

TERMS AND CONDITIONS OF THE ATHENACOORDINATOR CORE RECEIVER AGREEMENT
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Until accepted by Athena, this form is an offer from the undersigned Brightree and the undersigned Network Facility to Athena to contract with respect to the identified Network Facility on the following terms. Upon acceptance of this form, Athena will countersign it, and this form will only then become effective as a binding agreement (the "Receiver Agreement") as of the date of such countersignature (the "Effective Date"). Athena sales personnel cannot accept, sign or amend this form or make agreements on behalf of Athena.

"Master Agreement" is the Master Agreement for the Network athenaCoordinator Core Services (Brightree LLC) between Athena and Brightree dated:

In addition to the terms of this Agreement, the undersigned parties will each be bound by the following, all of which are hereby incorporated into the Agreement: (a) the Terms and Conditions of the athenaCoordinator Core Service, which is attached to the Receiver Agreement as Addendum B, and (b) the Business Associate Agreement which is attached to the Receiver Agreement as Exhibit 1 to Addendum B.

Network Facility full name, address, phone and fax:

Accepted and signed on __/__/__
athenahealth, Inc.

By: _____
Print Name:
Title:

Accepted and signed on __/__/__
Network Facility:

By: _____
Print Name:
Title:

Accepted and signed on __/__/__
Brightree LLC:

By: _____
Print Name:
Title:

TERMS AND CONDITIONS OF THE ATHENACoORDINATOR CORE RECEIVER AGREEMENT

Section 1. Defined Terms.

“**Applicable Law**” means all applicable federal, state, and local laws and regulations, including, without limitation, those relating to kickbacks, fraud and abuse, confidentiality (including HIPAA), Medicaid, or Medicare.

“**Athena**” means athenahealth, Inc. and its subsidiaries, 311 Arsenal St., Watertown, MA 02472; Tel: 617.402.1000; Fax: 617.402.1099.

“**athenaNet**” means the internet-based athenaNet® multi-user platform used to provide athenaNet Service, together with athenaNet Functionality and associated databases.

“**athenaNet Content**” means any data made available by Athena as part of the athenaNet Service and all documents, formats, forms, functions, and screens for organizing or presenting that data.

“**athenaNet Functionality**” means the software functionality of athenaNet that enables system access and use.

“**athenaNet Service**” means the athenaCoordinator Core service provided by Athena under this Agreement.

“**Authorized Users**” means those users designated by Brightree on an athenaNet control screens, or by Network Facility, if applicable, who are (i) employees of such entity or (ii) other individuals, corporations, or entities that are not competitors of Athena and that have a valid HIPAA business associate agreement or other agreement with Network Facility and have been granted access to athenaNet by the Master Agreement and the Receiver Agreement, and with respect to Brightree or Network Facility, as applicable, has obtained reasonable assurances that they will comply with the access and use terms and the confidentiality terms in this Agreement.

“**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, athenaNet Functionality, athenaNet Content to the extent provided by Athena, Materials, each Service Description, and business information of Athena. Notwithstanding the foregoing, Confidential Information does not include PHI that is otherwise protected under HIPAA or pursuant to a business associate agreement or information that the receiving party can demonstrate: (a) is in the public domain or is generally publicly known through no improper action or inaction by the receiving party; (b) was rightfully in the receiving party’s possession or known by it prior to receipt from the disclosing party; (c) is rightfully disclosed without restriction to the receiving party by a third party without violation of obligation to the disclosing party; or (d) 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 of Athena’s signature of the Receiver Agreement.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, and associated regulations, as they may be amended from time to time.

“**Master Agreement**” is the Master Agreement for the athenaNet Service between Athena and Brightree in effect at the time of the execution of this Agreement.

“**Network Facility**” is the entity named as the Network Facility on the Receiver Agreement.

“**Materials**” means all instructions, manuals, specifications, and training Athena provides in connection with the athenaNet Service.

“**Brightree**” is the organization that has accepted and signed the Master Agreement as “Brightree.”

“**PHI**” means “protected health information” as that term is used under HIPAA. “**Network Facility PHI**” means PHI that Athena receives from or on behalf of Network Facility or creates on behalf of Network Facility.

“**Privacy Rule**” means the privacy standards in 45 C.F.R. Part 160 and Part 164, subparts A and E.

“**Receiver Agreement**” means the AthenaCoordinator Core Receiver Agreement to which these terms are attached.

“**Security Rule**” means the Security Standards in 45 C.F.R. Part 160 and Part 164, subparts A and C.

“**Service Description**” means with respect to Network Facilities, only Sections titled “In-Network,” “Insurance Eligibility Status,” and “Order Data” of the athenaCoordinator Core Service Description that is periodically updated by Athena and incorporated herein..

