

FILED
U.S. BANKRUPTCY CT.
INDIANAPOLIS DIVISION

2019 FEB 12 AM 10:46

SOUTHERN DISTRICT
OF INDIANA
KEVIN P. DEMPSEY
CLERK

Fill in this information to identify the case:

Debtor 1 Fayette Memorial Hospital Association, Inc. dba Fayette R+

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Southern District of Indiana

Case number 18-07762-JJG-11

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? athenahealth, Inc.
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>athenahealth, Inc. - AR Collections</u> Name	_____ Name
<u>3 Hatley Rd</u> Number Street	_____ Number Street
<u>Belfast ME 04915</u> City State ZIP Code	_____ City State ZIP Code
Contact phone <u>207-323-7938</u>	Contact phone _____
Contact email <u>belfastARteam@athenahealth.com</u>	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

ENVELOPE NOT PROVIDED

COPIES NOT PROVIDED

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 6 8 7 1

7. How much is the claim? \$ 128,277.28. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
Services performed

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Amount entitled to priority

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

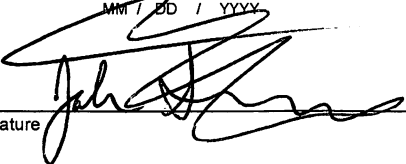
- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/07/2019
MM / DD / YYYY

Signature 

Print the name of the person who is completing and signing this claim:

Name John A. Stewart
First name Middle name Last name

Title Collections Manager

Company athenahealth, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 3 Hatley Rd
Number Street

Belfast ME 04915
City State ZIP Code

Contact phone 207-323-7938 Email jstewart@athenahealth.com



Service Proposal

Presented to Fayette Regional Health System

Presented By:

Christopher Heath
Large Group Sales Executive
athenahealth, Inc.
311 Arsenal Street
Watertown, MA 02472

cheath@athenahealth.com

Prepared for:

Randy White
CEO
Fayette Regional Health System
1941 Virginia Ave
Connersville, IN 47331-2833
(765) 827-7987
randyw@fayetteregional.org

What You Told Us About Your Organization

NPSR/Collections..... \$67,246,000.00
 Number of Beds..... 99
 Inpatient Days 20,060
 Outpatient Visits..... 96,452
 Emergency Room Visits 13,663
 Ambulatory (clinic) Visits 45,665
 Surgeries 1,200

athenaOne for Hospitals and Health Systems Fees

Service Fee	Pricing Plan
3.72%	% of Collections

Onboarding Service Fees and Scope

- Number of Onsite Person Days..... 80 Person Day(s)
- Total Onboarding Service Fees.....\$200,000.00*

Notes

*Provided Client (i) executes the Agreement on or before September 30, 2017, (ii) has its first Go-Live Date within eleven (11) months of the Effective Date, then the Onboarding Service Fee set forth above shall be reduced to \$100,000.00.

You will be invoiced monthly and will pay the athenaOne for Hospitals & Health Systems Service Fee set forth above.

Client will send all Orders through athenaClinicals.

Following the Effective Date and prior to Client's Go-Live Date, Athena will scope necessary interfaces, and Athena and Client shall enter into an interface proposal setting forth the interfaces Athena will build. All such interfaces shall be built by Athena at no additional charge to Client; provided, however, that Athena reserves the right at any time, in its sole and absolute discretion, to modify the types of interfaces that Athena will build at no additional charge. Any interfaces requested by Client after the Go-Live Date shall be priced in accordance with Athena's then-current pricing.

Client shall pay to Athena the Onboarding Service Fees set forth above (the "Onboarding Fee") the month after your initial Go-Live Date.

