

## **COMMONWELL HEALTH ALLIANCE END USER TERMS AND CONDITIONS**

These End User Terms and Conditions (“EULA”) apply to Athena’s distribution and sublicense of the Core Commercial Services to its Clients. RelayHealth, a service provider of the Core Commercial Services requires Clients’ agreement to this EULA. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Commercial Services Agreement between the CommonWell Health Alliance, Inc. (the “Alliance”) and RelayHealth, a division of McKesson Technologies, Inc. (“RelayHealth”), (the “Agreement”).

1. Description of Services. Client acknowledges and agrees that, as part of the patient identity and data routing management services provided under the Core Commercial Services, Health Data of Client and each of its End Users may be used and disclosed by RelayHealth and disclosed to other Members’ clients participating in the Core Commercial Services solely as necessary to carry out the Core Commercial Services. Client represents and warrants that it has all rights and authority necessary to agree to and comply with the previous sentence and all Health Data provided to RelayHealth or exchanged via the Core Commercial Services by Client and its End Users is provided with the full authority of the owner of such Health Data as set forth in Section 5. Health Data may be used and disclosed by RelayHealth and its subcontractors solely as necessary to provide the Core Commercial Services, including on behalf of Client or End Users to carry out the following related to the Core Commercial Services: (a) submit requests for Health Data relating to individual patients, (b) identify whether other Core Commercial Services participants maintain Health Data relating to those patients, (c) request such Health Data from the participants maintaining it, and (d) transmit requested Health Data to the requesting participant. In addition, RelayHealth may de-identify PHI and store Health Data and de-identified PHI for the sole purposes of performance testing, trouble shooting and improving the Core Commercial Services within the scope of the Agreement, and for no other purpose.

2. Defined Terms. The following defined terms shall apply to this EULA.

“Applicable Privacy Laws” means all laws and regulations concerning the privacy and/or security of personal information or personal information breach notification, including, where applicable, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, (“HIPAA”) and all applicable state privacy laws, including those governing sensitive conditions.

“Client” means any client that contracts with Athena.

“Core Commercial Services” means the technology services provided by RelayHealth to enable patient registration and enrollment, and linking clinical patient records across healthcare organizations for patient identity and consent management, together with the querying and retrieval of clinical healthcare record documents then indexed for a patient and available through the network. For the avoidance of doubt, Core Commercial Services does not include any of the following services to the extent such services are not dependent upon such Core Commercial Services for: (i) services provided to optimize the Core Commercial Services for use in Client’s clinical environment, (ii) data migration services, (iii) provision of patient enrollment, patient matching or document query and retrieval services, or (iv) any patient record matching or document retrieval conducted for purposes of determining insurance coverage eligibility, payment or claims management.

“Documentation” means the user documentation containing the functional descriptions for the Core Commercial Services as may be reasonably modified from time to time by RelayHealth.

“End User” means a healthcare provider facility, practice group, or physician, including any individual or legal entity, permitted by Client to access the Core Commercial Services or any enrollment user interface to utilize the Core Commercial Services.

“Health Data” means health information, including PHI, that is received, transmitted, stored, or maintained through the Core Commercial Services.

“Member” means any legal entity other than the Alliance which is a party to a Membership Agreement accepted by the Alliance and eligible to become an Authorized Member.

“PHI” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, transmitted or maintained through the Core Commercial Services by or on behalf of Athena, Client, or an End User.

