not related to the Service, 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.

- 15.4. **Mitigation.** If any of the Services are, or in Athena’s opinion likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer’s use of the Services is enjoined or threatened to be enjoined, Athena may, at its option and sole cost and expense:
- (a) obtain the right for Customer to continue to use the Services as contemplated by this Agreement;
 - (b) modify or replace the Services, in whole or in part, to seek to make the Services and Deliverables (as so modified or replaced) non-infringing, while providing reasonably equivalent features and functionality, in which case such modifications or replacements will constitute Services and Deliverables, as applicable, under this Agreement; or
 - (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Deliverables, and require Customer to immediately cease any use of the Services and Deliverables or any specified part or feature thereof. Customer will be entitled to a refund for the prorated portion of any Fees paid in advance relating to the Services and Deliverables or specified part of feature thereof.
- 15.5. **THIS SECTION SETS FORTH CUSTOMER’S SOLE REMEDIES AND ATHENA’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND SERVICE DELIVERABLES) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.**

16. CONFIDENTIALITY

- 16.1. A party, from time to time, may disclose Confidential information (herein “**Disclosing Party**”) to the other party (herein “**Receiving Party**”) for the purposes of the Receiving Party to meet its obligations under this Agreement or any Order Form or related Statement of Work (herein “**Purpose**”). Except as otherwise expressly required by this Agreement, neither Party is obligated to disclose Confidential Information; when disclosing Confidential Information, such disclosure is at the sole discretion of the Disclosing Party; and the Receiving Party otherwise agrees:
- (a) to only use the Confidential Information for the Purpose;
 - (b) not to use the Confidential Information for the Receiving Party’s sole benefit or advantage outside of the Purpose;
 - (c) not use or attempt to use the Confidential Information in any manner which may cause loss or damage, directly or indirectly, to the Disclosing Party; and
 - (d) not to copy, decompile, disassemble or reverse engineer any Confidential information.
- 16.2. The Receiving Party agrees to keep all of the Disclosing Party’s Confidential Information strictly confidential. Furthermore, each party acknowledges that any unauthorized use or disclosure, in whole or part, of Confidential Information by the Receiving Party may cause irreparable harm to the Disclosing Party and therefore the Disclosing Party is entitled to seek appropriate equitable relief including injunctive relief in addition to whatever remedies it has available at law and to be indemnified by the Receiving Party from any loss or harm. The Receiving Party may not disclose Confidential Information except where:
- (a) disclosure is required by a court order, court hearing, law or a regulatory body for which the Disclosing Party will provide written notification to the Receiving Party prior to such disclosure; or
 - (b) the Disclosing Party has given written permission of such disclosure.

- 16.3. The Receiving Party shall not be required to observe any duty for confidentiality where the Confidential Information:
- (a) is or becomes disclosed to the public of no fault of the Receiving Party;
 - (b) is rightfully received from a third party without similar restriction and without breach of this Agreement;
 - (c) the Receiving Party is able to demonstrate that the information was known to it on a non-confidential basis before such information was disclosed to such party by or on behalf of another party;
 - (d) was released pursuant to subsection **16.2(a)** in a manner that did not protect the confidential nature of the Confidential Information; or
 - (e) was independently developed by a party without the use of any of another party's Confidential Information.
- 16.4. Upon requests of the Disclosing Party, the Receiving Party shall, without delay, return all Confidential Information of the Disclosing Party, including any documents, or media containing the Confidential Information and any copies or extracts; or if requested by the Disclosing Party, the Receiving Party must destroy all Confidential Information and provide the Disclosing Party with written certificate of such destruction.

17. DISCLAIMER OF WARRANTY

- 17.1. 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 Commencement Date of this Agreement. Athena does not warrant the operation of the Software will be uninterrupted or error free.
- 17.2. Customer's only rights in association with a breach of the warranty provided in Section **17.1** above is for Athena to correct such breach after being provided with notice of such breach of warranty.
- 17.3. The Software is a tool for the use by qualified professionals and is not intended to provide a diagnosis or to replace qualified professional's judgment in assessing and treating patients. The Software is not meant to replace Customer's general protocols and other redundancies that are required when the Software is unavailable for any reason; the Software is not meant to be the sole source for the information and services provided by the Software.
- 17.4. 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 AND MODULES INCLUDING ANY PROFESSIONAL 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, IN WHICH CASE THE ABOVE LIMITATION MAY NOT APPLY TO THE CUSTOMER.
- 17.5. 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 AND MODULES (INCLUDING ANY PROFESSIONAL SERVICES PROVIDED PURSUANT TO THIS

AGREEMENT) 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.

