**SERVICES AGREEMENT**

This Services Agreement is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) between **Athennian USA, Inc.**, a Delaware corporation (“**Athennian**”, “**We**”, “**Our**”, or “**Us**”) and and **Your Organizations name** ●, a/an **Type of company Limited Liability Company** (“**Customer**”, “**You**” or “**Your**”). The parties agree as follows:

1. **DEFINITIONS**
	1. **Definitions.**

“**Affiliate**”means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the entity or subject entity.

“**Agreement**”means this Services Agreement and any schedules, exhibits and addenda, and all Order Forms and Statements of Work, as it or they may from time to time be amended or supplemented.

“**Athennian Help Center**” means the online articles, training resources, and other materials We develop and make available to Users via <https://help.athennian.com>.

“**Consulting Services**” means consulting services provided by Athennian to Customer under a Statement of Work, including requirements analysis, implementation, development and training services. Consulting Services do not include Support Services.

“**Order Form**” means an ordering document signed by You or online order specifying the Services to be provided under this Agreement, including any schedules, exhibits and addenda, as it or they may from time to time be amended or supplemented.

“**Services**” means the products and services that are ordered by Customer under an Order Form and made available online by Athennian, as described in the Athennian Help Center. Services do not include Non-Athennian Applications, Consulting Services or Support Services.

“**Support Services**” means maintenance and support services in respect of the Services.

“**User**” means an individual authorized by You to use the Services. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

