

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

### PART 1 - GENERAL TERMS AND CONDITIONS.

The following Third Party Terms apply to all Athena sublicenses of Third Party Items (as defined in the Athenahealth Master Services Agreement) to Client pursuant to agreements that Athena has made with its third party licensors ("Third Party Licensors"):

**A.** Client will not modify the Third Party Items or the substance of the data contained therein.

**B.** Except as authorized by the applicable Third Party Licensor or as permitted under Part 2 herein, Client will not use any Third Party Item (or any data derived from it) in a computer service business or in network, time-sharing, multiple-CPU or multiple-user arrangements (including the Internet and Intranets), or link or interface them with any other equipment, software, data, network or communications system except in and as part of athenaNet®.

**C.** Client will not transmit the Third Party Items to other data processing systems or units that are "on-line" with Client's data processing unit, without the prior written consent of the applicable Third Party Licensor.

**D.** Client will not copy, reproduce, publish, translate, decipher, decompile, disassemble, reverse engineer, derive source code from, store in a retrieval system, sell, lease, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in or permit any unauthorized access or use of any Third Party Items in any form or by any media (electronic, mechanical, photocopy, recording or otherwise), on either a permanent or temporary basis to any third party.

**E.** Client will have no right to use the Third Party Items on behalf of any third party, on a service bureau basis, in any public computer-based information system or public electronic bulletin board or otherwise, or to license or sublicense the Third Party Items to others.

**F.** Client will not use any Third Party Item to create derivative works thereof or develop a product competitive therewith, or otherwise to compete with the providing Third Party Licensor.

**G.** Client acknowledges that the Third Party Items and all right, title and interest, including all intellectual property rights, in any aspect of them and all improvements, additions, modifications and derivative works prepared from or relating to them, are and will remain the exclusive property of the respective Third Party Licensors (or their respective suppliers), and Client will obtain no implied license rights to the Third Party Items. Any rights not expressly granted to Client herein will be retained by the Third Party Licensors (or their respective suppliers).

**H.** Client will not use the name of any Third Party Item or any Third Party Licensor, or any trademark owned by or licensed to such Third Party Licensor, except as authorized in writing. All notices of proprietary rights and copyright in the Third Party Items must appear on any and all permitted backup or archival copies thereof.

**I.** Client hereby covenants and agrees to indemnify, defend, and hold the Third Party Licensors and Athena, and their respective affiliates, and the officers, directors, managers, employees, successors, and assigns of any of the foregoing harmless from and against any liability, loss, injury or expense (including, but not limited to, reasonable attorneys' fees and court costs) imposed upon or incurred or suffered in connection with any claim based on Client's (1) infringement or misappropriation of any intellectual property rights; (2) failure to comply with its obligations hereunder; (3) violation of any applicable law (including, but not limited to, patient confidentiality or privacy laws) in regard to data communicated through any Third Party Item; or (4) coding decisions, or negligence.

**J.** Neither these Third Party Terms nor the rights hereunder may be assigned or otherwise transferred, voluntarily or by operation of law. Any purported assignment of the rights or delegation of the duties hereunder by Client will be void unless prior written consent is secured from the applicable Third Party Licensors.

**K.** Client acknowledges and agrees that the covenants and disclaimers made hereunder are made for the benefit of the Third Party Licensors and their suppliers, and shall survive the termination of these Third Party Terms and the Agreement. In the event of any breach by Client of the terms hereunder, in addition to other relief to which the applicable Third Party Licensor or its suppliers may be entitled, such Third Party Licensor or its suppliers shall be entitled to terminate Client's rights hereunder.

**L.** Client acknowledges that the processes, formulas and methodology used in producing the Third Party Items are valuable trade

secrets. Client shall hold in confidence and take reasonable measures, but not less than the measures taken by Client to safeguard its own confidential information, to safeguard and prohibit access to, and copying or disclosure of, any and all confidential information and materials provided hereunder, including, but not limited to, confidential information in or about the Third Party Items, any updates to any of them and any user manuals for them.

**M.** IN NO EVENT SHALL ATHENA OR A THIRD PARTY LICENSOR (OR ITS SUPPLIERS), OR THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS OR EMPLOYEES, BE LIABLE TO CLIENT OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, OR ANY LOSS OF USE, DATA OR BUSINESS PROFITS, ARISING OUT OF OR IN CONNECTION WITH (1) THE USE OR PERFORMANCE OF THE THIRD PARTY ITEM; (2) THE INTERRUPTION OF BUSINESS, DELAY OR INABILITY TO USE ANY THIRD PARTY ITEM, RELATED EQUIPMENT OR RELATED WEB SITE; (3) THE PROVISION OF OR FAILURE TO PROVIDE THE THIRD PARTY ITEM OR USE OF ANY SUBSTITUTE SERVICES; OR (4) LOST, DAMAGED, OR DESTROYED E-MAIL OR ELECTRONIC DATA CONTENT OR THE FAILURE TO DELIVER ANY E-MAIL OR ELECTRONIC DATA CONTENT; REGARDLESS OF THE FORM OF THE ACTION OR CLAIM AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF THE THIRD PARTY LICENSOR (OR ITS SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF ATHENA OR A THIRD PARTY LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL A THIRD PARTY LICENSOR'S (OR ITS SUPPLIERS') LIABILITY EXCEED THE AMOUNT PAID TO IT BY ATHENA UNDER THE CURRENT FEE TERM OF THE UNDERLYING LICENSE AGREEMENT BETWEEN ATHENA AND SUCH THIRD PARTY LICENSOR, REGARDLESS OF THE FORM OF THE ACTION OR CLAIM, AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF THE THIRD PARTY LICENSOR (OR ITS SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF ATHENA OR A THIRD PARTY LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**N.** Neither Athena nor any Third Party Licensor shall be liable for any delay, failure in performance or interruption of the Third Party Items resulting directly or indirectly from any cause beyond its reasonable control.

**O.** If Client does not use any Third Party Items in the performance of a U.S. Government contract, then this provision has no application to Client. If Client intends to use a Third Party Item in the performance of a U.S. Government contract, either as a contractor or subcontractor, Client shall include provisions in such contract to protect all ownership interests of Athena and/or Third Party Licensors in that Third Party Item and restrict use of that Third Party Item to the uses provided under this Agreement. If Client uses a Third Party Item in the performance of a U.S. Government contract, then Client shall communicate to the party it contracts with that: "The Third Party Item is provided with RESTRICTED RIGHTS under the Federal Acquisition Regulations. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in this Agreement and in the Rights in Commercial Computer Software or Commercial Computer Software Documentation clause at DFARS 227.7202-3, or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, or under DFARS 252.227-7015 for Commercial Technical Data, as applicable.

### PART 2 - SPECIAL TERMS AND CONDITIONS

The following additional terms and conditions apply to Athena sublicenses of specific Third Party Items to Client:

**A. MEDASSETS NET REVENUE SYSTEMS, LLC (applicable to athenaCollector®, athenaOne for Hospitals and Health Systems, athenaHealth Population Health, athenaCoordinator® Analytics, and athenaOne® Analytics)**

MEDASSETS NET REVENUE SYSTEMS, LLC, a Delaware limited liability company with offices at 200 North Point Center East, Suite 400, Alpharetta, Georgia 30022 ("MedAssets"), has licensed certain databases ("MedAssets Databases"), software ("MedAssets Software"), and ASP services (together with the MedAssets Databases and MedAssets Software, each as including periodic updates thereto, the "MedAssets Services") to Athena for sublicense to its Clients. The MedAssets Services also include certain software and content, and periodic updates thereto, of MedAssets'

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

third party suppliers. The following additional terms and conditions apply to all Athena sublicenses of the MedAssets Services to Client:

1. Client will comply with such reasonable rules as may be established by MedAssets or Athena from time to time with respect to use of or access to the MedAssets Services as such rules are set forth in any materials furnished by MedAssets and/or Athena to Client.

2. Client shall not, and shall not permit others, to develop passwords for any portion of the MedAssets Services that is not covered by license.

3. EXCEPT AS SPECIFICALLY PROVIDED IN THIS PART 2.A, NEITHER ATHENA NOR MEDASSETS MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MEDASSETS SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CLIENT. WHILE MEDASSETS ATTEMPTS TO INCLUDE ACCURATE, COMPLETE AND ERROR-FREE CONTENT IN THE MEDASSETS SERVICES, ERRORS OR OMISSIONS MAY OCCUR. MEDASSETS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO CORRECT THESE ERRORS OR OMISSIONS OR CAUSE THE APPROPRIATE THIRD PARTY SUPPLIER TO CORRECT THESE ERRORS OR OMISSIONS. NEVERTHELESS, NONE OF ATHENA, MEDASSETS OR ITS SUPPLIERS MAKES ANY REPRESENTATION REGARDING THE ACCURACY, COMPLETENESS OR ERROR-FREE NATURE OF THE MEDASSETS SERVICES OR THAT THE USE OF THE MEDASSETS SERVICES WILL BE UNINTERRUPTED OR MEET CLIENT'S REQUIREMENTS. NEITHER ATHENA NOR MEDASSETS IS THE CREATOR OF THIRD PARTY SOFTWARE AND/OR THIRD PARTY DATABASES AND NEITHER ATHENA NOR MEDASSETS GIVES ANY WARRANTY, EXPRESS OR IMPLIED, IN RELATION TO THOSE ITEMS. CLIENT RELEASES ATHENA AND MEDASSETS FROM ANY AND ALL RESPONSIBILITY FOR ANY ERRORS, DAMAGES CAUSED BY THIRD PARTIES, OR FAILURE OF THIRD PARTY SOFTWARE OR THIRD PARTY DATABASES. NONE OF ATHENA, MEDASSETS OR ITS THIRD PARTY SUPPLIERS SHALL BE LIABLE FOR ANY DELAY, FAILURE IN PERFORMANCE OR INTERRUPTION OF THE MEDASSETS SERVICES RESULTING DIRECTLY OR INDIRECTLY FROM ANY CAUSE BEYOND ITS REASONABLE CONTROL.

