Athelas

TERMS OF AGREEMENT

Effective For All Service Agreements Entered After **June 25, 2021.**

These Terms of Agreement (the "**Terms of Agreement**") establish the terms under which Athelas Inc. ("**Athelas**") will provide to Customer Services set forth on that Athelas Service Agreement between Customer and Athelas (the "**Service Agreement**"). All capitalized terms shall have the meaning set forth in Section 1 of these Terms of Agreement or, if not defined herein, in the Service Agreement. In the event of a conflict between the Service Agreement and these Terms of Agreement, the Service Agreement shall govern.

1. **DEFINITIONS.** The following definitions will apply to capitalized terms used throughout these Terms of Agreement.

    a. "**Athelas Data**" means: (a) all data, software (in any form) and information Athelas submits or transmits to Customer regarding Athelas; (b) all data, records and information generated in Athelas' business or operations, including any information relating to Athelas' subcontractors and/or affiliates; (c) all Athelas Intellectual Property, together with all derivative works of the Athelas Intellectual Property; and (d) data, records or information occurring in any form, including written, graphic, electronic, visual, or fixed in any tangible medium of expression and whether developed, generated, stored, possessed, or used by Athelas, Customer, or a third party if related to the items described in (a) through (c) above. Athelas Data does not include any data or information that relates exclusively to Customer or Customer's business, operations or activities.

    b. "**Athelas One Service**" means any Service involving the use of the FDA-Approved Athelas One blood test device and companion diagnostic strips.

    c. "**Applicable Law**" means any and all laws, ordinances, rules, regulations, statutes, restrictions, restrictive covenants, judgments, orders or decrees, requirements, and standards of any governmental authority, as adopted, amended, issued, or decreed from time to time including, without limitation, the Medicare and Medicaid Patient and Program Protection Act of 1987, as amended, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended by the federal Health Information Technology for Economic and Clinical Health ("HITECH") Act and its implementing regulations, as each may be modified or amended (collectively "HIPAA"), and any applicable state patient privacy and security laws, the Omnibus Budget Reconciliation Act of 1990, as amended, the Drug Price Competition and Patent Term Restoration Act of 1984, as amended, the Food, Drug and Cosmetic Act ("FDCA"), as amended, all rules and regulations of the Department of Health and Human Services Office of the Inspector General, and federal and state consumer protection and fraud statutes.

    d. "**Authorized User**" means (a) the employees, consultants, agents, and subcontractors of Customer that Customer authorizes to access the Software on its behalf.

    e. "**Beta**" means Services labeled as "Beta" in the Service Agreement, which are typically limited release Services that are still in the testing or refining stage of development.

    f. "**Billing Concierge**" means Beta Service provided by Athelas or a contracted third party to submit claims for reimbursement to public and private insurers on behalf of Customer.

    g. "**Clinical Review Service**" means the review of Participating Patient RPM data, and interaction with Participating Patients, by Athelas clinical staff under the general supervision of Customer's providers.

    h. "**Customer**" means the organization indicated on the Service Agreement.

    i. "**Customer Data**" means (a) all data and information Customer submits or transmits to Athelas, excluding any PHI (as defined below) and/or Patient-Generated Health Data necessary for the Services; and (b) data, records and information Athelas generates that relates directly to the Services for Customer under the Service

Athelas

Agreement, exclusive of information or documentation that Athelas generates for use in Athelas' business generally or for use with multiple customers and exclusive of De-Identified Data as defined below.

j. "**De-identified Data**" means personally identifiable information ("PII") and PHI (defined below) that has been stripped of certain identifiable elements in accordance with applicable law so as to render the individual's data de-identified.

k. "**Devices**" means the peripheral devices and any other equipment provided by Athelas to Customer under the Service Agreement.

l. "**Intellectual Property Rights**" means any patent, invention, discovery, know-how, moral, technology, software, copyright, authorship, trade secret, trademark, trade dress, service mark, confidentiality, proprietary, privacy, intellectual property or similar rights (including rights in remote patient monitoring applications, registrations, filings and renewals) that are now or hereafter protected or legally enforceable under state and/or Federal common laws or statutory laws or laws of foreign jurisdictions.

m. "**Service Agreement**" means the Athelas Service Agreement provided to Customer for purposes of ordering Athelas technology and services.

n. "**Participating Patients**" means those patients of Customer's practice that Customer has determined may benefit from the Services, that are enrolled in the Software and that have consented to receive Services.

o. "**Patient Clinical Review**" means Service provided by Athelas clinical staff under the general supervision of Customer's licensed healthcare providers to satisfy obligations of the healthcare provider relating to Services provided by Athelas.

p. "**Patient-Generated Health Data**" means health-related data created, recorded, or gathered by or from patients (or family members or other caregivers) to help address a health concern.

q. "**Protected Health Information**" or "**PHI**" shall have the meaning ascribed to such term in 45 C.F.R. 160.103.

r. "**Participating Patient-Facing Interface**" means a text-message and/or web-based software platform that allows Participating Patients to view and track their health data.

s. "**Provider-Facing Dashboard**" means a web-based software platform that allows healthcare providers to view, track, and analyze their Participating Patients' health data.

t. "**Services**" means the products and service offering(s) Customer selects for purchase from Athelas.

u. "**Software**" means the Participating Patient-Facing Interface, the Provider-Facing Dashboard, all of the capabilities and functionalities associated with the Participating Patient-Facing Interface and Provider-Facing Dashboard, and user support services provided by Athelas.

v. "**Terms of Use**" means the agreement between each of Customer's individual users of the Software and Athelas.