1. **SERVICES**
	1. **Services.**  Subject to the terms of this Agreement, during the Term, We will provide You with: (a) access to and use of the Services; and (b) Support Services. The Services will be available in accordance with Our service level agreement (available here <https://www.athennian.com/legal-terms-portal/service-level-agreement>) and the terms and conditions of Our Support Services (available here <https://www.athennian.com/legal-terms-portal/support-service-terms>). Any limits on Your use of the Services will be specified on an Order Form, and You will be invoiced for any usage overages.
	2. **Subscriptions.** Services are purchased as subscriptions and any added subscriptions during the Term will co-terminate with any underlying subscriptions.
	3. **Consulting Services.** At Your request, We will provide Consulting Services to You in accordance with an Order Form or a fully executed statement of work (a “**Statement of Work**” or “**SOW**”).
	4. **Non-Athennian Applications.** You may use the Services with a service or software application not provided by Us that interoperates with the Services, such as an Application Programming Interface (“**API**”), (a “**Non-Athennian Application**”).
	5. **Athennian Open API.** If You access or use Our developer tools or purchase a sandbox plan, the terms of Our developer agreement (available here <https://www.athennian.com/legal-terms-portal/developer-terms-and-conditions>) also apply to You and Your personnel who use the developer tools.
2. **RESPONSIBILITIES**
	1. **Your responsibilities.**  You will: (a) be responsible for Your Users’ compliance with this Agreement and Order Forms; (b)  prevent unauthorized access to or use of the Services, the Athennian Help Center, and other Athennian documentation and policies applicable to the Services, as amended by Us from time to time (the “**Documentation**”) (and notify Us promptly of any such unauthorized access or use); (c) use Services and Documentation in accordance with this Agreement, Order Forms and applicable laws; (d) comply with terms of service of any Non-Athennian Applications with which You use Services; and (e) notify Us promptly of any security incident or vulnerability of Yours which may directly or indirectly affect the Services.
	2. **Restrictions.**  You will not: (a) allow anyone other than Yourself or Your Users to use the Services, Third Party Content or Documentation; (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Services or Documentation, or include the Services or Documentation in a service bureau or outsourcing offering; (c) store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in violation of third-party rights; (d) store or transmit malicious code, or send spam; (e) interfere with or disrupt the integrity or performance of the Services, Non-Athennian Applications, or third-party data; (f) attempt to gain unauthorized access to the Services or Documentation or its related systems or networks; (g) permit access to or use of the Services or Documentation in a way that circumvents a contractual service limit, or use the Services to access or use any Athennian intellectual property except as permitted under this Agreement, an Order Form, or Documentation; (h) copy the Services or any part, feature, function or user interface of the Services; (i) copy, distribute or use Third Party Content except as permitted in this Agreement or in an Order Form or Documentation; (j) copy Documentation except for internal use by You; (k) frame or mirror any part of the Services or Documentation, other than framing on Your own intranets or otherwise for Your own internal business purposes; (l) access or use the Services or Documentation in order to build a competitive product or service or to benchmark with a non-Athennian product or service; or (m) reverse engineer the Services or any software used to provide the Services (to the extent such restriction is permitted by applicable laws). If You or a User intentionally violates these restrictions, or use of the Services in breach of this Agreement or Order Forms, in a way that, in Our judgment, imminently threatens the security, integrity or availability of Our Services, We may immediately suspend Your use of the Services. Unless otherwise specified in an Order Form, a User’s password may not be shared with any other individual. “**Third Party Content**” means information obtained by Us from publicly available sources or Our third-party content providers and made available to You through the Services.
	3. **Non-Athennian Providers.**  We or third parties may make third-party products or services available, including Non-Athennian Applications and implementation and other consulting services (such as document digitization services).
		1. If You acquire such products or services, any exchange of data between You and any third-party provider, product or service is solely between You and the applicable third-party provider. We do not warrant or support Non-Athennian Applications or other third-party products or services.
		2. If You choose to use a Non-Athennian Application with the Services (for example, DocuSign’s API), You grant Us permission to allow the Non-Athennian Application and its provider to access data submitted by or for You to the Services or provided by Us to You in output files generated by the Services, including Support Data and Customer Documents but excluding Customer Content, Third Party Content, Non-Athennian Applications, and Service Attributes (“**Customer Data”)** as required for the interoperation of that Non-Athennian Application with the Services. We are not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Athennian Application or its provider. “**Customer Documents”** means documents submitted by or for You to the Services or provided by Athennian to Customer in output files generated by the Services, including digital documents in .docx, .xlsx, and .pdf formats, uploaded to or generated by the services; “**Service Attributes**” means (i) data related to the provision or use of the Services, such as resource identifiers, metadata tags, security and access roles, logs, rules, audit trail events, usage policies, permissions, usage metrics, statistics and analytics; and (ii) data required for billing or administration of the Services, including billing and support contact information; and “**Support Data**'' means all data that is provided to Us by You or on Your behalf (or that You authorize Us to obtain from the Services) in relation to a request by You for Support Services.
		3. The Services may contain features designed to interoperate with Non-Athennian Applications. To use such features, You may be required to obtain access to such Non-Athennian Applications from their providers, and may be required to grant Us access to Your accounts on such Non-Athennian Applications (for example, You or Users will be required to sign into an existing Office 365 or DocuSign account to allow the Services to interoperate with those accounts). We cannot guarantee the continued availability of such Services features, and may cease providing them without entitling You to any refund, credit, or other compensation.
