

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**Form 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-33689

**athenahealth, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**311 Arsenal Street,  
Watertown, Massachusetts**

(Address of principal executive offices)

**04-3387530**

(I.R.S. Employer  
Identification No.)

**02472**

(Zip Code)

**617-402-1000**

Registrant's telephone number, including area code

**Securities registered pursuant to Section 12(b) of the Act:**

Title of each class	Name of each exchange on which registered
Common Stock, \$0.01 par value	The NASDAQ Stock Market LLC

**Securities registered pursuant to Section 12(g) of the Act:**

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the common stock held by non-affiliates of the registrant was approximately \$2,818,219,399 based on the closing price on the NASDAQ Global Select Market on June 29, 2012.

At February 7, 2013, the registrant had 36,331,531 shares of common stock, par value \$0.01 per share, outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Part III of this Form 10-K incorporates information by reference from the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year ended December 31, 2012.

---

## Table of Contents

### INDEX

#### PART I

Item 1.	<a href="#"><u>Business</u></a>	<a href="#"><u>1</u></a>
Item 1A.	<a href="#"><u>Risk Factors</u></a>	<a href="#"><u>16</u></a>
Item 1B.	<a href="#"><u>Unresolved Staff Comments</u></a>	<a href="#"><u>33</u></a>
Item 2.	<a href="#"><u>Properties</u></a>	<a href="#"><u>34</u></a>
Item 3.	<a href="#"><u>Legal Proceedings</u></a>	<a href="#"><u>34</u></a>
Item 4.	<a href="#"><u>Mine Safety Disclosures</u></a>	<a href="#"><u>34</u></a>

#### PART II

Item 5.	<a href="#"><u>Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u></a>	<a href="#"><u>35</u></a>
Item 6.	<a href="#"><u>Selected Financial Data</u></a>	<a href="#"><u>37</u></a>
Item 7.	<a href="#"><u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u></a>	<a href="#"><u>39</u></a>
Item 7A.	<a href="#"><u>Quantitative and Qualitative Disclosures About Market Risk</u></a>	<a href="#"><u>52</u></a>
Item 8.	<a href="#"><u>Financial Statements and Supplementary Data</u></a>	<a href="#"><u>53</u></a>
Item 9.	<a href="#"><u>Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</u></a>	<a href="#"><u>53</u></a> 64
Item 9A.	<a href="#"><u>Controls and Procedures</u></a>	<a href="#"><u>53</u></a>
Item 9B.	<a href="#"><u>Other Information</u></a>	<a href="#"><u>5</u></a> 67

#### PART III

Item 10.	<a href="#"><u>Directors, Executive Officers and Corporate Governance</u></a>	<a href="#"><u>57</u></a>
Item 11.	<a href="#"><u>Executive Compensation</u></a>	<a href="#"><u>57</u></a>
Item 12.	<a href="#"><u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u></a>	<a href="#"><u>57</u></a>
Item 13.	<a href="#"><u>Certain Relationships and Related Transactions, and Director Independence</u></a>	<a href="#"><u>57</u></a>
Item 14.	<a href="#"><u>Principal Accounting Fees and Services</u></a>	<a href="#"><u>57</u></a>

#### PART IV

Item 15.	<a href="#"><u>Exhibits, Financial Statement Schedules</u></a>	<a href="#"><u>58</u></a>
	<a href="#"><u>SIGNATURES</u></a>	<a href="#"><u>61</u></a>

**PART I**  
**SPECIAL NOTE REGARDING**  
**FORWARD-LOOKING STATEMENTS AND INDUSTRY DATA**

This Annual Report on Form 10-K contains forward-looking statements. All statements other than statements of historical fact contained in this Annual Report on Form 10-K are forward-looking statements, including the combination or integration of newly acquired services; expanded sales and marketing efforts; changes in expenses related to operations, selling, marketing, research and development, general and administrative matters, and depreciation and amortization; liquidity issues; additional fundraising; our proposed acquisition of Epocrates, Inc.; and the expected performance period and estimated term of our client relationships, as well as more general statements regarding our expectations for future financial or operational performance, product and service offerings, regulatory environment, and market trends. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential,” or “continue”; the negative of these terms; or other comparable terminology.

Forward-looking statements are only current predictions and are subject to known and unknown risks, uncertainties, and other factors that may cause our or our industry’s actual results, levels of activity, performance, or achievements to be materially different from those anticipated by such statements. These factors include, among other things, those listed under “Risk Factors” and elsewhere in this Annual Report on Form 10-K.

Although we believe that the expectations reflected in the forward-looking statements contained in this Annual Report on Form 10-K are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. Except as required by law, we are under no duty to update or revise any of such forward-looking statements, whether as a result of new information, future events, or otherwise, after the date of this Annual Report on Form 10-K.

Unless otherwise indicated, information contained in this Annual Report on Form 10-K concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity, and market share, is based on information from independent industry analysts and third-party sources (including industry publications, surveys, and forecasts), our internal research, and management estimates. Management estimates are derived from publicly available information released by independent industry analysts and third-party sources, as well as data from our internal research, and are based on assumptions made by us based on such data and our knowledge of such industry and markets, which we believe to be reasonable. None of the sources cited in this Annual Report on Form 10-K has consented to the inclusion of any data from its reports, and we have not sought the consent of any source. Our internal research has not been verified by any independent source, and we have not independently verified any third-party information. While we believe the market position, market opportunity, and market share information included in this Annual Report on Form 10-K is generally reliable, such information is inherently imprecise. In addition, projections, assumptions, and estimates of our future performance and the future performance of the industries in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in “Risk Factors” in Item 1A of Part I of this Annual Report on Form 10-K and elsewhere in this Annual Report on Form 10-K. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

**Item 1.        *Business.***

In this Annual Report on Form 10-K, the terms the “Company,” “athenahealth,” “we,” “us,” and “our” refer to athenahealth, Inc. and its subsidiaries, Anodyne Health Partners, Inc.; athena Point Lookout, LLC; athenahealth MA, Inc.; athenahealth Security Corporation; athenahealth Technology Private Limited; Echo Merger Sub, Inc.; Healthcare Data Services LLC; and Proxsys LLC, and any subsidiary that may be acquired or formed in the future. We were incorporated in Delaware on August 21, 1997, as Athena Healthcare Incorporated. We changed our name to athenahealth.com, Inc. on March 31, 2000, and to athenahealth, Inc. on November 17, 2000. Our corporate headquarters are located at 311 Arsenal Street, Watertown, Massachusetts, 02472, and our telephone number is (617) 402-1000.

**Overview**

athenahealth provides cloud-based business services that help medical care givers collect more revenue and greatly reduce the trouble and inconvenience of their administrative tasks. Through a combination of three distinct but interconnected components—cloud-based software, networked knowledge, and back-office work—athenahealth enables its providers to achieve and sustain financial health while keeping their focus on quality patient care.

Our services are designed to reduce the burden presented by complex billing rules, quality measurement and reporting, clinical documentation and data exchange, patient communication and referrals, and many of the related tasks that distract medical care givers and staff from delivering care. We differentiate our services by regularly deploying updates and

## [Table of Contents](#)

improvements to clients via our cloud-based network, athenaNet, requiring no action by the client. Since athenaNet is web-based, our staff can quickly and seamlessly implement our services at a low up-front start-up cost to clients.

Our cloud-based services are currently packaged as four integrated offerings: athenaCollector for revenue cycle management, athenaClinicals for clinical cycle management, athenaCommunicator for patient cycle management, and athenaCoordinator for referral cycle management. Our single-instance platform allows every client to benefit from the collective knowledge of all other clients through our patented billing Rules Engine and clinical Quality Management Engine, collectively called “athenaRules.” This powerful, shared knowledge enables our clients to monitor and benchmark their performances against those of peer practices across the network. Our comprehensive business intelligence application, Anodyne Analytics, together with the services of our newest subsidiary, Healthcare Data Services LLC, further support our clients’ goal of financial health by equipping them with data analysis and visualization tools and actionable insight into their performance and the health of their patient populations.

The software offered via athenaNet is the primary conduit through which we exchange information among clients, payers, and our staff of experts. Expert knowledge is infused into each service via athenaRules as we work with clients, payers, and other partners to codify rules associated with reimbursement, clinical quality measures, and other factors related to our clients’ performance. Each service also benefits from back-office administrative work that we perform on behalf of our clients. We automate these processes whenever possible, but, when automation cannot be implemented, we perform the work ourselves rather than returning it to clients to be completed.

This unique service model of Software, Knowledge, and Work has allowed us to align our success with our clients’ performance, creating a continual cycle of improvement and efficiency. We charge clients a percentage of collections in most cases, so our financial results are a direct reflection of our ability to drive revenue for them.

In 2000, we released our first service offering, athenaCollector, and followed with athenaClinicals in 2006. athenaCommunicator, introduced in 2010, represents the integration and rebranding of our first acquisition, Crest Line Technologies, LLC (d.b.a. MedicalMessaging.net). We continued this expansion of our offerings in October, 2009, with our acquisition of Anodyne Health Partners, Inc. (“Anodyne”), the privately held company that developed the Anodyne Analytics service. In August, 2011, to further accelerate the development of our emerging care coordination service, we acquired Proxsys LLC (“Proxsys”), a leading provider of cloud-based care coordination services between physicians and hospitals. Finally, in October 2012 we acquired Healthcare Data Services LLC, which offers patient population health management services.

In 2012, we generated revenue of \$422.3 million from the sale of our services, compared to \$324.1 million in 2011. As of December 31, 2012, there were 39,752 medical providers, including 28,011 physicians, using our athenaCollector service across 47 states and the District of Columbia and 77 medical specialties.

## **Market Opportunity**

The health care industry is complex and fragmented, and is largely served by legacy software systems that do not offer the core competencies of collaboration, flexibility, and interoperability. A disproportionate amount of communication still takes place on paper instead of via automated communications. This combination of outdated, inflexible systems and paper workflows creates significant costs for health care organizations, which suffer sizable administrative work, as well as duplication and errors. By addressing these problems head on, medical care givers can free their staff to focus on the practice of medicine.

While the fee-for-service reimbursement framework is fraught with complexity for medical practices, managed care plans typically are even more complex, creating reimbursement structures that are more complicated than previous methods, with greater responsibility placed on care givers to capture and provide appropriate data to obtain payments. This reality is further complicated by newer, emerging reimbursement models such as Pay-For-Reporting, Pay-For-Performance, and Shared Savings. These programs require care givers to identify programs for which they are eligible, enroll in those programs, identify eligible patients, and record relevant billing and clinical data for each eligible encounter. In addition, care givers may be penalized for non-reporting or non-participation in these programs. Many of these programs also require a much greater focus on care coordination and cost efficiency across multiple care givers.

Practice-based activities required to ensure appropriate payment for services rendered have increased in number and complexity for the following reasons:

- *Legislative reform efforts.* Legislative reform, including the Patient Protection and Affordable Care Act, or PPACA, that was signed into law in March 2010, is expected to drive many fundamental shifts in the health care reimbursement landscape. Millions of additional patients could be required to purchase health insurance coverage, and private payers may have to limit percentages of non-clinical expenses as a portion of their revenues. Payers’ abilities to raise insurance premiums will likely also be regulated, forcing them to focus on other ways of improving their financial performance, including new contracting options for physicians and new programs to identify preventable costs. Many

## Table of Contents

of these programs would require the aggregation and exchange of clinical data in order to ensure continuity of care for each patient.

- *Diversity of health benefit plan design.* Health insurers have introduced a wide range of benefit structures, many of which are customized to the unique goals of particular employer groups. This has resulted in an increase in rules regarding who is eligible for health care services, what health care services are eligible for reimbursement, and who is responsible to pay for health care services delivered. It has also resulted in more plans that require a larger portion of patient responsibility, such as High Deductible Health Plans (“HDHP”) or plans with little coverage other than negotiated discounts; these increase the burden on practices to manage and pursue receivables directly with the patient.
- *Dynamic nature of health benefit plan design.* Health insurers continually update their reimbursement rules based on ongoing monitoring of consumption patterns, in response to new medical products and procedures, and to address changing employer demands. As these changes are made frequently throughout the year and are often specific to each individual health plan, practices need to be continually aware of this dynamic element of the reimbursement cycle, as it could impact overall reimbursement and specific workflows.
- *Proliferation of new payment models.* New health benefit plans and reimbursement structures have considerably modified the ways in which medical practices are paid. Care-based initiatives like Pay-for-Performance, which provide reimbursement incentives related to the capture and submission of specified clinical information, have dramatically increased the administrative and clinical documentation burden of the medical practice. Shared Savings programs like Accountable Care Organizations, or ACOs, reward care givers for managing care in a cost-efficient way; this requires greater coordination of clinical effort across medical practices and their trading partners. These newer models continue to evolve and grow in both number and complexity.
- *Financial incentives continue to spur on EHR purchasing activity.* The federal government enacted a financial incentive program through the 2009 Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) for care givers who demonstrate “Meaningful Use” of a certified Electronic Health Record (“EHR”) technology. While payments under the program do not represent a sustained market opportunity, they have shifted buying patterns since they were instituted, with many care givers accelerating their purchase of EHRs and making revenue cycle decisions tied to an EHR selection. We expect that these payments, together with reductions in Medicare reimbursement that will be imposed starting in 2015 for failure to demonstrate Meaningful Use, will continue to drive EHR adoption.

In addition to administering typical business functions, care givers must invest significant time and resources processing inbound and outbound communications related to physician orders, including referrals to specialists, imaging centers, laboratories, pharmacies, and inpatient admissions. In order to process these communications, medical practices often interact with multiple software systems; execute paper-based and fax-based communications to and from payers and other trading partners; and contact patients, payers, and other trading partners to effectively communicate the appropriate clinical information to accompany the order. All of this work must be conducted to ensure that the patient receives appropriate care and the procedure is eligible for reimbursement.

## **Our Strategy**

Our mission is to be medical care givers’ most trusted service, helping them do well, doing the right thing. In almost all cases, we price our services as a percentage of practice collections, which incentivizes us to improve organization performance while simultaneously reducing cost through more efficient operations. As practices face rising costs, greater complexity, and changing reimbursement rates, they need solutions for a diverse set of problems. These problems include increased administrative work required to manage new reimbursement models; greater demand from trading partners and Shared Savings program members for electronic data exchange; pressure to adopt expensive EHRs; continued changes to federally mandated transaction standards; new insurance payer rules; more complicated reimbursement structures; and increased work to collect self-pay balances from uninsured, underinsured, and HDHP patients.

We believe that traditional, locally installed software fails to address all of these needs, solving only a subset of problems that can be managed through electronic storage and data transmission, without allowing for intelligent evolution of the functionality. Locally installed software also favors larger organizations that can afford an up-front investment in hardware and software, as well as the staff to manage and maintain these systems. Cloud-based software can solve a greater set of these problems—particularly when implemented in a single instance—because it can be quickly updated and delivered to all clients without expensive upgrades or new hardware installation. However, there remain many challenges that even cloud-based software alone cannot address without a corresponding service component. Examples include processing and sorting all incoming paper documents that a practice receives; identifying and managing payer rules; identifying and enrolling care givers in Pay-For-Performance programs; selecting and alerting care givers to Pay-for-Performance measures for specific patients; and taking patient phone calls with a live operator when a practice is closed. Our unique service model addresses these problems for clients through cloud-based software that delivers targeted knowledge to the right user at the right time, and through large

## [Table of Contents](#)

service operations that can achieve a comparative advantage by executing work at scale that would otherwise fall upon the practice.

The electronic connectivity and system infrastructure that we provide would normally be out of reach for small independent practices, which make up a large portion of the care giver market. However, because we automate processes and scale work across our entire provider network, we can efficiently deliver our services to medical practices of every size. By enabling small practices to receive the same level of technical and service infrastructure available to large clients, we provide significant benefit not only to practices but also to all of their trading partners and fellow Shared Savings program members. As practices continue to be acquired or divested by other entities, this strategic flexibility will enhance our ability to compete, regardless of whether the practice is independent or owned by a large enterprise.

Key elements of our strategy include:

- *Remaining intensely focused on our clients' success.* Our business model aligns our goals with our clients' goals, providing us with an ongoing incentive to improve client performance. We believe that this approach enables us to maintain client loyalty (demonstrated through high and sustained client satisfaction and retention), enhance our reputation, and improve the quality of our solutions.
- *Integration of revenue cycle, clinical cycle, patient cycle, and referral cycle.* As payment models continue to integrate cost efficiency and performance into reimbursement formulas, activities that previously were not factors in reimbursement will become more important in driving practice performance. Only practices that control these activities in a way that is fully integrated with their revenue cycle will have visibility into their true financial health. Some examples might be care hand-offs between physicians and trading partners, care coordination to prevent duplicate procedures, patient adherence reminders, and closed-loop prescription and lab order management. We proactively demonstrate to practices how, when fully adopted and optimized, our integrated services—athenaCollector, athenaClinicals, athenaCommunicator, and athenaCoordinator—can help medical care givers manage and monitor performance comprehensively.
- *Maintaining and growing athenaRules.* Our Rules Engine leverages our single-instance platform to allow all clients to benefit from knowledge across the network. We actively seek out new revenue opportunities for practices and use the Rules Engine to deliver the right information to the right person at the right time. For athenaCollector clients, these rules are introduced during charge entry and claim submission to alert users to any errors or omissions; this increases the percentage of transactions that are successfully executed on the first attempt and reduces the time it takes to fully resolve claims or other transactions. We continually build our centralized payer reimbursement rules by learning from the collective experience of our national network of clients, as well as through proactive outreach to payers. The rules embedded in athenaClinicals are becoming increasingly tied to reimbursement as more Pay-for-Reporting, Pay-for-Performance, shared savings, and other bonus payments require specific action at the point of care. The athenaClinicals workflow allows customizable alerts to surface during the encounter to ensure that the proper quality measures are being prompted. Without the type of automation found in our Quality Management Engine, these payment programs would plague physicians with an administrative burden, significantly impairing their ability to practice.
- *Increasing awareness and attracting new clients.* We believe that our cloud-based business services provide significant value for medical practices of any size, and we continue to expand sales and marketing efforts to address our market opportunity and aggressively seek new clients. Our athenaCollector client base currently represents approximately four percent of the addressable U.S. market, comprised of an estimated 674,000 physicians practicing in the ambulatory segment. In addition to our traditional marketing efforts targeted at small and group practices, we have introduced several new programs to reach hospitals, health systems, and health services companies to help them manage their affiliated and employed physician strategies.
- *Uncovering and delivering new sources of revenue to clients.* We have worked closely with payers and other health care trading partners to demonstrate the process efficiencies and reduction in administrative work that our services provide to medical practices. We believe that, as these trading partners gain greater understanding of these advantages and related system-wide benefits, they will continue to reward these efficiencies in a manner that accrues direct benefits for our clients.
- *High levels of user adoption and network transparency.* One of the biggest challenges for traditional EHR software vendors has been lack of physician adoption. While adoption is increasing, many physicians have not used software templates to habitually document encounters and fear that EHRs will slow them down. Traditional documentation styles such as paper or dictation are preferred in many cases. Due to our large service operation, we can support many alternate documentation styles that are not available with software-only solutions. For example, physicians can continue to document on paper and transmit that document to us to be processed and attached to the patient chart. By supporting multiple work styles and integrating these activities into the complete revenue, clinical, patient, and referral cycles, our clients realize significant benefits by using our EHR, which drives our high adoption rate. We, in turn, convert this usage data into system-wide measures of top-line practice performance, individual clinician performance,

## [Table of Contents](#)

and the associated drivers of each. We can then share this intelligence on the measures that correlate with, or drive, practice performance with our entire network of clients.

### **Our Solutions**

Our service offerings are based on our proprietary cloud-based software, a continually updated database of rules, and integrated back-office service operations. Our services are designed to help our clients achieve faster reimbursement from all parties, reduce error rates, increase collections, lower operating costs, improve operational workflow controls, improve coordination of care, and more efficiently manage clinical and billing information.

#### ***athenaCollector, Anodyne Analytics, and Healthcare Data Services***

Our principal offering, athenaCollector, is our revenue cycle management service. It automates and manages billing-related functions for medical practices and includes a practice management platform. athenaCollector assists our clients with the proper handling of claims and billing processes to help manage reimbursement quickly and efficiently. Complementing athenaCollector is our business intelligence offering, Anodyne Analytics, which provides physicians and practice managers with comprehensive, detailed insight into practice performance, and Healthcare Data Services, which offers practices a better understanding of the cost and quality of the care they provide to their patients.

#### ***Software (athenaNet, Anodyne Analytics, and HDS Services)***

Through athenaNet, athenaCollector utilizes the Internet to connect medical practices to our Rules Engine and service operations team. athenaCollector is a complete practice management system that includes scheduling, payment processing, and a workflow dashboard. The system is used by our clients and our services team to track claims requiring edits in real-time before they are sent to the payer, claims requiring work that have come back from the payer unpaid, and claims that are being held up due to administrative steps required by the individual client. This web-native functionality provides our clients with the benefits of our payer rules database as it is updated and enables them to interact with our services team to efficiently monitor workflows. Each transaction runs through our centralized Rules Engine so preventable mistakes can be corrected quickly across all of our clients. We also include a full set of reporting tools in athenaNet, so that users can track their ongoing performance and benchmark it against other practices.

With the acquisition of Anodyne in October 2009, we expanded the business intelligence function of our existing services through the addition of Anodyne Analytics. This web-based, Software-as-a-Service platform organizes and analyzes billing and claims-based data across medical practices, allowing decision makers to quickly and easily present that data visually through a wide array of business performance metrics. These metrics can be provided either as broad, practice-wide summaries or as discrete, highly specific analyses based on complex user-defined requests.

As a complement to Anodyne's business intelligence services, in October 2012 we added population-based cost and quality data analysis and reporting capabilities to our line of offerings through the acquisition of Healthcare Data Services. These newly added services gather claims, health plan administrative, and clinical data from client health care organizations and combine those data into a single data asset that can be used by the client to coordinate care, reduce health care utilization, and address gaps in care across its patient population. This enables clients to participate more effectively in new payment models offered by the U.S. government and commercial health plans, which aim to create a reimbursement system that links care reimbursement to the quality of care delivered and, ultimately, to reduce overall health care expenses for patient populations. In the future, we plan to further leverage the additional detail and analysis offered by Anodyne Analytics and our Healthcare Data Services offerings to visually present other data sets, such as clinical and patient cycle metrics.

#### ***Knowledge (athenaRules)***

Medical practices route all of their day-to-day electronic and paper-based payer communications to us, which we then process using our patented billing Rules Engine and service operations to avoid reimbursement delays and improve practice performance. Our proprietary database of payer knowledge has been constructed based on over twelve years of experience in handling the physician workflow in thousands of medical practices, with medical claims from tens of thousands of health benefit packages. The core focus of the database is on the payer rules, which are the key drivers of claim payment and denials. Understanding denials allows us to construct rules to avoid future denials across our entire client base, resulting in increased automation of our workflow processes. On average, over 150 rules are added to or revised in our Rules Engine each month. athenaRules has been designed to interact seamlessly with athenaNet in the medical office workflow and with our service operations.

#### ***Work (athenahealth Service Operations)***

athenahealth service operations enable the service teams that collaborate with client staff to achieve successful transactions. Our service operations consist of both knowledgeable staff and technological infrastructure used to execute the key steps



## Table of Contents

associated with proper handling of physician claims and clinical data management. The service operations team is comprised of more than 1,000 people who interact with physicians, providers, and clinicians at all of the key steps in the revenue cycle, including:

- coordinating with payers to ensure that client providers are properly set up for billing;
- checking the eligibility of scheduled patients electronically;
- submitting claims to payers directly or through intermediaries, whether electronically or via printed claim forms;
- obtaining confirmation of claim receipt from payers, either electronically or through phone calls;
- receiving and processing checks and remittance information from payers and documenting the result of payers' responses;
- evaluating denied claims and determining the best approach to appealing or resubmitting claims to obtain payment;
- billing patients for balances that are due;
- compiling and delivering management reporting about the performance of clients at both the account level and the provider level;
- transmitting key clinical data to the revenue cycle workflow to eliminate the need for code re-entry and to permit assembly of all key data elements required to achieve maximum appropriate reimbursement; and
- providing proactive and responsive client support to manage issues, address questions, identify training needs, and communicate trends.

### ***athenaClinicals***

athenaClinicals is our EHR service, which automates and manages medical-record-management-related functions for practices. It assists medical groups with the proper handling of physician documentation, orders, and related inbound and outbound communications to ensure that orders are carried out quickly and accurately. athenaClinicals is designed to improve clinical administrative workflow.

#### *Software (athenaNet)*

Through athenaNet, athenaClinicals displays key clinical measures, by office location related to the drivers of high quality and efficient care delivery, on a workflow dashboard, including lab results requiring review, patient referral requests, prescription requests, and family history of previous exams. athenaClinicals is a 2011/2012 compliant Complete EHR technology and has been certified by the Certification Commission for Healthcare Information Technology ("CCHIT"), an ONC-ATCB, in accordance with the applicable certification criteria. Similar to its functionality within athenaCollector, athenaNet provides comprehensive reporting on a range of clinical results, including distribution of different procedure codes (leveling), incidence of different diagnoses, timeliness of turnaround by lab companies and other intermediaries, and other key performance indicators.

#### *Knowledge (athenaRules)*

Reporting and quality programs have collectively become a greater portion of physician revenue but are very difficult to manage on paper or in a static software system, where the user is not prompted for the appropriate action to be taken. Clinical data must be captured according to the requirements and incentives of different payers and plans. Clinical intermediaries such as laboratories and pharmacy networks require specific formats and data elements, as well. athenaRules is designed to access medication formularies, identify potential medication errors (such as drug-to-drug interactions or allergy reactions), and identify the specific clinical activities that are required to adhere to Pay-for-Performance programs, including Medicare incentive payments under the HITECH Act.

#### *Work (athenahealth Service Operations)*

Medical practices that use an EHR still receive large amounts of paper documentation from third parties. These can include consult letters, lab results, general correspondence, and multiple other document types. Practices can receive an average of over 1,000 clinical documents per provider per month, creating a significant administrative burden. Our service operations capture inbound paper documents, convert them to electronic format, attach them to the appropriate patient chart, classify them according to type, and associate results with the original order where applicable. Additionally, even if the physician creates an order in the EHR, the intended recipient may not accept orders electronically; in that case, we reduce the electronically generated order to paper for delivery on behalf of the practice. We also perform many of the Pay-for-Performance program identification and enrollment tasks on behalf of practices so that they can participate without significant up-front research and effort.

## [Table of Contents](#)

### ***athenaCommunicator***

Through athenaNet, athenaCommunicator—which includes ReminderCall (part of the acquisition of Crest Line Technologies, LLC in September 2008) and other automated patient messaging services, live operator services, and a patient portal—was commercially released in the first half of 2010. These services help reduce patient no-show rates and improve overall schedule density, which increases the number of revenue-generating appointments for our clients. The ability to increase patient outreach also helps provide clinical education and adherence reminders to patients, which increases the quality of care and improves outcomes without increasing practice demand to monitor and contact patients. Reminders may also be used to drive collection of patient self-pay balances. Together, these services provide a personalized, high-quality experience for patients while driving practice performance.

#### *Software (athenaNet)*

athenaCommunicator allows practices to manage many patient communication tasks electronically, including use of automated reminder calls with customizable criteria and opt-out functionality; creation of a self-service patient portal for registration, appointment requests, bill payments, and general communication; automatic generation of emails to patients; and patient education tools. The automated phone calls are multi-purpose and may include appointment reminders, outbound campaigns, and follow-up on outstanding balances while prompting patients to make payments by mail, telephone, or online through our systems.

#### *Knowledge (athenaRules)*

athenaCommunicator allows practices to build a highly flexible set of communication rules with their patients. They can set patient or group-specific communication preferences that will automatically tailor communications to the preferred timing and mode of delivery, including phone call, e-mail, or patient portal. These communication rules allow each patient to receive a personalized experience, including delivery of messages with branding and using the Caller ID of the practice, if desired.

#### *Work (athenahealth Service Operations)*

Practices spend a great deal of time fielding phone calls from patients on topics ranging from scheduling requests, bill payment, directions, and clinical cases. As part of the athenaCommunicator service, we provide live operators who field these calls on behalf of practices, including redirected automated calls for appointment scheduling, patient payments, and message-taking. We also print and mail paper statements to patients on behalf of the practice to assist with patient payment collection. Collectively, these activities expand the availability of the office to patients and help free staff to focus on more critical tasks.

### ***athenaCoordinator***

The result of athenahealth's acquisition of Proxsys LLC in August 2011, athenaCoordinator is a referral cycle management tool that helps streamline the disorganized system of patient care coordination. The connections between practices and points of patient referral are rife with inefficiencies due to patient data redundancies, manual inputs, and errors, resulting in additional practice workload and patient dissatisfaction. With athenaCoordinator, care givers can efficiently deliver a clean referral order to a physician, hospital, or other supply-chain partner. This much-needed improvement in today's health care reduces unnecessary phone calls and faxes, eliminates redundancies, and greatly reduces both the error rate and patient frustration.

#### *Software (athenaNet)*

athenaCoordinator allows providers, via an easy-to-use online portal, to electronically prepare and send a "clean order" for a referral—meaning all the pertinent information needed to streamline care coordination is complete—and a patient can arrive at his or her appointment with another physician, or at a hospital or lab, with information already entered and verified. This information can include the order details, the patient's insurance eligibility, any necessary pre-certification, information the receiving provider needs to fulfill and bill the order, and details on any prior authorizations that are needed. This type of efficient information transfer delivers benefits to both the referring and receiving providers. For the initial care giver, athenaCoordinator reduces time spent managing outbound orders and can provide greater visibility to patient status after the referring visit. For the receiving care giver, athenaCoordinator reduces denials, the time spent processing referrals, and the risk of acting on erroneous information. Referring providers who use athenaClinicals can also receive a detailed care summary of the referral, effectively closing the loop of patient care.

#### *Knowledge (athenaRules)*

As part of a streamlined path of coordinated care information, athenahealth's powerful, cloud-based Rules Engine automatically determines a patient's insurance eligibility after a referring provider enters an order via the web-based portal. This cuts down on the need for practice staff to manually contact an insurer and allows a patient to arrive at a receiving provider with

## [Table of Contents](#)

his or her coverage eligibility already confirmed. Both the patient and the receiving hospital or lab staff can then focus on care and not get bogged down with insurance eligibility research at the point of care.

### *Work (athenahealth Service Operations)*

Preparing referral orders can often require office staff to spend time managing administrative duties—and they'll often not receive follow-up information after a patient has visited a referred lab, physician, or hospital. As part of athenaCoordinator, athenahealth staff takes over this work, benefitting both the referring and receiving providers. athenahealth back-office operations will verify insurance and benefits with payers, secure pre-certification, handle patient registration, collect self-pay from the patient, and electronically deliver the order to the receiving provider in advance of the patient visit.

### **Research and Development**

Our research and development efforts focus on enhancing our service offerings in response to changes in the market and evolving our technology platform to better serve medical practices. All of our clients use the same version of our software, although some athenaRules are designed to take effect locally for particular clients. We continually update our software and rules and execute bimonthly releases of new software functionality for our clients. Our software development life cycle methodology ensures that each software release is properly designed, built, tested, and rolled out. Our software development technologists are primarily located in the United States; we complement this team's work with software development services from third-party technology development providers in Huntsville, Alabama; Pune, India; and Tver, Russia, as well as our own employees at our development center operated through our subsidiary in Chennai, India. In addition to our core software development activities, we dedicate full-time staff to our ongoing development and maintenance of the rules database. On average, over 150 rules are added or revised in our billing Rules Engine each month. We also employ program management and product management personnel, who work continually on improvements to our service operations processes and our service design, respectively.

### *athenaIntelligence*

The team behind athenaRules is based in Watertown, Massachusetts, and is supported by employees at all of our locations. This team is responsible for creating the billing rules that alert clients to potential problems on claims and for the creation of the clinical rules that alert clinical staff to quality measures applicable to particular patients and encounters. Some key metrics delivered by the athenaIntelligence team in 2012 were:

- over 27 different Pay-for-Performance programs built into the Rules Engine; and
- 94.2% of claims resolved on the first submission.

Taken as a whole, these activities result, in most cases, in a direct reduction in practices' work. Rather than submitting a claim with missing information, waiting for adjudication, receiving a denial, and then resubmitting the claim to start the cycle over again, our practices are alerted to issues prior to the first submission. Similarly, practices are spared the tedious process of identifying upcoming appointments for patients that qualify for a specific Pay-for-Performance program and then remembering to track the appropriate measure during the encounter; instead, athenaClinicals introduces the measure seamlessly into the workflow.

### **Operations**

Our operations team assists clients at each critical step in the revenue cycle, clinical cycle, patient cycle, and referral cycle workflow processes and provides services that include insurance benefits packaging, insurance eligibility confirmation, claims submission, claims tracking, remittance posting, denials management, payment processing, formatting of lab requisitions, submission of lab requisitions, and monitoring and classification of all inbound faxes. Additionally, we use third parties for data entry, data matching, data characterization, and outbound and inbound telephone services. We have contracted with International Business Machines Corporation and Vision Business Process Solutions Inc., a subsidiary of Dell, Inc. (formerly Perot Systems Corporation), to provide data entry and other services from facilities located in India and the Philippines to support our operations team. These services are generally commercially available at comparable rates from other service providers.

We depend on satisfied clients to succeed. Our client contracts require minimum commitments by us on a range of tasks, including claims submission, payment posting, claims tracking, and claims denial management. We also commit to our clients that athenaNet is accessible 99.7% of the time, excluding scheduled maintenance windows. Each quarter, our management conducts a survey of clients to identify client concerns and track progress against client satisfaction objectives. In our most recent survey 87.2% of the respondents reported that they would recommend athenahealth to a trusted friend or colleague.

## [Table of Contents](#)

In addition to the services described above, we also provide client support services. There are several client support service activities that take place on a regular basis, including the following:

- client support by our client services center, which is designed to address client questions and concerns rapidly, whether those questions and concerns are registered via a phone call or via an online support case through our customized use of customer relationship management technology;
- account performance monitoring by the account management organization to address open issues and focus clients on the financial results of the co-sourcing relationship; these activities are intended to aid in client performance and retention, determine appropriate adjustments to service pricing at renewal dates, inform clients of the full suite of our services, and provide incremental services when appropriate;
- relationship management by regional leaders of the client services organization to ensure that decision-makers at client practices are satisfied and that regional performance is managed proactively with regard to client satisfaction, client margins, client retention, renewal pricing, and added services; and
- active, real-time performance monitoring for clients with complex and highly scaled operations.

The increased burden on patients to pay for a larger percentage of their health care services, together with the need for care givers to have the ability to determine this patient payment responsibility at the time of service, has led some payers to develop the capability to accept and process claims in real time. This is frequently referred to within the industry as “real time adjudication” (or “RTA”) because it avoids the processing time that adjudication of claims by payers has historically involved. Under an RTA system, payers notify physicians immediately upon receipt of billing information if third-party claims are accepted or rejected, the amount that will be paid by the payer, and the amount that the patient may owe under the particular health plan involved. Taking advantage of this payer capability, we have designed a platform for transacting with payer RTA systems that is payer-neutral and designed to integrate the various payer RTA processes so that our clients experience the same workflow regardless of payer. Using this platform, we have collaborated with three major payers, Highmark Blue Cross Blue Shield, Humana, and United Healthcare, to process RTA transactions with their systems.

## **Sales and Marketing**

We have developed sales and marketing capabilities aimed at expanding our network of physician clients. We expect to expand our network by selling our services to new clients and cross-selling additional services into our client base. We have a direct sales force, which we augment through our channel partners and marketing initiatives.

### ***Direct Sales***

We sell our services primarily through our direct sales force. Our sales force is divided into four groups: the national accounts team, which is dedicated to serving the very largest managed care organizations, including multi-state hospital systems and academic medical centers, as well as those with high growth potential, including for-profit health care systems; the enterprise team, which is dedicated to managed care organizations with 21 or more physicians that are not handled by the national accounts team; the group team, which is dedicated to medical practices with five to twenty physicians; and the small group team, which is dedicated to practices with one to four physicians. Our sales force is supported by personnel in our marketing organization, who provide specialized support for promotional and selling efforts. Due to our ongoing service relationship with clients, we conduct a consultative sales process. This process includes understanding the needs of prospective clients, developing service proposals, and negotiating contracts to enable the commencement of services.

### ***Channel Partners***

In addition to our direct sales force, we maintain business relationships with third parties that promote or support our sales or services within specific industries or geographic regions. We refer to these third parties as “channels” and the individuals and organizations involved as our “channel partners.” In most cases, these relationships are agreements that compensate channel partners for providing us sales lead information that results in sales. These channel partners generally do not make sales but instead provide us with leads that we use to develop new business through our direct sales force. Other channel relationships permit third parties to act as an independent sales representative, a purchasing agent (as in the case of group purchasing organizations), or a joint marketer of combined service offerings that we jointly develop with that third party. In some instances, the channel relationship involves endorsement or promotion of our services by these third parties. In 2012, channel-based leads were associated with approximately 41% of our new business. Our channel relationships include state medical societies, health care information technology product companies, health care product distribution companies, consulting firms, group purchasing organizations, health systems, regional extension centers, and payers. Examples of these types of channel relationships include:

- *Humana Inc. (“Humana”).* In August 2010, we entered into an alliance with Humana to promote a program to reward quality, efficiency, and improved coordination of care for Humana’s Medicare beneficiaries. Under this program, eligible physicians can receive a subsidy from Humana for the purchase of our athenaClinicals service and

## Table of Contents

earn additional revenue above their current fee schedule for meeting certain performance criteria. Humana is one of the nation's largest publicly traded health and supplemental benefits companies.

- *WorldMed Shared Services, Inc. d/b/a PSS World Medical Shared Services, Inc. ("PSS")*. In October 2010, we entered into an agreement with PSS for the marketing and sale of our revenue cycle, clinical cycle, and patient cycle services. Under the terms of the agreement, PSS has a non-exclusive right to distribute, sell, market, and promote our services in the United States (excluding Hawaii) and we will pay PSS commissions based upon the contract value of client orders placed through PSS. According to PSS, they are the largest provider of medical and surgical supplies to the physician market in the United States, with a sales force of more than 750 sales consultants who distribute medical supplies and equipment to approximately 100,000 offices in all 50 states.

### **Marketing Initiatives**

Since our service model is new to most physicians, our marketing and sales objectives are designed to increase awareness of our company, establish the benefits of our service model, and build credibility with prospective clients so that they will view our company as a trustworthy long-term service provider. To execute on this strategy, we have designed and implemented specific activities and programs aimed at converting leads to new clients.

Our marketing initiatives are generally targeted toward specific segments of the medical practice market. These marketing programs primarily consist of:

- traditional print advertising;
- sponsored pay-per-click search advertising and other Internet-focused awareness-building efforts (such as social media, online videos, webinars, and destination websites covering compliance and other issues of interest to medical practices);
- public relations activities aimed at generating media coverage;
- campaigns to engage hospitals in discussions about their approach to the affiliated physician market;
- participation in industry-focused trade shows;
- targeted mail, e-mail, and phone calls to medical practices;
- informational meetings (such as strategic retreats with targeted potential clients); and
- dinner seminar series.

In June 2006, we introduced our annual PayerView rankings to provide an industry-unique framework that systematically addresses what we believe is administrative complexity that exists between payers and providers. PayerView is designed to look at payers' performance based on a number of categories, which combine to provide an overall ranking aimed at quantifying the "ease of doing business with the payer." All data used for the rankings come from our clients' actual claims performance data and depict our experience in dealing with individual payers across the nation. The rankings include payers that meet a threshold of 6,500 claims per quarter in athenaNet.

### **Competition**

We have experienced, and expect to continue to experience, intense competition from a number of companies. Our primary competition is the use of locally installed software to manage revenue cycle, clinical cycle, patient cycle, and referral cycle workflow within the physician's office. Other nationwide competitors have begun introducing services that they refer to as "on-demand" or "software-as-a-service" models, under which software is centrally hosted and services are provided from central locations. Software and service companies that sell practice management and EHR software and medical billing, collection, and referral management services include Allscripts-Misys Healthcare Solutions, Inc.; eClinicalWorks, LLC; Epic Systems Corporation; GE Healthcare; Greenway Medical Technologies, Inc.; Quality Systems, Inc.; Sage Software Healthcare, Inc.; SCI Solutions, Inc.; and Siemens Medical Solutions USA, Inc. As a service company that provides revenue cycle services, we also compete against large billing companies such as Ingenix, a division of United Healthcare, Inc.; McKesson Corp.; and regional billing companies.

The principal competitive factors in our industry include:

- ability to quickly adapt to increasing complexity of the health care reimbursement system;
- size and scope of payer rules knowledge;
- ability to introduce only relevant rules into the workflow at the point of care;
- ease of use and rates of user adoption;
- product functionality and scope of services;
- scope of network connections to support electronic data interactions;
- performance, security, scalability, and reliability of service;

## [Table of Contents](#)

- sale and marketing capabilities of the vendor; and
- financial stability of the vendor.

We believe that we compete favorably with our competitors on the basis of these factors. However, many of our competitors and potential competitors have significantly greater financial, technological, and other resources and name recognition than we do, as well as more established distribution networks and relationships with health care providers. As a result, many of these companies may respond more quickly to new or emerging technologies and standards and changes in customer requirements. These companies may be able to invest more resources than we can in research and development, strategic acquisitions, sales and marketing, and patent prosecution and litigation and to finance capital equipment acquisitions for their customers.

### **Government Regulation**

Although we generally do not contract with U.S. state or local government entities, the services that we provide are subject to a complex array of federal and state laws and regulations, including regulation by the Centers for Medicare and Medicaid Services, or CMS, of the U.S. Department of Health and Human Services, as well as additional regulation.

#### ***Government Regulation of Health Information***

***HIPAA Privacy and Security Rules.*** The Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations that have been issued under it (collectively, “HIPAA”) contain substantial restrictions and requirements with respect to the use and disclosure of individuals’ protected health information. These are embodied in the Privacy Rule and Security Rule portions of HIPAA. The HIPAA Privacy Rule prohibits a covered entity from using or disclosing an individual’s protected health information unless the use or disclosure is authorized by the individual or is specifically required or permitted under the Privacy Rule. The Privacy Rule imposes a complex system of requirements on covered entities for complying with this basic standard. Under the HIPAA Security Rule, covered entities must establish administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of electronic protected health information maintained or transmitted by them or by others on their behalf.

The HIPAA Privacy and Security Rules apply directly to covered entities, such as health care providers who engage in HIPAA-defined standard electronic transactions, health plans, and health care clearinghouses. Because we translate electronic transactions to and from the HIPAA-prescribed electronic forms and other forms, we are considered a clearinghouse, and as such are a covered entity. In addition, our clients are also covered entities. In order to provide clients with services that involve the use or disclosure of protected health information, the HIPAA Privacy and Security Rules require us to enter into business associate agreements with our clients. Such agreements must, among other things, provide adequate written assurances:

- as to how we will use and disclose the protected health information;
- that we will implement reasonable administrative, physical, and technical safeguards to protect such information from misuse;
- that we will enter into similar agreements with our agents and subcontractors that have access to the information;
- that we will report security incidents and other inappropriate uses or disclosures of the information; and
- that we will assist the client in question with certain of its duties under the Privacy Rule.

***HIPAA Transaction Requirements.*** In addition to the Privacy and Security Rules, HIPAA also requires that certain electronic transactions related to health care billing be conducted using prescribed electronic formats. For example, claims for reimbursement that are transmitted electronically to payers must comply with specific formatting standards, and these standards apply whether the payer is a government or a private entity. As a covered entity subject to HIPAA, we must meet these requirements, and moreover, we must structure and provide our services in a way that supports our clients’ HIPAA compliance obligations.

***HITECH Act.*** The HITECH Act, which became law in February 2009, and the regulations issued under it, have provided, among other things, clarification of certain aspects of both the Privacy and Security Rules, expansion of the disclosure requirements for a breach of the Security Rule, and strengthening of the civil and criminal penalties for failure to comply with HIPAA. As these additional requirements become effective, we will be required to comply with them.

***State Laws.*** In addition to the HIPAA Privacy and Security Rules and the requirements imposed by the HITECH Act, most states have enacted patient confidentiality laws that protect against the disclosure of confidential medical information, and many states have adopted or are considering further legislation in this area, including privacy safeguards, security standards, and data security breach notification requirements. Such state laws, if more stringent than HIPAA and HITECH Act requirements, are not preempted by the federal requirements, and we must comply with them. For example, the Massachusetts Office of Consumer Affairs and Business Regulations issued final data security regulations, which became effective in March



## [Table of Contents](#)

2010 and establish minimum standards for protecting and storing personal information about Massachusetts residents contained in paper or electronic format.

### ***Government Regulation of Reimbursement***

Our clients are subject to regulation by a number of governmental agencies, including those that administer the Medicare and Medicaid programs. Accordingly, our clients are sensitive to legislative and regulatory changes in, and limitations on, the government health care programs and changes in reimbursement policies, processes, and payment rates. During recent years, there have been numerous federal legislative and administrative actions that have affected government programs, including adjustments that have reduced or increased payments to physicians and other health care providers and adjustments that have affected the complexity of our work. It is possible that the federal or state governments will implement future reductions, increases, or changes in reimbursement under government programs that adversely affect our client base or our cost of providing our services.

### ***Fraud and Abuse***

A number of federal and state laws, loosely referred to as “fraud and abuse laws,” are used to prosecute health care providers, physicians, and others that make, offer, seek, or receive referrals or payments for products or services that may be paid for through any federal or state health care program and, in some instances, any private program. Given the breadth of these laws and regulations, they are potentially applicable to our business; the transactions that we undertake on behalf of our clients; and the financial arrangements through which we market, sell, and distribute our services. These laws and regulations include:

***Anti-Kickback Laws.*** There are numerous federal and state laws that govern patient referrals, physician financial relationships, and inducements to health care providers and patients. The federal health care programs’ anti-kickback law prohibits any person or entity from offering, paying, soliciting, or receiving anything of value, directly or indirectly, for the referral of patients covered by Medicare, Medicaid, and other federal health care programs or the leasing, purchasing, ordering, or arranging for or recommending the lease, purchase, or order of any item, good, facility, or service covered by these programs. Courts have construed this anti-kickback law to mean that a financial arrangement may violate this law if any one of the purposes of one of the arrangements is to encourage patient referrals or other federal health care program business, regardless of whether there are other legitimate purposes for the arrangement. There are several limited exclusions known as safe harbors that may protect some arrangements from enforcement penalties. These safe harbors have very limited application. Penalties for federal anti-kickback violations are severe, and include imprisonment, criminal fines, civil money penalties with triple damages, and exclusion from participation in federal health care programs. Many states have similar anti-kickback laws, some of which are not limited to items or services for which payment is made by a government health care program.

***False or Fraudulent Claim Laws.*** There are numerous federal and state laws that forbid submission of false information, or the failure to disclose information, in connection with the submission and payment of physician claims for reimbursement. In some cases, these laws also forbid abuse in connection with such submission and payment, for example, by systematic over treatment or duplicate billing for the same services to collect increased or duplicate payments. These laws and regulations may change rapidly, and it is frequently unclear how they apply to our business. For example, one federal false claim law forbids knowing submission to government programs of false claims for reimbursement for medical items or services. Under this law, knowledge may consist of willful ignorance or reckless disregard of falsity. How these concepts apply to services such as ours that rely substantially on automated processes has not been well defined in the regulations or relevant case law. As a result, our errors with respect to the formatting, preparation, or transmission of such claims and any mishandling by us of claims information that is supplied by our clients or other third parties may be determined to, or may be alleged to, involve willful ignorance or reckless disregard of any falsity that is later determined to exist.

In most cases where we are permitted to do so, we charge our clients a percentage of the collections that they receive as a result of our services. To the extent that liability under fraud and abuse laws and regulations requires intent, it may be alleged that this percentage calculation provides us or our employees with incentive to commit or overlook fraud or abuse in connection with submission and payment of reimbursement claims. CMS has stated that it is concerned that percentage-based billing services may encourage billing companies to commit to or overlook fraudulent or abusive practices.

***PPACA.*** In addition to the provisions relating to health care access and delivery, the Patient Protection and Affordable Care Act made changes to health care fraud and abuse laws. The PPACA expands false claim laws, amends key provisions of other anti-fraud and abuse statutes, provides the government with new enforcement tools and funding for enforcement, and enhances both criminal and administrative penalties for noncompliance. The PPACA may result in increased anti-fraud enforcement activities.

***Stark Law and Similar State Laws.*** The Ethics in Patient Referrals Act, known as the Stark Law, prohibits certain types of referral arrangements between physicians and health care entities. Physicians are prohibited from referring patients for certain

## [Table of Contents](#)

designated health services reimbursed under federally funded programs to entities with which they or their immediate family members have a financial relationship or an ownership interest, unless such referrals fall within a specific exception. Violations of the statute can result in civil monetary penalties and/or exclusion from the Medicare and Medicaid programs. Furthermore, reimbursement claims for care rendered under forbidden referrals may be deemed false or fraudulent, resulting in liability under other fraud and abuse laws.

Laws in many states similarly forbid billing based on referrals between individuals and/or entities that have various financial, ownership, or other business relationships. These laws vary widely from state to state.

### ***Corporate Practice of Medicine Laws, Fee-Splitting Laws, and Anti-Assignment Laws***

In many states, there are laws that prohibit non-licensed practitioners from practicing medicine, prevent corporations from being licensed as practitioners, and prohibit licensed medical practitioners from practicing medicine in partnership with non-physicians, such as business corporations. In some states, these prohibitions take the form of laws or regulations forbidding the splitting of physician fees with non-physicians or others. In some cases, these laws have been interpreted to prevent business service providers from charging their physician clients on the basis of a percentage of collections or charges.

There are also federal and state laws that forbid or limit assignment of claims for reimbursement from government-funded programs. Some of these laws limit the manner in which business service companies may handle payments for such claims and prevent such companies from charging their physician clients on the basis of a percentage of collections or charges. In particular, the Medicare program specifically requires that billing agents who receive Medicare payments on behalf of medical care providers must meet the following requirements:

- the agent must receive the payment under an agreement between the provider and the agent;
- the agent's compensation may not be related in any way to the dollar amount billed or collected;
- the agent's compensation may not depend upon the actual collection of payment;
- the agent must act under payment disposition instructions, which the provider may modify or revoke at any time; and
- in receiving the payment, the agent must act only on behalf of the provider, except insofar as the agent uses part of that payment to compensate the agent for the agent's billing and collection services.

Medicaid regulations similarly provide that payments may be received by billing agents in the name of their clients without violating anti-assignment requirements if payment to the agent is related to the cost of the billing service, not related on a percentage basis to the amount billed or collected, and not dependent on collection of payment.

### ***Electronic Prescribing Laws***

States have differing prescription format and signature requirements. Many existing laws and regulations, when enacted, did not anticipate the methods of e-commerce now being developed. However, due in part to recent industry initiatives, federal law and the laws of all 50 states now permit the electronic transmission of prescription orders. In addition, on November 7, 2005, the Department of Health and Human Services published its final E-Prescribing and the Prescription Drug Program regulations, referred to below as the E-Prescribing Regulations. These regulations are required by the Medicare Prescription Drug Improvement and Modernization Act of 2003 ("MMA") and became effective beginning on January 1, 2006. The E-Prescribing Regulations consist of detailed standards and requirements, in addition to the HIPAA standards discussed previously, for prescription and other information transmitted electronically in connection with a drug benefit covered by the MMA's Prescription Drug Benefit. These standards cover not only transactions between prescribers and dispensers for prescriptions but also electronic eligibility and benefits inquiries and drug formulary and benefit coverage information. The standards apply to prescription drug plans participating in the MMA's Prescription Drug Benefit. Aspects of our services are affected by such regulation, as our clients need to comply with these requirements.

### ***Anti-Tampering Laws***

For certain prescriptions that cannot or may not be transmitted electronically from physician to pharmacy, both federal and state laws require that the written forms used exhibit anti-tampering features. For example, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 has since April 2008 required that most prescriptions covered by Medicaid must demonstrate security features that prevent copying, erasing, or counterfeiting of the written form. Because our clients will, on occasion, need to use printed forms, we must take these laws into consideration for purposes of the prescription functions of our athenaClinicals service.

### ***Electronic Health Records Certification Requirements***

The HITECH Act directs the Office of the National Coordinator for Health Information Technology, or ONCHIT, to support and promote meaningful use of certified EHR technology nationwide through the adoption of standards,



## [Table of Contents](#)

implementation specifications, and certification criteria as well as the establishment of certification programs for EHR technology. In January 2011, HHS issued a final rule to establish a permanent certification program for EHR technology, including how organizations can become ONC-Authorized Testing and Certification Bodies (ONC-ATCBs). ONC-ATCBs are required to test and certify that EHR technology is compliant with the standards, implementation specifications, and certification criteria adopted by the Secretary and meet the definition of “certified EHR technology.” In July 2010, the Secretary published the final rule that adopted standards, implementation specifications, and certification criteria for EHR technology. Our athenaClinicals service was certified as a 2011/2012 compliant Complete EHR by CCHIT, an ONC-ATCB, in accordance with the applicable eligible provider certification criteria adopted by the Secretary. While we believe our system is well designed in terms of function and interoperability, we cannot be certain that it will meet future requirements.

### ***United States Food and Drug Administration***

The U.S. Food and Drug Administration (“FDA”) has promulgated a draft policy for the regulation of computer software products as medical devices and a proposed rule for reclassification of medical device data systems under the Federal Food, Drug and Cosmetic Act, as amended, or FDCA. The FDA has stated that health information technology software is a medical device under the FDCA, and we expect that the FDA is likely to become increasingly active in regulating computer software intended for use in health care settings regardless of whether the draft policy or proposed rule is finalized or changed. We anticipate additional guidance on this subject by early 2014, in the form of a report to be issued by the FDA, ONCHIT, and the Federal Communications Commission. This report would propose a regulatory framework for health information technology that promotes innovation, protects patient safety, and avoids regulatory duplication.

If our computer software functionality is considered a medical device under the FDCA, we could be subject to additional regulatory requirements. Under the FDCA, medical devices include any instrument, apparatus, machine, contrivance, or other similar or related article that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease. FDA regulations govern, among other things, product development, testing, manufacture, packaging, labeling, storage, clearance or approval, advertising and promotion, sales and distribution, and import and export. FDA requirements with respect to devices that are determined to pose lesser risk to the public include:

- establishment registration and device listing with the FDA;
- the Quality System Regulation, or QSR, which requires manufacturers, including third-party or contract manufacturers, to follow stringent design, testing, control, documentation, and other quality assurance procedures during all aspects of manufacturing;
- labeling regulations and FDA prohibitions against the advertising and promotion of products for uncleared, unapproved off-label uses and other requirements related to advertising and promotional activities;
- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur;
- corrections and removal reporting regulations, which require that manufacturers report to the FDA any field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health; and
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Non-compliance with applicable FDA requirements can result in, among other things, public warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, failure of the FDA to grant marketing approvals, withdrawal of marketing approvals, a recommendation by the FDA to disallow us from entering into government contracts, and criminal prosecutions. The FDA also has the authority to request repair, replacement, or refund of the cost of any device.

### ***Foreign Regulations***

Our subsidiary in Chennai, India, is subject to additional regulations by the Government of India, as well as its regional subdivisions. These regulations include Indian federal and local corporation requirements, restrictions on exchange of funds, employment-related laws, and qualification for tax status and tax incentives.

### **Intellectual Property**

We rely on a combination of patent, trademark, copyright, and trade secret laws in the United States as well as confidentiality procedures and contractual provisions to protect our proprietary technology, databases, and our brand. Despite these reliances, we believe the following factors are more essential to establishing and maintaining a competitive advantage:

- the statistical and technological skills of our service operations and research and development teams;

## Table of Contents

- the health care domain expertise and payer rules knowledge of our service operations and research and development teams;
- the real-time connectivity of our service offerings;
- the continued expansion of our proprietary Rules Engine; and
- a continued focus on the improved financial results of our clients.

As of December 31, 2012, we held three U.S. patents, with eighteen U.S. patent applications pending, one U.S. provisional patent application pending, and eight foreign patent applications pending. Our first patent relates to our unique patient workflow process, including the Rules Engine, which applies proprietary rules to practice and payer inputs on a live, ongoing basis to produce cleaner health care claims, which can be adjudicated more quickly and efficiently. This patent was granted in November 2009 and expires in December 2023. Our second patent covers the self-service implementation of a practice management system, which allows for our clients to configure their systems themselves by responding to a series of rule-based questions, thus saving time and money. This second patent was granted in May 2010 and expires in July 2029. Our last patent relates to our automated reconciliation of bank transactions with deposit entries in athenaCollector, which helps to speed preparation of month-end financial statements. This patent was granted in December 2012 and expires in May 2030. We will continue to file and prosecute patent applications when and where appropriate to protect our rights in proprietary technologies.

