

# MASTER PRODUCT AND SERVICE AGREEMENT

**Agreement Number:** [ID  
Agreement made this [Data]

BETWEEN:

**1561599 Ontario Inc. (operating as “Athena Software”)**

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

herein called “**Athena**”

AND

**[Agency Name]**

[Agency Address ]

[Agency Address ]

[Agency Address ]

herein called “**CUSTOMER**”

**WHEREAS** Athena is a provider of case management software and related services in the health and social services sector, including the Penelope Case Management software.

**WHEREAS** the Customer wishes to purchase certain products and services from Athena under the terms and conditions of this Agreement.

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## 1. DEFINITIONS

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

- (a) “**Agreement**” means this Master Product and Service Agreement and as amended from time to time through accepted Order Forms.
- (b) “**Confidential Information**” means information that by its nature is generally known to be confidential by the Parties or is designated by the disclosing party as confidential, and Confidential Information includes (i) any information comprised in or relating to any Intellectual Property (ii) financial and legal positions of a Party, (iii) policies, practises and procedures of a Party, (iv) internal management, structure and personnel, (v) product designs, schemas and know how and (iv) business strategies and trade secrets.
- (c) “**Documentation**” means the electronic files and printed materials created by Athena that describe the Software and how to properly use the Software.

- (d) **"Fees"** means the amount payable to Athena for any Products and Service whether being from the Initial Order Form or an Order Form.
- (e) **"Intellectual Property Rights"** shall be defined as any patent, design right, copyright, trademark, service mark (or 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.
- (f) **"Order Form"** means an ordering document specifying the Products and Services to be provided hereunder that is entered into between the Customer and Athena, including any addenda and supplements thereto.
- (g) **"Products and Services"** means offerings Athena makes available to the Customer for purchase and specifically defined in Schedule "B" of this Agreement or in an Order Form.
- (h) **"Professional Service"** means the work performed by Athena under the Initial Order Order Form or an Order Form relating to the specific ordered services as categorized under the heading of 'Professional Services' in Schedule "B" of this Agreement.
- (i) **"Software"** means the software in object code format that is provided pursuant to this Agreement, the components of which are specifically Penelope Case Management Software and any of the Penelope Modules.

1.2. References to:

- (a) Party or Parties refers to one or both Customer or Athena.
- (b) Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

## 2. PURCHASE OF PRODUCT AND SERVICES

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- 2.1. Athena agrees to make available Products and Services to the Customer for purchase. A Product or Service may be accompanied with its own terms and conditions of sale (herein referred to as **"Secondary Agreements"**), which may be an entirely separate agreement to be executed by the Parties. Any purchase of the Products or Services shall be governed solely by the terms set out in the applicable Secondary Agreement to the extent that the Order Form and Secondary Agreements state that the Secondary Agreements apply, and where no Secondary Agreement accompanies the Order Form and otherwise to the extent that no Secondary Agreement applies to the applicable Products and Services, then such Products and Services will be governed by this Agreement. All Secondary Agreements do not form part of this Agreement except to the extent that the applicable Secondary Agreement states otherwise.
- 2.2. Athena reserves the right, at any time, to alter the Products and Services listed in Scheduled "B" including the price - subject to the terms of any applicable Secondary Agreement(s). In the event that Athena removes a significant component of the Products and Services without any similar or like replacement, then Athena shall provide the Customer with no less than ninety (90) days notice before such removal.
- 2.3. The Customer agrees to purchase and Athena will provide the Customer with the Products and Services as specified in Schedule "A" (herein the **"Initial Order Form"**), subject to Customer's payment of the Fees and in accordance with this Agreement and the applicable Order Form.
- 2.4. The Customer may, at its own discretion and at any time, request an Order Form to place orders for other Products and Services. This Order Form will clearly state:

- (a) this Agreement number;
  - (b) the products and/or services being requested;
  - (c) any applicable Secondary Agreements;
  - (d) the Fees and payment terms of the Order Form; and
  - (e) the currency of the Order Form.
- 2.5. Any Order Form shall be signed by an individual authorized by the Customer to make such purchases and be submitted to Athena in a single fax, scanned or electronic copy including the Order Form and any applicable Secondary Agreements. 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, including the Initial Order Form, the Customer agrees to be bound by the Secondary Agreement of the specific product or service being order.
- 2.6. Athena shall provide the Customer, subject to the payment of the Fees in accordance with the Order Form, with the Products and Services described in the Order Form and applicable Secondary Agreement. Athena may, by way of written notice, reject an Order Form submitted by the Customer in the event the Order Form does not conform to paragraphs 2.3 and 2.4 above, submitted with a purchase order from the Customer that introduces new or different terms and conditions, or where the Order Form and Secondary Agreement have been altered in any way.
- 2.7. Certain services that form part of the Products and Services require Fees to be paid continuously, such as any SaaS service, support plan, term license, and hosting. In the event that these terms lapse for any reason a reinstatement fee may be assessed when placing subsequent Order Forms for similar Products or Services. The reinstatement fee calculation is as follows: 150% of the last annual term purchased, prorated from the date of the lapse to the date of reinstatement.
- 2.8. Any purchase order that accompanies this Agreement or any Order Form that introduces new or altered terms shall be excluded, not binding and is not deemed a counter offer.
- 2.9. The Customer agrees that the Customer's purchase, whether on the Initial Order Form or subsequent Order Forms, of any Product or Service is not contingent on the delivery of any future functionality or features, dependent on any oral or written comments made by Athena regarding future functionality or features, assuming the delivery of any future Order Form to be placed or otherwise any deliverable of any kind by Athena.

### **3. PERMITTED USE OF PRODUCTS AND SERVICES**

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- 3.1. Use of any Products and Services is for the 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.
- 3.2. The Customer shall not assign, sublet or transfer any rights granted herein, except as otherwise provided for in this Agreement.
- 3.3. The Customer shall not rent, lease, transfer, assign, distribute, sell or otherwise provide access to the Software or any other Products and Services 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.

#### **4. PAYMENT OF FEES, INVOICING AND SALES TAXES**

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- 4.1. The Customer shall pay the Fees when due in accordance with this Agreement or as stated in any Order Form as applicable. The Fees shall be made out to Athena as defined in "Fees Payable To" of Schedule "A". The terms of this section 4 shall apply despite the provisions of or the applicability of any Secondary Agreement.
- 4.2. For any undisputed payment not received when due, Athena may, at its absolute and sole discretion:
- (a) charge interest at the lower of (i) 15% per year or (ii) the highest rate permitted by law. Additionally, Athena is entitled to recover any sums expended in connection with the collection of undisputed sums not paid when due, including reasonable attorneys' fees;
  - (b) deny any Order Form submitted to Athena; and
  - (c) suspend any service Athena is providing the Customer, which may include access to the Software and other such Products and Services - the Parties agree that this subparagraph shall apply regardless of the existence of any applicable Secondary Agreement and that the Parties agree that any applicable Secondary Agreement is amended to permit this right.
- 4.3. The Fees may not include all applicable sales or value added taxes. To the extent that such taxes are required by law to be charged by Athena against the Customer, the Customer shall pay and be responsible for the payment of such taxes and such taxes shall be deemed to be a Fee for the purposes of this Section and Schedule "A". The Customer is solely responsible for any applicable sales or value added taxes that are not included in the Fees.
- 4.4. 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 initial or subsequent Order Forms. It is the Customer's responsibility to notify Athena if an alternate credit card should be used for payment.

#### **5. OTHER TERMS**

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- 5.1. In the event Athena delivers any Professional Services under this Agreement, the following shall apply:
- (a) Athena will provide the Professional Services to the 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) the 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, the Customer's exclusive remedy and entire liability will be to the re-performance of the applicable Professional Services. If Athena is unable to re-perform the Professional Services as warranted, the Customer will be entitled to recover any Fees paid to Athena for those Professional Services. The Customer must make any claim under the foregoing

warranty to Athena in writing within ninety (90) days of the performance of such Professional Services in order to receive warranty remedies.

