

Service Proposal

Presented to Pinellas County Board of County Commissioners

Presented by:

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Prepared for:

Kathleen Peters
Board of County Commissioner & Chair
Pinellas County Board of County Commissioners
647 1st Ave N
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Presented on: 1/9/2024
Valid if accepted by: 8/31/2024



What You Told Us About Your Organization

| | |
|-------------------------|-----------------|
| Specialties Served | Multi Specialty |
| Number of Providers | 22 |
| Annual Visit Volume | 25,000 |
| Medicaid Collections | \$5,000.00 |
| Medicaid Claims | 200 |
| Annual Encounter Volume | 25,000 |

athenaOne

| | |
|----------------------------|---|
| athenaOne Base Service Fee | \$16,400 Flat fee per Practice per month* |
| Total Annual Fee Cap** | \$3,507,208.75 |

*For purposes of this Proposal, "Practice" means one a single legal entity and associated Tax Identification Number. In the event Client wishes to add an additional Practice in the future, the Parties will negotiate pricing terms for such additional Practice in good faith and any resultant mutual agreement will be set forth in a separate Proposal or similar document signed by the Parties.

**Total annual service fees for the initial term of the Agreement (one-year period beginning on the Effective Date) will not exceed \$3,507,208.75 for the services reflected in this Proposal, which amount includes any CPI increases or API increases or decreases (the "Fee Cap"). Client shall track its total expenditures hereunder to ensure the total accumulated contract expenditure is not exceeded. In the event the Parties agree to add additional athenaOne products or services, the Parties will mutually execute an amendment to the Agreement or superseding Proposal for such products and services, payable at the mutually agreed upon rates set forth herein. In the event a CPI increase, or an API increase may exceed the Fee Cap, Client will notify Athena and the Parties may execute an amendment if necessary.

athenahealth Data View What You Told Us About Your Organization

| | |
|---------------------------------|-----|
| Number of Providers | 22 |
| athenaOne Context ID/Tablesapce | TBD |

athenahealth Data View Service Fees

| | |
|------------------------------------|-----------------------------|
| athenahealth Data View Service Fee | \$650.00 Flat fee per month |
|------------------------------------|-----------------------------|

The athenahealth Data View Service Fee set forth above is based on the number of Providers identified herein. Athena reserves the right to require Client to agree to additional or alternative terms or pricing from time to time, but in no event more than once per year, in the event that Athena determines that the number of Providers has increased based on the information recorded in athenaOne; provided, that if the Parties cannot reach mutual agreement after good faith discussion as to such alternative terms or pricing, either Party may terminate the athenahealth Data View Services upon 30 days' Notice to the other Party. For purposes of calculating the monthly athenahealth Data View Service Fees, the term "Provider" means an MD or Mid-Level who has either (a) billed a claim within the preceding 90 days, or (b) both (i) enabled the "createencounteroncheckin" setting in athenaOne and (ii) created a clinical encounter within the preceding 90 days. The Parties agree that if the number of Providers exceeds 49 Providers, then the athenahealth Data View Service Fee shall be as follows: A Provider count between 50-99 Providers will be billed at \$870 Flat fee per month. For the avoidance of doubt, the athenahealth Data View Service Fee set forth in the preceding sentence shall be subject to the annual CPI increase, as set forth in Section 6 of the Additional Terms below.

If Client desires to add one or more Context IDs to its Data View Service following the Effective Date, such additional Context IDs may be subject to additional fees. For any Context ID that is owned by a client that purchases athenaOne services directly from Athena and not pursuant to the Agreement, Athena will only include such Context ID in Client's athenahealth Data View account if it has received an authorization and consent from such client in the form provided by Athena from time to time.

Client represents and warrants to Athena on a continuing basis that it has all necessary right, title, interest, consents or licenses necessary to permit Client to use the Data View Services with respect to each Context ID included in Client's Data View account. Client will immediately notify Athena if it no longer has such rights, title, interest, consents or licenses.

athenahealth Data View Solution

Solutions for athenaOne Base/athenaClinicals/athenaCollector clients

Athena-Managed (athenaOne Base/athenaClinicals/athenaCollector)

Essential Plus Advanced

Client-Managed (athenaOne Base/athenaClinicals/athenaCollector)

Solutions for athenahealth Population Health clients

Athena-Managed (Data View for Population Health)

Client-Managed (Data View for Population Health)

athenahealth Data View Onboarding Service Fee

athenahealth Data View Onboarding Service Fee \$3,000.00

Deposit

Deposit \$6,125.00

Onboarding Service Fees and Scope

Scope

Fees

Implementation and Configuration Services

Number of Locations Assessed Onsite

0 Location(s)

Training (Person Days)

4 Day(s)

\$5,200.00

Go-live Support (Person Days)

13 Day(s)

\$16,900.00

Total Onboarding Service Fees

\$22,100.00

Promotions

The Parties agree that the athenahealth Data View Service Fee will be \$0 per month for the first three (3) months following Client's initial Go-Live Date on athenahealth Data View Services.

athenahealth Platform Services API Solutions Service Fees

Platform Services - API Solutions - Essential (Customers)

Variable Monthly Service Fee As set forth below

- Beginning in the first month in which Client has been granted access to a Preview Environment (as described in the Service Description) for purposes of using the athenahealth Platform Services API Solutions (the "API Preview Date"), Client will be invoiced monthly in arrears and will pay the athenahealth Platform Services API Solutions Service Fee, which includes the Flat Monthly Service Fee set forth above and the Variable Monthly Service Fee, calculated as set forth below. If Client does not have its API Preview Date within six (6) months following the effective date of this Proposal, Athena reserves the right to terminate Client's athenahealth Platform Services API Solutions, effective upon Notice.
- If Client's API Call Volume in any calendar month exceeds 160,000,000, Athena reserves the right to require Client to agree to additional or alternative terms or pricing. If the parties cannot agree to such additional or alternative terms or pricing after good faith negotiation, either Party may terminate the athenahealth Platform Services API Solutions upon 30 days' written notice to the other Party. Until the Parties agree to such additional or alternative terms or pricing, the Variable Monthly Service Fee for any month in which the API Call Volume exceeds 160,000,000 will be \$106,500.
- Beginning with the month in which Client is granted access to a Preview Environment and until its initial Application Go-Live Date (as defined in the Service Description), Client will be deemed to have 0 API calls and the Variable Monthly Service Fee will be \$540. At the beginning of each calendar month following Client's initial Application Go-Live Date (each, a "Review Date"), Athena will calculate your Variable Monthly Service Fee for the previous calendar month in accordance with the table below based on your API Call Volume during such calendar month. "API Call Volume" means the actual number of API calls made during a given calendar month. A subset of Athena's APIs are known as Certified APIs. Certified APIs are certified under 42 CFR § 170.315(g)(7)-(g)(10) as part of the Office of the National Coordinator's (ONC) Certified Electronic Health

Record Technology (CEHRT) program. An up-to-date inventory of all available APIs, including a list of all Certified APIs, can be found on our Developer Portal: (https://docs.athenahealth.com/api/resources/complete_list_athena_apis). **Notwithstanding anything herein to the contrary, calls to Certified APIs, which are accessible via the Developer Portal, are outside the scope of athenahealth Platform Services API Solutions and will not be included in the calculation of Client’s API Call Volume.**

| Monthly API Call Volume | Variable Monthly Service Fee |
|--------------------------|------------------------------|
| 0 - 10,000 | \$540 |
| 10,001 – 25,000 | \$1,080 |
| 25,001 – 50,000 | \$1,940 |
| 50,001 – 100,000 | \$3,020 |
| 100,001 – 250,000 | \$5,510 |
| 250,001 – 500,000 | \$8,530 |
| 500,001 – 1,000,000 | \$11,450 |
| 1,000,001 – 2,500,000 | \$17,060 |
| 2,500,001 – 5,000,000 | \$20,500 |
| 5,000,001 – 10,000,000 | \$24,600 |
| 10,000,001 – 20,000,000 | \$32,000 |
| 20,000,001 – 40,000,000 | \$37,000 |
| 40,000,001 – 80,000,000 | \$59,200 |
| 80,000,001 – 160,000,000 | \$106,500 |