We also rely on a combination of registered and unregistered service marks to protect our brand. Our registered service marks include athenaClinicals, athenaCollector, athenaCommunicator, athenaCoordinator, athenahealth, athenaNet, PayerView, and the athenahealth logo. Anodyne Analytics, Anodyne Dashboard, athenaCare, athenaEnterprise, athenaInsight, athenaOne, athenaRules, ReminderCall, and VaccineView are unregistered service marks. This Annual Report on Form 10-K also includes the registered and unregistered trademarks and service marks of other persons.

We have a policy of requiring key employees and consultants to execute confidentiality agreements upon the commencement of an employment or consulting relationship with us. Our employee agreements also require relevant employees to assign to us all rights to any inventions made or conceived during their employment with us. In addition, we have a policy of requiring individuals and entities with which we discuss potential business relationships to sign non-disclosure agreements. Our agreements with clients include confidentiality and non-disclosure provisions.

### **Seasonality**

There is moderate seasonality in the activity level of medical practices. Typically, discretionary use of physician services declines in the late summer and during the holiday season, which leads to a decline in collections by our physician clients about 30 to 50 days later. In addition, as further explained in “Risk Factors” in Item 1A of Part I of this Annual Report on Form 10-K, our revenues and operating results may fluctuate from quarter to quarter depending on a host of factors including, but not limited to, the severity, length, and timing of seasonal and pandemic illnesses.

### **Employees**

As of December 31, 2012, we had 2,339 full-time employees, with 1,362 in service operations, 353 in sales and marketing, 402 in research and development, and 222 in general and administrative functions. Of these full-time employees, 2,148 were located in the U.S. and 191 were located in Chennai, India. We believe that we have good relationships with our employees. None of our employees are subject to collective bargaining agreements or are represented by a union.

### **Financial Information**

The financial information required under this Item 1 is incorporated herein by reference to Item 8 of this Annual Report on Form 10-K.

### **Where You Can Find More Information**

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, including exhibits, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available through the “Investors” portion of our website ([www.athenahealth.com](http://www.athenahealth.com)) free of charge as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or SEC. Information on our website is not part of this Annual Report on Form 10-K or any of our other securities filings unless specifically incorporated herein by reference. In addition, our filings with the SEC may be accessed through the SEC’s Interactive Data Electronic Applications (IDEA) system at [www.sec.gov](http://www.sec.gov). All statements made in any of our securities filings, including all forward-looking statements or information, are made as of the date of the document in which the statement is included, and we do not assume or undertake any obligation to update any of those statements or documents unless we are required to do so by law.

## [Table of Contents](#)

### **Item 1A. Risk Factors.**

*Our operating results and financial condition have varied in the past and may in the future vary significantly depending on a number of factors. Except for the historical information in this report, the matters contained in this report include forward-looking statements that involve risks and uncertainties. The following factors, among others, could cause actual results to differ materially from those contained in forward-looking statements made in this report and presented elsewhere by management from time to time. Such factors, among others, may have a material adverse effect upon our business, results of operations, and financial condition.*

#### **RISKS RELATED TO OUR BUSINESS — GENERAL**

***We operate in a highly competitive industry, and if we are not able to compete effectively, our business and operating results will be harmed.***

The provision by third parties of revenue cycle services to medical practices has historically been dominated by small service providers who offer highly individualized services and a high degree of specialized knowledge applicable in many cases to a limited medical specialty, a limited set of payers, or a limited geographical area. We anticipate that the software, statistical, and database tools that are available to such service providers will continue to become more sophisticated and effective and that demand for our services could be adversely affected.

Revenue cycle and clinical cycle software for medical practices has historically been dominated by large, well-financed, and technologically sophisticated entities that have focused on software solutions. Some of these entities are now offering “on-demand” services or a “software-as-a-service” model under which software is centrally administered, and these vendors may also provide administrative services. The size, financial strength, and breadth of offerings of the larger entities is increasing as a result of continued consolidation in both the information technology and health care industries. We expect large integrated technology companies to continue to become more active in our markets, both through acquisition and internal investment. As costs fall and technology improves, increased market saturation may change the competitive landscape in favor of competitors with greater scale than we possess. In addition, a few smaller companies have started providing single-instance, Internet-based software using a model similar to ours; the offerings of these smaller companies may reduce the perceived competitive advantage of our services and impact our market share. Further, while the market for patient communication and referral management services is growing and is not as yet dominated by a small group of vendors with significant resources, our patient and referral cycle services face competition from a wide variety of market participants. For example, certain health systems have developed their own patient portals or referral management systems. If we fail to distinguish our patient and referral cycle offerings from the other options available to health care providers, the demand for and market share of those offerings may decrease.

Some of our current large competitors, such as Allscripts-Misys Healthcare Solutions, Inc.; Epic Systems Corporation; GE Healthcare; McKesson Corp.; Quality Systems, Inc.; Sage Software Healthcare, Inc.; and Siemens Medical Solutions USA, Inc., have greater name recognition, longer operating histories, and significantly greater resources than we do. As a result, our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards, or client requirements. In addition, current and potential competitors have established, and may in the future establish, cooperative relationships with vendors of complementary products, technologies, or services to increase the availability of their products to the marketplace. Current or future competitors may consolidate to improve the breadth of their products, directly competing with our integrated offerings. Accordingly, new competitors or alliances may emerge that have greater market share, larger client bases, more widely adopted proprietary technologies, broader offerings, greater marketing expertise, greater financial resources, and larger sales forces than we have, which could put us at a competitive disadvantage. Further, in light of these advantages, even if our services are more effective than the product or service offerings of our competitors, current or potential clients might accept competitive products and services in lieu of purchasing our services. Increased competition is likely to result in pricing pressures, which could negatively impact our sales, profitability, or market share. In addition to new niche vendors, who offer stand-alone products and services, we face competition from existing enterprise vendors, including those currently focused on software solutions, which have information systems in place with clients in our target market. These existing enterprise vendors may now, or in the future, offer or promise products or services with less functionality than our services, but that offer ease of integration with existing systems and that leverage existing vendor relationships.

## [Table of Contents](#)

***The market for Internet-based medical business services may not develop substantially further or develop more slowly than we expect, harming the growth of our business.***

While Internet-based medical business services are becoming more accepted, the market for these services remains narrowly based, and it is uncertain whether these services will achieve and sustain the high levels of demand and market acceptance we anticipate. Our success will depend to a substantial extent on the willingness of enterprises, large and small, to increase their use of on-demand business services in general, and for their revenue, clinical, and patient cycles in particular. Many enterprises have invested substantial personnel and financial resources to integrate established enterprise software into their businesses and therefore may be reluctant or unwilling to switch to an on-demand application service. Furthermore, some enterprises may be reluctant or unwilling to use on-demand application services, because they have concerns regarding the risks associated with the security and reliability, among other things, of the technology delivery model associated with these services. If enterprises do not perceive the benefits of our services, then the market for these services may not expand as much or develop as quickly as we expect, either of which would significantly adversely affect our business, financial condition, or operating results.

***Changes in the health care industry could affect the demand for our services, cause our existing contracts to terminate, and negatively impact the process of negotiating future contracts.***

As the health care industry evolves, changes in our client and vendor bases may reduce the demand for our services, result in the termination of existing contracts, and make it more difficult to negotiate new contracts on terms that are acceptable to us. For example, the current trend toward consolidation of health care providers within hospital systems may cause our existing client contracts to terminate as independent practices are merged into hospital systems. Such larger health care organizations may also have their own practice management services and health IT systems, reducing demand for our services. Similarly, client and vendor consolidation results in fewer, larger entities with increased bargaining power and the ability to demand terms that are unfavorable to us. If these trends continue, we cannot assure you that we will be able to continue to maintain or expand our client base, negotiate contracts with acceptable terms, or maintain our current pricing structure, and our revenues may decrease.

***If we do not continue to innovate and provide services that are useful to users, we may not remain competitive, and our revenues and operating results could suffer.***

Our success depends on providing services that the medical community uses to improve business performance and quality of service to patients. Our competitors are constantly developing products and services that may become more efficient or appealing to our clients. As a result, we must continue to invest significant resources in research and development in order to enhance our existing services and introduce new high-quality services that clients will want. If we are unable to predict user preferences or industry changes, or if we are unable to modify our services on a timely basis, we may lose clients. Our operating results would also suffer if our innovations are not responsive to the needs of our clients, are not appropriately timed with market opportunity, or are not effectively brought to market. As technology continues to develop, our competitors may be able to offer results that are, or that are perceived to be, substantially similar to or better than those generated by our services. This may force us to compete on additional service attributes and to expend significant resources in order to remain competitive.

***Failure to manage our rapid growth effectively could increase our expenses, decrease our revenue, and prevent us from implementing our business strategy.***

We have been experiencing a period of rapid growth. To manage our anticipated future growth effectively, we must continue to maintain, and may need to enhance, our information technology infrastructure and financial and accounting systems and controls, as well as manage expanded operations in geographically distributed locations. We also must attract, train, and retain a significant number of qualified sales and marketing personnel, professional services personnel, software engineers, technical personnel, and management personnel. Failure to manage our rapid growth effectively could lead us to over-invest or under-invest in technology and operations; result in weaknesses in our infrastructure, systems, or controls; give rise to operational mistakes, losses, or loss of productivity or business opportunities; and result in loss of employees and reduced productivity of remaining employees. Our growth could require significant capital expenditures and may divert financial resources and management attention from other projects, such as the development of new services. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our revenue could decline or may grow more slowly than expected, and we may be unable to implement our business strategy.

## [Table of Contents](#)

### ***We may be unable to adequately protect, and we may incur significant costs in enforcing, our intellectual property and other proprietary rights.***

Our success depends in part on our ability to enforce our intellectual property and other proprietary rights. We rely upon a combination of trademark, trade secret, copyright, patent, and unfair competition laws, as well as license and access agreements and other contractual provisions, to protect our intellectual property and other proprietary rights. In addition, we attempt to protect our intellectual property and proprietary information by requiring certain of our employees and consultants to enter into confidentiality, noncompetition, and assignment of inventions agreements. Our attempts to protect our intellectual property may be challenged by others or invalidated through administrative process or litigation. While we have three issued U.S. patents and a number of U.S. and foreign patent applications pending as of December 31, 2012, we may be unable to obtain further meaningful patent protection for our technology. In addition, any patents issued in the future may not provide us with any competitive advantages or may be successfully challenged by third parties.

Agreement terms that address non-competition are difficult to enforce in many jurisdictions and may not be enforceable in any particular case. To the extent that our intellectual property and other proprietary rights are not adequately protected, third parties might gain access to our proprietary information, develop and market products or services similar to ours, or use trademarks similar to ours, each of which could materially harm our business. Existing U.S. federal and state intellectual property laws offer only limited protection. Moreover, the laws of other countries in which we now or may in the future conduct operations or contract for services may afford little or no effective protection of our intellectual property. Further, our platform incorporates open source software components that are licensed to us under various public domain licenses. While we believe that we have complied with our obligations under the various applicable licenses for open source software that we use, there is little or no legal precedent governing the interpretation of many of the terms of certain of these licenses, and therefore the potential impact of such terms on our business is somewhat unknown. The failure to adequately protect our intellectual property and other proprietary rights could materially harm our business.

In addition, if we resort to legal proceedings to enforce our intellectual property rights or to determine the validity and scope of the intellectual property or other proprietary rights of others, the proceedings could be burdensome and expensive, even if we were to prevail. Any litigation that may be necessary in the future could result in substantial costs and diversion of resources and could have a material adverse effect on our business, operating results, or financial condition.

### ***We may be sued by third parties for alleged infringement of their proprietary rights.***

The software and Internet industries are characterized by the existence of a large number of patents, trademarks, and copyrights and by frequent litigation based on allegations of infringement or other violations of intellectual property rights. Moreover, our business involves the systematic gathering and analysis of data about the requirements and behaviors of payers and other third parties, some or all of which may be claimed to be confidential or proprietary. We have received in the past, and may receive in the future, communications from third parties claiming that we have infringed on the intellectual property rights of others. For example, in 2011 a complaint was filed by PPS Data, LLC naming us in a patent infringement case. For additional information regarding this litigation, see Part I, Item 3, “Legal Proceedings.” Our technologies may not be able to withstand such third-party claims of rights against their use. Any intellectual property claims, with or without merit, could be time-consuming and expensive to resolve, divert management attention from executing our business plan, and require us to pay monetary damages or enter into royalty or licensing agreements. In addition, many of our contracts contain warranties with respect to intellectual property rights, and some require us to indemnify our clients for third-party intellectual property infringement claims, which would increase the cost to us of an adverse ruling on such a claim.

Moreover, any settlement or adverse judgment resulting from such a claim could require us to pay substantial amounts of money or obtain a license to continue to use the technology or information that is the subject of the claim, or otherwise restrict or prohibit our use of the technology or information. There can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all, from third parties asserting an infringement claim; that we would be able to develop alternative technology on a timely basis, if at all; or that we would be able to obtain a license to use a suitable alternative technology to permit us to continue offering, and our clients to continue using, our affected services. Accordingly, an adverse determination could prevent us from offering our services to others. In addition, we may be required to indemnify our clients for third-party intellectual property infringement claims, which would increase the cost to us of an adverse ruling for such a claim.

### ***Current and future litigation against us could be costly and time-consuming to defend and could result in additional liabilities.***

We may from time to time be subject to legal proceedings and claims that arise in the ordinary course of business, such as claims brought by our clients in connection with commercial disputes and employment claims made by our current or former employees. Claims may also be asserted by or on behalf of a variety of other parties, including government agencies, patients of

## [Table of Contents](#)

our physician clients, or stockholders. For example, we have entered into a purchase and sale agreement for the property on which our corporate headquarters are located. This property is a former Superfund site, and our ownership of it, or any of our other properties, could expose us to liability under applicable environmental laws. Any litigation involving us may result in substantial costs and may divert management's attention and resources, which may seriously harm our business, overall financial condition, and operating results. Insurance may not cover existing or future claims, be sufficient to fully compensate us for one or more of such claims, or continue to be available on terms acceptable to us. A claim brought against us that is uninsured or underinsured could result in unanticipated costs, thereby reducing our operating results and leading analysts or potential investors to reduce their expectations of our performance resulting in a reduction in the trading price of our stock.

### **RISKS RELATED TO OUR BUSINESS — OPERATIONS**

***We depend upon two third-party service providers for important processing functions. If either of these third-party providers does not fulfill its contractual obligations or chooses to discontinue its services, our business and operations could be disrupted and our operating results would be harmed.***

We have entered into service agreements with International Business Machines Corporation and Vision Business Process Solutions Inc., a subsidiary of Dell, Inc. (formerly Perot Systems Corporation), to provide data entry and other services from facilities located in India and the Philippines to support our client service operations. Among other things, these providers process critical claims data and clinical documents. If these services fail or are of poor quality, our business, reputation, and operating results could be harmed. Failure of either service provider to perform satisfactorily could result in client dissatisfaction, disrupt our operations, and adversely affect operating results. With respect to these service providers, we have significantly less control over the systems and processes involved than if we maintained and operated them ourselves, which increases our risk. In some cases, functions necessary to our business are performed on proprietary systems and software to which we have no access. If we need to find an alternative source for performing these functions, we may have to expend significant money, resources, and time to develop the alternative, and if this development is not accomplished in a timely manner and without significant disruption to our business, we may be unable to fulfill our responsibilities to clients or the expectations of clients, with the attendant potential for liability claims and a loss of business reputation, loss of ability to attract or maintain clients, and reduction of our revenue or operating margin.

***Various risks could affect our worldwide operations, exposing us to significant costs.***

We conduct operations in the United States, India, and the Philippines, either directly or through our service providers. Such worldwide operations expose us to potential operational disruptions and costs as a result of a wide variety of events, including local inflation or economic downturn, currency exchange fluctuations, political turmoil, terrorism, labor issues, natural disasters, and pandemics. Any such disruptions or costs could have a negative effect on our ability to provide our services or meet our contractual obligations, the cost of our services, client satisfaction, our ability to attract or maintain clients, and, ultimately, our profits.

***Because competition for our target employees is intense, we may not be able to attract and retain the highly skilled employees we need to support our planned growth.***

To continue to execute on our growth plan, we must attract and retain highly qualified personnel. Competition for these personnel is intense, especially for senior sales executives and engineers with high levels of experience in designing and developing software and Internet-related services. We may not be successful in attracting and retaining qualified personnel. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we have. In addition, in making employment decisions, particularly in the Internet and high-technology industries, job candidates often consider the value of the equity awards they are to receive in connection with their employment. Volatility in the price of our stock or failure to obtain stockholder approval for increases in the number of shares available for grant under our equity plans may, therefore, adversely affect our ability to attract or retain key employees. Furthermore, the requirements to expense equity awards may discourage us from granting the size or type of equity awards that job candidates require to join our company. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

***If we acquire companies or technologies in the future, they could prove difficult to integrate, disrupt our business, dilute stockholder value, and adversely affect our operating results and the value of our common stock.***

As part of our business strategy, we may acquire, enter into joint ventures with, or make investments in complementary companies, services, and technologies in the future. Acquisitions and investments involve numerous risks, including:

- difficulties in identifying and acquiring products, technologies, or businesses that will help our business;



## Table of Contents

- difficulties in integrating operations, technologies, services, and personnel;
- diversion of financial and managerial resources from existing operations;
- the risk of entering new markets in which we have little to no experience;
- risks related to the assumption of known and unknown liabilities;
- the risk of write-offs and the amortization of expenses related to purchased intangible assets; and
- delays in client purchases due to uncertainty and the inability to maintain relationships with clients of the acquired businesses.

As a result, if we fail to properly evaluate acquisitions or investments, we may not achieve the anticipated benefits of any such acquisitions, we may incur costs in excess of what we anticipate, and management resources and attention may be diverted from other necessary or valuable activities.

### **RISKS RELATED TO THE PROPOSED ACQUISITION OF EPOCRATES, INC.**

***Completion of the proposed acquisition of Epocrates, Inc. ("Epocrates") is subject to various closing conditions, involves significant costs, and will require considerable attention from our management. Failure to complete the acquisition could adversely affect our stock price and our future business and operations.***

On January 7, 2013, we entered into a definitive agreement to acquire Epocrates, Inc. ("Epocrates"), a leading provider of clinical content to healthcare providers via a mobile device at the point of care. The completion of the proposed acquisition of Epocrates is subject to the satisfaction of various closing conditions, including the approval by Epocrates' stockholders, and we cannot assure you that such conditions will be satisfied and that the acquisition will be successfully completed. In the event that the acquisition is not consummated, we will have spent considerable time and resources, and incurred substantial costs, including costs related to the acquisition, many of which must be paid even if the merger is not completed. If the acquisition is not consummated, our reputation in our industry and in the investment community could be damaged and, as a result, the market price of our common stock could decline.

#### ***We may fail to realize the anticipated benefits of the acquisition of Epocrates.***

The success of the acquisition of Epocrates will depend on, among other things, our ability to combine the businesses of athenahealth and Epocrates in a manner that does not materially disrupt existing relationships and that allows us to achieve operational synergies and capitalize on the increased brand recognition and customer base of the combined company. If we are not able to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In particular, the acquisition may not be accretive or accelerate sales in near or long term.

athenahealth and Epocrates have operated and will continue to operate independently until the expected close of the acquisition in the early part of 2013. It is possible that the integration process could result in the loss of key employees; the disruption of athenahealth's or Epocrates' ongoing businesses; or inconsistencies in standards, controls, procedures, or policies that could adversely affect our ability to maintain relationships with third parties and employees or to achieve the anticipated benefits of the acquisition. Integration efforts between the two companies will also divert management's attention from our core business and other opportunities that could have been beneficial to our shareholders. An inability to realize the full extent of, or any of, the anticipated benefits of the acquisition, as well as any delays encountered in the integration process, could have an adverse effect on our business and results of operations, which may affect the value of the shares of our common stock after the completion of the acquisition.

Further, the actual integration may result in additional and unforeseen expenses. Operational improvements and actual cost synergies, if achieved at all, may be lower than we expect and may take longer to achieve than we anticipate. If we are not able to adequately address these challenges, athenahealth and Epocrates may be unable to realize the anticipated benefits of the integration of the two companies.

#### ***We expect to incur additional costs in connection with the acquisition of Epocrates and in integrating the companies into a single business.***

During the year ended December 31, 2012, athenahealth incurred legal and professional fees in connection with the Epocrates acquisition of approximately \$0.5 million. We expect to incur additional costs integrating the companies' operations, product offerings, and personnel, which cannot be estimated accurately at this time. If the total costs of the integration exceed the anticipated benefits of the acquisition, our financial results could be adversely affected.

## RISKS RELATED TO OUR BUSINESS — FINANCIALS

***Our operating results have in the past fluctuated and may continue to fluctuate significantly, and if we fail to meet the expectations of analysts or investors, our stock price and the value of an investment in our common stock could decline substantially.***

Our operating results are likely to fluctuate, and if we fail to meet or exceed the expectations of securities analysts or investors, the trading price of our common stock could decline. Moreover, our stock price may be based on expectations of our future performance that may be unrealistic or that may not be met. Some of the important factors that could cause our revenues and operating results to fluctuate from quarter to quarter include:

- the extent to which our services achieve or maintain market acceptance;
- our ability to introduce new services and enhancements to our existing services on a timely basis;
- new competitors and the introduction of enhanced products and services from new or existing competitors;
- the length of our contracting and implementation cycles;
- changes in Client Days in Accounts Receivable;
- the severity, length, and timing of seasonal and pandemic illnesses;
- seasonal declines in the use of physician services, generally in the late summer and during the holiday season, which lead to a decline in collections by our physician clients about 30 to 50 days later;
- the financial condition of our current and future clients;
- changes in client budgets and procurement policies;
- the amount and timing of our investment in research and development activities;
- the amount and timing of our investment in sales and marketing activities;
- technical difficulties or interruptions in our services;
- our ability to hire and retain qualified personnel and maintain an adequate rate of expansion of our sales force;
- changes in the regulatory environment related to health care;
- regulatory compliance costs;
- the timing, size, and integration success of potential future acquisitions; and
- unforeseen legal expenses, including litigation and settlement costs.

Many of these factors are not within our control, and the occurrence of one or more of them might cause our operating results to vary widely. As such, we believe that quarter-to-quarter comparisons of our revenues and operating results may not be meaningful and should not be relied upon as an indication of future performance.

A significant portion of our operating expense is relatively fixed in nature, and planned expenditures are based in part on expectations regarding future revenue and profitability. Accordingly, unexpected revenue shortfalls, lower-than-expected revenue increases as a result of planned expenditures, and longer-than-expected impact on profitability and margins as a result of planned revenue expenditures may decrease our gross margins and profitability and could cause significant changes in our operating results from quarter to quarter. In addition, our future quarterly operating results may fluctuate and may not meet the expectations of securities analysts or investors. If this occurs, the trading price of our common stock could fall substantially, either suddenly or over time.

***If the revenue of our clients decreases, or if our clients cancel or elect not to renew their contracts, our revenue will decrease.***

Under most of our client contracts, we base our charges on a percentage of the revenue that the client realizes while using our services. Many factors may lead to decreases in client revenue, including:

- interruption of client access to our system for any reason;
- our failure to provide services in a timely or high-quality manner;
- failure of our clients to adopt or maintain effective business practices;
- actions by third-party payers of medical claims to reduce reimbursement;
- government regulations and government or other payer actions or inaction reducing or delaying reimbursement; and
- reduction of client revenue resulting from increased competition or other changes in the marketplace for physician services.



## [Table of Contents](#)

The current economic situation may give rise to several of these factors. For example, patients who have lost health insurance coverage due to unemployment or who face increased deductibles imposed by financially struggling employers or insurers could reduce the number of visits those patients make to our physician clients. Patients without health insurance or with reduced coverage may also default on their payment obligations at a higher rate than patients with coverage. Added financial stress on our clients could lead to their acquisition or bankruptcy, which could cause the termination of some of our service relationships. Further, despite the cost benefits that we believe our services provide, prospective clients may wish to delay contract decisions due to implementation costs or be reluctant to make any material changes in their established business methods in the current economic climate. With a reduction in tax revenue, state and federal government health care programs, including reimbursement programs such as Medicaid, may be reduced or eliminated, which could negatively impact the payments that our clients receive. Also, although we currently estimate our expected customer life to be twelve years, this is only an estimate, and there can be no assurance that our clients will elect to renew their contracts for this period of time. Our clients typically purchase one-year contracts that, in most cases, may be terminated on 90 days notice without cause. If our clients' revenue decreases for any of the above or other reasons, or if our clients cancel or elect not to renew their contracts, our revenue will decrease.

***If we are required to collect sales and use taxes on the services we sell in additional jurisdictions, we may be subject to liability for past sales and incur additional related costs and expenses, and our future sales may decrease.***

We may lose sales or incur significant expenses should states be successful in imposing state sales and use taxes on our services. A successful assertion by one or more states that we should collect sales or other taxes on the sale of our services could result in substantial tax liabilities for past sales, decrease our ability to compete with software vendors subject to sales and use taxes, and otherwise harm our business. Each state has different rules and regulations governing sales and use taxes, and these rules and regulations are subject to varying interpretations that may change over time. We review these rules and regulations periodically and, when we believe that our services are subject to sales and use taxes in a particular state, we voluntarily approach state tax authorities in order to determine how to comply with their rules and regulations. We cannot assure you that we will not be subject to sales and use taxes or related penalties for past sales in states where we believe no compliance is necessary.

Vendors of services, like us, are typically held responsible by taxing authorities for the collection and payment of any applicable sales and similar taxes. If one or more taxing authorities determines that taxes should have, but have not, been paid with respect to our services, we may be liable for past taxes in addition to taxes going forward. Liability for past taxes may also include very substantial interest and penalty charges. Our client contracts provide that our clients must pay all applicable sales and similar taxes. Nevertheless, clients may be reluctant to pay back taxes and may refuse responsibility for interest or penalties associated with those taxes. If we are required to collect and pay back taxes and the associated interest and penalties, and if our clients fail or refuse to reimburse us for all or a portion of these amounts, we will have incurred unplanned expenses that may be substantial. Moreover, imposition of such taxes on our services going forward will effectively increase the cost of such services to our clients and may adversely affect our ability to retain existing clients or to gain new clients in the states in which such taxes are imposed.

We may also become subject to tax audits or similar procedures in states where we already pay sales and use taxes. The incurrence of additional accounting and legal costs and related expenses in connection with, and the assessment of, taxes, interest, and penalties as a result of audits, litigation, or otherwise could be materially adverse to our current and future results of operations and financial condition.

***As a result of our variable sales and implementation cycles, we may be unable to recognize revenue to offset expenditures, which could result in fluctuations in our quarterly results of operations or otherwise harm our future operating results.***

The sales cycle for our services can be variable, typically ranging from three to five months from initial contact to contract execution, although this period can be substantially longer. During the sales cycle, we expend time and resources, and we do not recognize any revenue to offset such expenditures. Our implementation cycle is also variable, typically ranging from three to five months from contract execution to completion of implementation, although some of our new-client set-up projects—especially those for larger clients—are complex and require a lengthy delay and significant implementation work. Each client's situation is different, and unanticipated difficulties and delays may arise as a result of failure by us or by the client to meet our respective implementation responsibilities. During the implementation cycle, we expend substantial time, effort, and financial resources implementing our services, but accounting principles do not allow us to recognize the resulting revenue until the service has been implemented, at which time we begin recognition of implementation revenue over an expected attribution period of the longer of the estimated expected customer life, currently twelve years, or the contract term.

## [Table of Contents](#)

Even if implementation has begun, there can be no assurance that we will recognize revenue on a timely basis or at all from our efforts. Implementation for a given client may be canceled, as our contracts typically provide that they can be terminated for any reason or no reason on 90 days notice. Despite the fact that we typically require a deposit in advance of implementation, some clients have canceled before our services have been started. In addition, implementation may be delayed, or the target dates for completion may be extended into the future, for a variety of reasons, including the needs and requirements of the client, delays with payer processing, and the volume and complexity of the implementations awaiting our work. If implementation periods are extended, our provision of the revenue cycle, clinical cycle, or patient cycle services upon which we realize most of our revenues will be delayed, and our financial condition may be adversely affected. In addition, cancellation of any implementation after it has begun may involve loss to us of time, effort, and expenses invested in the canceled implementation process and lost opportunity for implementing paying clients in that same period of time.

These factors may contribute to substantial fluctuations in our quarterly operating results, particularly in the near term and during any period in which our sales volume is relatively low. As a result, in future quarters our operating results could fall below the expectations of securities analysts or investors, in which event our stock price would likely decrease.

### **RISKS RELATED TO OUR SERVICE OFFERINGS**

***Our proprietary software or our services may not operate properly, which could damage our reputation, give rise to claims against us, or divert application of our resources from other purposes, any of which could harm our business and operating results.***

Proprietary software development is time-consuming, expensive, and complex. Unforeseen difficulties can arise. We may encounter technical obstacles, and it is possible that we discover additional problems that prevent our proprietary athenaNet application from operating properly. If athenaNet does not function reliably or fails to achieve client expectations in terms of performance, clients could assert liability claims against us or attempt to cancel their contracts with us. This could damage our reputation and impair our ability to attract or maintain clients.

Moreover, information services as complex as those we offer have in the past contained, and may in the future develop or contain, undetected defects or errors. We cannot assure you that material performance problems or defects in our services will not arise in the future. Errors may result from receipt, entry, or interpretation of patient information or from interface of our services with legacy systems and data that we did not develop and the function of which is outside of our control. Despite testing, defects or errors may arise in our existing or new software or service processes. Because changes in payer requirements and practices are frequent and sometimes difficult to determine except through trial and error, we are continuously discovering defects and errors in our software and service processes compared against these requirements and practices. These defects and errors and any failure by us to identify and address them could result in loss of revenue or market share, liability to clients or others, failure to achieve market acceptance or expansion, diversion of development resources, injury to our reputation, and increased service and maintenance costs. Defects or errors in our software and service processes might discourage existing or potential clients from purchasing services from us. Correction of defects or errors could prove to be impossible or impracticable. The costs incurred in correcting any defects or errors or in responding to resulting claims or liability may be substantial and could adversely affect our operating results.

In addition, clients relying on our services to collect, manage, and report clinical, business, and administrative data may have a greater sensitivity to service errors and security vulnerabilities than clients of software products in general. We market and sell services that, among other things, provide information to assist care providers in tracking and treating ill patients. Any operational delay in or failure of our technology or service processes may result in the disruption of patient care and could cause harm to patients and thereby harm our business and operating results.

Our clients or their patients may assert claims against us alleging that they suffered damages due to a defect, error, or other failure of our software or service processes. A product liability claim or errors or omissions claim could subject us to significant legal defense costs and adverse publicity, regardless of the merits or eventual outcome of such a claim.

***If our security measures are breached or fail, and unauthorized access is obtained to a client's data, our services may be perceived as not being secure, clients may curtail or stop using our services, and we may incur significant liabilities.***

Our services involve the web-based storage and transmission of clients' proprietary information and protected health information of patients. Because of the sensitivity of this information, security features of our software are very important. From time to time we may detect vulnerabilities in our systems, which, even if they do not result in a security breach, may reduce customer confidence and require substantial resources to address. If our security measures are breached or fail as a result of third-party action, employee error, malfeasance, insufficiency, defective design, or otherwise, someone may be able to obtain unauthorized access to client or patient data. As a result, our reputation could be damaged, our business may suffer, and we could face damages for contract breach, penalties for violation of applicable laws or regulations, and significant costs for

## [Table of Contents](#)

remediation and efforts to prevent future occurrences. We rely upon our clients as users of our system for key activities to promote security of the system and the data within it, such as administration of client-side access credentialing and control of client-side display of data. On occasion, our clients have failed to perform these activities. Failure of clients to perform these activities may result in claims against us that this reliance was misplaced, which could expose us to significant expense and harm to our reputation. Because techniques used to obtain unauthorized access or to sabotage systems change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures. If an actual or perceived breach of our security occurs, the market perception of the effectiveness of our security measures could be harmed and we could lose sales and clients. In addition, our clients may authorize or enable third parties to access their client data or the data of their patients on our systems. Because we do not control such access, we cannot ensure the complete propriety of that access or integrity or security of such data in our systems.

***Failure by our clients to obtain proper permissions and waivers may result in claims against us or may limit or prevent our use of data, which could harm our business.***

We require our clients to provide necessary notices and to obtain necessary permissions and waivers for use and disclosure of the information that we receive, and we require contractual assurances from them that they have done so and will do so. If they do not obtain necessary permissions and waivers, then our use and disclosure of information that we receive from them or on their behalf may be limited or prohibited by state or federal privacy laws or other laws. This could impair our functions, processes, and databases that reflect, contain, or are based upon such data and may prevent use of such data. In addition, this could interfere with or prevent creation or use of rules, and analyses or limit other data-driven activities that benefit us. Moreover, we may be subject to claims or liability for use or disclosure of information by reason of lack of valid notice, permission, or waiver. These claims or liabilities could subject us to unexpected costs and adversely affect our operating results.

***Various events could interrupt clients' access to athenaNet, exposing us to significant costs.***

The ability to access athenaNet is critical to our clients' administration of care, cash flow, and business viability. Our operations and facilities are vulnerable to interruption or damage from a number of sources, many of which are beyond our control, including, without limitation: (i) power loss and telecommunications failures; (ii) fire, flood, hurricane, and other natural disasters; (iii) software and hardware errors, failures, or crashes in our systems or those of others; and (iv) computer viruses, hacking, and similar disruptive problems in our systems or those of others. We attempt to mitigate these risks through various means, including redundant infrastructure, disaster recovery plans, business continuity plans, separate test systems, and change control and system security measures, but our precautions will not protect against all potential problems. If clients' access is interrupted because of problems in the operation of our facilities, we could be exposed to significant claims by clients or their patients, particularly if the access interruption is associated with problems in the timely delivery of funds due to clients or medical information relevant to patient care. Our plans for disaster recovery and business continuity rely in part upon third-party providers of related services, and if those vendors fail us at a time that our systems are not operating correctly, we could incur a loss of revenue and liability for failure to fulfill our obligations. Any significant instances of system downtime could negatively affect our reputation and ability to retain clients and sell our services, which would adversely impact our revenues.

In addition, retention and availability of patient care and physician reimbursement data are subject to federal and state laws governing record retention, accuracy, and access. Some laws impose obligations on our clients and on us to produce information to third parties and to amend or expunge data at their direction. Our failure to meet these obligations may result in liability that could increase our costs and reduce our operating results.

***Interruptions or delays in service from our third-party data-hosting facilities could impair the delivery of our services and harm our business.***

In addition to the services we provide from our offices, we currently serve our clients from three third-party data-hosting facilities located in the greater Boston, Massachusetts, and Dallas-Fort Worth, Texas, areas. These facilities are operated by Colospace Inc. and two subsidiaries of Digital Realty Trust, Inc. In addition, in December 2009 we signed a contract with a major provider of disaster recovery services, SunGard Availability Services, LP, to store our disaster recovery plans and provide disaster recovery testing services. In the case of a significant event at any of our data centers, we could move operations from that data center to our other data centers within a reasonable timeframe.

However, these facilities are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunications failures, and similar events. They are also subject to break-ins, sabotage, intentional acts of vandalism, and similar misconduct. Despite precautions taken at these facilities, the occurrence of a natural disaster or an act of terrorism, a decision to close the facilities without adequate notice, or other unanticipated problems at two or more of the facilities could result in lengthy interruptions in our service. Even with our disaster recovery arrangements, our services could be interrupted.

## [Table of Contents](#)

***We rely on Internet infrastructure, bandwidth providers, data center providers, other third parties, and our own systems for providing services to our users, and any failure or interruption in the services provided by these third parties or our own systems could expose us to litigation and negatively impact our relationships with users, adversely affecting our brand and our business.***

Our ability to deliver our Internet- and telecommunications-based services is dependent on the development and maintenance of the infrastructure of the Internet and other telecommunications services by third parties. This includes maintenance of a reliable network backbone with the necessary speed, data capacity, and security for providing reliable Internet access and services and reliable telephone, facsimile, and pager systems. Our services are designed to operate without interruption in accordance with our service level commitments. However, we have experienced and expect that we will experience interruptions and delays in services and availability from time to time. We rely on internal systems as well as third-party vendors, including data center, bandwidth, and telecommunications equipment providers, to provide our services. We do not maintain redundant systems or facilities for some of these services. In the event of a catastrophic event with respect to one or more of these systems or facilities, we may experience an extended period of system unavailability, which could negatively impact our relationship with users. To operate without interruption, both we and our service providers must guard against:

- damage from fire, power loss, and other natural disasters;
- communications failures;
- software and hardware errors, failures, and crashes;
- security breaches, computer viruses, and similar disruptive problems; and
- other potential interruptions.

Any disruption in the network access, telecommunications, or co-location services provided by these third-party providers or any failure of or by these third-party providers or our own systems to handle current or higher volume of use could significantly harm our business. We exercise limited control over these third-party vendors, which increases our vulnerability to problems with services they provide.

Any errors, failures, interruptions, or delays experienced in connection with these third-party technologies and information services or our own systems could negatively impact our relationships with users and adversely affect our business and could expose us to third-party liabilities. Although we maintain insurance for our business, the coverage under our policies may not be adequate to compensate us for all losses that may occur. In addition, we cannot provide assurance that we will continue to be able to obtain adequate insurance coverage at an acceptable cost.

The reliability and performance of the Internet may be harmed by increased usage or by denial-of-service attacks. The Internet has experienced a variety of outages and other delays as a result of damages to portions of its infrastructure, and it could face outages and delays in the future. These outages and delays could reduce the level of Internet usage as well as the availability of the Internet to us for delivery of our Internet-based services.

***We rely on third-party computer hardware and software that may be difficult to replace or that could cause errors or failures of our services, which could damage our reputation, harm our ability to attract and maintain clients, and decrease our revenue.***

We rely on computer hardware purchased or leased and software licensed from third parties in order to offer our services, including database software from Oracle Corporation and storage devices from International Business Machines Corporation and EMC Corporation. These licenses are generally commercially available on varying terms; however, it is possible that this hardware and software may not continue to be available on commercially reasonable terms, or at all. Any loss of the right to use any of this hardware or software could result in delays in the provisioning of our services until equivalent technology is either developed by us, or, if available, is identified, obtained, and integrated, which could harm our business. Any errors or defects in third-party hardware or software could result in errors or a failure of our services, which could damage our reputation, harm our ability to attract and maintain clients, and decrease our revenue.

***We are subject to the effect of payer and provider conduct that we cannot control and that could damage our reputation with clients and result in liability claims that increase our expenses.***

We offer certain electronic claims submission services for which we rely on content from clients, payers, and others. While we have implemented certain features and safeguards designed to maximize the accuracy and completeness of claims content, these features and safeguards may not be sufficient to prevent inaccurate claims data from being submitted to payers. Should inaccurate claims data be submitted to payers, we may experience poor operational results and may be subject to liability claims, which could damage our reputation with clients and result in liability claims that increase our expenses.

## [Table of Contents](#)

***If our services fail to provide accurate and timely information, or if our content or any other element of any of our services is associated with faulty clinical decisions or treatment, we could have liability to clients, clinicians, or patients, which could adversely affect our results of operations.***

Our software, content, and services are used to assist clinical decision-making and provide information about patient medical histories and treatment plans. If our software, content, or services fail to provide accurate and timely information or are associated with faulty clinical decisions or treatment, then clients, clinicians, or their patients could assert claims against us that could result in substantial costs to us, harm our reputation in the industry, and cause demand for our services to decline.

Our proprietary athenaClinicals service is utilized in clinical decision-making, provides access to patient medical histories, and assists in creating patient treatment plans, including the issuance of prescription drugs. If our athenaClinicals service fails to provide accurate and timely information, or if our content or any other element of that service is associated with faulty clinical decisions or treatment, we could have liability to clients, clinicians, or patients.

The assertion of such claims and ensuing litigation, regardless of its outcome, could result in substantial cost to us, divert management's attention from operations, damage our reputation, and decrease market acceptance of our services. We attempt to limit by contract our liability for damages and to require that our clients assume responsibility for medical care and approve key system rules, protocols, and data. Despite these precautions, the allocations of responsibility and limitations of liability set forth in our contracts may not be enforceable, be binding upon patients, or otherwise protect us from liability for damages.

We maintain general liability and insurance coverage, but this coverage may not continue to be available on acceptable terms or may not be available in sufficient amounts to cover one or more large claims against us. In addition, the insurer might disclaim coverage as to any future claim. One or more large claims could exceed our available insurance coverage.

Our proprietary software may contain errors or failures that are not detected until after the software is introduced or updates and new versions are released. It is challenging for us to test our software for all potential problems because it is difficult to simulate the wide variety of computing environments or treatment methodologies that our clients may deploy or rely upon. From time to time we have discovered defects or errors in our software, and such defects or errors can be expected to appear in the future. Defects and errors that are not timely detected and remedied could expose us to risk of liability to clients, clinicians, and patients and cause delays in introduction of new services, result in increased costs and diversion of development resources, require design modifications, or decrease market acceptance or client satisfaction with our services.

If any of these risks occur, they could materially adversely affect our business, financial condition, or results of operations.

***We may be liable for use of incorrect or incomplete data that we provide, which could harm our business, financial condition, and results of operations.***

We store and display data for use by health care providers in treating patients. Our clients or third parties provide us with most of these data. If these data are incorrect or incomplete or if we make mistakes in the capture or input of these data, adverse consequences, including death, may occur and give rise to product liability and other claims against us. In addition, a court or government agency may take the position that our storage and display of health information exposes us to personal injury liability or other liability for wrongful delivery or handling of health care services or erroneous health information. While we maintain insurance coverage, we cannot assure that this coverage will prove to be adequate or will continue to be available on acceptable terms, if at all. Even unsuccessful claims could result in substantial costs and diversion of management resources. A claim brought against us that is uninsured or underinsured could harm our business, financial condition, and results of operations.

## RISKS RELATED TO REGULATION

### *Government regulation of health care creates risks and challenges with respect to our compliance efforts and our business strategies.*

The health care industry is highly regulated and is subject to changing political, legislative, regulatory, and other influences. Existing and new laws and regulations affecting the health care industry could create unexpected liabilities for us, cause us to incur additional costs, and restrict our operations. Many health care laws are complex, and their application to specific services and relationships may not be clear. In particular, many existing health care laws and regulations, when enacted, did not anticipate the health care information services that we provide, and these laws and regulations may be applied to our services in ways that we do not anticipate. Our failure to accurately anticipate the application of these laws and regulations, or our other failure to comply, could create liability for us, result in adverse publicity, and negatively affect our business. Some of the risks we face from health care regulation are described below:

*False or Fraudulent Claim Laws.* There are numerous federal and state laws that forbid submission of false information, or the failure to disclose information, in connection with submission and payment of physician claims for reimbursement. In some cases, these laws also forbid abuse in connection with such submission and payment. Any failure of our services to comply with these laws and regulations could result in substantial liability (including, but not limited to, criminal liability), adversely affect demand for our services, and force us to expend significant capital, research and development, and other resources to address the failure. Errors by us or our systems with respect to entry, formatting, preparation, or transmission of claim information may be determined or alleged to be in violation of these laws and regulations. Any determination by a court or regulatory agency that our services violate these laws could subject us to civil or criminal penalties, invalidate all or portions of some of our client contracts, require us to change or terminate some portions of our business, require us to refund portions of our services fees, cause us to be disqualified from serving clients doing business with government payers, and have an adverse effect on our business.

In most cases where we are permitted to do so, we calculate charges for our services based on a percentage of the collections that our clients receive as a result of our services. To the extent that violations or liability for violations of these laws and regulations require intent, it may be alleged that this percentage calculation provides us or our employees with incentive to commit or overlook fraud or abuse in connection with submission and payment of reimbursement claims. The U.S. Centers for Medicare and Medicaid Services has stated that it is concerned that percentage-based billing services may encourage billing companies to engage in or overlook fraudulent or abusive practices.

In addition, we may contract with third parties that offer software relating to the selection or verification of codes used to identify and classify the services for which reimbursement is sought. Submission of codes that do not accurately reflect the services provided or the location or method of their provision may constitute a violation of false or fraudulent claims laws. Our ability to comply with these laws depends on the coding decisions made by our clients and the accuracy of our vendors' software and services in suggesting possible codes to our clients and verifying that proper codes have been selected.

*HIPAA and other Health Privacy Regulations.* There are numerous federal and state laws related to patient privacy. In particular, the Health Insurance Portability and Accountability Act of 1996, or HIPAA, includes privacy standards that protect individual privacy by limiting the uses and disclosures of individually identifiable health information and implementing data security standards that require covered entities to implement administrative, physical, and technological safeguards to ensure the confidentiality, integrity, availability, and security of individually identifiable health information in electronic form. HIPAA also specifies formats that must be used in certain electronic transactions, such as claims, payment advice, and eligibility inquiries. Because we translate electronic transactions to and from HIPAA-prescribed electronic formats and other forms, we are considered a clearinghouse and, as such, a covered entity subject to HIPAA. In addition, our clients are also covered entities and are mandated by HIPAA to enter into written agreements with us—known as business associate agreements—that require us to safeguard individually identifiable health information. Business associate agreements typically include:

- a description of our permitted uses of individually identifiable health information;
- a covenant not to disclose that information except as permitted under the agreement and to make our subcontractors, if any, subject to the same restrictions;
- assurances that appropriate administrative, physical, and technical safeguards are in place to prevent misuse of that information;
- an obligation to report to our client any use or disclosure of that information other than as provided for in the agreement;
- a prohibition against our use or disclosure of that information if a similar use or disclosure by our client would violate the HIPAA standards;



## Table of Contents

- the ability of our clients to terminate the underlying support agreement if we breach a material term of the business associate agreement and are unable to cure the breach;
- the requirement to return or destroy all individually identifiable health information at the end of our support agreement; and
- access by the Department of Health and Human Services to our internal practices, books, and records to validate that we are safeguarding individually identifiable health information.

We may not be able to adequately address the business risks created by HIPAA implementation. Furthermore, we are unable to predict what changes to HIPAA or other laws or regulations might be made in the future or how those changes could affect our business or the costs of compliance. For example, the provisions of the HITECH Act and the regulations issued under it have provided clarification of certain aspects of both the Privacy and Security Rules, expansion of the disclosure requirements for a breach of the Security Rule, and strengthening of the civil and criminal penalties for failure to comply with HIPAA. In addition, ONCHIT is coordinating the ongoing development of standards to enable interoperable health information technology infrastructure nationwide based on the widespread adoption of electronic health records in the health care sector. We are unable to predict what, if any, impact the changes in such standards will have on our compliance costs or our services.

In addition, some payers and clearinghouses with which we conduct business interpret HIPAA transaction requirements differently than we do. Where clearinghouses or payers require conformity with their interpretations as a condition of effecting transactions, and their interpretations are no less stringent than ours, we seek to comply with their interpretations.

The HIPAA transaction standards include proper use of procedure and diagnosis codes. Since these codes are selected or approved by our clients, and since we do not verify their propriety, some of our capability to comply with the transaction standards is dependent on the proper conduct of our clients.

Among our services, we provide telephone reminder services to patients, Internet- and telephone-based access to medical test results, pager and email notification to practices of patient calls, and patient call answering services. We believe that reasonable efforts to prevent disclosure of individually identifiable health information have been and are being taken in connection with these services, including the use of multiple-password security. However, any failure of our clients to provide accurate contact information for their patients or physicians or any breach of our telecommunications systems could result in a disclosure of individually identifiable health information.

In addition to the HIPAA Privacy and Security Rules and the HITECH Act requirements, most states have enacted patient confidentiality laws that protect against the disclosure of confidential medical and other personally identifiable information, and many states have adopted or are considering further legislation in this area, including privacy safeguards, security standards, and data security breach notification requirements. Such state laws, if more stringent than HIPAA and HITECH Act requirements, are not preempted by the federal requirements, and we are required to comply with them.

Failure by us to comply with any of the federal and state standards regarding patient privacy may subject us to penalties, including civil monetary penalties and, in some circumstances, criminal penalties. In addition, such failure may injure our reputation and adversely affect our ability to retain clients and attract new clients.

In addition to false claims and HIPAA requirements, we are subject to a variety of other regulatory schemes, including:

- *Anti-Kickback and Anti-Bribery Laws.* There are federal and state laws that govern patient referrals, physician financial relationships, and inducements to health care providers and patients. For example, the federal health care programs' anti-kickback law prohibits any person or entity from offering, paying, soliciting, or receiving anything of value, directly or indirectly, for the referral of patients covered by Medicare, Medicaid, and other federal health care programs or the leasing, purchasing, ordering, or arranging for or recommending the lease, purchase, or order of any item, good, facility, or service covered by these programs. Many states also have similar anti-kickback laws that are not necessarily limited to items or services for which payment is made by a federal health care program. Moreover, both federal and state laws forbid bribery and similar behavior. Any determination by a state or federal regulatory agency that any of our activities or those of our clients, vendors, or channel partners violate any of these laws could subject us to civil or criminal penalties, require us to change or terminate some portions of our business, require us to refund a portion of our service fees, disqualify us from providing services to clients doing business with government programs, and have an adverse effect on our business. For example, one aspect of our athenaCoordinator service is the preparation and submission of electronic orders from providers to other participants in the health care system (*e.g.*, hospitals, labs, and specialists). As the recipients of those orders will in certain instances pay us for the submission of accurate, complete, and readable orders instead of the handwritten and often incomplete orders traditionally submitted, our service could potentially be seen as providing referrals to the order recipients in exchange for payment. Although the Office of Inspector General issued an Advisory Opinion in November 2011 stating that our receipt of payments in such instances would not violate federal anti-kickback laws, we cannot predict whether changes in the law or our

## [Table of Contents](#)

services might lead to a challenge of the legality of those services by government regulators. Even an unsuccessful challenge by regulatory authorities of our activities could result in adverse publicity and could require a costly response from us.

- *Anti-Referral Laws.* There are federal and state laws that forbid payment for patient referrals, patient brokering, remuneration of patients, or billing based on referrals between individuals or entities that have various financial, ownership, or other business relationships with health care providers. In many cases, billing for care arising from such actions is illegal. These vary widely from state to state, and one of the federal laws—called the Stark Law—is very complex in its application. Any determination by a state or federal regulatory agency that any of our clients violate or have violated any of these laws may result in allegations that claims that we have processed or forwarded are improper. This could subject us to civil or criminal penalties, require us to change or terminate some portions of our business, require us to refund portions of our services fees, and have an adverse effect on our business. Even an unsuccessful challenge by regulatory authorities of our activities could result in adverse publicity and could require a costly response from us.
- *Corporate Practice of Medicine Laws and Fee-Splitting Laws.* Many states have laws forbidding physicians from practicing medicine in partnership with non-physicians, such as business corporations. In some states, including New York, these take the form of laws or regulations forbidding splitting of physician fees with non-physicians or others. In some cases, these laws have been interpreted to prevent business service providers from charging their physician clients on the basis of a percentage of collections or charges. We have varied our charge structure in some states to comply with these laws, which may make our services less desirable to potential clients. Any determination by a state court or regulatory agency that our service contracts with our clients violate these laws could subject us to civil or criminal penalties, invalidate all or portions of some of our client contracts, require us to change or terminate some portions of our business, require us to refund portions of our services fees, and have an adverse effect on our business. Even an unsuccessful challenge by regulatory authorities of our activities could result in adverse publicity and could require a costly response from us.
- *Anti-Assignment Laws.* There are federal and state laws that prohibit or limit assignment of claims for reimbursement from government-funded programs. In some cases, these laws have been interpreted in regulations or policy statements to limit the manner in which business service companies may handle checks or other payments for such claims and to limit or prevent such companies from charging their physician clients on the basis of a percentage of collections or charges. Any determination by a state court or regulatory agency that our service contracts with our clients violate these laws could subject us to civil or criminal penalties, invalidate all or portions of some of our client contracts, require us to change or terminate some portions of our business, require us to refund portions of our service fees, and have an adverse effect on our business. Even an unsuccessful challenge by regulatory authorities of our activities could result in adverse publicity and could require a costly response from us.
- *Prescribing Laws.* The use of our software by physicians to perform a variety of functions relating to prescriptions, including electronic prescribing, electronic routing of prescriptions to pharmacies, and dispensing of medication, is governed by state and federal law, including fraud and abuse laws, drug control regulations, and state department of health regulations. States have differing prescription format requirements, and, due in part to recent industry initiatives, federal law and the laws of all 50 states now provide a regulatory framework for the electronic transmission of prescription orders. Regulatory authorities such as the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services may impose functionality standards with regard to electronic prescribing and EHR technologies. Any determination that we or our clients have violated prescribing laws may expose us to liability, loss of reputation, and loss of business. These laws and requirements may also increase the cost and time necessary to market new services and could affect us in other respects not presently foreseeable.
- *Electronic Health Records Laws.* A number of federal and state laws govern the use and content of electronic health record systems, including fraud and abuse laws that may affect how such technology is provided. As a company that provides EHR functionality, our systems and services must be designed in a manner that facilitates our clients' compliance with these laws. Because this is a topic of increasing state and federal regulation, we expect additional and continuing modification of the current legal and regulatory environment. We cannot predict the content or effect of possible future regulation on our business activities. The software component of our athenaClinicals service was certified as a 2011/2012 compliant Complete EHR by CCHIT, an ONC-ATCB, in accordance with the applicable certification criteria adopted by the Secretary of the U.S. Department of Health and Human Services (HHS). The 2011/2012 criteria support the Stage 1 meaningful use measures required to qualify eligible providers and hospitals for funding under the HITECH Act. However, such certification does not represent an endorsement of our athenaClinicals service by HHS or guarantee the receipt of incentive payments. While we believe that our system is well designed in terms of function and interoperability, we cannot be certain that it will meet future requirements.
- *Claims Transmission Laws.* Our services include the manual and electronic transmission of our client's claims for reimbursement from payers. Federal and various state laws provide for civil and criminal penalties for any person who



## Table of Contents

submits, or causes to be submitted, a claim to any payer (including, without limitation, Medicare, Medicaid, and any private health plans and managed care plans) that is false or that overbills or bills for items that have not been provided to the patient. Although we do not determine what is billed to a payer, to the extent that such laws apply to a service that merely transmits claims on behalf of others, we could be subject to the same civil and criminal penalties as our clients.

- **Prompt Pay Laws.** Laws in many states govern prompt payment obligations for health care services. These laws generally define claims payment processes and set specific time frames for submission, payment, and appeal steps. They frequently also define and require clean claims. Failure to meet these requirements and timeframes may result in rejection or delay of claims. Failure of our services to comply may adversely affect our business results and give rise to liability claims by clients.
- **Medical Device Laws.** The U.S. Food and Drug Administration (FDA) has promulgated a draft policy for the regulation of computer software products as medical devices under the 1976 Medical Device Amendments to the Federal Food, Drug and Cosmetic Act. In addition, in February 2011 the FDA issued a final rule regarding regulation of Medical Device Data Systems (MDDSs), which are systems that are intended to transfer, store, convert, or display medical device data. While EHRs are expressly exempted from the final rule, it is possible that future changes in our services could involve the transfer, storage, conversion, or display of medical device data. In addition, a report, due by early 2014 from the FDA, ONCHIT, and the Federal Communications Commission, is expected to propose a regulatory framework for health information technology for the purpose of promoting innovation, protecting patient safety, and avoiding regulatory duplication. To the extent that our software is considered a medical device under the policy or an MDDS under the final rule, or is the subject of additional regulation promulgated as a result of the report, we, as a provider of application functionality, could be required, depending on the functionality, to:
  - register and list our products with the FDA;
  - notify the FDA and demonstrate substantial equivalence to other products on the market before marketing our functionality; or
  - obtain FDA approval by demonstrating safety and effectiveness before marketing our functionality.

The FDA can impose extensive requirements governing pre- and post-market conditions, such as service investigation and others relating to approval, labeling, and manufacturing. In addition, the FDA can impose extensive requirements governing development controls and quality assurance processes.