2. **TERM.** The Service Term indicated on the Service Agreement, inclusive of the Initial Term and any renewal Term, constitutes the term of the Service Agreement (the "**Term**"). Customer agrees that for the length of the Initial Term and any renewal Term, Athelas will be the exclusive provider of the Services set forth in the Service Agreement ("**Exclusivity**").

3. **PRODUCTS & SERVICES.** The Services Customer has agreed to receive are set forth on the Service Agreement, as further detailed in **Exhibit A** hereto. By entering the Service Agreement, Customer agrees to the terms of the Service Agreement, these Terms of Agreement, and all other terms and conditions incorporated by reference into the Service Agreement. Customer agrees that Athelas may discontinue or change the pricing of individual Services upon thirty (30) days written notice to Customer, to the extent permitted by Applicable Law. Athelas may also add new Services provided, however, that Athelas will not charge Customer for new Services without providing thirty (30) days written notice to Customer. Athelas may change Beta Services without notice and may discontinue Beta Services at any time so long as Athelas notifies customer within thirty (30) days of discontinuation. The following Services are included with any contract for Athelas Services.

Athelas

a. Implementation & Training Services. Athelas will provide implementation and training services for Customer and Customer's Authorized Users. Implementation services include integrating Participating Patients' information into the Software and developing a dedicated tracking system to allow Customer and its Authorized Users to monitor Participating Patients. Training Services shall include virtual communication with Customer and its Authorized Users to educate them on use of the Software and related obligations and Services.

b. Support Services. Athelas will provide technical support Services to Customer (including Participating Patients, physicians, and staff during business hours between 9 am and 5 pm Pacific Time (PT), excluding Federal holidays ("**Support Hours**"). Customer may initiate a Helpdesk ticket during Support Hours by emailing support@athelas.com. Athelas will use commercially reasonable efforts to respond to all Helpdesk tickets within two (2) business days, but Athelas does not represent, warrant, or guarantee that all tickets will be responded to within such time frame.

c. Software. The Software provides a virtual care management platform that may include remote patient monitoring and/or Athelas One Service, as well as and integrated communications features for each. The Software provides a full featured remote patient monitoring system consisting of the Participating Patient-Facing Interface, the Provider-Facing Dashboard, the Devices used by a patient to monitor their health status, and a cloud-based repository of information gathered from patients to enable healthcare organizations to monitor, document and manage patient Services.

d. Software License. Subject to Customer's compliance with these Terms of Agreement as well as the Business Associate Agreement (Athelas.com/BAA), Athelas Terms of Use (Athelas.com/terms-of-use) and Privacy Policy (Athelas.com/privacy-policy), Athelas will provide a revocable, nonexclusive, non-transferrable, non-sublicensable, license to access the Software to Customer and its Authorized Users. Customer and its Authorized Users may use the Software (a) to upload and/or transmit Customer Data by and through the Software; and (b) to access and use reports generated from time to time by Athelas.

4. **CUSTOMER RESPONSIBILITIES.**

a. Service-Specific Responsibilities. For each Service provided to Customer under the Service Agreement, Customer is responsible for the responsibilities set forth in **Exhibit A**.

b. General Responsibilities. For all Services provided under the Service Agreement, Customer is responsible for the following:

   i. Operations & Enrollment. Customer is responsible for providing Athelas with information necessary to identify and enroll Participating Patients and for ordering the Services for Participating Patients and to furnish Services to Participating Patients. Additional responsibilities are set forth in **Exhibit A**.

   ii. Patient Consents. Unless otherwise agreed in writing, Customer is responsible for maintaining all necessary consents and authorizations to enable Athelas to use, upload, process, and store Customer Data and to provide the Services to Participating Patients. Customer will not furnish any Customer Data that includes an individual's PHI to Athelas in the event such individual objects. Customer acknowledges and accepts full responsibility and liability for all Customer Data. Athelas will obtain informed consent for remote patient monitoring and connected Services on behalf of Provider.

iii. Patient Communication. Customer authorizes Athelas to communicate with Customer's patients on behalf of Customer to the extent necessary to provide the Services. Communication will be via phone, video chat, or electronic means such as text messages, online chats, and emails. If Athelas provides Customer portals for patient review of results, communication may take place via the portal.

iv. TOU; Privacy Policy. Customer will be solely responsible for its actions and the actions of its Authorized Users while using the Software. As a condition to Customer's and its Authorized Users' use of the Software, Customer shall require its Authorized Users to review and accept the Athelas Terms of Use (Athelas.com/terms-of-use) and Privacy Policy (Athelas.com/privacy-policy), as updated by Athelas from time to time, prior to accessing the Software. Customer shall abide by, and Customer shall ensure that its Authorized Users abide by, the Terms of Use and Privacy Policy when using or accessing the Software.

v. BAA. Customer agrees to the terms of the Business Associate Agreement ("**BAA**") incorporated by reference into the Service Agreement.

vi. Unenrollment of Patients. Customer is responsible for determining when a Participating Patient is no longer eligible for or in need of the Services. Customer must unenroll the patient via the Software. If Customer fails to unenroll a Participating Patient after they are no longer in need of the Services, Athelas may continue to provide Services to that Participating Patient and Customer will continue to be obligated to pay Athelas for the Services (athelas.com/BAA).