4. IN NO EVENT SHALL ATHENA OR MEDASSETS (OR ITS SUPPLIERS') LIABILITY EXCEED THE AMOUNT PAID TO MEDASSETS BY ATHENA UNDER THE CURRENT FEE TERM OF THE UNDERLYING LICENSE AGREEMENT BETWEEN ATHENA AND MEDASSETS PRIOR TO THE DATE THE CAUSE OF ACTION (OR MOST RECENT CAUSE OF ACTION, IF MORE THAN ONE) AROSE, REGARDLESS OF THE FORM OF THE ACTION OR CLAIM, AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF MEDASSETS (OR ITS SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF ATHENA OR MEDASSETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, RELATING TO THE MEDASSETS SERVICES MAY BE BROUGHT BY CLIENT MORE THAN ONE(1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

5. To the extent that the MedAssets Services contain content or data licensed to MedAssets by the American Medical Association ("AMA"), the following additional provisions and restrictions will apply:

a. THE AMA DISCLAIMS RESPONSIBILITY FOR ANY ERRORS IN THE AMA CONTENT AND FOR ANY CONSEQUENCES ATTRIBUTABLE TO OR RELATED TO ANY USE, NONUSE, OR INTERPRETATION OF INFORMATION CONTAINED IN OR NOT CONTAINED IN THE AMA CONTENT. THE AMA WILL NOT BE DEEMED TO BE ENGAGED IN THE PRACTICE OF MEDICINE OR DISPENSING MEDICAL SERVICES. IN NO EVENT WILL THE AMA BE LIABLE TO ANY PARTY FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE AMA CONTENT EVEN IF THE AMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AMA CONTENT IS LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AMA DOES NOT WARRANT THAT THE OPERATION OF THE AMA CONTENT WILL BE UNINTERRUPTED OR WITHOUT ERROR.

b. CPT and/or CPT Assistant are commercial technical data and/or computer databases and/or commercial computer software and/or commercial computer software documentation, as applicable, which were

developed exclusively at private expense by the AMA, 515 North State Street, Chicago, Illinois 60654. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

**B. FIRST DATABANK, INC. (applicable to athenaClinicals®, athenaOne for Hospitals and Health Systems, and athenahealth Population Health)**

FIRST DATABANK, INC., a wholly owned subsidiary of The Hearst Corporation, a Delaware corporation with offices at 500 East 96<sup>th</sup> Street, Suite 500, Indianapolis, IN 46240 ("First DataBank"), has licensed certain copyrighted databases of medical, pharmaceutical and nutritional information, and periodic updates thereto ("FDB Databases"), related access software products ("FDB Toolkits") and user manuals ("Manuals", and collectively with the FDB Databases and FDB Toolkits, the "FDB Knowledge Bases") to Athena for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the FDB Knowledge Bases to Client:

1. The FDB Databases consist of:

a. FDB Medknowledge, Core Package + POEM FDB Foundations:

FDB DRUG PRICING  
FDB CLINICAL MODULES, Core Package which includes:  
COUNSELING MESSAGE MODULE™  
DRUG ALLERGY MODULE™  
DRUG-DRUG INTERACTION MODULE™  
DRUG-FOOD INTERACTION MODFULE™  
DRUG-LAB INTERFERENCE MODULE™  
DUPLICATE THERAPY MODULE™  
MIN/MAX DOSE MODULE™  
PATIENT EDUCATION MODULE™, English  
PRIORITIZED LABEL WARNINGS MODULE™, English  
PRESCRIBER ORDER ENTRY MODULE™ (POEM)

b. FDB MEDKNOWLEDGE, Enhanced Package FDB FOUNDATIONS:

FDB DRUG PRICING  
FDB CLINICAL MODULES, Enhanced Package which includes:  
COUNSELING MESSAGE MODULE™  
DOSAGE RANGE CHECK MODULE™  
DRUG ALLERGY MODULE™  
DRUG-DISEASE CONTRAINDICATION MODULE™  
DRUG-DRUG INTERACTION MODULE™  
DRUG-FOOD INTERACTION MODFULE™  
DRUG-LAB INTERFERENCE MODULE™  
DUPLICATE THERAPY MODULE™  
INDICATIONS MODULE™  
INTRAVENOUS MODULE™  
MIN/MAX DOSE MODULE™  
PATIENT EDUCATION MODULE™, English  
PRECAUTIONS MODULES (GERIATRIC, PEDIATRIC, PREGNANCY, LACTATION)  
PRIORITIZED LABEL WARNINGS MODULE™, English  
PRESCRIBER ORDER ENTRY MODULE™ (POEM)  
SIDE EFFECTS MODULE™

c. Premium Modules:

FDB OrderKnowledge™  
FDB INTEROPERABILITY MODULE™, Enhanced Package

d. FDB MEDKNOWLEDGE, Descriptive Pricing Information:  
FDB FOUNDATIONS (Drug and Conditions Concepts and Descriptive Information)  
FDB DRUG PRICING

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

2. Client will use the FDB Knowledge Bases solely as a source of drug product information in athenaNet and solely to support prescription writing in Client offices.

3. Client will not use the FDB Knowledge Bases in any system other than athenaNet, including any pharmacy system, prescription pricing, claims preparation or medication order entry application or any other clinical application.

4. To the extent that any tangible object(s) is delivered to Client pursuant to this sublicense, title to such object(s) shall not pass to Client, as this sublicense is not for the sale of goods.

5. Client will not alter, amend, modify or change in any respect any of the FDB Knowledge Bases unless authorized to do so by First DataBank. If so authorized, Client acknowledges and agrees that First DataBank disclaims all warranties, express and implied, regarding any Client-modified FDB Knowledge Bases. Further, Client agrees to defend, indemnify, and hold First DataBank harmless from any third-party claim arising from such Client-modified FDB Knowledge Bases to the extent that such claim would not have existed but for Client's modification of the FDB Knowledge Bases.

6. Client will hold the terms of this sublicense in strictest confidence, releasing them only to employees of Client requiring such information, and shall not release or disclose them to any other party, except: (a) as disclosure is required by law; (b) as reasonably required in connection with regulatory filings; (c) to accountants, lawyers, and other agents of Client as reasonably necessary, provided that such agents have agreed to maintain the confidentiality of such information on terms no less stringent than those set forth hereunder.

7. First DataBank does not warrant the accuracy of codes, prices or other data contained in the FDB Knowledge Bases. Information reflecting prices is not a quotation or offer to sell or purchase. The clinical information contained in the FDB Knowledge Bases is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill and judgment of physicians, pharmacists, or other healthcare professionals in patient care. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.

8. EXCEPT AS EXPRESSLY SET FORTH IN THIS PART 2.B, NEITHER ATHENA NOR FIRST DATABANK MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE FDB KNOWLEDGE BASES, THE ACCURACY OF THE DATA FROM WHICH THE FDB KNOWLEDGE BASES ARE COMPILED OR THE COMPATIBILITY OF THE FDB KNOWLEDGE BASES WITH CLIENT'S HARDWARE AND SYSTEMS.

### C. MEDICOMP SYSTEMS, INC. (applicable to athenaClinicals and athenaOne for Hospitals and Health Systems)

Medicomp Systems, Inc., a Virginia corporation with offices at 14500 Avion Parkway, Suite 175, Chantilly, Virginia 20151 ("Medicomp"), has licensed certain software components, algorithms, databases, and periodic updates thereto (collectively, the "Medcin Products") to Athena for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the Medcin Products to Client:

1. The Medcin Products consist of:

- Medcin Knowledge Engine
- E&M Engine
- Medcin clinical concepts
- Unidirectional mappings from Medcin concepts to ICD-9-CM and CPT-4

2. Client will use the Medcin Products solely as a source of medical coding information in athenaNet and solely to support billing in Client offices.

3. Athena has the right, but not the obligation, to (a) create and maintain an audit trail of Client's use of the medical coding functions that use the Medcin Products (such functions and the Medcin Products, collectively, the "Medicomp Coding Functions"), including any changes made to any medical record after the associated documentation has been designated as complete and any overrides made of any code provided by the Medicomp Coding Functions, and (b) prevent submission of any claim if there is a discrepancy between any code selected and the documentation for that claim, or if any code selected would violate any law or the policies of any payer.

4. Medicomp does not warrant the accuracy of codes or other data contained in the Medcin Products. The clinical information contained in the Medcin Products is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists or other healthcare professionals in patient care.