The athenaNet Services covered by this Rider may be subject to a discount and/or warranty as described in this Rider, which are intended to be structured consistent with the discount or warranty regulatory safe harbor, as applicable, to the federal anti-kickback statute set forth in 42 C.F.R. 1001.952(h) and (g), respectively, and other applicable laws and regulations. To the extent that the value of any discount or warranty item is known as of the Effective Date, that discount or warranty value is detailed in this Rider and in the Additional Services section of the initial sales invoice. To the extent that the value of any discount or warranty is not known as of the Effective Date, Athena will provide to Client documentation of the calculation of the value of the discount or warranty identifying the specific goods or services purchased to which the discount or warranty will be applied at the time the discount or warranty is credited, earned, or redeemed. If applicable, Client must fully and accurately report the discount or warranty in its applicable cost report(s) filed with the U.S. Department of Health and Human Services (HHS) or applicable State agency. In addition, Client must provide, upon request of HHS or applicable State agency, information regarding the discount or warranty in accordance with the safe harbor regulations.

Travel and expenses are not included in the fees listed above. You will be responsible for paying all reasonable and necessary travel and expenses.

Any additional Training, Post Go-Live Support, and On-Site Consulting will be billed at \$1,500.00 per Person Day.

See the athenaOne for Hospitals & Health Systems Service Description for more information on standard onboarding activities, athenaCare and the process to request additional services.

We look forward to doing business with you!

ATHENAHEALTH MASTER SERVICES AGREEMENT

Until accepted by Athena, this form is an offer from Client to Athena to contract on the terms below. After execution by Client and acceptance of this form by Athena, an authorized Athena representative will countersign it, and this form will then become effective as a binding agreement between the Parties as of the Effective Date.

Section 1. Defined Terms

"Agreement" means this Master Services Agreement, Exhibit A, any Riders attached hereto, the Third Party Terms, each Proposal, and each Service Description.

"Applicable Law" means all federal, state, and local laws and regulations, including, without limitation, those relating to kickbacks, fraud and abuse, confidentiality (including HIPAA), Medicaid, Medicare, or the Telephone Consumer Protection Act, in each case to the extent directly applicable to the respective Party's performance of its obligations under this Agreement.

"Athena" is athenahealth, Inc. and its subsidiaries, 311 Arsenal St., Watertown, MA 02472; Tel: 617.402.1000; Fax: 617.402.1099.

"Athena Property" means athenaNet, athenaNet Services, athenaNet Content, Materials, Service Descriptions, proprietary methods, templates, spreadsheets, databases and other electronic tools created or owned by Athena, including all data and information included in or entered into athenaNet that Athena compiles, sorts, integrates, normalizes, analyzes, maps, stores, processes, selectively aggregates and/or combines with multiple disparate data sources, for comparison, benchmarking or other similar and lawful purposes, as well as edits, improvements, additions, modifications, interfaces, and derivative works prepared from or relating to any of the foregoing, and any and all tangible and intangible works of authorship, copyrights, patents, trademarks, trade secrets and trade dress, and all intellectual property rights in any of the foregoing.

"athenaNet" means the internet-based athenaNet® multi-user platform used to provide athenaNet Services, together with athenaNet Functionality and associated databases.

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

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

"athenaNet Services" means the services provided by Athena under this Agreement, including, but not limited to, access to and use of athenaNet by Client and the provision of athenaNet Content and Materials.

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

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

"Client" is (use full legal name) Fayette Regional Health System

Address: 1941 Virginia Ave, Connersville, IN 47331-2833

Tel: (765) 827-7987

Fax: (765) 827-7775

Client Tax I.D.: ██████████0741

E-mail: samb@fayetteregional.org

"Client Data" means all data and information of Client provided by Client or its Authorized Users to Athena, including through athenaNet. Client Data includes Client's Confidential Information.

"Collections" means all sums received by Client for any health care items or services furnished by Client to patients if such sums are posted in athenaNet or if athenaNet Services have been used to schedule such health care or to bill, track, or follow up on such sums, including, without limitation, co-pays, withhold returns, surplus distributions, bonus payments, incentive program payments, revenue sharing, capitation and other managed care payments, cost report settlements, and wrap-around payments. Collections also include all sums processed using Athena's credit card processing services. Collections do not include payments for Client administrative services not performed using athenaNet or athenaNet Services (including, but not limited to, 340b payments). Any cost report, bonus payments or incentive payments received by Client for periods prior to Client's first Go-Live Date are excluded from the definition of Collections. Any amounts refunded to or taken back by any payer during the term of this Agreement in regard to sums qualified as Collections during that time will be treated as negative adjustments to Client's Collections in the month in which such refunds or takebacks occur.