5. **PAYMENT TERMS.**

   a. Fees. As compensation for the Services, Customer will pay Athelas the Fees indicated on the Service Agreement. All amounts set forth in the Service Agreement are denominated and shall be paid in U.S. dollars.

   b. Invoicing & Payment Method. Athelas will invoice Customer for fees owed to Athelas on a monthly basis. Athelas will charge the customer via the payment method selected by Customer after entry into the Service Agreement.

   c. Due Date. Unless otherwise indicated on the Service Agreement and/or properly disputed according to Section 6(c)(i) below, Customer will be provided with the invoice on the last day of the month, and Customer's invoiced amounts will be automatically charged via the payment method selected by Customer during online signup by Athelas within five (5) business days of Customer's receipt of an invoice.

      i. Disputed Payments. If Customer wishes to dispute any invoiced fees or expenses, Customer must notify Athelas in writing within five (5) business days of receipt of the invoice specifying such fees or expenses (a "**Dispute Notice**"). The Dispute Notice must specify the amounts that are being disputed as well as the reason for such dispute. Athelas and Customer agree to attempt to resolve such dispute through informal meetings and discussions in good faith between appropriate representatives of the Parties within forty-five (45) days of receipt of the Dispute Notice before resorting to any other dispute resolution procedure.

      ii. Suspension of Services for Nonpayment. If there are undisputed payments outstanding for more than sixty (60) days from the due date, Athelas reserves the right to suspend Authorized Users' access to the

Software until such amounts are paid in full. Customer will continue to be obligated to pay all Fees during any such suspension period.

d. <u>Taxes</u>. All amounts payable to Athelas pursuant to the Service Agreement are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**"), and all payments to Athelas are payable in full without reduction for Taxes. Customer is responsible for payment of all Taxes, excluding Taxes owed by Athelas based on Athelas' net income. If Athelas is legally obligated to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer unless Customer provides Athelas with a valid tax exemption certificate authorized by the appropriate taxing authority.

e. <u>Bona Fide Service Fees</u>. The Parties agree the Fees set forth in the Service Agreement were determined in advance at arms-length and in a manner that represents the fair market value for the Services provided thereunder. The Parties agree that the Fees are: (i) compensation for bona fide services; (ii) not intended to diminish the objectivity or professional judgment of Customer; (iii) not intended in any way as remuneration for referrals or for other business generated which are reimbursed under Medicare, Medicaid or any private health insurance; (iv) not intended as discounts or rebates prohibited by federal or state law, including any state or federal anti-kickback law; and (v) not intended to induce either Party to order, recommend, or arrange for the order of any goods or services from the other party.

6. **PROPRIETARY RIGHTS.**

a. <u>Athelas Intellectual Property</u>. As between Athelas and Customer, all right, title and interest, including all Intellectual Property Rights, in the Software, Athelas Data, and any other Athelas property or materials furnished or made available as part of the Services, and all modifications and enhancements of the same, belong to and are retained solely by Athelas or Athelas' licensors and providers, as applicable. Nothing in the Service Agreement is intended to or may be construed to transfer any such rights in any part of the Services to Customer other than as explicitly provided for in the Service Agreement. Customer shall not re-distribute the Software or the Devices other than as specifically provided for in the Service Agreement.

   i. <u>Developments</u>. Except as otherwise explicitly set forth in the Service Agreement, all inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of Athelas, whether solely or jointly, in connection with the Services ("**Athelas Developments**") and all Intellectual Property Rights in the same, shall be the sole and exclusive property of Athelas. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as Athelas may reasonably request, to perfect Athelas' ownership of the Athelas Developments.

b. <u>Publicity; Use of Marks</u>. Customer shall permit Athelas to generate widely disseminated publicity, advertising or promotion concerning the Service Agreement ("**Publicity**") without prior written consent of Customer. Each Party reserve the right to control the use of its own name, tradenames, service marks, symbols, trademarks or other marks currently existing or later established. Neither Party may use any tradename, trademark, service mark or symbol belonging to the other without first receiving the prior written consent of the Party owning the tradename, trademark, service mark, or symbol. Notwithstanding the foregoing, Customer hereby provides its written authorization for Athelas to use, during the term of the Service Agreement, Customer's tradenames, trademarks, service marks or symbols in furtherance of Publicity or Athelas's performance of the Service Agreement.

Athelas

c. <u>Customer Data</u>. As between Athelas and Customer, all right, title and interest in the Customer Data belong to and are retained solely by Customer.

    i. <u>Athelas License</u>. Customer grants to Athelas a limited, non-exclusive, royalty-free, worldwide license to (i) Use, reproduce, aggregate and modify the Customer Data and to perform all acts with respect to the Customer Data as may be necessary for Athelas to provide the Services to Customer; (ii) Use or modify the Customer Data to create De-identified Data; and (iii) Use Customer's name, logo, and trademark for marketing purposes upon written consent of Customer. Athelas intends to use De-identified Data, aggregated with the de-identified data of other Athelas customers, to enable Athelas to provide more targeted, accurate, and useful insights to its customers.

    ii. <u>Accuracy of Customer Data</u>. As between Athelas and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer Data will be included in and treated as Customer's Confidential Information under the Service Agreement.

d. <u>Feedback License</u>. Athelas owns all right, title, and interest in and to any suggestion, enhancement, request, recommendation, or other feedback related to the Software provided by Customer (any "**Feedback**"). Feedback is not Customer's Confidential Information.

e. <u>De-identified Data</u>. Athelas may use, create, modify, aggregate, and disclose De-identified Data for any purposes not prohibited by law. Athelas owns all rights, title and interest, and all Intellectual Property Rights in such De-identified Data and any data, information and material created by Athelas with such De-identified Data. De-identified Data is NOT Customer Data. For the avoidance of doubt, the second and third sentences of this Section shall survive the expiration or earlier termination of the Service Agreement.