18. LIMITATION OF LIABILITY

- 18.1. THIS SECTION APPLIES ONLY IN RELATION TO THE SOFTWARE AND MODULES PROVIDED PURSUANT TO THIS AGREEMENT. TO THE EXTENT THAT ANY SOFTWARE OR MODULES ARE SUBJECT TO A SECONDARY AGREEMENT, THEN ATHENA HAS NO LIABILITY IN RELATION TO SUCH SOFTWARE OR MODULES UNDER THIS AGREEMENT AND THE PARTIES AGREE THAT - EXCEPT TO THE EXTENT EXPRESSLY PERMITTED UNDER THIS AGREEMENT - ANY CLAIM SHALL ONLY BE MADE UNDER THE TERMS OF THE APPLICABLE SECONDARY AGREEMENTS. THE CUSTOMER AGREES THAT IT CANNOT SEEK AWARDS FOR THE SAME DAMAGES UNDER BOTH THIS AGREEMENT AND ANY SECONDARY AGREEMENT.
- 18.2. IN NO EVENT SHALL ATHENA AND ITS AGENTS BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT , SPECIAL , CONSEQUENTIAL, 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 ANY SOFTWARE, MODULES OR DOCUMENTATION EVEN IF ATHENA OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM.
- 18.3. EXCEPT IN RELATION TO THE INDEMNITY PROVIDED ABOVE IN SECTION 15.1 WHICH IS NOT SUBJECT TO THIS SUBSECTION 18.3, IN NO EVENT SHALL ATHENA'S AGGREGATE LIABILITY UNDER THE TERMS OF THIS AGREEMENT FOR THE SOFTWARE AND MODULES EXCEED THE ACTUAL FEES PAID BY THE CUSTOMER TO ATHENA FOR SUCH SOFTWARE AND MODULES DURING THE TWELVE (12) MONTH PERIOD DIRECTLY PRECEDING THE DATE ON WHICH SUCH LIABILITY AROSE.
- 18.4. 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.
- 18.5. 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.
- 18.6. 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.
- 18.7. IN NO EVENT SHALL ATHENA BE LIABLE, IN ANY WAY, FOR THE DELETION OF THE CUSTOMER DATA UNDER SECTION 19.2 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 SECTION 19.1 OF THIS AGREEMENT.
- 18.8. THE LIMITATIONS OF LIABILITY STATED IN SECTION 18.3 SHALL NOT APPLY TO ANY BREACH OF A CONFIDENTIALITY OBLIGATION DETAILED IN SECTION 16 OF THIS

AGREEMENT; AND ANY INDEMNITY FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY BY THE OTHER PARTY AS DETAILED IN SECTION 15.

19. CUSTOMER DATA

- 19.1. Upon written request by Customer and within fifteen (15) days from the end of the Service Term, or any Renewal Term(s), Customer may request a copy of Customer Data. Upon receipt of such request, Athena shall provide instructions to Customer on how to receive Customer Data. It is the sole and absolute responsibility of Customer upon receipt of Customer Data to verify that the data is not corrupt, is free of defects and is accessible. Customer is required to notify Athena of any defects within two (2) days of Customer's receipt of Customer Data. Athena is under no obligation to notify Customer concerning the return of Customer Data. At any time after fifteen (15) days have passed from the end of the Service Term or any Renewal Term(s), 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 or any Renewal Term(s).
- 19.2. **AT NO POINT WILL ATHENA RETAIN THE CUSTOMER DATA BEYOND 15 DAYS FROM THE END OF THE SERVICE TERM OR RENEWAL TERM(S). ATHENA WILL HAVE NO OBLIGATION TO MAINTAIN OR PROVIDE CUSTOMER DATA, AND WILL THEREAFTER DELETE OR DESTROY ALL COPIES OF CUSTOMER DATA IN SERVERS OR OTHERWISE IN ATHENA'S POSSESSION OR CONTROL, UNLESS PROHIBITED BY APPLICABLE LAW.**
- 19.3. Customer Data returned in Section 19.1 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 Customer or generated by the Software and certain log files. These files are in its natural form, native to the Software itself. Customer acknowledges that use of the PostgreSQL database file returned will require Customer to install and use the PostgreSQL application. Further, 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 Customer alternate views, simplified data structures, amalgamated data or otherwise alterations to the data itself.