***Potential health care reform and new regulatory requirements placed on our software, services, and content could impose increased costs on us, delay or prevent our introduction of new services types, and impair the function or value of our existing service types.***

Our services may be significantly impacted by health care reform initiatives and will be subject to increasing regulatory requirements, either of which could affect our business in a multitude of ways. If substantive health care reform or applicable regulatory requirements are adopted, we may have to change or adapt our services and software to comply. Reform or changing regulatory requirements may also render our services obsolete or may block us from accomplishing our work or from developing new services. This may in turn impose additional costs upon us to adapt to the new operating environment or to further develop services or software. For example, the conversion to the ICD-10 standard for coding medical diagnoses will likely cause significant disruption to our industry and consume a large amount of resources on our part. Such reforms may also make introduction of new service types more costly or more time-consuming than we currently anticipate. Such changes may even prevent introduction by us of new services or make the continuation of our existing services unprofitable or impossible.

***Potential additional regulation of the disclosure of health information outside the United States may adversely affect our operations and may increase our costs.***

Federal or state governmental authorities may impose additional data security standards or additional privacy or other restrictions on the collection, use, transmission, and other disclosures of health information. Legislation has been proposed at various times at both the federal and the state level that would limit, forbid, or regulate the use or transmission of medical information outside of the United States. Such legislation, if adopted, may render our use of our off-shore partners, such as our data-entry and customer service providers, International Business Machines Corporation and Vision Business Process Solutions Inc., for work related to such data impracticable or substantially more expensive. Alternative processing of such information within the United States may involve substantial delay in implementation and increased cost.

## [Table of Contents](#)

### ***Due to the particular nature of certain services we provide or the manner in which we provide them, we may be subject to government regulation unrelated to health care.***

While our services are primarily subject to government regulations pertaining to health care, certain aspects of those services may require us to comply with regulatory schemes from other areas. Examples of such regulatory schema include:

***Antitrust Laws.*** Our national cloud-based network allows us access to cost and pricing data for a large number of providers in most regional markets, as well as to the contracted rates for third-party payers. To the extent that our services enable providers to compare their cost and pricing data with those of their competitors, those providers could collude to increase the pricing for their services, to reduce the compensation they pay their employees, or to collectively negotiate agreements with third parties. Similarly, if payers are able to compare their contracted rates of payment to providers, those payers may seek to reduce the amounts they might otherwise pay. Such actions may be deemed to be anti-competitive and a violation of federal antitrust laws. To the extent that we are deemed to have enabled such activities, we could be subject to fines and penalties imposed by the U.S. Department of Justice or the Federal Trade Commission and be required to curtail or terminate the services that permitted such collusion.

***Debt Collection Laws.*** As a billing service that offers patient communication and registration services, our employees or those of our service providers may from time to time come into contact with patients who owe our clients outstanding amounts. Communications with patients that relate to amounts owed may be deemed to subject us or our service providers to federal or state debt collection laws and regulations. Such laws and regulations, if deemed to apply to us, could require registration with government agencies and compliance with significant administrative obligations ( e.g., to maintain an in-state office with local employees), which could result in increased expenses and subject us to fines and penalties for violation. Following the disclosure in 2012 of the methods used by debt collector Accretive Health to obtain payment of amounts owed by patients to one of its hospital clients, heightened focus on debt collection practices may lead to additional regulation and greater scrutiny of existing debt collection practices.

### ***Errors or illegal activity on the part of our clients may result in claims against us.***

We require our clients to provide us with accurate and appropriate data and directives for our actions. We also rely upon our clients as users of our system to perform key activities in order to produce proper claims for reimbursement. Failure of our clients to provide these data and directives or to perform these activities may result in claims against us alleging that our reliance was misplaced or unreasonable or that we have facilitated or otherwise participated in submission of false claims.

### ***If participants in our channel marketing and sales lead programs do not maintain appropriate relationships with current and potential clients, our sales accomplished with their help or data may be unwound and our payments to them may be deemed improper.***

We maintain a series of relationships with third parties that we term “channel relationships.” These relationships take different forms under different contractual language. Some relationships help us identify sales leads. Other relationships permit third parties to act as value-added resellers or as independent sales representatives for our services. In some cases, for example in the case of some membership organizations, these relationships involve endorsement of our services as well as other marketing activities. In each of these cases, we require contractually that the third party disclose information to and limit their relationships with potential purchasers of our services for regulatory compliance reasons. If these third parties do not comply with these regulatory requirements or if our requirements are deemed insufficient, sales accomplished with the data or help that they have provided, as well as the channel relationships themselves, may not be enforceable, may be unwound, and may be deemed to violate relevant laws or regulations. Third parties that, despite our requirements, exercise undue influence over decisions by current and prospective clients, occupy positions with obligations of fidelity or fiduciary obligations to current and prospective clients, or who offer bribes or kickbacks to current and prospective clients or their employees may be committing illegal acts that could render any resulting contract between us and the client unenforceable or in violation of relevant laws or regulations. Any misconduct by these third parties with respect to current or prospective clients, any failure to follow contractual requirements, or any insufficiency of those contractual requirements may result in allegations that we have encouraged or participated in illegal behavior and that payments to such third parties under our channel contracts are improper. This misconduct could subject us to civil or criminal claims and liabilities, require us to change or terminate some portions of our business, require us to refund portions of our services fees, and adversely affect our revenue and operating margin. Even an unsuccessful challenge of our activities could result in adverse publicity, require costly response from us, impair our ability to attract and maintain clients, and lead analysts or investors to reduce their expectations of our performance, resulting in reduction in the market price of our stock.

## [Table of Contents](#)

***Our services present the potential for embezzlement, identity theft, or other similar illegal behavior by our employees or subcontractors with respect to third parties.***

Among other things, our services involve handling mail from payers and from patients for many of our clients, and this mail frequently includes original checks and credit card information and occasionally includes currency. Even in those cases in which we do not handle original documents or mail, our services also involve the use and disclosure of personal and business information that could be used to impersonate third parties or otherwise gain access to their data or funds. If any of our employees or subcontractors takes, converts, or misuses such funds, documents, or data, we could be liable for damages, and our business reputation could be damaged or destroyed. In addition, we could be perceived to have facilitated or participated in illegal misappropriation of funds, documents, or data and therefore be subject to civil or criminal liability.

***Subsidy of services similar to ours may reduce client demand if we do not participate in such programs.***

In the past few years, entities such as the Massachusetts Healthcare Consortium have offered to subsidize adoption by physicians of EHR technology. In addition, federal regulations have been changed to permit such subsidy from additional sources, subject to certain limitations, and the current administration passed the HITECH Act, which provides federal support for EHR initiatives. While we have qualified for and participated in many of such subsidy programs, we cannot guarantee that we will be able to do so in the future. To the extent that we do not participate in such programs, demand for our services may be reduced, which may decrease our revenues.

## **RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK**

***The price of our common stock may continue to be volatile.***

The trading price of our common stock has been and is likely to remain highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control or unrelated to our operating performance. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this Annual Report on Form 10-K, these factors include:

- the operating performance of similar companies;
- the overall performance of the equity markets;
- announcements by us or our competitors of acquisitions, business plans, or commercial relationships;
- threatened or actual litigation;
- changes in laws or regulations relating to the provision of health care or the sale of health insurance;
- any major change in our board of directors or management;
- publication of research reports or news stories about us, our competitors, or our industry or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- large volumes of sales of our shares of common stock by existing stockholders; and
- general political and economic conditions.

In addition, the stock market in general, and the market for Internet-related companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company’s securities. This litigation, if instituted against us, could result in very substantial costs; divert our management’s attention and resources; and harm our business, operating results, and financial condition.

***If a substantial number of shares become available for sale and are sold in a short period of time, the market price of our common stock could decline.***

If our existing stockholders sell a large number of shares of our common stock or the public market perceives that these sales may occur, the market price of our common stock could decline. As of December 31, 2012, we had approximately 36.3 million shares of common stock outstanding. Moreover, certain holders of shares of our common stock have rights, subject to some conditions, to require us to file registration statements covering the shares they currently hold, or to include these shares in registration statements that we may file for ourselves or other stockholders.

We have also registered all common stock that we may issue under our 1997 Stock Plan, 2000 Stock Plan, 2007 Stock Option and Incentive Plan, and 2007 Employee Stock Purchase Plan. As of December 31, 2012, we had outstanding options to purchase approximately 2.5 million shares of common stock (approximately 1.4 million of which were exercisable at December 31, 2012) that, if exercised, would result in those shares becoming available for sale in the public market. As of

## [Table of Contents](#)

December 31, 2012, we had outstanding restricted stock units totaling approximately 1.1 million that, if vested, would result in those shares becoming available for sale in the public market. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock.

***Actual or potential sales of our stock by our employees, including members of our senior management team, pursuant to pre-arranged stock trading plans could cause our stock price to fall or prevent it from increasing for numerous reasons, and actual or potential sales by such persons could be viewed negatively by other investors.***

In accordance with the guidelines specified under Rule 10b5-1 of the Securities and Exchange Act of 1934 and our policies regarding stock transactions, a number of our directors and employees, including members of our senior management team, have adopted and will continue to adopt pre-arranged stock trading plans to sell shares of our common stock that they hold or will hold as the result of exercise or vesting of equity grants. Generally, stock sales under such plans by members of our senior management team and directors require public filings. Actual or potential sales of our stock by such persons could cause our stock price to fall or prevent it from increasing for numerous reasons. For example, actual or potential sales by such persons could be viewed negatively by other investors.

***Provisions in our certificate of incorporation and by-laws or Delaware law might discourage, delay, or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Provisions of our certificate of incorporation and by-laws and Delaware law may discourage, delay, or prevent a merger, acquisition, or other change in control that stockholders may consider favorable, including transactions in which they might otherwise receive a premium for their shares of our common stock. These provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions include:

- limitations on the removal of directors;
- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to act by written consent or to call special meetings; and
- the ability of our board of directors to make, alter, or repeal our by-laws.

The affirmative vote of the holders of at least 75% of our shares of capital stock entitled to vote is necessary to amend or repeal the above provisions of our certificate of incorporation. As our board of directors has the ability to designate the terms of and issue new series of preferred stock without stockholder approval, the effective number of votes required to make such changes could increase. Also, absent approval of our board of directors, our by-laws may only be amended or repealed by the affirmative vote of the holders of at least 75% of our shares of capital stock entitled to vote.

In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder (generally an entity that, together with its affiliates, owns, or within the last three years has owned, 15% or more of our voting stock) for a period of three years after the date of the transaction in which the entity became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that stockholders could receive a premium for their common stock in an acquisition.

***We do not currently intend to pay dividends on our common stock, and, consequently, stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.***

We have never declared or paid any cash dividends on our common stock and do not currently intend to do so for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, investors are not likely to receive any dividends on their common stock for the foreseeable future, and the success of an investment in shares of our common stock will depend upon any future appreciation in its value. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

### **Item 1B. *Unresolved Staff Comments.***

None.

## [Table of Contents](#)

### **Item 2. *Properties.***

As of December 31, 2012, we own a complex of buildings, including approximately 133,000 square feet of office space, on approximately 53 acres of land in Belfast, Maine, as well as a conference and training facility on approximately 396 acres of land in Northport, Maine. We lease the remainder of our facilities. Our primary location is 311 Arsenal Street in Watertown, Massachusetts, where we lease 223,235 square feet, which is under lease until June 30, 2015; on December 5, 2012, we entered into a purchase and sale agreement with The President and Fellows of Harvard College for the property containing these leased premises. We also lease 23,636 square feet in Alpharetta, Georgia, through October 31, 2013; 19,730 square feet in Birmingham, Alabama, through February 28, 2014; and 37,506 square feet in Chennai, India, through our Indian subsidiary, athenahealth Technology Private Limited, until October 31, 2014. Our servers are housed at our headquarters and our Belfast, Maine, offices and also in data centers in Bedford, Massachusetts; Waltham, Massachusetts; Dallas, Texas; and Orlando, Florida.

### **Item 3. *Legal Proceedings.***

On July 18, 2011, we filed a complaint against ADP AdvancedMD, Inc. in the United States District Court for the District of Massachusetts. The complaint alleges that ADP AdvancedMD, Inc. has infringed two of our U.S. Patents: No. 7,617,116, which was issued on November 10, 2009, for “Practice Management and Billing Automation System” and No. 7,720,701, which was issued on May 18, 2010, for “Automated Configuration of Medical Practice Management Systems.” On May 16, 2012, the Court entered the parties’ joint stipulation of dismissal without prejudice of claims and counterclaims related to U.S. Patent No. 7,720,701. A Markman Hearing was held on September 14, 2012. The Court has not yet issued its Markman decision. We are seeking permanent injunctive relief, damages, pre- and post-judgment costs and interest, and attorneys’ fees.

On July 28, 2011, a complaint was filed by PPS Data, LLC naming us in a patent infringement case ( *PPS Data, LLC v. athenahealth, Inc.*, Civil Action No. 3:11-cv-00746, United States District Court for the Middle District of Florida). The complaint alleges that we have infringed U.S. Patent No. 6,343,271 with a listed issue date of January 29, 2002, entitled “Electronic Creation, Submission, Adjudication, and Payment of Health Insurance Claims” (the “’271 Patent”). The complaint seeks an injunction enjoining infringement, damages, pre- and post-judgment costs and interest, and attorneys’ fees. On September 8, 2011, we filed a motion to dismiss, or, in the alternative, a motion for summary judgment. On October 18, 2011, the plaintiff filed a motion for leave to amend its complaint to allege that we have infringed on U.S. Patent No. 6,341,265 with a listed issue date of January 22, 2002, entitled “Provider claim editing and settlement system,” and U.S. Patent No. 7,194,416 with a listed issue date of March 20, 2007, entitled “Interactive creation and adjudication of health care insurance claims.” The Court granted the plaintiff’s motion for leave to amend its complaint on December 21, 2011, and on December 23, 2011, the plaintiff filed its amended complaint. On December 27, 2011, we filed a motion to dismiss, or, in the alternative, a motion for summary judgment of non-infringement with respect to the ‘271 Patent. On December 29, 2011, the United States Patent and Trademark Office granted our request for reexamination of the ‘271 Patent. On January 9, 2012, we filed a motion to stay the case pending completion of the patent reexamination, and on March 1, 2012, the Court granted our motion to stay the case. We believe that we have meritorious defenses to the amended complaint and will continue to contest the claims vigorously.

In addition, from time to time we may be subject to other legal proceedings, claims, and litigation arising in the ordinary course of business. We do not, however, currently expect that the ultimate costs to resolve any pending matter will have a material effect on our consolidated financial position, results of operations, or cash flows.

### **Item 4. *Mine Safety Disclosures.***

None.

**PART II****Item 5.        *Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.*****Market Information**

Our common stock is listed on the NASDAQ Global Select Market under the trading symbol “ATHN.” The following table sets forth, for each of the periods indicated, the high and low sales prices per share of our common stock as reported by the NASDAQ Global Select Market.

	High	Low
<b>Fiscal Year Ended December 31, 2012</b>		
First Quarter	\$ 78.24	\$ 48.75
Second Quarter	\$ 87.16	\$ 69.34
Third Quarter	\$ 97.37	\$ 78.67
Fourth Quarter	\$ 92.56	\$ 56.33
<b>Fiscal Year Ended December 31, 2011</b>		
First Quarter	\$ 50.56	\$ 40.40
Second Quarter	\$ 47.96	\$ 38.97
Third Quarter	\$ 72.70	\$ 41.08
Fourth Quarter	\$ 66.99	\$ 40.79

**Holders**

The last reported sale price of our common stock on the NASDAQ Global Select Market on February 7, 2013, was \$88.37 per share. As of February 7, 2013, we had 102 holders of record of our common stock. Because many shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

**Dividends**

We have never declared or paid any dividends on our capital stock. We currently intend to retain any future earnings and do not intend to declare or pay cash dividends on our common stock in the foreseeable future. Any future determination to pay dividends will be, subject to applicable law, at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions, and capital requirements.

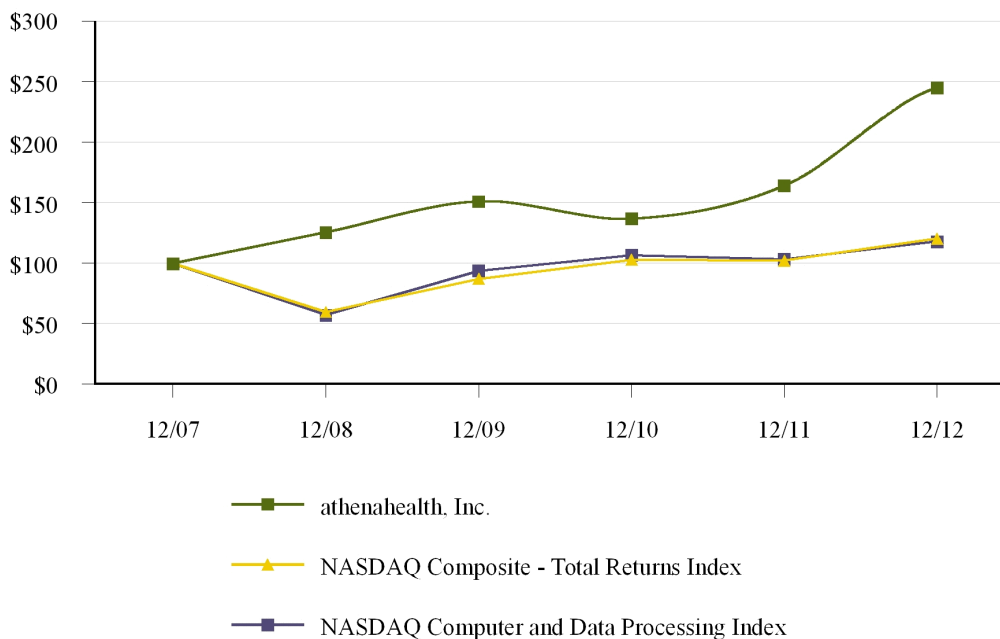
**Performance Graph**

*The following performance graph and related information shall not be deemed “soliciting material” or to be “filed” with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933 or Securities Exchange Act of 1934, each as amended, except to the extent that we specifically incorporate it by reference into such filing.*

## [Table of Contents](#)

Set forth below is a graph comparing the cumulative total stockholder return on our common stock with the NASDAQ Composite-Total Returns Index and the NASDAQ Computer and Data Processing Index for each of the last five fiscal years ended December 31, 2012, assuming an investment of \$100 at the beginning of such period and the reinvestment of any dividends.

### **Comparison of 5 Year Cumulative Total Return Among athenahealth, Inc., the NASDAQ Composite, and the NASDAQ Computer and Data Processing Index**



	12/07	12/08	12/09	12/10	12/11	12/12
athenahealth, Inc.	\$ 100	\$ 126	\$ 151	\$ 137	\$ 164	\$ 245
NASDAQ Composite-Total Returns Index	\$ 100	\$ 60	\$ 87	\$ 103	\$ 102	\$ 120
NASDAQ Computer and Data Processing Index	\$ 100	\$ 58	\$ 94	\$ 107	\$ 104	\$ 118

#### **Recent Sales of Unregistered Securities**

None.

#### **Issuer Purchases of Equity Securities**

During the quarter ended December 31, 2012, there were no purchases made by us, on our behalf, or by any “affiliated purchasers” of shares of our common stock.



## [Table of Contents](#)

### Item 6. *Selected Financial Data.*

The following tables summarize our consolidated financial data for the periods presented. You should read the following financial information together with the information under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the related notes to these consolidated financial statements appearing elsewhere in this Form 10-K. Historical results are not necessarily indicative of the results to be expected in future periods.

	Years Ended December 31,				
	2012	2011	2010	2009	2008
(In thousands, except per share data)					
Revenue:					
Business services	\$ 408,496	\$ 312,768	\$ 237,145	\$ 183,230	\$ 131,879
Implementation and other	13,775	11,299	8,393	5,297	4,403
Total revenue	422,271	324,067	245,538	188,527	136,282
Expenses (1):					
Direct operating	166,886	122,795	96,582	79,017	59,947
Selling and marketing	104,300	79,775	52,675	34,072	22,827
Research and development	33,792	23,343	18,448	14,348	10,600
General and administrative	57,025	48,711	43,119	36,111	29,330
Depreciation and amortization	25,641	16,710	11,117	7,767	5,993
Total expenses	387,644	291,334	221,941	171,315	128,697
Operating income	34,627	32,733	23,597	17,212	7,585
Other income (expense)	251	147	(497)	893	815
Income before income tax (provision)	34,878	32,880	23,100	18,105	8,400
Income tax (provision) benefit (3)	(16,146)	(13,834)	(10,396)	(8,829)	23,202
Net income	\$ 18,732	\$ 19,046	\$ 12,704	\$ 9,276	\$ 31,602
Net income per share — basic	\$ 0.52	\$ 0.54	\$ 0.37	\$ 0.28	\$ 0.97
Net income per share — diluted	\$ 0.50	\$ 0.53	\$ 0.36	\$ 0.27	\$ 0.91
Weighted average shares used in computing net income per share — basic	35,956	35,046	34,181	33,584	32,746
Weighted average shares used in net income per share — diluted	37,133	36,050	35,204	34,917	34,777

	As of December 31,				
	2012	2011	2010	2009	2008
(In thousands)					
Balance Sheet Data:					
Cash, cash equivalents and short-term investments	\$ 193,080	\$ 119,865	\$ 116,175	\$ 82,849	\$ 86,994
Current assets	274,184	183,136	163,650	126,379	123,816
Total assets (4)	428,452	348,786	261,170	211,077	169,571
Current liabilities	66,817	59,573	40,592	37,489	25,310
Total non-current liabilities	49,987	52,742	49,825	46,270	39,226
Total liabilities	116,804	112,315	90,417	83,759	64,536
Total indebtedness including current portion	—	—	9,216	12,388	10,416
Total stockholders’ equity	311,648	236,471	170,753	127,318	105,035

## [Table of Contents](#)

	Years Ended December 31,				
	2012	2011	2010	2009	2008
	(In thousands)				
(1) Amounts include stock-based compensation as follows:					
Direct operating costs	\$ 5,619	\$ 3,173	\$ 2,298	\$ 1,589	\$ 872
Selling and marketing	7,717	5,645	3,509	2,126	1,383
Research and development	3,213	2,311	2,014	1,015	1,086
General and administrative	10,687	7,772	6,656	3,584	2,217
Total stock-based compensation expense	<u>\$ 27,236</u>	<u>\$ 18,901</u>	<u>\$ 14,477</u>	<u>\$ 8,314</u>	<u>\$ 5,558</u>
Amortization of capitalized stock-based compensation related to software development (2)	257	—	—	\$ —	\$ —
Total	<u>\$ 27,493</u>	<u>\$ 18,901</u>	<u>\$ 14,477</u>	<u>\$ 8,314</u>	<u>\$ 5,558</u>

- (2) In addition, for the year ended December 31, 2012, \$0.8 million of stock-based compensation was capitalized in the line item Capitalized Software Costs in the Consolidated Balance Sheet for which \$0.3 million was included in the line item Depreciation and Amortization Expense in the Consolidated Statement of Income. The amount of stock-based compensation related to capitalized software development costs in prior periods was not significant.
- (3) In the year ended December 31, 2008, we determined that a valuation allowance was no longer needed on our deferred tax assets. Accordingly, the 2008 results include the reversal of a \$23.9 million valuation allowance.
- (4) In 2010, we began purchasing certain available-for-sale investments that had a maturity date longer than one-year, which we classify in investments and other assets on the consolidated balance sheet. Included in total assets are cash, cash equivalents and short-term investments of \$193.1 million, \$119.9 million and \$116.2 million at December 31, 2012, 2011, and 2010, respectively and long-term investments of \$0.0 million, \$18.6 million and \$5.6 million at December 31, 2012, 2011, and 2010, respectively; therefore total cash, cash equivalents and available for sale investments equal \$193.1 million, \$138.5 million and \$121.8 million at December 31, 2012, 2011, and 2010, respectively.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

*The following discussion and analysis should be read in conjunction with our consolidated financial statements, the accompanying notes to these financial statements, and the other financial information that appear elsewhere in this Annual Report on Form 10-K. This discussion contains predictions, estimates, and other forward-looking statements that involve a number of risks and uncertainties. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential," or "continue"; the negative of these terms; or other comparable terminology. Actual results may differ materially from those discussed in these forward-looking statements due to a number of factors, including those set forth in the section entitled "Risk Factors" and elsewhere in this Annual Report on Form 10-K.*

*Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. Except as required by law, we are under no duty to update or revise any of the forward-looking statements, whether as a result of new information, future events, or otherwise, after the date of Annual Report on Form 10-K.*

**Overview**

athenahealth provides business services that help medical caregivers achieve and sustain financial health by collecting more money and exercising more control over their administrative tasks. These services are designed to reduce the administrative burden of complex billing rules, quality measurement and reporting, clinical documentation and data exchange, patient communication and referrals, and many of the related tasks that distract medical care givers and staff from delivering care. Our services are delivered and consumed through a single instance of our cloud-based platform, athenaNet. We differentiate our services by regularly deploying updates and improvements through athenaNet to clients without any action on the part of the client. athenaNet enables us to quickly implement our solution at a low up-front cost and to seamlessly work in tandem with our clients in real time.

The services provided through our single-instance cloud are currently packaged as four integrated components: athenaCollector for revenue cycle management, athenaClinicals for electronic health record management, athenaCommunicator for patient communication management, and athenaCoordinator for referral cycle management. The use of our single-instance platform allows all clients to benefit from the collective knowledge of all of our other clients through our patented billing Rules Engine and our clinical Quality Management Engine. Our clients use these rules engines to monitor and benchmark their performance with peer practices across the network. Complementing athenaCollector is our business intelligence offering, Anodyne Solutions, which provides physicians and practice managers with comprehensive, detailed insight into practice performance, and Healthcare Data Services, which offers practices a better understanding of the cost and quality of the care they provide to their patients.

Each service we provide is supported by a model comprised of three distinct components: Software, Knowledge, and Work. The cloud-based software is provided at no extra charge to users but is the primary conduit through which we exchange information between clients, payers, and our staff of experts. Knowledge is infused into each of our services via our Rules Engine as we work with clients, payers, and other partners to codify rules associated with reimbursement, clinical quality measures, and other factors related to our clients' performance. The third component to each of our services is the Work that we perform on behalf of our clients. Wherever possible, we replace manual processes with automation, but where automation is not possible, we provide that manual labor rather than returning it to clients to be completed. This unique service model of Software, Knowledge, and Work has allowed us to align our success with our clients' performance, creating a continual cycle of improvement and efficiency. We charge clients a percentage of collections in most cases, so our financial results are a direct reflection of our ability to drive revenue to medical practices.

For the year ended December 31, 2012, we generated revenue of \$422.3 million from the sale of our services compared to \$324.1 million for the year ended December 31, 2011, and \$245.5 million for the year ended December 31, 2010. Given the scope of our market opportunity, we have increased our spending each year on growth, innovation, and infrastructure.

Our revenue is predominately derived from business services that we provide on an ongoing basis. This revenue is generally determined as a percentage of payments collected by us on behalf of our clients, so the key drivers of our revenue include growth in the number of physicians and other medical providers working within our client accounts, the collections of these physicians, and the number of services purchased. To provide these services, we incur expenses in several categories, including direct operating, selling and marketing, research and development, general and administrative, and depreciation and amortization expense. In general, our direct operating expense increases as our volume of work increases, whereas our selling and marketing expense increases in proportion to our intended growth rate of adding new accounts to our network of physician clients. Our other expense categories are less directly related to growth of revenues and relate more to our planning for the

## [Table of Contents](#)

future, our overall business management activities, and our infrastructure. We manage our cash and our use of credit facilities to ensure adequate liquidity, in adherence to related financial covenants.

### **Recent Developments**

#### ***Epocrates, Inc.***

On January 7, 2013, the Company entered into a definitive agreement to acquire Epocrates, Inc. (“Epocrates”), a leading provider of clinical content to healthcare providers via a mobile device at the point of care. Upon the consummation of the acquisition, the issued and outstanding shares of Epocrates common stock will be canceled and automatically converted into the right to receive \$11.75 in cash, without interest, and all outstanding options and restricted stock unit awards under Epocrates’ equity compensation plans will be assumed by the Company. Each outstanding option and restricted stock unit award shall be exercisable or shall be settled upon the same terms and conditions as under the applicable Epocrates equity compensation plan, except that each option shall be exercisable for, and each restricted stock unit shall be converted into the right to receive, shares of the Company’s common stock using an exchange ratio based on the average closing sales prices per share of the Company’s common stock for the ten trading days ending on the second trading day prior to the closing of the acquisition. The acquisition is expected to enable the Company to accelerate awareness of athenahealth’s services across the physician market and deliver high-value information to the clinical community. The transaction is expected to close in the early part of 2013 and is subject to various closing conditions, including the requisite Epocrates stockholder approval and the expiration or termination of any waiting period under Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended. During the year ended December 31, 2012, the Company incurred legal and professional fees in connection with the acquisition of \$0.5 million, which are included in general and administrative expenses.

#### ***Watertown, MA Corporate Headquarters - Arsenal on the Charles***

On December 5, 2012, we entered into a purchase and sale agreement with the President and Fellows of Harvard College to acquire the real estate commonly known as the Arsenal on the Charles, an expansive 29 acre, multi-building, commercial property situated less than 10 miles outside of downtown Boston where we currently lease our headquarters, and related operating activities. The purchase price will be approximately \$169 million, subject to the terms and conditions of the purchase and sale agreement, and the transaction is expected to close in the second quarter of 2013, subject to the satisfactory completion of due diligence by athenahealth. We have incurred legal and professional fees in connection with the acquisition of \$0.7 million during the year ended December 31, 2012, which are included in general and administrative expenses.

#### ***2013 Commitment Letter***

On January 7, 2013, we entered into a commitment letter, pursuant to which Bank of America, N.A. committed to increase its commitment to provide revolving loans under our credit facility by an amount up to \$55 million as a source of funding for the Epocrates transaction.

### **Critical Accounting Policies**

Our discussion and analysis of our results of operations and liquidity and capital resources are based on our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States (GAAP). In connection with the preparation of our consolidated financial statements, we are required to make assumptions and estimates about future events, and apply judgments that affect the reported amounts of assets, liabilities, revenue, expenses, and the related disclosures. We base our assumptions, estimates and judgments on historical experience, current trends and other factors we believe to be relevant at the time we prepared our consolidated financial statements. On a regular basis, we review the accounting policies, assumptions, estimates and judgments to ensure that our consolidated financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

The preparation of our consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosures of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Significant estimates and assumptions are used for, but are not limited to: (1) revenue recognition; including our estimated expected customer life; (2) asset impairments; (3) depreciable lives of assets; (4) fair value of stock options; (5) allocation of direct and indirect expenses; (6) fair value of contingent consideration and acquired intangible assets in a business combination; and (7) litigation reserves. Future events and their effects cannot be predicted with certainty, and accordingly, our accounting estimates require the exercise of judgment. The accounting estimates used in the preparation of our consolidated financial statements will change as new events occur, as more experience is acquired, as additional information is

obtained, and as our operating environment changes. We evaluate and update our assumptions and estimates on an ongoing basis and may employ outside experts to assist in our evaluations. Actual results could differ from the estimates we have used.

Our significant accounting policies are discussed in Note 1, Nature of Operations and Summary of Significant Accounting Policies, to our accompanying consolidated financial statements. We believe the following accounting policies are the most critical to aid in fully understanding and evaluating our reported financial results, as they require management to make difficult, subjective or complex judgments, and to make estimates about the effect of matters that are inherently uncertain. We have reviewed these critical accounting policies and related disclosures with the audit committee of our board of directors.

Description	Judgment and Uncertainties	Effect if Actual Results Differ from Assumptions
<p><b>Revenue Recognition</b></p>		
<p>We derive our revenue from business services associated with revenue cycle management, electronic health record management, patient communication management, referral cycle management and analytics offerings and from implementation and other services.</p> <p>Our clients typically purchase one-year contracts that renew automatically upon completion. In most cases, our clients may terminate their agreements with 90 days notice without cause. We typically retain the right to terminate client agreements in a similar timeframe. Our clients are billed monthly, in arrears, based either upon a percentage of collections posted to athenaNet, minimum fees, flat fees, or per-claim fees where applicable. Invoices are generated within the first two weeks of the subsequent month and delivered to clients primarily by email. For most of our clients, fees are then deducted from a pre-defined bank account one week after invoice receipt via an auto-debit transaction. Amounts that have been accrued are recorded as revenue or deferred revenue, as appropriate, and are included in our accounts receivable balances.</p>	<p>We recognize revenue when all of the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>- there is evidence of an arrangement;</li> <li>- the service has been provided to the client;</li> <li>- the collection of the fees is reasonably assured; and</li> <li>- the amount of fees to be paid by the client is fixed or determinable.</li> </ul> <p>All revenue, other than implementation revenue, is recognized when the service is performed. Relative to our business services offering that is based on the collections of amounts by our customers; we do not recognize revenue until our customers have been paid.</p> <p>Each deliverable within a multiple deliverable revenue arrangement is accounted for as a separate unit if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control. We consider a deliverable to have standalone value if we sell this item separately or if the item is sold by another vendor or could be resold by the customer. Further, our revenue arrangements generally do not include a general right of return relative to delivered products.</p> <p>Deliverables not meeting the criteria for being a separate unit of accounting are combined with a deliverable that does meet that criterion. The appropriate allocation of arrangement consideration and recognition of revenue is then determined for the combined unit of accounting. If and when we are not able to deliver all separate units of account in the same period, we allocate arrangement consideration to each deliverable in an arrangement based on its relative selling price.</p>	<p>Although we believe that our approach to estimates and judgments as described herein is reasonable, actual results could differ and we may be exposed to increases or decreases in revenue that could be material.</p>

Description	Judgment and Uncertainties	Effect if Actual Results Differ from Assumptions
<p>We recognize our non-refundable up-front fees over the contract term or estimated expected customer life, whichever is longer.</p>	<p>As the implementation service is not separable from the ongoing business services, we record implementation fees as deferred revenue until the implementation service is complete, at which time we recognize revenue ratably on a monthly basis over the longer of the estimated expected customer life or contract life.</p> <p>The determination of the amount of revenue we can recognize each accounting period requires management to make estimates and judgments on the estimated expected customer life. We determined the estimated customer life considering the following key factors:</p> <ul style="list-style-type: none"> <li>- Renewal rate considerations</li> <li>- Economic life of the product or service</li> <li>- Industry data</li> </ul> <p>The estimated customer life, or expected performance period, for the years presented is 12 years.</p>	<p>Our estimate of expected performance period may prove to be inaccurate, in which case we may have understated or overstated the revenue recognized in an accounting period. For example, if in the future, we need to increase our estimated expected performance period to a period longer than 12 years, the amount we would recognize in each accounting period would decrease. On the other hand, if in the future, we need to decrease our estimated expected performance period to a period shorter than 12 years, the amount we would recognize in each accounting period would increase. The amount of deferred revenue related to non-refundable up-front fees is \$53.7 million as of December 31, 2012.</p>



Description	Judgment and Uncertainties	Effect if Actual Results Differ from Assumptions
<p><b>Business Combinations: Purchased Intangibles and Contingent Consideration</b></p> <p>Business Combinations, including purchased intangibles and contingent consideration, are accounted for at fair value. Acquisition costs are generally expensed as incurred and recorded in general and administrative expenses. All changes to purchase accounting that do not qualify as measurement period adjustments are included in current period earnings.</p>	<p>The accounting for business combinations requires estimates and judgment as to expectations for future cash flows of the acquired business, the allocation of those cash flows to identifiable intangible assets, estimated useful lives of these intangible assets and a probability-weighted income approach based on scenarios in estimating achievement of operating results and earn-out targets related to estimating the value of the contingent considerations. Significant judgment is employed in determining the appropriateness of these assumptions as of the acquisition date and for each subsequent period. We review acquired intangibles for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Each period we revalue the contingent consideration obligations associated with certain acquisitions to their then fair value and record increases in the fair value as contingent consideration expense and record decreases in the fair value as a reduction of contingent consideration expense.</p>	<p>Future business and economic conditions, as well as differences actually related to any of the assumptions, could materially impact the financial statements through impairment of goodwill and intangibles, acceleration of the amortization period of the purchased intangibles which are finite-lived assets or changes in fair value of the contingent consideration from the date of acquisition. Increases or decreases in the fair value of the contingent consideration obligations can result from changes in the estimates of earn out results. We have \$48.1 million and \$21.6 million carrying amount of goodwill and purchased intangibles, as of December 31, 2012, respectively. We have a liability of \$0.4 million of contingent consideration related to \$5.0 million in potential payments as of December 31, 2012, related to the Proxsys business combinations cross sell earn out. For the initial purchase price allocation, we estimated the fair value of this contingent consideration related to the Proxsys acquisition in August of 2011 to be \$4.4 million. To date, we have paid out an insignificant amount and decreased the fair value by \$3.9 million.</p>

## Financial Operations Overview

**Revenue.** We derive our revenue from two sources: from business services associated with our revenue cycle management, electronic health record management, patient communication management, referral cycle management and analytics offerings and from implementation and other services. Implementation and other revenue consist primarily of professional services fees related to assisting clients with the initial implementation of our services and for ongoing training and related support services. Business services accounted for approximately 97% of our total revenues for the year ended December 31, 2012 and 2011. Business services revenue are typically 2% to 8% of a practice's total collections depending upon the services purchased, the size, complexity, and other characteristics of the practice, plus a per-statement charge for billing statements that are generated for patients. Accordingly, business services revenue is largely driven by: the number of physician practices and other service providers we serve, the number of physicians and other medical providers working in those physician practices, the volume of activity and related collections of those physicians, the mix of our services used by those physician practices and other medical providers, and our contracted rates. There is moderate seasonality in the activity level of physician practices. Typically, discretionary use of physician services declines in the late summer and during the holiday season, which leads to a decline in collections by our physician clients about 30 to 50 days later. Additionally, the volume of activity and related collections vary from year to year based in large part on the severity, length and timing of the onset of the flu season. While we believe that the severity, length and timing of the onset of the cold and flu season will continue to impact collections by our physician clients, there can be no assurance that our future sales of these services will necessarily follow historical patterns. Implementation and other revenue are largely driven by the increase in the volume of our new business. As a result, we expect implementation and other revenue to increase in absolute terms for the foreseeable future but to remain relatively consistent as a percentage of total

## [Table of Contents](#)

revenue. None of our clients accounted for more than 10% of our total revenues for the years ended December 31, 2012, 2011, and 2010.

***Direct Operating Expense.*** Direct operating expense consists primarily of salaries, benefits, claim processing costs, other direct expenses, and stock-based compensation related to personnel who provide services to clients, including staff who implement new clients. We expense implementation costs as incurred. We include in direct operating expense all service costs associated with athenaCollector, athenaClinicals, athenaCommunicator, athenaCoordinator, Anodyne Solutions and Healthcare Data Services. We expect to increase our overall level of automation as we become a larger operation, with higher volumes of work in particular functions, geographies, and medical specialties. Although we expect that direct operating expense will increase in absolute terms for the foreseeable future, the direct operating expense is expected to decline as a percentage of revenue as we increase automation. Direct operating expense does not include allocated amounts for rent, occupancy and other indirect costs (including building maintenance and utilities), depreciation, and amortization, except for amortization related to purchased intangible assets.

***Selling and Marketing Expense.*** Selling and marketing expense consists primarily of marketing programs (including trade shows, brand messaging, and on-line initiatives) and personnel-related expense for sales and marketing employees (including salaries, benefits, commissions, stock-based compensation, non-billable travel, lodging, and other out-of-pocket employee-related expenses). Although we recognize substantially all of our revenue when services have been delivered, we recognize a large portion of our sales commission expense at the time of contract signature and at the time our services commence. Accordingly, we incur a portion of our sales and marketing expense prior to the recognition of the corresponding revenue. We have increased our sales and marketing expenses from year to year and we expect to continue to increase our investment in sales and marketing by hiring additional direct sales personnel and support personnel to add new clients and increase sales to our existing clients and expand awareness through paid search and other similar initiatives. We also plan to expand our marketing activities, such as attending trade shows, expanding user groups, and creating new printed materials. As a result, we expect that, in the near-term, sales and marketing expense will increase in line with revenue growth.

***Research and Development Expense.*** Research and development expense consists primarily of personnel-related expenses for research and development employees (including salaries, benefits, stock-based compensation, non-billable travel, lodging, and other out-of-pocket employee-related expenses) and consulting fees for third-party developers. We expect that, in the near-term, research and development expenditures will increase in absolute terms and will likely remain consistent as a percent of revenue as we develop and enhance new and existing services; however the amount of expenditures that should be capitalized as software development costs versus expensed as research and development could vary based on the specific projects we undertake.

***General and Administrative Expense.*** General and administrative expense consists primarily of personnel-related expense for administrative employees (including salaries, benefits, stock-based compensation, non-billable travel, lodging, and other out-of-pocket employee-related expense), occupancy and other indirect costs (including building maintenance and utilities), and insurance premiums; and, outside professional fees for accountants, lawyers, external costs associated with acquisitions, change in the fair value of contingent consideration and consultants. We expect that general and administrative expense will increase in absolute terms as we invest in infrastructure to support our growth. Though expenses are expected to continue to rise in absolute terms, we expect general and administrative expense to decline as a percentage of total revenue over time.

***Depreciation and Amortization Expense.*** Depreciation and amortization expense consists primarily of depreciation of fixed assets and amortization of capitalized software development and acquisition costs, which we amortize over a two to three-year period from the time of release of related software code. As we grow, we will continue to make capital investments in the infrastructure of the business and we will continue to develop software that we capitalize. In the near term we expect depreciation and amortization expense to increase as a percentage of total revenue.

***Other Income (Expense).*** Interest income represents earnings from our cash, cash equivalents, and investments. We currently do not have any debt outstanding and therefore have insignificant expense related to debt issuance costs associated with our credit facility. We expect that in the near term our interest expense will substantially increase as we anticipate that we will need to borrow to fund a portion of the two proposed acquisitions discussed in the “Recent Developments” section.

***Income Tax Provision.*** Income tax provision consists of federal and state income taxes in the United States and India. The difference between our effective tax rate and our statutory rate is mainly related to any changes in the fair value of contingent considerations related to non-tax deductible goodwill, the treatment of Incentive Stock Options (“ISOs”) and the impact of certain tax deduction limits related to certain of our highly compensated officers. The changes in fair value of contingent consideration related to non-tax deductible goodwill and the treatment of disqualifying dispositions related to ISOs are also treated as discrete items which means they are recorded in the quarter in which they occur and could cause significant differences between the quarterly and annual effective tax rate. Also, we substantially ceased issuing ISOs in 2009, but we expect continued volatility related to these options since we cannot anticipate when disqualifying dispositions related to these options will occur. In the first quarter of 2013, we expect to receive a discrete tax benefit to our provision related to research

## [Table of Contents](#)

and development credits from 2012. The Taxpayer Relief Act of 2012 was signed in 2013 and retroactively extends this type of credit through the end of 2013.

### Results of Operations

#### *Consolidated Results of Operations*

The following table sets forth our consolidated results of operations as a percentage of total revenue for the periods

	Year Ended December 31,		
	2012	2011	2010
Revenue:			
Business services	96.7 %	96.5 %	96.6 %
Implementation and other	3.3	3.5	3.4
Total revenue	100.0	100.0	100.0
Expense:			
Direct operating	39.5	37.9	39.3
Selling and marketing	24.7	24.6	21.5
Research and development	8.0	7.2	7.5
General and administrative	13.5	15.0	17.6
Depreciation and amortization	6.1	5.2	4.5
Total expense	91.8	89.9	90.4
Operating income	8.2	10.1	9.6
Other income (expense)	0.1	0.1	—
Income before income taxes	8.3	10.2	9.4
Income tax provision	(3.9)	(4.3)	(4.2)
Net income	4.4 %	5.9 %	5.2 %

#### *Comparison of the Years Ended December 31, 2012 and 2011*

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in thousands)			
Business services	\$ 408,496	\$ 312,768	\$ 95,728	31%
Implementation and other	13,775	11,299	2,476	22%
Total	\$ 422,271	\$ 324,067	\$ 98,204	30%

*Revenue.* Total revenue for the year ended December 31, 2012, increased by 30% due to an increase in business services revenue.

*Business Services Revenue.* The increase in business services revenue is primarily driven by the growth in the number of physicians and providers using our services. The summary of changes in the physicians and providers using our revenue cycle management service, athenaCollector, electronic health record management service, athenaClinicals, and patient communication management service, athenaCommunicator are as follows:

		As of December 31,		Change	
		2012	2011	Amount	Percent
		Amount	Amount	Amount	Percent
athenaCollector	Physicians	28,011	23,210	4,801	21%
	Providers	39,752	32,740	7,012	21%
athenaClinicals	Physicians	7,949	4,662	3,287	71%
	Providers	10,926	6,525	4,401	67%
athenaCommunicator	Physicians	10,153	4,098	6,055	148%
	Providers	14,065	5,830	8,235	141%

## [Table of Contents](#)

Also contributing to this increase was the growth in related collections on behalf of these physicians and providers. The amount of collections processed are as follows:

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in millions)			
Collections processed	\$9,183.6	\$7,276.6	\$ 1,907.0	26%

*Implementation and Other Revenue.* The increase in revenue from implementation and other revenue was driven by new client implementations and increased professional services for our larger client base. The increase in implementation and other revenue is the result of the increase in the volume of our new business.

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in thousands)			
Direct operating	\$166,886	\$122,795	\$ 44,091	36%

*Direct Operating Costs.* The increase in direct operating expense is primarily due to an increase in the number of claims that we processed on behalf of our clients and the related expense of providing services, including transactions expense and employee-related costs. The total claims submitted on behalf of clients are as follows:

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in millions)			
Total claims submitted	73.1	59.3	13.8	23%

Also contributing to this increase was the direct operating employee-related costs, including stock-based compensation, which increased \$28.2 million from the year ended December 31, 2011, to the year ended December 31, 2012, primarily due to the 28% increase in headcount since December 31, 2011, and an increase fair value of our recently issued stock-based compensation expense. We increased headcount to meet the current and anticipated demand for our services as our customer base has expanded and includes larger medical groups. Amortization related to purchased intangible assets increased \$1.1 million from the year ended December 31, 2011, to the year ended December 31, 2012.

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in thousands)			
Selling and marketing	\$ 104,300	\$ 79,775	\$ 24,525	31%
Research and development	33,792	23,343	10,449	45%
General and administrative	57,025	48,711	8,314	17%
Depreciation and amortization	25,641	16,710	8,931	53%
Total	\$ 220,758	\$ 168,539	\$ 52,219	31%

*Selling and Marketing Expense.* The increase in selling and marketing expense was primarily due to employee-related costs, including stock-based compensation expense, internal sales commissions and external partner channel commission of \$15.7 million, or 31%, from \$50.0 million for the year ended December 31, 2011, to \$65.8 million for the year ended December 31, 2012. Our sales and marketing headcount increased by 28% since December 31, 2011, as we hired additional sales personnel to focus on adding new customers and increasing penetration within our existing markets. The increase was also due to a \$3.4 million increase in travel-related expenses and consulting and \$5.4 million increase in online marketing, offline marketing and other marketing events for the year.

*Research and Development Expense.* Research and development expense increased due to higher employee-related costs, including stock-based compensation expense of \$8.5 million, or 42%, from \$20.5 million for the year ended December 31, 2011, to \$29.0 million for the year ended December 31, 2012. This increase is due in part to a 45% increase in headcount from December 31, 2011, as we hired additional research and development personnel in order to upgrade and extend our service offerings and develop new technologies. The increase was also due to a \$1.9 million increase in travel-related expenses, infrastructure and consulting.

*General and Administrative Expense.* General and administrative expense increase was partially due to higher employee-related costs, including stock-based compensation expense, of \$6.2 million, due to an increase in headcount and in fair value of our recently issued stock-based compensation expense. Our general and administrative headcount increased by 26% since

## [Table of Contents](#)

December 31, 2011, as we added personnel to support our growth. The increase in headcount drove an increase in our expenditures related to infrastructure by \$3.4 million. General and administrative expense for the year ended December 31, 2012, included an increase of \$2.3 million in legal, audit, tax, consulting, external costs associated with acquisitions and insurance expenses along with an increase of \$2.6 million in travel expenses, recruiting and corporate events.

These increases are offset by a decrease in the provision for uncollectible accounts of \$1.0 million due to less accounts requiring higher reserve percentages due to increased collection activity and a decrease in the fair value of the contingent consideration of \$5.1 million. The fair value considerations related to each of the contingent considerations are fully disclosed in Note 4 to the Consolidated Financial Statements. The impact of those described changes in the fair value of the contingent considerations on General and Administrative Expense in the Consolidated Statements of Income are as follows:

	Year Ended December 31,	
	2012	2011
	(in thousands)	
First Anodyne contingent consideration	\$ —	\$ —
Second Anodyne contingent consideration	1,310	40
First Proxsys contingent consideration	(2,420)	—
Second Proxsys contingent consideration	(4,008)	—
Total	\$ (5,118)	\$ 40

**Depreciation and Amortization Expense.** Depreciation and amortization expense for the year ended December 31, 2012, was \$25.6 million, an increase of \$8.9 million, or 53%, from depreciation and amortization of \$16.7 million for the year ended December 31, 2011. This increase was primarily due to higher depreciation from fixed asset expenditures in 2012 and 2011 and higher amortization related to an increase in our software development costs.

	Year Ended December 31,		Change	
	2012	2011	Amount	Percent
	(in thousands)			
Income tax provision	\$ 16,146	\$ 13,834	\$ 2,312	17%
Effective tax rate	46%	42%	4%	

**Income Tax Provision.** The effective tax rate is higher due to larger permanent items for the year ended December 31, 2012, primarily related to compensation in excess of tax deduction limits which had a 1.5% unfavorable impact, the change in the Anodyne contingent consideration which is treated as additional non-taxable goodwill which had a 1.5% unfavorable impact and the transaction costs related to the pending acquisition of Epocrates which had a 0.5% unfavorable impact. The rate was also impacted by ISO disqualifying events which impacted the rate favorably by 2% for the year ended December 31, 2012. Comparatively, the effective tax rate for the year ended December 31, 2011, was not impacted by compensation in excess of tax deduction limits, changes related to the Anodyne contingent consideration or non-deductible transaction costs but did have a favorable impact of 2.5% due to ISO disqualifications.

On January 3, 2013, the American Taxpayer Relief Act of 2012 was signed into law reinstating the federal research and development credit for the 2012 and 2013 years. Under the accounting guidance on this topic, the effects are recognized as a component of income tax expense or benefit from continuing operations in the financial statements for the interim or annual period that includes the enactment date. The benefit related to the 2012 federal research and development credit of \$0.7 million will be recorded in the first quarter of 2013.

### **Comparison of the Years Ended December 31, 2011 and 2010**

	Year Ended December 31,		Change	
	2011	2010	Amount	Percent
	(in thousands)			
Business services	\$ 312,768	\$ 237,145	\$ 75,623	32%
Implementation and other	11,299	8,393	2,906	35%
Total	\$ 324,067	\$ 245,538	\$ 78,529	32%

**Revenue.** Total revenue for the year ended December 31, 2011, increased almost entirely due to an increase in business services revenue.

## [Table of Contents](#)

**Business Services Revenue.** The increase in business services revenue is primarily driven by the growth in the number of physicians and providers using our services. The summary of changes in the physicians and providers using our revenue cycle management service, athenaCollector, electronic health record management service, athenaClinicals, and patient communication management service, athenaCommunicator are as follows:

		As of December 31,		Change	
		2011	2010		
		Amount	Amount	Amount	Percent
<b>athenaCollector</b>	Physicians	23,210	19,197	4,013	21%
	Providers	32,740	27,114	5,626	21%
<b>athenaClinicals</b>	Physicians	4,662	2,383	2,279	96%
	Providers	6,525	3,348	3,177	95%
<b>athenaCommunicator</b>	Physicians	4,098	736	3,362	457%
	Providers	5,830	1,213	4,617	381%

Also contributing to this increase was the growth in related collections on behalf of these physicians and providers. The amount of collections processed are as follows:

		Year Ended December 31,		Change	
		2011	2010	Amount	Percent
(in millions)					
Collections processed	\$	7,276.6	\$ 5,864.3	\$ 1,412.3	24%

**Implementation and Other Revenue.** The increase in revenue from implementation and other revenue was driven by new client implementations and increased professional services for our larger client base. The increase in implementation and other revenue is the result of the increase in the volume of our new business.

		Year Ended December 31,		Change	
		2011	2010	Amount	Percent
(in thousands)					
Direct operating	\$	122,795	\$ 96,582	\$ 26,213	27%

**Direct Operating Costs.** The increase in direct operating expense is primarily due to an increase in the number of claims that we processed on behalf of our clients and the related expense of providing services, including transactions expense and employee-related costs. The total claims submitted on behalf of clients are as follows:

		Year Ended December 31,		Change	
		2011	2010	Amount	Percent
(in millions)					
Total claims submitted		59.3	47.4	11.9	25%

Also contributing to this increase was the direct operating employee-related costs, including stock-based compensation, primarily due to the 21% increase in headcount since December 31, 2010, which does not include the approximately 200 employees from our acquisition of Proxsys at the end of August 2011. Not including Proxsys, we increased headcount to meet the current and anticipated demand for our services as our customer base has expanded and includes larger medical groups.

		Year Ended December 31,		Change	
		2011	2010	Amount	Percent
(in thousands)					
Selling and marketing	\$	79,775	\$ 52,675	\$ 27,100	51%
Research and development		23,343	18,448	4,895	27%
General and administrative		48,711	43,119	5,592	13%
Depreciation and amortization		16,710	11,117	5,593	50%
Total	\$	168,539	\$ 125,359	\$ 43,180	34%

**Selling and Marketing Expense.** Selling and marketing expense primarily increased due to employee-related costs, including stock-based compensation expense, internal sales commissions and external partner channel commission of \$15.2 million for the year due to an increase in headcount, an increase in the fair value of our recently issued stock-based

## [Table of Contents](#)

compensation awards and an increase in amount paid to external channel partners. Our sales and marketing headcount increased by 39% since December 31, 2010, as we hired additional sales personnel to focus on adding new customers and increasing penetration within our existing markets. The increase was also due to a \$8.6 million increase in sales and marketing programs to drive leads, meetings and awareness and \$3.2 million increase in travel-related expenses, consulting, and other marketing expenses.

*Research and Development Expense.* Research and development expense increased due to higher employee-related costs, including stock-based compensation expense, of \$4.1 million for the year as a result of the increased headcount and increase in the fair value of our recently issued stock-based compensation awards. Our research and development headcount increased 31% since December 31, 2010, as we hired additional research and development personnel in order to upgrade and extend our service offerings and develop new technologies, as well as an overall increase in salaries for technical resources.

*General and Administrative Expense.* General and administrative expense was primarily impacted by higher employee-related costs, an increase in infrastructure expenditures and changes in the fair value of the certain contingent consideration. An increase in higher employee-related costs, including stock-based compensation expense, of \$3.4 million is due to an increased headcount and increase in the fair value of our recently issued stock-based compensation awards for the year. Our general and administrative headcount increased by 23% since December 31, 2010, as we added personnel to support our growth. General and administrative expense for the year ended December 31, 2011, included an increase of \$1.2 million in legal, audit, tax, consulting and insurance expenses which mainly relate to our recent acquisitions and \$1.1 million in travel, recruiting, corporate events and infrastructure.

*Depreciation and Amortization Expense.* Depreciation and amortization increased due to higher depreciation from fixed asset expenditures and software development costs in 2010 and 2011.

	Year Ended December 31,		Change	
	2011	2010	Amount	Percent
	(in thousands)			
Income tax provision	13,834	10,396	\$ 3,438	33%
Effective tax rate	42%	45%		

*Income Tax Provision.* The decrease in our effective tax rate was due to a decrease in our total permanent differences. The decrease in our total permanent differences was mainly due to an increase in the amount of deductions for disqualifying dispositions related to ISOs.

## **Liquidity and Capital Resources**

### *Sources of Liquidity*

As of December 31, 2012, our principal sources of liquidity consisted of cash, cash equivalents and available-for-sale investments of \$193.1 million. Our cash investments consist of corporate debt securities, bank certificate of deposits, and commercial paper. As specified in our investment policy, we place our investments in instruments that meet high credit quality standards, the policy limits the amount of our credit exposure to any one issue or issuer and seeks to manage these assets to achieve our goals of preserving principal, maintaining adequate liquidity at all times, and maximizing returns. As of December 31, 2012, we have no outstanding indebtedness. On October 20, 2011, we entered into a credit agreement which provides for a five-year \$100 million revolving credit facility. The credit facility may be increased by up to an additional \$100 million on the satisfaction of certain conditions including obtaining lender commitments. There was no balance outstanding on the revolving credit facility during the year ended December 31, 2012. The credit facility contains certain covenants, including consolidated leverage ratio and minimum fixed charges coverage ratios. The interest rates applicable to revolving loans under the credit agreement are at either (i) the British Bankers Association London Interbank Offered Rate ("LIBOR") plus an interest margin based on our consolidated leverage ratio, or (ii) the base rate (which is the highest of (a) the bank's prime rate, (b) the Federal Funds rate plus 0.50%, and (c) one month LIBOR plus 1.00%) plus an interest margin based on our consolidated leverage ratio. We will pay a commitment fee during the term of the credit agreement which varies between 0.20% and 0.30% depending on our consolidated leverage ratio. In connection with the proposed acquisition of Epocrates, on January 3, 2013, we borrowed \$100 million from our credit facility and, on January 9, 2013, we repaid the borrowed amount in full. On January 7, 2013, we entered into a commitment letter, pursuant to which Bank of America, N.A. committed to increase its commitment to provide revolving loans under our credit facility by an amount up to \$55 million as a source of funding for the Epocrates transaction.