7. **CONFIDENTIALITY.**

a. <u>Confidential Information Defined</u>. "**Confidential Information**" means any and all non-public technical and non-technical information disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") in any form or medium, that the Disclosing Party identifies as confidential or that by the nature of the circumstances surrounding the disclosure and/or receipt ought to be treated as confidential and proprietary information. Confidential Information includes, without limitation, (a) techniques, inventions (whether or not patented or patentable), know-how, processes, algorithms, software programs, software source and object codes and documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) financial information, customer lists, business forecasts, and marketing plans and information; (c) the business relationships and affairs of either party and its clients, patients, and referral sources; (d) the internal policies and procedures of either Party; (e) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business; and (f) the terms of the Service Agreement. Athelas' Confidential Information includes the Software and Athelas Data. Confidential Information of Customer includes Customer Data. Confidential Information also includes all summaries and abstracts of Confidential Information. In addition, Confidential Information excludes PHI, which must be protected according to the BAA.

The term "Confidential Information" shall not include any information which, as evidenced by Receiving Party's records: (i) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source with no obligation of confidentiality to the Disclosing Party; (ii) was developed by the Receiving Party without use of the Disclosing Party's Confidential Information, or (iii) becomes

publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of the Service Agreement or any obligation of confidentiality by the Receiving Party.

b. <u>Confidential Information Terms</u>. The Receiving Party will, at all times, both during the term and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information. The Receiving Party will not use the Disclosing Party's Confidential Information other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under the Service Agreement. Either Party may disclose the other Party's Confidential Information upon the order of any competent court or government agency; provided that, prior to disclosure and to the extent possible, the receiving Party must (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Disclosing Party in writing of the order or request; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or narrowing the scope of the compelled disclosure. Each Party agrees to secure and protect the other Party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such Party's own Confidential Information (but in no event less than reasonable care). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, affiliates, and agents who need access to such Confidential Information in order to effect the intent of the Service Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in the Service Agreement.

c. <u>Injunctive Relief</u>. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damage.

d. <u>Security</u>. Each of Customer's Authorized Users will create a unique user login and passwords to be used to access and use the Software. Customer will be, and will ensure that its Authorized Users are, responsible for maintaining the confidentiality of all Authorized User logins and passwords and for ensuring that each login and password is used only by the Authorized User to which it was issued. Customer is responsible for ensuring that its Authorized Users do not share passwords with each other or any third party. Customer agrees to immediately notify Athelas of any unauthorized use of any account or login and password issued to an Authorized User, or any other breach of security known to Customer. Athelas will have no liability for any loss or damage arising from Customer's failure to comply with the terms set forth in this Section. Customer will ensure its Authorized Users do not circumvent or otherwise interfere with any user authentication or security of the Software.

8. **TERMINATION.**

a. <u>Without Cause</u>. Either Party may terminate the Service Agreement without cause upon thirty (30) days' written notice to the other Party.

b. <u>For Cause</u>.

i. <u>Material Breach</u>. Either Party may terminate the Service Agreement following a material breach of these the Service Agreement by the other Party which is not cured during the Cure Period. The non-breaching Party shall notify the breaching Party of the breach in writing and the breaching party shall have thirty (30) days (the "**Cure Period**") to cure the breach following receipt of the notification. If the breaching

Party fails to cure the breach within the Cure Period, then the non-breaching Party may terminate the Service Agreement upon written notice to the breaching party.

ii. <u>Termination for Change of Law</u>. The Service Agreement may also be terminated immediately by either Party if such Party determines that any Applicable Law in effect or to become effective as of a date certain, or if Athelas or Client receives notice of an actual or threatened decision, finding or action by any governmental or private agency or court (collectively referred to herein as an "**Action**"), which Applicable Law or Action, if or when implemented, would have the effect of (i) subjecting either Party to civil, criminal, or administrative prosecution, litigation, or liability under local, state, and/or federal laws, or other material adverse proceeding on the basis of their participation herein; or (ii) which causes the arrangement contemplated hereunder to become unprofitable for either Party.

iii. <u>Other Cause</u>. Athelas may terminate the Service Agreement immediately by providing written notice to Customer upon the occurrence of any of the following events:

1. Athelas reasonably determines that Customer and/or its Authorized User(s) have been or are engaged in unlawful activity associated with the use of the Software and/or the Services;
2. The indictment or conviction of Customer or its principals, employees, or agents for any felony or misdemeanor involving moral turpitude;
3. The filing, with respect to Customer, of a voluntary or involuntary petition in bankruptcy if such petition is not dismissed within thirty (30) days of such filing; or
4. Upon the appointment of a receiver or trustee to take possession of all, or substantially all, of Customer's assets, if such appointment is not terminated within thirty (30) days.