5. The Medcin Products are a work in progress, are not complete, and will always contain errors due to the constant changes in the field of medicine as it evolves. The Medcin Products contain diagnostic and clinical alerting information to support processes for which the sole intent is to provide a list containing some relevant findings for the documentation and consideration of what the provider has already done. The Intelligent Prompting list, Alerts list or any other list provided by the Medcin Products or by applications using the Medcin Products should never be used for decision support as they contain tests, therapies and other items that, although relevant for some patients, would be harmful or even fatal for other patients. The findings prompted by the Intelligent Prompting and Alerts options are for purposes of documentation only and are not meant to suggest any procedures, medications or physical findings for the patient.

6. Client agrees that the sole and exclusive responsibility for any medical decisions or actions with respect to a patient's medical care and for determining the accuracy, completeness or appropriateness of any billing, clinical, coding, diagnostic, medical or other information provided by the Medcin Products resides solely with the health care provider. Neither Athena nor Medicomp assumes any responsibility for how such materials are used. The choice with regard to when and how to use the Medcin Products for patient medical records is the health care provider's responsibility, and the Medcin Products and any database are to be used at the health care provider's discretion. Client understands and agrees that the Medicomp Coding Functions provide possible coding options and do not "recommend," "suggest," or "advise" proper coding decisions and that the responsibility for the medical treatment, and any associated decisions regarding billing for medical services, rests with the health care provider and revolves around the health care provider's judgment and the health care provider's analysis of the patient's condition. In addition, Client agrees that the Intelligent Prompting and Alerts options are tools available to the health care provider for augmenting the documentation of the patient's electronic medical records, and are not intended in any way to eliminate, replace or substitute for, in whole or in part, the health care provider's judgment and analysis of the patient's condition.

7. NEITHER ATHENA NOR MEDICOMP MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED: (A) WITH RESPECT TO THE MEDCIN PRODUCTS OTHER THAN THOSE IN THIS PART 2.C; OR (B) AS TO THE ACCURACY OF THE DATA FROM WHICH THE MEDCIN PRODUCTS ARE COMPILED; OR (C) AS TO THE COMPATIBILITY OF THE MEDCIN PRODUCTS WITH CLIENT'S HARDWARE AND SYSTEMS; AND, EACH SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### D. SURESCRIPTS, LLC (applicable to athenaClinicals and athenaOne for Hospitals and Health Systems)

Surescripts, LLC, a Delaware limited liability company with offices at 2800 Crystal Drive, Arlington, Virginia 22202 ("Surescripts"), has licensed certain services (the "Surescripts Services"), and the right to use certain documentation, interfaces, functionality and transaction maps used in providing the Surescripts Services (the "Surescripts network") to Athena for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the Surescripts Services and the Surescripts network to Client:

1. The Surescripts Services consist of Core Services, Prescription Routing Services and Medication History and Benefit Services - Ambulatory, which may include some or all of the following:

a. Core Services:

- Certification Services
- Foundation Infrastructure
- Patient Identification Services
- Encryption-Related Services

b. Prescription Routing Services:

- NCPDP SCRIPT Transaction Services
- Transmission by Surescripts
- Confirmation by Surescripts
- Facsimile Services in the Event of a Communication Failure to Pharmacy Participants and Format Monitoring

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

c. Medication History and Benefit Services – Ambulatory:

Formulary Distribution Services  
Activity Reporting  
Patient Visit/Treatment Event Services

d. Medication Management for Adherence Service:

Foundation Infrastructure  
Patient Identification Services  
Encryption Related Services  
Timed and Target Message Delivery Services  
Message Feedback Services

e. Fax Gateway Service to Pharmacies Not Participating in the SureScripts Network:

2. Client and its Prescriber End Users (as defined below) will use the SureScripts Services solely for purposes of transmitting and receiving information through athenaNet and the SureScripts network to and from authorized users of the SureScripts network (each such user, a "Participant"). Client shall not and shall cause its Prescriber End Users not to: (i) use the SureScripts network in any manner which would allow the general public access thereto; (ii) authorize any use of the SureScripts network for the benefit of any person or entity not a Prescriber End User; or (iii) disable any portion of athenaNet, solely as such disabling relates to SureScripts' e-prescribing modules. A "Prescriber End User" is an individual, located in the United States or a United States territory, that: (a) is employed by, an active member of the medical staff of, or otherwise performing healthcare services as a legally authorized representative of Client; and (b) if required by Applicable Law to be licensed, registered, or otherwise authorized by a governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate governmental authority to perform the applicable healthcare services.

3. Only Client's duly authorized Prescriber End Users will use the SureScripts Services and the SureScripts network, and Client shall conduct identity proofing and authentication sufficient to meet regulatory requirements and industry standards to confirm that all messages transmitted via the SureScripts network originate from such Prescriber End Users.

4. Client will not use the SureScripts network or any data or information relating to SureScripts, its services or operations ("SureScripts Data") to compete with any pharmacy benefit manager, health benefit payer or administrator, pharmacy, pharmacy chain, pharmacy information aggregator or other similar entity (each, a "Data Source") in the primary areas of business of such Data Source.

5. Client shall not and shall not permit any other person (including Prescriber End Users) to use any means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, a prescribing decision of a prescriber at the point of care if: (a) such means, program, or device is triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (b) that prescription shall be delivered via the SureScripts network. Notwithstanding the foregoing, Client may: (A) show information regarding a payer's formulary and benefit plan design, including patient lowest cost options, on/off tier, prior authorization, step therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to Prescriber End Users clinical alerts that are sourced from payers and/or are attributed to generally recognized and reputable sources providing clinical information to the prescriber, even if, in the event of either (A) or (B), such information influences the patient or prescriber's choice of pharmacy or other prescribing decisions. Any custom lists created and maintained by Prescriber End Users, including but not limited to: (i) an individual Prescriber End User's most often prescribed medication list; (ii) an individual Prescriber End User's most often used pharmacy list; and/or (iii) an individual Prescriber End User's most often used SIGs (i.e., instructions for the use of medications) would not be considered a violation of this Section.

6. Client and its Prescriber End Users shall keep confidential any SureScripts or Participant proprietary and/or confidential information disclosed to Client and/or its Prescriber End Users through the SureScripts Services.

7. Client shall establish and maintain appropriate safeguards against the destruction, loss, or alteration of SureScripts Data or Participant Data that are no less rigorous than those maintained by Client for its own information

of a similar nature, but no less than reasonable safeguards. Client shall have in place appropriate administrative, technical, and physical safeguards to protect the privacy and security of Private Information. Client shall reasonably safeguard Private Information from any intentional or unintentional use or disclosure that is in violation of Applicable Law, and limit incidental uses or disclosures made pursuant to otherwise permitted or required disclosures. "Private Information" means (i) Nonpublic Personal Financial Information and, as applicable, Nonpublic Personal Health Information, as defined by the Gramm-Leach-Bliley Act; or (ii) any data or information that: (1) relates to an individual, and (2) identifies or can reasonably be believed to form the basis for identifying an individual (such as, but not limited to, an individual's name, postal address, e-mail address, telephone number, date of birth, Social Security number, driver's license number, financial account number, or any other unique identifier), in each case, that is provided to Client by SureScripts pursuant to the Agreement. Private Information does not include PHI.

8. Client shall ensure that any and all patient consents and/or authorizations required by Applicable Law for use or access to the SureScripts Services have been obtained by Prescriber End Users and that its Prescriber End Users have certified to such. In particular, and without limiting the foregoing, Client shall require that each Prescriber End User shall obtain the consent of the patient prior to requesting medication history for such patient. Client shall require its Prescriber End Users to comply with any privacy and patient consent policies of SureScripts related to the delivery of PHI and Private Information. Client acknowledges that Data Sources may impose additional privacy and patient consent policies on the delivery of Private Information through the SureScripts network.

9. Client warrants and represents that Client has obtained, at Client's own expense and in a manner compliant with all material Applicable Law, a Satisfactory Background Screening, as defined below, for all of its employees and contractors whose job descriptions or functional duties require or contemplate access (other than incidental or infrequent access) to any Private Information and/or PHI that is provided to Client by SureScripts pursuant to the Agreement ("Client Personnel"). As used herein, a "Satisfactory Background Screening" shall mean, collectively, the following: (1) national federal criminal database check; (2) seven (7)-year county of residence criminal conviction search (i.e., search of all counties in which individual has resided within the preceding seven (7) year period); and (3) in each of (1) and (2) above, containing no felony or misdemeanor conviction that related to fraud or theft (including but not limited to, shoplifting, larceny, embezzlement, forgery, credit card fraud, or check fraud), the disposition of which is within seven (7) years, as allowed by law. Upon written notice to Client, SureScripts may reasonably modify the foregoing guidelines to comply with Applicable Law. Client agrees to impose a requirement at least as restrictive as that contemplated herein on any Downstream Entities; provided however, that for any offshore Downstream Entity, a Satisfactory Background Check shall mean verification of an employee's (W) status on the Office of Inspector General exclusions list, (X) employment history, (Y) educational background, and (Z), if reasonably practicable, a criminal background check. Aggregator agrees that in the event that any Downstream Entity refuses or fails to perform such background checks as contemplated herein, Client shall not provide to such Downstream Entity any Private Information and/or PHI from SureScripts. Promptly upon written request, Client shall verify in writing its compliance with the foregoing requirements by providing SureScripts with a written affidavit signed by an executive officer of Client, certifying that Client has obtained Satisfactory Background Checks with respect to all Client Personnel with access to Private Information and/or PHI in accordance with these Third Party Terms. Downstream Entity means any agent or subcontractor, except for a Covered Entity (as defined under HIPAA), that has access to SureScripts Data.