During the first half of 2013, we anticipate amending our existing credit facility and incurring debt in order to help finance the two proposed acquisitions discussed in the "Recent Developments" section. We believe our current and these future sources of liquidity will be sufficient to sustain operations, to finance our strategic initiatives, to make payments on our contractual obligations, as well as to purchase property and equipment and to finance the two pending transactions in the foreseeable future.



## [Table of Contents](#)

Our analysis is supported by the growth in our new customer base and a high rate of renewal with our existing customers and the corresponding increase in billings and collections. There can be no assurance that we will continue to generate cash flows at or above current levels or that we will be able to maintain our ability to borrow under these credit facilities or obtain additional financing.

### ***Commitments***

We enter into various purchase commitments with vendors in the normal course of business. We believe that our existing sources of liquidity will be adequate to fund these purchases during the year 2013. In the normal course of business, we make representations and warranties that guarantee the performance of services under service arrangements with clients. Historically, there has been no material losses related to such guarantees.

### ***Operating Cash Flow Activities***

	Year Ended December 31,		
	2012	2011	2010
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Non-cash adjustments	37,438	23,575	22,074
Cash used in changes in operating assets and liabilities	14,043	18,143	9,942
Net cash provided by operating activities	\$ 70,213	\$ 60,764	\$ 44,720

The increase in cash flow from operations for the year ended December 31, 2012, compared to the year ended December 31, 2011, is mainly attributable to the actual and proportionate increase in the amount of non-cash adjustments compared to the net income for those periods. The non-cash adjustments include an increase of stock-based compensation of \$8.3 million and depreciation and amortization of \$10.1 million offset by a decrease in the change in fair value of the contingent consideration of \$5.1 million when comparing these periods. The increase in stock-based compensation is a result of an increase in the fair value of recently issued stock-based awards due to an increase in the stock price. We continue to offset our portion of our income tax assessments with net operating losses from stock based compensation from prior years and tax benefits from current year exercises as shown by the excess tax benefit amounts. We no longer have significant net operating losses from prior years and expect the amount of taxes paid will increase in future years.

The year over year decrease in cash used in operating assets and liabilities is mainly driven by the change in deferred revenue. The increase in the deferred revenue balance of \$3.0 million in the year ended December 31, 2012, compared to \$10.0 million in the year ended December 31, 2011, is primarily due to the fact that we began waiving implementation fees for remote implementations and for some sales offerings.

### ***Investing Cash Flow Activities***

The cash used by investing activities decreased \$53 million for the year ended December 31, 2012, as compared to the year ended December 31, 2011. Cash flows used in investing activities consist primarily of purchases of property and equipment, capitalized software development costs, and our investment activities. We make investments in property and equipment and in software development on an ongoing basis. Our investment in equipment consists primarily of purchases of technology infrastructure to provide service stability and additional capacity to support our expanding client base. Our increase of \$7.2 million in equipment is primarily related to several new servers for our new data center located in Dallas, Texas and existing data centers located in Bedford, Massachusetts, and Belfast, Maine, as well as build out of new leasehold and building improvements to accommodate our headcount growth. Our investment in software development consists of company managed-design, development, and testing of new application functionality. Our capitalized software development costs increased by \$7.9 million for the year ended December 31, 2012, compared to the year ended December 31, 2011, primarily related to the new automation activities related to the new athenaCoordinator service offering as well as our athenaClinicals service offering. The change of restricted cash is due to the timing of the payments made for contingent consideration relating to the Anodyne acquisition completed in 2009. In the year ended December 31, 2012, we acquired Healthcare Data Services, LLC for \$5.8 million. In the year ended December 31, 2011, we acquired a conference center located in Maine for \$7.0 million and Proxsys for \$27.9 million.

The net change in proceeds and purchases of our available for sale investments is based upon the changes in maturity of our investments in securities. We decreased the amount of available for sale investments at December 31, 2012, in anticipation of the proposed acquisition of Epocrates and the Arsenal on the Charles property that we anticipate will both close in the first half of 2013.

## [Table of Contents](#)

### ***Financing Cash Flow Activities***

The cash provided by financing activities was \$27.1 million for the year ended December 31, 2012, compared to cash provided by financing activities of \$14.4 million for the year ended December 31, 2011. The change is primarily attributable to the \$9.7 million payment related to our debt and interest rate swap in 2011. We elected to repay all of our outstanding debt balances under our equipment line of credit and term loan, as well as terminate our related interest rate derivative in May 2011. The increase of \$4.6 million in cash received from the exercise of stock options during the year ended December 31, 2012, compared to the year ended December 31, 2011, is primarily due to the overall increase in the strike price of the options exercised along with an increase in the number of options exercised during the comparable time periods. This increase was offset by an increase of \$4.2 million related to the cash paid to settle tax obligations through the net settlement method that our employees can elect when restricted stock units vest in the year ended December 31, 2012. We began issuing restricted stock units in 2010 and have since experienced an increase in the proportionate number of restricted stock units granted compared to options granted. We expect that the cash paid to settle tax obligations will increase in the near future as these issued restricted stock units begin to vest. The payment of contingent consideration relates to the portion of the Anodyne contingent consideration that was accrued at acquisition date.

We expect that our cash flows from financing activities will increase in the near future as we anticipate that we will need to borrow to fund the pending transactions discussed in the “Recent Developments” section.

### ***Contractual Obligations***

We have contractual obligations under our operating leases for properties. The following table summarizes our long-term contractual obligations and commitments as of December 31, 2012:

	Payments Due by Period					
	Total	Less than 1 Year	2 - 3 Years	4 - 5 Years	After 5 years	Other
Operating lease obligations	\$ 32,089	\$ 8,867	\$ 13,637	\$ 4,605	\$ 4,980	\$ —
Other	1,761	—	—	—	—	1,761
Total	\$ 33,850	\$ 8,867	\$ 13,637	\$ 4,605	\$ 4,980	\$ 1,761

The commitments under our operating leases shown above consist primarily of lease payments for our Watertown, Massachusetts, headquarters; our Rome, Georgia, offices; our Alpharetta, Georgia, offices; our Birmingham, Alabama, offices; our Austin, Texas, offices; and our Chennai, India, offices. At December 31, 2012, \$19.0 million of the \$32.1 million relates to lease payments for our Watertown, Massachusetts, headquarters, see the “Recent Developments” section.

Other amount consists of uncertain tax benefits. We have not utilized these uncertain tax benefits, nor do we have an expectation of when these uncertain tax benefits would be challenged. As of December 31, 2012, we cannot reasonably estimate when any future cash outlays would occur related to these uncertain tax positions.

### ***Off-Balance Sheet Arrangements***

As of December 31, 2012 and 2011, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as “structured finance” or “special purpose” entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Other than our operating leases for office space, we do not engage in off-balance sheet financing arrangements.

### **Item 7A. *Quantitative and Qualitative Disclosures About Market Risk.***

**Foreign Currency Exchange Risk.** Our results of operations and cash flows are subject to fluctuations due to changes in the Indian rupee. None of our consolidated revenues are generated outside the United States. None of our vendor relationships, including our contracts with our offshore service providers International Business Machines Corporation and Vision Business Process Solutions, Inc., a subsidiary of Dell, Inc. (formerly Perot Systems Corporation), for work performed in India and the Philippines, is denominated in any currency other than the U.S. dollar. For the year ended December 31, 2012, less than 1% of our expenses occurred in our direct subsidiary in Chennai, India, and was incurred in Indian rupees. We therefore believe that the risk of a significant impact on our operating income from foreign currency fluctuations is not substantial.

**Interest Rate Sensitivity.** We had unrestricted cash, cash equivalents and available for sale investments totaling \$193.1 million at December 31, 2012. These amounts are held for working capital purposes and were invested primarily in deposits, money market funds, and short-term and long-term, interest-bearing, investment-grade securities. Due to the short and expected term of these investments, we believe that we do not have any material exposure to changes in the fair value of our investment

## [Table of Contents](#)

portfolio as a result of changes in interest rates. The value of these securities, however, will be subject to interest rate risk and could fall in value if interest rates rise.

*Interest Rate Risk.* As of December 31, 2012, we had no outstanding long-term debt and capital lease obligations and there were no amounts outstanding under the revolving credit facility.

### **Item 8. *Financial Statements and Supplementary Data.***

The financial statements required by this Item are located beginning on page F-1 of this report.

### **Item 9. *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.***

None.

### **Item 9A. *Controls and Procedures.***

#### **Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities and Exchange Act of 1934 are (1) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. As of December 31, 2012 (the "Evaluation Date"), our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934). Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our Chief Executive Officer and Chief Financial Officer have concluded based upon the evaluation described above that, as of the Evaluation Date, our disclosure controls and procedures were effective at the reasonable assurance level.

#### **Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for our company. Internal control over financial reporting is defined in Rules 13a-15(f) and 15(d)-15(f) promulgated under the Securities Exchange Act of 1934, as amended, as a process designed by, or under the supervision of, our Chief Executive and Chief Financial Officers and effected by our board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and disposition of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles;
- provide reasonable assurance that our receipts and expenditures are being made only in accordance with authorization of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of inherent limitations, internal controls over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Our management, including our Chief Executive and Chief Financial Officers, has conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2012. In conducting this evaluation, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), in Internal Control-Integrated Framework.

Based upon this evaluation and those criteria, management believes that, as of December 31, 2012, our internal controls over financial reporting were effective.

Deloitte and Touche LLP, our independent registered public accounting firm, has audited our consolidated financial statements and the effectiveness of our internal control over financial reporting as of December 31, 2012.

[Table of Contents](#)

**Changes in Internal Control**

There have been no changes in our internal control over financial reporting for the quarter ended December 31, 2012, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## [Table of Contents](#)

### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the athenahealth, Inc. Board of Directors and Stockholders  
Watertown, Massachusetts

We have audited the internal control over financial reporting of athenahealth, Inc. and subsidiaries (the “Company”) as of December 31, 2012, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company’s internal control over financial reporting is a process designed by, or under the supervision of, the company’s principal executive and principal financial officers, or persons performing similar functions, and effected by the company’s board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on the criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended December 31, 2012, of the Company and our report dated February 11, 2013, expressed an unqualified opinion on those financial statements.

/s/ Deloitte & Touche LLP

Boston, Massachusetts  
February 11, 2013

[Table of Contents](#)

**Item 9B.**      *Other Information.*

None.

### PART III

Certain information required by Part III of Form 10-K is omitted from this report because we expect to file a definitive proxy statement for our 2013 Annual Meeting of Stockholders ("2013 Proxy Statement") within 120 days after the end of our fiscal year pursuant to Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended, and the information included in our 2013 Proxy Statement is incorporated herein by reference to the extent provided below.

**Item 10.        *Directors, Executive Officers and Corporate Governance.***

The information required by this Item is incorporated by reference to the information to be contained in our 2013 Proxy Statement.

We have adopted a code of ethics that applies to all of our directors, officers, and employees. This code is publicly available on our website at [www.athenahealth.com](http://www.athenahealth.com). Amendments to the code of ethics or any grant of a waiver from a provision of the code requiring disclosure under applicable SEC and NASDAQ Global Select Market rules will be disclosed on our website or, if so required, disclosed in a Current Report on Form 8-K.

**Item 11.        *Executive Compensation.***

The information required by this Item is incorporated by reference to the information to be contained in our 2013 Proxy Statement.

**Item 12.        *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.***

The information required by this Item is incorporated by reference to the information to be contained in our 2013 Proxy Statement.

**Item 13.        *Certain Relationships and Related Transactions, and Director Independence.***

The information required by this Item is incorporated by reference to the information to be contained in our 2013 Proxy Statement.

**Item 14.        *Principal Accounting Fees and Services.***

The information required by this Item is incorporated by reference to the information to be contained in our 2013 Proxy Statement.



**PART IV**

**Item 15. Exhibits, Financial Statement Schedules.**

- (a) Documents filed as part of this report.
  - (1) *The following consolidated financial statements are filed herewith in Item 8 of Part II above.*
    - (i) Report of Independent Registered Public Accounting Firm
    - (ii) Consolidated Balance Sheets
    - (iii) Consolidated Statements of Income
    - (iv) Consolidated Statements of Comprehensive Income
    - (v) Consolidated Statement of Stockholders' Equity
    - (v) Consolidated Statements of Cash Flows
    - (vi) Notes to Consolidated Financial Statements

(2) *Financial Statement Schedules*

All other supplemental schedules are omitted because of the absence of conditions under which they are required or because the required information is given in the financial statements or notes thereto.

(3) *Exhibits*

<u>Exhibit No.</u>	<u>Exhibit Index</u>
2.1(v)	Agreement and Plan of Merger by and among the Registrant, Aries Acquisition Corporation, Anodyne Health Partners, Inc., and the Securityholders' Representatives named therein, dated October 5, 2009
2.2(xii)	Agreement and Plan of Merger by and among the Registrant, Prometheus Acquisition LLC, Proxsys LLC, and the Securityholders' Representative named therein, dated July 21, 2011
2.3(xvii)	Agreement and Plan of Merger by and among the Registrant, Echo Merger Sub, Inc., and Epocrates, Inc., dated January 7, 2013
3.1(i)	Amended and Restated Certificate of Incorporation of the Registrant
3.2(i)	Amended and Restated Bylaws of the Registrant
4.1(i)	Specimen Certificate evidencing shares of common stock
10.1(i)	Form of Indemnification Agreement, to be entered into between the Registrant and each of its directors and officers
†10.2(i)	1997 Stock Plan of the Registrant and form of agreements thereunder
†10.3(i)	2000 Stock Option and Incentive Plan of the Registrant, as amended, and form of agreements thereunder
†10.4	2007 Stock Option and Incentive Plan of the Registrant, as amended, and form of agreements thereunder
†10.5(xvi)	2007 Employee Stock Purchase Plan, as amended
†10.6(vii)	Employment Agreement by and between the Registrant and Timothy M. Adams, dated January 11, 2010
†10.7(i)	Employment Agreement by and between the Registrant and Jonathan Bush, dated November 1, 1999, as amended
†10.8(iii)	Employment Agreement by and between the Registrant and Robert L. Cosinuke, dated December 3, 2007
†10.9(xi)	Employment Agreement by and between the Registrant and Stephen Kahane, dated February 18, 2011
†10.10(viii)	Employment Agreement by and between the Registrant and Daniel H. Orenstein, dated July 1, 2010
†10.11(viii)	Employment Agreement by and between the Registrant and Ed Park, dated July 1, 2010
†10.12(x)	The athenahealth Executive Incentive Plan, adopted February 15, 2011
†10.13	Director Compensation Plan of the Registrant, effective as of January 1, 2013

## Table of Contents

<u>Exhibit No.</u>	<u>Exhibit Index</u>
#10.14(i)	Lease between President and Fellows of Harvard College and the Registrant, dated November 8, 2004, for space at the premises located at 300 North Beacon Street, Watertown, MA 02472 and 311 Arsenal Street, Watertown, MA 02472
10.15(xiii)	First Amendment to Lease by and between the Registrant and President and Fellows of Harvard College, dated May 16, 2011
10.16(xv)	Second Amendment to Lease by and between the Registrant and President and Fellows of Harvard College, dated November 7, 2011
10.17(xvi)	Third Amendment to Lease by and between the Registrant and President and Fellows of Harvard College, dated August 29, 2012
10.18(xv)	Lease Deed by and between M/S. Faery Estates Private Limited and athenahealth Technology Private Limited, dated October 24, 2011, for space at the premises located at Unit No. 3 and 4, 9 <sup>th</sup> Floor, MGR Salai (Veeranam Road), Kandanchavadi, Perungudi, Chennai, 600096.
#10.19(i)	Agreement of Lease by and between Sentinel Properties -- Bedford, LLC and the Registrant, dated May 8, 2007
10.20(ii)	Purchase Agreement dated November 28, 2007, between the Registrant and Bracebridge Corporation
#10.21(iv)	Master Agreement by and between the Registrant and Vision Business Process Solutions Inc., dated June 30, 2008
#10.22(vi)	Professional Services Agreement by and between the Registrant and International Business Machines Corporation dated as of October 2, 2009
#10.23(xi)	Amendment No. 1 to Professional Services Agreement by and between the Registrant and International Business Machines Corporation, dated March 11, 2011
10.24(xvi)	Amendment No. 2 to Professional Services Agreement by and between the Registrant and International Business Machines Corporation, dated July 3, 2012
#10.25(vi)	Master Agreement for U.S. Availability Services between SunGard Availability Services LP and the Registrant, dated December 1, 2009, as amended
#10.26(ix)	Second Amended and Restated Marketing and Sales Agreement by and between the Registrant and WorldMed Shared Services, Inc. (d/b/a PSS World Medical Shared Services, Inc.), dated October 21, 2010
10.27(xiii)	Purchase and Sale Agreement by and between the Registrant and Point Lookout, LLC, dated March 29, 2011, as amended May 12, and May 26, 2011
10.28(xiv)	Credit Agreement among the Registrant, Bank of America, N.A., as Administrative Agent, Swing Line Lender, and L/C Issuer, and the other lenders from time to time party thereto, dated October 20, 2011, and exhibits and schedules thereunder
10.29	Purchase and Sale Agreement by and between the Registrant and the President and Fellows of Harvard College, dated December 5, 2012
21.1	Subsidiaries of the Registrant
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Rule 13a-14(a) or 15d-14 Certification of Chief Executive Officer
31.2	Rule 13a-14(a) or 15d-14 Certification of Chief Financial Officer
32.1*	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to Exchange Act rules 13a-14(b) or 15d-14(b) and 18 U.S.C. Section 1350
101**	The following financial statements from the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the Securities and Exchange Commission on February 8, 2013, formatted in XBRL, as follows:  (i) the Consolidated Balance Sheets;  (ii) the Consolidated Statement of Income;  (iii) the Consolidated Statements of Comprehensive Income;  (iv) the Consolidated Statement of Stockholders' Equity

## Table of Contents

<u>Exhibit No.</u>	<u>Exhibit Index</u>
	(v) the Consolidated Statements of Cash Flows; and
	(vi) the Notes to the Consolidated Financial Statements, tagged in summary and detail.
†	Indicates a management contract or any compensatory plan, contract, or arrangement.
*	Furnished herewith.
**	As provided in Rule 406T of Regulation S-T, this information is furnished and not filed for purposes of Section 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934.
#	Application has been made to the Securities and Exchange Commission for confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.
(i)	Incorporated by reference to the Registrant's registration statement on Form S-1 (File No. 333-143998).
(ii)	Incorporated by reference to the Registrant's current report on Form 8-K, filed November 29, 2007.
(iii)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed May 6, 2008.
(iv)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed August 5, 2008.
(v)	Incorporated by reference to the Registrant's current report on Form 8-K, filed October 5, 2009.
(vi)	Incorporated by reference to the Registrant's annual report on Form 10-K, filed March 15, 2010.
(vii)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed May 3, 2010.
(viii)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed October 22, 2010.
(ix)	Incorporated by reference to the Registrant's annual report on Form 10-K, filed February 18, 2011.
(x)	Incorporated by reference to the Registrant's current report on Form 8-K, filed February 22, 2011.
(xi)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed April 29, 2011.
(xii)	Incorporated by reference to the Registrant's current report on Form 8-K, filed July 21, 2011.
(xiii)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed July 22, 2011.
(xiv)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed October 21, 2011.
(xv)	Incorporated by reference to the Registrant's annual report on Form 10-K, filed February 16, 2012.
(xvi)	Incorporated by reference to the Registrant's quarterly report on Form 10-Q, filed October 19, 2012.
(xvii)	Incorporated by reference to the Registrant's current report on Form 8-K, filed January 7, 2013.

[Table of Contents](#)

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ATHENAHEALTH, INC.

By: /s/ Jonathan Bush  
Jonathan Bush  
Chief Executive Officer, President, and Chairman

By: /s/ Timothy M. Adams  
Timothy M. Adams  
Chief Financial Officer,  
Senior Vice President and Treasurer

Date: February 11, 2013

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jonathan Bush</u> (Jonathan Bush)	Chief Executive Officer, President, and Chairman (Principal Executive Officer)	February 11, 2013
<u>/s/ Timothy M. Adams</u> (Timothy M. Adams)	Chief Financial Officer, Senior Vice President and Treasurer (Principal Financial Officer & Principal Accounting Officer)	February 11, 2013
<u>/s/ Ruben J. King-Shaw, Jr.</u> (Ruben J. King-Shaw, Jr.)	Lead Director	February 11, 2013
<u>/s/ Charles D. Baker</u> (Charles D. Baker)	Director	February 11, 2013
<u>/s/ Brandon H. Hull</u> (Brandon H. Hull)	Director	February 11, 2013
<u>/s/ Dev Ittycheria</u> (Dev Ittycheria)	Director	February 11, 2013
<u>/s/ John A. Kane</u> (John A. Kane)	Director	February 11, 2013
<u>/s/ Jacqueline B. Kosecoff</u> (Jacqueline B. Kosecoff)	Director	February 11, 2013
<u>/s/ James L. Mann</u> (James L. Mann)	Director	February 11, 2013
<u>/s/ David E. Robinson</u> (David E. Robinson)	Director	February 11, 2013

[Table of Contents](#)

**Financial Statements and Supplementary Data**

**athenahealth, Inc.**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

**Contents**

<a href="#"><u>Report of Independent Registered Public Accounting Firm</u></a>	<a href="#"><u>F-2</u></a>
FINANCIAL STATEMENTS	
<a href="#"><u>Consolidated Balance Sheets</u></a>	<a href="#"><u>F-3</u></a>
<a href="#"><u>Consolidated Statements of Income</u></a>	<a href="#"><u>F-4</u></a>
<a href="#"><u>Consolidated Statements of Comprehensive Income</u></a>	<a href="#"><u>F-5</u></a>
<a href="#"><u>Consolidated Statements of Stockholders' Equity</u></a>	<a href="#"><u>F-6</u></a>
<a href="#"><u>Consolidated Statements of Cash Flows</u></a>	<a href="#"><u>F-7</u></a>
<a href="#"><u>Notes to Consolidated Financial Statements</u></a>	<a href="#"><u>F-8</u></a>

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
athenahealth, Inc.  
Watertown, Massachusetts

We have audited the accompanying consolidated balance sheets of athenahealth, Inc. and subsidiaries (the “Company”) as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2012. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of athenahealth, Inc. and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2012, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 31, 2012, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 11, 2013, expressed an unqualified opinion on the Company’s internal control over financial reporting.

/s/ Deloitte & Touche LLP

Boston, Massachusetts  
February 11, 2013

[Table of Contents](#)

**athenahealth, Inc.**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands, except per-share amounts)

	December 31, 2012	December 31, 2011
Assets		
Current assets:		
Cash and cash equivalents	\$ 154,988	\$ 57,781
Short-term investments	38,092	62,084
Accounts receivable - net	61,916	49,038
Current portion of restricted cash	1,357	—
Deferred tax assets	6,907	5,245
Prepaid expenses and other current assets	10,924	8,988
Total current assets	274,184	183,136
Property and equipment - net	54,035	52,275
Restricted cash	—	5,007
Capitalized software costs - net	16,050	6,974
Purchased intangibles - net	21,561	20,052
Goodwill	48,090	47,307
Deferred tax assets	11,759	12,532
Investments and other assets	2,773	21,503
Total assets	\$ 428,452	\$ 348,786
Liabilities & Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,733	\$ 6,318
Accrued compensation	36,393	28,176
Accrued expenses	19,683	17,774
Current portion of deferred revenue	8,209	6,345
Current portion of deferred rent	799	960
Total current liabilities	66,817	59,573
Deferred rent, net of current portion	2,854	2,932
Deferred revenue, net of current portion	45,515	44,281
Other long-term liabilities	1,618	5,529
Total liabilities	116,804	112,315
Commitments and contingencies (note 14)		
Stockholders' equity:		
Preferred stock, \$0.01 par value: 5,000 shares authorized; no shares issued and outstanding at December 31, 2012, and December 31, 2011, respectively	—	—
Common stock, \$0.01 par value: 125,000 shares authorized; 37,572 shares issued and 36,294 shares outstanding at December 31, 2012; 36,678 shares issued and 35,400 shares outstanding at December 31, 2011	376	367
Additional paid-in capital	303,547	247,131
Treasury stock, at cost, 1,278 shares	(1,200)	(1,200)
Accumulated other comprehensive loss	(81)	(101)
Retained earnings (accumulated deficit)	9,006	(9,726)
Total stockholders' equity	311,648	236,471
Total liabilities and stockholders' equity	\$ 428,452	\$ 348,786

The accompanying notes are an integral part of these consolidated financial statements.



**athenahealth, Inc.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(Amounts in thousands, except per-share amounts)

	Year Ended December 31,		
	2012	2011	2010
Revenue:			
Business services	\$ 408,496	\$ 312,768	\$ 237,145
Implementation and other	13,775	11,299	8,393
Total revenue	422,271	324,067	245,538
Expense:			
Direct operating	166,886	122,795	96,582
Selling and marketing	104,300	79,775	52,675
Research and development	33,792	23,343	18,448
General and administrative	57,025	48,711	43,119
Depreciation and amortization	25,641	16,710	11,117
Total expense	387,644	291,334	221,941
Operating income	34,627	32,733	23,597
Other income (expense)	251	147	(497)
Income before income tax provision	34,878	32,880	23,100
Income tax provision	(16,146)	(13,834)	(10,396)
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Net income per share - Basic	\$ 0.52	\$ 0.54	\$ 0.37
Net income per share - Diluted	\$ 0.50	\$ 0.53	\$ 0.36
Weighted average shares used in computing net income per share:			
Basic	35,956	35,046	34,181
Diluted	37,133	36,050	35,204

The accompanying notes are an integral part of these consolidated financial statements.

**athenahealth, Inc.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(Amounts in thousands)**

	Year Ended December 31,		
	2012	2011	2010
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Other comprehensive income (loss)			
Unrealized gain (loss) on securities, net of tax of \$5, \$1, and \$7 for the years ended December 31, 2012, 2011, and 2010, respectively.	32	(6)	(52)
Foreign currency translation adjustment	(12)	(123)	153
Total other comprehensive income (loss)	20	(129)	101
Comprehensive income	\$ 18,752	\$ 18,917	\$ 12,805

The accompanying notes are an integral part of these consolidated financial statements.

**athenahealth, Inc.**
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**(Amounts in thousands)**

	Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Other Comprehensive (Loss) Income	Retained Earnings (Accumulated Deficit)	Total Stockholders Equity
	Shares	Amount		Shares	Amount			
BALANCE — January 1, 2010	35,166	\$ 352	\$ 169,715	(1,278)	\$ (1,200)	\$ (73)	\$ (41,476)	\$ 127,318
Stock compensation expense			14,477					14,477
Stock options exercised and restricted stock units vested	605	5	7,522					7,527
Common stock issued under employee stock purchase plan	37	1	1,078					1,079
Tax benefit realized from stock-based awards			7,547					7,547
Net income							12,704	12,704
Other comprehensive income						101		101
BALANCE — December 31, 2010	35,808	358	200,339	(1,278)	(1,200)	28	(28,772)	170,753
Stock compensation expense			18,901					18,901
Stock options exercised and restricted stock units vested	816	8	12,320					12,328
Common stock issued under employee stock purchase plan	54	1	1,768					1,769
Tax benefit realized from stock-based awards			13,803					13,803
Net income							19,046	19,046
Other comprehensive income						(129)		(129)
BALANCE — December 31, 2011	36,678	367	247,131	(1,278)	(1,200)	(101)	(9,726)	236,471
Stock compensation expense			28,082					28,082
Stock options and warrants exercised and restricted stock units vested, net	849	9	11,758					11,767
Common stock issued under employee stock purchase plan	45	—	2,426					2,426
Tax benefit realized from stock-based awards			14,150					14,150
Net income							18,732	18,732
Other comprehensive income						20		20
BALANCE — December 31, 2012	37,572	\$ 376	\$ 303,547	(1,278)	\$ (1,200)	\$ (81)	\$ 9,006	\$ 311,648

The accompanying notes are an integral part of the consolidated financial statements

[Table of Contents](#)

**athenahealth, Inc.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Amounts in thousands)

	Year Ended December 31,		
	2012	2011	2010
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	29,144	19,030	12,956
Amortization of premium on investments	1,270	1,579	1,152
Provision for uncollectible accounts	153	1,122	1,772
Excess tax benefit from stock-based awards	(14,179)	(14,208)	(9,245)
Deferred income tax	(890)	(2,962)	1,013
Change in fair value of contingent considerations	(5,118)	40	(250)
Stock-based compensation expense	27,236	18,901	14,477
Other reconciling adjustments	(178)	73	199
Changes in operating assets and liabilities:			
Accounts receivable	(12,764)	(12,130)	(5,319)
Prepaid expenses and other current assets	12,096	11,787	5,461
Other long-term assets	111	489	(243)
Accounts payable	13	688	(1,024)
Accrued expenses	3,898	2,832	1,021
Accrued compensation	7,959	8,055	3,404
Deferred revenue	2,969	9,987	7,917
Deferred rent	(239)	(3,565)	(1,275)
Net cash provided by operating activities	70,213	60,764	44,720
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Capitalized software development costs	(15,657)	(7,779)	(3,881)
Purchases of property and equipment	(23,904)	(16,696)	(15,932)
Proceeds from sales and disposals of property and equipment	172	—	363
Proceeds from sales and maturities of investments	160,340	168,083	110,741
Purchases of short-term and long-term investments	(118,919)	(165,657)	(145,443)
Payments on acquisition	(5,798)	(34,882)	—
Decrease in restricted cash	3,650	3,684	525
Net cash used in investing activities	(116)	(53,247)	(53,627)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from issuance of common stock under stock plans and warrants	18,699	14,097	8,606
Taxes paid related to net share settlement of restricted stock units	(4,248)	—	—
Excess tax benefit from stock-based awards	14,179	14,208	9,245
Payment of contingent consideration accrued at acquisition date	(1,550)	(3,355)	(195)
Financing fee for line of credit	—	(741)	—
Payment to terminate interest rate derivative contract	—	(563)	—
Payments on long-term debt and capital lease obligations	—	(9,216)	(3,535)
Net cash provided by financing activities	27,080	14,430	14,121
Effects of exchange rate changes on cash and cash equivalents	30	(110)	204
Net increase in cash and cash equivalents	97,207	21,837	5,418
Cash and cash equivalents at beginning of period	57,781	35,944	30,526
Cash and cash equivalents at end of period	\$ 154,988	\$ 57,781	\$ 35,944
<b>Non-cash transactions</b>			
Property, equipment and purchased software recorded in accounts payable and accrued expenses	\$ 4,217	\$ 8,066	\$ 214
Taxes to be paid related to net share settlement of restricted stock units in accrued expenses	\$ 258	\$ —	\$ —
Tax benefit recorded in prepaid expenses and other current assets	\$ 14,150	\$ 13,803	\$ 7,547
Property and equipment acquired under capital leases	—	—	363
<b>Additional disclosures</b>			
Cash received for interest	\$ 1,960	\$ 1,900	\$ 1,193
Cash paid for taxes	\$ 3,932	\$ 2,708	\$ 1,636

The accompanying notes are an integral part of these consolidated financial statements.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

**1. Nature of Operations and Summary of Significant Accounting Policies**

*General* - athenahealth, Inc. (the “Company”, “we”, “us”, or “our”) is a business services company that provides ongoing billing, clinical-related, and other related services to its customers. The Company provides these services with the use of athenaNet, a proprietary Internet-based practice management application. The Company’s customers consist of medical group practices ranging in size throughout the United States of America.

*Principles of Consolidation* - The accompanying consolidated financial statements include the results of operations of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

*Use of Estimates* - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions are used for, but are not limited to: (1) revenue recognition; including the estimated expected customer life; (2) asset impairments; (3) depreciable lives of assets; (4) fair value of stock-based compensation; (5) allocation of direct and indirect cost of sales; (6) fair value of identifiable purchased tangible and intangible assets and contingent consideration in a business combination and (7) litigation reserves. Actual results could significantly differ from those estimates.

*Revenue Recognition* - The Company recognizes revenue when there is evidence of an arrangement, the service has been provided to the customer, the collection of the fees is reasonably assured, and the amount of fees to be paid by the customer are fixed or determinable.

The Company derives its revenue from business services fees, implementation fees, and other services. Business services fees include amounts charged for ongoing billing, clinical-related, and other related services and are generally billed to the customer as a percentage of total collections. The Company does not recognize revenue for business services fees until these collections are made, as the services fees are not fixed and determinable until such time. Business services fees also include amounts charged to customers for generating and mailing patient statements and are recognized as the related services are performed.

Implementation revenue consists primarily of professional services fees related to assisting customers with the implementation of the Company’s services and are generally billed upfront and recorded as deferred revenue until the implementation is complete and then recognized ratably over the longer of the life of the agreement or the estimated expected customer life, which is currently estimated to be twelve years. The Company evaluates the length of the amortization period of the implementation fees based on its experience with customer contract renewals and consideration of the period over which those customers will receive benefits from the Company’s current portfolio of services. Certain expenses related to the implementation of a customer, such as out-of-pocket travel, are typically reimbursed by the customer. This is accounted for as both revenue and expense in the period the cost is incurred. Other services consist primarily of training, consulting services and interface fees and are recognized as the services are performed.

Each deliverable within a multiple-deliverable revenue arrangement is accounted for as a separate unit if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control. The Company considers a deliverable to have standalone value if it sells this item separately or if the item is sold by another vendor or could be resold by the customer. Further, the Company’s revenue arrangements generally do not include a general right of return relative to delivered products. Deliverables not meeting the criteria for being a separate unit of accounting are combined with a deliverable that does meet that criterion. The appropriate allocation of arrangement consideration and recognition of revenue is then determined for the combined unit of accounting. If and when we are not able to deliver all separate units of account in the same period, we allocate arrangement consideration to each deliverable in an arrangement based on its relative selling price.

*Direct Operating Expenses* - Direct operating expenses consist primarily of salaries, benefits, and stock-based compensation related to personnel who provide services to clients; claims processing costs; implementing new clients; and other direct costs related to collection and business services. Costs associated with the implementation of new clients are expensed as incurred. The reported amounts of direct operating expenses do not include allocated amounts for rent and

overhead costs (which are included in general and administrative costs), and depreciation and amortization (which are broken out separately on the Consolidated Statements of Income), except for the amortization of certain purchased intangible assets.

*Research and Development Expenses* - Research and development expenses consist primarily of personnel-related costs and consulting fees for third-party developers. All such costs are expensed as incurred.

*Cash and Cash Equivalents* - Cash and cash equivalents consist of deposits, money market funds, commercial paper, and other liquid securities with remaining maturities of three months or less at the date of purchase.

*Investments* - Management determines the appropriate classification of investments at the time of purchase based upon management’s intent with regard to such investments. Scheduled maturity dates of U.S. government backed securities, corporate bonds and commercial paper purchased that are within one year are classified as short-term. Scheduled maturity dates of U.S. government backed securities, corporate bonds and commercial paper that are in excess of one year are classified as long-term. All investments are recorded at fair value with unrealized holding gains and losses included in accumulated other comprehensive (loss) income. There were no material realized gains and losses on sales of these investments for the periods presented. The Company determines realized gains and losses based on the specific identification method. All investments are held as available-for-sales investments.

*Accounts Receivable* - Accounts receivable represents amounts due from customers for subscription and implementation services. Accounts receivable are stated net of an allowance for uncollectible accounts, which are determined by establishing reserves for specific accounts and consideration of historical and

estimated probable losses.

Activity in the allowance for doubtful accounts is as follows:

	Years Ended December 31,		
	2012	2011	2010
Beginning balance	\$ 2,348	\$ 1,945	\$ 1,271
Provision	153	1,122	1,772
Write-offs and adjustments	(730)	(719)	(1,098)
Ending balance	<u>\$ 1,771</u>	<u>\$ 2,348</u>	<u>\$ 1,945</u>

*Financial Instruments* - Certain financial instruments are required to be recorded at fair value. The other financial instruments approximate their fair value, primarily because of their short-term nature. All highly liquid debt instruments purchased with a maturity of three months or less at the date of acquisition are included in cash and cash equivalents.

Derivative financial instruments have been used to manage certain of the Company's interest rate exposures. The Company does not enter into derivatives for speculative purposes, nor does the Company hold or issue any financial instruments for trading purposes. In October 2008, the Company entered into a derivative instrument that is not designated as hedge which was terminated in May 2011. The Company entered into the derivative instrument to offset the cash flow exposure associated with its interest payments on certain outstanding debt which was paid off in May 2011. Derivatives are carried at fair value, as determined using standard valuation models and adjusted, when necessary, for credit risk and are separately presented on the balance sheet. The gains or losses from changes in the fair value of derivative instruments that are not accounted for as hedges are recognized in earnings and are separately presented.

*Property and Equipment* - Property and equipment are stated at cost. Equipment, furniture, and fixtures are depreciated using the straight-line method over their estimated useful lives, generally ranging from three to five years. Leasehold improvements are depreciated using the straight-line method over the lesser of the useful life of the improvements or the applicable lease terms, excluding renewal periods. Buildings are depreciated using the straight-line method over 30 years. Building improvements are depreciated using the straight-line method over the lesser of the useful life of the improvement or the remaining life of the building. Costs associated with maintenance and repairs are expensed as incurred. The airplane and land improvements are depreciated using the straight-line method over 20 years and 10 years, respectively.

*Long-Lived Assets* - Long-lived assets to be held and used are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability of long-lived assets is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition, as compared with the asset carrying value. Measurement of an impairment loss for long-lived assets that management expects to hold and use is based on the fair value of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value, less costs to sell. No impairment losses have been recognized in the years ended December 31, 2012, 2011, and 2010.



## Table of Contents

*Restricted Cash* - As of December 31, 2012 and 2011, restricted cash balances totaled \$1.4 million and \$5.0 million, respectively. The December 31, 2012, balance of \$0.9 million consists of escrowed funds held under a letter of credit as a condition of the Company's operating lease for its corporate headquarters and \$0.5 million consists of a deposit made relating to the pending purchase of the Company's corporate headquarters. The letter of credit will remain in effect during the term of the lease agreement. The December 31, 2011, balance of \$4.2 million consisted of escrow funds relating to the remaining contingent consideration from purchase of Anodyne. This amount was which was paid in 2012. The remaining restricted cash balance as of December 31, 2011, consists of escrowed funds held under a letter of credit as a condition of the Company's operating lease for its corporate headquarters.

*Capitalized Software Costs* - The Company capitalizes costs related to its athenaNet services and certain other projects for internal use incurred during the application development stage. Costs related to the preliminary project stage and post implementation activities are expensed as incurred. Internal-use software is amortized on a straight-line basis over its estimated useful life. The estimated useful life of the software is two to three years. Amortization expense was \$9.0 million, \$4.4 million, and \$2.6 million for the years ended December 31, 2012, 2011, and 2010, respectively. Future amortization expense for all software development costs capitalized as of December 31, 2012, is estimated to be \$10.5 million, \$4.9 million and \$0.6 million for the years ending December 31, 2013, 2014, and 2015, respectively.

*Goodwill* - Goodwill is recorded as the difference, if any, between the aggregate consideration paid for an acquisition and the fair value of the identifiable net tangible and intangible assets acquired. Goodwill is not amortized but is evaluated for impairment annually or more frequently if indicators of impairment are present or changes in circumstances suggest that impairment may exist. The Company evaluates the carrying value of its goodwill annually on November 30. The first step of the goodwill impairment test compares the fair value of the reporting unit with its carrying amount, including goodwill. If the fair value of the Company's reporting unit exceeds its carrying amount, the goodwill of the reporting unit is considered not impaired. If the carrying amount of the Company's reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test, used to measure the amount of impairment loss, compares the implied fair value of the affected reporting unit's goodwill with the carrying value of that goodwill. No impairment losses have been recognized in the years ended December 31, 2012, 2011, and 2010.

*Purchased Intangibles* - Purchased intangibles consist of technology, non-compete agreements and customer relationships acquired in connection with business acquisitions and are amortized over their estimated useful lives on a straight-line basis. The Company concluded that use of the straight-line method was appropriate as the majority of the cash flows will be recognized ratably over the estimated useful lives and there is no degradation of the cash flows over time.

*Accrued expenses and accrued compensation* - Accrued expenses consist of the following:

	As of December 31,	
	2012	2011
Accrued bonus	\$ 17,192	\$ 13,677
Accrued vacation	4,109	3,517
Accrued payroll	9,980	7,008
Accrued commissions	5,112	3,974
Accrued compensation expenses	\$ 36,393	\$ 28,176
Accrued expenses	\$ 15,214	\$ 10,958
Accrued property and equipment additions	4,021	3,269
Current portion of accrued contingent consideration	448	3,547
Accrued expenses	\$ 19,683	\$ 17,774

*Deferred Rent* - Deferred rent consists of rent escalation payment terms, tenant improvement allowances and other incentives received from landlords related to the Company's operating leases for its facilities. Rent escalation represents the difference between actual operating lease payments due and straight-line rent expense, which is recorded by the Company over the term of the lease, including any construction period. The excess is recorded as a deferred credit in the early periods of the lease, when cash payments are generally lower than straight-line rent expense, and is reduced in the later periods of the lease when payments begin to exceed the straight-line expense. Tenant allowances from landlords for tenant improvements are generally comprised of cash received from the landlord as part of the negotiated terms of the lease or reimbursements of moving costs. These cash payments are recorded as deferred rent from landlords and are amortized as a reduction of periodic rent expense, over the term of the applicable lease.

## Table of Contents

*Deferred Revenue* - Deferred revenue primarily consists of billings or payments received in advance of the revenue recognition criteria being met. Deferred revenue includes certain deferred implementation services fees which are recognized as revenue ratably over the longer of the life of the agreement or the estimated expected customer life, which is currently estimated to be twelve years. Deferred revenue that will be recognized during the succeeding 12-month period is recorded as current deferred revenue and the remaining portion is recorded as noncurrent.

*Business Combinations* - The Company applies business combination accounting when they have acquired control over one or more businesses. Business Combinations are accounted for at fair value. The associated acquisition costs are generally expensed as incurred and recorded in general and administrative expenses; non-controlling interests, if any, are reflected at fair value at the acquisition date; in-process research and development ("IPR&D"), if any, is recorded at fair value as an intangible asset at the acquisition date; restructuring costs associated with a business combination, if any, are generally expensed rather than capitalized; contingent consideration is measured at fair value at the acquisition date, with changes in the fair value after the acquisition date affecting earnings; changes in deferred tax asset valuation allowances and income tax uncertainties after the measurement period will affect income tax expense; and goodwill is determined as the excess of the fair value of the consideration conveyed in the acquisition over the fair value of the net assets acquired. The accounting for business combinations requires estimates and judgments as to expectations for future cash flows of the acquired business, and the allocation of those cash flows to identifiable intangible assets, in determining the estimated fair value for assets and liabilities acquired. The fair values assigned to tangible and intangible assets acquired and liabilities assumed, including contingent consideration, are based on management's estimates and assumptions, as well as other information compiled by management, including valuations that utilize customary valuation procedures and techniques. If the actual results differ from the estimates and judgments used in these estimates, the amounts recorded in the financial statements could result in a possible impairment of the intangible assets and goodwill, or require acceleration of the amortization expense of finite-lived intangible assets. The results of the newly acquired business' operations are included in the Consolidated Statements of Income of the combined entity beginning on the date of acquisition. We have applied this acquisition method to the transactions described in Note 2.

*Concentrations of Credit Risk* - Financial instruments that potentially subject the Company to concentrations of credit risk are cash equivalents, investments, derivatives, and accounts receivable. The Company attempts to limit its credit risk associated with cash equivalents, investments by investing in highly rated corporate and financial institutions, and engaging with highly rated financial institutions as a counterparty to its derivative transaction. With respect to customer accounts receivable, the Company manages its credit risk by performing ongoing credit evaluations of its customers. No customer accounted for more than 10% of revenues or accounts receivable as of or for the years ended December 31, 2011 and 2010. One customer accounted for 11% of accounts receivable as of the year ended December 31, 2012, due to the timing of receipt of payments. However, no customers accounted for more than 10% of revenues for the year ended December 31, 2012.

*Income Taxes* - Deferred tax assets and liabilities relate to temporary differences between the financial reporting and income tax bases of assets and liabilities and are measured using enacted tax rates and laws expected to be in effect at the time of their reversal. A valuation allowance is established to reduce net deferred tax assets if, based on the available positive and negative evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. In making such determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies, and recent financial results.

The Company recognizes a tax benefit from an uncertain tax position when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits. Our income tax positions must meet a more-likely-than-not recognition threshold at the balance sheet date to be recognized in the related period. The Company's policy is to record interest and penalties related to unrecognized tax benefits in income tax expense.

*Sales and Use Taxes* - The Company's services are subject to sales and use taxes in certain jurisdictions. The Company's contractual agreements with its customers provide that payment of any sales or use taxes assessments are the responsibility of the customer. In certain jurisdictions sales taxes are collected from the customer and remitted to the respective agencies. These taxes are recorded on a net basis and excluded from revenue and expense in our financial statements as presented.

*Segment Reporting* - Operating segments are identified as components of an enterprise about which separate discrete financial information is evaluated by the chief decision-maker ("CODM"), or decision-making group, in making decisions regarding resource allocation and assessing performance. The Company, which uses consolidated financial information in determining how to allocate resources and assess performance, has determined that it operates in one segment and the CODM uses non-GAAP operating income (defined as Operating Income as shown in the Consolidated Statements of Income less total stock-based compensation and amortization expense related to purchased intangibles for the period) as the measure of the Company's profit on a regular basis.

*Stock-Based Compensation* - The Company accounts for share-based awards, including shares issued under employee stock purchase plans, stock options, and share-based awards with compensation cost measured using the fair value of the awards

## [Table of Contents](#)

issued. The Company uses the Black-Scholes option pricing model to value share-based awards and determine the related compensation expense. The assumptions used in calculating the fair value of share-based awards represent management's best estimates. The Company generally issues previously unissued shares for the exercise of stock options; however the Company may reissue previously acquired treasury shares to satisfy these issuances in the future.

*Foreign Currency Translation* - The financial position and results of operations of the Company's foreign subsidiary are measured using local currency as the functional currency. Assets and liabilities are translated at the rate of exchange in effect at the end of each reporting period. Revenues and expenses are translated at the average exchange rate for the period. Foreign currency translation gains and losses are recorded within other comprehensive (loss) income.

## **2. ACQUISITIONS**

### ***Epocrates, Inc.***

On January 7, 2013, the Company entered into a definitive agreement to acquire Epocrates, Inc. ("Epocrates"), a leading provider of clinical content to healthcare providers via a mobile device at the point of care. Upon the consummation of the acquisition, the issued and outstanding shares of Epocrates common stock will be canceled and automatically converted into the right to receive \$11.75 in cash, without interest, and all outstanding options and restricted stock unit awards under Epocrates' equity compensation plans will be assumed by the Company. Each outstanding option and restricted stock unit award shall be exercisable or shall be settled upon the same terms and conditions as under the applicable Epocrates equity compensation plan, except that each option shall be exercisable for, and each restricted stock unit shall be converted into the right to receive, shares of the Company's common stock using an exchange ratio based on the average closing sales prices per share of the Company's common stock for the ten trading days ending on the second trading day prior to the closing of the acquisition. The acquisition is expected to enable the Company to accelerate awareness of athenahealth's services across the physician market and deliver high-value information to the clinical community. The transaction is expected to close in the early part of 2013 and is subject to various closing conditions, including the requisite Epocrates stockholder approval and the expiration or termination of any waiting period under Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended. During the year ended December 31, 2012, the Company incurred legal and professional fees in connection with the acquisition of \$0.5 million, which are included in general and administrative expenses.

### ***Watertown, MA Corporate Headquarters - Arsenal on the Charles***

On December 5, 2012, the Company entered into a purchase and sale agreement with the President and Fellows of Harvard College to acquire the real estate commonly known as the Arsenal on the Charles, an expansive 29 acre, multi-building, commercial property situated less than 10 miles outside of downtown Boston where the Company currently leases its headquarters, and related operating activities. As of December 31, 2012, the Company has a minimum lease and contractual obligation of \$19.0 million related to such headquarters on the property. The purchase price will be approximately \$169 million, subject to the terms and conditions of the purchase and sale agreement, and the transaction is expected to close in the second quarter of 2013, subject to the satisfactory completion of due diligence by the Company. The Company has incurred legal and professional fees in connection with the acquisition of \$0.7 million during the year ended December 31, 2012, which are included in general and administrative expenses.

### ***Healthcare Data Services***

On October 10, 2012, the Company acquired Healthcare Data Services LLC ("HDS") for a purchase price of \$6.0 million, which was adjusted for certain working capital adjustments to arrive at a total cash consideration of \$5.8 million net of cash acquired. The valuation of the intangible assets was finalized during the quarter ended December 31, 2012. The identifiable assets acquired and liabilities assumed included \$0.3 million in accounts receivable, prepaid and other current assets, \$4.8 million of intangible assets and \$0.1 million in accrued expenses and deferred revenue. The goodwill recorded as a result of this transaction was \$0.8 million and is deductible for tax purposes. The Company incurred legal and professional fees in connection with the acquisition of \$0.2 million which are included in general and administrative expenses.

The intangibles are being amortized between 3 and 5 years, with customer lists being amortized over 5 years. The goodwill resulting from the acquisition arises largely from the synergies expected from combining the operations of the acquisition with our existing service operations, as well as from the benefits derived from the assembled workforce of the acquisition. The goodwill recognized is deductible for tax purposes.

### ***Proxsys***

On August 31, 2011, the Company acquired Proxsys LLC ("Proxsys"). The acquisition broadens the Company's offerings by bringing order transmission, pre-certification and pre-registration capabilities to the Company's service platform. The Company incurred legal costs and professional fees in connection with the acquisition of \$0.7 million which are included in general and administrative expense.

## Table of Contents

The following table summarizes the total consideration on the acquisition date:

Cash payments	\$	28,000
Contingent consideration		6,836
Less cash acquired		(106)
Fair value of total consideration	\$	34,730

The final cash payment amount was subject to a working capital adjustment which was finalized during the quarter ended December 31, 2011. Contingent consideration is recorded at fair value as an element of purchase price with subsequent adjustments recognized in the Consolidated Statements of Income. The contingent consideration is discussed in Note 4.

The fair values assigned to the contingent consideration and the tangible and intangible assets acquired and liabilities assumed are based on management's estimates and assumptions, as well as other information compiled by management, including valuations that utilize customary valuation procedures and techniques.

The following table summarizes the recognized amounts of identifiable assets acquired and liabilities assumed:

Accounts receivable	\$	1,160
Other current and long-term assets		70
Property and equipment		206
Purchased Intangibles:		
Developed technology		230
Customer relationships		8,900
Non compete agreement		500
Accounts payable and accrued expenses		(318)
Accrued compensation		(875)
Total identifiable net assets		9,873
Goodwill		24,857
	\$	34,730

The intangibles are being amortized between 2-10 years, with customer lists being amortized over 10 years. The goodwill resulting from the acquisition arises largely from the synergies expected from combining the operations of the acquisition with our existing service operations, as well as from the benefits derived from the assembled workforce of the acquisition. The goodwill recognized is deductible for tax purposes.

### ***Point Lookout***

On June 24, 2011, the Company purchased certain net assets of the Point Lookout facility located near Belfast, Maine for a purchase price of \$7.7 million, which was adjusted for certain working capital adjustments to arrive at a total cash consideration of \$7.0 million. The facility will serve as the Company's client and employee training center. The identifiable assets acquired and liabilities assumed included \$0.1 million in prepaid and other current assets, \$7.7 million of property and equipment and \$0.8 million in accrued expenses. There was no goodwill or bargain purchase gain recorded as a result of this transaction. The Company incurred legal and professional fees in connection with the acquisition of \$0.5 million which are included in general and administrative expenses.

The Company does not consider the acquisitions in 2012 and 2011 to be material to its consolidated results of operations and is therefore not presenting pro forma financial information of operations. The Company has also determined that the presentation of the results of operations for each of these acquisition, from the date of acquisition, is impracticable and immaterial.

### **3. NET INCOME PER SHARE**

Basic net income per share is computed by dividing net income by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed by dividing net income by the weighted average number of common shares outstanding and potentially dilutive securities outstanding during the period under the treasury stock method. Potentially dilutive securities include stock options, restricted stock units, and shares to be purchased under the employee stock purchase plan. Under the treasury stock method, dilutive securities are assumed to be exercised at the beginning of the periods and as if funds obtained thereby were used to purchase common stock at the average market price

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

during the period. Securities are excluded from the computations of diluted net income per share if their effect would be anti-dilutive to earnings per share.

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

The following table reconciles the weighted average shares outstanding for basic and diluted net income per share for the periods indicated:

	Years Ended December 31,		
	2012	2011	2010
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Weighted average shares used in computing basic net income per share	35,956	35,046	34,181
Net income per share - basic	\$ 0.52	\$ 0.54	\$ 0.37
Net income	\$ 18,732	\$ 19,046	\$ 12,704
Weighted average shares used in computing basic net income per share	35,956	35,046	34,181
Effect of dilutive securities	1,177	1,004	1,023
Weighted average shares used in computing diluted net income per share	37,133	36,050	35,204
Net income per share - diluted	\$ 0.50	\$ 0.53	\$ 0.36

The computation of diluted net income per share does not include 0.4 million, 0.8 million and 0.9 million of stock options and restricted stock units for the year ended December 31, 2012, 2011, and 2010, respectively, because their inclusion would have an anti-dilutive effect on net income per share.

#### **4. FAIR VALUE OF FINANCIAL INSTRUMENTS**

As of December 31, 2012 and 2011, the carrying amounts of cash and cash equivalents, restricted cash, receivables, accounts payable and accrued expenses approximated their estimated fair values because of their short term nature of these financial instruments. Included in cash and cash equivalents as of December 31, 2012 and 2011, are money market fund investments of \$59.4 millions and \$33.4 million, respectively, which are reported at fair value. As of December 31, 2012 and 2011, the Company had no outstanding debt.

**athenahealth, Inc.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**(Amounts in thousands, except per-share amounts)**

The following table presents information about the Company's financial assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2012, and December 31, 2011, and indicates the fair value hierarchy of the valuation techniques the Company utilized to determine such fair value. In general, fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities and fair values determined by Level 2 inputs utilize quoted prices (unadjusted) in inactive markets for identical assets or liabilities obtained from readily available pricing sources for similar instruments. The fair values determined by Level 3 inputs are unobservable values which are supported by little or no market activity. No amounts have been classified in investments and other assets on the Consolidated Balance Sheet at December 31, 2012. Investments include \$18.6 million of long-term U.S. government backed securities that have been classified in investments and other assets on the Consolidated Balance Sheet at December 31, 2011.

Fair Value Measurements At December 31, 2012, Using				
	Level 1	Level 2	Level 3	Total
Cash and cash equivalents:				
Money market	\$ 89,480	\$ —	\$ —	\$ 89,480
Available-for-sale investments:				
Commercial paper	—	11,748	—	11,748
Corporate bonds	—	20,334	—	20,334
Certificate of deposit	—	6,010	—	6,010
Total assets	\$ 89,480	\$ 38,092	\$ —	\$ 127,572
Accrued contingent consideration	\$ —	\$ —	\$ (448)	\$ (448)
Total liabilities	\$ —	\$ —	\$ (448)	\$ (448)
Fair Value Measurements as of December 31, 2011, Using				
	Level 1	Level 2	Level 3	Total
Cash and cash equivalents:				
Money market	\$ 33,444	\$ —	\$ —	\$ 33,444
Commercial paper	—	7,250	—	7,250
Available-for-sale investments:				
Commercial paper	—	6,499	—	6,499
Corporate bonds	—	40,833	—	40,833
U.S. government backed securities	—	33,370	—	33,370
Total assets	\$ 33,444	\$ 87,952	\$ —	\$ 121,396
Accrued contingent consideration	\$ —	\$ —	\$ (8,176)	\$ (8,176)
Total liabilities	\$ —	\$ —	\$ (8,176)	\$ (8,176)

Money markets, certificates of deposit, U.S. government backed securities, corporate bonds and commercial paper are valued using a market approach based upon the quoted market prices of identical instruments when available or other observable inputs such as trading prices of identical instruments in inactive markets or similar securities. It is the Company's policy to recognize transfers between levels of the fair value hierarchy, if any, at the end of the reporting period however there have been no such transfers during any periods presented.