c. <u>Effect of Termination</u>. Unless otherwise stated below, upon expiration or termination of the Service Agreement for any reason, (a) the License shall terminate and the Customer shall not use or access, directly or indirectly, the Software; (b) Athelas' obligation to perform support Services shall cease; and (c) all fees and other amounts owed to Athelas accrued prior to expiration or termination will be immediately due and payable. Further, if Customer has made any copies of any Athelas property or materials furnished or made available under the Service Agreement, Customer shall, within thirty (30) days of the effective date of the expiration or termination, either destroy or return to Athelas all such copies along with a certificate signed by Customer that all such copies have been either destroyed or returned, respectively, and that no copy or any part of the Software, data, or other materials has been retained by Customer in any form.

i. <u>Return of Customer Data</u>. Within thirty (30) days after the effective date of applicable termination or expiration, Athelas will make any Customer Data stored on the Software available upon written request to Customer.

ii. <u>Effect of Termination on Exclusivity</u>. If Customer terminates the Service Agreement prior to the end of a Term other than for cause, Exclusivity will continue until the end of the Term. If Customer enters an agreement with a company other than Athelas for Services subject to Exclusivity under the Service Agreement ("**Competing Services**"), Customer agrees to pay Athelas a fee equal to $60 for the greater of the number of Participating Patient enrolled in Services in the three months prior to termination or the number of patients enrolled in the Competing Services.

iii. <u>Termination In First Year of Agreement</u>. If the Service Agreement is terminated for any reason within one (1) year of the Effective Date, then, prior to the first anniversary of the Effective Date, Athelas and

Customer will not enter into any similar agreement with each other for the Services covered hereunder with payment terms that differs from the payment terms set forth herein.

9. **REPRESENTATIONS & WARRANTIES.**

a. <u>Mutual Representations and Warranties</u>. Each Party represents, warrants and covenants that: (a) to its knowledge, it has the full power and authority to enter into the Service Agreement and to perform its obligations thereunder, without the need for any consents, approvals, or immunities not yet obtained; (b) its acceptance of and performance under the Service Agreement will not breach any oral or written agreement with any third party or any obligation it owes to any third party; and (c) it will comply with any and all Applicable Laws regarding data privacy and transmission of personal data.

b. <u>Practice of Medicine</u>. CUSTOMER HEREBY AGREES AND ACKNOWLEDGES THAT ATHELAS IS IN NO WAY ACTING AS A MEDICAL PROVIDER, NOR IS ATHELAS PROVIDING 24/7 CONTINUOUS, SYNCHRONOUS, OR EMERGENCY MONITORING OR ALERTING UNLESS SPECIFICALLY SET FORTH IN THE SERVICE AGREEMENT. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION, PROCESSES, PRODUCTS, AND OTHER ITEMS REFERENCED BY ATHELAS OR ITS SOFTWARE ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF THAT INFORMATION, PROCESS, PRODUCT, OR OTHER ITEM AND THAT THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH CUSTOMER AND/OR ITS HEALTHCARE PROVIDER(S) TREATING SUCH PATIENT.

c. <u>Third Party Materials</u>. CUSTOMER UNDERSTANDS AND AGREES THAT USING, ACCESSING, DOWNLOADING, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA THROUGH THE SOFTWARE FROM A SOURCE OTHER THAN ATHELAS ("**Third Party Materials**") IS AT ITS OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS AUTHORIZED USERS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

d. <u>Privacy Law Compliance.</u> Parties will comply with all Applicable Laws protecting the confidentiality of patient records and the disclosure of medical records and other health information including, but not limited to, all requirements of HIPAA and HITECH. Parties will each maintain industry standard security systems to protect the privacy and confidentiality of the Data. The BAA incorporated by reference into the Service Agreement further describes the parties' obligations with respect to compliance with HIPAA and HITECH.

e. <u>Disclaimer</u>. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, **THE SERVICES ARE PROVIDED ON AN AS-IS BASIS**. **CUSTOMER'S USE OF THE SOFTWARE AND PURCHASE OF THE SERVICES ARE AT ITS OWN RISK. ATHELAS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY, AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE**. ANY WARRANTIES MADE BY ATHELAS ARE FOR THE BENEFIT OF CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ATHELAS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY INFORMATION, DATA, PRODUCTS, PROCESSES, AND OTHER MATTERS REFERENCED BY THE SERVICES REMAINS WITH THE CUSTOMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ATHELAS DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE, OR SECURE OPERATION AND ACCESS TO THE SOFTWARE.

f. Basis of the Bargain. CUSTOMER ACKNOWLEDGES AND AGREES THAT ATHELAS HAS OFFERED ITS SERVICES AND ENTERED INTO THE SERVICE AGREEMENT TO WHICH IT IS A PARTY IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN CUSTOMER AND ATHELAS, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CUSTOMER AND ATHELAS. CUSTOMER ACKNOWLEDGES AND AGREES THAT ATHELAS WOULD NOT BE ABLE TO PROVIDE THE SERVICES TO CUSTOMER ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