10. Client shall not make any use or disclosure of any data or information provided by Data Sources to Client by or through the SureScripts network except for the specific purposes outlined in the SureScript Services. Client shall not attempt to capture, open, examine, modify, add commercial or other messages to, repackage, distribute, license, sell or make any commercial use of any data or information provided by any Data Source to Client by or through the SureScripts network other than as specifically permitted herein. Client shall engage in no act or omissions which would interfere with, modify, or delay the transmission of any data or information provided by the Data Sources which is communicated through athenaNet.

11. CLIENT UNDERSTANDS AND AGREES THAT CERTAIN DISCLOSURES OF A PATIENT'S PRESCRIPTION HISTORY MAY NOT BE PERMITTED UNDER APPLICABLE LAWS AND THAT CLIENT SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LAWS (INCLUDING, BUT NOT LIMITED TO, OBTAINING CONSENT FROM

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

PATIENTS TO ANY DISCLOSURE OF PRESCRIPTION HISTORY TO CLIENT THROUGH THE SURESCRIPTS SERVICES THAT WOULD OTHERWISE BE PROHIBITED) PRIOR TO RECEIPT OR USE OF SUCH HISTORY.

12. Athena and Surescripts have the right (but not the obligation) to (a) create and maintain an audit trail of Client's use of the Surescripts Services; (b) access, inspect, and audit records of Client relating to the use of Surescripts network, Surescripts data, and Participant data, in each case after reasonable notice; and (c) share Client data or information with other Participants, in each case in compliance with applicable law and solely to the extent necessary to fulfill the terms and conditions of the underlying license agreement between Athena and Surescripts. REGARDLESS OF ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, CLIENT HEREBY CONSENTS TO THE DISCLOSURE OF CLIENT'S E-PRESCRIBING DATA (INCLUDING, BUT NOT LIMITED TO, DATA RELATING TO EACH SPECIFIC PRESCRIPTION TRANSACTION) TO DATA SOURCES FOR THE PURPOSES OF MONITORING ADOPTION AND VALIDATING THE VALUE OF THE E-PRESCRIBING PROCESS TO PLAN SPONSORS.

13. Client and other Participants are solely responsible for (a) the content of any point-to-point messages sent using the Surescripts Services, as well as the encryption method and administration of those messages and (b) optional payload encryption for SCRIPT transactions, which Participants must determine between themselves.

14. Except to the extent arising from the gross negligence or willful misconduct of Surescripts, Client shall indemnify and save harmless Surescripts from and against any and all loss, damage, or expense (or claims of damage or liability) asserted against Surescripts by third parties and arising directly out of any breach of this Part 2.D by Client, any loss of connectivity to the Surescripts network due to acts or omissions of Client inconsistent with the terms and conditions of the Agreement or these Third Party Terms, or information provided to Surescripts by Client or Prescriber End Users, or arising out of the use of such information when furnished by Surescripts to Client, Prescriber End Users or to other third persons at Client's request, or to officers, employees and agents of Client.

15. Surescripts makes no representation or warranty regarding the availability through the Surescripts network of any particular Data Source or other Participant in the Surescripts network. At any time, Data Sources or other Participants in the Surescripts network may be added to or deleted from the Surescripts network, may elect not to receive prescriptions and other messages or may limit Client's access to their data; such changes may occur without prior notice to Client.

16. OTHER THAN AS EXPRESSLY PROVIDED IN THIS PART 2.D, NONE OF ATHENA, SURESCRIPTS OR THE DATA SOURCES MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE SURESCRIPTS SERVICES, THE AVAILABILITY THROUGH THE SURESCRIPTS NETWORK OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT, OR THE ACCURACY OR COMPLETENESS OF THE DATA PROVIDED THROUGH THE SURESCRIPTS NETWORK, INCLUDING BUT NOT LIMITED TO PRESCRIPTION BENEFIT AND MEDICATION HISTORY INFORMATION, AND EACH SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE.

17. Surescripts uses available technology to match patient identities in order to provide the Surescripts Services. Because patient information is maintained in multiple places, not all of which are accessible to Surescripts, and may not be kept in a standard fashion or be regularly updated, it is possible that false matches may occur or that there may be errors or omissions in the prescription drug benefit and/or medication history information provided pursuant to the Surescripts Services. Therefore, any treating physician or other health care provider or facility should, and Surescripts and each Data Source shall have no responsibility to, verify prescription drug benefit or medication history information, through means other than the Surescripts network, with each patient and/or the patient's representatives before such information is relied upon or utilized in diagnosing or treating the patient. Surescripts is not a health plan, health care provider or prescriber. Surescripts does not and cannot independently verify or review the information transmitted through the Surescripts network for accuracy or completeness.

18. Client releases and holds harmless Athena, Surescripts and any person or entity providing prescription benefit or medication history

information from any liability, cause of action, or claim related to the completeness or lack thereof of the prescription benefit or medication history information. In addition, Client and Client's Prescriber End Users shall confirm the accuracy of the prescription benefit and medication history information with his/her/its patient prior to providing any medical services based thereon. Client and its Prescriber End Users shall use his/her/it professional judgment in the provision of care.

19. The Surescripts network is not intended to serve as a replacement for: (i) a written prescription where not approved as such by the appropriate governmental authorities or where such written prescription is required for record keeping purposes; or (ii) applicable prescription documentation. Use of the Surescripts network is not a substitute for a health care provider's standard practice or professional judgment. Any decision with regard to the appropriateness of treatment, or the validity or reliability of information, is the sole responsibility of a patient's health care provider.

20. All disclaimers set forth in this Part 2.D shall survive termination or expiration of the Agreement.

### **E. HEALTH LANGUAGE, INC. (applicable to athenaClinicals, athenaCollector, athenaOne for Hospitals and Health Systems, and athenahealth Population Health)**

HEALTH LANGUAGE, INC., a Delaware corporation with offices at 4600 South Syracuse Street, Suite 1200, Denver, Colorado 80237 ("HLI") has licensed certain proprietary software, content and documentation ("HLI Technology") to Athena for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the HLI Technology to Client:

1. **SUBLICENSE.** HLI hereby grants a limited nonexclusive and nontransferable sublicense for the HLI Technology through Athena to Client. Client acknowledges that HLI owns the HLI Technology.

2. **PROTECTIONS AND NONDISCLOSURE.** Client agrees that it shall protect all intellectual properties in the HLI Technology, including without limitation, patents, copyrights, and trade secrets. Further, Client shall not disclose any HLI Technology to any third parties, nor reverse engineer any HLI Technology.

3. **ANY USE BY CLIENT OF THE HLI TECHNOLOGY IS AT CLIENT'S OWN RISK. THE HLI TECHNOLOGY IS PROVIDED FOR USE "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HLI AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT. HLI IS NOT OBLIGATED TO PROVIDE ANY UPDATES TO THE HLI TECHNOLOGY.**

4. **CONFIDENTIALITY.** Client agrees to protect HLI's confidential information which is contained within the HLI Technology.

### **F. HEALTHWISE, INC. (applicable to athenaClinicals, athenaCommunicator®, and athenaOne for Hospitals and Health Systems)**

HEALTHWISE, INC., an Idaho nonprofit corporation with offices at 2601 North Bogus Basin Road, Boise, Idaho 83702 ("Healthwise"), has licensed the Healthwise knowledgebase (in English and Spanish) (each, a "Knowledgebase") and Healthwise patient instructions ("Patient Instructions") (each, a "Healthwise Product") to Athena for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the Healthwise Products to Client:

1. Client shall have a nonexclusive, nontransferable, limited sublicense to access and use the Healthwise Products solely as embedded within athenaClinicals, athenaCommunicator, or athenaOne for Hospitals and Health Systems.

2. Upon reasonable request by Athena and/or Healthwise, Client will provide to Athena and/or Healthwise all marketing materials used by Client that include Healthwise trademarks. Upon termination of the Athena third party agreement with Healthwise or upon request by Athena, Client shall immediately return to Athena any product and/or Healthwise Product, marketing materials or confidential information of Healthwise, or destroy all copies in its possession or control, and upon request, an officer of Client will certify this to Athena and/or Healthwise in writing.

3. Healthwise and its suppliers provide the Healthwise Products to Client on an "AS-IS" basis. Healthwise and its suppliers make no

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

representation or warranty as to the accuracy or completeness of the information. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEALTHWISE AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

4. HEALTHWISE AND ITS SUPPLIERS' AGGREGATE LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS THIRD PARTY AGREEMENT, WHETHER BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, SHALL BE LIMITED TO THE AMOUNT OF LICENSE FEES PAID BY OR OWED BY ATHENA TO HEALTHWISE UNDER THIS THIRD PARTY AGREEMENT IN THE 24 MONTH PERIOD IMMEDIATELY PRECEDING ANY CLAIM. CLIENT AGREES THAT HEALTHWISE AND ITS THIRD PARTY SUPPLIERS ARE NOT RESPONSIBLE FOR THE RESULTS OF CLIENT'S OR USERS' USE OF THE LICENSED PRODUCTS, INCLUDING, BUT NOT LIMITED TO, USERS CHOOSING TO SEEK OR NOT TO SEEK PROFESSIONAL MEDICAL CARE, OR USERS CHOOSING OR NOT CHOOSING SPECIFIC TREATMENT BASED ON THE HEALTHWISE PRODUCTS.