4. If you desire to change the athenahealth Platform Services API Solutions package for which you are contracted, you must provide Athena with 90 days’ notice and recontract for such package at Athena’s then-current rates.
5. The athenahealth Platform Services API Solutions are described in the athenahealth Platform Services API Solutions Service Description, as the same may be updated from time to time.
6. If you use athenahealth Platform Services API Solutions to access data in an Authorized Tablespace (as defined in the Service Description) of other Athena clients, the following terms apply:
 - a) The following definitions are hereby incorporated into the Agreement:
 - i. **“Authorization and Consent”** means an Authorization and Consent in the form provided by Athena from time to time.
 - ii. **“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 a valid HIPAA business associate agreement in place with Client that meets the requirements of 45 CFR 164.504; and (iii) has executed an Authorization and Consent authorizing Athena to provide Client with access to Mutual Customer Data in connection with the athenaOne Services.
 - iii. **“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 such Mutual Customer’s direction, including through athenaOne.
 - b) Client represents and warrants that it shall access and use Mutual Customer Data hereunder only if such access or use complies with (x) Applicable Law and (y) Client’s agreement with such Mutual Customer. Client further represents and warrants that any requested configurations (including, for avoidance of doubt, commingling of Mutual Customer Data), is compliant with Applicable Law and Client’s agreement with each Mutual Customer.
 - c) If Client’s agreement with any Mutual Customer is terminated, or if Client ceases to be the business associate of such Mutual Customer, Client will immediately notify Athena of such termination and will no longer use the athenahealth Platform Services API Solutions to access or use the applicable Mutual Customer Data.
 - d) Client will not have access to Mutual Customer Data until Athena has received an executed Authorization and Consent form from such Mutual Customer.
 - e) Any Mutual Customer may terminate its Authorization and Consent at any time, for any reason, and Client

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.
7. Client is responsible for arranging for any licenses or other permissions necessary from any third parties with respect to the development and operation of your application. To the extent that your application utilizes a third-party platform or system, you authorize Athena to make its APIs available to such third party and acknowledge that such third party will have access to Client Data via the APIs. You are responsible for ensuring that such third party complies with the terms of the Agreement.
8. If you wish to terminate any individual or third party's access to the API, you may do so by sending a request to the Client Support Center, as described in the Service Description. If you wish to terminate the athenahealth Platform Services API Solutions entirely, the termination provisions in your athenahealth Master Services Agreement, Athena Services Agreement, or similar agreement for athenahealth services apply.
9. By executing this Proposal, each Party agrees and intends that the terms contained in the Agreement, including this Proposal and the applicable Service Description(s), related to the content and manner of a request for access, exchange, or use of electronic health information (as defined at 45 C.F.R. § 171.102), including any and all terms related to fees, reflect the Parties' mutual agreement (in an arms' length transaction without any coercion) and meet the "content" and "manner requested" conditions of the Content and Manner Exception set forth at 45 C.F.R. § 171.301. Travel and expenses are not included in the fees listed above. You will be responsible for paying all travel and expenses.
10. The athenaOne Services covered in this Proposal may be subject to a discount and/or warranty as described in this Proposal, which are intended to be structured consistent with the discount or warranty regulatory safe harbor, as applicable, to the federal anti-kickback statute set forth in 42 C.F.R. 1001.952(h) and (g), respectively, and other applicable laws and regulations. To the extent that the value of any discount or warranty item is known as of the Effective Date, that discount/warranty value is detailed in this Proposal and in the Additional Services section of the initial sales invoice. To the extent that the value of any discount or warranty is not known as of the Effective Date, Athena will provide to Client documentation of the calculation of the value of the discount/warranty identifying the specific goods or services purchased to which the discount/warranty will be applied at the time the discount/warranty is credited, earned, or redeemed. If applicable, Client must fully and accurately report the discount/warranty in its applicable cost report(s) filed with the U.S. Department of Health and Human Services (HHS) or applicable State agency. In addition, Client must provide, upon request of HHS or applicable State agency, information regarding the discount or warranty in accordance with the safe harbor regulations.

Additional Terms

1. By executing this Proposal, each Party agrees and intends that the terms contained in the Agreement, including this Proposal and the applicable Service Description(s), related to the content and manner of a request for access, exchange, or use of electronic health information (as defined at 45 C.F.R. § 171.102), including any and all terms related to fees, reflect the Parties' mutual agreement (in an arms' length transaction without any coercion) and meet the "content" and "manner requested" conditions of the Content and Manner Exception set forth at 45 C.F.R. § 171.301.
2. Following your initial Go-Live Date on athenahealth Data View, you will be invoiced and will pay the athenahealth Data View Service Fees set forth above.
3. See the athenahealth Data View Service Description for a full description of the services.
4. For the avoidance of doubt, if you only contract for the athenahealth Data View Services for athenaOne Base Services, athenaClinicals Services or athenaCollector Services, such service does not include any data from athenahealth Population Health Services.
5. For each of the first three months following your first Go-Live Date, you will be invoiced monthly and shall pay the Service Fee set forth above. Beginning in the fourth month following your first Go-Live Date and for each month thereafter, you will be invoiced monthly and shall pay the greater of (1) the Service Fee set forth above, or (2) the Client Minimum Fee set forth above (adjusted, as applicable, in accordance with the Monthly Minimum Ramp Schedule set forth above).
6. Notwithstanding anything to the contrary in the Agreement, not more than once per year following the one-year anniversary of Client's first Go-Live Date, Athena may, following provision of notice to Client, automatically increase Client's then-current service fee for the athenaOne Services set forth in this Proposal by no more than CPI. CPI shall mean the U.S. City Average (December to December percent) for All Urban Consumers (CPI-U).
7. You will be invoiced monthly and pay the Service Fees set forth above. Notwithstanding the foregoing, in the event Client prepays any portion of the athenaOne service fees set forth in this Proposal Number Q-262471-1 that will come due in the future, Athena will apply a credit to Client's account in the amount of the prepayment, which will be used to offset such future monthly Service Fees.
8. Athena will refund the full Deposit amount set forth above in the form of a credit or series of credits applied prospectively to Client's invoices contingent upon Client's first Go-Live Date occurring within 6 months following the Effective Date of the Agreement.
9. You will be invoiced and shall pay the Onboarding Service Fees set forth above in the month after your initial Go-Live Date.
10. Travel and expenses are not included in the fees listed above. You will be responsible for paying all travel and expenses.,
11. Any work outside of the Onboarding type or scope, including phasing of the product roll-out or switching from Offsite to Onsite Onboarding, will require a change order and will result in additional fees
12. Credit card processing services will require the Client to complete an Elavon Merchant Agreement credit application via athenahealth, and Client will be responsible for all applicable Elavon fees for credit card transactions will apply.
13. Any additional Onsite Training and/or Onsite Go-Live Support will be billed at \$1,950.00 per Person Day, and any additional Offsite Training and / or Offsite Go-Live Support will be billed at \$1,300.00 per Person Day
14. See the athenaOne Base Service Description for more information on standard onboarding activities, Consulting Services and the process to request additional services.
15. The athenaOne Services covered in this Proposal may be subject to a discount and/or warranty as described in this Proposal, which are intended to be structured consistent with the discount or warranty regulatory safe harbor, as applicable, to the federal antikickback statute set forth in 42 C.F.R. 1001.952(h) and (g), respectively, and other applicable laws and regulations. To the extent that the value of any discount or warranty item is known as of the Effective Date, that discount/warranty value is detailed in this Proposal and in the Additional Services section of the initial sales invoice. To the extent that the value of any discount or warranty is not known as of the Effective Date, Athena will provide to Client documentation of the calculation of the value of the discount/warranty identifying the specific goods or services purchased to which the discount/warranty will be applied at the time the discount/warranty is credited, earned, or redeemed. If the discount includes supplying one or more goods or services without charge or at a reduced charge in connection with the purchase of other goods or services, Client represents and warrants that to the extent any goods or services included in the transaction are reimbursed by a Federal health care program (in whole or in part), they are all reimbursed by the same Federal healthcare program using the same methodology. If applicable, Client must fully and accurately report the discount/warranty in its applicable cost report(s) filed with the U.S. Department of Health and Human Services (HHS) or applicable State agency. In addition, Client must provide, upon request of HHS or applicable State agency, information regarding the discount or warranty in accordance with the safe harbor regulations.