10. **INSURANCE AND INDEMNIFICATION.**

a. Insurance. During the Term, each Party will, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to (i) cyber liability insurance covering claims based on a violation of the Privacy Rule (as defined in Exhibit D) or any Applicable Law or regulation concerning the privacy of patient information and claims based on obligations pursuant to the Service Agreement with coverage of not less than One Million Dollars ($1,000,000) per occurrence; (ii) product liability insurance and comprehensive general liability coverage with coverage limits that are reasonable based on industry standards, but not less than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate, (iii) as well as all insurance required by Applicable Law. Each Party may request from the other Party and is required to provide to the other Party certificates of insurance showing the insurance coverage required in the Service Agreement. Except where prohibited by Applicable Law, each Party will require its insurer to waive all rights of subrogation against the other Party and its insurers.

b. Indemnification by Customer. Customer shall indemnify and hold harmless Athelas and its officers, directors, employees and agents ("**Athelas Indemnified Parties**"), from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses (including reasonable attorneys' fees and expenses) ("**Losses**"), arising, directly or indirectly, out of or relating to any claim, action or proceeding (a "**Claim**") brought by a third party based on (i) the improper use or operation of the Services (and any third party software provided to Customer pursuant to the Service Agreement) by Participating Patients, Customer and/or Authorized Users, including, without limitation, any non-authorized use of Customer's user logins, except to the extent that any such Loss was due to the gross negligence or willful misconduct of Athelas; (ii) a breach of the Agreement and/or the TOU by Customer or any of its Authorized Users, (iii) the accuracy, quality, integrity, legality, reliability, or appropriateness of Customer Data or any other content or data introduced to any part of the Services by any Authorized User; (iv) violation of any applicable law, rule, or regulation by Customer or any of the Authorized Users; (v) the diagnosis and/or treatment of any of Customer's patients; and/or (vi) the negligent acts or willful misconduct of Customer or its personnel. Customer will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the Athelas Indemnified Parties from any such Claim.

c. Indemnification by Athelas. Subject to limitations of liability set forth in these Terms of Agreement, Athelas agrees to defend Customer and its officers, directors, employees, and agents (a "**Customer Indemnified Party**") from and against any Losses resulting from or arising out of a successful claim that the Software infringes or misappropriates the patent, trade secret, trademark, copyright, or other Intellectual Property Rights of any third party (an "**Infringement Claim**"). Athelas will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the Customer Indemnified Parties from any such Claim. In the event of an Infringement Claim, Athelas may, at its election, and sole expense, (i) modify the Software so that such Software

10

is non-infringing and functionally equivalent; or (ii) obtain the right for Customer and Customer's patients to continue using the Software at no additional cost to Customer. If none of the foregoing is commercially practicable, Athelas may immediately terminate the Service Agreement upon reasonable notice to Customer.

d. Procedure. Each Party shall provide to the other Party prompt notice of any Claim for which they are seeking indemnification. The indemnified Party may have counsel reasonably acceptable to the indemnifying Party observe the proceedings at the indemnified Party's expense, provided the indemnifying Party retains sole control of the defense of the Claim. The indemnified Party has the right to approve any settlement that affirmatively places on the indemnified Party an obligation that has a material adverse effect on the indemnified Party other than requiring the indemnified Party to cease using all or a portion of the Services or to pay sums eligible for indemnification under the Service Agreement. Such approval shall not be unreasonably withheld.

11. LIMITATIONS OF LIABILITY.

a. No Consequential Damages. **Neither Party will be liable for any indirect, incidental, special, consequential or punitive damages, or any damages for lost data, business interruption, lost profits, lost revenue, or lost business arising out of or in connection with the Service Agreement, including without limitation any such damages arising out of Athelas' provision or Customer's use of the Services or the results thereof, even if a party has been advised of the possibility of such damages. In no event will Athelas be liable for the cost of procurement of substitute goods or Services.**

b. Limits on Liability. **In no case will Athelas be liable for any aggregate amount greater than the amounts paid and payable by customer to Athelas under the Service Agreement during the twelve (12) month period preceding the date on which the claim first accrued, without regard to whether such claim is based in contract, tort (including negligence), product liability, or otherwise.**

c. Essential Purpose. **Customer acknowledges that the terms in this Section (Limitations of Liability) are a bargained for reasonable allocation of the risk between the parties and will apply (a) to the maximum extent permitted by applicable law, and (b) even if an exclusive or limited remedy stated herein fails of its essential purpose.**

d. Limitation of Action. No action (regardless of form) arising out of the Service Agreement may be commenced by Customer against Athelas more than two (2) years after the cause of action arose.

12. MISCELLANEOUS.

a. Subcontractors. Athelas may use its affiliates or subcontractors to perform its obligations under the Service Agreement.

b. Notices. Any notices, requests, consents, demands, or other communications required or permitted under the Service Agreement will be in writing and deemed to have been duly given when delivered, if delivered by hand, sent by email, or delivered by nationally recognized commercial overnight courier; and in each case to the parties at the following addresses or email addresses (or at other addresses or email addresses specified by a notice) with applicable postage or delivery charges prepaid. Notices to Athelas shall be sent to the following address: Athelas Inc., a Delaware corporation with its principal office located at 160 S. Whisman Rd. Mountain View, CA 94041, with a copy to legal@athelas.com. Notices to Customer shall be sent to the address or email address specified in the Service Agreement. Notwithstanding the foregoing, any changes to Services may be

noticed via the Provider-Facing Dashboard and will be deemed effective upon receipt by Customer's Primary Contact.