5.2. In the event that the Customer requires Athena to perform any Professional Services at the Customer's location, the following will apply:

- (a) the Customer will reimburse Athena for any reasonable and out-of-pocket expenses incurred in connection with travel for which Athena can provide a quote;
- (b) if any costs for such travel are included in the Order Form, Athena will not exceed that amount quoted without the Customer's consent; and
- (c) if the Customer cancels or reschedules the requested services and Athena cannot be refunded amounts for the travel arrangements, the Customer shall pay those unrecoverable costs incurred by Athena.

5.3. In the event this Agreement or any Order Form includes a Statement of Work the following applies:

- (a) the 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 (ii) the specific task(s) to be performed, (iii) a schedule of deliverables (herein "**Deliverables**"), any acceptance criteria or test plans (mutually agreeable by both parties for such Deliverables), (iv) an estimated and/or budget of fees (herein "**Estimate Fees**") and (v) optionally outline any milestones;
- (c) Athena will provide any Deliverables in accordance with the Statement of Work, where it will be the Customer's responsibility for reviewing and testing all Deliverables including any acceptance tests;
- (d) the Customer acknowledges and agrees that the Estimated Fees are solely a good faith estimate provided for the Customer's own budget/resource planning and is not a guarantee the work performed under the Statement of Work will be completed for that amount as the actual amount may be higher or lower (Athena will periodically update the Customer on the status of such estimate);
- (e) where any acceptance test(s) is defined in the Statement of Work, the 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 the 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, the Customer may either, at the 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);
- (f) 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**”);

- (g) any Change Order shall be signed by both parties before any work is performed for the revised requirements;
- (h) Athena is under no obligation to accept any Change Order that alters the original scope of the Statement of Work;
- (i) any delays caused by the Customer may result in changes to the scheduled Deliverables;
- (j) acceptance of any Deliverables will not affect the Customer’s rights or remedies for any “Warranty”; and
- (k) In addition to the limitation of liabilities set out in section 10, in no event will Athena’s liability or the 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.

## 6. CONTACTS

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- 6.1. The 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.
- 6.2. The Customer will designate a single Security Contact as defined in “Security Contact” of Schedule “C”. The Security Contact will be the sole liaison between the Customer and Athena for matters relating to the security and privacy of the Customer’s data. These may include, but are not limited to:
  - (a) authorizing Athena to access the 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 the Customer.
- 6.3. The Customer will designate a single Primary Contact as defined in “Customer Contacts” of Schedule “C”. 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.
- 6.4. The Customer will designate a single, suitably qualified, Information Technology Contact as defined in “Information Technology Contact” of Schedule “C”. The Information Technology Contact will be the main liaison for, but not limited to, Software installation and Software upgrades.

- 6.5. The Customer will designate a single, Financial Contact as defined in “Financial Contact“ of Schedule “C”. The Financial Technology Contact will be the main liaison for, but not limited to, invoicing, collections of fees and such.

## 7. OWNERSHIP AND INTELLECTUAL PROPERTY

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- 7.1. Athena retains full and complete ownership of all Intellectual Property rights, copyrights, design rights and know-how for any Products or Services delivered under the initial or subsequent Order Forms or related Statements of Work.
- 7.2. The Customer does not grant Athena any rights in or to the Customer’s Intellectual Property except such license as may be required for Athena to perform its obligations under this Agreement, including in the provision of any Professional Services.
- 7.3. Any recommendations, requests, suggestions, or ideas of any kind that are made by the Customer for any improvements, additional functionality, or general enhancements to any Products and Services (collectively the “**Feedback**”) that Athena adopts in whole or part, shall be the sole property of Athena; the Customer shall have no claim in any way to such Feedback. To the extent that applicable law does not permit for Athena to be the owner of such Feedback, then the Customer grants to Athena a non-exclusive, perpetual, non-terminable, world-wide, fully paid up license in such Feedback to use, create derivate works based on, resell, license, commodify, and commercialize the Feedback and the related Products and Services.

## 8. CONFIDENTIALITY

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- 8.1. 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.
- 8.2. 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.

8.3. 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 what 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 8.2 (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

8.4. 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.

## **9. DISCLAIMER OF WARRANTY**

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9.1. 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 PRODUCTS AND 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.

9.2. 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 PRODUCTS AND 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.