ATHENAHEALTH MASTER SERVICES AGREEMENT

This Agreement (as defined in Section 1 below) is entered into by and between Pinellas County, a subdivision of the State of Florida whose primary address is 315 Court Street, Clearwater, Florida 33756 ("COUNTY or Client") and athenahealth, Inc whose primary address is 80 Guest Street, Boston, MA 02135 (hereinafter "CONTRACTOR or Athena") (jointly, the "Parties"). Upon execution by Athena and countersignature by Pinellas County, this document will become effective as a binding agreement between the Parties as of the Effective Date.

Section 1. Defined Terms.

"**Agreement**" means this Master Services Agreement, Exhibit A, the Third Party Terms, each Proposal, and each Service Description, each of which is incorporated by reference herein.

"**Applicable Law**" means all federal, state, and local laws and regulations, including those relating to kickbacks, consumer protection, fraud and abuse, confidentiality (including HIPAA), Medicaid, and Medicare, in each case to the extent directly applicable to the respective Party's performance of its obligations under this Agreement.

"**Athena**" is athenahealth, Inc. and its majority-owned subsidiaries, 80 Guest St., Boston, MA 02135; Tel: 617.402.1000; Fax: 617.402.1099.

"**Athena Property**" means athenaOne, athenaOne Services, athenaOne Content, Materials, Service Descriptions, Athena's Confidential Information, proprietary methods, templates, spreadsheets, databases and other electronic tools created or owned by Athena, and all data and information in athenaOne that Athena compiles, sorts, integrates, normalizes, analyzes, maps, processes, selectively aggregates or combines with multiple disparate data sources, for comparison, benchmarking or other lawful purposes, as well as improvements, additions, modifications, interfaces, and derivative works prepared from or relating to any of the foregoing, and any 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. For the avoidance of doubt, Client owns Client Data and Client PHI.

"**athenaOne**" means the platforms, including the athenaOne® multi-user platform, made available to Client or its Authorized Users, or used to provide athenaOne Services, together with athenaOne Functionality and associated databases.

"**athenaOne Content**" means any data made available by Athena as part of any athenaOne Services and all documents, formats, forms, functions, and screens for organizing or presenting that data.

"**athenaOne Functionality**" means the software functionality of athenaOne that enables system access and use.

"**athenaOne Services**" means the services provided by Athena under this Agreement, including access to and use of athenaOne by Client and the provision of athenaOne Content and Materials through athenaOne.

"**Authorized Users**" means those users (a) who are designated by Client in athenaOne and who are (i) employees of Client, or (ii) other individuals, corporations, or entities that are not, and are not affiliated with, competitors of Athena, and have a valid HIPAA business associate agreement or other agreement with Client, and (b) who have been granted access to athenaOne by Client in its exercise of reasonable discretion relating to the receipt of athenaOne Services hereunder by Client, and (c) from whom Client has obtained reasonable assurances that they will comply with the access and use and confidentiality terms in this Agreement.

"**Billable Provider**" means a physician or licensed or specially trained non-physician who is credentialed with payers, linked to Client's organization, and performs health services for Client's customers.

"**Client**" or "County" is Pinellas County, a Subdivision of the State of Florida (use full legal name)

Address: 315 Court Street, Clearwater, FL 33756

Client Tax I.D.: 59-6000800

E-mail: bzumwalt@pinellas.gov

"**Client Data**" means all data and information of Client provided by Client or its Authorized Users to Athena, or provided to Athena from third parties at Client's direction, including through athenaOne. Client

Data includes Client's Confidential Information but does not include Client PHI.

"**Client PHI**" means PHI that Athena receives from or on behalf of Client or creates on behalf of Client. Use and disclosure of Client PHI is governed by the terms of Exhibit A.

"**Collections**" means all sums received by Client for any health care items or services furnished by Client to patients if (a) such sums are posted in athenaOne, or (b) if athenaOne Services have been used to schedule such health care or to bill, track, or follow up on such sums. Collections include co-pays, withhold returns, surplus distributions, bonus payments, incentive program payments, revenue sharing, capitation and other managed care payments, cost report settlements, wrap-around payments, and all sums processed using Athena's credit card processing services. Collections do not include payments for Client administrative services not performed using athenaOne or athenaOne Services. Any amounts refunded to or taken back by any payer during the term of this Agreement in regard to sums qualified as Collections during that time will be treated as negative adjustments to Client's Collections in the month in which such refunds or takebacks occur.

"**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. Confidential Information includes financial and other business information of either Party. With respect to Athena, Confidential Information includes athenaOne Functionality, athenaOne Content, Materials, the terms of this Agreement, and each Service Description, and in each case, any visual reproduction thereof. Notwithstanding the foregoing, Confidential Information does not include PHI 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 this document is countersigned by Pinellas County.

"**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.

"**Go-Live Date**" has the meaning set forth in the applicable Service Description.

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

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

"**Notice**" is defined in Section 13 of this Agreement.

"**Party**" means Athena or Client. "**Parties**" means Athena and Client.

"**PHI**" means "protected health information" as that term is used under HIPAA.

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

"**Proposal**" means Athena Proposal # Q-262471-1 (unique identifier) and each Athena Proposal entered into by the Parties after the Effective Date and incorporated herein by reference.

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

“**Service Description**” means each document periodically updated by Athena that contains a description of athenaOne Services.

“**Third Party Items**” means the third party products and services accessible through athenaOne.

“**Third Party Terms**” means the pass-through terms and conditions set forth at <http://www.athenahealth.com/tp> applicable to Client’s access to and use of certain Third Party Items.

Section 2. Athena Services and Payment.

(a) Athena shall provide athenaOne Services as described in each applicable Service Description. The Parties shall perform their respective obligations as set forth in this Agreement.

(b) Client shall pay Athena the fees and expenses as set forth in this Agreement in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, “The Local Government Prompt Payment Act.” Payment of invoices for work performed for Pinellas COUNTY Board of COUNTY Commissioners (COUNTY) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act. Athena may impose a late charge equal to 1%, each month on amounts overdue beyond 30 days, in accordance with the rate set forth in “The Local Government Prompt Payment Act.”

(c) Refunds: If the County makes advance payment for any athenaOne Services under the Agreement, following the Spindown Period, the County is entitled to a pro-rated refund for any advance payment for athenaOne Services not received as of completion of the Spindown Period.

Section 3. Term and Termination.

(a) This Agreement will have a term of one year from the Effective Date and will automatically extend for additional consecutive one-year terms unless terminated as set forth below.

(b) Either Party may terminate this Agreement or any athenaOne Services at any time, with or without cause, by providing the other Party with no less than 60 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 (10 days in the event of failure to pay amounts owed); (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; (v) a court assumes jurisdiction of the assets of the other Party under a federal reorganization act or other statute; (vi) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other Party; (vii) the other Party becomes insolvent, suspends business or ceases to conduct its business in the ordinary course; or (viii) the other Party makes an assignment of its assets for the benefit of its creditors. Termination of this Agreement by Athena for Client’s failure to pay amounts owed will not constitute irreparable harm to Client.