3. Licenses. Client hereby receives a limited, nonexclusive, non-transferable, non-sublicensable license to access the Core Commercial Services as integrated with and accessible via a designated Client healthcare information technology solution, solely for Client’s internal purposes. Client is responsible for establishing back-up, and other procedures and controls appropriate to maintain the integrity and continuity of Client’s operations.
4. Core Commercial Services Access. The Core Commercial Services include the login features described in the Documentation. Each End User will be required to enter his or her login credentials (“Login Credentials”) in order to access the Core Commercial Services. Client is fully responsible for all uses of Login Credentials issued to (or created by) its End Users. Client is responsible for authentication and identity management of each End User that accesses the Core Commercial Services and to ensure such Login Credentials are unique to each End User and remain secure. Client shall ensure that each End User accessing clinical data using the Core Commercial Services is properly identified and authenticated as a duly licensed provider authorized under applicable law to access such Health Data.
5. Authority. Client agrees to (i) use or disclose data received from other Core Commercial Services participants responsibly and in accordance with Applicable Privacy Laws, (ii) only request data for patients of legal age, and (iii) not use or disclose behavioral health data related to the Core Commercial Services. Client shall not, and shall cause and obligate each End User not to, request any data or information, including any Health Data, made available through the Core Commercial Services except for treatment (as defined in 45 C.F.R. § 164.501) purposes. Client agrees, and shall cause and obligate each End User to agree, that when it accesses Health Data available through the Core Commercial Services it shall access that Health Data solely for treatment of the individual to whom the data relates. Client shall ensure, and train and obligate its Ends Users to ensure, that patient consents are: (i) made with full transparency and education; (ii) made only after the patient has had sufficient time to review educational material; (iii) commensurate with circumstances for why health information is exchanged; (iv) not used for discriminatory purposes or as a condition for receiving medical treatment; (v) consistent with patient expectations; and (vi) revocable at any time (collectively, “Meaningful Consent”).
6. Business Associate Agreement. Client represents and warrants that it has and will maintain a business associate agreement in conformance with Applicable Laws with Athena that is applicable to and covers the use and disclosure of Health Data for participation in the Core Commercial Services.
7. Suspension of Core Commercial Services. RelayHealth and/or Athena retains the right to suspend the Core Commercial Services provided to Client at any time in the event that Client is not in compliance with this EULA or to protect the performance, integrity and security of the Core Commercial Services.
8. PHI Accuracy and Completeness. Each Client agrees and will require its End Users to agree to the following terms, or to terms substantially similar thereto:
  - a. Alliance through RelayHealth provides the technology and services to allow Client (and its respective Users) to request and disclose their PHI, and as such, Alliance and RelayHealth give no representations or guarantees about the accuracy or completeness of the PHI disclosed through the Core Commercial Services;
  - b. PHI disclosed or received using the Core Commercial Services may not be a complete clinical record or history with respect to any individual, and it is the sole responsibility of any treating healthcare provider to confirm the accuracy and completeness of any PHI or clinical records used for treatment purposes and to obtain whatever information the provider deems necessary for the proper treatment of the patient;
  - c. Client and each of its Users is solely responsible for any decisions or actions taken involving patient care or patient care management, whether or not those decisions or actions were made or taken using information received through the Core Commercial Services; and
  - d. Alliance and RelayHealth by virtue of this EULA assume no responsibility or role in the care of any patient.

9. Compliance with EULA. Client agrees (i) to utilize the Core Commercial Services in accordance with the terms and conditions of this EULA, and (ii) to provide training materials to End Users to ensure they use the Core Commercial Services in accordance with these terms and conditions and any Documentation, including any required changes to workflow.
10. Accuracy of Data. Client acknowledges and agrees that it is solely responsible for the accuracy of data it provides through the Core Commercial Services and that RelayHealth is not responsible for the accuracy or content of the data used or disclosed in providing the Core Commercial Services.
11. Fraud Detection; Security Breach. Client must make reasonable efforts to notify Athena of any material security breaches related to the Core Commercial Services promptly after discovery.
12. Compliance with Laws. Client is, and will remain, and will obligate End Users to be and remain, compliant with all Applicable Privacy Laws in their use of the Core Commercial Services.
13. Proprietary Rights. Client acknowledges and agrees, as between Client and RelayHealth, Client is only being granted a limited use right to the Core Commercial Services provided by RelayHealth and that the Core Commercial Services and all additions or modifications to the Core Commercial Services provided by RelayHealth and all intellectual property rights associated therewith (including, without limitation, rights to patents, copyrights, trademarks, trade secrets, or know-how), are the sole and exclusive property of RelayHealth.
14. LIMITATION OF LIABILITY. IN NO EVENT WILL RELAYHEALTH BE LIABLE TO CLIENT UNDER, IN CONNECTION WITH, OR RELATED TO THE CORE COMMERCIAL SERVICES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT RELAYHEALTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. RELAYHEALTH'S ENTIRE LIABILITY TO CLIENT FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, RELATED TO CLIENT'S USE OF THE CORE COMMERCIAL SERVICES, WILL BE LIMITED TO CLIENT'S ACTUAL DIRECT OUT-OF-POCKET EXPENSES WHICH ARE REASONABLY INCURRED BY CLIENT IN AN AMOUNT NOT TO EXCEED \$25,000.00.
15. Exclusive Warranty & Disclaimer. RELAYHEALTH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
16. Non-Disclosure. The provisions of this EULA are confidential and shall not be disclosed by Client to any third party without the prior written consent of the other party. Client agrees to maintain in confidence the Core Commercial Services and all media and documentation that relate to the design, development, operation, or use of the Core Commercial Services or any additions or modifications thereto. The foregoing confidentiality obligations shall not apply to any information generally available to the public, independently developed or obtained without reliance on the other party's confidential information.
17. RelayHealth as Third Party Beneficiary. RelayHealth is a third party beneficiary of this EULA and is entitled to enforce any rights herein.

