

## athenahealth Partner Terms and Conditions

### Section 1. Defined Terms.

**"Agreement"** means these athenahealth Partner Terms and Conditions, any exhibits attached hereto, each Service Description for Partner Services purchased hereunder, and each Proposal, each of which is hereby incorporated by reference herein.

**"Applicable Law"** means all federal, state, and local laws and regulations, in each case to the extent directly applicable to the respective party's performance of its obligations under this Agreement.

**"Athena"** means athenahealth, Inc., and its majority-owned subsidiaries, 311 Arsenal Street, Watertown, MA 02472; Tel: 617.402.1000; Fax: 617.402.1099.

**"Athena API" or "API"** means each application programming interface made available by Athena.

**"Athena Property"** means athenaNet, the Athena API, Partner Services, Materials, proprietary methods, templates, spreadsheets, reports, structured data, visual representations of data, databases and other electronic tools created or owned by Athena, as well as edits, improvements, additions, modifications, interfaces, and derivative works prepared from or relating to any of the foregoing, and all tangible and intangible works of authorship, copyrights, patents, trademarks, trade secrets and trade dress, and all intellectual property rights in any of the foregoing. Notwithstanding the foregoing, Athena Property does not include Mutual Customer Data.

**"athenaNet"** means the platforms, including the athenaNet® multi-user platform, made available to Partner or through which Athena provides services to Partner or Mutual Customers.

**"Authorization and Consent"** means an Authorization and Consent in the form made available by Athena from time to time.

**"Authorized User"** means those unique individual users who (i) are (a) employees of Partner or (b) other individuals employed by entities that have a valid HIPAA business associate agreement or other agreement with Partner, (ii) who have been granted access to the Athena API or athenaNet by Partner in its exercise of reasonable discretion relating to the receipt of Partner Services hereunder by Partner, and (iii) from whom Partner has obtained reasonable assurances that such individual will comply with the terms and conditions of this Agreement applicable thereto.

**"Claim"** means any and all losses, damages, liabilities, deficiencies, claims, suits, actions, proceedings, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees.

**"Confidential Information"** means information that is disclosed by one party to the other and that the receiving party knows is confidential to the disclosing party or that is of such a nature that someone familiar with the type of business of the disclosing party would reasonably understand is confidential to it. Without limitation, Confidential Information includes financial and other business information of either party. With respect to Athena, Confidential Information includes, Materials, the terms of this Agreement, and in each case, any visual reproduction thereof. Notwithstanding the foregoing, Confidential Information does not include information that the receiving party can demonstrate: (i) is in the public domain or is generally publicly known through no improper action or inaction by the receiving party; (ii) was rightfully in the receiving party's possession or known by it prior to receipt from the disclosing party; (iii) is rightfully disclosed without restriction to the receiving party by a third party without violation of obligation to the disclosing party; or (iv) is independently developed for the receiving party by third parties without use of the Confidential Information of the disclosing party.

**"Effective Date"** means the date this Agreement is countersigned by Athena.

**"Force Majeure Event"** means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party and any consequences of that event or circumstance.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996 and associated regulations, as amended from time to time.

**"Marks"** means a party's trademarks, service marks, trade dress, trade names, logos, corporate names and domain names.

**"Materials"** means all instructions, manuals, specifications, and training Athena provides in connection with the Partner Services.

**"Mutual Customer"** means a healthcare provider group, hospital or health system that (i) has an agreement in place with Athena for the provision of Athena's services; (ii) has an agreement in place with Partner that meets the requirements set forth in Section 7(b); and (iii) has executed an Authorization and Consent authorizing Athena to provide Partner with access to Mutual Customer Data in connection with the Partner Services.

**"Mutual Customer Data"** means all data and information of Mutual Customers provided by Mutual Customers or their authorized users to Athena, or provided to Athena from third parties at Mutual Customer's direction, including through athenaNet.

**"Partner"** means (use full legal name)

Address:

Tel: Fax:

E-mail:

Tax ID:

**"Partner Services"** means the services provided by Athena to Partner under this Agreement.

**"PHI"** means "protected health information" as defined under HIPAA.

**"Proposal"** means each athenahealth Service Proposal, Interface Proposal, or similar Athena Proposal entered into by the Parties after the Effective Date and incorporated herein by reference.

**"Service Description"** means each document periodically updated by Athena that contains a description of Partner Services.

**"Technical Specifications"** means the technical specifications developed by Athena and provided to Partner.

### Section 2. Athena Services and Payment.

(a) Athena shall provide Partner Services as described in this Agreement.