5. Client agrees to maintain adequate insurance coverage during the term of the Athenahealth Master Services Agreement.

6. Client agrees not to disclose any confidential information of Healthwise to any person or entity except employees of Client or others providing services to Client who have a need to know such confidential information and who have been informed of and are bound by Client's obligations of confidentiality hereunder.

### 7. Knowledgebase Terms and Conditions

a. Definitions. "End Users" means and is limited to Client's patients in the Physician Market or Hospital Market in the United States. "Physician Market" is defined as and comprised of organizations that employ and/or contract with Healthcare Professionals to provide medical care to patients in an outpatient clinical setting. "Healthcare Professional" means a care giver licensed to practice some scope of health care/medicine and who can bill one or more third party payers for his or her services. "Hospital Market" is defined as a health care organization that has a governing body, an organized medical staff and professional staff, and State Licensed Beds that provide medical, nursing, and related services for ill and injured patients. "State Licensed Bed" means State licensed capacity for a hospital/an available bed which is resourced for patient care, that is located at a practice, hospital, or health system utilizing athenaOne for Hospitals & Health Systems.

b. As an additional restriction for Knowledgebase, the sublicense grant is further defined to grant to Client a non-exclusive, nontransferable limited license to the Knowledgebase solely as embedded within athenaClinicals, athenaCommunicator, or athenaOne for Hospitals and Health Systems for access by End Users via the Client's unique Athena website.

c. The following are additional provisions from Healthwise's third-party content providers that Healthwise is required to pass through to Client pertaining to implementation and use third party content included in Knowledgebase. Client agrees to such provisions.

i. National Cancer Institute Physician Data Query (PDQ®). Some material in the PDQ® is from copyrighted publications of the respective copyright claimants. Users of PDQ are referred to the publication data appearing in the bibliographic citations, as well as to the copyright notices appearing in the original publication, all of which are hereby incorporated by reference. Because use of the PDQ data for insurance reimbursement decisions is contrary to the nature of the database, which is designed as a research tool and not to reflect all possible treatment options, Client agrees to not use it for reimbursement decision purposes.

ii. Carner Multum Drug Reference. The Multum Information Services, Inc. SDK patient education drug information service is included in the Healthwise content. Client will maintain all required Multum End-User Agreements included in the Healthwise content. Client acknowledges that users will be required to agree to the Multum End-User License Agreement by one of the following ways: (a) one time per user upon entry to the Multum content, leaving a "cookie" on the eligible user's computer to record eligible user's agreement; (b) upon entry to the Multum content at least

once each user session; or (c) providing each eligible user a link to the Multum End-User License Agreement language. The link shall appear on each screen when the Multum content can be viewed by the user, and shall read: "Your use of the content provided in this service indicates that you have read, understood and agree to the End-User License Agreement, which can be accessed by clicking on this link."

### 8. Patient Instructions Terms and Conditions

a. As an additional restriction for Patient Instructions, the sublicense grant is further defined to grant to Client a non-exclusive, nontransferable limited license to the Patient Instructions solely for the purpose of allowing Healthcare Professionals of Client to access the Patient Instructions for distribution of the health information contained in the Patient Instructions to End Users.

b. The license grant does not permit Client or Healthcare Professionals to alter or delete the copyright statements or disclaimers, warning notices, license restrictions and limitations of liability provisions printed on the Patient Instructions.

c. Client will ensure that each Patient Instructions dispensed by Client, and/or a Healthcare Professional include the following disclaimer, notation and attribution of ownership in a font size readable by the end user and in close proximity to the Patient Instruction content: "© [insert current year] Healthwise, Incorporated. Care instructions adapted under license by [your organization]. This care instruction is for use with your licensed Healthcare Professional. If you have questions about a medical condition or this instruction, always ask your Healthcare Professional. Healthwise disclaims any warranty or liability for your use of this information."

## G. MICROSOFT CORPORATION (applicable to athenaOne for Hospitals and Health Systems, athenahealth Population Health, athenaCoordinator Analytics, and athenaOne Analytics)

Microsoft Corporation, a Washington corporation with offices at Dept 551, Volume Licensing, 6100 Neil Road, Suite 210, Reno, Nevada 89511 ("Microsoft"), has licensed Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation (individually and collectively, "Microsoft Products") to Athena for sublicense to its Clients. Athena does not own the Microsoft Products. The following additional terms and conditions apply to all Athena sublicenses of Microsoft Products to Client:

### 1. DEFINITIONS.

"Client Software" means software that is installed on a Device that allows the Device to access or utilize the Microsoft Products.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or any other hardware where software can be installed that would allow Microsoft End User to interact with the Microsoft Products.

"Microsoft End User" means an individual or legal entity that obtains athenaNet Services directly from Athena.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

2. **OWNERSHIP OF PRODUCTS.** The Microsoft Products are licensed to Athena from an affiliate of the Microsoft Corporation (collectively "Microsoft"). Microsoft Products are protected by copyright and other intellectual property rights. Microsoft Products and other Microsoft Products elements including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Microsoft Products are owned by Microsoft or its suppliers. Client may not remove, modify or obscure any copyright trademark or other proprietary rights notices that are contained in or on the Microsoft Products. The Microsoft Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Client's possession, access, or use of the Microsoft Products does not transfer any ownership of the Microsoft Products or any intellectual property rights to Client.

3. **USE OF CLIENT SOFTWARE.** Client may use the Client Software installed on Client's Devices only in accordance with Client's agreement with Athena and the terms under this document, and only in connection with the athenaNet Services, provided to Client by Athena. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during the installation and/or use of the Client Software.

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

**4. USE OF REDISTRIBUTION SOFTWARE.** In connection with the athenaNet Services provided to Client by Athena, Client may have access to certain "sample," "redistributable" and/or software development software code and tools (individually and collectively "Redistribution Software"). Client may use, copy and/or install the Redistribution Software only in accordance with the terms of Client's agreement with Athena and this document and/or Client's agreement with Athena.

**5. COPIES.** Client may not make any copies of the Microsoft Products; provided, however, that Client may (a) make one copy of Client Software on Client's Device as expressly authorized by Athena; and (b) Client may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). Client must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Client's agreement with Athena, upon notice from Athena or upon transfer of Client's Device to another person or entity, whichever occurs first. Client may not copy any printed materials accompanying the Microsoft Products.

**6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** Client may not reverse engineer, decompile, or disassemble the Microsoft Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

**7. NO RENTAL.** Client may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Microsoft Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Microsoft Products except for the sole purpose of accessing the functionality of the Microsoft Products in the form of athenaNet Services in accordance with the terms of this agreement and any agreement between Client and Athena.

**8. TERMINATION.** Without prejudice to any other rights, Athena may terminate Client's rights to use the Microsoft Products if Client fails to comply with these terms and conditions. In the event of termination or cancellation of Client's agreement with Athena or Athena's agreement with Microsoft under which the Microsoft Products are licensed, Client must stop using and/or accessing the Microsoft Products, and destroy all copies of the Microsoft Products and all of their component parts within thirty (30) days of the termination of Client's agreement with Athena.

**9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** Microsoft disclaims, to the extent permitted by applicable law, all warranties and liability for damages by Microsoft or its suppliers for any damages and remedies whether direct, indirect or consequential, arising from the athenaNet Services. Any warranties and liabilities are provided solely by Athena and not by Microsoft, its affiliates or subsidiaries.

**10. PRODUCT SUPPORT.** Any support for the athenaNet Services is provided to Client by Athena or a third party on Athena's behalf and is not provided by Microsoft, its suppliers, affiliates or subsidiaries.

**11. NOT FAULT TOLERANT.** The Microsoft Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. Client must not use the Microsoft Products in any application or situation where the Microsoft Products' failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use").

**12. EXPORT RESTRICTIONS.** The Microsoft Products are subject to U.S. export jurisdiction. Athena must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**13. LIABILITY FOR BREACH.** In addition to any liability Client may have to Athena, Client agrees that Client will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

**14. INFORMATION DISCLOSURE.** Client must permit Athena to disclose any information requested by Microsoft under the Athena's Agreement. Microsoft will be an intended third party beneficiary of Client's agreement with Athena, with the right to enforce provisions of Client's agreement with Athena and to verify Client's compliance.

### H. INTELLIGENT MEDICAL OBJECTS, INC. (applicable to athenaClinicals and Epocrates Connect)

athenaClinicals and Epocrates Connect (collectively, the "Software") (defined hereunder) contains terminology products from Intelligent Medical Objects, Inc. ("IMO") including, but not limited to IMO® Problem **IT**®

terminology (IMO products and Services shall be collectively referred to in this as the "IMO Service"). The IMO Service and the Software are separate products provided by separate entities. Your (either an individual or single entity) ("END-USER") use of the IMO Service in conjunction with athenaNet is subject to the terms and conditions of this Part 2.H.