## Carequality® Connection Terms

These Carequality Connection Terms apply to Athena, as the party that is imposing these Carequality Connection Terms, and Client, as a “Carequality Connection.” Client and Athena may be referred to in these Carequality Connection Terms as a “Party” or referred to collectively as “Parties.” Unless otherwise defined herein, capitalized terms used but not defined herein have the meanings assigned to such terms in Client’s services agreement with Athena.

1. **Definitions:** The following terms have the following meanings:

1.1. **Adverse Security Event:** The unauthorized acquisition, access, disclosure, or use of individually identifiable health information (as defined in the HIPAA Regulations) while such information is being transmitted between Implementers or Carequality Connections as specified by a Carequality Implementation Guide and pursuant to a valid Carequality Connected Agreement or Carequality Connection Terms, as applicable, but shall not include (i) any unauthorized acquisition, access, disclosure or use of encrypted data; (ii) any unintentional acquisition, access, disclosure, or use of health information if (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment, or other professional relationship if not an employee, of an End User; and (II) such health information is not further acquired, accessed, disclosed or used by the End User; or (iii) any acquisition, access, disclosure or use of information that was not directly related to use of the Carequality Elements or these Terms.

1.2. **Athena Business Rule:** A data sharing restriction that Athena has adopted for itself and its customers, participants or other constituent entities. An Athena Business Rule may only be based on a policy decision that Athena has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that Athena Business Rule be required by Applicable Law or be based on Applicable Law.

1.3. **Business Day(s):** Monday through Friday excluding federal or state holidays.

1.4. **Carequality:** The Sequoia Project, d/b/a Carequality®.

1.5. **Carequality Confidential Information:** Proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such upon disclosure or given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. With respect to Carequality, Carequality Confidential Information also includes those components of the Carequality Elements that the Carequality Steering Committee determines should be labeled Confidential. Notwithstanding any label to the contrary, Carequality Confidential Information does not include any Contribution (even if included in a Carequality Element); any information which is or becomes known publicly through no fault of a Recipient; is learned of by a Recipient from a third party entitled to disclose it; is already known to a Recipient before receipt from a Discloser as documented by the Recipient’s written records; or, is independently developed by Recipient without reference to, reliance on, or use of, Discloser’s Carequality Confidential Information.

1.6. **Carequality Connection:** Any Client that appears in the Carequality Directory and is not an Implementer. Each Carequality Connection is allowed to be listed in the Carequality Directory by exactly one Implementer per Carequality Use Case. The Carequality Connection must be in a legally recognized business relationship with the Implementer that lists the Carequality Connection, although the details of such relationship may vary depending on the Implementer.

1.7. Carequality Connection Terms: These Carequality Terms and Conditions between Athena and Client.

1.8. Carequality Directory: A set of information that includes entries for all organizations who have been accepted as Carequality Implementers, along with those organizations' Carequality Connections which serves as the definitive reference for identifying those organizations who are valid participants in exchange activities through the Carequality Elements, and for obtaining the information needed to establish technical connectivity with such organizations.

1.9. Carequality Elements: Those elements that have been adopted by Carequality to support widespread interoperability among Implementers including, but not limited to, the Carequality Connected Agreement, these Carequality Connection Terms, the Carequality Directory, Implementation Guides, and the Carequality Policies.

1.10. Carequality Policies: Those policies and procedures adopted by Carequality which are binding on Carequality, Implementers, Carequality Connections or all of them.

1.11. Carequality Use Case: A combination of a set of functional needs and a particular technical architecture for addressing those needs, for which the Carequality Steering Committee ("Steering Committee") has adopted an Implementation Guide.

1.12. CCA. The Carequality Connected Agreement between Athena and The Sequoia Project d/b/a Carequality.

1.13. Client: The athenaCoordinator Client upon which these Carequality Connection Terms are binding.

1.14. Client Business Rule: A data sharing restriction that Client has adopted for itself and its End Users. A Client Business Rule may only be based on a policy decision that Client has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that the Client Business Rule be required by Applicable Law or be based on Applicable Law.