Contingent consideration is recorded at fair value as an element of consideration paid with subsequent adjustments recognized in the consolidated statement of income. At the acquisition date and reporting date, the fair value of the accrued contingent consideration was determined using a probability-weighted income approach based on upside, downside and base case scenarios. This approach is based on significant inputs that are not observable in the market, which are referred to as Level 3 inputs. As of December 31, 2012, and December 31, 2011, the Company has accrued a liability of \$0.4 million and \$8.2 million respectively for the estimated fair value of contingent considerations estimated to be payable upon the acquired companies reaching specific performance metrics over a specified period of operations or time after acquisition. The elements that make up the contingent consideration are as follows:

**Anodyne**

The first potential contingent consideration related to our acquisition of Anodyne Health Partners, Inc. ("Anodyne") in 2009 ranged from zero to \$4.8 million and was payable in one installment based upon operational performance for the year



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****(Amounts in thousands, except per-share amounts)**

ended December 31, 2010. Based on the actual operational performance for the year ended December 31, 2010, the Company paid \$2.4 million relating to the first potential contingent consideration in March of 2011.

The second potential contingent consideration related to our acquisition of Anodyne in 2009 ranged from zero to \$2.9 million and was payable in quarterly installments based upon the cross selling of the Company's services for the years ended December 31, 2010 and 2011, and the six-month period ended June 30, 2012. Any amounts not earned in the first potential contingent consideration could be earned under the second potential contingent consideration in excess of the initial \$2.9 million bringing the total second potential contingent consideration to \$5.3 million. On December 31, 2011, the Company estimated the fair value of the second contingent consideration at \$1.4 million based on key assumptions including a probability adjusted level of 50% for the base case scenario and 25% for the upside and downside scenarios. The significant judgment related to the estimated earn-out payments by scenario was primarily based on the Company's i) past experience of our cross selling, ii) past experience of the timeline for converting pipeline opportunities into customers and iii) the remaining time period of this contingent consideration. At December 31, 2011, a large cross sell customer opportunity was included in the upside scenario which had a 25% probability. On March 31, 2012, the Company estimated the fair value of the second contingent consideration at \$3.4 million based on key assumptions including a 20% for the base case scenario, 70% for the upside scenario and 10% for the downside scenario. At March 31, 2012, this large cross sell opportunity was in final contract negotiations with the Company and therefore a higher probability was assigned to the upside scenario. The time period through which the contingent consideration could be earned elapsed on June 30, 2012. The Company accrued \$1.8 million as of June 30, 2012, for the final payment based on the final cross selling results which was paid during the three months ended September 30, 2012. The change in fair value of \$1.3 million for the year ended December 31, 2012, is an increase in the general and administrative line item in the Consolidated Statements of Income. The Company paid \$2.6 million during the year ended December 31, 2012, and \$3.9 million over the entire term of the second contingent consideration.

**Proxsys**

The first potential contingent consideration related to our acquisition of Proxsys LLC ("Proxsys") in 2011 ranges from zero to \$3.0 million and is payable in one installment in the first quarter of 2013 based upon revenue and new sales performance for the fiscal year ending December 31, 2012. In order to qualify for the earnout payment, the acquired subsidiary must have achieved a minimum revenue threshold which was derived from both recurring revenue and revenue generated from new customers brought onto the service after the acquisition. Once that minimum revenue threshold is met, the amount of the payment is then determined by new sales of the Company's athenaCoordinator service offering since date of acquisition. At acquisition date and on December 31, 2011, the Company estimated the fair value of the first potential contingent consideration at \$2.4 million, the key assumptions relating to this potential contingent consideration included the athenaCoordinator revenue budget for the 2012 fiscal year, which included recurring revenue and estimates related new revenue generated from new customers based upon the existing sales pipeline and historical implementation timeline and a probability adjusted level of 60% for the base case and 25% and 15% for the upside and downside scenarios, respectively. The athenaCoordinator revenue budget for the 2012 fiscal year exceeded the minimum revenue threshold. The downside scenarios included a worse case scenario where the acquired subsidiary did not achieve the minimum revenue target. Certain contracts that were in an advanced negotiation stage at December 31, 2011, and estimated to close in the first quarter of 2012, did not close during the three months ended March 31, 2012; therefore as of March 31, 2012, the Company determined that it is more likely than not that the minimum revenue threshold for athenaCoordinator will not be achieved by a margin of 5-10%. On March 31, 2012, the Company determined that based on the reforecasted amounts and the pass fail structure of this contingent payment, the probability percentages have been adjusted to 90% for the worse case scenario and 10% for the upside scenario. On March 31, 2012, the Company estimated the fair value of the first potential contingent consideration at \$0.3 million. On June 30, 2012, the Company estimated the fair value of the first potential contingent consideration to have no value. For the year ended December 31, 2012, the Company did not meet the minimum revenue threshold therefore zero consideration was earned related to the first contingent consideration. The change in fair value of \$2.4 million is a decrease in the general and administrative expense line item in the Consolidated Statements of Income for the year ended December 31, 2012.

The second potential contingent consideration related to our acquisition of Proxsys in 2011 ranges from zero to \$5.0 million and is payable in quarterly installments based upon the cross selling of the Company's athenaCollector services into Proxsys' new and acquired customer and physician sender base, from acquisition to the second year anniversary of the acquisition in the third quarter of 2013. On December 31, 2011, and through June 30, 2012, the key assumptions relating to this potential contingent consideration included scenarios primarily based on the Company's (i) past experience of our cross selling related to the Anodyne acquisition, (ii) past experience of the timeline for converting pipeline opportunities into customers and (iii) the remaining time period of this contingent consideration and a probability adjusted level of 65% for the base case and 25% and 10% for the upside and downside scenarios, respectively. As of September 30, 2012, over a one year after the acquisition, the Company determined that it now had sufficient information into the actual cross sell opportunity base to adjust



**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

the scenarios. The Company lowered its expectations of achievable cross sells within the earn out period for all scenarios and has a probability adjusted level of 60% for the base case and 20% for the upside and downside scenarios. The Company estimates the fair value of the contingent consideration at December 31, 2012, to be \$0.4 million, primarily related to the amount of time left to earn the additional consideration. The change in fair value of \$4.0 million is a decrease in the general and administrative expense line item in the Consolidated Statements of Income for the year ended December 31, 2012. Minimal cross sells have been earned and minimal payments have been made as of December 31, 2012.

The reconciliations for the fair values of financial instruments determined by Level 3 for the periods presented, are as follows:

	Year Ended December 31, 2012	Year Ended December 31, 2011
Balance beginning of period	\$ 8,176	\$ 4,655
Payments	(2,610)	(3,355)
Additions	—	6,836
Change in fair value (included in G&A expenses)	(5,118)	40
Balance end of period	<u>\$ 448</u>	<u>\$ 8,176</u>

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

**5. INVESTMENTS**

The summary of available-for-sale securities at December 31, 2012, is as follows:

	Amortized Cost	Gross Unrealized Gain	Fair Value
Commercial paper	\$ 11,740	\$ 8	\$ 11,748
Corporate bonds	20,331	3	20,334
Certificate of deposit	6,008	2	6,010
Total	<u>\$ 38,079</u>	<u>\$ 13</u>	<u>\$ 38,092</u>

The summary of available-for-sale securities at December 31, 2011, is as follows:

	Amortized Cost	Gross Unrealized Gains (Loss)	Fair Value
Commercial paper	\$ 13,739	\$ 10	\$ 13,749
Corporate bonds	40,863	(30)	40,833
U.S. government backed securities	33,374	(4)	33,370
Total	<u>\$ 87,976</u>	<u>\$ (24)</u>	<u>\$ 87,952</u>

**6. PROPERTY AND EQUIPMENT**

The Company has no capital leases for the years ended December 31, 2012, and December 31, 2011.

The fair values of the property and equipment acquired as part of the purchase of the Point Lookout facility are allocated as buildings of \$4.8 million, land and land improvements of \$2.1 million, and furniture and fixtures of \$0.6 million.

Property and equipment consist of the following:

	Years Ended December 31,	
	2012	2011
Equipment	\$ 56,078	\$ 43,950
Furniture and fixtures	5,297	3,634
Leasehold improvements	15,518	12,297
Airplane	3,156	3,154
Building and improvements	18,144	14,556
Land and land improvements	2,950	2,921
Total property and equipment, at cost	101,143	80,512
Accumulated depreciation and amortization	(49,902)	(33,929)
Construction in progress	2,794	5,692
Property and equipment, net	<u>\$ 54,035</u>	<u>\$ 52,275</u>

Depreciation expense on property and equipment was \$16.6 million, \$12.2 million, and \$8.6 million for the years ended December 31, 2012, 2011, and 2010, respectively.

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

## 7. GOODWILL AND PURCHASED INTANGIBLE ASSETS

### *Goodwill*

The following table summarizes the activity relating to the carrying value of the Company's goodwill during the years ended December 31, 2012 and 2011:

Gross balance as of January 1, 2011	\$	22,450
Goodwill recorded in connection with the acquisition of Proxsys LLC		24,857
Gross balance as of December 31, 2011	\$	47,307
Goodwill recorded in connection with the acquisition of Healthcare Data Services LLC		783
Gross balance as of December 31, 2012	\$	48,090

### *Purchased Intangible Assets*

The fair values of the purchased intangible assets acquired as part of the purchase of Healthcare Data Services are allocated as development technology of \$3.2 million, customer relationships of \$0.4 million and non-compete agreement of \$1.2 million.

Intangible assets acquired as of December 31, 2012 and 2011, are as follows:

	December 31, 2012			Weighted Average Remaining Useful Life (years)
	Gross	Accumulated Amortization	Net	
Developed technology	\$ 6,612	\$ (2,678)	\$ 3,934	2.5
Customer relationships	21,434	(5,175)	16,259	7.6
Non-compete agreement	1,678	(310)	1,368	2.6
Total	\$ 29,724	\$ (8,163)	\$ 21,561	

	December 31, 2011			Weighted Average Remaining Useful Life (years)
	Gross	Accumulated Amortization	Net	
Developed technology	\$ 3,391	\$ (1,692)	\$ 1,699	2.4
Customer relationships	20,966	(3,057)	17,909	8.7
Non-compete agreement	500	(56)	444	2.7
Total	\$ 24,857	\$ (4,805)	\$ 20,052	

Amortization expense for the years ended December 31, 2012, 2011, and 2010, was \$3.4 million, \$2.2 million, and \$1.8 million, respectively, and is included in direct operating expenses. Estimated amortization expense, based upon the Company's intangible assets at December 31, 2012, is as follows:

Year ending December 31,	Amount
2013	\$ 4,458
2014	4,084
2015	3,331
2016	2,190
2017	2,169
Thereafter	5,329
Total	\$ 21,561

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

## 8. OPERATING LEASES AND OTHER COMMITMENTS

The Company maintains operating leases for facilities and certain office equipment. The facility leases contain renewal options and require payments of certain utilities, taxes, and shared operating costs of each leased facility. The rental agreements expire at various dates from 2013 to 2024.

The Company entered into a lease agreement with a landlord in connection with the relocation of its corporate offices in June 2005. Under the terms of such lease agreement, the landlord provided approximately \$11.5 million in allowances to the Company for the leasehold improvements for the office space, reimbursement of moving costs and all payments under the Company's lease agreement relating to its previous office space. Prior to May 2011, the incentive payments received from the new landlord were being recognized over the lease term and accounted for as a component of deferred rent on the Company's Consolidated Balance Sheets. In May 2011, the Company paid \$2.1 million to settle the remaining amounts of these rental incentive loans.

The lease agreement contains certain financial and operational covenants. These covenants provide for restrictions on, among other things, a change in control of the Company and certain structural additions to the premises, without prior consent from the landlord.

Rent expense for the Company totaled \$4.9 million, \$3.5 million, and \$2.9 million for the years ended December 31, 2012, 2011, and 2010, respectively.

Future minimum lease payments under non-cancelable operating leases as of December 31, 2012, are as follows:

Year ending December 31,	Future Rent Payments
2012 \$	8,867
2013	8,066
2014	5,571
2015	2,818
2016	1,787
Thereafter	4,980
Total minimum lease payments	\$ 32,089

At December 31, 2012, \$19.0 million of the \$32.1 million relates to lease payments for our Watertown, Massachusetts headquarters.

## 9. DEBT AND CAPITAL LEASE OBLIGATIONS

As of December 31, 2012 and 2011, the Company had no outstanding debt and capital lease obligations.

*2013 Commitment Letter* - On January 7, 2013, the Company entered into commitment letter, pursuant to which Bank of America, N.A. committed to increase its commitment to provide revolving loans under our credit facility by an amount up to \$55 million as a source of funding for the Epocrates transaction.

*2011 Line of Credit* — On October 20, 2011, the Company entered into a \$100.0 million new revolving credit agreement ("Revolving Credit Agreement") with a term of five years. The Revolving Credit Agreement replaces the \$15.0 million Credit Agreement that expired September 30, 2011. The terms and conditions of the Revolving Credit Agreement are customary to facilities of this nature. The Company was required to pay financing fees of \$0.7 million for this Revolving Credit Agreement which is being amortized in interest expense in the Consolidated Statements of Income over the five-year term.

*2008 Term and Revolving Loans* — On September 30, 2008, the Company entered into a Credit Agreement (the "Credit Agreement") with a financial institution. The Credit Agreement consisted of a revolving credit facility in the amount of \$15.0 million and a term loan facility in the amount of \$6.0 million (collectively, the "Credit Facility"). In May 2011, the Company repaid the outstanding balance of the term loan and the entire Credit Agreement matured on September 30, 2011.

*Capital Lease Obligation* — In June 2007, the Company entered into a master lease and security agreement (the "Equipment Line") with a financing company. The Equipment Line allows for the Company to lease from the financing company eligible equipment purchases, submitted within 90 days of the applicable equipment's invoice date. Each lease has a

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

36 month term which are payable in equal monthly installments, commencing on the first day of the fourth month after the date of the disbursements of such loan and continuing on the first day of each month thereafter until paid in full. The Company has accounted for these as capital leases. In May 2011 the Company terminated these leases and elected to purchase the assets for approximately \$1.0 million. The weighted average interest rate implicit in the leases was 4.3%.

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

## 10. STOCKHOLDERS' EQUITY

*Preferred Stock* — The Company's Board of Directors has the authority, without further action by stockholders, to issue up to 5,000 shares of preferred stock in one or more series. The Company's board of directors may designate the rights, preferences, privileges, and restrictions of the preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preference, and number of shares constituting any series or the designation of any series. The issuance of preferred stock could have the effect of restricting dividends on the Company's common stock, diluting the voting power of its common stock, impairing the liquidation rights of its common stock, or delaying or preventing a change in control. The ability to issue preferred stock could delay or impede a change in control. As of December 31, 2012 and 2011, no shares of preferred stock were outstanding.

*Common Stock* — Common stockholders are entitled to one vote per share and dividends when declared by the Board of Directors, subject to any preferential rights of preferred stockholders.

*Warrants* — In connection with equipment financing with a finance company and a bank in May 2001, the Company issued warrants to purchase shares of the Company's stock at an exercise price of \$3.08 per share. As of December 31, 2011, 32 warrants remained outstanding. The 32 warrants were exercised during the year ended December 31, 2012. As of December 31, 2012, no warrants remain outstanding.

## 11. STOCK-BASED COMPENSATION

Total stock-based compensation expense for the years ended December 31, 2012, 2011, and 2010, are as follows:

	Year Ended December 31,		
	2012	2011	2010
<u>Stock-based compensation charged to:</u>			
Direct operating	\$ 5,619	\$ 3,173	\$ 2,298
Selling and marketing	7,717	5,645	3,509
Research and development	3,213	2,311	2,014
General and administrative	10,687	7,772	6,656
Total	<u>\$ 27,236</u>	<u>\$ 18,901</u>	<u>\$ 14,477</u>
Amortization of capitalized stock-based compensation related to software development	257	—	—
Total	<u>\$ 27,493</u>	<u>\$ 18,901</u>	<u>\$ 14,477</u>

In addition, for the year ended December 31, 2012, \$0.8 million of stock-based compensation was capitalized in the line item Software Development Costs in the Consolidated Balance Sheet for which \$0.3 million was included in the line item Depreciation and Amortization Expense in the Consolidated Statement of Income. The amount of stock-based compensation related to capitalized software development costs in prior periods was not significant.

In 2007, the board of directors and the Company's stockholders approved the Company's 2007 Stock Option and Incentive Plan. The 2007 Stock Option and Incentive Plan was amended and restated in 2011 to: (i) remove an evergreen provision; (ii) increase the number of shares reserved for issuance by 1.3 million shares; (iii) set a multiplier for full value awards of 1.3 shares of stock for each share of stock subject to that award; (iv) set minimum restriction periods for stock awards; (v) set maximum awards payable for performance-based awards; (vi) add performance criteria; and (vii) make other administrative changes; and in 2012 to: (i) increase the number of shares reserved for issuance by 1.85 million shares; (ii) set a multiplier for full value awards of 1.66 shares of stock for each share of stock subject to that award; (iii) set a new minimum period for a performance cycle for cash-based awards; (iv) add performance criteria; (v) revise the share counting provision so that shares underlying awards other than stock options and stock appreciation rights may be withheld to satisfy tax withholding obligations; and (vi) extend its term through April 23, 2022 (as amended and restated, the "2007 Plan"). As of December 31, 2012 and 2011, there were approximately 3,303 and 2,494 shares, respectively, available for grant under the Company's stock award plans.

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

### **Stock Options**

Options granted under the 2007 Plan may be incentive stock options or non-qualified stock options under the applicable provisions of the Internal Revenue Code. Incentive stock options are granted with exercise prices at or above the fair value of the Company's common stock at the grant date as determined by the Board of Directors. Incentive stock options granted to employees who own more than 10% of the voting power of all classes of stock are granted with exercise prices at 110% of the fair value of the Company's common stock at the date of the grant. Non-qualified stock options may be granted with exercise prices up to the fair value of the Company's common stock on the date of the grant, as determined by the Board of Directors. All options granted vest over a range of one to four years and have contractual terms of between five and ten years. Options granted typically vest 25% per year over a total of four years at each anniversary, with the exception of options granted to members of the board of directors, which vest on a quarterly basis.

The following table presents the stock option activity for the year ended December 31, 2012:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding — January 1, 2012	2,885	\$ 30.81		
Granted	371	71.06		
Exercised	(670)	24.28		
Forfeited	(83)	49.05		
Outstanding — as of December 31, 2012	2,503	\$ 37.93	6.7	\$ 88,661
Exercisable — as of December 31, 2012	1,435	\$ 29.60	5.8	\$ 62,679
Vested and expected to vest as of December 31, 2012	2,336	\$ 36.71	6.6	\$ 85,571
Weighted-average fair value of options granted for the year ended December 31, 2012		\$ 31.71		

The Company recorded compensation expense in relation to stock options of \$9.8 million, \$10.6 million, and \$11.8 million, for the years ended December 31, 2012, 2011, and 2010, respectively.

The following table illustrates the weighted average assumptions used to compute stock-based compensation expense for awards granted:

	Year Ended December 31,		
	2012	2011	2010
Risk-free interest rate	1%	1% - 2.2%	1.5% - 3.0%
Expected dividend yield	—%	—%	—%
Expected option term (years)	3.0 - 5.0	5.0	6.25
Expected stock volatility	43% - 52%	51% - 54%	45% - 52%

The risk-free interest rate estimate was based on the U.S. Treasury rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The expected dividend yield was based on the Company's expectation of not paying dividends in the foreseeable future.

For grants issued during the year ended December 31, 2010, the expected option term reflects the application of the simplified method. The simplified method defines the life as the average of the contractual term of the options and the weighted average vesting period for all option tranches. This methodology was utilized due to the short length of time our common stock had been publicly traded. In 2011, the Company began using company-specific historical information.

Since the Company completed its initial public offering in September 2007, it did not have sufficient history as a publicly traded company to evaluate its volatility factor for grants prior to 2011. As such, the Company analyzed the volatilities of a group of peer companies, including company-specific historical information to date, to support the assumptions used in its calculations. The Company averaged the volatilities of the peer companies with in-the-money options, sufficient trading history and similar vesting terms to generate the assumptions. In 2012, the Company began using only company-specific historical and implied volatility information to generate the volatility assumptions.

[Table of Contents](#)

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

As of December 31, 2012 and 2011, there was \$19.2 million and \$20.8 million, respectively, of unrecognized stock-based compensation expense related to unvested stock option share-based compensation arrangements granted under the Company's stock award plans. This expense is expected to be recognized over a weighted-average period of approximately 2.4 years. The weighted average fair value of stock options granted during fiscal 2012, 2011, and 2010, was \$31.71, \$21.01, and \$19.06, respectively. The intrinsic value of options exercised during fiscal 2012, 2011, and 2010, was \$36.1 million, \$26.1 million, and \$15.2 million, respectively. The intrinsic value is calculated as the difference between the market value on the date of purchase and the exercise price of the options.

### ***Restricted Stock Units***

The 2007 Plan also allows for granting of restricted stock unit awards under the terms of the plan. The majority of the restricted units vest in four equal, annual installments on the anniversaries of the vesting start date or in four equal, quarterly installments on anniversaries of the vesting date. The Company estimated the fair value of the restricted stock units using the market price of its common stock on the date of the grant. The fair value of restricted stock units is amortized on a straight-line basis over the vesting period. The following table presents the restricted stock unit activity for the year ended December 31, 2012.

	Shares	Weighted-Average Grant Date Fair Value
Outstanding — January 1, 2012	757	\$ 43.99
Granted	565	71.15
Vested	(210)	44.88
Forfeited	(28)	51.77
Outstanding — as of December 31, 2012	1,084	\$ 58.07

As of December 31, 2012, \$49.3 million of total unrecognized compensation costs related to restricted stock units is expected to be recognized over a weighted average period of 2.8 years. Stock-based compensation expense of \$17.3 million, \$7.3 million, and \$2.3 million was recorded for restricted stock units during the years ended December 31, 2012, 2011, and 2010, respectively.

### ***Employee Stock Purchase Plan***

The Company's 2007 Employee Stock Purchase Plan ("2007 ESPP") allows employees of the Company and its subsidiaries as designated by the Company's board of directors to purchase shares of the Company's common stock. The purchase price is equal to 85% of the lower of the closing price of the Company's common stock on (1) the first day of the purchase period or (2) the last day of the purchase period. The expense for the years ended December 31, 2012, 2011, and 2010, was \$1.0 million, \$1.0 million, and \$0.4 million, respectively.

## **12. INCOME TAXES**

The components of the Company's income tax provision for the years ended December 31, 2012, 2011, and 2010, are as follows:

	2012	2011	2010
Current Provision:			
Federal	\$ 13,089	\$ 12,264	\$ 6,193
State	3,575	4,397	3,141
Foreign	372	135	49
	17,036	16,796	9,383
Deferred Provision (Benefit):			
Federal	26	(1,804)	1,285
Foreign	(114)	—	—
State	(802)	(1,158)	(272)
	(890)	(2,962)	1,013
Total income tax provision	\$ 16,146	\$ 13,834	\$ 10,396

The components of the Company's deferred income taxes as of December 31, 2012 and 2011, are as follows:

	2012	2011
Deferred tax assets:		
Federal net operating loss carryforward	\$ —	\$ 1,978
State net operating loss carryforward	25	132
Allowances for accounts receivable	1,005	1,610
Deferred rent obligation	1,593	1,749



Stock compensation	13,800	10,184
Other accrued liabilities	1,743	908
Deferred revenue	16,594	13,672
Other	2,251	3,064
Total gross deferred tax assets	37,011	33,297
Valuation allowance	(25)	(132)
Total deferred tax assets	36,986	33,165
Deferred tax liabilities:		
Intangible assets	(6,605)	(4,760)
Capitalized software development	(5,420)	(2,807)
Property and equipment	(6,290)	(8,117)
Investments	(5)	(8)
Other	—	304
Total deferred tax liabilities	(18,320)	(15,388)
Net deferred tax assets	\$ 18,666	\$ 17,777

The Company classifies its deferred tax assets and liabilities as current or noncurrent based on the classification of the related asset or liability for financial reporting giving rise to the temporary difference. A deferred tax asset that is not related to an asset or liability for financial reporting, including deferred tax assets related to net operating loss (“NOLs”) carryforwards, is classified according to the expected reversal date. The Company recorded a valuation allowance against certain state net operating losses related to Anodyne. The Company evaluated the ability to utilize the losses and determined they could not meet the more likely than not standard of utilizing the losses.

As of December 31, 2012, the Company had federal and state NOLs of approximately \$6.1 million (which includes \$6.1 million of NOLs from stock-based compensation) and \$2.2 million (which includes \$0.4 million of NOLs from stock-based compensation), respectively, to offset future federal and state taxable income. The state NOLs begin to expire 2013 and the federal NOLs expire at various times from 2022 through 2028. As of December 31, 2011, the Company had federal and state NOLs of approximately \$22.7 million (which includes \$17.0 million of NOLs from stock-based compensation) and \$6.3 million (which includes \$1.0 million of NOLs from stock-based compensation), respectively, to offset future federal and state taxable income.

The Company has generated NOLs from stock-based compensation deductions in excess of expenses recognized for financial reporting purposes (excess tax benefits). Excess tax benefits are realized when they reduce taxes payable, as determined using a “with and without” method, and are credited to additional paid-in capital rather than as a reduction of income tax provision. During the years ended December 31, 2012, 2011, and 2010, the Company realized excess tax benefits from federal and state tax deductions of \$14.1 million, \$14.2 million and \$9.2 million, respectively, which was credited to additional paid-in capital. As of December 31, 2012, the amount of unrecognized federal and state excess tax benefits is \$3.8 million and \$0.0 million, respectively, which will be credited to additional paid-in capital when realized.

During the year ended December 31, 2012, the Company utilized tax federal NOLs to reduce the current tax provision by \$2.8 million. During the year ended December 31, 2011, the Company utilized tax federal NOLs carryforwards to reduce the current tax provision by \$0.3 million. During the year ended December 31, 2010, the Company utilized tax federal NOLs carryforwards to reduce the current tax provision by \$4.6 million.

The Company’s federal research and development tax credit carryforward is available to offset future federal and state taxes and expire at various times through 2032. The Company has R&D credits of \$1.7 million (which includes \$1.7 million

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

from the utilization of credits under the without method of accounting related to stock-based compensation). These benefits when utilized to reduce the taxes payable will be credited to additional paid-in capital.

A reconciliation of the federal statutory income tax rate to the Company's effective income tax rate is as follows for the years ended December 31:

	2012	2011	2010
Income tax computed at federal statutory tax rate	35 %	35 %	34 %
State taxes net of federal benefit	5 %	6 %	6 %
Research and development credits	— %	(1)%	(1)%
Permanent differences	6 %	2 %	5 %
Valuation allowance	— %	— %	1 %
Total	46 %	42 %	45 %

A reconciliation of the beginning and ending amount of uncertain tax benefits is as follows:

	2012	2011	2010
Beginning uncertain tax benefits	\$ 1,685	\$ 1,610	\$ 986
Prior year — decreases	(140)	(23)	—
Prior year — increases	177	22	93
Current year — increases	39	76	531
Ending uncertain tax benefits	\$ 1,761	\$ 1,685	\$ 1,610

Included in the balance of unrecognized tax benefits at December 31, 2012, are \$1.3 million of tax benefits that, if recognized, would affect the effective tax rate. Included in the 2009 year increases was \$1.3 million of unrecognized tax benefits which the Company acquired through its acquisition of Anodyne, Inc. The Company anticipates \$0.6 million of unrecognized tax benefits will either expire or be settled in the next twelve months of the reporting date.

On January 3, 2013, the American Taxpayer Relief Act of 2012 was signed into law reinstating the federal research and development credit for the 2012 and 2013 years. Under the accounting guidance on this topic, the effects are recognized as a component of income tax expense or benefit from continuing operations in the financial statements for the interim or annual period that includes the enactment date. The benefit related to the 2012 federal research and development credit of \$0.7 million will be recorded in the first quarter of 2013.

The Company is subject to taxation in the United States, various states and India. As of December 31, 2012, tax years 1997 through 2011—except for 2006 through 2008 for federal purposes—remain open to examination by major taxing jurisdictions to which the Company is subject, which years primarily resulted in carryforward attributes that may still be adjusted upon examination by the Internal Revenue Service or state tax authorities if they have or will be used in a future period.

### 13. EMPLOYEE BENEFIT PLAN

The Company sponsors a 401(k) retirement savings plan (the “401(k) Plan”), under which eligible employees may contribute, on a pre-tax basis, specified percentages of their compensation, subject to maximum aggregate annual contributions imposed by the Internal Revenue Code of 1986. All employee contributions are allocated to the employee's individual account and are invested in various investment options as directed by the employee. Employees' cash contributions are fully vested and non-forfeitable. The Company may make a discretionary contribution in any year, subject to authorization by the Company's Board of Directors. During the years ended December 31, 2012, 2011, and 2010, the Company's contributions to the 401(k) Plan were \$2.4 million, \$1.7 million, and \$1.2 million, respectively.

### 14. COMMITMENTS AND CONTINGENCIES

On July 18, 2011, the Company filed a complaint against ADP AdvancedMD, Inc. in the United States District Court for the District of Massachusetts. The complaint alleges that ADP AdvancedMD, Inc. has infringed two of the Company's U.S. Patents: No. 7,617,116, which was issued on November 10, 2009, for “Practice Management and Billing Automation System” and No. 7,720,701, which was issued on May 18, 2010, for “Automated Configuration of Medical Practice Management Systems.” On May 16, 2012, the Court entered the parties' joint stipulation of dismissal without prejudice of claims and counterclaims related to U.S. Patent No. 7,720,701. A Markman Hearing was held on September 14, 2012. The Court has not

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per-share amounts)**

yet issued its Markman decision. The Company is seeking permanent injunctive relief, damages, pre- and post-judgment costs and interest, and attorneys' fees.

On July 28, 2011, a complaint was filed by PPS Data, LLC naming the Company in a patent infringement case ( *PPS Data, LLC v. athenahealth, Inc.*, Civil Action No. 3:11-cv-00746, United States District Court for the Middle District of Florida). The complaint alleges that the Company has infringed U.S. Patent No. 6,343,271 with a listed issue date of January 29, 2002, entitled "Electronic Creation, Submission, Adjudication, and Payment of Health Insurance Claims" (the "'271 Patent"). The complaint seeks an injunction enjoining infringement, damages, pre- and post-judgment costs and interest, and attorneys' fees. On September 8, 2011, the Company filed a motion to dismiss, or, in the alternative, a motion for summary judgment. On October 18, 2011, the plaintiff filed a motion for leave to amend its complaint to allege that the Company has infringed on U.S. Patent No. 6,341,265 with a listed issue date of January 22, 2002, entitled "Provider claim editing and settlement system," and U.S. Patent No. 7,194,416 with a listed issue date of March 20, 2007, entitled "Interactive creation and adjudication of health care insurance claims." The Court granted the plaintiff's motion for leave to amend its complaint on December 21, 2011, and on December 23, 2011, the plaintiff filed its amended complaint. On December 27, 2011, the Company filed a motion to dismiss, or, in the alternative, a motion for summary judgment of non-infringement with respect to the '271 Patent. On December 29, 2011, the United States Patent and Trademark Office granted the Company's request for reexamination of the '271 Patent. On January 9, 2012, the Company filed a motion to stay the case pending completion of the patent reexamination, and on March 1, 2012, the Court granted the Company's motion to stay the case. The Company believes that it has meritorious defenses to the amended complaint and will continue to contest the claims vigorously.

In addition, the Company is engaged from time to time in certain legal disputes arising in the ordinary course of business. The Company believes that it has adequate legal defenses and that the likelihood of a loss contingency relating to the ultimate disposition of any of these disputes or to any of the proceedings disclosed in this Note 14 is remote. When the likelihood of a loss contingency becomes at least reasonably possible with respect to any of these disputes or any of the proceedings disclosed in this Note 14, or, as applicable in the future, if there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred, we will revise our disclosures in accordance with the relevant authoritative guidance.

Additionally, the Company will accrue liability for legal contingencies when it believes that it is both probable that a liability has been incurred and that it can reasonably estimate the amount of the loss. The Company will review these accruals and adjust them to reflect ongoing negotiations, settlements, rulings, advice of legal counsel, and other relevant information. To the extent new information is obtained, and the Company's views on the probable outcomes of claims, suits, assessments, investigations, or legal proceedings change, changes in the Company's accrued liabilities would be recorded in the period in which such determination is made.

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

**15. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)**

Selected quarterly financial information follows for the year ended December 31, 2012:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Year
Revenue:					
Business services	\$ 93,549	\$ 100,110	\$ 102,256	\$ 112,581	\$ 408,496
Implementation and other	3,017	3,405	3,630	3,723	13,775
Total revenue	96,566	103,515	105,886	116,304	422,271
Expenses:					
Direct operating costs	38,798	41,014	41,866	45,208	166,886
Selling and marketing	23,728	27,389	25,603	27,580	104,300
Research and development	7,168	8,615	8,746	9,263	33,792
General and administrative	16,199	13,961	11,913	14,952	57,025
Depreciation and amortization	5,486	5,795	6,683	7,677	25,641
Total expenses	91,379	96,774	94,811	104,680	387,644
Operating income	5,187	6,741	11,075	11,624	34,627
Other income (expense):	134	12	88	17	251
Income before income tax provision	5,321	6,753	11,163	11,641	34,878
Income tax provision	(2,893)	(2,599)	(4,953)	(5,701)	(16,146)
Net income	\$ 2,428	\$ 4,154	\$ 6,210	\$ 5,940	\$ 18,732
Net income per share — basic	\$ 0.07	\$ 0.12	\$ 0.17	\$ 0.16	\$ 0.52
Net income per share — diluted	\$ 0.07	\$ 0.11	\$ 0.17	\$ 0.16	\$ 0.50
Weighted average shares used in computing net income per share:					
Basic	35,535	35,685	35,832	36,264	35,956
Diluted	36,996	36,906	37,212	37,420	37,133

[Table of Contents](#)

**athenahealth, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per-share amounts)

Selected quarterly financial information follows for the year ended December 31, 2011:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Year
Revenue:					
Business services	\$ 67,486	\$ 75,349	\$ 80,640	\$ 89,293	\$ 312,768
Implementation and other	2,444	2,536	3,100	3,219	11,299
Total revenue	69,930	77,885	83,740	92,512	324,067
Expenses:					
Direct operating costs	27,270	29,020	31,695	34,810	122,795
Selling and marketing	16,941	18,815	20,784	23,235	79,775
Research and development	5,079	5,166	6,141	6,957	23,343
General and administrative	11,719	11,718	11,869	13,405	48,711
Depreciation and amortization	3,398	3,737	4,749	4,826	16,710
Total expenses	64,407	68,456	75,238	83,233	291,334
Operating income	5,523	9,429	8,502	9,279	32,733
Other income (expense):	33	(77)	142	49	147
Income before income tax provision	5,556	9,352	8,644	9,328	32,880
Income tax provision	(2,305)	(4,166)	(3,364)	(3,999)	(13,834)
Net income	3,251	5,186	5,280	5,329	19,046
Net income per share — basic	\$ 0.09	\$ 0.15	\$ 0.15	\$ 0.15	\$ 0.54
Net income per share — diluted	\$ 0.09	\$ 0.14	\$ 0.15	\$ 0.15	\$ 0.53
Weighted average shares used in computing net income per share:					
Basic	34,678	34,917	35,155	35,392	35,046
Diluted	35,657	35,773	36,277	36,492	36,050

**ATHENAHEALTH, INC.**  
**2007 STOCK OPTION AND INCENTIVE PLAN**

**As Amended and Restated as of April 24, 2012**

**SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS**

The name of the plan is the athenahealth, Inc. 2007 Stock Option and Incentive Plan (the “Plan”). The purpose of the Plan is to encourage and enable the officers, employees, directors and other key persons (including consultants and prospective employees) of athenahealth, Inc. (the “Company”) and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company and its stockholders, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

“*Act*” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“*Administrator*” means either the Board or the Compensation Committee of the Board or a similar committee performing the functions of the compensation committee and which is comprised of not less than two Non-Employee Directors.

“*Award*” or “*Awards*,” except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Deferred Stock Awards, Restricted Stock Awards, Unrestricted Stock Awards, Cash-based Awards, Performance Shares and Dividend Equivalent Rights.

“*Award Agreement*” means a written or electronic agreement setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Agreement is subject to the terms and conditions of the Plan.

“*Board*” means the Board of Directors of the Company.

“*Cash-based Award*” means an Award entitling the recipient to receive a cash-denominated payment.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

“*Committee*” means a committee of the Board.

“*Covered Employee*” means an employee who is a “Covered Employee” within the meaning of Section 162(m) of the Code.

“*Deferred Stock Award*” means an Award of phantom stock units to a grantee, subject to restrictions and conditions as the Administrator may determine at the time of grant.

“*Dividend Equivalent Right*” means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

“*Effective Date*” means the date on which the Plan is approved by stockholders as set forth in Section 21.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“*Fair Market Value*” of the Stock on any given date means the fair market value of the Stock determined in good faith by the Administrator; provided, however, that if the Stock is admitted to quotation on a national securities exchange, the determination shall be made by reference to market quotations. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations.

“*Incentive Stock Option*” means any Stock Option designated and qualified as an “incentive stock option” as defined in Section 422 of the Code.

“*Non-Employee Director*” means a member of the Board who is not also an employee of the Company or any Subsidiary.

“*Non-Qualified Stock Option*” means any Stock Option that is not an Incentive Stock Option.

“*Option*” or “*Stock Option*” means any option to purchase shares of Stock granted pursuant to Section 5.

“*Performance-based Award*” means any Restricted Stock Award, Deferred Stock Award, Performance Share Award or Cash-based Award granted to a Covered Employee that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code and the regulations promulgated thereunder.

*“Performance Criteria”* means the criteria that the Administrator selects for purposes of establishing the Performance Goal or Performance Goals for an individual for a Performance Cycle. The Performance Criteria (which shall be applicable to an individual or to the organizational level specified by the Administrator, including, but not limited to, the Company or a unit, division, group, or Subsidiary of the Company) that will be used to establish Performance Goals are limited to the following: earnings before interest, taxes, depreciation, and amortization; net income (loss) (either before or after interest, taxes, depreciation, and amortization); changes in the market price of our common stock; economic value-added, funds from operations or similar measure; sales or revenue; acquisitions or strategic transactions; operating income (loss); cash flow (including, but not limited to, operating cash flow and free cash flow); return on capital, assets, equity, or investment; stockholder returns; return on sales; gross or net profit levels; productivity; expense; margins; operating efficiency; voluntary turnover; corporate compliance; employee engagement; client days-in-accounts-receivable; days-in-accounts-receivable in client work buckets; client collections; lost patient care revenue; client work rate; provider time per relative value unit; provider documentation time per appointment; client touches per claim; client tickets per provider; client satisfaction; sales bookings; working capital; earnings (loss) per share of our common stock; sales or market shares; number of clients, physicians, and providers; patient throughput; clinical documents; pay-for-performance revenue; patient no-show rate; patient interactions; days clinical orders outstanding; closed-loop orders; and referral leakage.

*“Performance Cycle”* means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Criteria will be measured for the purpose of determining a grantee's right to and the payment of a Restricted Stock Award, Deferred Stock Award or Cash-based Award. Each such period shall not be less than 12 months, except for a Cash-Based Award which shall not have a period of less than 3 months.

*“Performance Goals”* means, for a Performance Cycle, the specific goals established in writing by the Administrator for a Performance Cycle based upon the Performance Criteria.

*“Performance Share Award”* means an Award entitling the recipient to acquire shares of Stock upon the attainment of specified Performance Goals.

*“Restricted Stock Award”* means an Award entitling the recipient to acquire, at such purchase price (which may be zero) as determined by the Administrator, shares of Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant.

*“Sale Event”* shall mean (i) the dissolution or liquidation of the Company, (ii) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (iii) a merger, reorganization or consolidation in which the outstanding shares of Stock are converted into or exchanged for securities of the successor entity and the holders of the Company's outstanding voting power immediately prior to such transaction do not own a majority of the outstanding voting power of the successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction, or (iv) the sale of all of the Stock of the Company to an unrelated person or entity.

*“Sale Price”* means the value as determined by the Administrator of the consideration payable, or otherwise to be received by stockholders, per share of Stock pursuant to a Sale Event.

*“Section 409A”* means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

*“Stock”* means the Common Stock, par value \$0.001 per share, of the Company, subject to adjustments pursuant to Section 3.

*“Stock Appreciation Right”* means an Award entitling the recipient to receive shares of Stock having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

*“Subsidiary”* means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

*“Ten Percent Owner”* means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

*“Unrestricted Stock Award”* means an Award of shares of Stock free of any restrictions.

## SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEEES AND DETERMINE AWARDS

(a) Administrator. The Plan shall be administered by the Administrator.

(b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:

- (i) to select the individuals to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Deferred Stock Awards, Unrestricted Stock Awards, Cash-based Awards, Performance Share Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;

(iii) to determine the number of shares of Stock to be covered by any Award;

(iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the form of written instruments evidencing the Awards;

(v) to accelerate at any time the exercisability or vesting of all or any portion of any Award, provided that the Administrator generally shall not exercise such discretion to accelerate Awards subject to Sections 7 and 8 except in the event of the grantee's death, disability or retirement or a Sale Event;

(vi) subject to the provisions of Section 5(c)(ii), to extend at any time the period in which Stock Options may be exercised; and

(vii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees.

(c) Delegation of Authority to Grant Options and Deferred Stock Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to an officer of the Company all or part of the Administrator's authority and duties with respect to the granting of Options and Deferred Stock Awards, to individuals who are (i) not subject to the reporting and other provisions of Section 16 of the Exchange Act and (ii) not Covered Employees. Any such delegation by the Administrator shall include a limitation as to the amount of Options and Deferred Stock Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price, if applicable, and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(d) Award Agreement. Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include, without limitation, the term of an Award, the provisions applicable in the event employment or service terminates, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

(e) Indemnification. Neither the Board nor the Administrator, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Administrator (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the Company's articles or bylaws or any directors' and officers' liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

(f) Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have employees or other individuals eligible for Awards, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable (and such subplans and/or modifications shall be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3(a) hereof; and (v) take any action, before or after an Award is made, that the Administrator determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

### SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan (subject to adjustment as provided in Section 3(b)) shall be the sum of (i) 7,679,781 shares, plus (ii) the number of Shares under the Company's 1997 Stock Plan and 2000 Stock Option and Incentive Plan (together, the "Prior Plans") which are not needed to fulfill the



Company's obligations for awards issued under the Prior Plans as a result of forfeiture, expiration, cancellation, termination or net issuances of awards thereunder. Without limiting the generality of the foregoing, not more than 20,000,000 shares shall be issued in the form of Incentive Stock Options under the Plan. For purposes of this limitation, the shares of Stock underlying any Awards under the Plan that are forfeited, canceled or otherwise terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan. Further, each share reacquired by the Company to satisfy a tax withholding obligation pursuant to Awards other than Stock Options and Stock Appreciation Rights will again become available for issuance under the Plan pursuant to this Section 3(a) and will increase the number of shares of Common Stock available for issuance under the Plan by 1.66 shares; and the shares reserved for issuance under this Plan will not be reduced by each share withheld (and not issued) to satisfy a tax withholding obligation pursuant to a Deferred Stock Award. Notwithstanding the foregoing, the following shares shall not be added to the shares authorized for grant under the Plan: (i) shares tendered or held back upon exercise of an Option or settlement of an Option or Stock Appreciation Right to cover the exercise price or tax withholding, and (ii) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right upon exercise thereof. In the event the Company repurchases shares of Stock on the open market, such shares shall not be added to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that Stock Options or Stock Appreciation Rights with respect to no more than 2,000,000 shares of Stock may be granted to any one individual grantee during any one calendar year period. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Effect of Awards. Effective for Awards granted on or after April 24, 2012, for purposes of determining the number of shares of Stock available for issuance under Section 3(a), the grant of any Option or Stock Appreciation Right shall be deemed an Award for one share of Stock for each share of Stock actually subject to that Award, and the grant of any full value Award (i.e., an Award other than an Option or a Stock Appreciation Right) shall be deemed an Award of 1.66 shares of Stock for each share of Stock actually subject to that Award. Any forfeiture, cancellation, or other termination (other than by exercise) of an Award shall result in the return of the shares subject to that Award to the reserved pool of shares of Stock under the Plan in the same ratios.

(c) Changes in Stock. Subject to Section 3(c) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, including the maximum number of shares that may be issued in the form of Incentive Stock Options, (ii) the number of Stock Options or Stock Appreciation Rights that can be granted to any one individual grantee and the maximum number of shares that may be granted under a Performance-based Award, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iv) the repurchase price, if any, per share subject to each outstanding Restricted Stock Award, and (v) the price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable. The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration cash dividends paid other than in the ordinary course or any other extraordinary corporate event. Notwithstanding the foregoing, no such adjustment shall be made if the Administrator determines that such action could cause any Award to fail to satisfy the conditions of any applicable exception from the requirements of Section 409A or otherwise could subject the grantee to the additional tax imposed under Section 409A in respect of an outstanding Award or constitute a modification, extension or renewal of an Incentive Stock Option within the meaning of Section 424(h) of the Code. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

(d) Mergers and Other Transactions. Except as the Administrator may otherwise specify with respect to a particular Award in the relevant Award Agreement, in the case of and subject to the consummation of a Sale Event, all Options and Stock Appreciation Rights that are not exercisable immediately prior to the effective time of the Sale Event shall become fully exercisable as of the effective time of the Sale Event, all other Awards with time-based vesting, conditions or restrictions shall become fully vested and nonforfeitable as of the effective time of the Sale Event, and all other Awards with conditions and restrictions relating to the attainment of performance goals may become vested and nonforfeitable in connection with a Sale Event in the Administrator's discretion unless in any case, the parties to the Sale Event agree that Awards will be assumed or continued by the successor entity. Upon the effective time of the Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate, unless provision is made in connection with the Sale Event in the sole discretion of the parties thereto for the assumption or continuation of Awards theretofore granted by the successor entity, or the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties shall agree (after taking into account any acceleration hereunder). In the event of such termination, (i) the Company shall have the right, but not the obligation, to make or provide for a cash payment to the grantees holding Options and Stock Appreciation Rights,

in exchange for the cancellation thereof, in an amount equal to the difference between (A) the Sale Price times the number of shares of Stock subject to outstanding Options and Stock Appreciation Rights (to the extent then exercisable at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Stock Appreciation Rights, or (ii) each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Administrator, to exercise all outstanding Options and Stock Appreciation Rights held by such grantee, including those that will become exercisable upon the consummation of the Sale Event; provided, however, that the exercise of Options and Stock Appreciation Rights not exercisable prior to the Sale Event shall be subject to the consummation of the Sale Event.

(e) Substitute Awards. The Administrator may grant Awards under the Plan in substitution for stock and stock based awards held by employees, directors or other key persons of another corporation in connection with the merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Administrator may direct that the substitute awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances. Any substitute Awards granted under the Plan shall not count against the share limitation set forth in Section 3(a).

#### SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, directors and key persons (including consultants and prospective employees) of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

#### SECTION 5. STOCK OPTIONS

(a) Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

(b) Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a "subsidiary corporation" within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

(c) Stock Options granted pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the optionee's election, subject to such terms and conditions as the Administrator may establish.

(i) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(a) shall be determined by the Administrator at the time of grant but shall not be less than one hundred percent (100%) of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the option price of such Incentive Stock Option shall be not less than one hundred ten percent (110%) of the Fair Market Value on the grant date.

(ii) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date the Stock Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Stock Option shall be no more than five years from the date of grant.

(iii) Exercisability; Rights of a Stockholder. Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(iv) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods to the extent provided in the Option Award Agreement:

(A) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(B) Through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the optionee on the open market or that are beneficially owned by the optionee and are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date. To the extent required to avoid variable accounting treatment under FAS 123R or other applicable accounting rules, such surrendered shares shall have been owned by the optionee for at least six months; or

(C) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure.

(D) With respect to Stock Options that are not Incentive Stock Options, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price.

Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Option Award Agreement or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of attested shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.

(v) Annual Limit on Incentive Stock Options. To the extent required for “incentive stock option” treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

#### SECTION 6. STOCK APPRECIATION RIGHTS

(a) Exercise Price of Stock Appreciation Rights. The exercise price of a Stock Appreciation Right shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant (or more than the Stock Option exercise price per share, if the Stock Appreciation Right was granted in tandem with a Stock Option).

(b) Grant and Exercise of Stock Appreciation Rights. Stock Appreciation Rights may be granted by the Administrator in tandem with, or independently of, any Stock Option granted pursuant to Section 5 of the Plan. In the case of a Stock Appreciation Right granted in tandem with a Non-Qualified Stock Option, such Stock Appreciation Right may be granted either at or after the time of the grant of such Option. In the case of a Stock Appreciation Right granted in tandem with an Incentive Stock Option, such Stock Appreciation Right may be granted only at the time of the grant of the Option.

A Stock Appreciation Right or applicable portion thereof granted in tandem with a Stock Option shall terminate and no longer be exercisable upon the termination or exercise of the related Option.

(c) Terms and Conditions of Stock Appreciation Rights. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined from time to time by the Administrator, subject to the following:

(i) Stock Appreciation Rights granted in tandem with Options shall be exercisable at such time or times and to the extent that the related Stock Options shall be exercisable.

(ii) Upon exercise of a Stock Appreciation Right, the applicable portion of any related Option shall be surrendered.

(iii) The term of a Stock Appreciation Right may not exceed ten years.

#### SECTION 7. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Awards. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Award at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

(b) Rights as a Stockholder. Upon the grant of the Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the voting of the Restricted Stock, subject to such conditions contained in the Restricted Stock Award Agreement. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Stock shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Stock are vested as provided in Section 7(d) below, and (ii) certificated Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.

(c) Restrictions. Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award Agreement. Except as may otherwise be provided by the Administrator either in the Award Agreement or, subject to Section 18 below, in writing after the Award Agreement is issued, if any, if a grantee's employment (or other service relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Stock that has not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or

other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other service relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a stockholder. Following such deemed reacquisition of unvested Restricted Stock that are represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.

(d) Vesting of Restricted Stock. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Notwithstanding the foregoing, in the event that any such Restricted Stock granted to employees shall have a performance-based goal, the restriction period with respect to such shares shall not be less than one year, and in the event any such Restricted Stock granted to employees shall have a time-based restriction, the total restriction period with respect to such shares shall not be less than three years; provided, however, that Restricted Stock with a time-based restriction may become vested incrementally over such three-year period. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested." Except as may otherwise be provided by the Administrator either in the Award Agreement or, subject to Section 18 below, in writing after the Award Agreement is issued, a grantee's rights in any shares of Restricted Stock that have not vested shall automatically terminate upon the grantee's termination of employment (or other service relationship) with the Company and its Subsidiaries and such shares shall be subject to the provisions of Section 7(c) above.

#### SECTION 8. DEFERRED STOCK AWARDS

(a) Nature of Deferred Stock Awards. The Administrator shall determine the restrictions and conditions applicable to each Deferred Stock Award at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. Notwithstanding the foregoing, in the event that any such Deferred Stock Award granted to employees shall have a performance-based goal, the restriction period with respect to such Award shall not be less than one year, and in the event any such Deferred Stock Award granted to employees shall have a time-based restriction, the total restriction period with respect to such Award shall not be less than three years; provided, however, that any Deferred Stock Award with a time-based restriction may become vested incrementally over such three-year period. At the end of the deferral period, the Deferred Stock Award, to the extent vested, shall be settled in the form of shares of Stock.

(b) Election to Receive Deferred Stock Awards in Lieu of Compensation. The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of future cash compensation otherwise due to such grantee in the form of a Deferred Stock Award. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with Section 409A and such other rules and procedures established by the Administrator. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate. Any such future cash compensation that the grantee elects to defer shall be converted to a fixed number of phantom stock units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee but for the deferral.

(c) Rights as a Stockholder. A grantee shall have the rights as a stockholder only as to shares of Stock acquired by the grantee upon settlement of a Deferred Stock Award; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Deferred Stock Award, subject to such terms and conditions as the Administrator may determine.

(d) Termination. Except as may otherwise be provided by the Administrator either in the Award Agreement or, subject to Section 18 below, in writing after the Award Agreement is issued, a grantee's right in all Deferred Stock Awards that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 9. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. The Administrator may, in its sole discretion, grant (or sell at par value or such higher purchase price as determined by the Administrator), an Unrestricted Stock Award under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

#### SECTION 10. CASH-BASED AWARDS

Grant of Cash-based Awards. The Administrator may, in its sole discretion, grant Cash-based Awards to any grantee in such number or amount and upon such terms, and subject to such conditions, as the Administrator shall determine at the time of grant. The Administrator shall determine the maximum duration of the Cash-based Award, the amount of cash to which the Cash-based Award pertains, the conditions upon which the Cash-based Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-based Award shall specify a cash-denominated payment amount, formula or payment

ranges as determined by the Administrator. Payment, if any, with respect to a Cash-based Award shall be made in accordance with the terms of the Award and may be made in cash or in shares of Stock, as the Administrator determines.

#### SECTION 11. PERFORMANCE SHARE AWARDS

(a) Nature of Performance Share Awards. The Administrator may, in its sole discretion, grant Performance Share Awards independent of, or in connection with, the granting of any other Award under the Plan. The Administrator shall determine whether and to whom Performance Share Awards shall be granted, the Performance Goals, the periods during which performance is to be measured, which may not be less than one year, and such other limitations and conditions as the Administrator shall determine.

(b) Rights as a Stockholder. A grantee receiving a Performance Share Award shall have the rights of a stockholder only as to shares actually received by the grantee under the Plan and not with respect to shares subject to the Award but not actually received by the grantee. A grantee shall be entitled to receive shares of Stock under a Performance Share Award only upon satisfaction of all conditions specified in the Performance Share Award agreement (or in a performance plan adopted by the Administrator).

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 18 below, in writing after the Award agreement is issued, a grantee's rights in all Performance Share Awards shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 12. PERFORMANCE-BASED AWARDS TO COVERED EMPLOYEES

(a) Performance-based Awards. Any employee or other key person providing services to the Company and who is selected by the Administrator may be granted one or more Performance-based Awards in the form of a Restricted Stock Award, Deferred Stock Award, Performance Share Award or Cash-based Award payable upon the attainment of Performance Goals that are established by the Administrator and relate to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Administrator. The Administrator shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for any Performance Period. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Administrator, in its discretion, may adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of an individual (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development, or (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or (iii) in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions provided however, that the Administrator may not exercise such discretion in a manner that would increase the Performance-based Award granted to a Covered Employee. Each Performance-based Award shall comply with the provisions set forth below.

(b) Grant of Performance-based Awards. With respect to each Performance-based Award granted to a Covered Employee, the Administrator shall select, within the first 90 days of a Performance Cycle (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) the Performance Criteria for such grant, and the Performance Goals with respect to each Performance Criterion (including a threshold level of performance below which no amount will become payable with respect to such Award). Each Performance-based Award will specify the amount payable, or the formula for determining the amount payable, upon achievement of the various applicable performance targets. The Performance Criteria established by the Administrator may be (but need not be) different for each Performance Cycle and different Performance Goals may be applicable to Performance-based Awards to different Covered Employees.

(c) Payment of Performance-based Awards. Following the completion of a Performance Cycle, the Administrator shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if so, to also calculate and certify in writing the amount of the Performance-based Awards earned for the Performance Cycle. The Administrator shall then determine the actual size of each Covered Employee's Performance-based Award, and, in doing so, may reduce or eliminate the amount of the Performance-based Award for a Covered Employee if, in its sole judgment, such reduction or elimination is appropriate.

(d) Maximum Award Payable. The maximum Performance-based Award payable to any one Covered Employee under the Plan for a Performance Cycle is 300,000 shares of Stock (subject to adjustment as provided in Section 3(b) hereof) or \$2,000,000 in the case of a Performance-Based Award that is a Cash-Based Award.

#### SECTION 13. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of another Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Agreement. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend

Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other Award.