"Confidential Information" means information that is disclosed by one Party to the other and that the receiving Party knows is confidential to the disclosing Party or that is of such a nature that someone familiar with the type of business of the disclosing Party would reasonably understand is confidential to it. Without limitation, Confidential Information includes financial and other business information of either Party. With respect to Athena, Confidential Information includes athenaNet Functionality, athenaNet Content, Materials, the terms of this Agreement, and each Service Description, and in each case, any visual reproduction thereof. Notwithstanding the foregoing, Confidential Information does not include PHI or information that the receiving Party can demonstrate: (i) is in the public domain or is generally publicly known through no improper action or inaction by the receiving Party; (ii) was rightfully in the receiving Party's possession or known by it prior to receipt from the disclosing Party; (iii) is rightfully disclosed without restriction to the receiving Party by a third party without violation of obligation to the disclosing Party; or (iv) is independently developed for the receiving Party by third parties without use of the Confidential Information of the disclosing Party.

"Effective Date" means the date this form is countersigned by Athena.

"Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party and any consequences of that event or circumstance.

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

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

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

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

"PHI" means "protected health information" as that term is used under HIPAA. "Client PHI" means PHI that Athena receives from or on behalf of Client or creates on behalf of Client.

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

"Proposal" means Athena Proposal # Q-01470 - 20 (unique identifier) and each Athena Proposal entered into by the Parties after the Effective Date and incorporated herein by reference.

"Rider" means each document listed as follows:

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

"Service Description" means each document periodically updated by Athena and incorporated herein that contains a description of athenaNet Services.

"Third Party Items" means the third party products and services incorporated into athenaNet and made available to Client hereunder.

"Third Party Terms" means the pass-through terms and conditions set forth at <http://www.athenahealth.com/tpt> applicable to Client's access to and use of the Third Party Items.

Section 2. Athena Services and Payment.

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

(b) Client shall pay Athena the fees and expenses as set forth in this Agreement. Athena may impose a late charge equal to the lesser of (i) 1½%, or (ii) the highest rate permitted by Applicable Law, each month on all amounts overdue beyond 10 days, but this charge will not waive or extend any obligation of Client to make payments when due.

Section 3. Term and Termination.

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

(b) Either Party may terminate this Agreement or any athenaNet Services at any time, with or without cause, by providing the other Party with no less than 90 days' Notice.

(c) Either Party may terminate this Agreement effective upon Notice to the other Party if (i) the other Party defaults in performance of any material provision of this Agreement and such default is not cured within a period of 30 days following Notice describing the specific default (10 days in the event of failure to pay amounts owed); (ii) the other Party violates Applicable Law; (iii) the other Party files a voluntary petition in bankruptcy or an involuntary petition is filed against it; (iv) the other Party is adjudged bankrupt; (v) a court assumes jurisdiction of the assets of the other Party under a federal reorganization act or other statute; (vi) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other Party; (vii) the other Party becomes insolvent, suspends business or ceases to conduct its business in the ordinary course; or (viii) the other Party makes an assignment of its assets for the benefit of its creditors. Termination of this Agreement by Athena for Client's failure to pay amounts owed will not constitute irreparable harm to Client.

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

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

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

(g) Upon termination of this Agreement or any athenaNet Service for any reason, Client shall immediately pay to Athena all amounts due hereunder for all services rendered through the date of termination.

Section 4. System and Service Access and Use.

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

(b) Client shall ensure that each Authorized User complies with the terms of this Agreement as well as Applicable Law. Client shall terminate any Authorized User's access to athenaNet (i) when such person no longer meets the definition of "Authorized User;" (ii) if conduct by such Authorized User breaches any term of this Agreement; or (iii) upon such Authorized User's indictment, arrest, or conviction of any crime related to claims or other transactions, financial relationships, or financial dealings in connection with health care, and Client shall immediately inform Athena of any such indictment, arrest, or conviction. Client is responsible for all acts and omissions of any Authorized User in connection with such Authorized User's access and use of athenaNet. Athena may restrict, suspend, or terminate an Authorized User's access to athenaNet if Athena determines in its reasonable discretion that such access has an adverse effect on Athena.