## **10. LIMITATION OF LIABILITY**

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10.1. TO THE EXTENT THAT ANY PRODUCTS AND SERVICES ARE SUBJECT TO A SECONDARY AGREEMENT, THEN ATHENA HAS NO LIABILITY IN RELATION TO SUCH PRODUCTS AND SERVICES 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.

- 10.2. IN NO EVENT SHALL ATHENA'S AGGREGATE LIABILITY UNDER THE TERMS OF THIS AGREEMENT AND UNDER ITS SECONDARY AGREEMENTS FOR THE PRODUCTS AND SERVICES EXCEED THE ACTUAL FEES PAID BY THE CUSTOMER TO ATHENA FOR THOSE PRODUCTS AND SERVICES AS DETAILED IN THE APPLICABLE ORDER FORM.
- 10.3. ATHENA AND ITS AGENTS SHALL NOT 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 LOSS OF BUSINESS OPPORTUNITY EVEN IF ATHENA OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OR SUCH DAMAGES OR CLAIM.
- 10.4. 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, OR TORT. 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.
- 10.5. THE LIMITATIONS OF LIABILITY STATED IN PARAGRAPH 10.2 SHALL NOT APPLY TO ANY BREACH OF A CONFIDENTIALITY OBLIGATION DETAILED IN SECTION 8 OF THIS AGREEMENT; AND ANY INDEMNITY FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY BY THE OTHER PARTY AS DETAILED IN SECTION 7).

## 11. TERM AND TERMINATION

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- 11.1. The term of this Agreement shall commence on the execution of this Agreement and shall end 6 (six) months after the latest completion or expiry of any Products and Services provided to the Customer by Athena (herein "**Term**"). For clarity, the Customer may continuously extend the Term of this Agreement by placing subsequent Order Forms for any Product or Service.
- 11.2. Notwithstanding any provision to the contrary herein, the parties may terminate this Agreement at any time by mutual written agreement.
- 11.3. Either party shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the other party who is in breach of any material obligation under this Agreement and where the other party fails to remedy such breach within such notice period. If the other party does remedy the breach within thirty (30) days of the other party's receipt of the notice, then the notice of termination shall be deemed to be of no force or effect.
- 11.4. 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.
- 11.5. The Sections titled "Ownership and Intellectual Property", "Confidentiality", "Disclaimer of Warranty" and "Limitations of Liability" shall survive any termination or expiry of the Term of this Agreement.

## 12. MISCELLANEOUS

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- 12.1. **ASSIGNMENT:** It is the intention of the parties that the Customer is not permitted to assign this Agreement or any rights acquired from any Order Form except with the prior written consent of

Athena. The Customer may only assign the Agreement in the event that the Customer or substantially all of the assets of the Customer is/are sold to a third party where the acquiring party affirms prior to the assignment that it will be bound by the terms of this Agreement. Any assignment for which Athena does not give its prior written consent gives Athena the right to terminate this Agreement immediately.

- 12.2. **INSURANCE:** Athena will maintain throughout the duration of this Agreement (i) professional errors and omissions insurance in an amount no less than \$2,000,000 CDN per claim and \$2,000,000 CDN aggregate; (ii) general liability insurance in an amount no less than \$5,000,000 CDN per claim and \$5,000,000 CDN aggregate and (iii) worker's compensation insurance in accordance with applicable legislation.
- 12.3. **ACKNOWLEDGEMENT:** The Customer hereby acknowledges having read this Agreement or the applicable Secondary Agreement and understood it, and hereby agrees to be bound by its terms and conditions. The Customer also agrees that this Agreement or the applicable Secondary Agreement is the complete and exclusive agreement between the Customer and Athena, and supersedes all prior agreements, representations and any other communications, oral or written, between the Customer and Athena relating to the subject matter of the Products and Services provided under the Initial Order Form or subsequent Order Forms. This Agreement or the applicable Secondary Agreement may only be amended by written agreement of both parties or as set out in the terms of this Agreement. 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 the applicable Secondary Agreement.
- 12.4. **GOVERNING LAW:** This Agreement or the applicable Secondary Agreement and any Product and Service provided under an Order Form is 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.
- 12.5. **OTHER:** 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. The controlling language of this Agreement is English, and if the Customer has received any translation into another language, it has been provided for the Customer's convenience only. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
- 12.6. **NOTICE:** This Agreement may be executed and delivered by facsimile or other electronic means of transmission (including in PDF format via electronic mail). Any notice provided under this Agreement must be in writing. Such notice shall be delivered either via courier, registered mail, facsimile or via electronic mail in PDF format. Where notice is delivered via facsimile or electronic mail, the sender of the notice must receive confirmation of the receipt of the notice in order for the notice to be effective. The notice shall be effective upon delivery of the notice and where confirmation of receipt is necessary for the notice to be effective, the notice shall be effective as of the date that the sender receives confirmation of the notice.