(b) Interest Equivalents. Any Award under this Plan that is settled in whole or in part in cash on a deferred basis may provide in the grant for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award Agreement or, subject to Section 18 below, in writing after the Award Agreement is issued, a grantee's rights in all Dividend Equivalent Rights or interest equivalents granted as a component of another Award that has not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 14. Transferability of Awards

(a) Transferability. Except as provided in Section 14(b) below, during a grantee's lifetime, his or her Awards shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. No Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or by the laws of descent and distribution. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.

(b) Administrator Action. Notwithstanding Section 14(a), the Administrator, in its discretion, may provide either in the Award Agreement regarding a given Award or by subsequent written approval that the grantee (who is an employee or director) may transfer his or her Awards (other than any Incentive Stock Options) to his or her immediate family members, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Award.

(c) Family Member. For purposes of Section 14(b), "family member" shall mean a grantee's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the grantee's household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50 percent of the voting interests.

(d) Designation of Beneficiary. Each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

#### SECTION 15. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

(b) Payment in Stock. Subject to approval by the Administrator, a grantee may elect to have the Company's minimum required tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due.

#### SECTION 16. Additional Conditions Applicable to Nonqualified Deferred Compensation Under Section 409A.

In the event any Stock Option or Stock Appreciation Right under the Plan is materially modified and deemed a new grant at a time when the Fair Market Value exceeds the exercise price, or any other Award is otherwise determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A (a "409A Award"), the following additional conditions shall apply and shall supersede any contrary provisions of this Plan or the terms of any agreement relating to such 409A Award.

(a) Exercise and Distribution. Except as provided in Section 16(b) hereof, no 409A Award shall be exercisable or distributable earlier than upon one of the following:

- (i) Specified Time. A specified time or a fixed schedule set forth in the written instrument evidencing the 409A Award.
- (ii) Separation from Service. Separation from service (within the meaning of Section 409A) by the 409A Award grantee; provided, however, that if the 409A Award grantee is a “key employee” (as defined in Section 416(i) of the Code without regard to paragraph (5) thereof) and any of the Company's Stock is publicly traded on an established securities market or otherwise, exercise or distribution under this Section 16(a)(ii) may not be made before the date that is six months after the date of separation from service.
- (iii) Death. The date of death of the 409A Award grantee.
- (iv) Disability. The date the 409A Award grantee becomes disabled (within the meaning of Section 16(c)(ii) hereof).
- (v) Unforeseeable Emergency. The occurrence of an unforeseeable emergency (within the meaning of Section 16(c)(iii) hereof), but only if the net value (after payment of the exercise price) of the number of shares of Stock that become issuable does not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the exercise, after taking into account the extent to which the emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the grantee's other assets (to the extent such liquidation would not itself cause severe financial hardship).
- (vi) Change in Control Event. The occurrence of a Change in Control Event (within the meaning of Section 16(c)(i) hereof), including the Company's discretionary exercise of the right to accelerate vesting of such grant upon a Change in Control Event or to terminate the Plan or any 409A Award granted hereunder within 12 months of the Change in Control Event.
- (b) No Acceleration. A 409A Award may not be accelerated or exercised prior to the time specified in Section 16(a) hereof, except in the case of one of the following events:
  - (i) Domestic Relations Order. The 409A Award may permit the acceleration of the exercise or distribution time or schedule to an individual other than the grantee as may be necessary to comply with the terms of a domestic relations order (as defined in Section 414(p)(1)(B) of the Code).
  - (ii) Conflicts of Interest. The 409A Award may permit the acceleration of the exercise or distribution time or schedule as may be necessary to comply with the terms of a certificate of divestiture (as defined in Section 1043(b)(2) of the Code).
  - (iii) Change in Control Event. The Administrator may exercise the discretionary right to accelerate the vesting of such 409A Award upon a Change in Control Event or to terminate the Plan or any 409A Award granted thereunder within 12 months of the Change in Control Event and cancel the 409A Award for compensation.
- (c) Definitions. Solely for purposes of this Section 16 and not for other purposes of the Plan, the following terms shall be defined as set forth below:
  - (i) “Change in Control Event” means the occurrence of a change in the ownership of the Company, a change in effective control of the Company, or a change in the ownership of a substantial portion of the assets of the Company (as defined in Section 1.409A-3(g) of the proposed regulations promulgated under Section 409A by the Department of the Treasury on September 29, 2005 or any subsequent guidance).
  - (ii) “Disabled” means a grantee who (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company or its Subsidiaries.
  - (iii) “Unforeseeable Emergency” means a severe financial hardship to the grantee resulting from an illness or accident of the grantee, the grantee's spouse, or a dependent (as defined in Section 152(a) of the Code) of the grantee, loss of the grantee's property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the grantee.

#### SECTION 17. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

- (a) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or
- (b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

## SECTION 18. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(b) or 3(c), without prior stockholder approval in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Stock Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Stock Appreciation Rights in exchange for cash. Any material Plan amendments (other than amendments that curtail the scope of the Plan), including any Plan amendments that (i) increase the number of shares reserved for issuance under the Plan, (ii) expand the type of Awards available under, materially expand the eligibility to participate in, or materially extend the term of, the Plan, or (iii) materially change the method of determining Fair Market Value, shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. In addition, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code or to ensure that compensation earned under Awards qualifies as performance-based compensation under Section 162(m) of the Code, Plan amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 18 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(c).

## SECTION 19. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

## SECTION 20. GENERAL PROVISIONS

(a) No Distribution. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

(b) Delivery of Stock Certificates. Stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by electronic mail (with proof of receipt) or by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic "book entry" records). Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Board has determined, with advice of counsel (to the extent the Board deems such advice necessary or advisable), that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed, quoted or traded. All Stock certificates delivered pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Stock is listed, quoted or traded. The Administrator may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Board may require that an individual make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(c) Stockholder Rights. Until Stock is deemed delivered in accordance with Section 20(b), no right to vote or receive dividends or any other rights of a stockholder will exist with respect to shares of Stock to be issued in connection with an Award, notwithstanding the exercise of a Stock Option or any other action by the grantee with respect to an Award.

(d) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(e) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to the Company's insider trading policy and procedures, as in effect from time to time.

(f) Forfeiture of Awards under Sarbanes-Oxley Act. If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, then any grantee who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley



Act of 2002 shall reimburse the Company for the amount of any Award received by such individual under the Plan during the 12-month period following the first public issuance or filing with the United States Securities and Exchange Commission, as the case may be, of the financial document embodying such financial reporting requirement.

SECTION 21. EFFECTIVE DATE OF PLAN

This Plan shall become effective upon approval by the holders of a majority of the votes cast at a meeting of stockholders at which a quorum is present. No grants of Stock Options and other Awards may be made hereunder after the tenth (10<sup>th</sup>) anniversary of the Effective Date and no grants of Incentive Stock Options may be made hereunder after the tenth (10<sup>th</sup>) anniversary of the date the Plan is approved by the Board.

SECTION 22. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles.

**ATHENAHEALTH, INC.**  
**INCENTIVE STOCK OPTION AGREEMENT**  
UNDER THE AMENDED AND RESTATED

ATHENAHEALTH, INC.  
  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Optionee: \_\_\_\_\_  
No. of Option Shares: \_\_\_\_\_  
Option Exercise Price per Share: \$ \_\_\_\_\_  
[FMV on Grant Date (110% of FMV if a 10% owner)]  
Grant Date: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
[up to 10 years (5 if a 10% owner)]

Pursuant to the athenahealth, Inc. 2007 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), athenahealth, Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.01 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 1 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated:

<u>Incremental Number of</u>	
<u>Option Shares Exercisable *</u>	<u>Exercisability Date</u>
_____ ( ____ %)	_____
_____ ( ____ %)	_____
_____ ( ____ %)	_____
_____ ( ____ %)	_____

\* Max. of \$100,000 per yr.

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

---

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon the Company's receipt from the Optionee of full payment for the Option Shares, as set forth above and any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such issuance and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to

which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment; Employment Status Change. If the Optionee's employment by the Company or a Subsidiary (as defined in the Plan) is terminated, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's employment terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date may thereafter be exercised, to the extent exercisable on such date, by the Optionee's legal representative or legatee for a period of 180 days from the date of death or until the Expiration Date, if earlier.

(b) Termination Due to Disability. If the Optionee's employment terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Stock Option outstanding on such date may thereafter be exercised, to the extent exercisable on the date of termination, by the Optionee for a period of 180 days from the date of termination or until the Expiration Date, if earlier. The death of the Optionee during the 180-day period provided in this Section 3(b) shall extend such period for another 180-days from the date of death or until the Expiration Date, if earlier.

(c) Termination for Cause. If the Optionee's employment terminates for Cause, any portion of this Stock Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" means any of the following: (i) dishonesty, embezzlement, misappropriation of assets or property of the Company; (ii) gross negligence, misconduct, neglect of duties, theft, fraud, or breach of fiduciary duty to the Company; (iii) violation of federal or state securities laws; (iv) breach of an employment, consulting or other agreement with the Company; or (v) the conviction of a felony, or any crime involving moral turpitude, including a plea of guilty or *nolo contendere*.

(d) Other Termination. If the Optionee's employment terminates for any reason other than the Optionee's death, the Optionee's disability, or Cause, and unless otherwise determined by the Administrator, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

(e) Employment Status Change. The exercisability of this Stock Option reflects the Company's policy that stock option awards accrue over time, and that such accruals are in consideration for providing continued service to the Company during substantially all of each work week. Therefore, this Stock Option will continue to vest under the above Exercisability Schedule only if the Optionee devotes at least eighty percent (80%) of the

Optionee's work schedule to service to the Company. If at any time the Optionee's employment status is changed to less than 80% time, then any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of change in employment status, for a period of three months from the date of change in employment status or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of change in employment status shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. Status of the Stock Option. This Stock Option is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), but the Company does not represent or warrant that this Stock Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Stock Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. To the extent any portion of this Stock Option does not so qualify as an "incentive stock option," such portion shall be deemed to be a non-qualified stock option. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Stock Option, he or she will so notify the Company within 30 days after such disposition.

7. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Stock Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Optionee may elect to have the minimum required tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued.

8. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Optionee at any time.

9. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

10. Acceptance. The foregoing Agreement shall be deemed accepted and the terms and conditions thereof hereby agreed to by the Optionee upon notice to the Optionee.

ATHENAHEALTH, INC.

NON-QUALIFIED STOCK OPTION AGREEMENT  
FOR COMPANY EMPLOYEES

UNDER THE AMENDED AND RESTATED  
ATHENAHEALTH, INC.  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Optionee: \_\_\_\_\_  
No. of Option Shares: \_\_\_\_\_  
Option Exercise Price per Share: \$ \_\_\_\_\_  
[FMV on Grant Date]  
Grant Date: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Pursuant to the athenahealth, Inc. 2007 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), athenahealth, Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.01 per share (the "Stock") of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 1 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated:

<u>Incremental Number of</u>	
<u>Option Shares Exercisable</u>	<u>Exercisability Date</u>
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

---

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon the Company's receipt from the Optionee of full payment for the Option Shares, as set forth above and any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such issuance and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to



which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment; Employment Status Change. If the Optionee's employment by the Company or a Subsidiary (as defined in the Plan) is terminated, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's employment terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date may thereafter be exercised, to the extent exercisable on such date, by the Optionee's legal representative or legatee for a period of 180 days from the date of death or until the Expiration Date, if earlier.

(b) Termination Due to Disability. If the Optionee's employment terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Stock Option outstanding on such date may thereafter be exercised, to the extent exercisable on the date of termination, by the Optionee for a period of 180 days from the date of termination or until the Expiration Date, if earlier. The death of the Optionee during the 180-day period provided in this Section 3(b) shall extend such period for another 180 days from the date of death or until the Expiration Date, if earlier.

(c) Termination for Cause. If the Optionee's employment terminates for Cause, any portion of this Stock Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" means any of the following: (i) dishonesty, embezzlement, misappropriation of assets or property of the Company; (ii) gross negligence, misconduct, neglect of duties, theft, fraud, or breach of fiduciary duty to the Company; (iii) violation of federal or state securities laws; (iv) breach of an employment, consulting or other agreement with the Company; or (v) the conviction of a felony, or any crime involving moral turpitude, including a plea of guilty or *nolo contendere*.

(d) Other Termination. If the Optionee's employment terminates for any reason other than the Optionee's death, the Optionee's disability or Cause, and unless otherwise determined by the Administrator, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

(e) Employment Status Change. The exercisability of this Stock Option reflects the Company's policy that stock option awards accrue over time, and that such accruals are in consideration for providing continued service to the Company during substantially all of each work week. Therefore, this Stock Option will continue to vest under the above Exercisability Schedule only if the Optionee devotes at least eighty percent (80%) of the

Optionee's work schedule to service to the Company. If at any time the Optionee's employment status is changed to less than 80% time, then any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of change in employment status, for a period of three months from the date of change in employment status or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of change in employment status shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Stock Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Optionee may elect to have the minimum required tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued.

7. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Optionee at any time.

8. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

9. Acceptance. The foregoing Agreement shall be deemed accepted and the terms and conditions thereof hereby agreed to by the Optionee upon notice to the Optionee.

ATHENAHEALTH, INC.

NON-QUALIFIED STOCK OPTION AGREEMENT  
FOR NON-EMPLOYEE DIRECTORS

UNDER THE AMENDED AND RESTATED  
ATHENAHEALTH, INC.  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Optionee: \_\_\_\_\_

No. of Option Shares: \_\_\_\_\_

Option Exercise Price per Share: \$ \_\_\_\_\_

[FMV on Grant Date]

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

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

[No more than 10 years]

Pursuant to the athenahealth, Inc. 2007 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), athenahealth, Inc. (the "Company") hereby grants to the Optionee named above, who is a Director of the Company but is not an employee of the Company, an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.01 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 1 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated:

Incremental Number of

Option Shares Exercisable

Exercisability Date

\_\_\_\_\_ ( \_\_\_\_ %)

\_\_\_\_\_

\_\_\_\_\_ ( \_\_\_\_ %)

\_\_\_\_\_

\_\_\_\_\_ ( \_\_\_\_ %)

\_\_\_\_\_

\_\_\_\_\_ ( \_\_\_\_ %)

\_\_\_\_\_

---

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon the Company's receipt from the Optionee of full payment for the Option Shares, as set forth above and any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been

entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination as Director. If the Optionee ceases to be a Director of the Company, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination by Reason of Death. If the Optionee ceases to be a Director by reason of the Optionee's death, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on such date, by his or her legal representative or legatee for a period of 180 days from the date of death or until the Expiration Date, if earlier.

(b) Other Termination. If the Optionee ceases to be a Director for any reason other than the Optionee's death, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on such date, for a period of 180 days from the date of termination or until the Expiration Date, if earlier.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. No Obligation to Continue as a Director. Neither the Plan nor this Stock Option confers upon the Optionee any rights with respect to continuance as a Director.

7. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

8. Amendment. Pursuant to Section 18 of the Plan, the Administrator may at any time amend or cancel any outstanding portion of this Stock Option, but no such action may be

taken that adversely affects the Optionee's rights under this Agreement without the Optionee's consent.

9. Acceptance. The foregoing Agreement shall be deemed accepted and the terms and conditions thereof hereby agreed to by the Optionee upon notice to the Optionee.

ATHENAHEALTH, INC.

NON-QUALIFIED STOCK OPTION AGREEMENT  
FOR NON-EMPLOYEE CONSULTANTS

UNDER THE ATHENAHEALTH, INC.  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Optionee: \_\_\_\_\_

No. of Option Shares: \_\_\_\_\_

Option Exercise Price per Share: \$ \_\_\_\_\_

[FMV on Grant Date]

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

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

[No more than 10 years]

Pursuant to the athenahealth, Inc. 2007 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), athenahealth, Inc. (the "Company") hereby grants to the Optionee named above, who is a consultant or other service provider to the Company but is not an employee of the Company, an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.01 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 1 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated:

Incremental Number of

Option Shares Exercisable

Exercisability Date

\_\_\_\_\_(    %)  
\_\_\_\_\_(    %)  
\_\_\_\_\_(    %)  
\_\_\_\_\_(    %)  
\_\_\_\_\_(    %)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon the Company's receipt from the Optionee of full payment for the Option Shares, as set forth above and any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been



entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination as Consultant. If the Optionee ceases to be a consultant or other service provider to the Company for any reason including death or disability, any portion of this Stock Option outstanding on such date may be exercised (to the extent exercisable on such date) for a period of three (3) months from the date of the cessation of the Optionee's consulting or service relationship with Company or until the Expiration Date, if earlier. No further portion of this Option shall become exercisable after the Optionee ceases to be a consultant or other service provider to the Company.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. No Obligation to Continue as a Consultant or Service Provider. Neither the Plan nor this Stock Option confers upon the Optionee any rights with respect to continuance as a consultant or other service provider to the Company.

7. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

8. Amendment. Pursuant to Section 18 of the Plan, the Administrator may at any time amend or cancel any outstanding portion of this Stock Option, but no such action may be taken that adversely affects the Optionee's rights under this Agreement without the Optionee's consent.

ATHENAHEALTH, INC.

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

Name:

Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned.

Dated: \_\_ \_\_

Optionee's Signature

Optionee's name and address:

**ATHENAHEALTH, INC.**

**RESTRICTED STOCK AWARD AGREEMENT**

UNDER THE ATHENAHEALTH, INC.  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Grantee: \_\_\_\_\_  
No. of Shares: \_\_\_\_\_  
Grant Date: \_\_\_\_\_  
Final Acceptance Date: \_\_\_\_\_  
Purchase Price per Share: \_\_\_\_\_ (if any)

Pursuant to the athenahealth, Inc. 2007 Stock Option and Incentive Plan (the "Plan") as amended through the date hereof, athenahealth, Inc. (the "Company") hereby grants a Restricted Stock Award (an "Award") to the Grantee named above. Upon acceptance of this Award, the Grantee shall receive the number of shares of Common Stock, par value \$0.01 per share (the "Stock") of the Company specified above, subject to the restrictions and conditions set forth herein and in the Plan.

1. Acceptance of Award. The Grantee shall have no rights with respect to this Award unless he or she shall have accepted this Award prior to the close of business on the Final Acceptance Date specified above by signing and delivering to the Company a copy of this Award Agreement and paying the applicable purchase price (if any). Upon acceptance of this Award by the Grantee, the shares of Restricted Stock so accepted shall be issued and held by the Company's transfer agent in book entry form, and the Grantee's name shall be entered as the stockholder of record on the books of the Company. Thereupon, the Grantee shall have all the rights of a shareholder with respect to such shares, including voting and dividend rights, subject, however, to the restrictions and conditions specified in Paragraph 2 below.

2. Restrictions and Conditions.

(a) Any book entries for the shares of Restricted Stock granted herein shall bear an appropriate legend, as determined by the Administrator in its sole discretion, to the effect that such shares are subject to restrictions as set forth herein and in the Plan.

(b) Shares of Restricted Stock granted herein may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of by the Grantee prior to vesting.

(c) If the Grantee's employment with the Company and its Subsidiaries is voluntarily or involuntarily terminated for any reason (including death) prior to vesting of shares of Restricted Stock granted herein, all shares of Restricted Stock shall immediately and automatically be forfeited and returned to the Company.

3. Vesting of Restricted Stock. The restrictions and conditions in Paragraph 2 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long

---

as the Grantee remains an employee of the Company or a Subsidiary on such Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 2 shall lapse only with respect to the number of shares of Restricted Stock specified as vested on such date.

<u>Number of</u>		<u>Vesting Date</u>
<u>Shares Vested</u>		
_____ (    %)		_____
_____ (    %)		_____
_____ (    %)		_____
_____ (    %)		_____
_____ (    %)		_____

Subsequent to such Vesting Date or Dates, the shares of Stock on which all restrictions and conditions have lapsed shall no longer be deemed Restricted Stock. The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 3.

4.        Dividends. Dividends on Shares of Restricted Stock shall be paid currently to the Grantee.
5.        Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.
6.        Transferability. This Agreement is personal to the Grantee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution.
7.        Tax Withholding. The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Grantee may elect to have the required minimum tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued.
8.        Election Under Section 83(b). The Grantee and the Company hereby agree that the Grantee may, within 30 days following the acceptance of this Award as provided in Paragraph 1 hereof, file with the Internal Revenue Service and the Company an election under Section 83(b) of the Internal Revenue Code. In the event the Grantee makes such an election, he or she agrees to provide a copy of the election to the Company.

9. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Grantee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Grantee at any time.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

ATHENAHEALTH, INC.

By: \_\_\_\_\_  
Name:  
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned.

Dated:

Grantee's Signature

Grantee's name and address:

RESTRICTED STOCK UNIT AWARD AGREEMENT

UNDER THE AMENDED AND RESTATED  
ATHENAHEALTH, INC.  
2007 STOCK OPTION AND INCENTIVE PLAN

Name of Grantee: \_\_\_\_\_  
No. of Restricted Stock Units: \_\_\_\_\_  
Grant Date: \_\_\_\_\_

athenahealth, Inc. (the “Company”) has selected you to receive an award of Restricted Stock Units identified above, subject to the terms set forth on Appendix A and the provisions of the Amended and Restated athenahealth, Inc. 2007 Stock Option and Incentive Plan (the “Plan”) and the attached Statement of Terms and Conditions.

**Appendix A**

**Vesting Schedule**

<b><u>Percentage of Units Vested</u></b>	<b><u>Vesting Date</u></b>
____%	First Anniversary of Grant Date
____%	Second Anniversary of Grant Date
____%	Third Anniversary of Grant Date
____%	Fourth Anniversary of Grant Date

The Administrator may at any time accelerate the vesting schedule set forth above.

---

## STATEMENT OF TERMS AND CONDITIONS

1. Preamble. This Statement contains the terms and conditions of an award ("Award") of Restricted Stock Units ("Restricted Stock Units") made to the Grantee identified in the Restricted Stock Unit Award Agreement attached hereto pursuant to the Plan. Each Restricted Stock Unit represents the right to receive one share of common stock of the Company ("Stock") on the vesting date of that unit.

2. Restrictions and Conditions.

(a) This Award may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of by the Grantee prior to vesting.

(b) If the Grantee's employment with or service as a director of the Company and its Subsidiaries is voluntarily or involuntarily terminated for any reason (including death) prior to vesting of Restricted Stock Units granted herein, all unvested Restricted Stock Units shall immediately and automatically be forfeited and returned to the Company.

(c) The Grantee shall not have any stockholder rights, including voting or dividend rights, with respect to the shares of Stock subject to the Award until the Grantee becomes a record holder of those shares of Stock following their actual issuance pursuant to Section 5 of this Agreement

3. Vesting of Restricted Stock Units.

The term "vest" as used in this Statement means the lapsing of the restrictions that are described in this Statement with respect to the Restricted Stock Units. The Restricted Stock Units shall vest in accordance with the schedule set forth in Appendix A to this Agreement so long as the Grantee remains at least eighty percent of a full-time equivalent employee or director of the Company or a Subsidiary on each vesting date. If at any time the Grantee's employment status is changed to less than an eighty percent full-time equivalent, then any unvested Restricted Stock Units shall be forfeited and returned to the Company on such date.

4. Dividend Equivalents.

(a) If on any date the Company shall pay any dividend on shares of Stock of the Company, the number of Restricted Stock Units credited to the Grantee shall, as of such date, be increased by an amount determined by the following formula:

$W = (X \text{ multiplied by } Y) \text{ divided by } Z$ , where:

W = the number of additional Restricted Stock Units to be credited to the Grantee on such dividend payment date;

X = the aggregate number of Restricted Stock Units credited to the Grantee as of the record date of the dividend;

Y = the cash dividend per share amount; and

Z = the Fair Market Value per share of Stock (as determined under the Plan) on the dividend payment date.

(b) In the case of a dividend paid on Stock in the form of Stock, including without limitation a distribution of Stock by reason of a stock dividend, stock split or otherwise, the number of Restricted Stock Units credited to the Grantee shall be increased by a number equal to the product of (i) the aggregate number of Restricted Stock Units that have been awarded to the Grantee through the related dividend record date, and (ii) the number of shares of Stock (including any fraction thereof) payable as dividend on one share of Stock. Any additional Restricted Stock Units shall be subject to the vesting and restrictions of this Agreement in the same manner and for so long as the Restricted Stock Units granted pursuant to this Agreement to which they relate remain subject to such vesting and restrictions, and shall be promptly forfeited to the Company if and when such Restricted Stock Units are so forfeited.

5. Receipt of Shares of Stock.

(a) The Restricted Stock Units in which the Grantee vests in accordance with the vesting schedule set forth in Appendix A will be issuable in the form of shares of Stock immediately upon vesting, subject to the collection of the minimum withholding taxes in accordance with the share withholding provision of Section 7 of this Agreement.

(b) Once a stock certificate (or electronic transfer) has been delivered to the Grantee in respect of the Restricted Stock Units, the Grantee will be free to sell the shares of Stock evidenced by such certificate (or electronic transfer), subject to applicable requirements of federal and state securities law and the Company's insider trading policy.

6. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Award shall be subject to and governed by all the terms and conditions of the Plan. Capitalized terms in this Award shall have the meaning specified in the Plan, unless a different meaning is specified herein.

7. Tax Withholding. The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Grantee may elect to have the required minimum tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold shares of Stock to be issued to the Grantee pursuant to this Agreement with an aggregate Fair Market Value that would satisfy the withholding amount due.

8. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Award to continue the Grantee in employment and neither the Plan nor this Award shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Grantee at any time.

9. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file



with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

10. Acceptance. This Agreement shall be deemed accepted and the terms and conditions thereof hereby agreed to by the Grantee upon notice to the Grantee.

**ATHENAHEALTH, INC.**  
**DIRECTOR COMPENSATION PLAN as amended**  
(Effective January 1, 2013)

The Director Compensation Plan (the “Plan”) of athenahealth, Inc. (the “Company”) applies to non-employee directors, who shall receive the following compensation for service on the Board of Directors:

***Cash Compensation***

<b>Meeting Fees*</b>	<b>Meeting Fee</b>
In Person - Board Meeting	\$ 3,000
In Person - Committee Meeting	\$ 3,000
By Phone - Board Meeting and Board Calls	\$ 1,000
By Phone - Committee Meeting	\$ 1,000

<b>Retainers *</b>	<b>Annual Retainer</b>
Annual	\$ 20,000
Lead Director	\$ 10,000
Audit Committee Chair	\$ 20,000
Compensation Committee Chair	\$ 10,000
Nominating and Corporate Governance Committee Chair	\$ 10,000

\*Meeting Fees and Retainers are payable quarterly in arrears, and Retainers are pro-rated for any partial period. Board Meeting Fees will only be paid once per scheduled meeting even if a meeting occurs over one or more days. Committee Meeting Fees will only be paid once per day even if more than one Committee Meeting is attended on such day.

***Equity Compensation***

**Annual Grant**

Annual equity grants shall be equivalent in value to \$175,000 per year. The equity amount will be determined by dividing \$175,000 by the average stock price of the Company during the last 20 trading sessions preceding and including February 1 to arrive at a restricted stock unit equivalent. Restricted stock units and/or stock options (or any combination of stock options and restricted stock units, which are awarded at a 2:1 ratio to option shares) shall be granted the first business day of March and will vest fully on June 1 of the following year. Grants for new directors will be pro-rated for partial year service and granted on the first business day of the month following the later of the initial date of service or the date on which such grant is approved. The number of stock option shares and restricted stock units will be reviewed annually by the Nominating and Corporate Governance Committee and are subject to change. Directors with equity vesting from equity grants granted prior to the effective date of this Plan will not receive new annual grants until all prior equity grants are fully vested, unless an exception is made by the Nominating and Corporate Governance Committee.

In addition to the cash and equity compensation described above, the Company reimburses each member of the Board of Directors for reasonable travel and other expenses in connection with attending meetings of the Board of Directors or committees thereof.

This Plan is prospective from its effective date and will not affect any compensation paid or granted before that date. This Plan may be amended from time to time by vote of the Board of Directors. This Plan does not affect the obligations of the Company to indemnify directors as set forth in relevant sections of the Company's certificate of incorporation, by-laws, or indemnification agreements. Questions or issues concerning the application and administration of this Plan will be addressed by the Nominating and Corporate Governance Committee.

**PURCHASE AND SALE AGREEMENT**

**by and between**

**PRESIDENT AND FELLOWS OF HARVARD COLLEGE,  
as Seller**

**and**

**ATHENAHEALTH, INC.,  
as Buyer**

**Property Name: The Arsenal on the Charles  
Location: Watertown, Middlesex County, Commonwealth of Massachusetts**

**Effective Date: December 5, 2012**

---

## TABLE OF CONTENTS

	Page
ARTICLE 1 - CERTAIN DEFINITIONS	1
ARTICLE 2 - SALE OF PROPERTY	8
ARTICLE 3 - PURCHASE PRICE	8
3.1 Earnest Money Deposit	8
3.2 Cash at Closing	8
ARTICLE 4 - TITLE MATTERS	9
4.1 Title to Real Property	9
4.2 Title Defects	9
4.3 Title Insurance	10
ARTICLE 5 - BUYER'S DUE DILIGENCE/CONDITION OF THE PROPERTY	10
5.1 Buyer's Due Diligence	10
5.2 Intentionally Omitted	12
5.3 Termination of Agreement During Due Diligence Period	12
5.4 Release	13
5.5 No Assumption of Employee Claims	13
ARTICLE 6 - ADJUSTMENTS AND PRORATIONS	14
6.1 Lease Rentals and Other Revenues	14
6.2 Intentionally Omitted	15
6.3 Real Estate and Personal Property Taxes	15
6.4 Other Property Operating Expenses	16
6.5 Closing Costs	16
6.6 Cash Security Deposits	17
6.7 Apportionment Credit	17
6.8 Delayed Adjustment; Delivery of Operating and Other Statements	17
ARTICLE 7 - CLOSING	17
7.1 Closing Date	17
7.2 Title Transfer and Payment of Purchase Price	17
7.3 Seller's Closing Deliveries	18
7.4 Buyer Closing Deliveries	20

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 8 - CONDITIONS TO CLOSING	20
8.1 Conditions to Seller's Obligations	20
8.2 Conditions to Buyer's Obligations	21
8.3 Waiver of Failure of Conditions Precedent	21
ARTICLE 9 - REPRESENTATIONS AND WARRANTIES	22
9.1 Buyer's Representations	22
9.2 Seller's Representations	22
9.3 General Provisions	24
9.4 As-Is Sale	26
ARTICLE 10 - COVENANTS	26
10.1 Buyer's Covenants	26
10.2 Seller's Covenants	27
10.3 Mutual Covenants	28
ARTICLE 11 - FAILURE OF CONDITIONS	29
11.1 To Seller's Obligations	29
11.2 To Buyer's Obligations	30
ARTICLE 12 - CONDEMNATION/CASUALTY	30
12.1 Right to Terminate	30
12.2 Allocation of Proceeds and Awards	30
12.3 Insurance	31
12.4 Waiver	31
ARTICLE 13 - ESCROW	31
ARTICLE 14 - LEASE EXPENSES	31
14.1 New Leases; Lease Modifications	32
14.2 Lease Enforcement	32
14.3 Lease Expenses	32
ARTICLE 15 - MISCELLANEOUS	32
15.1 Assignment	32
15.2 Designation Agreement	33
15.3 Survival/Merger	33

	<b>Page</b>
15.4	Integration; Waiver 33
15.5	Governing Law 34
15.6	Captions Not Binding; Exhibits 34
15.7	Binding Effect 34
15.8	Severability 34
15.9	Notices 34
15.10	Counterparts 35
15.11	No Recordation 36
15.12	Additional Agreements; Further Assurances 36
15.13	Construction 36
15.14	Maximum Aggregate Liability 36
15.15	Time of The Essence 36
15.16	Waiver of Jury Trial 36
15.17	Electronic Signatures 37
15.18	Prevailing Parties 37

## **EXHIBITS**

- A. Legal Description**
- B. List of Contracts and Leasing Commissions Due**
- C. Form of Quitclaim Deed**
- D. Form of Bill of Sale**
- E. Form of Assignment of Tenant Leases**
- F. Form of Assignment of Intangible Property**
- G. Form of Notice to Tenants**
- H. Form of Seller's Non-Foreign Certificate**
- I. Form of Seller's Title Affidavit**
- J. Tenant Estoppel Documents:**
  - 1: Form of Tenant Estoppel Letter**
  - 2: Form of Seller Estoppel Letter**
- K. Litigation Notices, Contract Defaults and Governmental Violations**
- L. List of Tenants**
- M. List of Letters of Credit**
- N. Due Diligence Materials**
- O. Environmental Testing Plan**

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is made as of December 5, 2012, by and between PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable and educational corporation ("Seller"), and ATHENAHEALTH, INC., a Delaware corporation, or its permitted assignee ("Buyer").

### W I T N E S S E T H:

In consideration of the mutual covenants and agreements set forth herein the parties hereto do hereby agree as follows:

#### ARTICLE 1 - CERTAIN DEFINITIONS

As used herein, the following terms shall have the following meanings:

"**Additional Deposit**" shall mean the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), to the extent the same is deposited by Buyer in accordance with the terms of Subsection 3.1.2 hereof, together with any interest earned thereon.

"**Business Day**" shall mean any day other than a Saturday, Sunday, or any federal or Commonwealth of Massachusetts holiday. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

"**Buyer's Broker**" shall mean any broker, agent, finder or advisor retained by Buyer in connection with this Transaction, including, but not limited to, Avison Young.

"**Buyer's Reports**" shall mean the written results of any examinations, inspections, investigations, tests, studies, analyses, appraisals, evaluations and/or investigations prepared by or for or otherwise obtained by Buyer or Buyer's Representatives in connection with Buyer's Due Diligence.

"**Buyer's Representatives**" shall mean Buyer, any direct or indirect owner of any beneficial interest in Buyer, and any officers, directors, employees, agents, representatives and attorneys of Buyer or any such direct or indirect owner of any beneficial interest in Buyer.

"**Closing**" shall mean the closing of the Transaction.

"**Closing Date**" shall mean April 11, 2013, as the same may be extended pursuant to the express terms of this Agreement.

"**Closing Tax Year**" shall mean the Tax Year in which the Closing Date occurs.

"**Code**" shall mean the Internal Revenue Code of 1986, and all amendments thereto and all regulations thereunder.

---



**“Confidential Materials”** shall mean, any books, computer software, records or files (whether in a printed or electronic format) that consist of or contain any of the following (whether prepared internally or by a third party on behalf of Seller): appraisals; budgets; strategic plans for the Property (including, without limitation, information relating to any proposed future use or development of the Property); internal analyses; information regarding the marketing of the Property for sale; submissions relating to obtaining internal authorization for the sale of the Property by Seller; attorney and accountant work product; attorney-client privileged documents; or internal correspondence of Seller, or any of their respective affiliates and correspondence between or among such parties, all of which Confidential Materials are the subject of the nondisclosure provisions contained herein. Notwithstanding the foregoing, Confidential Materials shall not include information that (a) is known to the Buyer prior to disclosure thereof by the Seller; (b) has been published or made available to others, without restriction and without breach of this Agreement by the Buyer; (c) has become or becomes available to the Buyer from others having no obligation to hold such information or data in confidence; or (d) has been developed by the Buyer independently of any disclosure of such information or data by the Seller.

**“Continuing Contracts”** shall have the meaning given to such term in Section 10.2.1(c) hereof.

**“Contracts”** shall mean all service, supply, maintenance, utility and commission agreements, all equipment leases, and all other contracts, subcontracts and agreements relating to the Property and to which Seller or Seller's property manager is a party (including all contracts, subcontracts and agreements relating to the construction of any unfinished tenant improvements and any contracts with government authorities that relate to the Property), all of which are described in **Exhibit B** attached hereto and incorporated herein by this reference, together with any additional contracts, subcontracts and agreements entered into in accordance with the terms of **Subsection 10.2.1** hereof and as the same may be modified or terminated in accordance with the terms of **Subsection 10.2.1**.

**“Data”** shall mean any and all materials or documents furnished by Seller to Buyer or Buyer's Representatives by delivery to Buyer's outside counsel or to the Data Room (as defined in Section 5.1 hereof) in connection with Due Diligence.

**“Deposit”** shall mean the Initial Deposit plus, if delivered, the Additional Deposit.

**“Designated Employee”** shall mean Carolee Hill. The Designated Employee is the individual who has been primarily responsible for the management of the Property on behalf of Seller since Seller's acquisition of the Property.

**“Documents”** shall mean the documents and instruments applicable to the Property or any portion thereof that Seller or any of the other Seller Party delivers or makes available to Buyer or Buyer' Representatives prior to Closing or which are otherwise obtained by Buyer or Buyer's Representatives prior to Closing, including, but not limited to, the Title Commitment, the Survey, the Title Documents, and the Property Documents.

**“Due Diligence”** shall mean examinations, inspections, investigations, tests, studies, analyses, appraisals, evaluations, interviews of any Seller Parties and/or investigations with

respect to the Property, the Documents, and other information and documents regarding the Property as Buyer, in its sole and absolute discretion, deems appropriate so as to satisfy itself with respect to its potential purchase of the Property, including, but not limited to, the following matters: title and survey, land use, zoning, environmental issues, utilities, the physical condition of the Property, tenant/leasehold interests, the economic status of the Property, inventory of personal property, including intangible property, and the availability of government incentive programs with regard to Buyer's potential purchase and operation of the Property.

**“Due Diligence Period”** shall mean the period commencing on the Effective Date and expiring on March 12, 2013.

**“Effective Date”** shall mean the last date of execution of this Agreement by either Seller or Buyer, as shown on the signature page hereof.

**“Environmental Due Diligence”** shall mean Buyer's Environmental Due Diligence Investigations of the Property permitted hereunder, including compliance with all applicable federal, state and local environmental requirements, including any topic covered by MEPA, to be performed by Buyer or Buyer Representatives.

**“Escrow Agent”** shall mean Bank of America, National Association, a national banking association, in its capacity as escrow agent pursuant to the Escrow Agreement.

**“Escrow Agreement”** shall mean that certain Escrow Agreement dated as of September 14, 2012, by and among Seller, Buyer and Escrow Agent.

**“Initial Deposit”** shall mean the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), which sum has been deposited by Buyer in accordance with the terms of Subsection 3.1.1 hereof, together with any interest earned thereon.

**“Laws”** shall mean all municipal, county, state or federal statutes, codes, ordinances, laws, rules or regulations.

**“Leases”** shall mean all leases for tenants of the Real Property on the Closing Date (including, without limitation, all New Leases).

**“Liabilities”** shall mean, collectively, any and all problems, conditions, losses, costs, damages, claims, liabilities, expenses, demands or obligations of any kind or nature whatsoever.

**“Major Condemnation”** shall mean any condemnation or eminent domain proceeding that is commenced after the date hereof: (i) of all or substantially all of the Property; or (ii) of less than all or substantially all of the Property that: (a) causes the Property to fail to comply with Legal Requirements; (b) materially and permanently impairs access to or egress from the Property; and or (c) for which the portion of the Property that is the subject of such proceedings has a value in excess of ten percent (10%) of the Purchase Price, as reasonably determined by a third party consultant selected by Seller and approved by Buyer, such approval not to be unreasonably withheld or delayed.

**“New Leases”** shall mean, collectively, any Lease entered into between the Effective Date and the Closing Date.

**“Other Property Rights”** shall mean, collectively, Seller's interest in and to all of the following, if and only to the extent the same may be assigned or quitclaimed by Seller without any expense to Seller: (a) any licenses, permits and other written authorizations necessary or useful for the use, operation or ownership of the Real Property, (b) the rights of Seller (if any) to the name “The Arsenal on the Charles” (it being acknowledged by Buyer that Seller does not have exclusive rights (and in fact may have no rights) to use such name and that Seller has not registered the same in any manner), (c) any third-party guaranties and warranties in effect with respect to any portion of the Real Property or the Personal Property as of the Closing Date, and (d) any books, records and files relating to the Property excluding Confidential Materials.

**“Owner's Title Policy”** shall mean an ALTA Owner's Form of title insurance policy (or such other comparable form of title insurance policy as is available in the jurisdiction in which the Property is located) in the form of the Title Commitment, in the amount of the Purchase Price.

**“Permitted Exceptions”** shall mean and include all of the following, subject to the rights of Buyer to object to matters of title and survey pursuant to Article 4 hereof and the right of Buyer to terminate this Agreement pursuant to Article 5 hereof: (a) applicable zoning and building ordinances and land use regulations, (b) all liens, encumbrances, covenants, conditions, restrictions, easements and other matters of record, except to the extent that the same are caused or created by Seller in violation of the terms of Subsection 4.2.3, (c) such exceptions to title as are listed on Schedule B of the Title Commitment, including the Title Company's standard printed exceptions, except to the extent Seller agrees in writing to Remove the same on or prior to Closing in accordance with the terms of Subsection 4.2.1, (d) such state of facts as disclosed in the Survey, (e) such state of facts as would be disclosed by a physical inspection of the Property of the nature of inspection which would be conducted in a Survey of the Property, (f) the lien of taxes and assessments not yet due and payable, (g) any exceptions caused by Buyer or any Buyer's Representative, (h) such other exceptions as may be Removed from the Owner's Title Policy, (i) the rights of the tenants under the Leases, and (j) any matters deemed to constitute additional Permitted Exceptions under Subsection 4.2.1 hereof. Notwithstanding any provision to the contrary contained in this Agreement or any of the documents to be executed in connection herewith or pursuant hereto, any or all of the Permitted Exceptions may be omitted by Seller in the Deed (as defined in Subsection 7.3(a)) without giving rise to any liability of Seller, irrespective of any covenant or warranty of Seller contained in the Deed (which provisions shall survive the Closing and not be merged therein).

**“Personal Property”** shall mean all tangible personal property owned by Seller (excluding any computer software which either (a) is licensed to Seller or Seller's property manager, or (b) Seller deems proprietary), whether or not located on the Real Property and used solely in connection with the ownership, operation and maintenance of the Real Property.

**“PILOT Agreement”** shall mean that certain Memorandum of Understanding with respect to Payment in Lieu of Taxes to be paid to the Town of Watertown by President and Fellows of Harvard College dated as of July 1, 2002.

**“Property”** shall mean, collectively, (a) the Real Property, (b) the Personal Property, (c) Seller's interest as landlord in all Leases; (d) if and to only the extent the same may be assigned or quitclaimed by Seller without any expense to Seller, the Contracts, and (e) the Other Property Rights.

**“Property Documents”** shall mean, collectively, (a) the Leases, (b) the Contracts, and (c) any other documents or instruments which constitute, evidence or create any portion of the Property.

**“Purchase Price”** shall mean the sum of One Hundred Sixty-Eight Million Five Hundred Thousand and No/100 Dollars (\$168,500,000.00).

**“Real Property”** shall mean that certain parcel of real estate commonly known as The Arsenal on the Charles, located in Watertown, Middlesex County, Massachusetts and legally described in Exhibit A attached hereto and incorporated herein by this reference, together with all buildings, improvements and fixtures located thereon and owned by Seller as of the Closing Date and all right, title and interest, if any, that Seller may have in and to all rights, privileges and appurtenances pertaining thereto including all of Seller's right, title and interest, if any, in and to all rights-of-way, open or proposed streets, alleys, easements, strips or gores of land adjacent thereto; provided, however, that in the event of any condemnation or casualty that occurs after the date hereof, the term “Real Property” shall not include any of the foregoing that is destroyed or taken as a result of any such condemnation proceeding.

**“Reimbursable Lease Expenses”** shall mean, collectively, any and all costs, expenses and fees paid by Seller prior to Closing or costs, expenses and fees incurred by Seller prior to Closing arising out of or in connection with (a) any extensions, renewals or expansions under any Lease exercised or granted between the Effective Date and the Closing Date, and (b) any New Lease; provided that Buyer consented, or Buyer's consent was deemed to have been given, in accordance with Article 14 hereof. Reimbursable Lease Expenses shall include, without limitation, (i) brokerage commissions and fees to effect any such leasing transaction, (ii) expenses incurred for repairs, improvements, equipment, painting, decorating, partitioning and other items to satisfy the tenant's requirements with regard to such leasing transaction, (iii) legal fees for services in connection with the preparation of documents and other services rendered in connection with the effectuation of the leasing transaction, (iv) if there are any rent concessions covering any period that the tenant has the right to be in possession of the demised space, the rents that would have accrued during the period of such concession prior to the Closing Date as if such concession were amortized over (A) with respect to any extension or renewal, the term of such extension or renewal, (B) with respect to any expansion, that portion of the term remaining under the subject Lease after the date of any expansion, or (C) with respect to any New Lease, the entire initial term of any such New Lease, and (v) expenses incurred for the purpose of satisfying or terminating the obligations of a tenant under a New Lease to the landlord under another lease (whether or not such other lease covers space in the Property).

**“Remove”** with respect to any exception to title shall mean that Seller causes the Title Company to remove the same as an exception to the Owner's Title Policy for the benefit of Buyer, without any additional cost to Buyer, whether such removal is made available in consideration of payment, bonding, indemnity of Seller or otherwise

**“Rents”** shall mean all base rents, percentage rents, additional rent and any tax and operating expense reimbursements and escalations due from the tenants of the Property under the Leases.

**“Required Removal Exceptions”** shall mean, collectively, any Title Objections to the extent (and only to the extent) that the same (a) have not been caused by Buyer or any Buyer's Representatives, and (b) are either:

- (i) liens evidencing monetary encumbrances (other than liens for non-delinquent general real estate taxes or assessments) (“Monetary Liens”) which can be Removed by payment of liquidated amounts but only if such Monetary Liens (A) have been created by written instrument signed by Seller or assumed by written instrument signed by Seller or (B) can be removed by payment of a sum certain not to exceed \$10,000.00; or
- (ii) liens or encumbrances (including, but not limited to, Monetary Liens) created by Seller after the date of this Agreement in violation of Subsection 4.2.3.

**“Required Tenants”** shall mean, collectively, the following tenants: Boston Bread, LLC, Harvard Business School Publishing; Bright Horizons Children's Centers, LLC; TSI Watertown, Inc.; Bard, Rao + Athanas Consulting Engineers, LLC; and Paulus, Sokolowski and Sartor, LLC; Scholastic Inc.; Roundarch Isobar, Inc.; Liaison International, LLC; Mobile Messenger Americas, Inc.; Communispace Corporation; Service Employees International Union (SEIU) Local 509; Watertown Arts Center; Syniverse ICX Corporation; and La Casa de Pedro, Inc.

**“SEC”** shall have the meaning given to such term in Subsection 10.1.1 hereof.

**“Seller-Allocated Amounts”** shall mean, collectively:

(b) with respect to any condemnation or eminent domain proceedings with respect to any portion of the Property that occurs after the date hereof, (i) the costs, expenses and fees, including reasonable attorneys' fees, expenses and disbursements, incurred by Seller in connection with obtaining payment of any award or proceeds in connection with any such condemnation or eminent domain proceedings, and (ii) any portion of any such award or proceeds that is allocable to loss of use of the Property prior to Closing; and

(c) with respect to any casualty to any portion of the Property that occurs after the date hereof, (i) the costs, expenses and fees, including reasonable attorneys' fees, expenses and disbursements, incurred by Seller in connection with the negotiation and/or settlement of any casualty claim with an insurer with respect to the Property, (ii) the proceeds of any rental loss, business interruption or similar insurance that are allocable to the period prior to the Closing Date, and (iii) the reasonable and actual costs incurred by Seller in stabilizing the Property following a casualty.

**“Seller's Knowledge”** or words of similar import shall refer only to the actual knowledge of the Designated Employee and shall not be construed to refer to the knowledge of any other

Seller Party, or to impose or have imposed upon the Designated Employee any duty to investigate the matters to which such knowledge, or the absence thereof, pertains, including, but not limited to, the contents of the files, documents and materials made available to or disclosed to Buyer or the contents of files maintained by the Designated Employee, provided, however, that the Designated Employee shall have a duty to inquire of Stephen Faber, asset manager, and Robert Weikel, senior property manager, with respect to such matters (each of Stephen Faber and Robert Weikel being engaged by The Beal Companies, the property manager of the Property). There shall be no personal liability on the part of the Designated Employee arising out of any of the Seller's Warranties .

**"Seller Parties"** shall mean and include, collectively, (a) Seller; (b) its counsel; (c) Seller's property manager, (d) any direct or indirect owner of any beneficial interest in Seller, (e) any officer, director, employee, or agent of Seller, its counsel, Seller's property manager or any direct or indirect owner of any beneficial interest in Seller; and (f) any other entity or individual affiliated or related in any way to any of the foregoing.

**"Seller's Warranties"** shall mean Seller's representations and warranties set forth in Section 9.2 and the limited warranty of title set forth in the Deed (as defined in Subsection 7.3(a)) as the same may be deemed modified or waived by Buyer pursuant to this Agreement.

**"Survey"** shall mean an ALTA as-built survey of the Property to be obtained as set forth in Article 4.

**"Tax Year"** shall mean the year period commencing on July 1 of each calendar year and ending on June 30 of each calendar year.

**"Title Commitment"** shall mean that certain commitment to issue an Owner's Policy of Title Insurance, with endorsements, with respect to the Property to be issued by the Title Company.

**"Title Company"** shall mean Chicago Title Insurance Company.

**"Title Documents"** shall mean all recorded documents referred to on Schedule B of the Title Commitment as exceptions to coverage.

**"Title Objection Date"** shall mean February 4, 2013.

**"Title Objections"** shall mean any exceptions to title to which Buyer is entitled and timely objects in accordance with the terms of Subsection 4.2.1(a).

**"Transaction"** shall mean the transaction contemplated by this Agreement.

## **ARTICLE 2 - SALE OF PROPERTY**

Seller agrees to sell, transfer and assign and Buyer agrees to purchase, accept and assume, subject to the terms and conditions set forth in this Agreement and the Exhibits attached hereto, all of Seller's right, title and interest in and to the Property.

### ARTICLE 3 - PURCHASE PRICE

In consideration of the sale of the Property to Buyer, Buyer shall pay to Seller an amount equal to the Purchase Price, as prorated and adjusted as set forth in Article 6, Section 7.2, or as otherwise provided under this Agreement.

#### 3.1 Earnest Money Deposit.

3.1.1 Payment of Initial Deposit. Buyer has previously delivered the Initial Deposit in immediately available funds to Escrow Agent.

3.1.2 Payment of Additional Deposit. Within two (2) Business Days after the expiration of the Due Diligence Period, Buyer shall deliver the Additional Deposit in immediately available funds to Escrow Agent if Buyer does not elect to terminate this Agreement pursuant to Section 5.3. Notwithstanding any provision contained in any section of this Agreement aside from the provisions contained in this Section 3.1.2 to the contrary, if Buyer fails to timely make the Additional Deposit as provided herein, at Seller's option, Buyer shall be deemed to be in default under this Agreement and, if Seller elects such option, Seller may terminate the Agreement, the Initial Deposit shall be paid to Seller, and the parties shall have no further rights or obligations hereunder except for obligations which expressly survive the termination of this Agreement.

3.1.3 Applicable Terms. Except as expressly otherwise set forth herein, the Deposit shall be non-refundable, shall be applied against the Purchase Price on the Closing Date and shall otherwise be held and delivered by Escrow Agent in accordance with the provisions of the Escrow Agreement.

3.2 Cash at Closing. On the Closing Date, Buyer shall (a) pay to Seller an amount equal to the balance of the Purchase Price in immediately available funds by wire transfer as more particularly set forth in Section 7.2, as prorated and adjusted as set forth in Article 6, Section 7.2, or as otherwise provided under this Agreement, and (b) cause the Escrow Agent to contemporaneously pay the Deposit to Seller in immediately available funds by wire transfer as more particularly set forth in Section 7.2.

### ARTICLE 4 - TITLE MATTERS

4.1 Title to Real Property. Within three (3) Business Days from the Effective Date, Seller shall provide Buyer with a copy of the most recent owner's title insurance policy issued in connection with the Property and the most recent survey of the Property. Buyer shall use good faith and reasonable efforts to obtain an updated Title Commitment, copies of all of the Title Documents, and the Survey as soon as reasonably practicable after the Effective Date. Buyer shall notify Seller when it receives any of the aforementioned documents.

#### 4.2 Title Defects.

##### 4.2.1 Buyer's Objections to Title; Seller's Obligations and Rights.

(a) On or prior to the Title Objection Date, Buyer shall have the right to object in writing to any title matters that appear on the Title Commitment, the Survey, and any supplemental title reports or updates to the Title Commitment (whether or not such matters constitute Permitted Exceptions). In addition, after the Title Objection Date, Buyer shall have the right to object in writing to any title matters which are not Permitted Exceptions that arise after the Title Objection Date so long as such objection is made by Buyer within five (5) Business Days after Buyer becomes aware of the same (but, in any event, prior to the Closing Date). Unless Buyer is entitled to and timely objects to such title matters, all such title matters shall be deemed to constitute additional Permitted Exceptions. Buyer shall deliver to Seller concurrently with any objection notice of Buyer delivered in accordance with this Section 4.2.1, copies of the Title Commitment, the Survey, and any supplemental title reports or updates to the Title Commitment that are the subject of any such Buyer objections, together with copies of any exception documents referenced therein.

(b) If this Agreement has not been terminated by Buyer prior to Closing in accordance with the provisions hereof, Seller shall, at Closing, Remove or cause to be Removed any Title Objections to the extent (and only to the extent) that the same constitute Required Removal Exceptions. In addition, Seller may elect (but shall not be obligated) to Remove or cause to be Removed any other Title Objections. To the extent that the same do not constitute Required Removal Exceptions, Seller may notify Buyer in writing within five (5) Business Days after receipt of Buyer's notice of Title Objections (but, in any event, prior to the Closing Date) whether Seller elects to Remove the same. Seller's failure to deliver such notice shall be deemed Seller's election not to Remove the same. If Seller elects not to Remove one or more Title Objections (or is deemed not to elect), then, within seven (7) Business Days after Seller's election, Buyer may elect in writing to either (i) terminate this Agreement, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for obligations which expressly survive the termination of this Agreement, or (ii) waive such Title Objections and proceed to Closing. Failure of Buyer to respond in writing within such period shall be deemed an election by Buyer to waive such Title Objections and proceed to Closing. Any such Title Objection so waived (or deemed waived) by Buyer shall be deemed to constitute a Permitted Exception and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price.

(c) If Seller is unable to Remove any Required Removal Exceptions or other Title Objection that it has previously elected to Remove prior to the Closing, Buyer may at or prior to Closing elect to either (i) terminate this Agreement, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for obligations which expressly survive the termination of this Agreement, or (ii) waive such Title Objection and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price; provided, however, if such lien or other matter is a Required Removal Exception, then Seller shall be obligated to remove such lien or other matter pursuant to paragraph (b) above.



(d) Seller shall be entitled to a reasonable adjournment of the Closing (not to exceed thirty (30) days) for the purpose of the Removal of any Required Removal Exceptions or other Title Objections.

**4.2.2 Discharge of Title Exceptions.** If on the Closing Date there are any Required Removal Exceptions or any other Title Objections which Seller has elected in writing to pay and discharge, Seller may use any portion of the Purchase Price to satisfy the same, provided Seller shall cause the Title Company to Remove the same.

**4.2.3 No New Exceptions.** From and after the Effective Date, Seller shall not execute any deed, easement, restriction, covenant or other matter affecting title to the Property (other than New Leases and/or Lease modifications permitted under Article 14) unless Buyer has received a copy thereof, along with a notice requesting Buyer to approve same in writing within five (5) Business Days after receipt thereof, and Buyer has approved the same in writing. If Buyer fails to object in writing to any such proposed instrument within five (5) Business Days after receipt of the aforementioned notice, Buyer shall be deemed to have approved the proposed instrument. Buyer, in its sole and absolute discretion, shall be entitled to grant or withhold its consent with respect to any such instrument that is proposed.

**4.3 Title Insurance.** At Closing, the Title Company shall issue the Owner's Title Policy to Buyer, insuring that title to the Real Property is vested in Buyer subject only to the Permitted Exceptions. Buyer shall be entitled to request that the Title Company provide such endorsements (or amendments) to the Owner's Title Policy as Buyer may reasonably require, provided that such endorsements (or amendments) shall be at no cost to Seller, and the Owner's Title Policy shall impose no additional liability on, Seller. Buyer's obligations under this Agreement are expressly conditioned upon the Title Company's issuance of a Title Insurance Commitment for such Owner's Title Policy and any such endorsements to which the Title Company has agreed, on or prior to the Title Objection Date, to issue to Buyer, and, if the Title Company refuses to issue such Title Insurance Commitment or any such endorsements, Buyer may terminate this Agreement as provided in Section 5.3.