Section 1. Athena Service and Payment.

a. Network Facility represents to Athena on a continuing basis that Brightree, whether in whole or in part, acts as provider of the Brightree Services to it and is authorized generally to bargain and arrange for services under this Agreement on its behalf.

b. For the term of this Agreement, Network Facility appoints Brightree as its sole and exclusive agent to give and receive notices required or allowed under this Agreement, to administer and to receive and pay invoices from Athena on its behalf as set forth herein. In addition, for the term of this Agreement, Network Facility appoints Brightree as an agent to give all instructions to Athena and to provide Athena with all information on its behalf in connection with athenaNet Service, to accept and approve and utilize the athenaNet® Service on its behalf, and to access and use athenaNet on its behalf as its agent under this Agreement. Network Facility authorizes Brightree to designate Brightree’s employees as Authorized Users for the Network Facility under this Agreement and authorizes and directs Athena to communicate information in connection with such Agreement to Brightree as fully as if Brightree were the Network Facility itself.

c. Athena will provide the athenaNet Service as described in the Service Description. The Parties agree to perform their respective obligations as set forth in this Agreement.

d. Athena will send all invoices to Brightree for payment by it under the Master Agreement.

e. Brightree will pay Athena the fees and expenses as set forth in each Proposal.

Section 2. Term and Termination.

a. This Agreement will have a term of one year from the Effective Date, and will be automatically extended for additional consecutive one-year terms unless either party notifies the other party in writing no less than 90 days prior to the renewal date that it is terminating this Agreement at the end of the then current term. In addition, (i) this Agreement will terminate in any case upon termination of the Master Agreement; (ii) If Brightree defaults in its performance with respect to timely payment of sums properly owed to Athena with regard to services provided to Network Facility, and such default is not cured within ten days after written notice by Athena to Brightree of such default, then Athena may terminate the Receiver Agreement applicable to the Network Facility upon immediate notice to Brightree; or (iii) if the services agreement between Brightree and Network Facility terminates or expires, then this Agreement shall automatically terminate as of the effective date of such termination or expiration.

b. Either party may terminate this Agreement or the athenaNet Service at any time, with or without cause, by providing the other party with no less than 90 days prior written notice.

c. Either party may terminate this Agreement effective upon notice to the other if (i) the other party defaults in performance of any material provision of this Agreement, and such default is not cured within a period of 30 days after written notice describing the specific default (10 days in the event of failure to pay amounts owed); (ii) voluntary or involuntary proceedings are commenced for the bankruptcy, receivership, insolvency, winding up, or dissolution of the other party or for the assignment of such party’s assets for the benefit of creditors; or (iii) any right of the other party under this Agreement becomes subject to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency.

TERMS AND CONDITIONS OF THE ATHENACoORDINATOR CORE RECEIVER AGREEMENT

d. Athena may terminate this Agreement effective upon notice if Brightree or Network Facility, if applicable, violates the System and Service Access and Use provisions hereunder.

Section 3. System and Service Access and Use. The following provisions shall apply to Network Facility only in the future event that it is required to access athenaNet in connection with the athenaNet Service:

a. Access to athenaNet is provided solely to facilitate access to athenaNet Service. Access to athenaNet is on a limited, non-exclusive, non-transferable basis only during the term of this Agreement. Network Facility agrees that it will access athenaNet only (i) through its Authorized Users acting within the scope of their service for Network Facility; (ii) on Athena's servers as authorized by Athena; (iii) for the internal use of Network Facility; and (iv) from and within the United States.

b. Network Facility will ensure that each Authorized User will comply with this Agreement as well as Applicable Law. Network Facility will terminate any Authorized User's access to athenaNet (i) when an Authorized User ceases to perform work on behalf of Network Facility or (ii) if an Authorized User breaches any term of this Agreement. Network Facility is responsible for all acts and omissions of any Authorized User in connection with that Authorized User's access and use of athenaNet. Athena reserves the right to restrict or terminate an Authorized User's access to athenaNet if Athena determines in its reasonable discretion that such access has an adverse effect on Athena, including, without limitation, with respect to Athena's business or athenaNet.

c. Network Facility will not (i) access or use athenaNet in connection with provision of any services to third parties (except the provision of health services by Network Facility to its own patients); (ii) resell, lease, encumber, copy, distribute, publish, exhibit, or transmit athenaNet to any third party; (iii) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record, or create derivative works based on athenaNet or any content contained therein; (iv) use athenaNet 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; (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"; or (vii) use the athenaNet Services or any part or aspect of them for any unlawful purpose or to mislead or harass anyone. Use of or access to athenaNet not in accordance with the terms in this Agreement is strictly prohibited. Permission to access or use athenaNet may be limited or suspended immediately in Athena's discretion if the terms of this Section 4 are violated. Network Facility agrees that such violation would cause Athena irreparable and immediate harm and that Athena is entitled to injunctive relief to prevent such violation.