(b) Partner shall pay Athena the fees and expenses as set forth in this Agreement. Athena will auto-debit Partner's bank account 7 days following the date of each Athena invoice that is not subject to a *bona fide* dispute for the full amount set forth in such invoice. Athena may impose a monthly late charge equal to the lesser of (i) 1½%, or (ii) the highest rate permitted by Applicable Law on all amounts not subject to a *bona fide* dispute that are overdue beyond 10 days, but this charge will not waive or extend any obligation of Partner to make payments when due.

### Section 3. Term and Termination.

(a) This Agreement will have a term of one year from the effective date of this Agreement and will automatically extend for additional consecutive one-year terms unless a party otherwise terminates this Agreement as set forth below.

(b) Either party may terminate this Agreement or any Partner Service at any time, with or without cause, by providing the other party with no less than 90 days' Notice.

(c) Either party may terminate this Agreement effective upon Notice to the other party if (i) the other party defaults in performance of any material provision of this Agreement and such default is not cured within 30 days following Notice describing the specific default; (ii) the other party violates Applicable Law; (iii) the other party files a voluntary petition in bankruptcy or an involuntary petition is filed against it; (iv) the other party is adjudged bankrupt; or (v) a court assumes jurisdiction of the assets of the other party under a federal reorganization act or other statute.

(d) Athena may terminate this Agreement for cause effective upon Notice if Partner (i) violates any Access and Use provision in [Section 4](#) herein, or (ii) has breached or breaches the warranty in [Section 8\(a\)\(iv\)](#) herein.

(e) Notwithstanding anything to the contrary set forth in this Agreement, Athena reserves the right to require Partner to agree to additional or alternative terms or pricing from time to time, but in no event more than once per year (unless otherwise required by Applicable Law or in connection with a change to the scope of the Partner Services); provided, that if the parties cannot reach mutual agreement after good faith discussion as to such alternative terms or pricing, either party may terminate this Agreement or the applicable Partner Service upon 30 days' Notice to the other party.

(f) Upon termination of this Agreement, Partner shall promptly pay to Athena all amounts not subject to a *bona fide* dispute that are due hereunder for all services rendered through the date of termination.

#### **Section 4. Access and Use.**

(a) Access to athenaNet and the Athena API is provided solely to facilitate access to Partner Services. Partner's right to access and use athenaNet and the Athena API is subject to its compliance with the terms and conditions of this Agreement and is on a limited, non-exclusive, non-transferable basis and only during the term of this Agreement. Partner shall access athenaNet and the Athena API only (i) through its Authorized Users acting within the scope of their service for Partner; (ii) on Athena's servers or as otherwise authorized by Athena; (iii) for the internal use of Partner (which includes, for avoidance of doubt, for the provision of services to Mutual Customers); and (iv) from and within the United States.

(b) Partner shall ensure that each Authorized User complies with the terms of this Agreement as well as Applicable Law. Partner shall terminate any Authorized User's access to athenaNet and the Athena API (i) when such person no longer meets the definition of "Authorized User;" (ii) if conduct by such Authorized User breaches any term of this Agreement; or (iii) upon such Authorized User's indictment, arrest, or conviction of any crime related to claims or other transactions, financial relationships, or financial dealings in connection with health care, and Partner shall immediately inform Athena of any such indictment, arrest, or conviction. Partner is responsible for all acts and omissions of any Authorized User in connection with such Authorized User's access and use of athenaNet and the Athena API. Athena may restrict, suspend, or terminate an Authorized User's access to athenaNet or the Athena API if Athena determines in its reasonable discretion that such access has an adverse effect on Athena or any of its clients or partners.

(c) Partner shall require Authorized Users to protect their passwords and log in credentials. Partner is responsible for any use of data, information, or services obtained through athenaNet or the Athena API by Authorized Users. Except as expressly permitted under this Agreement, Partner shall not and shall cause its Authorized Users not to: (i) access or use Athena Property in connection with the provision of any services to third parties (other than Mutual Customers); (ii) resell, rent, license, lease, provide service bureau or timeshare services, transfer, encumber, copy, distribute, publish, exhibit, transmit or otherwise make available to any third party any Athena Property; (iii) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record, or create derivative works based on Athena Property; (iv) use Athena Property in a manner that delays, impairs, or interferes with system functionality for others or that compromises the security or integrity of any data, equipment, software, or system input or output, including but not limited to introduction of any viruses or malware into athenaNet; (v) enter data in athenaNet that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others; (vi) apply systems to extract or modify information in athenaNet using technology or methods such as those commonly referred to as "web scraping," "data scraping," or "screen scraping;" (vii) use Athena Property or any part or aspect thereof for any unlawful purpose or to mislead or harass anyone; or (viii) use Athena Property except as specifically permitted under this Agreement. Use of or access to Athena Property not in accordance with the terms of this Agreement is strictly prohibited. Any violation of this Section 4 will cause Athena irreparable and immediate harm, and Athena is entitled to injunctive relief to prevent such violation.