1.15. Contribution: Any submission by a Discloser to Carequality intended by the Discloser to be considered for inclusion in any of the Carequality Elements, including comments submitted on any media, oral discussions at meetings of any work group, committee or sub-committee or other types of submissions.

1.16. Discloser: The Party that discloses Carequality Confidential Information to a Recipient.

1.17. Dispute: Any controversy, dispute, or disagreement arising out of or relating to the interpretation or implementation of the Carequality Elements.

1.18. End User: An individual or program generating a request for information, responding to a request for information, publishing information to a list of recipients or receiving published information through the Carequality Elements.

1.19. Exchange Activity: Any use of the capability provided or supported by the Carequality Elements to exchange information among Implementers or their Carequality Connection.

1.20. Governmental Entity: A local, state or Federal agency.

1.21. Implementation Guide: A guide adopted by Carequality that sets forth the technical specifications and additional business rules that apply to Implementers and Carequality Connections who declare support for a specific Carequality Use Case. Additional business rules will include, but not be limited to, permitted purposes for the Carequality Use Case, roles associated with the Carequality Use Case and specifications in compliance with Section 6 of these Carequality Connection Terms. The current implementation guidelines are located at <http://sequoiaproject.org/wp-content/uploads/2015/12/Query-Based-Document-Exchange-Implementation-Guide-Approved-11-5-20151.pdf>.

1.22. Implementer: An organization that has signed a Carequality Connected Agreement and been accepted as such by Carequality.

1.23. Recipient: The Party that receives Carequality Confidential Information from a Discloser.

1.24. Sponsoring Implementer: Athena, as the Party that has signed the CCA and agreed to comply with its terms as a Carequality Implementer. This term is used to distinguish the specific Client that is a Party to these Carequality Connection Terms from other Implementers, and applies to that Party both during the period in which it is seeking to attain Implementer status, and after it is accepted as an Implementer.

2. ***Recognition of Organization as Carequality Connection.*** Upon Athena determining to its satisfaction that Client has met the requirements to be a Carequality Connection, and Athena's inclusion of Client in the Carequality Directory, Client shall be recognized as a Carequality Connection, subject to all obligations, terms and conditions contained herein and entitled to all rights and benefits conferred upon Carequality Connections including, but not limited to, inclusion in the Carequality Directory.

### 3. ***Suspension and Termination.***

3.1. Suspension. Athena or Carequality may suspend Client's ability to participate in any exchange activity under the Carequality Connection Terms in the event that Athena or Carequality determines, that (i) Client has breached a material provision of these Carequality Connection Terms and failed to cure such breach within fifteen (15) days or such other period of time that the Parties have agreed to, of receiving notice of same; or (ii) there is a substantial likelihood that Client's acts or omissions create an immediate threat or will cause irreparable harm to another Party, an Implementer, Carequality Connection, End User or individual (collectively, a "Threat Condition"). Client may provide notice to Athena that it wishes to temporarily remove itself from the Carequality Directory in the event that Client or any of Client's End Users cannot comply with these Carequality Connection Terms.

3.2. Termination. Athena may terminate Client's status as a Carequality Connection with immediate effect by giving notice to Client if: (i) Client is in material breach of any of these Carequality Connection Terms and fails to remedy such breach within 30 days after receiving notice of such breach; or (ii) Client breaches a material provision of these Carequality Connection Terms where such breach is not capable of remedy. Subject to the terms of the services agreement between Client and Athena, Client may voluntarily terminate its status as a Carequality Connection at any time by providing written notice to Athena and to Carequality at least 60 prior to the effective date of the termination. The notice shall indicate the reason(s) for Client deciding to terminate its status as a Carequality Connection.

4. ***Legal Requirements.*** To further support the privacy, confidentiality, and security of health information exchanged pursuant to these Carequality Connection Terms, Client agrees that when acting as

a Carequality Connection, it will comply with the provisions of HIPAA that are applicable to Business Associates as a minimum contractual standard of conduct even if Client is not a Covered Entity, a Business Associate, or a Governmental Entity.