	4. **Removal of Non-Athennian Applications.**  If We receive information that a Non-Athennian Application used with the Services by You may violate applicable laws or third-party rights, We may notify You and:
		1. For Non-Athennian Applications provided by You, We will negotiate with You to resolve the issue. If within 10 days You and We do not agree on a solution or You do not: (i) disable such Non-Athennian Application; (ii) modify the Non-Athennian Application to resolve the potential violation; or (iii) instruct Us to disable the Non-Athennian Application, then We may disable the applicable Non-Athennian Application until the potential violation is resolved.
		2. For Non-Athennian Applications not provided by You, We will promptly disable such Non-Athennian Application or modify it to resolve the potential violation.
3. **FEES AND PAYMENT**
	1. **Fees.**  You will pay all fees specified in Order Forms, Statements of Work or this Agreement. Except as otherwise specified in an Order Form or a Statement of Work:
		1. Per-entity subscription fees are calculated at a frequency determined by Athennian, are based on Customer’s total active entity records (“**AERs**”), and invoiced on a pro-rata basis to the end of the relevant billing period;
		2. Unless expressly stated otherwise in this Agreement, payment obligations are non-cancelable and fees paid are non-refundable; and
		3. Quantities purchased (including AERs) cannot be decreased during the relevant subscription term.
	2. **E-File Fees.**  If applicable, You will pay additional fees for any use of the functionality within the Services that provides the ability for You to electronically file documents in certain jurisdictions (“**E-File**”). E-File fees include fees charged by Us (“**Athennian E-File Fees**”), fees charged by government registries (“**Registry Fees**”), and fees charged by third-party intermediaries (“**Third-Party E-File Fees**”). Additional terms applicable to Your use of E-File are outlined in our E-File Schedule (available here <https://www.athennian.com/legal-terms-portal/legal-terms-portal-agreements>).
	3. **Invoicing and Payment.**  Unless otherwise stated in the Order Form or Statement of Work, or unless otherwise agreed in writing from time to time: (a) fees will be invoiced in advance and expenses in arrears; (b) undisputed fees and expenses are due net 30 days from the invoice date; and (c) fees and expenses are payable by electronic funds transfer. You are responsible for providing complete and accurate billing and contact information to Us, and notifying Us of any changes to such information. If an Order Form or Statement of Work states that fees are payable by credit card, then (d) You will provide all required credit card information to Us, (e) if any of the information changes, You will immediately provide updated information to Us, (f) You authorize Us to provide the information to Our third-party payment processing vendor, which may store the information in order to facilitate payments, (g) You authorize Us and Our third-party payment processing vendor to charge the credit card for all amounts payable under this Agreement, and (h) You will complete and sign any additional online or paper authorizations requested by Us for this purpose. You are solely responsible for all fees charged to You by Your credit card issuer, bank, or other financial institution. If You do not notify Us in writing of an issue You may have with an invoice within 60 days of the invoice date, then You are deemed to have accepted the invoice and You waive any right to dispute the amount of the invoice.
	4. **Overdue Charges.**  If any undisputed invoiced amount is not received by Us by the due date, then, without limiting Our rights or remedies, the invoiced amounts will accrue late interest at the rate of 1.5% of the outstanding balance per month (equivalent to 19.56% per annum), or the maximum rate permitted by law, whichever is lower.
	5. **Taxes.**  You will be responsible for all applicable taxes or other charges imposed by any governmental authority, relating to: (i) Us providing; or (ii) Your access, receipt and use of the Services. If We are obligated to collect or pay taxes for which You are responsible, You will pay Us the appropriate amount unless You provide Us with a valid tax exemption certificate. We reserve the right to gross up the Fees for the Software and Services in an invoice if a withholding prevents Us from receiving the actual amount specified in an invoice.
4. **ADDITIONAL TERMS**
	1. **Security.**  We will implement and maintain appropriate technical and organizational measures, as determined by Us, designed to protect the security of Customer Data, including measures designed to protect Customer Data from unauthorized access, use, modification, encryption, deletion, loss or disclosure.
	2. **Security Incidents.**
		1. We will report to You any material security breach or other event where there is an actual material loss, theft, unauthorized access, acquisition, use, disclosure, alteration, or destruction of or to Customer Data within Our possession or control, or a significant risk of any of them (a “**Security Incident**”) promptly following determination by Us that a Security Incident has occurred, and in any event within 24 hours following such determination. The initial report will be made to the security contacts designated by You from time to time. You acknowledge that the Services are provided from the data centers of Amazon Web Services (unless otherwise specified in an Order Form) (the “**Data Center Service Provider**”), and that We rely and depend on the Data Center Service Provider providing notice to Us of Security Incidents relating to those data centers.
		2. We will investigate the Security Incident. We will provide You with detailed information about the Security Incident to the extent reasonably possible and to the extent known. We will take reasonable steps within Our systems to mitigate the effects of the Security Incident. We will use commercially reasonable efforts to provide You the information for You to fulfil any obligations under applicable laws to notify Your regulators and data subjects of the Security Incident.
	3. **Customer Data and Personal Data.**
		1. You have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data and for the means by which You acquire Customer Data. You represent and warrant to Us that You have all rights, consents, permissions and legal authority as may be necessary to provide the Customer Data to Us and to authorize Us to process the Customer Data to provide the Services.
		2. We will only use Customer Data and Service Attributes to provide the Services to You, except with Your prior written consent or as otherwise expressly permitted under this Agreement, or unless otherwise required under applicable laws.