**Section 5. Confidential Information.** Each party shall exercise reasonable care to hold Confidential Information in confidence and not use it or disclose it to any other person or entity, except (i) as permitted under this Agreement or as reasonably necessary for the performance or enforcement of this Agreement; (ii) as agreed in writing by the other party; (iii) for the party's proper management and administration (provided that it obtains reasonable assurances from all recipients that they will keep the information confidential and use it only for the purpose of its disclosure); or (iv) as required by law.

#### **Section 6. Usage and Ownership.**

(a) Except for the right to use Athena Property subject to the terms and conditions contained herein, this Agreement does not confer on Partner a license in, ownership of, or interest in Athena Property. Athena developed or acquired Athena Property exclusively at its private expense. As between the parties, Athena Property and all right, title, and interest in and to it is and will remain the exclusive property of Athena. Athena has the unrestricted and permanent right to use and

implement all ideas, advice, recommendations, or proposals of Partner and its personnel with respect to Athena Property in any manner and in any media and shall own any and all implementations thereof. As between Athena and Partner, each party retains all right, title and ownership interest in and to its Confidential Information.

(b) Each party acknowledges the other party's exclusive right, title, and interest in and to such party's Marks. Each party grants to the other party a limited license to use and distribute, during the term of this Agreement, its Marks (i) to the extent they appear in materials distributed by the other party pursuant to this Agreement and (ii) in connection with an announcement or description of the relationship between the Parties, in accordance with this Agreement. The use of Marks shall be accompanied by the appropriate trademark symbol (either "TM", "SM" or "®") and shall be subject to, and in compliance with, any quality guidelines (including any style guides) that a party may supply to the other party from time to time. Any goodwill associated with a licensee party's use of Marks shall inure to the benefit of the licensor party.

#### **Section 7. Compliance.**

(a) Each party shall comply with Applicable Law. Partner is solely responsible for compliance with all legal and regulatory requirements with respect to Partner's use of athenaNet and Partner Services.

(b) To the extent that Partner purchases any Partner Service that enables Partner to access Mutual Customer Data, each party (i) is the business associate of each Mutual Customer for purposes of such party's uses and disclosures of Mutual Customer Data contemplated herein, and (ii) has a valid HIPAA business associate agreement in place with each Mutual Customer meeting the requirements of 45 CFR 164.504. Neither party is the business associate of the other with respect to the Partner Services.

(c) If either party receives data from the other or is informed or reasonably believes that such data was not intended for it, the receiving party will notify the sender, promptly take effective steps to return such data, and then immediately and permanently delete such data from its systems.

(d) Partner represents and warrants that it shall access and use Mutual Customer Data hereunder and use the Partner Services to provide products or services to Mutual Customers only in a manner that complies with (i) Applicable Law and (ii) Partner's agreement with such Mutual Customer. Partner further represents and warrants that any requested configurations (including, for the avoiding of doubt, commingling of Mutual Customer Data), is compliant with Applicable Law and Partner's agreement with each Mutual Customer. If Partner's agreement with such Mutual Customer is terminated, or if Partner ceases to be the business associate of such Mutual Customer, Partner will immediately notify Athena of such termination and will no longer access or use the applicable Mutual Customer Data.

(e) To the extent that Partner contracts for any Partner Service that enables Partner to access Mutual Customer Data, Partner will deliver an Authorization and Consent form to each prospective Mutual Customer for execution and delivery to Athena in the manner designated by Athena from time to time. No prospective Mutual Customer shall be under any obligation to execute the Authorization and Consent. Any Mutual Customer may terminate its Authorization and Consent at any time, for any reason, and Partner will immediately notify Athena in writing of any such termination.

(f) Neither party will require any existing or prospective clients to purchase the products or services of the other, nor will either party condition any of its products or services on the purchase of the products or services of the other. Each party may market its services in the ordinary course of business, and nothing in this Agreement shall preclude either party from entering into similar business arrangements with any other party or parties.

(g) The parties agree that (i) any fees charged or amounts paid hereunder are not intended to be an inducement or payment, either directly or indirectly, for the referral of patients or furnishing of other healthcare services to Partner or any third party, and (ii) neither party will enter into any agreements or otherwise make any inducements or payments, either directly or indirectly, for the purpose of referring patients or furnishing other healthcare services to Partner or any third party.