(d) Athena may terminate this Agreement for cause effective upon Notice if Client (i) violates any System and Service Access and Use provision in Section 4 herein, or (ii) has breached or breaches the warranty in Section 8(b)(iv) herein.

(e) Notwithstanding anything to the contrary set forth in this Agreement, beginning on or around the 15-month anniversary of Client’s first Go-Live Date and no more frequently than every 24 months thereafter (each such date, a “**Review Date**”), Athena may review Client’s information actually recorded in athenaOne (such actual data/information on any Review Date, the “**Actual Client Metrics**”) against any Client information set forth in this Agreement, including, but not limited to, Client size, type, specialty, configuration, annual volume of Client claims or visits, annual Collections, or payer mix (any such Client information, “**Stated Client Metrics**”). If, upon such review, Athena determines that any of the Stated Client Metrics is materially inaccurate, incomplete, or varies by at least 15% from the Actual Client Metrics, Athena may require Client to agree to additional or alternative terms or pricing; 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 upon 30 days’ Notice to the other Party.

(f) Client may terminate this Agreement upon 15 days’ Notice to Athena if any revision by Athena of a Service Description materially and adversely affects the athenaOne Service that it receives, provided that such Notice must be provided within 60 days after Client is first informed of such revision.

(g) Client shall ensure neither it, nor any department, incurs any liabilities (i.e., fees due and payable) beyond the monies budgeted and available for this purpose. In the event that sufficient budgeted funds are not available for a new fiscal period, Client shall notify the Athena of such occurrence with as much advance written Notice as is reasonably possible under the circumstances, but in no event less than 60 days prior to the date of termination, and the Agreement will terminate on the last day of the then-current fiscal period without penalty or termination related expenses (i.e., early termination penalties) to the Client.

(h) Upon termination of this Agreement or any athenaOne Service for any reason, Client shall pay to Athena all amounts due hereunder for all services rendered through the date of termination in accordance with the terms of this Agreement.

Section 4. System and Service Access and Use.

(a) Client’s access to athenaOne is provided by Athena solely to facilitate Client’s access to athenaOne Services. Subject to compliance with the terms and conditions of this Agreement, Athena grants to Client and its Authorized Users a right to access and use athenaOne on a limited, non-exclusive, non-transferable basis and only during the term of this Agreement. Client shall access athenaOne only (i) through its Authorized Users acting within the scope of their service for Client; (ii) on Athena’s servers or as otherwise authorized by Athena; (iii) for the internal use of Client; and (iv) from and within the United States. If Client is live on the athenaCollector Service, Client shall not use, directly or indirectly, any patient service-related billing system or method other than athenaOne and the athenaOne Services, including cash billing systems, unless Client (A) uses a different tax identification number for claims submitted through a different billing system, or (B) agrees to use Athena’s mixed remittance process with respect to such claims.

(b) Client shall ensure that each Authorized User complies with the terms of this Agreement as well as Applicable Law. Client shall terminate any Authorized User’s access to athenaOne (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 Client shall immediately inform Athena of any such indictment, arrest, or conviction. Client is responsible for all acts and omissions of any Authorized User in connection with such Authorized User’s access and use of athenaOne. Athena may restrict, suspend, or terminate an Authorized User’s access to athenaOne if Athena determines in its reasonable discretion that such access has an adverse effect on Athena or any of its clients.

(c) Client shall require Authorized Users to protect their passwords and log in credentials. Client is responsible for any use of data, information, or services obtained through athenaOne by Authorized Users. Except as expressly permitted under this Agreement, Client 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; (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 athenaOne; (v) enter data in athenaOne 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 athenaOne 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 (a) as permitted under this Agreement or as reasonably necessary for the performance or enforcement of this Agreement; (b) as agreed in writing by the other Party; (c) 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; and provided further that it is responsible for all acts and omissions of any such recipient in violation of this [Section 5](#)); or (d) as required by law. Any violation of this [Section 5](#) may cause the non-violating Party irreparable and immediate harm, and such Party is entitled to injunctive relief to prevent such violation. Athena acknowledges that County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Agreement may be superseded by its obligations under any requirements of said laws. Notwithstanding the foregoing, in the event County receives a request for Athena's Confidential Information under any of the foregoing, County will promptly (i) provide Notice to Athena in each case of the request for Athena's Confidential Information prior to disclosing Athena's Confidential Information; (ii) reasonably cooperate with Athena to determine whether an exception applies under any of the foregoing that would constitute a basis for either not disclosing Athena's Confidential Information or reasonably limit the disclosure to the minimum amount legally required to be disclosed; and (iii) reasonably cooperate with Athena to effectuate any redaction or non-disclosure, as applicable. Notwithstanding the foregoing, Athena acknowledges and agrees: That after notice from the County that a public records request has been made for the materials designated as a trade secret, Athena will be, aside from reasonable cooperation of Client as described above, solely responsible for defending its determination that submitted material is a trade secret that is not subject to disclosure, and any expenses incurred by Athena in doing so will be at its sole cost; any such action by Athena will commence promptly, but no later than required by the applicable statute(s), from the date of notification, and if Athena fails to commence such action within such timeline, Athena may be deemed by such statute(s) to have waived the trade secret designation of the materials.

Section 6. Usage and Ownership. Except for the right to use Athena Property subject to the terms and conditions contained herein, this Agreement does not confer on Client 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. Any ideas, advice, recommendations, suggestions, enhancement requests, feedback or proposals provided by or on behalf of Client or its personnel to Athena related to Athena Property ("**Feedback**"), (a) is given to Athena without claim of intellectual property right by Client, (b) by its receipt grants Athena a royalty free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to commercialize, use and incorporate such Feedback into its software, services or systems or use as it otherwise deems necessary or desirable in its business, and (c) will

not enable Client to claim any interest in or ownership of Athena Property. As between Athena and Client, Client retains all right, title and ownership interest in and to Client Data. Client hereby grants to Athena a fully-paid up, worldwide, sub-licensable, perpetual, right and license to Client Data for the purpose of creating Athena Property.

Section 7. Compliance.

(a) Each Party shall comply with Applicable Law. Client is solely responsible for compliance with all legal and regulatory requirements with respect to Client's use of athenaOne and athenaOne Services. The athenaOne Services, to the extent used properly and as expressly authorized by Athena, operate in a manner that enables Client to comply with Applicable Law.

(b) 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 Client 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 Client or any third party.

(c) 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 concerning Client billing or Client's provision of, or referrals related to, health services for its patients.

(d) Client agrees that (i) no payment to or receivable of Client or any Billable Provider is or will be assigned to Athena, and Athena is not and will not be deemed to be the beneficiary of any such payment or receivable, and all such payments and receivables (including, but not limited to, checks and electronic fund transfers) will be payable to and will remain the property of Client or the Billable Provider; (ii) Athena will not endorse or sign any check or instrument; (iii) any lockbox or other account into which Client payments or receivables are properly deposited will remain in the name of, and under the sole ownership and control of, Client or the Billable Provider; (iv) Athena will not be a signatory on or have any power to transfer or withdraw from any account into which Client or Billable Provider payments or receivables from any federally funded program are properly deposited; and (v) in the event funds are deposited in error to Client's lockbox or other Client account, Client shall promptly repay an amount equal to such deposited amount as directed by Athena.