Section 4. Confidential Information. Athena and Network Facility will each take reasonable steps and exercise reasonable care to hold any Confidential Information in confidence and not to 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 the information will be kept confidential and used only for the purpose of its disclosure); or (iv) as required by law. The parties will also comply with the terms set forth on Exhibit 1 hereto.

Section 5. Usage and Ownership. Except for the right to use the athenaNet Service subject to the terms and conditions contained herein, this Agreement does not confer on Network Facility a license in, ownership of, or interest in the athenaNet Service. Athena developed athenaNet exclusively at its private expense. Network Facility agrees that athenaNet, the athenaNet Service, and all right, title, and interest in and to any aspect of them and all edits, improvements, additions, modifications, interfaces and derivative works prepared from or relating to them are and will remain the exclusive property of Athena. Athena will have the unrestricted and permanent right to use and implement all

ideas, advice, recommendations, or proposals of Network Facility with respect to the athenaNet Service in any manner and in any media.

Section 6. Compliance.

a. Athena and Network Facility will comply with Applicable Law.

b. Athena and Network Facility acknowledge and agree that (i) any fees charged or amounts paid hereunder are not intended, nor will they be construed to be, an inducement or payment for referral of patients among Athena, Network Facility, or any third party and (ii) they will not enter into any agreements, or otherwise make any payments, for the purpose of rewarding the referral of patients among Athena, Network Facility, or any third party.

c. Athena and Network Facility will 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 will cooperate with each other to provide 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 concerning Network Facility billing or Network Facility's provision of, or referrals related to, health services for its patients.

d. Network Facility warrants to Athena on a continuing basis throughout the term of this Agreement that Network Facility will not bill or claim payment in any form, directly or indirectly, from any government health care program or other third-party payor for the cost of any athenaNet Service, including, without limitation, on a government cost report.

e. Athena and Network Facility each warrants that neither it nor any of its personnel to its knowledge (i) has been convicted of any crime arising from claims or other transactions, financial relationships, or financial dealings in connection with health care or (ii) has been excluded from any federal or state health care program. Network Facility warrants to Athena that it and its practitioners are and will be duly licensed and authorized to provide and bill for the health services that they render.

f. Network Facility must verify the accuracy, completeness, and appropriateness of all information provided to Brightree for entry into or selected in athenaNet, including information from third-party functionality, before such information is utilized. Network Facility acknowledges and agrees that the professional duty to treat the patient, to the extent there is any, lies solely with Network Facility, and not with Athena, and use of information contained in or entered into athenaNet, or provided through the athenaNet Service, in no way replaces or substitutes for the professional judgment or skill of such entity or provider. Network Facility is responsible and liable for the treatment of patients as to whom Network Facility and its personnel access or use the athenaNet Service, including responsibility for personal injury or loss of life. To the extent applicable, Network Facility represents and warrants to Athena that all data it provides to Athena or that it selects in athenaNet, including, but not limited to, codes and practitioner identifiers, are accurate and in conformity with all legal requirements, its medical records appropriately support all codes that it enters selects or approves, it and its personnel are duly authorized to enter and access such data, and Athena is duly authorized to receive, use, and disclose such data subject to the terms of this Agreement. Athena is not a health plan or healthcare provider and it cannot and does not independently review or verify for medical accuracy or completeness the medical information entered into, or made available to it in, athenaNet. Use of and access to the athenaNet Service, including, but not limited to, clinical information in athenaNet, is at the sole risk and responsibility of Network Facility and any practitioner or health care provider or facility using data provided by Athena as part of the athenaNet Service. Athena shall not be liable for any action or inaction of Network Facility which may give rise to liability under the Federal False Claims Act or any state version thereof.