20. PAYMENT OF FEES, INVOICING AND SALES TAXES

- 20.1. The terms of this Section 20 shall apply despite the provisions of or the applicability of any Secondary Agreement.
- 20.2. In the event that payment of the Fees is made by credit card on a scheduled basis then Athena is permitted to process payments using the card on file according to the payment terms defined in the Order Forms. It is Customer's responsibility to notify Athena if an alternate credit card should be used for payment.
- 20.3. **Invoice and Payment.** All Fees due and payable by Customer in accordance with this Agreement or any Secondary Agreement, unless set out otherwise in an Order Form or in case of a good faith dispute with respect to Fees, shall be paid by Customer within 30 days of the invoice date. Athena shall send all Customer invoices electronically (by email or otherwise) and Customer shall be deemed to have received the invoice the next business day following transmission of email by Athena unless Athena receives a bounce back or automated response alerting of unsuccessful delivery. All fees with respect to the Customer Account, are contingent on access rights acquired rather than actual usage of the Customer Account. Customer shall provide Athena with complete and accurate billing contact information including a valid email address. Customer will make payments via electronic bank transfer, credit card or cheque. Please direct all remittance advice and invoice inquiries to finance@athenasoftware.net or

Athena Software

33 Dupont Street East
Main Floor
Waterloo, Ontario N2J 2G8
Canada

- 20.4. **Overdue Payments.** Any amounts payable by Customers (except fees subject to reasonable and good faith dispute) not received from the Customer by the due date may accrue, at Athena's discretion, late interest charges at the lower of (i) 25% per year or (ii) the highest rate permitted by law. Customer shall also pay all sums expended (including reasonable legal fees) in collecting overdue payments.
- 20.5. **Suspension of Service or Change in Pricing.** If Customer's account is more than sixty (60) days overdue (except with respect to charges then under good faith dispute), in addition to any other rights and remedies, Athena reserves the right to (a) subject the Customer Account to a Suspended Account status, until such outstanding amounts are paid in full by Customer, and (b) rescind any pricing designated in the relevant Order Form as promotional or one-time offer.
- 20.6. **Taxes.** All fees set out in this Agreement and any Order Forms do not include any transaction taxes, which may include local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including but not limited to, value-added taxes ("**VAT**"), excise, use, goods and services taxes ("**GST/HST**"), consumption taxes or similar taxes (collectively defined as "**Transaction Taxes**"). If Athena has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, Athena will invoice to, and Customer will pay, such Taxes unless the Customer provides Athena with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer agrees to pay all fees invoiced pursuant to this Agreement in full and without reduction for Transaction Taxes and/or foreign withholding taxes (collectively defined as "**Taxes**"). Customer is responsible for paying all Taxes associated with Fees for Services under this Agreement.
- 20.7. **Expenses.** Athena will invoice to Customer, and Customer will pay within thirty (30) days of receipt of such invoice, all pre-approved costs and expenses incurred by Athena in providing any Service to Customer pursuant to this Agreement. Customer is responsible for all fixed and variable expenses related to hardware on Customer premises as well as telecommunication connectivity and usage expenses, including but not limited to internet connectivity, phones, computers and other devices required to utilize the Services.
- 20.8. **Changes in Fees.** Athena may, at its sole discretion and at any time, change fees, and such changes will be effective (a) upon the next following renewal term, provided Athena provides a minimum of ninety (90) days written notice to Customer of such changes prior to the commencement of such renewal term; or (b) immediately, in the event of a change to Athena's cost of delivery of services as a result of (i) a change in any applicable law, regulation, or similar governmental action, or (ii) a ruling by a court of competent jurisdiction.
- 20.9. **No Set-off Permitted.** Neither Party will recoup any liability owed to it by the other Party by way of a set-off, including by way of withholding of payment due to the other Party for liabilities owed by the other Party.

21. TERM AND TERMINATION

- 21.1. This Agreement shall commence on the Effective Date and continue the later of (i) two (2) years, or (ii) until the term stated in all Order Forms has either expired or been terminated, unless otherwise extended pursuant to mutual written agreement by the Parties (the "**Term**"). The Service Term in an Order Form shall renew in an Order Form automatically for two (2) year terms, unless a longer term

is specified in the Order Form (each renewal a “**Renewal Term**”) unless Customer provides sixty (60) days notice prior to the end of the then current Service Term.