In consideration of the rights and restrictions contained herein, END-USER agrees as follows:

**1. Grant of License.** The license granted herein is a non-exclusive, non-transferable license to use the IMO Service solely in conjunction with the Software in a clinical setting; provided END-USER complies with the restrictions set forth in Section 2.

**2. Restrictions.** END-USER shall not cause or permit others to copy, duplicate, redistribute, loan, rent, retransmit, publish, license or sublicense or otherwise transfer, or commercially exploit, the IMO Service, in whole or part. END-USER shall not prepare derivative works or incorporate the IMO Service, in whole or part, in any other system or work; or reverse engineer, decompile, disassemble, decrypt, translate, alter, adapt or modify the IMO Service, in whole or part.

**3. Compliance with laws.** END-USER represents and warrants that its use of the IMO Service shall at all times comply with, and END-USER shall remain solely responsible for its compliance with applicable federal, state, local and foreign laws and regulations.

**4. Ownership.** IMO represents and warrants that it has the right to provide the IMO Service to End User, subject to the terms and conditions of this Part 2.H This Part 2.H provides only a license of rights to use the IMO Service, and does not provide for the sale or other transfer of title. Except for third party content included in the IMO Service, IMO has and shall have exclusive title to and ownership of all of its products, including the IMO Service and of all of its sub-parts and components, and of all updates, modifications, alterations, customizations, derivative works, revisions or enhancements thereof, and of all software, source code, and trade secrets, and proprietary research, equations, screens, techniques, methodology, analysis, programming or know-how thereof.

Any ideas or requests for terms submitted by END-USER to IMO for inclusion in the IMO Service shall be considered part of a derivative work of the IMO Service and shall be owned by IMO with all rights assigned by END-USER to IMO. END-USER shall not be charged for such regular inclusion of added terms. END-USER will have a perpetual, non-exclusive license to use, display or modify these requested terms apart from the IMO Service.

**5. Disclaimer of Warranties.** THE END USER ACKNOWLEDGES THAT EXCEPT AS SPECIFICALLY PROVIDED IN THESE TERMS, THE IMO SERVICE IS PROVIDED ON AN "AS IS" BASIS, AND IMO MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR NATURE OF THE DATA FROM WHICH THE IMO SERVICE IS COMPILED, THE MERCHANTABILITY AND FITNESS FOR CLIENT'S PARTICULAR PURPOSE NOR THE COMPATIBILITY OF THE IMO SERVICE WITH THE END USER'S HARDWARE AND SYSTEMS.

IMO IS NOT ENGAGED IN THE PRACTICE OF MEDICINE. THE END USER ACKNOWLEDGES THAT THE IMO SERVICE DOES NOT TAKE INTO ACCOUNT THE UNIQUE NATURE OF A PATIENT ENCOUNTER. USE OF THE IMO SERVICE DOES NOT ABSOLVE THE END USER OF ITS PROFESSIONAL OBLIGATIONS TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS (INCLUDING BILLING, CODING AND COMPLIANCE), AND SUCH OBLIGATIONS LIE SOLELY WITH THE END-USER.

**6. Assumption of Risk.** THE END-USER ACKNOWLEDGES THAT THE IMO SERVICE IS NOT A SUBSTITUTE FOR THE CARE PROVIDED BY LICENSED HEALTH CARE PRACTITIONERS. AS BETWEEN THE END-USER AND IMO, THE END-USER HEREBY ASSUMES FULL RESPONSIBILITY FOR: (A) ITS USE OF THE IMO SERVICE; AND (B) INSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRAINDICATIONS. ADDITIONALLY, IMO UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE IMO SERVICE.

THE IMO SERVICE DOES NOT ENDORSE DRUGS, DIAGNOSE PATIENTS, OR RECOMMEND THERAPY. THE IMO SERVICE IS AN INFORMATIONAL RESOURCE DESIGNED TO ASSIST LICENSED HEALTH CARE PRACTITIONERS IN DOCUMENTING THE CARE OF THEIR PATIENTS. THE INFORMATION CONTAINED WITHIN THE IMO

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

SERVICE IS INTENDED FOR USE ONLY BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS WHO SHOULD RELY ON THEIR CLINICAL DISCRETION AND JUDGMENT IN DIAGNOSIS AND TREATMENT.

**7. Disclaimer of Liability.** IN NO EVENT SHALL IMO BE LIABLE TO ANY PERSON INCLUDING, BUT NOT LIMITED TO END-USER AND PERSONS TREATED BY OR ON BEHALF OF END-USER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS PART 2.H OR THE IMO SERVICE.

**8. Indemnification.**

a. By END-USER. END-USER agrees to indemnify, defend, and hold IMO harmless from any claims, costs, liabilities, judgments, attorneys' fees, settlements, penalties or other losses in all causes including, but not limited to losses for tort, personal injury, medical malpractice or product liability arising out of or relating to: (a) the END-USER's use of the IMO Service; (b) any data or information input into the IMO Service by END-USER; (c) END-USER's negligence or intentional misconduct; and (d) any breach of this Part 2.H by END-USER. In the event that END-USER indemnifies IMO, then: (i) END-USER will retain qualified counsel with demonstrable experience defending claims of the type to be defended, who shall be preapproved by IMO; and (ii) END-USER agrees to let IMO participate in the defense of any action, at IMO's option and expense.

b. By IMO. IMO agrees to indemnify, defend, and hold END-USER harmless against third party claims, costs, liabilities, judgments, attorneys' fees, settlements, and penalties brought against END-USER arising out of, related to, or alleging that the IMO Service infringes on a United States patent, trademark, copyright or trade secret of a third party (collectively "Indemnified Claim"); provided END-USER promptly notifies IMO in writing of such Indemnified Claim. IMO shall have sole control of the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided END-USER will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations. IMO shall have no indemnification obligation to END-USER to the extent that an Indemnified Claim arises out of: (i) END-USER'S violation of this Part 2.H if such infringement would not have occurred but for such breach; (ii) information incorporated into the IMO Service by END-USER if such infringement would not have occurred but for such information being incorporated; (iii) a modification or addition to the IMO Service made by END-USER in violation of this Part 2.H and made without IMO's written consent if such infringement would not have occurred but for the modification or addition to the IMO Service; or (iv) use of the IMO Service in combination with hardware or software not contemplated under these Terms or approved in writing by IMO, if such infringement would not have occurred but for such combination

**9. Trademarks.** END-USER will not alter, cover or remove any trademark, copyright or other proprietary rights notice placed by IMO or a third party in or on the IMO Service.

**10. Security.** END-USER shall establish the appropriate firewalls and security systems, such that the IMO Service is accessed only by authorized employees or contractors of END-USER and is not used in a manner that would violate the terms of this Part 2.H.

**11. Protected Health Information; Collection of Information.**

a. *Protected Health Information.* IMO and END-USER agree that in connection with END-USER's use of the IMO Service, END-USER shall not transmit and IMO shall not request from END-USER any information that would be considered Protected Health Information ("PHI") as defined by 45 CFR §160.103 of the Health Insurance and Portability and Accountability Act of 1996 ("HIPAA").

b. *Collection and Use of Information.* IMO may, directly or indirectly through the IMO Service, collect and store information regarding use of the IMO Service and about equipment through which the IMO Service is accessed and used, by means of providing maintenance and support services and security measures included in the IMO Service. All information that IMO collects through or in connection with the IMO Service is subject to the IMO Privacy Policy located here: <https://www.e-imo.com/privacy-policy> (the "Privacy Policy"). END USER agrees that IMO and third parties acting under the direction of IMO may use such information to (i) train, tune, enhance, develop and improve the IMO Service and develop updates thereto; (ii) verify compliance with this Part 2.H; and (iii) as otherwise required to support the IMO Service and perform its obligations under this Part 2.H. IMO may disclose aggregated information, only in a form that does

not identify Software Vendor or END USER, or any patients thereof, to third parties. Notwithstanding the foregoing, IMO shall not be permitted to disclose Software Vendor's or END USER'S information on a standalone basis or in any manner that on its own or in combination with another data set could reasonably identify Software Vendor or END USER or any patients thereof. To the extent any information is compiled or used by IMO in or with any such software, products or IMO Services, all intellectual property rights in such software, products and IMO Services shall be owned by IMO.

**12. Third Party Beneficiary.** END-USER agrees that IMO shall be, and is hereby, named as an express third-party beneficiary of this Part 2.H for the purpose of enforcing at law and at equity all rights under this Part 2.H against END-USER, the covenants of END-USER and the warranty disclaimers and limitations of liability set forth in this Part 2.H whether or not such provisions make specific reference to IMO or the IMO Service.

**13. Term and Termination.** The term of this Part 2.H begins upon installation of the Software and/or IMO Service and continues for the term specified in END-USER's Software license agreement. This Part 2.H may be terminated by IMO or athenahealth, Inc at any time if athenahealth Inc.'s relationship with IMO terminates. IMO or athenahealth, Inc. may suspend END USER's access to the IMO Service in the event END USER breaches any provision of this Part 2.H and such breach is not cured within thirty (30) days after receipt of written notification of such breach; provided that such suspension shall become effective (i) immediately in the event such breach is unable to be cured within any cure period, and (ii) upon the date thirty (30) calendar days after written notification of any such breach able to be cured if the breaching Party fails to cure such breach within the 30-day time period. If this Part 2.H is terminated for any reason, END-USER agrees to immediately return or destroy all copies of the IMO Service maintained outside of the Software and all accompanying items and certify the return or destruction thereof.