## **ARTICLE 5 - BUYER'S DUE DILIGENCE/CONDITION OF THE PROPERTY**

### **5.1 Buyer's Due Diligence.**

**5.1.1 Access to Property.** Within five (5) Business Days of the Effective Date, Seller will provide to Buyer: (a) access to the property files of Seller, Seller's property manager and any other agent of Seller or agent of Seller's property manager including, without limitation, all building records (excluding appraisals and underwriting analyses), plans, environmental reports, Leases, tenant correspondence, soil tests, maintenance records, brokerage agreements, certified rent roll, and any other items referenced on Exhibit N attached hereto, all to the extent in Seller's control or possession, but in all events excluding the Confidential Materials (the "Due Diligence Items"). On or prior to December 12, 2012, Seller shall (and during the pendency of this Agreement, shall continue to) make the Due Diligence Items available to Buyer at the data room located on the first floor of Building 312 located at 321 Arsenal Street, Watertown, Massachusetts (the "Data Room"). Buyer may, at Buyer's sole cost and expense, make copies of the Due Diligence Items. Notwithstanding the foregoing, upon written request from Buyer,

Seller shall deliver to Buyer such additional materials or documents that Buyer may reasonably request relating to the Property, provided, however, that such additional materials and documents are in the possession and control of Seller or Seller's property manager and such additional materials and documents are not Confidential Materials. In the event that Seller does not have GAAP audited financial statements, Seller shall promptly provide, as reasonably requested by Buyer's auditors and to the extent in the possession of Seller or its property manager, financial books and records related solely to the Property sufficient to permit the audit of calendar years 2010, 2011 and 2012, provided, however, that in no event shall Seller be required to deliver books and records relating to the Property that have been consolidated within financial data in books and records relating to other property of Seller. In addition, if any particular books and records of Seller include financial data relating to the Property and financial data relating to other property of Seller, Seller shall only deliver Buyer that portion of such financial data relating to the Property (and then, only to the extent the same is readily separable from such other financial data). Between the Effective Date and the Closing Date Seller shall allow Buyer and Buyer's Representatives access to the Property and the Data Room upon reasonable prior notice at reasonable times (i.e. during regular business hours) provided (a) such access does not unreasonably interfere with the operation of the Property or the rights of tenants; (b) Buyer shall not initiate contact with any tenant prior January 21, 2013 without Seller's prior written consent, which consent shall not be unreasonably conditioned, withheld or delayed; and (c) except as expressly set forth in the next sentence, Buyer shall not engage in any subsurface or intrusive environmental or physical testing of the Property or any other testing (including, without limitation, any testing or sampling of surface or subsurface soils, surface water, groundwater or any materials in or about the Improvements), without the prior written consent of Seller, which may be granted, withheld or conditioned in Seller's sole discretion. During the Due Diligence Period, Buyer shall be permitted to conduct the subsurface environmental and physical testing of the Property expressly set forth in the written plan attached hereto as **Exhibit O**. Seller (or a Seller's Representative) shall have the right to be present (physically, electronically or telephonically, as applicable) when Buyer or any Buyer's Representative conducts its or their investigations of the Property or communicates with any tenant. In addition, Seller will make or cause to be made available to Buyer for copying, at Buyer's sole cost and expense, the property files of Seller and the management agent for the Property (other than those files containing Confidential Materials) including, without limitation, all building records (excluding appraisals and underwriting analyses), plans, environmental reports, Leases, tenant correspondence, soil tests, maintenance records, and the items referenced on **Exhibit N** attached hereto. Buyer shall promptly restore the Property to the condition existing prior to any such tests and inspections. Prior to such time as Buyer or any of Buyer's Representatives enter the Property, Buyer shall (i) obtain policies of general liability insurance which insure Buyer and Buyer's Representatives with liability insurance limits of not less than \$2,000,000.00 combined single limit for personal injury and property damage and name Seller and Seller's property manager as additional insureds and which are with such insurance companies, provide such coverages and carry such other limits as Seller shall reasonably require, and (ii) provide Seller with certificates of insurance evidencing that Buyer has obtained the aforementioned policies of insurance.

**5.1.2 Buyer's Reports.** Buyer shall have the right to rely on the statements, opinions and representations of the consultants, contractors or other parties hired by Buyer to perform the Due Diligence on Buyer's behalf, including the statements, opinions and representations contained in the Buyer's Reports. In the event that the parties do not proceed to

Closing, Seller shall have the right, upon written request to Buyer provided within thirty (30) days after the termination of this Agreement, to request the Buyer's Reports to be delivered to Seller. The Buyer's Reports shall be delivered to and accepted by Seller without any representation or warranty of Buyer whatsoever, express or implied, including, without limitation, any representation or warranty as to the accuracy or completeness thereof. Notwithstanding anything contained in the foregoing to the contrary, in no event shall Buyer disclose or deliver to any Person (other than the Buyer's Representatives in accordance with this Agreement) including, without limitation, the Seller, any Buyer's Reports other information relating to or the results of any Environmental Due Diligence except to the extent (i) expressly requested by Seller in writing or (ii) disclosure to a governmental authority is required of Buyer pursuant to applicable environmental Laws. In the case of (ii), if Buyer determines it is required to disclose any Environmental Due Diligence to a governmental authority, Buyer shall promptly notify Seller, in writing, of such requirement and consult with Seller as to the nature, scope and timing of such disclosure requirement before disclosure to any governmental authority.

**5.1.3 Limit on Government Contacts.** Except in connection with (a) the preparation of a so-called "Phase I" environmental report with respect to the Property, (b) the performance of customary due diligence regarding the zoning, building, tax or other compliance with the Property with applicable Laws, or (c) the determination of applicability of regulatory restrictions, availability of government incentive programs, and any potential redevelopment opportunities with regard to Buyer's potential purchase and operation of the Property, Seller shall be entitled to receive at least five (5) calendar days prior written notice of any intended contact with governmental officials or representatives.

**5.1.4 Buyer's Acknowledgement.** Buyer acknowledges and agrees as follows:

(a) During the Due Diligence Period, Buyer has conducted and shall continue to conduct, or has waived its right to conduct, such Due Diligence as Buyer has deemed or shall deem necessary or appropriate for Buyer to decide whether or not to terminate this Agreement as provided in Section 5.3.

(b) Except as expressly set forth in this Agreement or in the Exhibits attached hereto, none of the Seller Parties have or shall be deemed to have made any verbal or written representations, warranties, promises or guarantees (whether express, implied, statutory or otherwise) to Buyer with respect to the Property, any matter set forth, contained or addressed in the Documents (including, but not limited to, the accuracy and completeness thereof) or the results of Buyer's Due Diligence.

**5.2 Intentionally Omitted.**

**5.3 Termination of Agreement During Due Diligence Period.** If Buyer, in its sole and absolute discretion, is not satisfied with the results of its Due Diligence during the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller at any time prior to 5:00 p.m. Eastern Time on the last day of the Due Diligence Period, and, in the event of such termination, neither Seller nor Buyer shall have any liability hereunder except for those obligations which expressly survive the termination of this Agreement and Buyer shall be entitled to the return of the Initial Deposit. In the event Buyer fails to terminate this Agreement

prior to 5:00 p.m. Eastern Time on the last day of the Due Diligence Period, Buyer shall be deemed to have waived its rights to terminate this Agreement in accordance with this Article 5, and Buyer shall make the Additional Deposit in accordance with the provisions of Subsection 3.1.2. If after the expiration of the Due Diligence Period Buyer conducts further Due Diligence, Buyer acknowledges and agrees that, except as expressly provided in Section 8.1 below, Buyer shall have no further right to terminate this Agreement with respect to such further Due Diligence or otherwise in accordance with this Article 5.

**5.4 Release.** UPON CLOSING, BUYER, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, SHALL BE DEEMED TO HAVE RELEASED, ACQUITTED AND FOREVER DISCHARGED SELLER AND (AS THE CASE MAY BE) SELLER'S OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, TRUSTEES, PARTNERS, EMPLOYEES, MANAGERS, AGENTS AND AFFILIATES FROM ANY AND ALL RIGHTS, CLAIMS, DEMANDS, CAUSES OF ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND DISBURSEMENTS WHETHER THE SUIT IS INSTITUTED OR NOT) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT, WHICH BUYER HAS OR MAY HAVE IN THE FUTURE, ARISING FROM OR RELATING TO (I) ANY DEFECTS (PATENT OR LATENT), ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY WHETHER THE SAME ARE THE RESULT OF NEGLIGENCE OR OTHERWISE, OR (II) ANY OTHER CONDITIONS AFFECTING THE PROPERTY WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE, WHETHER ARISING BASED ON EVENTS THAT OCCURRED BEFORE, DURING, OR AFTER SELLER'S PERIOD OF OWNERSHIP OF THE PROPERTY AND WHETHER BASED ON THEORIES OF INDEMNIFICATION, CONTRIBUTION OR OTHERWISE. THE RELEASE SET FORTH HEREIN DOES NOT APPLY TO (I) THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, OR (II) ANY INDEMNITY OR WARRANTY EXPRESSLY MADE BY SELLER IN ANY DOCUMENT DELIVERED BY SELLER AT CLOSING. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THE ATHENA LEASE SHALL REMAIN IN FULL FORCE AND EFFECT, ALL RIGHTS THEREUNDER SHALL REMAIN UNDISTURBED IN THE EVENT THAT THE CLOSING DOES NOT OCCUR, AND BUYER'S RIGHTS AS TENANT UNDER THE ATHENA LEASE SHALL SURVIVE CLOSING AND NOT BE MERGED THEREIN. BUYER HEREBY SPECIFICALLY ACKNOWLEDGES THAT BUYER HAS CAREFULLY REVIEWED THIS SUBSECTION AND DISCUSSED ITS IMPORT WITH LEGAL COUNSEL AND THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL PART OF THIS AGREEMENT.

**5.5 No Assumption of Employee Claims.** Seller agrees that Buyer has no obligation to assume any obligations to (or regarding the employment of), any individuals previously or currently employed by Seller or Seller's agents in the management, ownership or operation of the Real Property. Buyer shall not assume, shall not take subject to and shall not be liable for, any liabilities or obligations of any kind or nature, whether absolute, contingent, accrued, known or unknown, (i) to former or current employees of Seller or Seller's agents, including, without limitation, any liabilities or obligations of Seller or Seller's agents in connection with any employee benefit plans or collective bargaining agreements, employment agreements or other similar arrangement, any liabilities or obligations with respect to employment arising under any

federal, state or municipal statute or common law, or any liabilities or obligations in respect of retiree health benefits, or (ii) with respect to severance payments or other termination payments owing by Seller to any of Seller's former or current employees (collectively, "Employee Claims"). The provisions of this paragraph shall survive the Closing,

## ARTICLE 6 - ADJUSTMENTS AND PRORATIONS

The following adjustments and prorations shall be made at Closing:

### 6.1 Lease Rentals and Other Revenues.

**6.1.1 Rents.** All collected Rents shall be prorated between Seller and Buyer as of the day prior to the Closing Date. Seller shall be entitled to all Rents attributable to any period to but not including the Closing Date. Buyer shall be entitled to all Rents attributable to any period on and after the Closing Date. Rents not collected as of the Closing Date shall not be prorated at the time of Closing. After Closing, Buyer shall make a good faith effort to collect any Rents not collected as of the Closing Date on Seller's behalf and to tender the same to Seller upon receipt (which obligation of Buyer shall survive the Closing and not be merged therein); provided, however, that all Rents collected by Buyer on or after the Closing Date shall first be applied to all amounts due under the Leases at the time of collection (*i.e.*, current Rents and sums due Buyer as the current owner and landlord) with the balance (if any) payable to Seller, but only to the extent of amounts delinquent and actually due Seller. Buyer shall not have an exclusive right to collect the sums due Seller under the Leases and Seller hereby retains its rights to pursue claims against any tenant under the Leases for sums due with respect to periods prior to the Closing Date; provided, however, that Seller (i) shall be required to notify Buyer in writing of its intention to commence or pursue such legal proceedings; (ii) shall only be permitted to commence or pursue any legal proceedings after the date which is six (6) months after Closing; and (iii) shall not be permitted to commence or pursue any legal proceedings against any tenant seeking eviction of such tenant or the termination of the underlying lease. The terms of the immediately preceding sentence shall survive the Closing and not be merged therein.

**6.1.2 Other Revenues.** Revenues from Property operations [other than Rents (which shall be prorated as provided in Subsection 6.1.1), security deposits (which will be apportioned as provided in Section 6.6), and pre-paid installments or other payments under Contracts (which shall be the sole property of Seller)], that are actually collected shall be prorated between Buyer and Seller as of 12:01 a.m. on the Closing Date. Seller shall be entitled to all such revenues attributable to any period to but not including the Closing Date and Buyer shall be entitled to all such revenues attributable to any period on and after the Closing Date. After Closing, Buyer shall make a good faith effort to collect any such revenues not collected as of the Closing Date on Seller's behalf and to tender the same to Seller upon receipt (which obligation of Buyer shall survive the Closing and not be merged therein). Buyer shall not have an exclusive right to collect such revenues and Seller hereby retains its rights to pursue claims against any parties for sums due with respect to periods prior to the Closing Date, provided, however, that Seller (i) shall be required to notify Buyer in writing of its intention to commence or pursue such legal proceedings; and (ii) shall not be permitted to commence or pursue any legal proceedings against any tenant seeking eviction of such tenant or the termination of the

underlying lease. The terms of the immediately preceding sentence shall survive the Closing and not be merged therein.

**6.2            Intentionally Omitted.**

**6.3            Real Estate and Personal Property Taxes.**

**6.3.1            Proration of Ad Valorem Taxes.** Buyer and Seller shall prorate real estate taxes and unmetered water and sewer charges and any and all other municipal or governmental assessments of any and every nature levied or imposed upon the Property, on the basis of the fiscal year or calendar year for which assessed. The parties acknowledge that Seller's actual payment obligations pursuant to the PILOT Agreement with respect to real estate taxes and payments in lieu of taxes may be greater than the amounts otherwise allocable to Seller pursuant to the foregoing sentence. Seller shall be responsible for all amounts payable under the PILOT Agreement.

**6.3.2            Proration of Real Estate Taxes.** The proration of the real estate taxes actually due and payable during the Closing Tax Year shall be calculated as follows:

(a) Seller shall be responsible for that portion of such taxes equal to (i) the total such taxes due and payable during the Closing Tax Year, multiplied by (ii) a fraction, the numerator of which shall be the number of days in the Closing Tax Year prior to the Closing Date, and the denominator of which shall be 365; and

(b) Buyer shall be responsible for that portion of such taxes equal to (i) the total such taxes due and payable during the Closing Tax Year, multiplied by (ii) a fraction, the numerator of which shall be the number of days in the Closing Tax Year subsequent to and including the Closing Date, and the denominator of which shall be 365.

**6.3.3            Special Assessments.** Seller shall pay all installments of special assessments due prior to the Closing Date and Buyer shall pay all installments of special assessments due and payable on and after the Closing Date; provided, however, that Seller shall not be required by the foregoing to pay any installments of special assessments which have not been confirmed or which relate to projects that have not been completed on the date hereof.

**6.3.4            Tenant Reimbursements.** Notwithstanding the foregoing terms of this Article 6, Seller shall have no obligation to pay (and Buyer shall not receive a credit at Closing for) any real estate or personal property taxes or special assessments to the extent that Buyer is entitled after Closing to reimbursement of taxes and assessments, or the recovery of any increase in taxes and assessments, from the tenants under the Leases, regardless of whether Buyer actually collects such reimbursement or increased taxes and assessments from such tenants, it being understood and agreed by Buyer and Seller that (a) as between Buyer and Seller, Buyer shall be responsible for payment of all of such real estate or personal property taxes and assessments, and (b) the burden of collecting such reimbursements shall be solely on Buyer. Furthermore, Seller and Buyer acknowledge and agree that, notwithstanding any provision in any of the Leases to the contrary, the tax reimbursement payments to be paid by tenants of the Property during the Closing Tax Year are to be applied to pay the real estate taxes due and payable during the Closing Tax Year and, therefore, Buyer shall not receive a credit for any

amounts due and payable by tenants of the Property prior to the Closing as real estate tax reimbursements.

**6.4 Other Property Operating Expenses.** Operating expenses for the Property shall be prorated as of 12:01 a.m. on the Closing Date. Seller shall pay all utility charges and other operating expenses attributable to the Property to, but not including the Closing Date (except for those utility charges and operating expenses payable by tenants in accordance with the Leases) and Buyer shall pay all utility charges and other operating expenses attributable to the Property on or after the Closing Date. To the extent that the amount of actual consumption of any utility services is not determined prior to the Closing Date, a proration shall be made at Closing based on the last available reading and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days of the date that actual consumption for such pre-closing period is determined, which obligation shall survive the Closing and not be merged therein. Seller shall not assign to Buyer any deposits which Seller has with any of the utility services or companies servicing the Property. Buyer shall arrange with such services and companies to have accounts opened in Buyer's name beginning at 12:01 a.m. on the Closing Date. Notwithstanding the foregoing terms of this section, Seller shall have no obligation to pay (and Buyer shall not receive a credit at Closing for) any operating expenses to the extent that Buyer is entitled after Closing to reimbursement of operating expenses, or the recovery of any increase in operating expenses, from the tenants under the Leases, regardless of whether Buyer actually collects such reimbursement or increased operating expenses from such tenants, it being understood and agreed by Buyer and Seller that (a) as between Buyer and Seller, Buyer shall be responsible for payment of all of such operating expenses, and (b) the burden of collecting such reimbursements shall be solely on Buyer.

**6.5 Closing Costs.** Buyer shall pay the following costs and expenses associated with the Transaction: (a) all premiums and charges of the Title Company for the Title Commitment and the Owner's Title Policy (including any extended coverage and endorsements), (b) the cost of the Survey, (c) all recording and filing charges in connection with the instruments by which Seller conveys the Property, (d) all escrow charges, (e) the commission due Buyer's Broker, (f) all costs of Buyer's Due Diligence, including fees due its consultants and attorneys, (g) all lenders' fees related to any financing to be obtained by Buyer, and (h) all other costs and expenses which are customarily borne by a purchaser of commercial property in the Commonwealth of Massachusetts. Seller shall pay the following costs and expenses associated with the Transaction: (a) all deed excise stamp taxes, (b) all fees due its attorneys, (c) all costs incurred in connection with causing the Title Company to Remove any Required Removal Exceptions or to Remove any other Title Objections to the extent Seller specifically agreed in writing, at or prior to Closing, to cause Removal of such matter pursuant to Section 4.2.1 hereof, it being understood for purposes of this sentence that nothing in this Agreement or any prior understanding or agreement of the parties shall be construed to obligate Seller to so Remove or agree to Remove any such matter, and (d) all other costs and expenses which are customarily borne by a seller of commercial property in the Commonwealth of Massachusetts. The obligations of the parties under this Section 6.5 shall survive the Closing (and not be merged therein) or any earlier termination of this Agreement.

**6.6      Cash Security Deposits.** At Closing, Seller shall give Buyer a credit against the Purchase Price in the aggregate amount of any cash security deposits then held by Seller under the Leases.

**6.7      Apportionment Credit.** In the event the apportionments to be made at the Closing result in a credit balance (a) to Buyer, such sum shall be paid at the Closing by giving Buyer a credit against the Purchase Price in the amount of such credit balance, or (b) to Seller, Buyer shall pay the amount thereof to Seller at the Closing by wire transfer of immediately available funds to the account or accounts to be designated by Seller for the payment of the Purchase Price.

**6.8      Delayed Adjustment; Delivery of Operating and Other Statements.** If at any time following the Closing Date, the amount of an item listed in any section of this Article 6 shall prove to be incorrect (whether as a result of an error in calculation or a lack of complete and accurate information as of the Closing), the party in whose favor the error was made shall promptly pay to the other party the sum necessary to correct such error upon receipt of proof of such error, provided that such proof is delivered to the party from whom payment is requested on or before one (1) year after Closing (such period being referred to herein as the “Post Closing Adjustment Period”). In order to enable Seller to determine whether any such delayed adjustment is necessary, Buyer shall provide to Seller such documentation as may be reasonably necessary to make any such determination no later than the date one (1) month prior to the expiration of the Post-Closing Adjustment Period. The provisions of this Section 6.8 shall survive the Closing and not be merged therein.

## **ARTICLE 7 - CLOSING**

Buyer and Seller hereby agree that the Transaction shall be consummated as follows:

**7.1      Closing Date.** Subject to Seller's right to extend the Closing as provided in this Agreement, Closing shall occur on the Closing Date. The parties shall endeavor to conduct an escrow-style closing through the Title Company (or such other party selected by Buyer and Seller) so that it will not be necessary for any party to attend the Closing. If, however, either Buyer or Seller determines in good faith that such an escrow Closing is not practical, Buyer and Seller shall conduct a “pre-closing” at 10:00 a.m. Eastern Time on the last Business Day prior to the Closing Date at the offices of Seller's attorney with title transfer and payment of the Purchase Price to be completed on the Closing Date as set forth in Section 7.2. Time is of the essence with respect to the Closing.

**7.2      Title Transfer and Payment of Purchase Price.** Provided all conditions precedent to Seller's obligations hereunder have been satisfied, Seller agrees to convey good, clear, record and marketable title to the Property to Buyer upon confirmation of receipt of the Purchase Price by the Escrow Agent as set forth below. Provided all conditions precedent to Buyer's obligations hereunder have been satisfied, Buyer agrees to pay the amount specified in Article 3 by timely delivering the same to the Escrow Agent no later than 11:00 a.m. Eastern Time on the Closing Date and causing the Escrow Agent to deposit the same in Seller's designated account by 12:00 noon Eastern Time on the Closing Date. In addition, for each full or partial day after 12:00 noon Eastern Time on the Closing Date that Seller has not received in



its account the payment specified in Article 3, Buyer shall pay to Seller at Closing (and as a condition thereto) an amount equal to one (1) day's interest on the unpaid funds at the rate *per annum* equal to the "prime rate" as such rate is reported in the "Money Rates" section of *The Wall Street Journal*, as published and distributed in New York, New York, in effect from time to time.

**7.3 Seller's Closing Deliveries.** At the Closing, Seller shall deliver or cause to be delivered the following to the Title Company:

(a) **Deed.** A quitclaim deed substantially in the form of **Exhibit C** attached hereto and incorporated herein by this reference (**"Deed"**) executed and acknowledged by Seller.

(b) **Bill of Sale.** A bill of sale substantially in the form of **Exhibit D** attached hereto and incorporated herein by this reference (**"Bill of Sale"**) executed by Seller.

(c) **Assignment and Assumption of Space Leases.** The Assignment and Assumption of Space Leases substantially, in the form of **Exhibit E** attached hereto and incorporated herein by this reference (**"Assignment of Leases"**) executed by Seller.

(d) **Assignment of Intangible Property.** An assignment and assumption of the Contracts required to be assumed by Buyer pursuant to Section 10.2.1(c) below and the Other Property Rights (to the extent the same are not transferred by the Deed, Bill of Sale or Assignment of Leases) substantially in the form of **Exhibit F** attached hereto and incorporated herein by this reference (**"Assignment of Intangible Property"**) executed by Seller.

(e) **Notice to Tenants.** A single form letter in the form of **Exhibit G** attached hereto and incorporated herein by this reference, executed by Seller, duplicate copies of which shall be sent by Buyer after Closing to each tenant under the Leases.

(f) **Non-Foreign Status Affidavit.** A non-foreign status affidavit in the form of **Exhibit H** attached hereto and incorporated herein by this reference, as required by Section 1445 of the Internal Revenue Code, executed by Seller.

(g) **Evidence of Authority** Documentation to establish to Buyer's reasonable satisfaction the due authorization of Seller's execution of this Agreement and all documents contemplated by this Agreement and the consummation of the Transaction.

(h) **Closing Statement.** A Closing Statement which shall, among other items, set forth the Purchase Price, all credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price and all disbursements made at Closing on behalf of Buyer and Seller. (the **"Closing Statement"**).

(i) **Title Affidavit.** A Title Affidavit in the form of **Exhibit I** attached hereto and incorporated herein by this reference.

(j) **Other Documents.** Such other documents as may be reasonably required by the Title Company, as may be agreed upon by Seller and Buyer, or as may be reasonably required by Buyer's insurance company, to consummate the Transaction.

(k) **Letters of Credit as Tenant Security Deposits.** The tenants listed on **Exhibit M** attached hereto have security deposits which are in the form of letters of credit. Seller shall, if such letter of credit may be assigned or otherwise transferred by Seller, (i) deliver to Buyer at the Closing such letters of credit, and (ii) execute and deliver such other instruments as the issuers of such letters of credit shall reasonably require. If such letters of credit cannot be assigned or otherwise transferred, Seller shall cooperate with Buyer to change the named beneficiary under such letters of credit to Buyer so long as Seller does not incur any additional liability or expense in connection therewith. Seller shall bear any expense associated with such transfers.

(l) **Keys and Original Documents.** Keys to all locks on the Real Property in Seller's or Seller's building manager's possession and originals or, if originals are not available, copies, of all of the Property Documents, to the extent not previously delivered to Buyer.

(m) **Estoppel Letters.** To the extent in Seller's possession, but in any event as a condition precedent to Buyer's obligation to close the Transaction, executed estoppel certificates (collectively, the "**Tenant Estoppels**") from tenants (including the Required Tenants) of the Property leasing in the aggregate not less than 100% of the rentable square footage of the Property currently subject to Leases, each of which (i) shall be dated no earlier than forty-five (45) days prior to the initially scheduled Closing Date, and (ii) shall be substantially in the form of **Exhibit J-1** attached hereto and incorporated herein by this reference (the "**Estoppel Condition**"). In the event Seller cannot for any reason obtain the Tenant Estoppels, Seller, at its option, may satisfy the Estoppel Condition with respect to any tenant(s) other than the Required Tenants by delivering to Buyer, an estoppel certificate in the form of **Exhibit J-2** attached hereto and incorporated herein by this reference for tenant(s) which (together with the estoppel certificates actually obtained from tenants) occupy all of the rentable square feet currently subject to Leases. Seller's failure to satisfy the Estoppel Condition shall not be a default by Seller hereunder. In the event of such failure, Buyer's sole remedy shall be to either (i) waive the Estoppel Condition and proceed to Closing without any reduction in the Purchase Price, or (ii) terminate this Agreement, in which event the Deposit shall be returned to Buyer and the parties shall have no further rights or obligations hereunder except for obligations which expressly survive the termination of this Agreement. Seller's liability under each Seller's representation letter shall expire and be of no further force or effect on the earlier of (A) ninety (90) days following the Closing Date, and (B) the date that Buyer receives an estoppel certificate with respect to any such tenant.

The items to be delivered by Seller in accordance with the terms of this **Section 7.3** shall be delivered to the Title Company no later than 5:00 p.m. Eastern Time on the last Business Day prior to the Closing Date, except that the items in the paragraph entitled "Keys and Original Documents" and any tenant estoppel certificates shall be delivered by Seller outside of escrow

and shall be deemed delivered if the same are located at the Property on the Closing Date and Buyer has been notified of their location at the Property by Seller.

**7.4 Buyer Closing Deliveries.** At the Closing, Buyer shall deliver or cause to be delivered the following to the Escrow Agent (with respect to Section 7.4(a)) or the Title Company (with respect to 7.4(b) through (g)), as applicable:

- (a) **Purchase Price.** The Purchase Price, as adjusted for apportionments and other adjustments required under this Agreement, plus any other amounts required to be paid by Buyer at Closing.
- (b) **Assignment of Leases.** The Assignment of Leases executed and acknowledged by Buyer.
- (c) **Assignment of Intangible Property.** The Assignment of Intangible Property executed and acknowledged by Buyer.
- (d) **Evidence of Authority.** Documentation to establish to Seller's reasonable satisfaction the due authorization of Buyer's acquisition of the Property and Buyer's execution of this Agreement and the documents required to be delivered by Buyer pursuant to this Agreement and the consummation of the Transaction.
- (e) **Closing Statement.** The Closing Statement.
- (f) **Other Documents.** Such other documents as may be reasonably required by the Title Company, as may be agreed upon by Seller and Buyer, or as may be reasonably required by Buyer's insurance company, to consummate the Transaction.

The Purchase Price shall be paid in accordance with the terms of Section 7.2 hereof and the items to be delivered by Buyer in accordance with the terms of Subsections (b) and following of this Section 7.4 shall be delivered to the Title Company no later than 5:00 p.m. Eastern Time on the last Business Day prior to the Closing Date.

#### ARTICLE 8 - CONDITIONS TO CLOSING

**8.1 Conditions to Seller's Obligations.** Seller's obligation to close the Transaction is conditioned on all of the following, any or all of which may be waived by Seller by an express written waiver, at its sole option:

- (a) **Representations True.** All representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date except to the extent they expressly relate to an earlier date;
- (b) **Buyer's Financial Condition.** No petition has been filed by or against Buyer under the Federal Bankruptcy Code or any similar state or federal Law, whether now or hereafter existing; and

(c) **Buyer's Deliveries Complete.** Buyer shall have delivered the funds required hereunder and all of the documents to be executed by Buyer set forth in Section 7.4 and shall have performed all other covenants, undertakings and obligations, and complied with all conditions required by this Agreement, to be performed or complied with by Buyer at or prior to the Closing.

**8.2** **Conditions to Buyer's Obligations.** Buyer's obligation to close the Transaction is conditioned on all of the following, any or all of which may be expressly waived by Buyer in writing, at its sole option:

(a) **Representations True.** Subject to the provisions of Section 9.3, all representations and warranties made by Seller in this Agreement, as the same may be cured as provided in Section 9.3, shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date except to the extent that they expressly relate to an earlier date.

(b) **Title.** At the time of Closing, title to the Property shall be as provided in Article 4 of this Agreement.

(c) **Seller's Deliveries Complete.** Seller shall have delivered all of the documents and other items required pursuant to Section 7.3 and shall have performed all other covenants, undertakings and obligations, and complied with all conditions required by this Agreement, to be performed or complied with by Seller at or prior to the Closing.

(d) **HBSP Lease Amendment.** Seller shall have delivered to Buyer a copy of an amendment to that certain Lease by and between Seller (as successor to Charles River Business Associates, LLC), as landlord, and Harvard Business School Publishing, as tenant, dated as of November 30, 1998, as amended, amending the expiration date to be on or prior to December 31, 2017.

(e) **Tenant Estoppels.** Seller shall have satisfied the condition with respect to Tenant Estoppels set forth in Subsection 7.3(m).

(f) **Condition of Property.** On the Closing Date, subject to the provisions of Article 12 below, the Property shall be in substantially the same condition that it is at the expiration of the Due Diligence Period, reasonable wear and tear excepted, Seller having removed all vehicles, equipment, tools, and goods; except for such vehicles, equipment, tools and goods as shall be conveyed to Buyer pursuant to the Bill of Sale.

**8.3** **Waiver of Failure of Conditions Precedent.** At any time or times on or before the date specified for the satisfaction of any condition, Seller or Buyer may elect in writing to waive the benefit of any such condition set forth in Section 8.1 or Section 8.2, respectively. By closing the Transaction, Seller and Buyer shall be conclusively deemed to have waived the benefit of any remaining unfulfilled conditions set forth in Section 8.1 and Section 8.2, respectively. In the event any of the conditions set forth in Section 8.1 or Section 8.2 are neither waived nor fulfilled, Seller or Buyer (as appropriate) may exercise such rights and remedies, if any, that such party may have pursuant to the terms of Article 11 hereof.

## ARTICLE 9 - REPRESENTATIONS AND WARRANTIES

**9.1        Buyer's Representations.** Buyer represents and warrants to, and covenants with, Seller as follows:

**9.1.1        Buyer's Authorization.** Buyer (a) is duly organized (or formed), validly existing and in good standing under the Laws of its State of organization and, as and to the extent required by Laws for this Transaction, the Commonwealth of Massachusetts, (b) is authorized to consummate the Transaction and fulfill all of its obligations hereunder and under all documents contemplated hereunder to be executed by Buyer, and (c) has all necessary power to execute and deliver this Agreement and all documents contemplated hereunder to be executed by Buyer, and to perform all of its obligations hereunder and thereunder. This Agreement and all documents contemplated hereunder to be executed by Buyer, have been duly authorized by all requisite partnership, corporate or other required action on the part of Buyer and are the valid and legally binding obligation of Buyer, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Buyer, nor the performance of the obligations of Buyer hereunder or thereunder will result in the violation of any Law or any provision of the organizational documents of Buyer or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Buyer is bound.

**9.1.2        Buyer's Financial Condition.** No petition has been filed by or against Buyer under the Federal Bankruptcy Code or any similar state or federal Law.

**9.1.3        Patriot Act.** Buyer is not, and will not be, a Person with whom Seller is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List.

**9.1.4** Buyer's representations contained in this Section 9.1 shall survive the Closing and not be merged therein for a period of one hundred eighty (180) and Buyer shall only be liable to Seller hereunder for a breach of Buyer's representations made in this Section 9.1 or in any of the documents executed by Buyer at the Closing with respect to which a claim is made by Seller against Buyer on or before one hundred eighty (180) days after the date of the Closing.

**9.2        Seller's Representations.** Seller represents and warrants to Buyer as follows:

**9.2.1        Seller's Authorization.** Seller (a) is duly organized (or formed), validly existing and in good standing under the Laws of the Commonwealth of Massachusetts, (b) is authorized to consummate the Transaction and fulfill all of its obligations hereunder and under all documents contemplated hereunder to be executed by Seller, and (c) has all necessary power to execute and deliver this Agreement and all documents contemplated hereunder to be executed by Seller, and to perform all of its obligations hereunder and thereunder. This Agreement and all documents contemplated hereunder to be executed by Seller, have been duly authorized by all

requisite partnership, corporate or other required action on the part of Seller and are the valid and legally binding obligation of Seller, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Seller, nor the performance of the obligations of Seller hereunder or thereunder will result in the violation of any Law or any provision of the organizational documents of Seller or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Seller is bound.

**9.2.2      Other Seller's Representations.** To Seller's Knowledge:

- (a) Except as listed in **Exhibit K** attached hereto and incorporated herein by this reference, Seller has not received any written notice of any current or pending litigation against Seller relating to the Property which would, if determined adversely to Seller, materially adversely affect the Property.
- (b) As of the Effective Date, except as set forth in **Exhibit B** attached hereto, there are no currently effective leasing commission agreements with respect to the Property.
- (c) As of the Effective Date, there are no outstanding tenant improvement allowances, rental abatements or other tenant allowances which are currently payable or which shall become payable prior to or after Closing, except as included in the Property Documents.
- (d) As of the Effective Date, Seller has not entered into any material service, supply, maintenance or utility contracts, subcontracts or agreements affecting the Property which will be binding upon Buyer after the Closing other than (i) the Contracts listed in **Exhibit B** attached hereto, (ii) the Leases, and (iii) the Permitted Exceptions. Seller has delivered to Buyer true, complete and correct copies of the Leases and the Contracts.
- (e) Except for defaults cured on or before the date hereof, Seller has not received or delivered any written notice of default under the terms of any of the Contracts or Leases except as listed in **Exhibit K** attached hereto.
- (f) As of the Effective Date, the only tenants or subtenants of the Property are those listed in **Exhibit L** attached hereto and incorporated herein by this reference; provided, however, that the foregoing is not intended (and shall not be construed) as a representation by Seller of the parties that are in actual possession of any portion of the Property as there may be subtenants, licensees or assignees that are in possession of portions of the Property.
- (g) Except for violations cured or remedied on or before the date hereof and except as listed in **Exhibit K** attached hereto, as of the date of this Agreement, Seller has not received any written notice from any governmental authority with respect to the violation of any zoning Law applicable to the Property.

(h) There are no pending, or to Seller's knowledge, threatened, condemnation or eminent domain proceedings relating to the Property.

(i) Seller has not granted any option to purchase or right of first refusal or first offer to any party to purchase any fee interest in any portion of the Property.

(j) No party constituting Seller is a "foreign person" as defined in Section 1445 of the Code.

(k) Seller is not a person with whom Buyer is restricted from doing business with under the Anti-Terrorism Laws.

(l) There are no actions, suits or proceedings pending or, to the knowledge of Seller, threatened in writing, against or affecting Seller which, if determined adversely to Seller, would adversely affect its ability to perform its obligations hereunder. Seller has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition of Seller's creditors, (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (e) admitted in writing its inability to pay its debts as they come due or (f) made an offer of settlement, extension or composition to its creditors generally. Seller has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.

(m) Except as set forth in the Data, Seller has not received any written notice, whether formal or informal, from any governmental authority of: (1) the presence of any hazardous materials at the Property in violation of any applicable environmental laws or that require any remediation or investigation; or (2) the presence of any underground storage tanks on any portion of the Property.

(n) To Seller's Knowledge, Data delivered to Buyer for purposes of Buyer's Environmental Due Diligence review included the results of the Designated Employee's duty of reasonable inquiry as provided in the definition of "Seller's Knowledge" contained herein.

(o) The Designated Employee is the individual who has been primarily responsible for the management of the Property on behalf of Seller since Seller's acquisition of the Property. Throughout the period of time that the Seller has occupied the Property, the Designated Employee has been the Seller employee primarily responsible for managing the Property and in such capacity would have knowledge of any material decisions regarding environmental compliance or decisions with respect to the Property and to whom any material notice regarding the environmental condition of the Property would be disclosed if delivered to the third-party manager of the Property and/or the department of Seller responsible for the management of the Property.

**9.2.3      Designated Employee.** The Designated Employee shall act as a liaison for Seller with respect to the Property and Buyer may contact any Designated Employee with any inquiries regarding Buyer's Due Diligence or any matter relating to the Property. There shall be no personal liability on the part of a Designated Employee arising out of any of the Seller's Warranties.

**9.3      General Provisions.**

**9.3.1      No Representation As to Leases.** Seller does not represent or warrant that any particular Lease or Leases will be in force or effect on the Closing Date or that the tenants will have performed their obligations thereunder.

**9.3.2      Intentionally Omitted.**

**9.3.3      Notice of Breach; Seller's Right to Cure.** If after the Effective Date but prior to the Closing, Buyer or any Buyer's Representative obtains actual knowledge that any of Seller's Warranties are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within five (5) Business Days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of Seller's Warranties are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within five (5) Business Days of obtaining such knowledge (but, in any event, prior to the Closing). In either such event, Seller shall have the right to cure such misrepresentation or breach and shall be entitled to a reasonable adjournment of the Closing (not to exceed thirty (30) days) for the purpose of such cure, provided, however, that Seller shall not have the right to extend the Closing Date if a misrepresentation or breach is of the nature that it cannot be cured. If Seller is unable to so cure any misrepresentation or breach, then Buyer, as its sole remedy for any and all such materially untrue, inaccurate or incorrect material representations or warranties, shall elect either (a) to waive such misrepresentations or breaches of representations and warranties and consummate the Transaction without any reduction of or credit against the Purchase Price, or (b) to terminate this Agreement by written notice given to Seller on the Closing Date, in which event this Agreement shall be terminated the Deposit shall be returned to Buyer and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives any termination of this Agreement. If any of Seller's Warranties are untrue, inaccurate or incorrect but are not, in the aggregate, untrue, inaccurate or incorrect in any material respect, Buyer shall be deemed to waive such misrepresentation or breach of warranty, and Buyer shall be required to consummate the Transaction without any reduction of or credit against the Purchase Price. The untruth, inaccuracy or incorrectness of Seller's Warranties shall be deemed material only if Buyer's aggregate damages resulting from the untruth, inaccuracy or incorrectness of Seller's Warranties are reasonably estimated to exceed \$250,000.00. Notwithstanding the foregoing, in the event that any of the Seller's Warranties are untrue, inaccurate or incorrect in any material respect as a result of an intentional misrepresentation made by Seller and Buyer elects to terminate this Agreement, then Buyer may, in addition to all other remedies available to Buyer under this Agreement, recover from Seller all actual third party costs incurred by Buyer in the performance of Buyer's Due Diligence up to the point of Buyer's discovery of the intentional misrepresentation. In the event that any of Seller's Warranties are untrue, inaccurate or incorrect in any material respect as a result of a negligent



misrepresentation made by Seller and Buyer elects to terminate this Agreement, then Buyer may, in addition to all other remedies available to Buyer hereunder, recover from Seller at actual third party costs incurred by Buyer in the performance of Buyer's Due Diligence up to the point of Buyer's discovery of the negligent misrepresentation in an amount not to exceed \$250,000.00 in the aggregate.

**9.3.4      Survival; Limitation on Seller's Liability.** Seller's Warranties, with the exception of Seller's quitclaim covenants contained in the Deed, shall survive the Closing and not be merged therein for a period of one hundred eighty (180) days and Seller shall only be liable to Buyer hereunder for a breach of Seller's Warranties made herein or in any of the documents executed by Seller at the Closing with respect to which a claim is made by Buyer against Seller on or before one hundred eighty (180) days after the date of the Closing. Anything in this Agreement to the contrary notwithstanding, the maximum aggregate liability of Seller for breaches of Seller's Warranties shall be limited as set forth in Section 15.14 hereof.

**9.3.5      Mutual Indemnifications.**

(a) Subject to the limitations set forth in Section 9.3.4 and Section 15.14, from and after the Closing, Seller shall indemnify Buyer and defend and hold Buyer harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including reasonable attorneys' fees, resulting from any misrepresentation or any material breach of a representation or warranty by Seller in this Agreement or in any document, certificate, or exhibit given or delivered by Seller pursuant to or in connection with this Agreement.

(b) Subject to the limitations set forth in Section 9.1.4, from and after the Closing, Buyer shall indemnify Seller and defend and hold Seller harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including reasonable attorneys' fees, resulting from any misrepresentation or any material breach of a representation or warranty by Buyer in this Agreement or in any document, certificate, or exhibit given or delivered by Buyer pursuant to or in connection with this Agreement.

**9.4      As-Is Sale.** Except for the obligations of Seller under this Agreement, Buyer agrees that the Property shall be sold, and Buyer shall accept possession of the Property on the Closing Date, strictly on an "as is, where is, with all faults" basis, and that, except as expressly provided for herein, such sale shall be without representation or warranty of any kind by Seller, express or implied.

**ARTICLE 10 - COVENANTS**

**10.1      Buyer's Covenants.** Buyer hereby covenants as follows:

**10.1.1      Confidentiality.** Buyer acknowledges that the Due Diligence Items furnished to Buyer with respect to the Property has been and will be so furnished on the condition that Buyer maintains the confidentiality thereof, except as otherwise expressly permitted in this Agreement. Accordingly, Buyer shall hold, and shall cause Buyer's Representatives to hold, in strict confidence, and Buyer shall not disclose, and shall prohibit

Buyer's Representatives from disclosing, to any other person without the prior written consent of Seller until the Closing shall have been consummated, (i) the terms of this Agreement, and (ii) any information contained in any Due Diligence Items. However, Seller hereby acknowledges that Buyer shall be required by law to disclose the terms of this Agreement to the Securities and Exchange Commission ("SEC") for purposes of fulfilling Buyer's filing obligations with the SEC. In the event the Closing does not occur or this Agreement is terminated, Buyer shall promptly return to Seller all copies all Due Diligence Items without retaining any copy thereof or extract therefrom. Notwithstanding anything to the contrary hereinabove set forth, Buyer may disclose such information (a) on a need-to-know basis to its employees, members of professional firms serving it or potential lenders, all of whom shall be informed of the confidential nature of such information, and shall agree to be bound by the terms hereof, (b) as any governmental agency may require in order to comply with applicable Laws and determine whether government incentive programs are available with regard to Buyer's potential purchase and operation of the Property, and (c) to the extent that such information is a matter of public record. The provisions of this Subsection 10.1.1 shall survive any termination of this Agreement.

**10.1.2** **Buyer's Indemnity.** Subject to the limitations set forth in Section 9.1.4, Buyer hereby agrees to indemnify, defend, and hold Seller and each of the other Seller Parties free and harmless from and against any and all Liabilities (including reasonable attorneys' fees, expenses and disbursements) arising out of or resulting from (a) the breach of the terms of Subsection 10.1.1 or (b) the entry on the Real Property and/or the conduct of any Due Diligence by Buyer or any of Buyer's Representatives at any time prior to the Closing; provided, however, that Buyer's obligations under this clause (b) shall not apply to any claims of diminution in value of the Property as a consequence of the mere discovery of an pre-existing environmental or physical condition at the Property. The foregoing indemnity shall survive the Closing (and not be merged therein) or any earlier termination of this Agreement.

**10.2** **Seller's Covenants.** Seller hereby covenants as follows:

**10.2.1** **Service Contracts.**

(a) Without Buyer's prior consent, which consent shall not be unreasonably withheld or delayed, between the Effective Date and the Closing Date Seller shall not extend, renew, replace or modify any Contract or enter into any new service contract or agreement unless such Contract, service contract or agreement (as so extended, renewed, replaced or modified) can be terminated by the owner of the Property without penalty on not more than thirty (30) days' notice. Seller shall provide Buyer not less than five (5) Business Days' prior written notice to provide its consent to any such contract, extension, renewal, replacement or modification. If Buyer fails to object in writing to any such proposed action within five (5) Business Days after receipt of the aforementioned notice, Buyer shall be deemed to have approved the proposed action. Buyer, in its sole and absolute discretion, shall be entitled to grant or withhold its consent with respect to any such transaction that is proposed prior to Closing.

(b) On or before the Closing, Seller shall terminate any management agreements currently in effect with respect to the Property at the sole cost and expense of Seller.

(c) On or prior to the expiration of the Due Diligence Period, Buyer shall notify Seller of which Contracts, if any, Buyer wishes to assume at the Closing (any such contracts, the "Continuing Contracts"). Seller will provide a notice of termination for all other Contracts, provided that such Contracts can be terminated in accordance with their terms without the payment of a termination fee or penalty by Seller. Buyer shall assume at Closing (i) the Continuing Contracts, (ii) all other Contracts until such time as the termination of such Contracts by Seller shall become effective, and (iii) all Contracts that cannot be terminated in accordance with their terms or that cannot be terminated without payment of a termination fee or penalty by Seller.

**10.2.2 Maintenance of Property.** Except to the extent Seller is relieved of such obligations by Article 12 hereof, between the Effective Date and the Closing Date Seller shall maintain and keep the Property in a manner consistent with Seller's past practices with respect to the Property and conduct business with respect to the Property in a commercially reasonable manner; provided, however, that, subject to Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period in accordance with the terms of Article 5 hereof, Buyer hereby agrees that, except for breaches of this Section 10.2.2, Buyer shall accept the Property subject to, and Seller shall have no obligation to cure, (a) any violations of Laws, or (b) any physical conditions which would give rise to violations of Laws, whether the same now exist or arise prior to Closing. Between the Effective Date and the Closing Date, Seller will advise Buyer of any written notice Seller receives after the date hereof from any governmental authority of the violation of any Laws regulating the condition or use of the Property.

**10.2.3 Marketing.** During the term of this Agreement, Seller will not market, solicit, or accept any offers, nor engage in any discussion concerning the sale of the Property other than the transaction contemplated by this Agreement.

**10.2.4 Insurance.** During the term of this Agreement, Seller shall maintain the insurance with respect to the Property that is in place as of the Effective Date and maintain liability insurance in accordance with generally prevailing industry standards.

**10.2.5 Special Assessments.** Seller shall deliver to Buyer copies of any written notices regarding special assessments with respect to the Property received by Seller after the Effective Date.

**10.2.6 Seller's Indemnity.** Subject to the limitations set forth in Section 9.3.4, Seller shall indemnify Buyer and defend and hold Buyer harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including reasonable attorneys' fees, asserted against, incurred or suffered by Buyer resulting from any personal injury or damage to property of third parties (except to the extent covered by Article 12 below) occurring in, on or about the Property or relating thereto and occurring during any period in which Seller or its affiliates owned the Property, from any cause whatsoever other than as a consequence of the acts or omissions of Buyer, its agents, employees or contractors. The foregoing indemnity shall survive the Closing (and not be merged therein) or any earlier termination of this Agreement.

### **10.3 Mutual Covenants.**

**10.3.1      Publicity.** Seller and Buyer each hereby covenant and agree that (a) prior to the Closing neither Seller nor Buyer shall issue any Release (as hereinafter defined) with respect to the Transaction without the prior consent of the other, except to the extent required by applicable Law or to the extent the information contained in such Release is already in the public record, and (b) after the Closing, any Release issued by either Seller or Buyer shall be subject to the review and approval of both parties (which approval shall not be unreasonably withheld or delayed), except to the extent required by applicable Law or to the extent the information contained in such Release is already in the public record. If either Seller or Buyer is required by applicable Law to issue a Release, such party shall, at least two (2) Business Days prior to the issuance of the same, deliver a copy of the proposed Release to the other party for its review. As used herein, the term “Release” shall mean any press release or public statement with respect to the Transaction or this Agreement.

**10.3.2      Brokers.** Seller and Buyer expressly acknowledge that Buyer's Broker (defined above) has acted as the exclusive broker with respect to the Transaction and with respect to this Agreement. Buyer shall pay any brokerage commission due to Buyer's Broker in accordance with the separate agreement between Buyer and Buyer's Broker. Seller agrees to hold Buyer harmless and indemnify Buyer from and against any and all Liabilities (including reasonable attorneys' fees, expenses and disbursements) suffered or incurred by Buyer as a result of any claims by any party claiming to have represented Seller as broker in connection with the Transaction. Buyer agrees to hold Seller harmless and indemnify Seller from and against any and all Liabilities (including reasonable attorneys' fees, expenses and disbursements) suffered or incurred by Seller as a result of any claims by Buyer's Broker or any other party claiming to have represented Buyer as broker in connection with the Transaction.

**10.3.3      Tax Protests, Tax Refunds and Credits.** Seller shall have the right to continue and to control the progress of and to make all decisions with respect to any contest of the real estate taxes and personal property taxes for the Property due and payable during the Closing Tax Year and all prior Tax Years. Buyer shall have the right to control the progress of and to make all decisions with respect to any tax contest of the real estate taxes and personal property taxes for the Property due and payable during all Tax Years subsequent to the Closing Tax Year.

**10.3.4      Survival.** The provisions of this Section 10.3 shall survive the Closing (and not be merged therein) or earlier termination of this Agreement.

## **ARTICLE 11 - FAILURE OF CONDITIONS**

**11.1      To Seller's Obligations.** If, on or before the Closing Date, (i) Buyer is in default of any of its obligations hereunder, or (ii) any of Buyer's representations or warranties are untrue in any material respect in the aggregate, or (iii) the Closing otherwise fails to occur by reason of Buyer's failure or refusal to perform its obligations hereunder in a prompt and timely manner, and such circumstance in (i), (ii) or (iii) continues for five (5) Business Days after written notice from Seller to Buyer, which written notice shall detail such default, untruth or failure, as applicable, then Seller may elect to (a) terminate this Agreement by written notice to Buyer, in which event neither party to this Agreement shall have any further rights or obligations hereunder other than any arising under any section herein which expressly provides that it

survives the termination of this Agreement; or (b) waive the condition and proceed to close the Transaction. If this Agreement is so terminated, the parties acknowledge that it is impossible to compute exactly the damages which would accrue to Seller. The parties have taken these facts into account in setting the amount of the Deposit and hereby agree that: (a) such amount is the pre-estimate of such damages which would accrue to Seller; (b) such amount represents damages and not any penalty against Buyer; and (c) if this Agreement shall be terminated by Seller pursuant to this Section 11.1, the Deposit (to the extent previously deposited by Buyer with Escrow Agent) shall be paid to Seller and shall be Seller's full and liquidated damages in lieu of all other rights and remedies which Seller may have against Buyer at law or in equity, provided, however, notwithstanding the foregoing, Buyer shall be liable to Seller for the full amount of any damages arising out of or in connection with Buyer's indemnification obligations contained in Sections 9.3.5 and 10.1.2.

**11.2        To Buyer's Obligations.** If, at the Closing, (i) Seller is in default of any of its obligations hereunder, or (ii) any of Seller's representations or warranties are untrue in any material respect in the aggregate, or (iii) the Closing otherwise fails to occur by reason of Seller's failure or refusal to perform its obligations hereunder in a prompt and timely manner, and such circumstance in (i), (ii) or (iii) continues for five (5) days after written notice from Buyer to Seller, which written notice shall detail such default, untruth or failure, as applicable, Buyer shall have the right, to elect, as its sole and exclusive remedy, to (a) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer in which event neither party to this Agreement shall have any further rights or obligations hereunder other than any arising under any section herein which expressly provides that it survives the termination of this Agreement, or (b) waive the condition and proceed to close the Transaction, or (c) seek specific performance of this Agreement by Seller. As a condition precedent to Buyer exercising any right it may have to bring an action for specific performance hereunder, Buyer must commence such an action within sixty (60) days after Borrower has actual notice of the occurrence of Seller's default. Buyer agrees that its failure to timely commence such an action for specific performance within such sixty (60) day period shall be deemed a waiver by it of its right to commence an action for specific performance as well as a waiver by it of any right it may have to file or record a notice of *lis pendens* or notice of pendency of action or similar notice against any portion of the Property.

## ARTICLE 12 - CONDEMNATION/CASUALTY

**12.1        Right to Terminate.** If, after the date hereof, (a) any portion of the Property is taken by condemnation or eminent domain (or is the subject of a pending taking which has not yet been consummated), or (b) any portion of the Property is damaged or destroyed (excluding routine wear and tear), Seller shall notify Buyer in writing of such fact promptly (but in no event exceeding five (5) Business Days) after obtaining knowledge thereof (" Seller's Casualty Notice"). If the Property is the subject of a Major Condemnation that occurs after the date hereof, Buyer shall have the right to terminate this Agreement by giving written notice to Seller no later than ten (10) Business Days after receive of Seller's Casualty Notice, and the Closing Date shall be extended, if necessary, to provide sufficient time for Buyer to make such election. The failure by Buyer to so elect in writing to terminate this Agreement within ten (10) Business Days following receipt of Seller's Casualty Notice, shall be deemed an election not to terminate this Agreement. If this Agreement is terminated pursuant to this Section 12.1, the Deposit shall

be returned to Buyer and, thereafter, this Agreement shall terminate and neither party to this Agreement shall have any further rights or obligations hereunder other than any arising under any section herein which expressly provides that it shall survive the termination of this Agreement.

**12.2** **Allocation of Proceeds and Awards.** If a condemnation or casualty occurs after the date hereof and this Agreement is not terminated as permitted pursuant to the terms of Section 12.1, then this Agreement shall remain in full force and effect, Buyer shall acquire the remainder of the Property upon the terms and conditions set forth herein and at the Closing:

(a) if the awards or proceeds, as the case may be, have been paid to Seller prior to Closing, Buyer shall receive a credit at Closing equal to (i) the amount of any such award or proceeds on account of such condemnation or casualty, plus (ii) if a casualty has occurred and such casualty is an insured casualty, an amount equal to Seller's deductible with respect to such casualty, less (iii) an amount equal to the Seller-Allocated Amounts; and

(b) to the extent that such award or proceeds have not been paid to Seller prior to Closing, (i) if a casualty has occurred and such casualty is an insured casualty, Buyer shall receive a credit at Closing equal to Seller's deductible with respect to such casualty, less an amount equal to the Seller-Allocated Amounts, and (ii) Seller shall assign to Buyer at the Closing (without recourse to Seller) the rights of Seller to, and Buyer shall be entitled to receive and retain, such awards or proceeds; provided, however, that within one (1) Business Day after receipt of such awards or proceeds, Buyer shall pay to Seller an amount equal to the Seller-Allocated Amounts not previously paid to Seller.

**12.3** **Insurance.** Seller shall maintain the property insurance coverage currently in effect for the Property, or comparable coverage, through the Closing Date.

**12.4** **Waiver.** The provisions of this Article 12 supersede the provisions of any applicable statutory or decisional law with respect to the subject matter of this Article 12.

#### **ARTICLE 13 - ESCROW**

The Deposit and any other sums (including, without limitation, any interest earned thereon) which the parties agree shall be held in escrow shall be held by the Escrow Agent, in trust, and disposed of only in accordance with the Escrow Agreement.