c. <u>Amendment</u>. Except as may otherwise be specified in the Service Agreement, the Service Agreement may be modified, changed, or amended only by a written amendment mutually agreed to and signed by both Parties.

d. <u>Waiver; Severability</u>. A Party's right to enforce a provision of the Service Agreement may only be waived in writing and signed by the Party against which the waiver is to be enforced. Failure to enforce any provision of the Service Agreement in any one instance will not be construed as a waiver of future performance of that provision, and the Party's obligations under that provision will continue in full force and effect. The provisions of the Service Agreement are severable. The invalidity or unenforceability of any term or provision in any jurisdiction will be construed and enforced as if it has been narrowly drawn so as not to be invalid, illegal, or unenforceable to the extent possible and will in no way affect the validity or enforceability of any other terms or provisions in that jurisdiction or of this entire Agreement in that jurisdiction.

e. <u>Medicare and Medicaid Fraud Representation</u>. Each Party represents that: (i) it is not currently excluded, debarred or suspended from participation in any federal health care programs and is not under investigation or by any state or federal governmental agency that may lead to such an exclusion, debarment or suspension; and (ii) to the best of its reasonable knowledge, none of its employees, officers, directors and any health care providers contracted to provide Services hereunder is currently excluded, debarred or suspended from participation in any federal health care programs and is not under investigation or by any state or federal governmental agency that may lead to such an exclusion, debarment or suspension. If any of the representations and warranties set forth in this Section ceases to be true, the Party with this information will promptly remove, or cause to be removed, the excluded, debarred or suspended individual from providing Services hereunder and notify the other Party within one (1) business day of confirming the exclusion, debarment or suspension. It is understood and agreed to by the Parties that the ability to verify if any individual is currently debarred is dependent upon the accuracy of the information contained on the OIG list of excluded persons and the representations of such individual.

f. <u>Governing Law</u>. The Service Agreement, any additional applicable terms and conditions incorporated by reference there in, and each Party's rights and obligations under each will be governed by and construed in accordance with the laws of Delaware without giving effect to conflicts of law principles. The Parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, state or federal courts sitting in Santa Clara County, California in any litigation arising out of the Service Agreement.

g. <u>Assignment</u>. Neither Party may assign or transfer the Service Agreement without the prior written consent of the other Party; provided, however, that Athelas may assign or transfer the Service Agreement without Customer's consent to any of Athelas' affiliates, subsidiaries, entities controlled by or under common control with Athelas, or in the event of a merger, change of control or sale of substantially all of its assets. The Service Agreement will bind the Parties and their respective successors and permitted assigns and will inure to the benefit of the Parties and their respective permitted successors and assigns.

h. <u>Invalidity</u>. If any provision of the Service Agreement is found by a court of competent jurisdiction to be unenforceable, the other provisions of the Service Agreement will be unimpaired, and the unenforceable provision will be deemed modified so that it is enforceable to the maximum extent permitted by law (unless such modification is not permitted by law, in which case such provision will be disregarded).

i. <u>Force Majeure</u>. If any Party is unable to perform any of its obligations under the Service Agreement (other than payment obligations) because of any cause beyond the reasonable control of and not the fault of the Party invoking this section, including any act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic or pandemic, destruction of production facilities, riot, insurrection or material unavailability, and if the non-performing Party has been unable to avoid or overcome its effects through the exercise of commercially reasonable efforts, such non-performing Party will give prompt notice to the other Party, its performance will be excused, and the time for its performance will be extended for the period of delay or inability to perform due to such occurrences. If performance is extended under this section for more than sixty (60) days, then at any time before reinstatement of the performance, the other Party may terminate the Service Agreement upon notice to the non-performing Party.

j. <u>Relationship of the Parties</u>. The sole relationship between the Parties is solely that of independent contractors. The Service Agreement will not create a joint venture, partnership, agency, employment, or other relationship between the Parties.

k. <u>Survival</u>. Any term of the Service Agreement that contemplates performance after termination of the Service Agreement will survive expiration or termination and continue until fully satisfied.

l. <u>Entire Agreement</u>. The Service Agreement, including all applicable exhibits and other documents incorporated by reference therein, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.

m. <u>Counterparts</u>. The Service Agreement may be executed in one or more counterparts and may be executed electronically. Each counterpart or electronic copy thereof will be an original, but all such counterparts will constitute a single instrument.

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Exhibit A
Athelas Services

The following Services comprise all Services, including Beta Services, currently offered by Athelas under the Service Agreement, as well as any specific Customer Responsibilities relating to each Service. To determine which Services have been purchased by Customer, please refer to the Service Agreement and any Amendments thereto.

1. Remote Patient Monitoring Services. The following Services comprise Athelas remote patient monitoring ("RPM") Services:

   a. Practice RPM Implementation. Practice RPM Implementation is the initial startup Service that kicks off on the Service Start Date. During Practice RPM Implementation the Athelas implementation team will work with Customer to determine which of Customer's patients may benefit from RPM Services. Upon approval and ordering of RPM Services for Participating Patients, Athelas will then conduct outreach to patients via phone, email, text message, and via the Sign-Up Portal (defined below). Upon Participating Patient sign-up, Athelas will implement Patient RPM Onboarding.