**14. Third Party Content.**

a. *SNOMED CT® Content.* The IMO Service includes SNOMED Clinical Terms (SNOMED CT®) which is used by permission of the International Health Terminology Standards Development Organisation (IHTSDO). All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. "SNOMED" and "SNOMED CT" are registered trademarks of the IHTSDO.

**15. Government Rights.** The IMO Service is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at the private expense by Intelligent Medical Objects, Inc., 60 Revere Drive, Suite 400, Northbrook, Illinois 60062. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.2277015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

**16. General.** END-USER will hold the terms of this Part 2.H confidential. END-USER will ensure that anyone with authorized access to the IMO Service will comply with the provisions of this Part 2.H. If any provision of this Part 2.H is determined to be unenforceable, the rest of this Part 2.H will remain in full force. Headings in this Part 2.H are for convenience only and are not part of this Part 2.H. The delay or failure to assert a right herein or to insist upon compliance with any term or condition of this Part 2.H shall not constitute a waiver of that right or excuse a subsequent failure to perform any term or condition. END-USER may not assign any of the rights herein without prior written approval from IMO. This Part 2.H will be governed by the State of Delaware without regard to choice-of-law principles. This Part 2.H is the entire agreement between END-USER and IMO as to the subject matter. Any amendment must be in writing signed by both END-USER and IMO.

**I. PARTNER SERVICE OFFERINGS (applicable to athenaOne for Hospitals and Health Systems)**

**1. General Terms.** athenaOne for Hospitals & Health Systems service partners with several athenahealth third-party providers that provide services, content, products, and/or platforms that integrate with athenaNet (collectively, the "Partner Service Offerings"). Your use of the Partner



## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

Service Offerings is subject to the terms and conditions set forth at [www.athenahealth.com/PartnerServiceOfferings](http://www.athenahealth.com/PartnerServiceOfferings), as may be updated from time to time by athenahealth.

### J. APPRISS, INC. (applicable to athenaClinicals and athenaOne for Hospitals and Health Systems)

Appriss Inc. ("Appriss") and Athena have built an integration to make the Gateway Service (as defined below) available to Athena's Clients via athenaNet. The following terms and conditions apply to Clients that use or access the Gateway Service:

#### 1. Defined Terms.

a. "Gateway Service" means the Gateway application programming interface (API), which is a data communication service that is owned by Appriss and, in conjunction with Third Party Material(s), facilitates the transmission of requests for, and retrieval of, controlled substance prescription related Services Information, including, as applicable, PMP Data from participating PMPs, for Client. Client may view an updated list of participating PMPs on Appriss's designated website. The Gateway Service includes Third Party Material(s).

b. "PMP" or "PMPs" means one or more state prescription monitoring programs that collect prescription drug dispensing information from entities such as pharmacies and permit users who meet applicable state-designated requirements to access such information.

c. "PMP Data" means prescription history and related information maintained by PMPs.

d. "Service Information" means data that is input and transmitted by Appriss to Client via the Gateway Service, including but not limited to user data, search criteria, PMP Data, and any other controlled substance prescription related data provided by Appriss.

e. "Third Party Material(s)" means any information, services, software, or goods provided, manufactured or created by a party other than Appriss that Appriss utilizes in connection with providing the Gateway Service.

2. Grant of License. Appriss grants Client a limited, non-exclusive, non-transferable, non-sublicensable license to access the Gateway Service and Service Information for internal use by Client.

3. Access and Use. Client will maintain and enforce policies and procedures to ensure that the Gateway Service and Service Information, and its systems used in connection therewith, are accessed and used in a secure manner in accordance with applicable law. Copies of said policies and procedures shall be provided upon request of a state.

4. Responsibility for Use. Appriss is not responsible for any access or use of the Gateway Service or Service Information by Client, or any of Client's patients, affiliates, agents or contractors, that is not in accordance with applicable law or the terms set forth herein.

5. Reverse Engineering. Client will not reverse engineer, disassemble, or decompile the Gateway Service or any portion thereof.

### K. ORCHARD SOFTWARE CORPORATION (applicable to athenaOne for Hospitals and Health Systems)

Orchard Software Corporation, an Indiana corporation with its principal place of business at 701 Congressional Boulevard, Carmel, IN 46032, has licensed the Orchard Harvest Laboratory Information System (the "Orchard LIS") for sublicense to its Clients. The following additional terms and conditions apply to all Athena sublicenses of the Orchard LIS:

1. IN NO EVENT SHALL A THIRD PARTY LICENSOR'S (OR ITS SUPPLIERS') LIABILITY TO ANY CLIENT EXCEED THE AMOUNT PAID TO IT BY ATHENA UNDER THE CURRENT FEE TERM OF THE UNDERLYING LICENSE AGREEMENT BETWEEN ATHENA AND SUCH THIRD PARTY LICENSOR WITH RESPECT TO SUCH CLIENT'S USE OF THE THIRD PARTY ITEM, REGARDLESS OF THE FORM OF THE ACTION OR CLAIM, AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF THE THIRD PARTY LICENSOR (OR ITS SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF ATHENA OR A THIRD PARTY LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### L. NDCHealth CORPORATION D/B/A RELAYHEALTH (applicable to athenaClinicals)

NDCHealth Corporation ("RelayHealth") and Athena have built an integration to make RxBenefit Clarity (as defined below) available to Athena's Clients via athenaNet. The following terms and conditions apply to Clients that use or access the RelayHealth/Athena Interface (as defined below):

1. "RxBenefit Clarity" means the functionality and service that RelayHealth provides that permits Client to obtain certain pharmacy benefit information (e.g., a patient's estimated out-of-pocket cost for a specific prescribed product and other coverage information) which may be delivered prior to completion of the prescription writing process.

2. "RelayHealth/Athena Interface" means the interface or interfaces enabling the transmission of data between athenaNet and RelayHealth in connection with RxBenefit Clarity.

3. Client represents and warrants that it will only submit data through the "RelayHealth/Athena Interface" pursuant to a valid prescription request and not for any other purpose (including test transactions) and only when: (a) Client has obtained all consents or authorizations necessary to submit such data; (b) the patient indicates an intent to use a prescription benefit to pay for the prescription at issue, and (c) Client has the authority to authorize Athena to provide such data to RelayHealth for use in connection with the athenaNet Services. By submitting data through the RelayHealth/Athena Interface, Client authorizes Athena to share such data with RelayHealth.

4. Client represents and warrants that each individual submitting data through the RelayHealth/Athena Interface has the appropriate medical credentials and licenses required to prescribe the prescription drugs that are the subject of each such submission.

5. Client acknowledges that: (a) information provided to Client through the RelayHealth/Athena Interface is provided for informational purposes only and is not a guarantee of the amount of a patient's out-of-pocket cost for a prescription product (e.g., out-of-pocket cost information may be affected by the pharmacy location selected or if the available benefits information is incomplete); (b) patient payment amount information provided to Client through the RelayHealth/Athena Interface may be for the generic equivalent of the prescribed product where a physician did not indicate a brand name product was medically necessary; and (c) Client will not receive any payment or other remuneration for using RxBenefit Clarity.

6. Client agrees that transactions it receives or sends through the RelayHealth/Athena Interface and the data contained in any such transaction will be used exclusively to facilitate the functioning of the athenaNet Services and RxBenefit Clarity and will not be used in combination with any other product or service or to comparison shop pharmacy prices.

7. Of all transactions Client submits through the RelayHealth/Athena Interface, Client shall ensure that at least 80% of such transactions identify the applicable patient's preferred pharmacy. Client acknowledges that noncompliance with this requirement may result in suspension or termination of its access to the RelayHealth/Athena Interface.

8. Client authorizes RelayHealth to use historical data provided by Client to match and identify patient benefit information when not available or accurate in the inbound inquiry and update insurance benefit information associated with such submitted inquiry and for proposing alternative medications in the same therapeutic class as the drug listed in an inquiry.

9. Client will reasonably cooperate with Athena to provide any data or information that Athena or RelayHealth reasonably requests related to inappropriate or unauthorized access to or use of the RelayHealth/Athena Interface.

10. Client shall not make any representations, warranties, or guarantees with respect to RelayHealth that have not been pre-approved in writing by RelayHealth. Client acknowledges that the covenants and disclaimers in this Section L are for the benefit of RelayHealth.