		3. We will not disclose Customer Data or Service Attributes outside of Athennian or Our Affiliates except (i) as You direct or as required to provide the Services, (ii) to Non-Athennian Applications and their providers as described in the section titled “Non-Athennian Providers”, (iii) to Our subcontractors and service providers to the extent reasonably necessary for the provision of the Services, including to third party intermediaries who assist in the provision of E-File Services, (iv) as otherwise described in this Agreement, or (v) as required by applicable laws.
		4. If We are required to disclose Customer Data by Applicable Law, then We will promptly notify You unless prohibited by law. Upon receipt of any other third-party request for Customer Data, We will promptly notify You unless prohibited by law. We will reject the request unless required by law to comply. If the request is valid, We will attempt to redirect the third party to request the Customer Data directly from You.
		5. To the extent that the Customer Data includes Personal Data, then: (i) You are the controller of such Personal Data and We are solely a processor acting on behalf of You; and (ii) We will promptly report to You any requests received from individuals for access to, correction or deletion of, or otherwise related to, their Personal Data. Subject to the above, You consent to Our collection, use and disclosure of Personal Data as provided in the Our Privacy Policy (which is available here <https://www.athennian.com/privacy-policy>). “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
		6. If any Customer Data submitted by or for You to the Athennian Services includes Personal Data, and if some or all of that Personal Data is subject to the GDPR or the CCPA, then Athennian’s Data Processing Addendum (the “DPA”) governs the processing of the personal data that is subject to the GDPR or the CCPA. The DPA is available on request. You are responsible for determining whether the DPA applies to Customer Data processed by Athennian, and for executing the DPA in accordance with the execution instructions therein, if it is applicable. “**GDPR**” means the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). “**CCPA**” means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq., and its implementing regulations.
		7. For the purposes of this section, “**Region**” means Canada, unless a different region is specified in the Order Form. Except as described elsewhere in this Agreement, Customer Data that We process on Your behalf may be transferred to, and stored and processed in, the Region or any other location where We or Our service providers operate. All Customer Data that is processed directly by Us will be stored at rest in the Region and processed directly by Us within the Region, except as provided below. Our service providers may store or process Customer Data outside the Region. We may transfer Customer Data from the Region, with Your consent, or as necessary to comply with applicable laws or a binding order of a governmental authority (such as a subpoena or court order). If You provide Customer Data as part of a request for Support Services, We may process that Customer Data in the locations from which We provide those Support Services. To investigate fraud, abuse or violations of this Agreement, We may process Customer Data Service Attributes where We maintain its support and investigation personnel. To provide billing and administration services, We may store and process Services Attributes in the locations from which We provide those billing and administration services. We do not control or limit the locations from which You or Your Users may access Customer Data or to which they may move Customer Data (except as otherwise provided under “Export Compliance”). You may interconnect the Services with certain other services provided by third parties. We do not control or limit the locations from which such third parties may access Customer Data or to which they may move Customer Data (except as otherwise provided under “Export Compliance”).
		8. Upon Your request made within 90 days after the effective date of termination or expiration of this Agreement, We will make any Customer Data in Our possession or control available to You for export or download. After such 90-day period, We will have no obligation to maintain or provide any Customer Data, and may delete or destroy all copies of Customer Data in Our systems or otherwise in Our possession or control, unless legally prohibited by applicable laws. At Your request, an officer of Ours will certify that We have deleted or destroyed Your Customer Data.
	4. **Compliance with applicable laws.** We will comply with all laws which are applicable to Us.
	5. **Customer Compliance with applicable laws and Customer Regulatory Requirements.** You will comply with all applicable laws which are applicable to You, Your businesses, or Your use of the Services, including all applicable laws relating to the issuance and transfer of securities or relating to the use of electronic signatures (collectively, the “**Customer Regulatory Requirements**”). You acknowledge that We are not providing any legal advice on Customer Regulatory Requirements, and You agree to obtain Your own legal advice on all matters related to Customer Regulatory Requirements. You are solely responsible for Your compliance with Customer Regulatory Requirements and for making an independent determination as to whether the Services satisfy Customer Regulatory Requirements and You will not hold Us responsible for any losses or claims arising from or relating to any failure to comply with Customer Regulatory Requirements.
	6. **Athennian Business Continuity and Disaster Recover Plans.** Summaries of Our current business continuity plan (“**BCP**”) and disaster recovery plan (“**DRP**”) are available on request. We may change Our BCP or DRP from time to time. From time to time at Your request, We will provide to You an updated summary of Our then current BCP or DRP. You acknowledge that the Services are provided from the data centers of the Data Center Service Provider, and that Our BCP and DRP rely and depend on the Data Center Service Provider’s BCP and DRP.
	7. **Changes.** Subject to Our obligations under the section titled “Warranty for Services”, We may, from time to time, make changes to the Data Center Service Provider or the Services, in Our discretion, including to add, change or remove features or functionality. We will provide You with reasonable notice of any material modifications: (i) at Your email address for notice; (ii) by posting a notice to the Athennian Help Center; or (iii) by posting a notice in the Services. Notwithstanding the foregoing, We may at any time modify or discontinue features of the Services to comply with applicable laws and regulations. We will not be liable to You or to any third party for any modification or discontinuation of the Services as described above. For new, additional, or modified features, functionality or Services, We may require You to (a) sign a new Order Form or an amended Order Form, (b) agree to pay additional fees, and/or (c) agree to additional contract terms specific to the feature, functionality or Service.
5. **PROPRIETARY RIGHTS AND LICENSES**