(h) The Parties shall each separately maintain effective compliance programs consistent with the relevant compliance guidelines set forth by the Office of the Inspector General of the Department of Health and Human Services. The Parties shall cooperate with each other to provide prompt, accurate, and full responses to any material inquiry or concern of either party related to compliance and to any reasonable request by either party for clarification, documentation, or further information.

(i) To the extent Partner's products, services, devices, or any offerings related to this Agreement or Mutual Customers are regulated by the Food and Drug Administration (the "FDA") or become subject to the regulations of the FDA, Partner is solely responsible for (i) complying with all relevant FDA laws, rules, and regulations, and (ii) providing notice to Athena of such regulated device or service, even if such products, services, devices or offerings involve any Athena services or products. Partner is solely responsible for any all reporting obligations related to the FDA

#### **Section 8. Warranties and Limitations.**

(a) Each party represents and warrants to the other party on a continuing basis through the term of this Agreement that (i) it has the requisite corporate power and authority to execute and perform its obligations under this Agreement; (ii) the person accepting this Agreement on its behalf has the authority to bind it hereunder and that such party's acceptance of this Agreement is not in violation of such party's bylaws, certificate of incorporation or other comparable document; (iii) neither the execution, delivery, nor performance of this Agreement will violate, conflict with, require consent under or result in any breach or default of (A) Applicable Law, or (B) any covenants or agreements by which such party or any of its assets are bound; and (iv) neither it nor any of its personnel to its knowledge (A) has been convicted of any crime arising from claims or other transactions, financial relationships, or financial dealings in connection with health care, or (B) has been excluded from any federal or state health care program.

(b) EXCEPT AS EXPRESSLY PROVIDED HEREIN, ATHENA DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO ANY SERVICE OR ITEM PROVIDED HEREUNDER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ATHENA PROPERTY IS PROVIDED "AS IS." ATHENA DOES NOT WARRANT THAT ATHENA PROPERTY OR MUTUAL CUSTOMER DATA WILL BE ERROR-FREE OR WILL BE PROVIDED (OR AVAILABLE) WITHOUT INTERRUPTION OR MEET PARTNER'S BUSINESS OR OPERATIONAL NEEDS. ATHENA IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY MUTUAL CUSTOMER DATA, IT BEING UNDERSTOOD THAT SUCH MUTUAL CUSTOMER DATA IS ENTERED INTO ATHENANET BY MUTUAL CUSTOMERS AND VIA INTERFACES WITH OTHER THIRD PARTIES, OVER WHOM ATHENA HAS NO CONTROL. ATHENA IS NOT A HEALTH PLAN OR HEALTHCARE PROVIDER AND IT CANNOT AND DOES NOT INDEPENDENTLY REVIEW OR VERIFY THE MEDICAL ACCURACY OR COMPLETENESS OF THE MEDICAL INFORMATION ENTERED INTO ATHENANET AND TRANSMITTED TO PARTNER.

(c) ATHENA'S CUMULATIVE, AGGREGATE LIABILITY IN CONNECTION WITH OR ARISING IN ANY WAY OR IN ANY DEGREE FROM THIS AGREEMENT, FROM PARTNER SERVICES, OR OTHERWISE FROM THE ACTS OR OMISSIONS OF ATHENA WILL NOT EXCEED THE TOTAL AMOUNT PAID OR DUE AND PAYABLE BY PARTNER TO ATHENA IN THE 12 MONTHS BEFORE SUCH CLAIM AROSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ATHENA WILL NOT BE LIABLE FOR INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES; ADDITIONAL OVERHEAD AND PAYROLL; LOST PROFITS OR BUSINESS OPPORTUNITIES; LOSS OF DATA; OR THE COST OF PROCUREMENT OF SUBSTITUTE ITEMS OR SERVICES. The parties hereby acknowledge that the remedies set forth above are reasonable and will not fail of their essential purpose.

(d) No claim against Athena of any kind under any circumstances may be asserted or filed more than one year after Partner knows, or in the exercise of reasonable care could know, of any circumstances, whether by act or omission, that may give rise to such claim.

**Section 9. Indemnification.** Partner agrees to indemnify, defend, and hold harmless Athena and Athena's directors, officers, employees, affiliates, and agents from and against any and all third party Claims to the extent that such Claims relate to or arise out of Partner's breach of Section 7 of this Agreement. Athena shall promptly notify Partner in

writing of any Claim. Partner shall assume control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the Claim, at its sole cost and expense. Athena may participate in and observe the proceedings at its own cost and expense. Partner shall not settle any Claim without Athena's prior written consent.