**COUNTERPARTS**

**Customer**

initial

I have received the applicable Secondary Agreements for all the products and services outlined in Schedule A.

initial

I hereby authorize the person designated as the "Security Contact" in Schedule C.

The Customer is:

initial

not a covered entity under HIPAA and the terms and conditions of Schedule D "Business Associate Addendum" shall NOT apply.

**OR**

initial

a covered entity under HIPAA and the terms and conditions of Schedule D "Business Associate Addendum" shall apply.

**OR**

initial

a covered entity under HIPAA and the Customer and Athena have executed a separate Business Associate Agreement.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATHENA SOFTWARE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE "A"**  
**INITIAL ORDER FORM**

**A. INITIAL ORDER FORM:**

Currency of fees are: [Currency]

Order Products and Services	Quantity	Unit Price	Fees
		Subtotal	\$ 0.00
		<b>Total</b>	<b>\$ 0.00</b>

**B. PAYMENT TERMS:**

Payment for Total Fees are due, in full, upon commencement of this agreement.

**C. FEES PAYABLE TO:**

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

## SCHEDULE “B” PRODUCTS AND SERVICES

The terms and conditions of any product or service listed herein will accompany the Order Form.

Penelope Products and Services	Unit
Penelope Case Management; Perpetual License	per Concurrent User
Penelope Case Management; One year Term License	per Concurrent User
Penelope Standard Support; One Year	per Concurrent User
Penelope Premium Support; One Year	per Concurrent User
Penelope SaaS and Hosting Services	Unit
Penelope Case Management SaaS; One Year	per Concurrent User
Penelope Case Management SaaS; One Year with Premium Support	per Concurrent User
Penelope Case Management SaaS; Monthly Subscription	per Concurrent User
Additional Storage; One year	per 10 GB
Penelope Case Management Hosting; One year	per Concurrent User
Penelope Modules	Unit
ORS Measures for Penelope; One year	per Concurrent User
FSP Module; One year	per Concurrent User
Professional Services	Unit
Deployment Consulting	per hour
Training	per hour
Penelope Document Building	as quoted
Penelope Custom Documentation	as quoted
Custom SQL work	per hour
Report Writing	as quoted
Business Analysis	as quoted
Penelope IT Consulting	per hour
Penelope Update Service	per year
Penelope Installation Service	per install
Backup Configuration	per hour
Data Conversion; to Penelope	as quoted
Other Services	Unit
Penelope Escrow Service	per year
Additional Community User Accounts	per account
Additional Webinar attendance	per registration

## SCHEDULE "C" CUSTOMER CONTACTS

The Customer designates the following individuals as Customer Contacts. The Customer may change these contacts from time to time by completing the contact change forms that are available upon request.

**A. SECURITY CONTACT:**

Name	
Title	
Phone	
Email	

**B. PRIMARY CONTACT:**

Name	
Title	
Phone	
Email	

**C. INFORMATION TECHNOLOGY CONTACT:**

Name	
Title	
Phone	
Email	

**D. FINANCIAL CONTACT:**

Name	
Title	
Phone	
Email	

**SCHEDULE “D”  
BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (this “Addendum”), is entered into as of the date of this agreement.