(c) Client shall monitor Authorized Users' use of passwords and require Authorized Users to protect their passwords and log in credentials. Client is responsible for any use of data, information, or services obtained through athenaNet by Authorized Users. Except as expressly permitted under this Agreement, Client shall not and shall cause its Authorized Users not to: (i) access or use Athena Property in connection with the provision of any services to third parties; (ii) resell, rent, license, lease, provide service bureau or timeshare services, transfer, encumber, copy, distribute, publish, exhibit, transmit or otherwise make available to any third party any Athena Property; (iii) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record, or create derivative works based on Athena Property; (iv) use Athena Property in a manner that delays, impairs, or interferes with system functionality for others or that compromises the security or integrity of any data, equipment, software, or system input or output, including but not limited to introduction of any viruses or malware into athenaNet; (v) enter data in athenaNet that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others; (vi) apply systems to extract or modify information in athenaNet using technology or methods such as those commonly referred to as "web scraping," "data scraping," or "screen scraping;" (vii) use Athena Property or any part or aspect thereof for any unlawful purpose or to mislead or harass anyone; or (viii) use Athena Property except as specifically permitted under this Agreement. Use of or access to Athena Property not in accordance with the terms of this Agreement is strictly prohibited. Any violation of this Section 4 will cause Athena irreparable and immediate harm, and Athena is entitled to injunctive relief to prevent such violation.

Section 5. Confidential Information. Each Party shall exercise reasonable care to hold Confidential Information in confidence and not use it or disclose it to any other person or entity, except (i) as permitted under this Agreement or as reasonably necessary for the performance or enforcement of this Agreement; (ii) as agreed in writing by the other Party; (iii) for the Party's proper management and administration (provided that it obtains reasonable assurances from all recipients that they will keep the information confidential and use it only for the purpose of its disclosure); or (iv) as required by law. If either Party files any Confidential Information of the other Party in court or other public forum, such filing shall be made under seal, to the extent reasonably practicable. Before disclosing the Confidential Information of the other Party pursuant to a lawful subpoena or similar order, unless prohibited by Applicable Law, the disclosing Party must inform the Party whose Confidential Information is at issue of the subpoena or other order so that the Party who owns the Confidential Information has a reasonable opportunity to seek a protective order or other remedy. The Parties shall also comply with the terms set forth in Exhibit A hereto.

Section 6. Usage and Ownership. Except for the right to use Athena Property subject to the terms and conditions contained herein, this Agreement does not confer on Client a license in, ownership of, or interest in Athena Property. Athena developed or acquired Athena Property exclusively at its private expense. Athena Property and all right, title, and interest in and to it is and will remain the exclusive property of Athena. Athena has the unrestricted and permanent right to use and implement all ideas, advice, recommendations, or proposals of Client and its personnel with respect to Athena Property in any manner and in any media, but only to the extent compliant with this Agreement. As between Athena and Client, Client retains all right, title and ownership rights to the Client Data. Client hereby grants to Athena a fully-paid up, worldwide, sub-licensable, perpetual, right and license to Client Data for the purpose of creating Athena Property.

Section 7. Compliance.

(a) Each Party shall comply with Applicable Law. Client is solely responsible for compliance with all legal and regulatory requirements with respect to Client's use of athenaNet and athenaNet Services.

(b) The Parties agree that (i) any fees charged or amounts paid hereunder are not intended, nor will they be construed to be, an inducement or payment for referral of patients among Athena, Client, or any third party, and (ii) neither Party will enter into any agreements, or otherwise make any payments, for the purpose of rewarding the referral of patients among Athena, Client, or any third party.