(e) Client shall verify and is solely responsible for the accuracy, completeness, and appropriateness of all information entered into or selected in athenaOne or the Third Party Items by it and its Authorized Users. The professional duty to treat the patient lies solely with Client and use of information contained in or entered into athenaOne or provided through athenaOne Services in no way replaces or substitutes for the professional judgment or skill of Client. Client is responsible and liable for the treatment of patients whom Client and its personnel treat in the course of accessing or using athenaOne Services, including responsibility for personal injury or loss of life. Client represents and warrants to Athena that (i) all data it provides to Athena or that it selects in athenaOne, including, but not limited to, codes and practitioner identifiers, are accurate and in conformity with all legal requirements; (ii) its medical records appropriately support all codes that it enters, selects, or approves; (iii) it and its personnel are duly authorized to enter and access such data; and (iv) 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 the medical accuracy or completeness of the medical information entered into, or made available to it in, athenaOne. Use of and access to athenaOne Services, including, but not limited to, clinical information in athenaOne, is at the sole risk and responsibility of

Client, Authorized Users, and any practitioner or health care provider or facility using data provided by Athena as part of athenaOne Services. Athena will not be liable for any action or inaction of Client which may give rise to liability under the federal False Claims Act or any state version thereof.

Section 8. Warranties and Limitations.

(a) Athena will indemnify and defend at its expense any claim, suit, or action (“**IP Claim**”) brought against Client or its directors, officers, or employees (“**Client Indemnitees**”) by a third party, and will pay any settlement Athena makes or approves, or any third party damages finally awarded in such IP Claim, to the extent such IP Claim arises out of an allegation that the athenaOne Functionality (“**Athena Indemnified Materials**”), when used properly and as expressly authorized by Athena, infringes upon any valid patent, registered copyright, or other registered intellectual property right under the law of the United States. If any portion of the Athena Indemnified Materials becomes, or in Athena's opinion is likely to become, the subject of an IP Claim, Athena may, at Athena's option: (V) procure for Client the right to continue using the applicable Athena Indemnified Material; or (W) modify or replace the applicable Athena Indemnified Materials with non-infringing software or services which do not materially impair the functionality of the applicable Athena Indemnified Materials, provided that if neither (V) or (W) is commercially practicable for Athena, Athena may terminate this Agreement upon Notice to Client. Notwithstanding the foregoing, Athena will have no obligation under this Section or otherwise with respect to any IP Claim to the extent based upon or arising out of (i) any use of the Athena Indemnified Materials in breach of this Agreement or any other agreement by, or any negligent or other wrongful act or omission of, any Client Indemnitees or any party acting on behalf of Client Indemnitees; (ii) any use of the Athena Indemnified Materials in combination with other products, equipment, software or data not supplied by Athena; (iii) any modification of the Athena Indemnified Materials by Client; or (iv) any data, information, materials, content, or information provided by or on behalf of Client or its Authorized Users through the athenaOne Services or otherwise to Athena. This Section 8(a) states the sole and exclusive remedy of Client and the entire liability of Athena and its officers, directors, employees, shareholders, contractors, or representatives of the foregoing, for all IP Claims. Athena's obligations as set forth above are expressly conditioned upon each of the following: (A) Client will promptly notify Athena in writing of any threatened or actual IP Claim, and will provide all reasonably available information about such IP Claim, as well as access to Client's employees and personnel; (B) Athena will have sole control of the defense or settlement of any IP Claim (provided that Client may, in its sole discretion and at its sole cost and expense, participate in the defense of any such IP Claim using attorneys selected by it, provided that such participation shall not interfere with Athena's control of the defense); and (C) Client will cooperate with Athena to facilitate the settlement or defense of any IP Claim. Athena will obtain the prior written approval of Client before entering into any settlement of any IP Claim that would impose additional obligations upon Client.

(b) Each Party represents and warrants to the other Party that (i) it has the requisite corporate power and authority to execute and perform its obligations under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to bind it hereunder and that such Party's execution of this Agreement is not in violation of such Party's bylaws, certificate of incorporation or other comparable document; (iii) the execution, delivery, or performance of this Agreement will not violate or 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.

(c) Client represents, warrants, and covenants to Athena that (i) it and its Billable Providers are, and will be, duly licensed and authorized to provide and bill for the health services they render; and (ii) all athenaOne local rule requests, technical requests, or other requests, waivers, or directives by or on behalf of Client are and shall remain compliant with Applicable Law and all applicable payer requirements. Client agrees that it has not relied on any representations, warranties, or statements of fact not specifically included in this Agreement, and shall not assert, and shall cause its affiliates and personnel not to assert, any claim against Athena with respect to its or their reliance on any representations, warranties or statements of fact not specifically included in this Agreement.

(d) ***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 will be error-free or will be provided (or available) without interruption or meet Client's business or operational needs.***

(e) No claim against Athena or Client of any kind under any circumstances may be asserted or filed more than two years after the other Party 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.

(f) The remedy of a credit with respect to any “Minimum Service Commitment” described 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 Client's monthly service fee for that month.

(g) ***Except with respect to fees and other charges properly due and payable by Client to Athena, each Party's cumulative, aggregate liability in connection with or arising in any way or in any degree from this Agreement, from athenaOne Services, or otherwise from the acts or omissions of Athena will not exceed the total amount paid (or with respect to Client's liability to Athena, the total amount paid and due and payable) by Client to Athena in the 12 months before such claim arose. Notwithstanding the foregoing, 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 any failure to provide services, content, or functionality with respect to any claim, statement, or transaction that Athena believes in good faith arises from, in connection with, or contains inaccurate, misleading, or otherwise improper information. Notwithstanding anything to the contrary, neither Party 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.*** Client hereby acknowledges that the remedies set forth above are reasonable and will not fail of their essential purpose.

Section 9. Third Party Items. As applicable in connection with athenaOne Services, Athena hereby grants to Client and its Authorized Users a limited, non-exclusive, non-transferable, non-licensable right to access and use the Third Party Items through athenaOne during the term of this Agreement. Athena may modify the Third Party Terms in the event Athena adds or replaces Third Party Items or as required in connection with changes to the applicable third party agreements for the Third Party Items. Athena agrees to use commercially reasonable efforts to post the current Third Party Terms on athenaOne and notify Client through an alert on athenaOne when Athena has posted revised Third Party Terms. The Third Party Items

will not be deemed part of Athena Property. All rights granted in this Section 9 are solely for Client and its Authorized Users' use in connection with athenaOne Services and will terminate on the earlier of expiration or termination of (a) this Agreement, or (b) the applicable agreement between Athena and the licensor of the Third Party Items.

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 (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event, or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event; and (iii) 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. Dispute Resolution; Mediation

In the event of a dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms, including any question regarding the negotiation, execution or performance of this Agreement and any conduct related to or arising out of this Agreement following termination hereof (each a "Dispute"), each Party will make a good faith effort to discuss and resolve any disputes prior to initiating legal action. The specific format of such discussion will be mutually decided by the Parties. In the event the Parties cannot resolve the Dispute as set forth above, the Parties shall submit to a mutually agreed upon mediator (to be determined prior to commencement of any such mediation) for non-binding mediation. The Parties shall participate in the mediation in good faith and equally share the costs of the mediation; the Parties agree that, notwithstanding the foregoing, the Client's portion of such shared costs are not to exceed a dollar amount of \$15,000.00 with respect to such shared costs. 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 (a) terminate this Agreement according to its terms, or (b) seek injunctive relief.

Section 12. Choice of Law; Forum. This Agreement and any Dispute will be governed exclusively by, construed and enforced in accordance with the laws of the state of Florida, 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 (with respect to Athena, the Commonwealth of Massachusetts and with respect to Client, the State of Florida) will be the exclusive venue for any resolution of any Dispute. If such Federal District Court does not have subject matter jurisdiction, the courts of the same state in which such Federal District Court is located shall 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 under this Agreement means written notification addressed to the individual signing this Agreement at the address listed in Section 1, with a copy to the notified Party's legal department located at; 315 Court Street, 6th Floor, Clearwater, FL 33756, that is (a) delivered by hand; (b) sent by traceable nationwide parcel delivery service, overnight or next business day service; or (c) 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. Certified athenaOne Services.