5. ***Compliance with the Implementation Guides and Carequality Policies.*** Client shall implement and maintain support of at least one Carequality Use Case and shall indicate to Athena the Client's role in such Carequality Use Case ("Carequality Use Case Role"). For all Carequality Use Cases supported by Client, Client shall comply with all components (unless such components are designated as optional) set forth in the applicable Implementation Guide that apply to (i) the Client's Carequality Use Case Role or (ii) all Carequality Connections. Client is encouraged, but not required, to comply with all optional components of the applicable Implementation Guide(s). Client also agrees that, if it is not in compliance with all applicable components of the Implementation Guide(s) and all Carequality Policies applicable to Carequality Connections, Athena may exercise its right to suspend Client in accordance with Section 3.1.

6. ***Non-Discrimination.*** With respect to Implementers and Implementers' Carequality Connections that have executed the same Carequality Use Case as Client and Client's End Users, neither Client nor its End Users shall unfairly or unreasonably limit exchange or interoperability with such Implementers or their Carequality Connections. Each Carequality Use Case's Implementation Guide will provide specific requirements for compliance with this requirement in the context of that Carequality Use Case.

7. ***Client Autonomy.*** To the extent that Client has adopted Client Business Rules, Client is permitted to continue acting in accordance with such Client Business Rules, even if they restrict Client's ability to support exchange of information with other Implementers or Carequality Connections or to meet the requirements of Section 6 above, provided that Client applies such Client Business Rules consistently with respect to other Implementers and Carequality Connections and the Client Business Rules do not impose conditions that would unfairly or unreasonably limit interoperability.

8. ***Accountability.***

8.1. **Client Accountability.** Client shall be responsible for any harm to Carequality, Athena, other Carequality Connections of Athena, other Implementers and their Carequality Connections which harm is caused by Client's, or its End Users', acts and omissions. Client shall not be responsible for the acts or omissions of any Implementer or other Carequality Connection. Notwithstanding any provision in these Carequality Connection Terms to the contrary, Client shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision.

8.2. **Carequality Accountability.** Client will not hold Carequality, or anyone acting on its behalf, including but not limited to members of the Steering Committee, Advisory Council, Dispute Resolution Panel or any work group, or subcommittee, of any of these or Carequality's contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to these Carequality Connection Terms. This section shall not be construed as an indemnification provision.

8.3. **Limitation on Liability.** Notwithstanding anything in these Carequality Connection Terms to the contrary, in no event shall Carequality's, Athena's or Client's total liability to each other and all third party beneficiaries arising from or relating to these Carequality Connection Terms exceed an aggregate amount equal to the lesser of (i) the limitation of liability set forth in Client's services agreement with Athena, or, (ii) three million dollars (\$3,000,000), whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if such Party has been apprised of the possibility or likelihood of such damages occurring.

9. **Dispute Resolution.** Client acknowledges that it may be in its best interest to resolve Disputes between or among Client, or its End Users, and Carequality, other Implementers or their Carequality Connections through a collaborative, collegial process rather than through civil litigation. Client has reached this conclusion based upon the fact that the legal and factual issues involved in these Carequality Connection Terms are unique, novel, and complex and limited case law exists which addresses the legal issues that could arise from these Carequality Connection Terms. Client acknowledges that Carequality has adopted a Dispute Resolution Process. Further, Client agrees to use its best efforts to resolve Disputes with Carequality, other Carequality Connections and their Implementers or with another Implementer directly if the Dispute does not involve another Implementers' Carequality Connections, through discussions with those involved in such Dispute before even submitting the Dispute to Athena. If Client requires assistance in identifying contact information for another Carequality Connection, or an Implementer, it shall seek that assistance from Athena.

9.1. If, despite using its best efforts, Client cannot resolve any Dispute through discussions with the other parties involved, then Client will notify Athena of the Dispute and request that the Athena initiate the Dispute Resolution Process. Client is required to undertake these efforts in the event of a Dispute before seeking any other recourse.

9.2. Notwithstanding the above, Client may be relieved of its obligation to participate in the Dispute Resolution Process if Client (i) believes that another Implementer's or Carequality Connection's act or omission will cause irreparable harm to Client or another organization or individual (e.g. Implementer, Carequality Connection, End User or consumer) and (ii) pursues immediate injunctive relief against such Implementer or Carequality Connection in a court of competent jurisdiction. Client must inform Athena of such action within two business days of filing for the injunctive relief and of the result of the action within 24 hours of learning of same. If the injunctive relief sought is not granted and Client chooses to pursue the Dispute, the Dispute must be submitted to each organization's Sponsoring Implementer in accordance with the Dispute Resolution Process so that the Sponsoring Implementer can determine next steps.