**1561599 Ontario inc. (operating as “Athena Software”)**  
33 Dupont Street East  
Main Floor  
Waterloo Ontario N2J 2G8  
Canada

herein called “**Business Associate**”

AND

**[Agency Name]**  
[Agency Address ]  
[Agency Address ]  
[Agency Address ]

herein called “**Covered Entity**”

1. **Background and Purpose.** In providing services under the Agreement (the "Services"), Business Associate may be provided with, have access to, or create Protected Health Information that is subject to the federal regulations issued pursuant to the Health Insurance Portability and Accountability Act and codified at 45 C.F.R. Parts 160 and 164 (“HIPAA Regulations”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) set forth in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (collectively, "HIPAA"). This Addendum enables the Parties to comply with the Privacy Rule (defined below), the Security Standards (defined below), and the requirements surrounding the Breach of Unsecured Protected Health Information as set forth in 45 C.F.R. Part 164, Subpart C. This Addendum will govern only with respect to Business Associate’s receipt, use, and creation of PHI on behalf of the Covered Entity pursuant to the Agreement.
2. **Definitions.** Unless otherwise defined in this Addendum, all capitalized terms have the same meanings set forth in the HIPAA Regulations, provided, however, that “PHI” and “ePHI” mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. §160.103, and is limited to the information Business Associate received from or created or received on behalf of Covered Entity as Covered Entity’s Business Associate. The “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended. “Security Standards” mean the Standards for Security of ePHI at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as amended. “Successful Security Incident” means a Security Incident that has resulted in the inappropriate use or disclosure of ePHI.
3. **Permitted Uses and Disclosures of PHI.** Except as otherwise specified in this Addendum, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Agreement or as Required by Law. Unless otherwise limited by this Addendum, Business Associate may:

- (a) use PHI in its possession for its proper management and administration and to carry out the legal responsibilities of Business Associate;
- (b) disclose PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the third party only uses or further discloses the PHI for the purpose for which it was received or as required by law, Business Associate obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule, and the third party agrees to notify Business Associate of any instance of which the third party recipient becomes aware that the confidentiality of such PHI has been breached;
- (c) provide Data Aggregation services relating to the health care operations of the Covered Entity; and
- (d) de-identify any and all PHI obtained by Business Associate under the Agreement and use such de-identified data in accordance with the de-identification requirements of the Privacy Rule.

**4. Obligations of Covered Entity.** Covered Entity will:

- 4.1 not disclose to Business Associate more PHI than the Minimum Necessary required to enable Business Associate to carry out the services for which it is contracted to provide Covered Entity, and only when such disclosure is required and will limit Business Associate's access to Covered Entity's ePHI to only such PHI as is needed to carry out Business Associate's activities required to support the Agreement and this Addendum. The term Minimum Necessary is construed in accordance with the requirements in Section 13405 (b) of the HITECH Act, or as otherwise specified in the HIPAA Regulations.
- 4.2 have in place appropriate privacy and security safeguards to prevent the unauthorized use and disclosure of PHI and will use appropriate administrative, technical, and physical safeguards consistent with 45 C.F.R. §§ 164.308, 164.310 and 164.312 to protect the confidentiality, integrity, and availability of ePHI it receives from or transmits to Business Associate; will adopt, maintain, and update written policies and procedures consistent with the requirements of 45 C.F.R. § 164.316 with respect to such safeguards; and will impose appropriate sanctions against applicable employees, as appropriate, in the event such employee uses or discloses PHI in violation of the provisions of this Addendum.
- 4.3 notify Business Associate in writing of any:
  - (a) limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
  - (b) restrictions to the use or disclosure of PHI to which Covered Entity is subject or to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI; and
  - (c) changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.4 obtain any authorization or consents as may be required by law for any of the uses or disclosures of PHI pursuant to the Services.
- 4.5 not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**5. Obligations of Business Associate.** Business Associate will:

- 5.1 not use or disclose PHI other than as permitted or required by the Agreement, this Addendum or as Required by Law.
- 5.2 use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum. Without limiting the foregoing, Business Associate shall implement administrative, physical, and technical safeguards consistent with 45 C.F.R. §§ 164.308, 164.310 and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it receives, creates, transmits, or maintains on behalf of Covered Entity, and adopt, maintain, and update written policies and proceedings consistent with the requirements of 45 C.F.R. §164.316 with respect to such safeguards.
- 5.3 ensure that any agents and subcontractors to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity executes a written agreement with Business Associate that contains the same or substantially similar restrictions and conditions set forth in the business associate provisions of the HIPAA Regulations that apply through this Addendum to Business Associate with respect to such information.
- 5.4 if requested by Covered Entity in writing, and if the PHI in Business Associate's possession constitutes a Designated Record Set, and if Business Associate maintains the sole copy of and has sole access to such PHI, (a) make available to the Covered Entity PHI necessary for Covered Entity to respond to individuals' requests for access to PHI about them; and (b) make available to the Covered Entity PHI for amendment and incorporate any amendments to the PHI in accordance with the Privacy Rule. Business Associate will perform the actions required by this Section 5.4 within the time frames specified in the Privacy Rule.
- 5.5 if requested by Covered Entity in writing, and if the PHI in Business Associate's possession constitutes a Designated Record Set, make available to the Covered Entity the information required for the Covered Entity to provide an accounting of disclosures of PHI as required by, and in the timeframes specified in, the Privacy Rule.
- 5.6 make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of HHS for purposes of determining the Parties' compliance with HIPAA.
- 5.7 notify Covered Entity as promptly as possible under the circumstances that a use or disclosure of PHI not provided for by this Addendum or a Successful Security Incident has occurred ("Initial Notification").
- 5.8 in addition to the Initial Notification and in accordance with the requirements of 45 C.F.R. § 164.410, provide the following information to Covered Entity following the discovery of a Breach of Unsecured PHI, to the extent the information is available:
  - (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach (or, if such identities are unknown at that time, the classes of such individuals);
  - (ii) the date of discovery of the Breach of Unsecured PHI;
  - (iii) a general description of the nature of the incident; and
  - (iv) any other available information that Covered Entity is required to include in its notification to the individual under 45 C.F.R. § 164.404(c) . If such information is not available at the time Business Associate is required by this Section to notify Covered Entity, Business Associate will provide such information to Covered Entity promptly as it becomes available. A Breach will be considered as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will be deemed to have knowledge

of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate.

- 5.9 use reasonable commercial efforts to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
  - 5.10 not use or further disclose PHI in a manner that would violate HIPAA if done by the Covered Entity.
  - 5.11 not sell PHI or disclose PHI for purposes of marketing or fundraising.
  - 5.12 to the extent the Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
- 6. Remuneration.** Business Associate shall not receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not affect payment to Business Associate by Covered Entity pursuant to the Services.
- 7. Termination.**
- 7.1 Should either Party become aware of a breach of a material term of this Addendum by the other Party, the non-breaching Party will provide breaching Party with written notice of such breach in sufficient detail to enable the breaching Party to understand the specific nature of the breach. The non-breaching Party will be entitled to terminate this Addendum associated with such breach if, after the non-breaching Party provides the notice to the breaching Party, the breaching Party fails to cure the breach within a reasonable time period specified by the non-breaching Party in such notice; provided, however, that such time period specified by the non-breaching Party will be based on the nature of the breach involved. If neither termination nor cure is feasible, the non-breaching party will report the violation to the Secretary. In addition to any termination provisions provided by the Agreement the breaching Party consents to the non-breaching Party's termination of the Agreement. This Addendum will automatically terminate without any further action of the parties upon the termination or expiration of the Agreement.
  - 7.2 Upon the termination of this Addendum, Business Associate will return to Covered Entity or destroy all PHI, including such information in possession of Business Associate's subcontractors, as a result of this Agreement and retain no copies, if it is feasible to do so. If return or destruction is infeasible, Business Associate agrees to extend all protections, limitations, and restrictions contained in this Addendum to Business Associate's use or disclosure of any retained PHI, and to limit further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. This provision will survive the termination or expiration of this Addendum and the Agreement.
- 8. Miscellaneous.**
- 8.1 The terms of this Addendum will prevail in the case of any conflict with the terms of the Agreement to the extent necessary to allow the Parties to comply with the HIPAA Regulations.
  - 8.2 Nothing in this Addendum or the Agreement will confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
  - 8.3 To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of the Parties or any one of them, the Parties agree to negotiate in good faith appropriate amendment(s) to this Addendum to give effect to these revised obligations.

8.4 Notices may be provided in accordance with the terms of the Agreement. Unless indicated below, notices will be sent to the address appearing beneath each Party's signature below.

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COVERED ENTITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_