      i. Customer Responsibilities. Customer is responsible for:
         1. Providing Athelas with access to its EHR system within five (5) business days of the Service Start Date;
         2. Setting up and hosting on its website, within fourteen (14) days of the Service Start Date, a web page through which Participating Patients may sign up for and consent to RPM Services, provided, however, that failure to do so will not be considered a breach of the Service Agreement but will instead result in the elimination of any discount provided to Customer for Practice RPM Implementation;
         3. Reviewing Athelas recommended Participating Patients and ordering RPM Services for Participating Patients;
         4. Reviewing and either approving or recommending changes to RPM programs recommended by Athelas for each Participating Patient ("Patient-Specific RPM Program"), which programs may include recommended RPM Devices appropriate for each condition from which the Participating Patient suffers, testing frequency, Device rollout timelines and criteria, and recommended ranges for RPM results, and;
         5. Periodically, but no less than monthly, reviewing with Athelas whether any RPM Orders need adjustment or discontinuation or whether additional patients not currently receiving RPM would benefit from doing so.

   b. Patient RPM Onboarding. Upon Patient sign-up for RPM, Athelas will undertake a two-month onboarding process in which Athelas will initiate Patient RPM Device Management, establish Patient Clinical Review Services if ordered by Customer, establish Billing Concierge if ordered by Customer, providing and monitoring the first two months of Monthly RPM Service and validating the success of the claims process for Customer ("Patient RPM Onboarding"). If Athelas fails to complete Patient RPM Onboarding, the Patient RPM Onboarding fee will not be charged to Customer, and no Monthly RPM Services will be billed until Patient RPM Onboarding is complete.

      i. Customer Responsibilities. Customer is Responsible for:
         1. Informing Athelas of any questions Participating Patients submit regarding Patient RPM Onboarding that Customer is unable to answer independently;

2. Inform Athelas upon the completion or failure of claims processing; and
3. Providing a dedicated internal administrative contact for Athelas to contact regarding billing questions.

c. <u>Patient RPM Device Management</u>. At no cost to Participating Patient or Customer, Athelas will send one or more RPM Devices to Participating Patients, as determined by the Patient-Specific RPM Program. Athelas will help Participating Patients complete any needed setup and onboarding of RPM Devices, will replace Devices that cease working through no fault of the Participating Patient, and will require return of, or, at Athelas's sole discretion, instruct Participating Patients on the disposition of, Devices once Participating Patient is no longer actively participating in RPM Services ("**Active Participating Patient**"). To be an Active Participating Patient, a Participating Patient must utilize their RPM Device at the monthly frequency established by their healthcare provider, which will be no less than once per month.

d. <u>Monthly RPM Service</u>. Athelas will provide monthly RPM monitoring Service to each Participating Patient. Athelas will provide reminders, connect no less than daily with the RPM devices to measure adherence and to collect Participating Patient measurements and related Device information, and display all results in the Provider-Facing Dashboard. Athelas will also package all RPM Information together on a monthly basis for Provider to facilitate Provider submission of claims for reimbursement.

    i. Customer Responsibilities. Customer Agrees to:
        1. Inform Athelas when Participating Patients request to discontinue RPM Service or Participating Patients' provider determines that RPM is no longer appropriate; and,
        2. Unless Customer receives Athelas's Clinical Review Service (Beta), to undertake no less than twenty minutes of RPM data review and patient interaction for each Participating Patient each month in which RPM Services are provided.

e. <u>Clinical Review Service</u> (Beta). Athelas's clinical team will act under the general supervision of Customer's licensed healthcare providers to complete RPM clinical responsibilities ("**Clinical Review Service**"), including, but not limited to, review of patient monitoring results, interaction with patients, review of provider-approved recommendations for patient care, and implementation of provider healthcare recommendations. All clinical staff are appropriately licensed to provide Clinical Review Service in the state in which Participating Patients reside.

    i. <u>Customer Responsibilities</u>. Customer:
        1. Authorizes Athelas clinical staff to undertake Clinical Review Service and to contact Participating Patients on behalf of the Customer;
        2. Agrees to oversee Athelas clinical staff providing Clinical Review Services;
        3. Agrees to collaborate with Athelas staff to approve any needed clinical guidelines for Clinical Review Service;
        4. Agrees to provide one or more methods for Athelas clinical team to escalate to providers of Customer in the event their clinical review results in questions or concerns; and
        5. Agrees that for non-urgent escalation, Athelas clinical staff may utilize the Provider-Facing Dashboard to communicate with Customer's providers.

f. <u>Billing Concierge (Beta)</u>. Athelas or one or more Athelas-contracted third party service providers (collectively, the "**Billers**") will code and submit claims for reimbursement on behalf of Customer. Prior to submitting claims for reimbursement, the Billers will summarize the claims to be submitted and provide

Athelas

them to Customer for a review period of no less than forty-eight (48) hours ("**Claims Review**"). Customer agrees to review the claims during Claims Review and to notify Athelas of any issues with the proposed claims submission. If Customer does not object to the proposed submission during Claims Review, Athelas will submit the claims for reimbursement on behalf of Customer.

    i. Customer Responsibilities. Customer:

        1. Agrees to review the claims during Claims Review and to notify Biller of any issues with the proposed claims submission;

        2. Acknowledges and agrees that Athelas may utilize third-party billing vendors to provide the Services comprising the Billing Concierge Service and may authorize the third-party billing vendors on behalf of Customer to provide Billing Services for Customer and Participating Patients; and,

        3. Agrees to provide information to Athelas upon request regarding claims success for individual Participating Patients.