## **Reservation of Rights.** We, Our Affiliates, and Our licensors have and will retain all right, title and interest (including all intellectual property rights) in and to the Services, Service Attributes and Third Party Content, the software and systems used to provide the Services, all code provided by Us that is used to integrate with the Services (even if installed on Your systems or Your service providers’ systems), all copies, modifications and derivative works of any of them, and all Documentation. You acknowledge that You are obtaining only a limited right to use the Services and Documentation. No rights are granted to You under this Agreement other than as expressly set forth in this Agreement.

## **License by Us for Documentation**. We and Our Affiliates grant to You a worldwide, non-exclusive, non-transferable, royalty-free license to use the Documentation solely for Your internal business purposes associated with Your use of the Services, and solely for the applicable subscription term. If We choose to inscribe a copyright notice on the Documentation, You will reproduce Our copyright notice on all copies of the Documentation. At Our request, and to the extent possible, You will destroy or delete all copies of the Documentation then in Your possession or control.

## **License by Us for Deliverables.** Unless otherwise provided in a Statement of Work, on Your payment of fees and expenses payable under a Statement of Work, We and Our Affiliates grant to You a worldwide, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) each deliverable provided by Us to You under a Statement of Work, solely for Your internal business purposes associated with Your use of the Services, and solely for the applicable subscription term for the associated Services.

## **License by You for Customer Data and Customer Content.** As between You and Us, You own all right, title and interest in and to all Customer Data and text, audio, video, images, and other information submitted by or for You to the Services, and used for the purpose of personalizing the presentation of screens, messaging or other communications from You to Users (“Customer Content”). You grant to Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data and Customer Content as necessary for Us to provide the Services in accordance with this Agreement. Notwithstanding any other provision of this Agreement, You also grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable (through multiple tiers) license to collect Customer Data, Service Attributes, and other information relating to the provision, use and performance of the Services, in aggregate or other de-identified or anonymized forms, and to analyze and use such aggregated, de-identified or anonymized Customer Data and other information to improve and enhance the Services and for Our other offerings.

## **License by You for Non-Athennian Applications.** You grant to Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit, run and display any Non-Athennian Applications and program code created by or for You using the Services or for use by You with the Services, as necessary for Us to provide the Services in accordance with this Agreement.

## **License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable (through multiple tiers) license to use and incorporate into Our services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users.