10. **Cooperation.** Client understands and acknowledges that numerous activities with respect to Carequality shall likely involve Athena, other Implementers and their Carequality Connections, employees, agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, Client shall: (a) respond in a timely manner to inquiries from Carequality, Athena, other Implementers or their Carequality Connections about possible issues related to the Carequality Use Case(s) in which Client is involved; (b) collaboratively participate in discussions coordinated by Carequality to address differing interpretations of requirements set forth in an applicable Implementation Guide(s) prior to pursuing the Dispute Resolution Process; (c) make reasonable efforts to notify Athena when persistent and widespread connectivity failures are occurring with Athena or with other Implementers or their Carequality Connections, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures; (d) work cooperatively, including without limitation facilitating contact with other Implementers or their Carequality Connections, to address the root cause(s) of persistent and widespread connectivity failures; (e) subject to Client's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting Client's confidential information, provide reasonable information to others in support of collaborative efforts to resolve issues or Disputes; (f) provide information and other relevant assistance to Athena in connection with this Section 10; and (g) subject to Client's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable litigation or protecting Client's Carequality Confidential Information, provide reasonable information to aid the efforts of Athena, other Implementers or their Carequality Connections to understand, contain, and mitigate an Adverse Security Event, at the request of such Implementer or Carequality Connection. In no case shall Client be required to disclose individually



identifiable health information in violation of Applicable Law. In seeking another's cooperation, Client shall make all reasonable efforts to accommodate the other's schedules and reasonable operational concerns.

11. ***Adverse Security Event Reporting.***

11.1. As soon as reasonably practicable but no later than four (4) business days after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s), Client shall provide Athena with notification of the Adverse Security Event through the notification protocol specified by Athena. The notification should include sufficient information for Athena to understand the nature of the Adverse Security Event and identify other Implementers or Carequality Connections that may be impacted by the Adverse Security Event. Notwithstanding the foregoing, Client agrees that (a) within one (1) hour of learning that an Adverse Security Event occurred and that such Adverse Security Event may involve an Implementer or Carequality Connection that is a Federal agency, it shall alert the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and (b) that within twenty-four (24) hours after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s) that is a Federal agency, Client shall provide a notification to the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and Client shall copy Athena and Carequality on any such notification.

11.2. This Section 11 shall not be deemed to supersede Client's obligations (if any) under relevant security incident, Breach notification or confidentiality provisions of Applicable Law. Compliance with this Section 11 shall not relieve Client of any other security incident or Breach reporting requirements under Applicable Law including, but not limited to, those related to consumers.

12. ***Acceptable Use.*** Carequality has adopted permitted purposes for the use of the Carequality Elements that are specifically set out in the Implementation Guide for each Carequality Use Case. Client shall only engage in exchange activities through the Carequality Elements for permitted purposes as defined in the Implementation Guides. If Client does not comply with these permitted purposes or other applicable provisions in the Implementation Guide, Carequality may exercise its right to suspend Client in accordance with Section 3 of these Carequality Connection Terms. If Client is not a Covered Entity or Governmental Entity, then (i) Client may only use the interoperability available through Carequality to transmit or receive information on behalf of its End Users and not on its own behalf; and (ii) Client will not re-use, re-disclose, aggregate, de-identify or sell any information transacted by its End Users for its own benefit unless its respective Carequality Connections or End Users have given Client the explicit written authority to do so.

13. ***Confidentiality.*** Client agrees to use any Carequality Confidential Information that it obtains solely for the purpose of performing its obligations under the Carequality Connection Terms, and for no other purpose. Client will disclose the Carequality Confidential Information it receives only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention, and will use all commercially reasonable efforts to protect the confidentiality of such Carequality Confidential Information. In the event Client has any question about whether information and/or materials it receives is Carequality Confidential Information, it shall treat the same as if it were Carequality Confidential Information. For the avoidance of doubt, the Carequality Elements that are not labeled as "Confidential Information" by the Carequality Steering Committee are not confidential and are not covered by the provisions of this section.