(a) Notwithstanding anything to the contrary in this Agreement, Client may make a communication for any of the following purposes about (i) the usability of Certified athenaOne Services, (ii) the interoperability of the Certified athenaOne Services, (iii) the security of the Certified athenaOne Services, (iv) relevant information regarding users' experience with the Certified athenaOne Services, (v) Athena's business practices related to exchanging electronic health information (as defined at 45 C.F.R. § 171.102), or (vi) the manner in which a user of the Certified athenaOne Services has used the technology:

(A) making a disclosure required by law;

(B) communicating information about adverse events, hazards, and other unsafe conditions to government agencies, health care accreditation organizations, and patient safety organizations;

(C) communicating information about cybersecurity threats and incidents to government agencies;

(D) communicating information about information blocking and other unlawful practices to government agencies; or

(E) communicating information about Athena's failure to comply with a Condition of Certification requirement or other requirement of 45 C.F.R. Part 170 to the Office of the National Coordinator for Health IT ("ONC") or an ONC-Authorized Certification Body ("ONC ACB").

(b) Client shall not disclose Athena Confidential Information about non-user facing aspects of Certified athenaOne Services. Client shall not disclose Athena Property or a third party's intellectual property existing in Certified athenaOne Services, except that Client may publicly display a portion of Certified athenaOne Services that is subject to copyright protection where such display would reasonably constitute "fair use" of Certified athenaOne Services, as provided by 45 C.F.R. § 170.403(a)(2)(ii)(C), and the display concerns one or more of the six subject areas set forth in Section 14(a).

(c) If Client discloses a screenshot or video of Certified athenaOne Services which contains Athena Confidential Information, Client shall (i) not alter the screenshots or video, except to annotate the screenshots or video or resize the screenshots or video; (ii) limit the sharing of screenshots to the relevant number of screenshots needed to communicate about Certified athenaOne Services regarding one or more of the six subject areas set forth in Section 14(a); and (iii) limit the sharing of video to (A) the relevant amount of video needed to communicate about Certified athenaOne Services regarding one or more of the six subject areas set forth in Section 14(a), and (B) only videos that address temporal matters that cannot be communicated through screenshots or other forms of communication. For the avoidance of doubt, this Agreement shall not be construed to prohibit or restrict any communication in a manner that violates the Condition of Certification set forth at 45 C.F.R. 170.403(a). For purposes of this Section 14, "Certified athenaOne Services" means athenaClinicals or athenaClinicals for Hospitals and Health Systems, as applicable, and associated workflows certified to ONC or an ONC-ACB as part of the ONC Health IT Certification Program

Section 15. Miscellaneous Athena must register with and use the E-Verify system when hiring employees. A contractor may not enter into a contract with the County unless the party registers with and uses the E-Verify system. This Agreement constitutes the entire agreement between the Parties relating to athenaOne Services and supersedes all prior agreements, understandings, and representations relating to athenaOne Services. Except as otherwise provided herein, no change to this Agreement will be effective or binding unless signed by Client and a duly authorized representative of Athena. Neither Party may assign this Agreement or any right under this Agreement, in each case by operation of law or otherwise, except as otherwise permitted hereunder without the prior written consent of the other Party, and any attempt to assign this Agreement or any right under this Agreement in breach of the provisions of this Section 15 shall be null and void. The foregoing notwithstanding, either Party may assign this Agreement upon Notice to the other Party in connection with (a) any reorganization, conversion, consolidation or merger of such

Party, (b) any transaction resulting in the holders (together with their affiliates) of a majority of the voting securities, membership interest or right to appoint a majority of the members of the board of directors or similar governing body of such Party as of immediately prior to such transaction, holding less than such a majority as of immediately after such transaction, or (c) any sale, transfer or exclusive license of all or a majority of the assets of such Party that are pertinent to this Agreement or, in each case of (a) through (c) whether consummated in one transaction or a series of related transactions. For the avoidance of doubt, the assigning Party and the assignee will remain liable jointly and severally for any unperformed obligations under this Agreement or any breach hereof arising prior to the effective date of any assignment of this Agreement. 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 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. Client will obtain Athena's consent before using Athena's name, trademarks, or logo in any manner. Athena will obtain Client's consent (such consent not to be unreasonably withheld) before using Client's name or logo in a manner signifying an endorsement of Athena by Client; provided, however that Athena may refer to Client as a current customer without first obtaining Client's consent. 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. When used in this Agreement, "including" means "including without limitation." 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. Despite the possibility that one Party or its representatives may have prepared the initial draft of this Agreement or any provision hereof or played a greater role in the preparation of subsequent drafts, neither Party shall be deemed the drafter of this Agreement and no provision hereof shall be construed in favor of one Party on the ground that such provision was drafted by the other. Client shall not join or consolidate claims by other clients or pursue any claim as a representative or class action or in a private attorney general capacity. In connection with athenaOne Services, a copy of a signed document sent by PDF or telephone fax will be deemed an original in the hands of the recipient. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. This Agreement may be executed in counterparts and exchanged by electronic means, each of which shall be deemed an original, and both of which together constitute only one

agreement between the Parties. The following Sections of this Agreement will survive termination and continue in force: Sections 1, 2(b)-(c), 3(g), 5, 6, 7(d)(v), 8(c)-(g), and 11 through 15.

Section 16. Insurance

(a) Athena will obtain, at its own expense, insurance coverage of the types and in the amounts specified below, and will continuously maintain such insurance throughout the term of this Agreement. Any one or more of the types of insurance coverage required in this Section may be obtained and maintained through a blanket or master policy. Further, the minimum limits listed below may be provided through a combination of primary and umbrella or excess policies. Umbrella and excess liability policies used to comply with any insurance requirement herein shall follow-form to the underlying coverage.

1. Professional Services Errors and Omissions Liability, with minimum annual limits of \$2,000,000 per claim and \$2,000,000 in the aggregate.
2. Workers' Compensation insurance as required by Applicable Law and Employers Liability insurance with minimum annual limits of \$1,000,000 per accident; \$1,000,000 disease – each employee; \$1,000,000 disease – policy limit.
3. Commercial General Liability (CGL) insurance with minimum annual limits of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000.
4. Cyber Liability insurance covering loss or disclosure of PHI, with minimum annual limits of \$2,000,000 per claim or occurrence, and in the aggregate.


(b) Athena will, supply Client with a Certificate of Insurance confirming that such insurance is in effect prior to award.

Section 17. Records Available. To the extent the requirements of 42 C.F.R. § 420.300 et seq. are applicable to the transactions contemplated by this Agreement, Athena shall make available to the Secretary of Health and Human Services ("HHS"), the Comptroller General of the Government Accounting Office ("GAO") and their authorized representatives, all contracts, books, documents and records relating to the nature and extent of charges under this Agreement until the expiration of 6 years after the athenaOne Services are furnished under this Agreement if the athenaOne Services are the type reimbursable under Medicare or any other government healthcare program.

Section 18. Client is required by law and/or its own internal policies ("Administrative Requirements") to include as an attachment hereto the document titled "CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS PROPOSAL NUMBER: 24-0331-RFP (the "ARPA Grant Provisions"). The Parties acknowledge and agree that all sections of such document may not apply to Athena (except, for the avoidance of doubt, to the extent Athena is obligated by Applicable Law to comply with any statutes or other legal requirements cited therein).

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

ATHENAHEALTH, INC.