(c) The Parties shall each separately maintain effective compliance programs consistent with the relevant compliance guidelines set forth by the Office of the Inspector General of the Department of Health and Human Services. The Parties shall cooperate with each other to provide prompt, accurate, and full responses to any material inquiry or concern of either Party related to compliance and to any reasonable request by either Party for clarification, documentation, or further information concerning Client billing or Client's provision of, or referrals related to, health services for its patients.

(d) Client shall not bill or claim payment in any form, directly or indirectly, from any government health care program or other third-party payer for the cost of any athenaNet Services, including, without limitation, on a government cost report.

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

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

part of athenaNet Services. Athena will not be liable for any action or inaction of Client which may give rise to liability under the federal False Claims Act or any state version thereof.

Section 8. Warranties and Limitations.

(a) Athena warrants to Client that, to Athena's knowledge, athenaNet Functionality, when used properly and as expressly authorized by Athena, does not infringe any valid patent, registered copyright, or other registered intellectual property right under the laws of the United States, provided that Athena makes no warranty to the extent that such infringement results from (i) use or access of athenaNet by Client in combination with any data, software, or equipment provided by Client or any third party that could have been avoided by use or access of athenaNet without such data, software, or equipment, or (ii) any breach of any agreement by, or any negligent or other wrongful act or omission of, Client or any party acting on behalf of Client.

(b) Each Party represents and warrants to the other Party on a continuing basis through the term of this Agreement that (i) it has the requisite corporate power and authority to execute and perform its obligations under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to bind it hereunder and that such Party's execution of this Agreement is not in violation of such Party's bylaws, certificate of incorporation or other comparable document; (iii) the execution of this Agreement does not constitute a material breach by such Party of any covenants or agreements by which such Party or any of its assets are bound; and (iv) neither it nor any of its personnel to its knowledge (A) has been convicted of any crime arising from claims or other transactions, financial relationships, or financial dealings in connection with health care, or (B) has been excluded from any federal or state health care program.

(c) Client represents, warrants, and covenants to Athena that (i) it and its Billable Providers are, and will be, duly licensed and authorized to provide and bill for the health services they render; and (ii) all athenaNet local rule requests, technical requests, or other requests, waivers, or directives by or on behalf of Client are and shall remain compliant with Applicable Law and with all applicable payer requirements.

(d) *Except as expressly provided herein, Athena disclaims all representations and warranties of any kind or nature, express or implied (either in fact or by operation of law), with respect to any service or item provided hereunder. Except as expressly provided herein, Athena Property is provided "as is." Athena does not warrant that Athena property will be error-free or will be provided (or available) without interruption or meet Client's business or operational needs. Client has not relied on any representations, warranties, or statements of fact not specifically included in this Agreement, and shall not assert, and shall cause its affiliates and personnel not to assert, any claim against Athena with respect to its or their reliance on any representations, warranties or statements of fact not specifically included in this Agreement.*

(e) No claim against Athena or Client of any kind under any circumstances may be asserted or filed more than one year after the other Party knows, or in the exercise of reasonable care could know, of any circumstances, whether by act or omission, that may give rise to such claim.

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

(g) *Athena's cumulative, aggregate liability in connection with or arising in any way or in any degree from this Agreement, from athenaNet Services, or otherwise from the acts or omissions of Athena will not exceed the lesser of (i) \$500,000, or (ii) the total amount paid by Client to Athena in the 12 months before such claim arose. If damages are measured by the cost of medical services provided or the dollar value of claims submitted, Athena's liability for such damages will not exceed the service fees attributable to such services or claims. Athena will not be liable for any failure to provide services, content, or functionality with respect to any claim, statement, or transaction that Athena believes in good faith arises from, in connection with, or contains inaccurate, misleading, or otherwise improper information. Notwithstanding anything to the contrary, neither Party will be liable for indirect, exemplary, punitive, special, incidental, or consequential damages or losses; lost profits or business opportunities; loss of data; or the cost of procurement of substitute items or services. Each Party hereby acknowledges that the remedies set forth above are reasonable and will not fail of their essential purpose.*