14. ***Contributions; IP Rights; Ownership of Materials; License.*** Client acknowledges that any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual

property in or related to Carequality including, but not limited to, these Carequality Connection Terms, Implementation Guides, Carequality Elements, Carequality Policies, related materials, information, reports, processes (the “Carequality IP”), are protected under applicable United States law. Recognizing that the Carequality IP is the work product of the membership of Carequality, and that Carequality is the collective representative of all Implementers’ interests, these intellectual property rights are asserted and held by Carequality in its capacity as the representative of its total membership and licensed to Client hereunder. This does not apply to Carequality trademarks, service marks or trade dress rights, which are discussed separately below. Client is encouraged to provide Contributions to Carequality and understands that Carequality must obtain certain rights in such Contributions in order to include the Contribution in Carequality IP.

14.1. With respect to each Contribution, Client represents that: (a) no information in the Contribution is Carequality Confidential Information; (b) Carequality may freely disclose the information in the Contribution; and (c) to the best of its knowledge, such Contribution is free of encumbrance as it relates to the intellectual property rights of others.

14.2. To the extent that a Contribution or any portion thereof is protected by copyright or other rights of authorship, Client grants a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to Carequality under all such copyrights and other rights in the Contribution to copy, modify, publish, display and distribute the Contribution (in whole or part) and to prepare derivative works based on or that incorporate all or part of such Contribution, in each case, for the purpose of incorporating such Contributions into the Carequality IP. Client also grants Carequality the right: (a) to register copyright in Carequality’s name any Carequality IP even though it may include Contributions; and (b) to permit others, at Carequality’s sole discretion, to reproduce in whole or in part the resulting Carequality IP.

14.3. Client shall identify to Carequality, through the issuance of a letter of assurance, any patents or patent applications which Client believes may be applicable to any Carequality Element specifically including, but not limited to, any Implementation Guide. This assurance shall be provided without coercion and shall take the form of a general disclaimer to the effect that the patent holder will not enforce any of its present or future patent(s) that would be required to implement or use the Carequality Element relevant to any person or entity using the patent(s) to comply with such Carequality Element.

14.4. Athena grants to Client a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, right and license to use, the Carequality IP for the purpose of enhancing interoperability (including through the modification of its products and services to implement the Carequality Use Cases and conform to the Implementation Guides). Client and its End Users have and will continue to possess the usage rights to the Carequality IP as authorized by these Carequality Connection Terms. Client retains ownership of any Contribution it provides, granting only the licenses described in this section. Nothing shall prevent Client from (i) changing Client’s technology, services or any Contribution in any way, including to conform to the requirements of an Implementation Guide or (ii) making any change available to any other person or entity. Notwithstanding anything to the contrary in the Carequality Connection Terms, all right, title, and interest in any change to Client’s technology, services or any Contribution will accrue to the benefit of, and be owned exclusively by, Client.

14.5. The trademarks, services marks, trade dress, business names, company names, and logos owned by Carequality, including without limitation CAREQUALITY and all Carequality logos, (collectively, the “Carequality Marks”) are an important part of maintaining the strength and reputation of Carequality and its efforts to enable the interoperable exchange of healthcare information. Client may not use the Carequality Marks to brand any of Client’s products or services and may not incorporate any

Carequality Marks in any of Client's domain names except as provided in Carequality's published guidelines on use of trademarks. Client shall not apply for registration of any trademark, service mark, trade dress, business name or company name, or logo that incorporates any Carequality Mark or any element confusingly similar to any Carequality Mark. In connection with any non-trademark, descriptive use of Carequality Marks, Client will use the registration symbol ® or the trademark or service mark symbols, <sup>TM</sup> or <sup>SM</sup>, as more fully set out in the Carequality guidelines on use of trademarks, and indicate in the text that the Carequality Mark used "is the registered trademark of Carequality," "is the trademark of Carequality," or "is the service mark of Carequality," respectively.

15. ***Disclaimers.*** Client acknowledges that Implementers and Carequality Connections may be added to or removed from the Carequality Directory at any time; therefore, Client may not rely upon the inclusion in the Carequality Directory of a particular Implementer or Carequality Connection. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CAREQUALITY OR CLIENT BE LIABLE TO EACH OTHER OR ANY THIRD PARTY BENEFICIARY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING.

16 ***Miscellaneous/General***

16.1. **Amendment.** These Carequality Connection Terms may be amended by Athena from time to time based upon changes required by Carequality.

16.2. **Third Party Beneficiary.** Carequality, other Carequality Connections of Athena, other Implementers and their Carequality Connections shall be deemed third party beneficiaries of these Carequality Connection Terms for purposes of enforcing Client's compliance with these Carequality Connection Terms.