Section 7. Warranties and Limitations.

a. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ATHENA UNDERTAKES NO OBLIGATION TO PROVIDE ERROR-FREE OR FAULT-FREE ITEMS OR SERVICES. TO THE EXTENT

TERMS AND CONDITIONS OF THE ATHENACoORDINATOR CORE RECEIVER AGREEMENT

PERMITTED BY LAW, THE ATHENANET SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND DEFECTS. 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, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, TITLE, DESIGN, INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM CONDUCT, COURSE OF DEALING, CUSTOM, OR USAGE IN TRADE.

b. No claim against either party of any kind under any circumstances will be filed more than one year after the other party knows, or in the exercise of reasonable care could know of, such claim, or an act or omission would give rise to such claim.

c. The remedy of a credit as set forth with respect to any Minimum Service Commitment in the applicable Service Description will be the sole and exclusive remedy for the acts or omissions of Athena relating to the performance of that Minimum Service Commitment. Notwithstanding any provision in this Agreement to the contrary, the combined aggregate credit remedy with respect to all Minimum Service Commitments on account of any month is limited to a maximum of 20% of the monthly service fee (as defined in the applicable Service Description) for that month.

d. Athena's cumulative, aggregate liability in connection with or arising in any way or in any degree from this Agreement, from the athenaNet Service, or otherwise from the acts or omissions of Athena under any and all legal theories will not exceed the lesser of (i) \$500,000 or (ii) the total amount paid by Brightree on behalf of Network Facility to Athena in the 12 months before such claim arose. If damages are measured by the cost of medical services provided or the dollar value of claims submitted, Athena's liability for such damages will not exceed the service fees attributable to such services or claims. Athena will not be liable for and will not incur any credit or remedy against it for failure to provide services or functionality with respect to any claim, statement, or transaction that it believes in good faith contains inaccurate, misleading, or otherwise improper information. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE UNDER ANY LEGAL THEORY FOR INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES; LOST PROFITS OR BUSINESS OPPORTUNITIES; OR THE COST OF PROCUREMENT OF SUBSTITUTE ITEMS OR SERVICES. Network Facility hereby acknowledges that the remedies set forth above are reasonable and will not fail of their essential purpose.

Section 8. Force Majeure. No failure, delay, or default in performance of any obligation under this Agreement (other than payment obligations) will constitute a breach of this Agreement if it is caused by strike, fire, shortage of materials, act of a public authority, civil disorder, riot, vandalism, war, severe weather, natural disaster or other act of god; terrorism; or other cause that is beyond the reasonable control of the party otherwise chargeable, for so long as such cause continues and for a reasonable period of time thereafter.

Section 9. Mediation. Athena and Network Facility agree to submit all claims or controversies arising out of or relating to this Agreement to mediation in Boston, Massachusetts, in accordance with the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Service Rules of Procedure for Mediation. Such mediation must be initiated by notifying the other party of written demand for mediation and notifying the AHLA Alternative Dispute Resolution Service. The parties will equally share the costs of the mediation. If the dispute is not resolved by mediation within 60 days, the party seeking relief will have the right to pursue all remedies available at law. Notwithstanding the foregoing, either party may (i) terminate this Agreement according to its terms or (ii) seek injunctive relief to prevent irreparable and immediate harm.

Section 10. Choice of Law, Forum. This Agreement will be governed by the laws of the Commonwealth of Massachusetts applicable to agreements made and to be performed wholly within Massachusetts, without regard to its conflicts of laws principles. The applicable Federal District Court for the state in which the Party named as Defendant has

its principal place of business will be the exclusive venue for any court proceeding between the Parties arising out of, or in connection with, this Agreement. The Parties hereby submit to and consent irrevocably to the jurisdiction of such courts for these purposes. Each Party covenants and agrees that it shall not seek to add, name, join, implead, or otherwise seek redress against any third party in connection with any such court proceeding that would have the effect of destroying the jurisdiction of such Court with respect to diversity of citizenship pursuant to 28 USC § 1332, and will pursue any claims against such third parties in separate legal actions.

Section 11. Notice. Notice under this Agreement will mean written notification addressed to the individual signing this Agreement at the address listed above 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 written notice of such change to the other party.

Section 12. Miscellaneous. This Agreement constitutes the entire agreement between Athena, and Network Facility relating to the athenaNet Service and supersedes all prior agreements, understandings, and representations relating to the athenaNet Service. No change in this Agreement will be effective or binding unless signed by Network Facility, and a duly authorized officer of Athena. Neither party will assign this Agreement without the written consent of the other, provided that either party may assign this Agreement with 90 days prior written notice as part of a corporate reorganization, consolidation, acquisition, 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. This Agreement will be binding on the parties and their successors and permitted assigns. Nothing contained in this Agreement will 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. In no event will either party be liable for the debts or obligations of the other party. Network Facility may not advertise, market, promote, or publicize in any manner its use of and access of the athenaNet Service without the express written consent of Athena in each instance. 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. Section titles are for convenience only and will not affect the meaning of this Agreement. 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. In connection with the athenaNet Service, a copy of a signed document sent by PDF or telephone fax will be deemed an original in the hands of the recipient. The following portions of this Agreement will survive termination and continue in force: Sections 5, 6, 8(c)-(d), and 10 through 13.