- 21.2. Software subscription Fees shall be the same for the Renewal Term as during the prior Service Term unless Athena provides the Customer with ninety (90) days advance written notice prior to the end of the then current term, in which case the pricing increase shall be effective upon commencement of Renewal Term. Any such pricing increase shall not exceed seven percent (7%) of the Fees for the relevant Software in the prior Service Term or Renewal Term, except where:
- (a) a third party supplier directly or indirectly increases the fee they charge Athena, in which case Athena may increase Customer’s Fees by the same percentage amount; or
 - (b) fees in the prior Service Term were designated in the relevant Order Form as promotional or one-time, in which case Athena may increase the Customer’s Fees to a level equivalent to Athena’s list price at the start of the prior Service Term, plus up to seven percent (7%) or applicable increase from Section **21.2(a)** above.
- 21.3. During the Service Term or related Renewal Term(s), the services provided under this Agreement can only be terminated pursuant to the following terms:
- (a) Athena has the right to terminate the Software provided hereunder upon the occurrence of any of the following events, which shall be deemed a breach of the terms of this Agreement:
 - (i) following suspension of Software for non-payment under Section **20.5**, Customer’s payment of any invoiced undisputed amount remains overdue for a further ten (10) days, Athena may terminate the Agreement or the applicable Order Form for breach on written notice; or
 - (ii) a violation by Customer of any of the restrictions or conditions listed in Sections **2, 5, 6, 14** and **16** 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 Software provided under this Agreement by providing written notice to Customer of such termination. Upon receipt of such notice, Customer shall immediately cease using the Software, and shall return to Athena, erase or otherwise disable the Documentation and any and all copies thereof within ten (10) days of receipt of such notice from Athena.
 - (c) Customer shall have the right to terminate the Software 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.
- 21.4. The provisions of Sections titled “Ownership and Intellectual Property”, “Confidentiality”, “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.
- 21.5. Athena is permitted to block access from Named Active Users to the Software upon the effective date of termination of this Agreement or the expiration of this Agreement.
- 21.6. Except as otherwise expressly stated in this Agreement, Athena shall under no circumstances be under any obligation to refund to Customer any amount paid by Customer by way of Fees upon termination of this Agreement for a breach of the terms of this Agreement.

22. FORCE MAJEURE

- 22.1. **No Breach or Default.** In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, actions, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation facilities (each of the foregoing, a "**Force Majeure Event**").
- 22.2. **Affected Party Obligations.** A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.
- 22.3. **Non-affected Party.** During the Force Majeure Event, the non-affected Party may similarly suspend its performance obligations until such time as the affected Party resumes performance.
- 22.4. **Right to Terminate.** The non-affected Party may terminate this Agreement if such failure or delay continues for a period of ninety 90 days or more. Unless this Agreement is terminated in accordance with this Section 22.4, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

23. MISCELLANEOUS

- 23.1. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 23.2. **Entire Agreement.** This Agreement, together with the Documentation and Order Form and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 23.3. **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.
- 23.4. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- 23.5. **Insurance.** Athena will maintain throughout the duration of this Agreement (i) professional errors and omissions insurance in an amount no less than \$5,000,000 CDN per claim and \$5,000,000 CDN aggregate; (ii) general liability insurance in an amount no less than \$10,000,000 CDN per claim and

\$10,000,000 CDN aggregate; and (iii) worker's compensation insurance in accordance with applicable legislation.

- 23.6. **Governing Law.** This Agreement or the applicable Secondary Agreement or Statement of Work and any Software, Modules or Professional Services provided under an Order Form are governed by the laws of the Province of Ontario, Canada and each of the Parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario without regard to conflicts of laws principles.
- 23.7. **Severability.** If any provision of this Agreement or the applicable Secondary 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.
- 23.8. **Language.** The controlling language of this Agreement is English, and if Customer has received any translation into another language, it has been provided for Customer's convenience only.
- 23.9. **Inurement and Third Party Beneficiaries.** This Agreement is for the sole benefit of, and shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 23.10. **Assignment.** Customer is not permitted to assign, sublet or transfer this Agreement or any rights granted herein except with the prior written consent of Athena. Customer may only assign the Agreement in the event that Customer or substantially all of the assets of Customer is/are sold to a third party where the acquiring party affirms in writing to Athena 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 is void and shall give Athena the right to terminate this Agreement at its discretion.
- 23.11. **Order of Priority.** If there is inconsistency between any of the documents forming part of this Agreement or a Secondary Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
- (a) Penelope Software As A Service (SaaS) Agreement or the Secondary Agreement as applicable;
 - (b) any attachments to the schedules;
 - (c) documents incorporated by reference in a Governing Agreement; and
 - (d) documents incorporated by reference in a schedule.
- 23.12. **Public Announcements.** Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other Party's Trade-marks, trade dress, brand names, logos, corporate names and domain names or other similar designations of source, sponsorship, association or origin, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, *provided, however,* that Athena may, without Customer's further consent, include Customer's name and/or **Customer's logo and related** indicia on **athenasoftware.net website** and in its lists of Athena's current or former customers of Athena in promotional and marketing materials and Customer may, without Athena's consent, include Athena's name and/or other indicia in its lists of Customer's current or former suppliers in internal material. **The Customer shall provide a high resolution logo and Athena agrees to abide by Customer branding guidelines as applicable.**

23.13. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.