1. **CONFIDENTIALITY**
	1. **Definition of Confidential Information.**  “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Yours includes Customer Data and Customer Content. Confidential Information of Ours includes the Services and Documentation. Confidential Information of each party includes the terms of this Agreement and all Order Forms and Statements of Work (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed by the Receiving Party to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party.
	2. **Protection of Confidential Information.**  The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those in this Agreement. Neither party will disclose the terms of this Agreement or any Order Form or Statement of Work to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.
	3. **Compelled Disclosure.**  The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, then the Disclosing Party will reimburse the Receiving Party for its reasonable costs of compiling and providing secure access to that Confidential Information.
	4. **Return of Confidential Information.**  Except as otherwise expressly provided below, on the request of the Disclosing Party, the Receiving Party will (a) return or destroy all tangible forms of Confidential Information of the Disclosing Party in its possession or control, (b) use all commercially reasonable efforts to erase or destroy all electronic copies of such Confidential Information, and (c) certify to the Disclosing Party that such materials have been either returned, erased or destroyed, in each case except as to signed original copies of any contractual documents or other materials customarily held by the Receiving Party as legal archival material. Notwithstanding the above, the Receiving Party may retain copies of the Confidential Information of the Disclosing Party for archival, audit, legal and/or regulatory purposes.
2. **REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**
	1. **Representations.**  Each party represents that it has validly entered into this Agreement and has the legal power to do so.
	2. **Warranties for Services.**  We warrant that during an applicable subscription term: (a) We will not materially decrease the overall security of the Services; (b) the Services will perform materially in accordance with the functionality of the Services as described in the Athennian Help Center, (c) subject to the “Non-Athennian Providers” section, We will not materially decrease the overall functionality of the Services; and (d) We will not materially reduce the BCP and DRP measures that are designed to reduce the risk of an interruption in the provision of Services to You. For any breach of these warranties, Your exclusive remedy and Our entire liability is Your right to terminate this Agreement on 30 days’ written notice to Us.
	3. **Warranties for Consulting Services.**  We warrant that the Consulting Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable portion of the Consulting Services. If We are unable to re-perform the Consulting Services as warranted, You will be entitled to recover the Consulting Services fees paid to Us for the deficient Consulting Services. You must make any claim under this warranty to Us in writing within 30 days of the completion of the applicable work in order to receive warranty remedies.
	4. **Disclaimer for Unauthorized Electronic Intruders**. Notwithstanding the “Athennian Security” section and the technical and organizational measures which are referred to in that section and which are designed to protect the security of Customer Data, You acknowledge and agree that: (a) such technical and organizational methods may not always be effective to prevent unauthorized electronic intruders from accessing the Services and Customer Data through the Internet or other electronic means; (b) if an unauthorized electronic intruder is able to overcome or avoid Our technical and organizational methods, the unauthorized electronic intruder may be able to access, use, modify, encrypt, delete, destroy, or steal Customer Data; and (c) We shall have no liability to You for any act by any unauthorized electronic intruder, except for direct damages suffered by You which are a direct result of a breach by Us of Our obligations under the “Athennian Security” section.
	5. **Disclaimers.**  EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY STATUTORY OR IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FORMS, TEMPLATES AND THIRD PARTY CONTENT ARE PROVIDED “AS IS,” AND AS AVAILABLE, EXCLUSIVE OF ANY WARRANTY WHATSOEVER, AND ARE USED BY YOU AT YOUR OWN RISK. WE DO NOT WARRANT THAT THE FORMS, TEMPLATES AND THIRD PARTY CONTENT COMPLY WITH APPLICABLE LAWS OR YOUR REGULATORY REQUIREMENTS, THAT THEY ARE ACCURATE OR CURRENT, OR THAT THEY ARE EFFECTIVE TO ACCOMPLISH THEIR APPARENT PURPOSE. YOU ACKNOWLEDGE THAT WE ARE NOT PROVIDING ANY LEGAL ADVICE TO YOU, AND YOU AGREE TO OBTAIN YOUR OWN LEGAL ADVICE ON ALL MATTERS RELATED TO THE SERVICES, FORMS, TEMPLATES, AND THIRD PARTY CONTENT. WE DO NOT WARRANT THAT THE SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION OR DELAY, THAT THE SERVICES WILL MEET ALL OF YOUR REQUIREMENTS, OR THAT THE SERVICES SATISFY THE YOUR CUSTOMER REGULATORY REQUIREMENTS. WE SHALL HAVE NO LIABILITY FOR ANY ERROR OR OMISSION BY ANY THIRD PARTY INTERMEDIARY THAT ASSISTS IN THE PROVISION OF E-FILE SERVICES.
	6. **Future Functionality.**  You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.
3. **MUTUAL INDEMNIFICATION**
	1. **Indemnification by Us.**  We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the Services infringes or misappropriates such third party’s intellectual property rights (a “**Claim Against Customer**”), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against Customer, provided You: (i) promptly give Us written notice of the Claim Against Customer; (ii) give Us sole control of the defense and settlement of the Claim Against Customer (except that We may not settle any Claim Against Customer unless the settlement unconditionally releases You of all liability); and (iii) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to the Services, We may in Our discretion and at no cost to You: (a) modify the Services so that they are no longer claimed to infringe or misappropriate, subject to Our warranties under the section titled “Warranties for Services”; (b) obtain a license for Your continued use of the Services in accordance with this Agreement; or (c) terminate Your subscriptions for that Service on 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from: (1) Third Party Content or a Non-Athennian Application; (2) Your breach of this Agreement or applicable Order Forms; (3) use or combination of the Services with any other product or service without Our express written approval; (4) modification of the Services or any component without Our express written approval; or (5) use of the Services for any purpose or in any manner other than as specifically contemplated by this Agreement, without Our express written approval.
	2. **Indemnification by You.**  You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party: (a) alleging that any Customer Data or Customer Content infringes or misappropriates such third party’s intellectual property rights or other rights; or (b) arising from Your use of the Services, Third Party Content or Documentation in breach of this Agreement, any Order Form or applicable laws; or (c) arising from any fraud or intentional misconduct by You or any personnel of Yours, Your Affiliates or Your or their contractors or service providers (each a “**Claim Against Athennian**”), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Athennian, provided We: (i) promptly give You written notice of the Claim Against Athennian; (ii) give You sole control of the defense and settlement of the Claim Against Athennian (except that You may not settle any Claim Against Athennian unless the settlement unconditionally releases Us of all liability); and (iii) give You all reasonable assistance, at Your expense.
	3. **Exclusive Remedy.**  This “Mutual Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this section.
4. **LIMITATION OF LIABILITY**
	1. **Limitation of Liability.**
		1. EXCEPT AS PROVIDED BELOW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU UNDER THIS AGREEMENT FOR THE SERVICES OR CONSULTING SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE (THE “**LIABILITY CAP**”).
		2. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO ALL BREACHES OF THE OBLIGATIONS IN ANY OF THE SECTIONS TITLED “ATHENNIAN SECURITY”, “SECURITY INCIDENTS”, “CUSTOMER DATA AND PERSONAL DATA”, “CONFIDENTIALITY” OR “MUTUAL INDEMNIFICATION” OF THIS AGREEMENT AND ALL BREACHES OF THE OBLIGATIONS IN ANY DATA PROCESSING ADDENDUM ENTERED INTO BY US AND YOU EXCEED, IN TOTAL, THE FOLLOWING LIABILITY SUPERCAP:

|  |  |
| --- | --- |
| **ANNUAL FEES PAID** **BY CUSTOMER** | **LIABILITY SUPERCAP** |
| Less than $75,000 | Two times the Liability Cap |
| Between $75,001 and $150,000 | $500,000 |
| Between $150,001 and $250,000 | $1,000,000 |
| Greater than $250,000 | $2,000,000 |

THE FOREGOING LIMITATION OF LIABILITY IS IN THE AGGREGATE AND NOT PER INCIDENT. “ANNUAL FEES PAID BY CUSTOMER” MEANS THE TOTAL AMOUNT PAID BY YOU UNDER THIS AGREEMENT FOR THE SERVICES OR CONSULTING SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

* + 1. THESE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION.
		2. You acknowledge that We have set Our fees and entered into this Agreement in reliance on the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between You and Us.
	1. **Exclusion of Consequential and Related Damages.**  IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, FAILURE TO REALIZE EXPECTED SAVINGS, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, COVER, BUSINESS INTERRUPTION OR DOWNTIME COSTS, THIRD-PARTY DAMAGES (INCLUDING ANY SERVICE LEVEL CREDITS PAYABLE BY YOU OR ANY OTHER PERSON), LOSS OF DATA, OR PUNITIVE, EXEMPLARY OR AGGRAVATED DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY’S OR ITS AFFILIATES’ REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THIS DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW AND WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION.
	2. **Limitations Protect Personnel, Etc.**  The limitations and exclusion of liability above also apply to any claims against the Affiliates of a party, or the party’s or its Affiliates’ directors, officers, employees, contractors and service providers.
1. **TERM AND TERMINATION**
	1. **Term of Agreement.**  This Agreement commences on the Effective Date and continues until all subscriptions under this Agreement have expired or have been terminated.
	2. **Term of Subscriptions.**  The term of each subscription will be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Unit pricing for annual fees during any renewal term may increase by up to 10% above the applicable pricing in the prior term, unless We provide You notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal. Discounts are non-renewable.
	3. **Termination for Breach.**  Either party may terminate this Agreement for cause on 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.
	4. **Surviving Provisions.**  The sections titled “Fees and Payment”, “Customer Data and Personal Data”, “Proprietary Rights and Licenses”, “Confidentiality”, “Disclaimers”, “Mutual Indemnification”, “Limitation of Liability”, “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, together with any other sections that by their nature are intended to survive the termination or expiry of this Agreement. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
	5. **Suspension.**  Athennian may suspend use of the Services by You if: (a) We believe the suspension is reasonably needed to prevent unauthorized access to Customer Data, or for other security reasons, or to otherwise protect Our systems or customers; (b) You do not pay any undisputed amounts that are due under this Agreement, and such amounts are not less than 90 days in arrears; or (c) You are in material breach of any of the sections titled “Customer Restrictions” or “Customer Compliance with applicable laws and Customer Regulatory Requirements”. If one or more of these conditions occurs, then We may suspend Your use of some or all of the Services. A suspension will be in effect only while the condition or need exists. We will give notice before We suspend, except where We reasonably believe We need to suspend immediately. Athennian will give at least 30 days’ notice before suspending for non-payment.
2. **GENERAL PROVISIONS**
	1. **Insurance.** We, at Our own expense, will carry and maintain during the term of this Agreement the following minimum insurance coverages in amounts no less than indicated: (a) Commercial General Liability: Each occurrence - CDN$5,000,000; General Aggregate - CDN$5,000,000; (b) Professional and Fiduciary Liability (Errors and Omissions): CDN$5,000,000; (c) Privacy and Security Liability Insurance (Cyber) - CDN$5,000,000. We shall promptly provide notice to You in the event We reduce or cancel Our coverage and You reserve the right to cancel this Agreement.
	2. **Export Compliance.**  The Services, Our other technology, and derivatives of them may be subject to export laws and regulations of Canada, the United States and other jurisdictions. We and You each represent that it is not named on any Canadian or U.S. government denied-party list. You will not permit any User to access or use any Service in a country named on Canada's Area Control List under Canada's Export and Import Permits Act, in a U.S.-embargoed country or region, by persons or entities prohibited from receiving U.S. exports, or in violation of any Canadian or U.S. export law or regulation.
	3. **Anti-Corruption.**  Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction.
	4. **Entire Agreement and Order of Precedence.**  This Agreement is the entire agreement between Us and You regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter, including any non-disclosure agreement. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms and Statements of Work) is void. This Agreement may not be amended except by a written amending agreement signed by duly authorized officers of both parties. In the event of any conflict or inconsistency among the following documents, the order of precedence will be (a) the applicable Order Form, (b) the applicable Statement of Work, (c) any schedule, exhibit or addendum to this Agreement, and (d) the body of this Agreement.