#### **ARTICLE 14 - LEASE EXPENSES**

**14.1** **New Leases; Lease Modifications.** After the Effective Date, except as may be permitted by the terms of this Section 14.1, Seller shall not, without Buyer's prior written consent, (a) enter into a New Lease; (b) modify or amend any Lease (except pursuant to the exercise by a tenant of a renewal, extension or expansion option or other right contained in such tenant's lease); or (c) consent to any assignment or sublease in connection with any Lease. Seller shall furnish Buyer with a written notice of the proposed action which shall contain information regarding the proposed action that Seller believes is reasonably necessary to enable Buyer to make informed decisions with respect to the advisability of the proposed action. If

Buyer fails to object in writing to any such proposed action within five (5) Business Days after receipt of the aforementioned information, Buyer shall be deemed to have approved the proposed action. Buyer's consent shall not be unreasonably withheld or delayed with respect to any such transaction that is proposed prior to the end of the Due Diligence Period. Buyer, in its sole and absolute discretion, shall be entitled to grant or withhold its consent with respect to any such transaction that is proposed between the end of the Due Diligence Period and the Closing. Notwithstanding the foregoing, if any Lease requires that the landlord's consent be given under the applicable circumstances (or not be unreasonably withheld), then Buyer shall be deemed *ipso facto* to have approved such action. Seller shall deliver to Buyer a true and complete copy of each such New Lease, renewal or extension agreement, modification, or amendment, as the case may be, promptly after the execution and delivery thereof. Notwithstanding anything contained in this Agreement to the contrary, during the term of this Agreement, Seller will not market or lease the following premises at the Property:

Building 43 - 28,579 SF, now or formerly leased to Isobar North America, Inc.  
Building 60 - 13,000 SF  
Building 118 1,345 SF, now or formerly leased to Netwatch (USA), LLC  
Building 131- 5,339 SF, 2nd floor  
Building 312 - 2,858 SF  
Building 313 - 18,099 SF, 2nd floor  
Building 313 - 10,315 SF, 1st floor

**14.2      Lease Enforcement.** Prior to the Closing hereunder, Seller shall have the right, but not the obligation (except to the extent that Seller's failure to act shall constitute a waiver of such rights or remedies), to enforce the rights and remedies of the landlord under any Lease, by summary proceedings or otherwise (including, without limitation, the right to remove any tenant), and to apply all or any portion of any security deposits then held by Seller toward any loss or damage incurred by Seller by reason of any defaults by tenants, and the exercise of any such rights or remedies shall not affect the obligations of Buyer under this Agreement in any manner or entitle Buyer to a reduction in, or credit or allowance against, the Purchase Price or give rise to any other claim on the part of Buyer.

**14.3      Lease Expenses.** At Closing, Buyer shall reimburse Seller for any and all Reimbursable Lease Expenses to the extent that the same have been paid by Seller prior to Closing. In addition, at Closing, Buyer shall assume Seller's obligations to pay, when due (whether on a stated due date or accelerated) any Reimbursable Lease Expenses unpaid as of the Closing, and Buyer hereby agrees to indemnify and hold Seller harmless from and against any and all Liabilities (including reasonable attorneys' fees, expenses and disbursements) with respect to such Reimbursable Lease Expenses which remain unpaid for any reason at the time of Closing, which obligations of Buyer shall survive the Closing and shall not be merged therein. Each party shall make available to the other all records, bills, vouchers and other data in such party's control verifying Reimbursable Lease Expenses and the payment thereof. At Closing, Seller shall pay any and all brokerage commissions and fees relating to New Leases (or Lease renewals, amendments or extensions) executed prior to the Effective Date, which brokerage commissions and amounts are set forth in **Exhibit B** attached hereto. In addition, Buyer shall receive a credit at Closing in an amount equal to the difference between what Seller has paid out- of-pocket for any tenant improvements allowance under the provisions of Leases entered into

prior to the Effective Date, and the amount of any such tenant improvements allowance provided for in any such Lease entered into prior to the Effective Date, as reasonably determined by Seller.

## ARTICLE 15 - MISCELLANEOUS

**15.1      Assignment.** Buyer shall not have the right to assign this Agreement, provided, however, that Buyer shall be entitled to assign this Agreement and its rights hereunder to a single purpose entity owned and controlled by Buyer (“Assignee”). In the event of such an assignment of this Agreement to Assignee (a) Buyer shall notify Seller promptly, (b) Buyer and Assignee shall be jointly and severally liable under this Agreement from and after such assignment until the Closing, at which time Athenahealth, Inc. (if the same is not the ultimate Buyer) shall be relieved of liability hereunder and Assignee shall be solely responsible therefor), and (c) from and after any such assignment the term “Buyer” shall be deemed to mean the Assignee under any such assignment.

**15.2      Designation Agreement.** Section 6045(e) of the United States Internal Revenue Code and the regulations promulgated thereunder (herein collectively called the “Reporting Requirements”) require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction. Escrow Agent shall be the “Reporting Person” as hereinafter provided; Escrow Agent is either (i) the person responsible for closing the transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the transaction (as described in the Reporting Requirements). Accordingly:

(a)          Escrow Agent is hereby designated as the “Reporting Person” (as defined in the Reporting Requirements) for the Transaction. Escrow Agent shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

(b)          Seller and Buyer shall furnish to Escrow Agent, in a timely manner, any information requested by Escrow Agent and necessary for Escrow Agent to perform its duties as Reporting Person for the Transaction.

(c)          Seller shall furnish to Escrow Agent Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Escrow Agent with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law.

(d)          Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which Closing occurs.

**15.3      Survival/Merger.** Except for the provisions of this Agreement which are explicitly stated to survive the Closing, (a) none of the terms of this Agreement shall survive the Closing, and (b) the delivery of the Deed and any other documents and instruments by Seller and the acceptance thereof by Buyer shall effect a merger, and be deemed the full performance and discharge of every obligation on the part of Buyer and Seller to be performed hereunder.



**15.4      Integration; Waiver.** This Agreement, together with the Exhibits hereto, embodies and constitutes the entire understanding between the parties with respect to the Transaction and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No waiver by either party hereto of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

**15.5      Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth of Massachusetts.

**15.6      Captions Not Binding; Exhibits.** The captions in this Agreement are inserted for reference only and in no way define, describe or limit the scope or intent of this Agreement or of any of the provisions hereof. All Exhibits attached hereto shall be incorporated by reference as if set out herein in full.

**15.7      Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**15.8      Severability.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**15.9      Notices.** Any notice, request, demand, consent, approval and other communications under this Agreement shall be in writing, and shall be deemed duly given or made at the time and on the date when received by email (provided that the sender of such communication shall send a copy of such communication to the appropriate parties within one (1) Business Day of such email) or when personally delivered as shown on a receipt therefor (which shall include delivery by a nationally recognized overnight delivery service), to the address for each party set forth below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

**If to Buyer:**    athenahealth, Inc

311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Carolyn Reckman  
Telephone No.: 617-402-1259  
Email: creckman@athenahealth.com

**with a copy to:**

athenahealth, Inc

311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Daniel Orenstein  
Telephone No.: 617 402 1397  
Email: dorenstein@athenahealth.com

Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Kenneth B. Hoffman, Esq.  
Telephone No.: (617) 619-9274  
Email: kenneth.hoffman@hklaw.com

Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Suanne St. Charles  
Telephone No.: (617) 305-2111  
Email: suanne.stcharles@hklaw.com

**If to Seller:** President and Fellows of Harvard College

c/o Harvard Real Estate Services  
1350 Massachusetts Avenue  
Holyoke Center, Suite 800  
Cambridge, Massachusetts 02138  
Attention: Carolee Hill  
Telephone No.: (617) 496-5254  
Email: carolee\_hill@harvard.edu

**with copies to:** President and Fellows of Harvard College

Office of the General Counsel  
1350 Massachusetts Avenue  
Holyoke Center, Suite 980  
Cambridge, Massachusetts 02138  
Attention: Audrey K. Wang, Esq.  
Telephone No.: (617) 495-1228  
Email: audrey\_wang@harvard.edu

Bingham McCutchen LLP  
One Federal Street  
Boston, Massachusetts 02110  
Attention: Vincent M. Sacchetti, Esq.  
Telephone No.: (212) 705-7302  
Email: vincent.sacchetti@bingham.com

**15.10**        **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

**15.11**        **No Recordation.** Seller and Buyer each agrees that neither this Agreement nor any memorandum or notice hereof shall be recorded and Buyer agrees (a) not to file any notice of pendency or other instrument (other than a judgment) against the Property or any portion thereof in connection herewith and (b) to indemnify Seller against all Liabilities (including reasonable attorneys' fees, expenses and disbursements) incurred by Seller by reason of the filing by Buyer of such notice of pendency or other instrument. Notwithstanding the foregoing, if the same is permitted pursuant to applicable Laws, Buyer shall be entitled to record a notice of *lis pendens* if Buyer is entitled to seek (and is actually seeking) specific performance of this Agreement by Seller in accordance with the terms of Section 11.2 hereof

**15.12**        **Additional Agreements; Further Assurances.** Subject to the terms and conditions herein provided, each of the parties hereto shall execute and deliver such documents as the other party shall reasonably request in order to consummate and make effective the Transaction; provided, however, that the execution and delivery of such documents by such party shall not result in any additional liability or cost to such party.

**15.13**        **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment hereof or Exhibit hereto.

**15.14**        **Maximum Aggregate Liability.** Notwithstanding any provision to the contrary contained in this Agreement or any documents executed by Seller pursuant hereto or in connection herewith, the maximum aggregate liability of Seller and the Seller Parties, and the maximum aggregate amount which may be awarded to and collected by Buyer, in connection with the Transaction, the Property, under this Agreement and under any and all documents executed pursuant hereto or in connection herewith (including, without limitation, in connection with the breach of any of Seller's Warranties for which a claim is timely made by Buyer) shall not exceed Five Million and no/100 Dollars (\$5,000,000.00) with the exception of a material intentional breach of Seller's Warranty contained in subsection 9.2.2(n) hereof, for which the maximum aggregate liability shall not exceed Twenty Million and no/100 Dollars (\$20,000,000.00). Notwithstanding anything set forth in this Agreement to the contrary, Buyer agrees that Seller shall have no liability to Buyer for any breach of Seller's covenants, agreements, representations or warranties hereunder or under any other agreement, document, certificate or instrument delivered by Seller to Buyer unless the valid claims for all such breaches collectively aggregate more than Fifty Thousand and 00/100 Dollars (\$50,000.00), in which event the full amount of such valid claims shall be actionable, up to the caps set forth in the preceding sentence. The provisions of this section shall survive the Closing (and not be merged therein) or any earlier termination of this Agreement.

**15.15**        **Time of The Essence.** Time is of the essence with respect to this Agreement.

**15.16      Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY PROCEEDINGS BROUGHT BY THE OTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE TRANSACTION, THIS AGREEMENT, THE PROPERTY OR THE RELATIONSHIP OF BUYER AND SELLER HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING (AND NOT BE MERGED THEREIN) OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

**15.17      Electronic Signatures.** Handwritten signatures to this Agreement transmitted by electronic transmission (for example, through use of a Portable Document Format or “PDF” file) shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver to the other party an executed original of this Agreement with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically transmitted handwritten signature and shall accept the electronically transmitted handwritten signature of the other party to this Agreement.

**15.18      Prevailing Parties.** If a party to this Agreement shall bring any action, suit, counterclaim, appeal or arbitration proceeding against the other party, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (referred to herein as an “Action”), the non-prevailing party in such Action shall pay to the prevailing party in such Action a reasonable sum for the prevailing party's attorneys' fees and expenses incurred in prosecuting or defending such Action and/or enforcing any judgment, order, ruling or award (referred to herein as a “Decision”), granted therein, all of which shall be deemed to have accrued from the commencement of such Action. Any Decision entered into in such Action shall contain a specific provision providing for the recovery of attorneys' fees and expenses incurred in obtaining and enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and expenses upon the request of any party. For purposes of this Section 15.18, attorneys' fees shall include, without limitation, fees incurred in connection with (i) post judgment motions and collection actions, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery and (v) bankruptcy litigation. The terms of this Section 15.18 shall survive Closing or any earlier termination of this Agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed on its behalf on the day and year first above written.

**SELLER:**

**PRESIDENT AND FELLOWS  
OF HARVARD COLLEGE,**

a Massachusetts charitable and educational corporation

By: /s/ Lisa Hogarty

Name: Lisa Hogarty

Title: Vice President for Campus Services

By: /s/ Carolee Hill

Name: Carolee Hill

Title: Managing Director for Harvard Real Estate

DATE OF EXECUTION: December 5, 2012

**BUYER:**

**ATHENAHEALTH, INC.,**

a Delaware corporation

By: /s/ Jonathan Bush

Name: Jonathan Bush

Title: CEO & President

DATE OF EXECUTION: December 5, 2012

**EXHIBIT A**

**LEGAL DESCRIPTION**

A certain parcel of land with the buildings thereon situated on the Southerly side of Arsenal Street in Watertown, Middlesex County, Massachusetts and being shown as Lot 1 on a plan entitled "Plan of Land in Watertown, Massachusetts - dated June 19, 1997 by Dunn-McKenzie, Inc. prepared for the town of Watertown", recorded with the Middlesex South Registry of Deeds on August 5, 1998 as Plan No. 832 in Book 28930, Page 478, bounded and described as follows:

Beginning on the southerly sideline of Arsenal Street at the Northwestern corner of Arsenal Associates Land being the Northeasterly corner of Lot 1 on the easterly sideline of Talcott Street (a private road); thence

SOUTH 13° 53'-39" WEST	a distance of 737.70 feet by Arsenal Associates and Town of Watertown land to an angle in said property; thence
SOUTH 11° 42'-25" EAST	a distance of 2.67 feet to a corner of Lot 2; thence
NORTH 76° 03'-07" WEST	a distance of 438.96 feet through a granite bound to a Hex-rod (set) for a corner; thence
SOUTH 19° 17'-48" WEST	a distance of 125.38 feet to an Iron Rod (set) for a corner; thence
SOUTH 50° 21'-36" WEST	a distance of 163.25 feet to an Iron Rod (set) at North Beacon Street on curve for a corner; thence
NORTHWESTERLY	on a curve to the right having a radius of 586.00 feet, an arc distance of 160.79 feet to the point of tangency; thence
NORTH 20° 36'-23" WEST	a distance of 292.07 feet to the point of curvature; thence
NORTHWESTERLY	on a curve to the left having a radius of 627.44 feet, an arc distance of 465.40 feet to the point of tangency; thence
NORTH 63° 06'-20" WEST	a distance of 707.76 feet to a slight angle break; thence
NORTH 63° 43'50" WEST	a distance of 101.12 feet to a corner of land of Burnham Manning Post #1105-Veterans of Foreign Wars of U.S.A., Inc. the last five courses being by North Beacon Street; thence
NORTH 25° 59'-00" EAST	a distance of 435.94 feet to a corner of Arsenal Street; thence
SOUTH 69° 39'-19" EAST	a distance of 1455.13 feet to a Stone Bound at a slight angle break; thence

---

SOUTH 68° 05'-21" EAST

a distance of 451.60 feet to a corner at the point and place of beginning, the last two courses being by Arsenal Street.

Lot 1 contains 1,281,841 square feet (29.42 Acres) more or less.

Said parcel is conveyed together with easement rights located on Lot 2 that benefit Lot 1 as set forth in an Access, Parking and Utilities Cross-Easement Agreement by and between Charles River Business Center Associates, LLC, and the Town of Watertown, Massachusetts, dated December 1, 1998 and recorded at Book 29502 Page 125, as affected by Relocation of Access, parking and Utilities Easement dated March 27, 2000 and recorded on May 22, 2000 at Book 31422 Page 247, as the same may have been amended from time to time.

**EXHIBIT B**

**LIST OF CONTRACTS & ONGOING LEASING COMMISSIONS**

**LIST OF CONTRACTS**

CONTRACTOR/VENDOR	SERVICE DESCRIPTION
American DG	Energy
American Alarm	Panic & Video Monitoring
Bartlett tree	Tree Fertilization & Maintenance
Captivate	Media Service
Charles George Trucking	Waste Management
Crown Uniforms	Maintenance Tech. Weekly Uniform
Drew Ashland Chemical	Water Chemical Treatment
Hess	Gas
Johnson Controls	Energy Management System
Johnson Controls	Card Access
Image Technology	Printer/ Copier Machine
Kone	Elevator Service
Milton Cat	Generator
M.D. Weaver	Pest removal & Maintenance
USI Security	Security Campus Coverage
Rustic Fire Protection	Fire System Repair & Maintenance
SAS Security	Fire Alarm & Elevator Monitoring
Siemens	Fire Panel System Maintenance
Unicco Janitorial	Janitorial Services
Unicco Landscaping	Landscaping
Unicco Snow Removal	Snow Removal
Unicco Special Services	Shuttle Bus
Ultra Services	HVAC Services

---



**EXHIBIT B (CONTINUED)**

**LIST OF CONTRACTS & ONGOING LEASING COMMISSIONS**

**LEASING COMMISSIONS DUE**

<b>Beal/Broker</b>	<b>Tenant</b>	<b>Building</b>	<b>RSF</b>	<b>Length of Lease</b>		<b>Amount Due</b>	<b>Timing</b>
Cushman Wakefield	Aliaswire Rental	131	5,732	3	\$	10,317.60	12/1/2012
Beal	Aliaswire Rental	131	5,732	3	\$	5,158.80	12/1/2012
Avison Young	athenahealth	311	26,897	5	\$	80,691.00	12/1/2012
Beal	athenahealth	311	26,897	5	\$	40,345.50	12/1/2012
Beal (no co broke)	Bright Horizon	312	9,894	7	\$	34,629.00	8/15/2013
Beal (no co broke)	Bright Horizon	312 Mezz Space	2,000	7	\$	7,000.00	8/15/2013
Cassidy Turley	Mobile Messenger	313	9,679	4	\$	23,229.60	2/15/2013
Beal	Mobile Messenger	313	9,679	4	\$	11,614.80	2/15/2013
					\$	212,986.30	TOTAL

---

**EXHIBIT C**

**FORM OF QUITCLAIM DEED**

PRESIDENT AND FELLOWS OF HARVARD COLLEGE, being an educational and charitable corporation established under the Harvard Charter of 1650 from the General Court of Massachusetts Bay Colony ("Grantor"), with its usual place of business c/o Harvard Real Estate Services, 1350 Massachusetts Avenue, Holyoke Center, Suite 800, Cambridge, Massachusetts 02138, in consideration of One Hundred Sixty Eight Million Five Hundred Thousand Dollars (\$168,500,000.00) paid, hereby grants to [\_\_\_\_\_, a \_\_\_\_\_] ("Grantee"), whose mailing address is 311 Arsenal Street, Watertown, Massachusetts 02472 with QUITCLAIM COVENANTS, that certain real property, with all buildings and improvements thereon, more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises").

Said Premises are conveyed subject to real estate taxes and municipal charges not yet due and payable, and subject to and with the benefit of all easements, restrictions and encumbrances of record so long as the same may be in force and effect, including without limitation all easements, restrictions and covenants contained in that certain *Quitclaim Deed*, dated August 20 1998, recorded with the Middlesex County (Southern District) Registry of Deeds at Book 29012 Page 420, from the United States of America, acting by and through the Secretary of the Army (the "Army"), to the Watertown Arsenal Development Corporation (the "WADC"), with respect to the Premises (the "Army Deed"), which Army Deed includes, without limitation, covenants in, Part IV of the Army Deed associated with the Army's obligations under the Federal Facility Agreement between the Army and the United States Environmental protection Agency ("EPA"), and covenants in Part XI associated with certain historical resources at the Premises, and including without limitation a perpetual easement benefiting that certain premises, located adjacent to the Premises, containing improvements known as the former Arsenal Commander's Residence (the "Commander's Residence"), the Commander's Residence being more particularly described in a certain *Quitclaim Deed*, dated August 14, 1998, and recorded with the Middlesex County (Southern District) Registry of Deeds at Book 29050, Page 40 (the "Commander's Residence Deed"), from the Army to the Town of Watertown (the "Town").

Notice is hereby given that a Grant of *Environmental Restriction and Easement*, dated August 11, 1998, pursuant to Massachusetts General Laws Chapter 21E, has been recorded by the Army with the Middlesex County (Southern District) Registry of Deeds at Book 28978, Page 549, as amended by a First Amendment to Grant of Environmental Restriction and Easement, dated February 5, 1999, recorded at Book 29779, Page 359, as affected by a Subordination Agreement, dated March 16, 1999, recorded at Book 29957, Page 104, as further affected by a Subordination Agreement, dated March 24, 1999, recorded at Book 29985, Page 151, as further amended by a Second Amendment to Grant of Environmental Restriction and Easement, dated April 15, 1999, recorded at Book 30066, Page 116, as further affected by a Partial Release of Environmental Restriction and Easement, dated June 10, 1999, recorded at Book 30278, Page 511, as further amended by a Third Amendment to Grant of Environmental Restriction and Easement, dated June 7, 1999, recorded at Book 30278, Page 513, and further amended by a Fourth Amendment to Grant of Environmental Restriction and Easement, dated July 22, 2000,

---

recorded at Book 31682, Page 99, as further amended by a Fifth Amendment to Grant of Environmental Restriction and Easement dated July 14, 2004, and recorded with said Registry of Deeds in Book 44119, Page 1; as affected by a plan entitled "Plan Showing Excavation Areas B, E, and G in Watertown, Massachusetts," dated February 20, 2002, as revised on September 25, 2002, prepared by Dunn McKenzie, Inc., recorded as Plan No. 1348 of 2004; as further amended by a Sixth Amendment to Grant of Environmental Restriction and Easement dated March 21, 2005, and recorded with said Registry of Deeds in Book 45129, Page 1; as further affected by a plan entitled "Plan Showing Commercial Reuse Area in Watertown, Massachusetts," dated October 25, 2004, as revised on March 16, 2005, prepared by Dunn McKenzie, Inc., recorded as Plan No. 523 of 2005; as further amended by a Seventh Amendment to Grant of Environmental Restriction and Easement dated August 9, 2006, and recorded with said Registry of Deeds in Book 48562, Page 187; and as further affected by a plan entitled "Plan Showing Commercial Reuse Area in Watertown, Massachusetts," dated August 16, 2004, as revised on March 16, 2005 and February 10, 2006, prepared by Dunn McKenzie, Inc., recorded as Plan No. 1480 of 2006 (the "Grant"). This restriction on the activities conducted on the Premises and use limitations contained in the Grant are hereby incorporated by reference and shall be independently enforceable by the Army under the Grant and under this Deed as a Restrictive Covenant and equitable servitude; provided that the consent or approval of the United States of America, acting by and through the Secretary of the Army, shall not be necessary in orders for Grantee, its successors or assigns, to obtain approval to modify the Grant in accordance with the terms and conditions therein set forth subject to Part X.B (5) of the Army Deed. The Grantee and all subsequent transferees shall include the provisions of this paragraph in all subsequent lease, transfer, or conveyance documents related to the Premises or any portion thereof until such time as the Grant is terminated.

Notice is hereby given that (3) three Notices of Activity and Use Limitations, pursuant to Massachusetts General Laws Chapter 21E, have been recorded with the Middlesex County (Southern District) Registry of Deeds, dated August 11, 1998, recorded at Book 28959, Page 92; dated August 11, 1998, recorded at Book 28959, Page 190, as amended by a First Amendment to Notice of Activity and Use Limitations, dated October 26, 1999, recorded at Book 30801, Page 319; and dated February 4, 1999, recorded at Book 29766, Page 17, as amended by a First Amendment to Notice of Activity and Use Limitations, dated \_\_\_\_, 2004, recorded at Book 42589, Page 438 ("Notices of AULs"). The restriction on activities conducted on the Premises and use limitations contained in the Notices of AULs are hereby incorporated by reference and shall be independently enforceable by the Army under this Deed as a Restrictive Covenant and equitable servitude; provided that the consent or approval of the Army shall not be necessary in order for Grantee, its successors or assigns, to obtain approval to modify the Notices of AULs in accordance with the terms and conditions therein set forth subject to Part X.B (5) of the Army Deed. The Grantee and all subsequent transferees shall (i) include the provisions of this paragraph in all subsequent lease, transfer, or conveyance documents related to the Premises or any portion thereof until such time as all of the Notices of AUL are terminated and (ii) provide a copy to the Army of every amendment to a Notice of AUL within 14 days after it being duly recorded with the Middlesex County (Southern District) Registry of Deeds.

Notice is hereby given that the WADC reserved an easement and right of access on, over and through the Premises for inspection in order to fulfill its obligations under the Army Deed, in the Quitclaim Deed from the WADC to Charles River Business Center Associates, LLC, dated

December 1, 1998 and recorded with the Middlesex County (Southern District) Registry of Deeds at Book 29502, Page 92.

Grantee hereby covenants, on behalf of itself, its successors and assigns, that Grantee and any subsequent holder of title to all, or any portion of, the Premises shall comply with, perform and assume all obligations, covenants, indemnities, restrictions, prohibitions and other agreements required of the Grantee of the Army Deed accruing from and after the date hereof.

Notwithstanding the foregoing, with respect to contamination governed by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), or M.G.L. c. 21E ("21E"), the provisions of the preceding paragraph shall not apply to any lender whose loan is secured in part or in whole by a mortgage of the Premises, in any manner which would impose upon such lender any greater liability by the terms of such preceding paragraph than that which would otherwise apply to such a lender under the applicable provisions of CERCLA or 21E.

For Grantor's title, see that certain Quitclaim Deed from the Charles River Business Center Associates, LLC to President and Fellows of Harvard College, dated May 15, 2001, and recorded with the Middlesex County (Southern District) Registry of Deeds as Instrument No. 1057 in Book 32863, Page 526.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be duly signed as of the day and year first written above.

**PRESIDENT AND FELLOWS OF HARVARD COLLEGE**, a Massachusetts charitable and educational corporation

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned notary public, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of President and Fellows of Harvard College, a Massachusetts charitable and educational corporation, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of said corporation.

Notary Public  
My Commission Expires:\_\_\_\_

**EXHIBIT D**

**FORM OF BILL OF SALE**

THIS BILL OF SALE ("Bill of Sale"), is made as of \_\_\_\_\_ by and between President and Fellows of Harvard College ("Seller") and \_\_\_\_\_ ("Buyer").

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of \_\_\_\_\_, by and between athenahealth, Inc. and Seller (the "Sale Agreement"), Seller agreed to sell to Buyer, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "Real Property") as more particularly described in Exhibit A attached thereto and incorporated herein by this reference, known as \_\_\_\_\_, Middlesex County, Massachusetts; and

WHEREAS, by deed of even date herewith, Seller conveyed the Real Property to Buyer and by assignment of even date herewith Seller assigned to Buyer Seller's rights under certain leases relating to the Real Property, as more particularly described in such assignment (collectively, the "Leases"); and

WHEREAS, in connection with the above described conveyance Seller desires to sell, transfer and convey to Buyer certain items of tangible personal property as hereinafter described.

NOW, THEREFORE, in consideration of the receipt of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid in hand by Buyer to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller has GRANTED, CONVEYED, SOLD, TRANSFERRED, SET OVER and DELIVERED and by these presents does hereby GRANT, SELL, TRANSFER, SET OVER and DELIVER to Buyer, its legal representatives, successors and assigns, and Buyer hereby accepts all right, title and interest in and to (a) all Personal Property (as such term is defined in the Sale Agreement, and (b) all books, records and files of Seller relating to the Personal Property, the Real Property and the Leases, but specifically excluding therefrom the items described as Confidential Materials (as such term is defined in the Sale Agreement) and any computer software that is licensed to Seller).

This Bill of Sale is made without any covenant, warranty or representation by, or recourse against, Seller as more expressly set forth in the Sale Agreement and the documents executed in connection therewith.

This Bill of Sale may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

If any term or provision of this Bill of Sale or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Bill of Sale or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Bill of Sale shall be valid and enforced to the fullest extent permitted by law.

---

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale as of the date first set forth hereinabove.

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**ACCEPTED:**

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**EXHIBIT E**

**FORM OF ASSIGNMENT AND ASSUMPTION OF SPACE LEASES**

**THIS ASSIGNMENT AND ASSUMPTION OF SPACE LEASES** (this "Assignment"), is made as of \_\_\_\_\_ by and between \_\_\_\_\_, \_\_\_\_\_ ("Assignor") and \_\_\_\_\_, \_\_\_\_\_ ("Assignee").

**W I T N E S S E T H:**

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of \_\_\_\_\_, by and between Assignor and \_\_\_\_\_ (the "Sale Agreement"), Assignor agreed to sell to Assignee, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "Real Property"), known as \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_. Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Agreement; and

**WHEREAS**, the Sale Agreement provides, *inter alia*, that Assignor shall assign to Assignee certain leases and that Assignor and Assignee shall enter into this Assignment.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

**1. Assignment.** Assignor hereby assigns, sets over and transfers to Assignee all of Assignor's right, title and interest in, to and under all of the space leases ("Leases") (and all guaranties and security with respect thereto) with the tenants of the Real Property identified on **Exhibit A** attached hereto and incorporated herein by this reference. Assignee hereby accepts the foregoing assignment of the Leases and expressly assumes the obligation for the performance of any and all of the obligations of Assignor under the Leases in respect of the period on or after the date hereof.

**2. Mutual Indemnity.** Assignor shall defend, indemnify and hold harmless Assignee from and against any liability, damages, causes of action, expenses, and reasonable attorneys' fees incurred by Assignee by reason of the failure of Assignor to fulfill, perform, discharge, and observe its obligations with respect to the Leases arising before the date hereof. Assignee shall defend, indemnify and hold harmless Assignor from and against any liability, damages, causes of action, expenses, and reasonable attorneys' fees incurred by Assignor by reason of the failure of Assignee to fulfill, perform, discharge, and observe its obligations with respect to the Leases arising on and after the date hereof.

**3. Miscellaneous.** This Assignment and the obligations of the parties hereunder: (i) shall survive the closing of the transaction referred to in the Sale Agreement and shall not be merged therein for a period of one hundred eighty (180) days, (ii) shall be subject to the limitations set forth in Section 15.14 of the Sale Agreement, (iii) shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns,

---



(iv) shall be governed by and construed in accordance with the laws of the Commonwealth of applicable to agreements made and to be wholly performed within said Commonwealth, and (v) may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

4. **Severability**. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

5. **Representations and Warranties**. Seller has not assigned, pledged, mortgaged, sublet, encumbered or otherwise transferred any of its interest under the Lease. This Assignment is made without representation or warranty of any kind, except as specifically set forth herein and in the Sale Agreement.

6. **Counterparts**. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

[Remainder of Page Left Intentionally Blank]

**IN WITNESS WHEREOF**, the undersigned have executed this Assignment as of the date first set forth hereinabove.

**ASSIGNOR:**

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**ASSIGNEE:**

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**EXHIBIT A**

**List of Tenants**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.

**EXHIBIT F**

**FORM OF ASSIGNMENT OF INTANGIBLE PROPERTY**

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (this "Assignment"), is made as of \_\_\_\_\_ by and between \_\_\_\_\_, \_\_\_\_\_ ("Assignor") and \_\_\_\_\_, \_\_\_\_\_ ("Assignee").

**WITNESSETH:**

**WHEREAS**, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of \_\_\_\_\_, by and between Assignor and \_\_\_\_\_ (the "**Sale Agreement**"), Assignor agreed to sell to Assignee, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "**Real Property**"), known as \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_. Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Agreement; and

**WHEREAS**, the Sale Agreement provides, *inter alia*, that Assignor shall assign to Assignee rights to certain intangible property and that Assignor and Assignee shall enter into this Assignment.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

**1. Assignment of Contracts, Licenses and Permits**. Assignor hereby assigns, sets over and transfers to Assignee all of Assignor's right, title and interest in, to and under the following, if and only to the extent the same may be assigned or quitclaimed by Assignor without expense to Assignor:

- (a) all service, supply, maintenance, utility and commission agreements, all equipment leases, and all other contracts, subcontracts and agreements relating to the Real Property and the Personal Property (including all contracts, subcontracts and agreements relating to the construction of any unfinished tenant improvements), including those described in **Exhibit A** attached hereto and incorporated herein by this reference (herein collectively called the "**Contracts**"); and
  - (b) to the extent that the same are in effect as of the date hereof, any licenses, permits, and other written authorizations necessary for the use, operation or ownership of the Real Property; and
  - (c) the rights of Assignor (if any) to the name "The Arsenal on the Charles" (it being acknowledged by Assignee that Assignor does not have exclusive rights (and in fact may have no rights) to use such name and Assignor has not registered the same in any manner); and
-

- (d) any guaranties and warranties in effect with respect to any portion of the Real Property or the Personal Property as of the date hereof.

Assignee hereby accepts the foregoing assignment of the interests described in this Section 1 and expressly assumes the obligation for the performance of any and all of the obligations of Assignor under the Contracts in respect of the period on or after the date hereof.

**2. Mutual Indemnity.** Assignor shall defend, indemnify and hold harmless Assignee from and against any liability, damages, causes of action, expenses, and reasonable attorneys' fees incurred by Assignee by reason of the failure of Assignor to fulfill, perform, discharge, and observe its obligations with respect to the Contracts arising before the date hereof. Assignee shall defend, indemnify and hold harmless Assignor from and against any liability, damages, causes of action, expenses, and reasonable attorneys' fees incurred by Assignor by reason of the failure of Assignee to fulfill, perform, discharge, and observe its obligations with respect to the Contracts arising on and after the date hereof.

**3. Miscellaneous.** This Assignment and the obligations of the parties hereunder: (i) shall survive the closing of the transaction referred to in the Sale Agreement and shall not be merged therein for a period of one hundred eighty (180) days, (ii) shall be subject to the limitations set forth in Section 15.14 of the Sale Agreement, (iii) shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns, (iv) shall be governed by and construed in accordance with the laws of the Commonwealth of applicable to agreements made and to be wholly performed within said Commonwealth, and (v) may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

**4. Severability.** If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

**5. Counterparts.** This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

[Remainder of Page Left Intentionally Blank]

**IN WITNESS WHEREOF**, the undersigned have executed this Assignment as of the date first set forth hereinabove.

**ASSIGNOR:**

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**ASSIGNEE:**

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

**EXHIBIT A**

**List of Contracts**

**(service, supply, maintenance, utility and commission agreements,  
and all equipment leases, and guaranties and warranties, if any)**

**EXHIBIT G**

**FORM OF NOTICE OF SALE**

**(To Tenants, Regarding Assignment and Assumption of Space Leases)**

TO: All Tenants of\_\_ \_\_

—

,

—

RE: Notice of Change of Ownership of \_\_\_\_\_,

\_\_\_\_\_ County, \_\_\_\_\_

To Whom It May Concern:

You are hereby notified as follows:

1. That as of the date hereof, \_\_\_\_\_ has transferred, sold, assigned, and conveyed all of its interest in and to the above-described property (the "Property") to \_\_\_\_\_, \_\_\_\_\_ (the New Owner")
2. Future notices and rental payments with respect to your leased premises at the Property should be made to the New Owner in accordance with your Lease terms at the following address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
3. If there is a security deposit with respect to your lease, it has been transferred to the New Owner and as such the New Owner shall be responsible for holding the same in accordance with the terms of your lease.

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

---



**EXHIBIT H**

**FORM OF NON-FOREIGN CERTIFICATE**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform \_\_\_\_\_, \_\_\_\_\_ (the "Transferee") that withholding of tax is not required upon the disposition of a United States real property interest by \_\_\_\_\_, \_\_\_\_\_ (the "Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
2. Seller is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);
3. Seller's U.S. employer tax identification number is \_\_\_\_\_; and
4. Seller's office address is c/o Harvard Real Estate Services, 1350 Massachusetts Avenue, Holyoke Center, Suite 800, Cambridge, Massachusetts 02138.

Seller understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The undersigned officer of Seller declares that such officer has examined this certification and to the best of his knowledge and belief it is true, correct and complete, and such officer further declares that such officer has authority to sign this document on behalf of Seller.

Certified, sworn to and subscribed before  
me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

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

Notary Public Name: \_\_\_\_

Title: \_\_\_\_

My Commission Expires:

\_\_\_\_\_

(NOTARIAL SEAL)

---

**EXHIBIT I**

**FORM OF AFFIDAVIT OF TITLE**

**CHICAGO TITLE INSURANCE COMPANY  
MASSACHUSETTS TENANTS AND MECHANICS LIENS AFFIDAVIT  
COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ having been sworn, declare and say that, to the best of my knowledge:

1. I am familiar with the premises known and designated as \_\_\_\_\_, said land being situated in \_\_\_\_\_, Massachusetts; and
2. Except as set forth on Exhibit A attached hereto, there are no tenants, lessees or parties in possession affecting the aforementioned premises **and** no tenants, lessees or parties in possession with options to purchase and/or rights of first refusal to purchase; and
3. There are no persons to whom a debt is due for labor or materials furnished in the erection, alteration, repair or removal of a building or structure upon the above land by virtue of an agreement with, or by the consent of, the undersigned, or of a person having authority from, or rightfully acting for, the undersigned in promising or furnishing such labor or materials for work actually performed during the past 93 days; and
4. All bills which could become liens pursuant to M.G.L.A. Chapter 551 of the Acts of 1980 (Municipal Lighting Plants-Real Estate Liens) have been paid.

The undersigned hereby agrees to indemnify and hold harmless Chicago Title Insurance Company from any loss or damage resulting from the incorrectness of the above assurances.

This affidavit is given to induce Chicago Title Insurance Company to issue its title insurance policy or policies.

EXECUTED AS A SEALED INSTRUMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

(Signature) \_\_\_\_\_  
Sellers/Borrowers (if refinancing)

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(Signature) \_\_\_\_\_  
Notary Public  
My Commission Expires:

---

**EXHIBIT J-1**

**FORM OF TENANT ESTOPPEL LETTER**

athenahealth, Inc  
311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Carolyn Reckman  
athenahealth, Inc  
311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Daniel Orenstein

Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Kenneth B. Hoffman, Esq.  
Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Suanne St. Charles  
Any lenders or other holders

of any interest in the Property

described below

Re: \_\_\_\_\_ [Address of leased premises]

Ladies and Gentlemen:

By lease dated \_\_\_\_\_ (the "Lease"), the undersigned ("Tenant") has leased from PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable and educational corporation, or its predecessors in interest ("Landlord") the leased premises located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_, known as The Arsenal on the Charles, which are more particularly described in the Lease. Landlord, as owner of the property ("Property") of which the lease premises are a part, intends to sell the said Property to ATHENAHEALTH, INC., a Delaware corporation, or its permitted assignee ("Buyer"), who, as a condition to the purchase of the Property, has required this Tenant Estoppel Letter.

In consideration of Buyer's agreement to purchase the Property, Tenant agrees and certifies to Landlord and to Buyer as follows:

1. Tenant is in possession and occupancy of the leased premises. Total square footage of the leased premises is: \_\_\_\_\_.
2. The Lease is in full force and effect in accordance with its terms; and the lease term begins on \_\_\_\_\_ and ends on \_\_\_\_\_.
3. Tenant claims no present charge, defense, set-off, lien or claim of offset or other credits against rent.

4. All rentals payable under the Lease have been paid through \_\_\_\_\_, 20\_\_; and no rental has been paid more than thirty (30) days in advance of its due date. Basic or fixed rent for the period from \_\_\_\_\_ to \_\_\_\_\_ is \$ \_\_\_\_\_ per month and is due on the first of each month. A security deposit in the amount of \$ \_\_\_\_\_ has been paid to Landlord.

5. The Lease sets forth the entire agreement between Landlord and Tenant, and has not, in any way, been amended or modified, except in accordance with the amendments dated as follows: \_\_\_\_\_.

6. Tenant has paid to Landlord all real estate or personal property taxes and special assessments as of the date hereof, except as follows \_\_\_\_\_.

7. Tenant has paid to Landlord all operating expenses due under the Lease as of the date hereof, except as follows \_\_\_\_\_.

8. All improvements and alterations to the leased premises or the real property to be performed or furnished by Landlord according to the Lease have been completed to the satisfaction of Tenant. All sums required to be paid by Landlord to Tenant pursuant to the Lease (including, without limitation, any tenant allowance, moving allowance or rebate) have been paid in full except as noted below, and all other conditions precedent to the commencement of the term of the Lease or the obligations of Tenant under the Lease have been satisfied.

Outstanding Tenant allowances, moving allowances or rebates: \_\_\_\_\_

9. Tenant has unconditionally accepted and currently occupies the leased premises, is paying rent under the Lease without claim or right of set-off, or claim of any default by the Landlord, and is now conducting business on the leased premises. There exists no default by either party to the Lease, or other grounds for ceasing or reducing the payment of rental, or for cancellation or termination of the Lease in any manner. No event has occurred which, with the giving of notice or passage of time, or both, would result in a default by either party under the Lease.

10. Landlord has not agreed to assume the obligations of Tenant under any other lease in connection with Tenant entering into the Lease.

11. Tenant has not assigned, pledged, mortgaged, sublet, encumbered or otherwise transferred any of its interest under the Lease and has received no notice of any assignment, mortgage or encumbrance of the Lease by Landlord except as follows: \_\_\_\_\_.

12. Tenant is not entitled to any expansion options or renewal options except as follows: \_\_\_\_\_.

13. Tenant has not filed, and is not subject of, any proceeding for bankruptcy reorganization, receivership, insolvency or similar proceedings.

14. The following is (are) guarantor(s) of Tenant's obligation under the Lease: \_\_\_\_\_

Address of Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

15. Tenant is not identified on the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing United States law, regulation or Executive Order of the President of the United States ("OFAC List") nor is Tenant subject to trade embargo or economic sanctions pursuant to any authorizing United States law, regulation or Executive Order of the President of the United States.

16. Attached hereto as Exhibit A is a true and correct copy of the Lease together with all amendments, modifications or renewals.

17. Tenant has no option, right of first refusal or other right to purchase the Property or any portion thereof, or any interest therein pursuant to the terms of the Lease or contained in any other document or agreement (written or oral) whatsoever. The only interest of Tenant in the Property is that of a tenant pursuant to the terms of the Lease. Tenant hereby waives any option, right of first refusal or other right to purchase the Property or any portion thereof or interest therein that is contained in the Lease or any other document or agreement, if any.

This certificate may be relied upon by Landlord, Buyer, Buyer's lender from time to time, and their respective successors and assigns.

**TENANT:**

\_\_\_\_\_

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

EXHIBIT A  
LEASE

**EXHIBIT J-2**

**FORM OF SELLER'S ESTOPPEL CERTIFICATE**

athenahealth, Inc  
311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Carolyn Reckman  
athenahealth, Inc  
311 Arsenal Street  
Watertown, Massachusetts 02472  
Attention: Daniel Orenstein

Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Kenneth B. Hoffman, Esq.  
Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Suanne St. Charles  
Any lenders or other holders

of any interest in the Property

described below

Re: \_\_\_\_\_ [Address of leased premises]

Ladies and Gentlemen:

By lease dated \_\_\_\_\_ (the "Lease"), \_\_\_\_\_ ("Tenant") has leased from PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable and educational corporation, or its predecessors in interest ("Seller") the leased premises located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_, known as The Arsenal on the Charles, which are more particularly described in the Lease. Seller, as owner of the property ("Property") of which the lease premises are a part, intends to sell the said Property to ATHENAHEALTH, INC., a Delaware corporation, or its permitted assignee ("Buyer"), who, as a condition to the purchase of the Property, has required this Seller's Estoppel Certificate.

In consideration of Buyer's agreement to purchase the Property, Seller agrees and certifies to Buyer as follows:

1. The approximate total square footage of the leased premises is: \_\_\_\_\_.
2. Seller is the current holder of all of the landlord's right, title and interest under the Lease.
3. The Lease is in full force and effect in accordance with its terms; and the lease term begins on \_\_\_\_\_ and ends on \_\_\_\_\_.

4. To the best of Seller's knowledge, Tenant has no present charge, defense, set-off, lien or claim of offset or other credits against rent.

5. All rentals payable under the Lease have been paid through \_\_\_\_\_, 20\_\_; and no rental has been paid more than thirty (30) days in advance of its due date. Basic or fixed rent for the period from \_\_\_\_\_ to \_\_\_\_\_ is \$ \_\_\_\_\_ per month and is due on the first of each month. A security deposit in the amount of \$ \_\_\_\_\_ has been paid to Seller.

6. The Lease sets forth the entire agreement between Seller and Tenant, and has not, in any way, been amended or modified, except in accordance with the amendments dated as follows: \_\_\_\_\_.

7. Tenant has paid to Seller all real estate or personal property taxes and special assessments as of the date hereof, except as follows  
\_\_\_\_\_.

8. Tenant has paid to Seller all operating expenses due under the Lease as of the date hereof, except as follows  
\_\_\_\_\_.

9. To the best of Seller's knowledge, all improvements and alterations to the leased premises or the real property to be performed or furnished by Seller according to the Lease have been completed except as noted below. All sums required to be paid by Seller to Tenant pursuant to the Lease (including, without limitation, any tenant allowance, moving allowance or rebate) have been paid in full except as noted below.

Outstanding improvements and alterations, Tenant allowances, moving allowances or rebates:  
\_\_\_\_\_

10. To Seller's knowledge, there exists no default by either party to the Lease, or other grounds for ceasing or reducing the payment of rental, or for cancellation or termination of the Lease in any manner. To Seller's knowledge, no event has occurred which, with the giving of notice or passage of time, or both, would result in a default by either party under the Lease.

11. Seller has not agreed to assume the obligations of Tenant under any other lease in connection with Tenant entering into the Lease.

12. Tenant is not entitled to any expansion options or renewal options except as expressly set forth in the Lease.

13. To Seller's knowledge, Tenant has not filed, and is not subject of, any proceeding for bankruptcy reorganization, receivership, insolvency or similar proceedings.

14. The following is (are) guarantor(s) of Tenant's obligation under the Lease: \_\_\_\_\_

Address of Guarantor:  
\_\_\_\_\_



---

15. Attached hereto as Exhibit A is a true and correct copy of the Lease together with all amendments, modifications or renewals.

16. Tenant has no option, right of first refusal or other right to purchase the Property or any portion thereof, or any interest therein pursuant to the terms of the Lease (except as expressly set forth therein) or contain in any other document or agreement whatsoever.

This certificate may be relied upon by Buyer and Buyer's lender from time to time, and their respective successors and assigns.

**SELLER:**

PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable and educational corporation

By:\_\_\_\_  
Name:\_\_\_\_  
Title:\_\_\_\_

EXHIBIT A  
LEASE

**EXHIBIT K**

**LITIGATION NOTICES, CONTRACT DEFAULTS**  
**GOVERNMENTAL VIOLATIONS**

None

---

**EXHIBIT L**

**LIST OF TENANTS**

**Building 37 - 200 Talcott Avenue, Watertown, Massachusetts**

- Bright Horizons Children's Centers LLC (Office)

**Building 39 - 300 North Beacon Street, Watertown, Massachusetts**

- Harvard Business School Publishing Corporation

**Building 43 - 343 Arsenal Street, Watertown, Massachusetts**

- Roundarch Isobar, Inc.
  - Envivo Pharmaceuticals Inc. (Subtenant)
- La Casa de Pedro

**Building 97 - 400 North Beacon Street, Watertown, Massachusetts**

- athenahealth, Inc.

**Building 117 - 3 Kingsbury Avenue, Watertown, Massachusetts**

- Beal & Co., Inc. (Management Office)

**Building 118 - 2 Kingsbury Avenue, Watertown, Massachusetts**

- Carlson Software, Inc.
  - Optodot Corporation (Subtenant)
- Karen L. Koumjian, O.D. d/b/a Watertown Eye Associates
- Netwatch (USA), LLC

**Building 131 - 400 Talcott Avenue, Watertown, Massachusetts**

- NetAge Solutions, Inc.
  - Bright Horizons Children's Center LLC (Office and Day Care)
  - Young Presidents' Organization, Inc.
  - Scholastic, Inc.
  - Aliaswire, Inc.
-

Building 311 - 311 Arsenal Street, Watertown, Massachusetts

- Liaison International, LLC
- Mobile Messenger Americas, Inc.
  - athenahealth, Inc. (Subtenant)
- athenahealth, Inc.
- Bard, RAO + Athanas Consulting Engineers, LLC and Paulus, Sokolowski and Sartor, LLC
- TSI Watertown, Inc. (Boston Sports Club)
- Scholastic, Inc.
- Anita M. Grasso, M.D. and Andrea A. Hass, M.D. d/b/a Associates in Dermatology
- Syniverse ICS Corporation
  - athenahealth, Inc. (Subtenant)
- McGarr Service Corp.
- Muni Zalawadia and Rekha Mistri

Building 312 - 321 Arsenal Street, Watertown, Massachusetts

- Watertown Arsenal Development Corporation
  - Watertown Arts on the Charles, Inc.
- Bright Horizons Children's Centers LLC
- Boston Bread, LLC

Building 313 - 321 100 Talcott Avenue, Watertown, Massachusetts

- Service Employees International Union (SEIU) Local 509
  - Communispace Corporation
    - APFS LLC (Subtenant)
-

**EXHIBIT M**

**LIST OF LETTERS OF CREDIT**

athenahealth, Inc.  
Bard, RAO + Athanas Consulting Engineers, LLC and Paulus, Sokolowski and Sartor, LLC  
Communispace Corporation  
Liaison International, LLC  
Mobile Messenger Americas, Inc.  
Roundarch Isobar, Inc.  
Service Employees International Union (SEIU) Local 509  
TSI Watertown, Inc.

---

**EXHIBIT N**

**DUE DILIGENCE MATERIALS**

1. All service and other maintenance contracts
  2. All current leases, pending leases, and property rent rolls with options included (i.e., purchase options, expansion options, etc.)
  3. Any outstanding Tenant Improvement allowances due existing Tenants
  4. Most recent and five-year historical and budgeted tax bills (PILOT) and value renditions
  5. Pilot Agreement(s)
  6. Most recent and five-year historical and budgeted operating statements relating to the Property
  7. Most recent and five-year historical and budgeted capital expense items and statements relating to the Property
  8. Current permits (waste water and well)
  9. Current governmental approvals
  10. Current licenses
  11. Structural, property conditions, and other inspection reports, claims, and/or disclosures
  12. Existing Owner's Title Policy
  13. Complete set of building plans (including architectural, mechanical, and structural plans)
  14. Any plans detailing building expansion capabilities or new building capacity
  15. Survey of the property
  16. Copies of all warranties (including roof, windows, mechanical, elevator, etc.)
  17. Copies of correspondence with the Fire Department, Health Department, Assessor's Department, and Building Department
  18. Mold remediation certification
  19. Reports concerning condition and function of HVAC, mechanical, electrical and utility systems with any applicable warranties or guaranties
  20. Roof report and maintenance plans
-

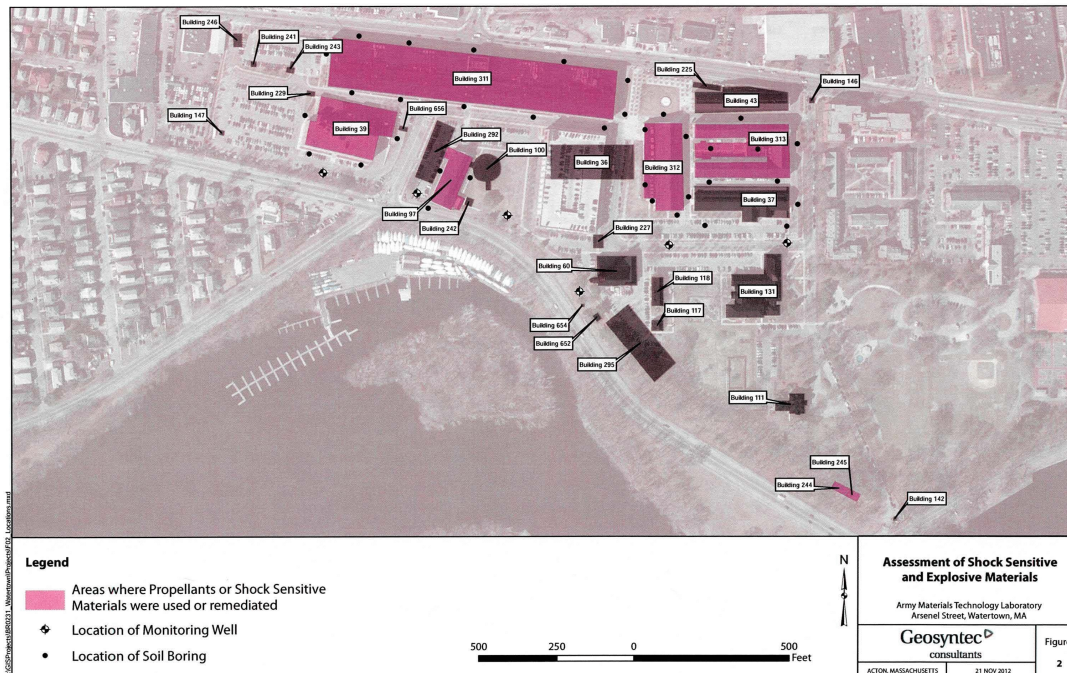
21. Solar panel information, warranties, and maintenance documents
22. Parking garage information and maintenance costs
23. Any septic reports for each building
24. Furniture, fixtures, and equipment list
25. Existing and pending claims and law suits
26. Zoning reports
27. Any historic building restriction or limitations
28. All environmental related reports, including Phase I, Phase II and Asbestos Reports
29. Personal Property List of items remaining with the Property upon transfer, such as art work, equipment, etc.
30. Tenant Correspondence Files
32. Financial Records from at least January, 2010, including the following:
  - Equipment Leases;
  - Security Deposit Report;
  - Aging Receivables Report;
  - Payables Report;
  - General Ledgers and Detailed Income Statements;
  - Cash Receipts Statements and Bank and Credit Card Statements;
  - Payroll Registers; and
  - GAAP audited financial statements for the Property.



## **EXHIBIT O**

### **ENVIRONMENTAL TESTING PLAN**

- Advance approximately 35 soil borings at the locations shown on the attached Figure 2 to a depth of approximately 10 feet each using direct push drilling methods. Collect two soil samples from each boring (one shallow and one deep). Each sample shall be analyzed by a Massachusetts certified laboratory for:
    - MCP Metals
    - perchlorate
    - nitroglycerin
    - nitrocellulose
    - nitroguanidine
    - 2,6-DiAmino-4NT
    - 2,4-DiAmino-6NT
    - pentaerythritol tetranitrate (PETN)
    - 1,4-dioxane
  - Install 5 groundwater monitoring wells to a depth of approximately 25 feet below ground surface at the locations shown on the attached Figure 2 using direct-push or hollow-stem auger drilling methods. Collect a groundwater sample from each monitoring well using low-flow sampling techniques. Each sample shall be analyzed by a Massachusetts certified laboratory for:
    - Volatile organic compounds via EPA Method 8260
    - perchlorate
    - nitroglycerin
    - nitrocellulose
    - nitroguanidine
    - 2,6-DiAmino-4NT
    - 2,4-DiAmino-6NT
    - pentaerythritol tetranitrate (PETN)
    - 1,4-dioxane
  - Conduct a hazardous building material survey to identify the types, quantities, and condition of hazardous material including lead-based paint and asbestos.
-



## EXHIBIT 21.1

### Subsidiaries of Registrant

Name	Jurisdiction of Organization
Anodyne Health Partners, Inc.	Delaware
athena Point Lookout, LLC	Maine
athenahealth MA, Inc.	Massachusetts
athenahealth Security Corporation	Massachusetts
athenahealth Technology Private Limited	India
Echo Merger Sub, Inc.	Delaware
Healthcare Data Services LLC	Massachusetts
Proxsys LLC	Alabama

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-146340, 333-172619, and 333-183053 on Form S-8 of our reports dated February 11, 2013, relating to the consolidated financial statements of athenahealth, Inc. and subsidiaries, and the effectiveness of athenahealth, Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K of athenahealth, Inc. for the year ended December 31, 2012.

/s/ Deloitte & Touche LLP

Boston, Massachusetts

February 11, 2013

**Certification**

I, Jonathan Bush, certify that:

1. I have reviewed this Annual Report on Form 10-K of athenahealth, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 11, 2013

/s/ Jonathan Bush

---

Chief Executive Officer

**Certification**

I, Timothy M. Adams, certify that:

1. I have reviewed this Annual Report on Form 10-K of athenahealth, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 11, 2013

/s/ Timothy M. Adams  
\_\_\_\_\_  
Chief Financial Officer

**The following certification is being made to the Securities and Exchange Commission solely for purposes of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350). This certification is not to be deemed a part of the Report, nor is it deemed to be “filed” for any purpose whatsoever.**

In accordance with the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 (18 USC 1350), each of the undersigned hereby certifies, to our knowledge, that:

(i) this Annual Report on Form 10-K for the year ended December 31, 2012, which this statement accompanies, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(ii) the information contained in this Annual Report on Form 10-K for the year ended December 31, 2012, fairly presents, in all material respects, the financial condition and results of operations of athenahealth, Inc.

Dated as of this 11<sup>th</sup> day of February, 2013.

/s/ Jonathan Bush

---

Jonathan Bush  
Chief Executive Officer

/s/ Timothy M. Adams

---

Timothy M. Adams  
Chief Financial Officer