#### **Section 10. Force Majeure.**

(a) If a Force Majeure Event prevents a party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (i) that party uses reasonable efforts to perform those obligations; (ii) that party's inability to perform those obligations is not due to its failure to (x) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event, or (y) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (z) that party complies with its obligations under Section 10(b).

(b) During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Agreement.

**Section 11. Mediation.** The parties shall submit all disputes, claims, or controversies arising out of or relating to this Agreement, including any conduct related to or arising out of this Agreement following termination hereof (each, a "Dispute") in the first instance to JAMS, or its successor, for mediation in Boston, Massachusetts. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, which must set forth the subject of the dispute, the relief requested, and the factual and legal bases for relief. The parties shall cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties shall participate in the mediation in good faith and equally share the costs of the mediation. If the dispute is not resolved through mediation, the party seeking relief may pursue all remedies available at law, subject to the terms of this Agreement. Notwithstanding this Section 11, either party may (i) terminate this Agreement according to its terms, or (ii) seek injunctive relief.

**Section 12. Choice of Law; Forum.** Any Dispute will be governed exclusively by the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws principles. The Federal District Court for the District of Massachusetts or the business litigation section of the state superior court of Massachusetts will be the exclusive venue for any resolution of any Dispute. The Parties hereby submit to and consent irrevocably to the jurisdiction of such courts for these purposes. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF ANY DISPUTE.

**Section 13. Notice.** Notice means written notification addressed to the individual signing this Agreement at the address listed in the Order Form, with a copy to the notified party's legal department that is (i) delivered by hand; (ii) sent by traceable nationwide parcel delivery service, overnight or next business day service; or (iii) sent by certified United States mail. Properly mailed Notice will be deemed given 3 days after the date of mailing, and other Notice will be deemed made when received. A party may change its address for Notice purposes by providing Notice of such change to the other party.

**Section 14. Miscellaneous.** This Agreement constitutes the entire agreement between the parties relating to Partner Services and supersedes all prior agreements, understandings, and representations relating to Partner Services. Except as otherwise provided herein, no change in this Agreement will be effective or binding unless signed by Partner and a duly authorized representative of Athena. Neither party will assign this Agreement without the written consent of the other, provided that either party may assign this Agreement with no less than 90 days' prior Notice as part of a corporate reorganization, consolidation, merger, change of control with respect to its outstanding stock, or sale of substantially all of its assets, and provided further that the assigning party and the assignee will remain liable for any unperformed obligations under this Agreement arising prior to the effective date of any such transaction, and any attempt to assign this Agreement not in accordance with this Section 14 shall be void. This Agreement is binding on the parties and their successors and permitted assigns. The parties agree that they will not take any action that aims to invalidate this Agreement, or seeks to prohibit the other party from realizing the benefits of the provisions herein relating to the dispute

resolution, choice of law, forum, or liability limitations. The parties further agree that they shall pay all legal fees, costs, and expenses, including reasonable attorneys' fees and internal time, incurred only with respect to preserving the validity of the contract, and realize the benefits of the provisions set forth in the preceding sentence. The parties intend that nothing contained in this Agreement be construed to create a joint venture, partnership, or like relationship between the parties, and their relationship is and will remain that of independent parties to a contractual service relationship. Neither party will be liable for the debts or obligations of the other party. Except as explicitly set forth herein, none of the provisions of this Agreement will be for the benefit of or enforceable by any third party. No failure by a party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy hereunder will constitute a waiver. If any term or provision of this Agreement is invalid, illegal or unenforceable, it will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. When used in this Agreement, the term "including" means "including without limitation". The following Section of this Agreement will survive termination and continue in force: Sections 1, 2(b), 3(e), 5, 6, 8, 9, and 11 through 14. To the extent of any conflict or inconsistency between or among these athenahealth Partner Terms and Conditions, a Proposal, or a Service Description, the order of priority (from highest to lowest) in which the respective documents will govern to the extent of any such conflict or inconsistency shall be as follows: (i) Amendments to this Agreement and any exhibits or addenda attached thereto; (ii) the applicable Proposal; (iii) these Terms and Conditions (including Exhibits, Addenda and any Riders); and (iv) the applicable Service Description. Athena will obtain Partner's consent (such consent not to be unreasonably withheld) before using Partner's name or logo in a manner signifying an endorsement of Athena by Partner; provided, however that Athena may refer to Partner as a current partner without first obtaining Partner's consent.

Each Party is signing this Agreement on the date stated opposite that Party's signature.

**ATHENAHEALTH, INC.**

**PARTNER:**

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

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

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

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