By:  _____
Name: Michelle Zhao _____
Title: Executive Director, Finance _____
Date: Aug 22, 2024 _____

CLIENT: Pinellas County

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM
By: Keiah Townsend
Office of the County Attorney

Auto Debit Authorization Form – Please Print Clearly

The undersigned Client (“**Client**”) hereby authorizes athenahealth, Inc. (“**Athena**”) to initiate debit entries to Client’s account indicated below, and the financial institution named below (“**Institution**”) is hereby authorized to debit such account as initiated by Athena. This authorization is for the purpose of fees periodically invoiced under the athenahealth Master Services Agreement. Client understands that debited amounts may vary, and Client authorizes debits for the full amount due each month. This authorization shall remain in full force and effect until Athena has received written notification from Client of its termination and Institution has had a reasonable opportunity to act upon it. Athena may detach this form or exhibit it separately to Institution as necessary.

| | | |
|---|-----------------------|---|
| Financial Institution Name: | Branch: | Address (Number, Street, City, State, and ZIP): |
| Type of Account: <input type="checkbox"/> Checking <input type="checkbox"/> Savings | Client Tax ID Number: | Account Number: Routing Number: |

Full Legal Name of Client: _____

By: _____ (President, General Partner, Treasurer, or other individual authorized according to the records of the financial institution identified above)

Print Name and Position: _____ Date: _____

EXHIBIT A – TO ATHENAHEALTH MASTER SERVICES AGREEMENT
Business Associate Agreement

Article 1. Definitions. Capitalized terms used but not defined herein have the meaning attributed to them (i) in the Agreement; or (ii) under HIPAA. In the event of a conflict, the definition under HIPAA controls. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act of 2009, as may be amended from time to time. "Unsuccessful Security Incident" means activities such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service, and any combination of the foregoing, so long as no such incident results in unauthorized access, use, disclosure, modification, or destruction of Client PHI.

Article 2. Athena's Duties. Athena shall:

not Use or Disclose Client PHI except (i) as required or permitted by Applicable Law; (ii) as permitted under the terms of the Agreement or as otherwise authorized by Client; or (iii) as incidental under HIPAA to another permitted Use or Disclosure;

use reasonable and appropriate safeguards designed to prevent Use or Disclosure of Client PHI other than as provided in the Agreement, and implement administrative, physical, and technical standards in accordance with the Security Rule designed to protect the confidentiality, integrity, and availability of Client PHI;

mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Client PHI by Athena that is known to Athena to violate the requirements of the Agreement;

limit its request for Client PHI to the minimum amount necessary to accomplish the intended purpose of requests for, and Uses and Disclosures of, Client PHI in accordance with 45 C.F.R. §164.502(b);

report to Client to the extent required by HIPAA and the HITECH Act any known Use or Disclosure of Client PHI by Athena in violation of the Agreement resulting in a Breach of Unsecured PHI. Such notification shall be made without unreasonable delay following the date of discovery to enable Client to comply with the Breach disclosure requirements under the HITECH Act. Athena shall include within such notice identification, to the extent possible, of each Individual whose Unsecured PHI has been, or is reasonably believed by Athena to have been, accessed, used, or disclosed through the Breach and any other valuable information known to Athena that Client is required to include in its notice to affected Individuals;

report to Client any Security Incident with respect to Client PHI as required by HIPAA and the HITECH Act. This [Article 2\(f\)](#) constitutes notice by Athena to Client of the ongoing existence, occurrence, or attempts of Unsuccessful Security Incidents, for which no additional notice to Client is required;

require any agent, including a subcontractor, under the Agreement that creates, receives, maintains, or transmits Client PHI on behalf of Athena to agree in writing to substantially the same restrictions and conditions with respect to Client PHI that apply through this [Exhibit A](#) to Athena with respect to such PHI;

at the request of Client, provide access to Client PHI in a Designated Record Set to Client or, as properly directed by Client, to an Individual, in order to meet the requirements under 45 C.F.R. §164.524;

at the request of Client, make any amendment to Client PHI in a Designated Record Set that Client properly directs or agrees to pursuant to 45 C.F.R. §164.526;

maintain and make available the information required to provide an Accounting of Disclosures to Client (or an Individual, as applicable) as necessary to satisfy Client's obligations under 45 C.F.R. §164.528;

make its internal practices, books, and records relating to the Use and Disclosure of Client PHI available to the Secretary of Health and Human Services for purposes of the Secretary's determination of Client's compliance with HIPAA requirements; and

to the extent that Athena agrees to carry out any Client obligation(s) under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Client in the performance of such obligation(s).

Article 3. Client's Duties. Client shall:

not request, direct, or cause Athena to Use or Disclose PHI unless such Use or Disclosure is in compliance with Applicable Law relating to the privacy and security of patient data and is the minimum amount necessary for the legitimate purpose of such Use or Disclosure;

notify Athena of any limitation in its notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Athena's Use or Disclosure of Client PHI;

notify Athena of any changes in, or revocation of permission by, an Individual to Use or Disclose Client PHI, to the extent that such changes may affect Athena's Use or Disclosure of Client PHI; and

notify Athena of any restriction on the Use or Disclosure of Client PHI that Client has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Athena's Use or Disclosure of Client PHI.

Article 4. Business Associate Permitted Purposes.

Athena's Use and Disclosure of Client PHI is permitted for the following purposes: (i) to provide athenaOne Services (including receipt from and disclosure to payers, patients, vendors, and others in order to provide athenaOne Services); (ii) for Payment, Health Care Operations, and Treatment (including testing and set up of electronic linkages for Payment transactions); (iii) as requested by Client or an authorized governmental agent for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); (iv) to provide data aggregation services as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); and (v) to de-identify Client PHI in accordance with 45 C.F.R. §164.514(b), and use or disclose such de-identified information as permitted by Applicable Law. All de-identified information created by Athena in compliance with the Agreement will belong exclusively to Athena, provided that Client will not hereby be prevented from itself creating and using its own de-identified information. Athena may Use Client PHI to carry out its legal responsibilities or for its proper management and administration, including making and maintaining reasonable business records of transactions in which Athena has participated or athenaOne has been used (including back-up documentation).

Athena may Disclose Client PHI to carry out its legal responsibilities or for its proper management and administration; provided that (i) such disclosures are required by Applicable Law; or (ii) Athena obtains prior written reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by Applicable Law or for the purpose(s) for which it was disclosed to the person, and the person notifies Athena of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the breach notification requirements of this [Exhibit A](#).

Article 5. Business Associate Termination. Upon termination of the Agreement, to the extent feasible, Athena shall return or destroy, or, to the extent return or destruction is infeasible, continue to extend protections to and limit the use and disclosure of, Client PHI to the extent required by and in accordance with 45 C.F.R. §164.504(e)(2)(ii)(J). It is not feasible in light of reasonable business requirements, regulatory compliance requirements, and the rights and obligations under the Agreement for Athena to return or destroy its business records and transaction databases, including, but not limited to, databases that reflect the use of athenaOne and information that Client or Athena has entered in athenaOne in the course of the Agreement to enable or perform athenaOne Services.

Article 6. Business Associate Default. Any material default by Athena of its obligations under [Articles 2](#) through [4](#) will be deemed a default of a material provision of the Agreement, and if cure of such default and termination of the Agreement are not feasible, Client may report the default to the U.S. Secretary of Health and Human Services and shall provide the same information to Athena concurrently, where permitted by Applicable Law.

Article 7. Athena Business Records. Subject to the other requirements and limitations of this [Exhibit A](#), the business records of Athena and all other records, electronic or otherwise, created or maintained by Athena in performance of the Agreement will be and remain the property of Athena, even though they may reflect or contain Client PHI.

Article 8. Ownership of Client PHI. As between the Parties, all Client PHI shall at all times be and remain the sole and exclusive property of Client.

► **Amendment to Athenahealth Master Services Agreement**

This Amendment to athenahealth Master Services Agreement (this “Amendment”) is entered into by and between athenahealth, Inc., a Delaware corporation (“Athena”), and the client set forth on the signature page below (“Client”) (Athena and the Client collectively referred to as the “Parties”).