### M. PREMIER HEALTHCARE SOLUTIONS, INC. (applicable to athenaClinicals and athenaOne for Hospitals and Health Systems)

Premier Healthcare Solutions, Inc. ("Premier") provides a certified clinical decision support mechanism to support the Protecting Access to Medicare Act mandate (the "PAMA Solution") made available to Athena's Clients via athenaNet. The following terms and conditions apply to Clients that use or access the PAMA Solution:

1. Ownership of Premier Property. As between the parties, Premier has been and shall continue to be the sole and exclusive owner of: (i) the

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

PAMA Solution; (ii) all source code, object code and protocols underlying the PAMA Solution (collectively, the "Code"); (iii) except for Client Data, all content and data that may be viewed, downloaded, printed, or copied from or by using the PAMA Solution (collectively, the "Content"); (iv) all things developed by or on behalf of Premier for Client pursuant to this Agreement or the PAMA Solution (collectively, the "Deliverables"); (v) Confidential Information of Premier or any of its affiliates; (vi) all things that have been or may in the future be conceived, developed, enhanced, derived, or otherwise created by or on behalf of Premier in connection with the PAMA Solution(s), the Code, the Content, or any Deliverable and (vii) all intellectual property rights and other proprietary rights in connection with any and all of the foregoing, including inventions, ideas, know-how, processes, methods, algorithms, technology, works of authorship, designs, formulae, research, trade secrets, derivative works, improvements, patentable matters, patents, copyrights, copyrightable works, trademarks, service marks, and all rights and claims related to any and all of the foregoing, and all applications, registrations and other governmental issuances with respect to any and all of the foregoing (collectively, the "Premier Property").

2. License to Customer. Premier grants to Client a nonexclusive, nontransferable and nonsublicensable right and license to use the Content and Deliverables associated with the PAMA Solution subscribed by Client, subject to the terms and conditions of these Third Party Terms. The right and license granted to Client pursuant to this Section M.2. shall automatically terminate if Athena terminates its agreement or the reseller arrangement between Athena and Premier in connection with the PAMA Solution, provided, however, that upon any such termination, Premier and Athena shall make available to Client a copy of the Content, Deliverables, and any Derivative Works (as defined below) necessary for Client to comply with its reporting obligations under 42 C.F.R. 414.94, and Client shall have a nonexclusive, nontransferable, nonsublicensable, fully-paid up, perpetual and irrevocable license to use such copy solely for such purpose.

3. License to Premier. Client grants to Premier and its affiliate, Stanson Health, Inc., a nonexclusive, royalty free, non-sublicensable, right and license to aggregate, compile, decompile, manipulate, modify, supplement, adapt, translate, create derivative works from and otherwise use Client Data solely: (i) to provide the PAMA Solution to Client; (ii) to perform Premier's obligations or to exercise its rights under the reseller arrangement between Athena and Premier in connection with the PAMA Solution; and (iii) to create de-identified health information in accordance with a methodology set forth in HIPAA (the "**Premier De-Identified Information**"), and use such Premier De-Identified Information solely for providing the PAMA Solution, which necessarily includes the use of the Premier De-Identified Information for training models for the PAMA Solution. Any such Premier De-Identified Information will (x) be combined with the data of at least ten (10) other customers, which in combination must be a data set larger than the set from any single customer whose PHI is being de-identified; (y) not directly or indirectly identify (or be reasonably capable of identifying) Client, its employees, providers or patients; and (z) not, except as contemplated hereby, be disclosed, commercialized, or sold, even if aggregated with the data of other customers. For avoidance of doubt, to the extent the Premier De-Identified Information is a necessary component of the PAMA Solution, Premier shall retain all ownership rights in such PAMA Solution. In addition to the foregoing, any PHI shall be subject to the terms and conditions of the Business Associate Agreement between Client and Athena and the Business Associate Subcontractor Addendum between Premier and Athena and all applicable laws.

4. Customer may use the reseller arrangement between Athena and Premier in connection with the PAMA Solution subscribed by Client only during the term of Athena's reseller arrangement with Premier. Client may create derivative works from the Content or Deliverable associated with the PAMA Solution (the "Derivative Works"), provided that all Derivative Works shall be deemed Premier Property. All uses of such PAMA Solution, the Content and Deliverables associated with PAMA Solutions and Derivative Works by Client shall be solely for Client's internal business purposes (including, for avoidance of doubt, for complying with the reporting requirements set forth in 42 CFR 414.94) and shall comply with these Third Party Terms and applicable laws. In no event may Client use the PAMA Solution, Content, Deliverable or Derivative Works for any illegal, improper or unauthorized purpose.

5. Client shall not provide access to, disclose, reproduce, distribute, display or otherwise use any Content, Deliverable or Derivative Works to or for the benefit of any third party, except as specifically permitted under these Third Party Terms. Client may disclose Content, Deliverables and Derivative Works to the extent required by (i) regulatory or governmental reporting or investigation requirements with authority over Client, (ii) accreditation

organizations to which Client is subject, and (iii) third-party payors pursuant to written contractual requirements for payment to Client; provided that Client (A) use commercially reasonable efforts to obtain confidentiality protections and prohibitions on any unauthorized or improper use or disclosure of any such Content, Deliverable or Derivative Works, (B) obtain written contractual commitments by any third-party payors to comply with confidentiality protections and prohibitions on any unauthorized or improper use or disclosure of any Content, Deliverable or Derivative Works, and (C) provide Premier with prior notice thereof, which notice shall include the identity of the recipient, the reasons for disclosure, and the Content, Deliverable and Derivative Works proposed to be disclosed. Client shall be responsible for any improper or unauthorized use or disclosure of any Content, Deliverable or Derivative Works by any such third party.

6. Client shall not alter Premier's copyright or other proprietary notices on or with respect to the PAMA Solution, Content or Deliverable.

7. Premier will not be obligated to modify the PAMA Solution or any part thereof to meet Client's requirements or to create customized Content or Deliverables.

8. Limited Warranty. With respect to the PAMA Solution subscribed by Client, Premier warrants to Client only that the PAMA Solution will conform in all material respects with the terms of the agreement between Athena and Premier. This warranty shall automatically expire or terminate upon the expiration or termination of the reseller arrangement between Reseller and Premier in connection with the PAMA Solution. OTHER THAN THE WARRANTY MADE IN THIS SECTION M.8, PREMIER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED BY PREMIER AND WAIVED BY CLIENT.

9. Sole Remedy. In the event of Premier's breach of the warranty contained in Section M.8 above, Client's sole and exclusive remedy shall be for Premier to correct the problem that caused the breach as promptly as reasonably possible. However, Premier shall not be obligated to remedy any breach of warranty if the breach resulted from or was otherwise caused, in whole or in part, by (i) Client's material failure to comply with these Third Party Terms, (ii) Client's acts or omissions, (iii) Client's modification of the reseller arrangement between Athena and Premier in connection with the PAMA Solution or any part thereof without Premier's prior written consent and such modification is the cause of the reseller arrangement between Athena and Premier in connection with the PAMA Solution's Solution(s) failure to conform with the terms of this Agreement, (iv) Client's combination of the reseller arrangement between Athena and Premier in connection with the PAMA Solution or any part thereof with any hardware or software of Client or a third party where such combination is the cause of the reseller arrangement between Athena and Premier in connection with the PAMA Solution failure to conform with the terms of these Third Party Terms, or (v) a cause beyond Premier's reasonable control, including computer viruses, hackers, failure of electric power, or Internet downtime.

10. Non-Premier Data. Certain applications on the PAMA Solution may allow Client to view data of other healthcare organizations, and certain Content and Deliverables may be based on, may be derived from or may otherwise contain data or information provided by Client or third parties, including other healthcare organizations (collectively, "Non-Premier Data"). Client agrees that (i) Premier is not the original source of Non-Premier Data, (ii) Premier has no control over the truth, accuracy or completeness of Non-Premier Data, (iii) Premier shall not be liable to Client for any inaccuracies of any Non-Premier Data, and (iv) Client is solely responsible for deciding how to use Non-Premier Data and for the consequences of such use. PREMIER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO NON-PREMIER DATA, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED BY PREMIER AND WAIVED BY CLIENT.

11. Indemnification by Premier. If a third-party (who is not an affiliate of Client) claims that Client's use of the PAMA Solution infringes or misappropriates any registered United States trademark, patent or copyright or a trade secret held by such third party, Client must promptly notify Premier in writing of such claim. If so notified, Premier will, at its reasonable cost, defend Client against such claim if Client reasonably cooperates, at

## ATHENAHEALTH MASTER SERVICES AGREEMENT THIRD PARTY TERMS

Premier's expense, with Premier and allows Premier to control the defense and all related settlement, and then Premier will indemnify Client from and against any damages finally awarded for such infringement. If an injunction is sought or obtained against Client's use of the PAMA Solution as a result of such third-party infringement claim, Premier shall, at its sole option and expense, (i) procure for Client the right to continue using the infringing portion of the PAMA Solution, (ii) replace or modify the infringing portion of the Solution with equivalent functionality so that it does not infringe, or (iii) terminate Client's use of the PAMA Solution, in which case Premier will provide Athena a pro rata refund of pre-paid fees for the then-current term based on the time period during which Client will be prohibited from using the PAMA Solution as a result of such third-party infringement claim. However, Premier shall have no liability for any third-party claim of infringement if the claim resulted from or is otherwise caused by, in whole or in part, (A) Client's failure to comply with any term or condition under these Third Party Terms, (B) Client's acts or omissions, (C) Client's modification of the PAMA Solution or any part thereof without Premier's prior written consent where such modification is the cause of such infringement, or (D) Client's combination of the PAMA Solution or any part thereof with any hardware or software of Client or a third party where such combination is the cause of such infringement. This M.11 constitutes the entire liability of Premier, and Client's sole and exclusive remedy with respect to, any third-party claims of infringement.