	5. **Force Majeure Events.**  Neither party will be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by a any event or circumstance beyond the reasonable control of a party, including an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet or telecommunications service failure or delay, Non-Athennian Application failure or delay, computer attack or malicious act, such as an attack on or through the internet, or a denial of service attack (“**Force Majeure Event**”). This provision will not excuse a failure to make any payment when due provided such payment is in relation to fees invoiced prior to the Force Majeure Event.
	6. **Relationship of the Parties.**  The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
	7. **Third-Party Beneficiaries.**  There are no third-party beneficiaries under this Agreement.
	8. **Publicity.**  Each party will obtain the other party’s prior written consent before making any public communication related to this Agreement or the Services. Notwithstanding the above:
		1. We may issue a press release announcing the relationship between You and Us. You will have the right to review and approve the press release prior to distribution.
		2. We may list You as a customer of Ours on Our website and on other of Our sales and promotional materials, and may use Your logos for that purpose. Any of Our use of Your logos will be subject to any applicable trademark use guidelines provided by You to Us.
	9. **Notices.**  All notices, requests, demands, claims, and other material communications under this Agreement must be in writing, and will be deemed duly given when delivered personally or by courier, or when delivered by email if receipt of the email is acknowledged by the intended recipient. Notice to Us shall be to: **Athennian USA, Inc.**, c/o Suite 310, 220 12 Avenue SW, Calgary, Alberta Canada T2R 0E9 Attention: Legal Department and/or legal@athennian.com. Notices to You shall be to the mailing and/or email address You provide in Your Order Form. Either party may change its address for notice from time to time by notice given in accordance with this section.
	10. **Waivers.**  A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by or on behalf of the waiving party. No omission, delay or failure to exercise any right or power, or any waiver by either party of any breach or default, whether express or implied, or any failure to insist on strict compliance with any provision of this Agreement, will constitute a waiver of any other provision. Any waiver of any provision of this Agreement will not constitute a continuing waiver unless otherwise expressly provided.
	11. **Severability.**  If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to applicable laws, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
	12. **Assignment.**  Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld). Notwithstanding this restriction, either party may assign this Agreement in its entirety (including all Order Forms and Statements of Work) without the consent of the other party to a purchaser of all or substantially all of the assets of such party. The assigning party will obtain from the permitted assignee and deliver to the other party an undertaking in writing in favour of the other party (in form and content acceptable to the other party, acting reasonably) to be bound by and to perform all of the obligations of the assigning party under this Agreement. The assigning party and the permitted assignee will be jointly and severally liable to the other party for all of the assigning party’s obligations under this Agreement. Any assignment in contravention of the above will not be effective against the non-assigning party.
	13. **Interpretation.**  The parties agree that this Agreement was drafted with the participation of both parties and will not be construed either against or in favour of either party. All amounts specified in this Agreement or an Order Form or a Statement of Work are in U.S. dollars, unless otherwise specified. The term “including” and similar terms will mean “including without limitation”.
	14. **Governing Law and Venue.**  This Agreement, and any disputes arising out of or related to this Agreement, will be governed exclusively by the internal laws of the State of New York and the laws of the United States applicable therein, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The courts located in New York, New York will have exclusive jurisdiction over any disputes related to this Agreement, and each party consents to the exclusive jurisdiction of those courts. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).
	15. **Counterparts.**  This Agreement may be executed by electronic means, and in counterparts.

*[The next page is the signature page.]*

To confirm their agreement, the parties have signed this Agreement as of the Effective Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | ● |  |  | **ATHENNIAN USA, INC.** |
| Per: |  |  | Per: |  |
|  | Authorized Signatory |  |  | Mary Ward, Treasurer |
|  | I have authority to bind Customer |  |  | I have authority to bind Athennian |