WHEREAS, the Parties have entered into an athenahealth Master Services Agreement (the “MSA”) and desire to amend the Agreement (as defined in the MSA) as set forth below;


NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Agreement.
2. The definition of “Collections” in Section 1 of the Agreement is amended by inserting the following at the end of such definition:
“Collections does not include revenue received by Client from claims submitted to or paid under a Florida State Medicaid program. No percentage fee for Athena will be charged under the Agreement on account of any claim submitted to or paid under any Florida State Medicaid program.”
3. Section 2(b) of the Agreement is amended by inserting the following at the end of such section: “The service fees with regard to claims submitted under a Florida State Medicaid program will not be calculated as a percentage of Collections and will instead be a flat fee of \$0 per Claim Forwarded. “Claim Forwarded” means a claim created in athenaOne and submitted to a third party by (a) United States mail, (b) commercial parcel delivery system, or (c) electronic transmission. Each submission, resubmission, or appeal of a claim will be deemed a Claim Forwarded.
4. The definition of “Collections” in Section 1 of the Agreement is amended by inserting the following at the end of such definition:
“Collections does not include revenue received by Client from claims submitted to or paid under a Florida State Medicaid program. No percentage fee for Athena will be charged under the Agreement on account of any claim submitted to or paid under any Florida State Medicaid program.”
5. Section 8 of the Agreement is amended by inserting the following as new subsection (h) immediately following Section 8(g):
“(h) Client represents and warrants to Athena on a continuing basis while the Agreement is in effect: (i) that it does not treat patients whose care must, or will be, paid by a Florida State Medicaid Program; (ii) that it does not and will not receive any revenue from such program or provide services or care that is paid for in whole or in part by such program; (iii) that its status and actions under (i) and (ii) above are not in violation of any applicable law or regulation; and, (iv) that it does not use, and will not initiate or cause use of, Athena’s services or the athenaOne® System in connection with the treatment, submission of claims or payment for treatment that is reimbursed or covered by such program.”
6. Except as expressly amended or modified herein, the terms of the Agreement remain in full force and effect. To the extent of any conflict between the terms of this Amendment and those of the Agreement in effect immediately prior to amendment hereby, the terms of this Amendment shall control. This Amendment may be executed and delivered by fax or PDF file and in counterparts, each of which shall be deemed an original and all of which together shall constitute one single agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to be effective as of the date countersigned by Athena below.

ATHENAHEALTH, INC.

CLIENT: Pinellas County

By:  _____
Name: Michelle Zhao _____
Title: Executive Director, Finance _____
Date: Aug 22, 2024 _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM
By: Keiah Townsend
Office of the County Attorney

**CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL
AWARDS PROPOSAL NUMBER: 24-0331-RFP**

**PROPOSAL TITLE: ELECTRONIC HEALTH RECORD
(EHR) FOR LOW INCOME AND HOMELESS HEALTHCARE PROGRAM - HUMAN SERVICES ARPA**

This solicitation is either fully or partially funded with federal funds from the Coronavirus Local Fiscal Recovery Funds made available under the American Rescue Plan Act (ARPA). In addition to other terms and conditions required by Pinellas County and the applicable federal agency, all contracts awarded to the qualified bidder are subject to the following provisions, as applicable to the services provided.

Equal Employment Opportunity: Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

If this contract meets the definition of a “federally assisted construction contract”, during the performance of this contract, the Contractor agrees as follows:

- (1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor.

Davis-Bacon Act as amended (40 U.S.C. 3141-3148): When required by federal program legislation, for all prime construction contracts awarded in excess of \$2,000, Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week. If the applicable grant award contains Davis-Bacon provisions, the County will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation document. The decision to award a contract shall be conditioned upon the acceptance of the wage determination [Appendix II to 2 CFR Part 200].

Copeland Anti Kick Back Act: If Davis-Bacon is applicable, CONTRACTOR shall also comply with all the requirements of 29 CFR Part 3 which are incorporated by reference to this contract. Contractors are prohibited from inducing by any means any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he or she is otherwise entitled [Appendix II to 2 CFR Part 200].

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708): Where applicable, all contracts awarded **in excess of \$100,000** that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each CONTRACTOR is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess

of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence [Appendix II to 2 CFR Part 200].

Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387): As amended—The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA) [Appendix II to 2 CFR Part 200].

Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) will not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. If applicable, the CONTRACTOR must verify that none of their subcontractors (for contracts expected to equal or exceed \$25,000), appear on the federal government’s Excluded Parties List. The Excluded Parties List is accessible at <http://www.sam.gov> [Appendix II to 2 CFR Part 200].

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): CONTRACTORS that apply or bid for an award **exceeding \$100,000** must submit a completed “Disclosure of Lobbying Activities” [Form SF-LLL]. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with *non-federal funds* that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. [Appendix II to 2 CFR Part 200]. **The bidder shall complete Form SF-LLL and submit with bid. Bidders may be deemed nonresponsive for failure to submit this certification.**

Conflict of Interest [2 CFR §200.112]: The CONTRACTOR must disclose in writing any potential conflict of interest to the Federal awarding agency or COUNTY in accordance with applicable Federal awarding agency policy.

Mandatory Disclosures [2 CFR §200.113]: The CONTRACTOR must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.339 - Remedies for

noncompliance, including suspension or debarment.

Certifications and representations. [2 CFR § 200.209]

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, CONTRACTOR may be required to submit certifications and representations required by this agreement, Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the CONTRACTOR fails to meet a requirement of these provisions for contracts under federal awards.

Protected Personally Identifiable Information (Protected PII) [CFR §200.303(e)]:

The CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the federal awarding agency or COUNTY designates as sensitive or the County considers sensitive consistent with other applicable federal, state, and local laws regarding privacy and obligations of confidentiality. Per 2 CFR § 200.82, Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed.

Prohibition on utilization of time and material type contracts [2 CFR §200.318 (j) (1)]: The COUNTY will not award contracts based on a time and material basis if the contract contains federal funding.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms [2 CFR § 200.321]: If using subcontractors, the CONTRACTOR must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (6) Affirmative Action Requirements per 41 CFR 60-4.1 Goals for Women and Minorities in Construction (for contracts in excess of \$10,000): Goals and timetables for minority and female utilization may be set which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered Contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be

published as notices in the Federal Register, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

Information regarding certified M/WBE firms can be obtained from:

- Florida Department of Management Services (Office of Supplier Diversity);
- Florida Department of Transportation;
- Minority Business Development Center in most large cities; and
- Local Government M/DBE programs in many large counties and cities.

Domestic preferences for procurements. [2 CFR § 200.322]

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Procurement of Recovered Materials [2 CFR §200.323]: CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Prohibition on utilization of cost plus a percentage of cost contracts [2 CFR §200.324 (d)]: The COUNTY will not award contracts containing federal funding on a cost plus percentage of cost basis.

Retention of Records [2 CFR 200.334]: Financial records, supporting documents, statistical records, and all other records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or invoice. Record retention may be required to be longer if any of the provisions of 2 CFR 200.334(a)-(f) apply.

Access to Records [2 CFR 200 § 200.337]: The County, Pass-through agency or Federal awarding agency have the right of timely and unrestricted access to any documents,

papers or other records, including electronic records, of the CONTRACTOR which are pertinent to the Federal award in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents.

This right also includes timely and reasonable access to the CONTRACTOR'S personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

Remedies for noncompliance. [2 CFR § 200.339]

If CONTRACTOR fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or COUNTY may impose additional conditions, as described in 2 CFR § 200.208. If the Federal awarding agency or COUNTY determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or COUNTY may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR or more severe enforcement action by the Federal awarding agency or COUNTY.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Agreement.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of the COUNTY, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Take other remedies that may be legally available.