Section 9. Third Party Items. As applicable in connection with athenaNet Services, Athena hereby grants to Client and its Authorized Users a limited, non-exclusive, non-transferable, non-licensable right to access and use the Third Party Items through athenaNet during the term of this Agreement, subject to the Third Party Terms. Athena may modify the Third Party Terms in the event Athena adds or replaces Third Party Items or as required in connection with changes to the third party license agreements for the Third Party Items. Athena agrees to use commercially reasonable efforts to post the current Third Party Terms on athenaNet and notify Client through an alert on athenaNet when Athena has posted revised Third Party Terms. The Third Party Items will not be deemed part of Athena Property. All rights granted in this Section 9 are solely for Client and its Authorized Users' use in connection with athenaNet Services and will terminate on the earlier of expiration or termination of (i) this Agreement, or (ii) the applicable agreement between Athena and the licensor of the Third Party Items.

Section 10. Force Majeure.

(a) If a Force Majeure Event prevents a party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (i) that Party uses reasonable efforts to perform those obligations; (ii) that Party's inability to perform those obligations is not due to its failure to (x) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event, or (y) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (z) that Party complies with its obligations under Section 10(b).

(b) During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement.

Section 11. Mediation. The Parties shall submit any and all disputes, claims, or controversies arising out of or relating to this Agreement to JAMS, or its successor, for mediation. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, which must set forth the subject of the dispute, the relief requested, and the factual and legal bases for

such relief. If Athena provides the written request for mediation, such mediation will be in Chicago, Illinois. If Client provides the written request for mediation, such mediation will be in Boston, Massachusetts. The Parties shall cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties shall participate in the mediation in good faith and equally share the costs of the mediation. If the dispute is not resolved by mediation, the Party seeking relief may pursue all remedies available at law, subject to the terms of this Agreement. Notwithstanding this Section 11, either Party may (i) terminate this Agreement according to its terms, or (ii) seek injunctive relief.

Section 12. Choice of Law; Forum. Any dispute arising out of or relating to this Agreement, including any conduct related to this Agreement following termination hereof (each, a "Dispute") will be governed exclusively by the laws of the state of Delaware, without regard to its conflicts of laws principles. The applicable Federal District Court for the state in which the Party named as Defendant has its principal place of business (with respect to Athena, the Commonwealth of Massachusetts and, with respect to Client, the state of Indiana) will be the exclusive venue for any resolution of any Dispute. If such Federal District Court does not have subject matter jurisdiction, the courts of the same state in which such Federal District Court is located shall be the exclusive venue for any resolution of any Dispute. The Parties hereby submit to and consent irrevocably to the jurisdiction of such courts for these purposes. ***The Parties hereby irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement.***

Section 13. Notice. Notice under this Agreement means written notification addressed to the individual signing this Agreement at the address listed in Section 1, with a copy to the notified Party's legal department that is (i) delivered by hand; (ii) sent by traceable nationwide parcel delivery service, overnight or next business day service; or (iii) sent by certified United States mail. Properly mailed Notice will be deemed given 3 days after the date of mailing, and other Notice will be deemed made when received. A Party may change its address for notice purposes by providing Notice of such change to the other Party.

Section 14. Miscellaneous. This Agreement constitutes the entire agreement between the Parties relating to athenaNet Services and supersedes all prior agreements, understandings, and representations relating to athenaNet Services. Except as otherwise provided herein, no change in this Agreement will be effective or binding unless signed by Client and a duly authorized representative of Athena. Neither Party will assign this Agreement without the written consent of the other, provided that either Party may assign this Agreement with no less than 90 days prior Notice as part of a corporate reorganization, consolidation, merger, change of control with respect to its outstanding stock, or sale of substantially all of its assets, and provided further that the assigning Party and the assignee will remain liable for any unperformed obligations under this Agreement arising prior to the effective date of any such transaction, and any attempt to assign this Agreement not in accordance with this Section 14 shall be null and void. This Agreement is binding on the Parties and their successors and permitted assigns. The Parties intend that nothing contained in this Agreement be construed to create a joint venture, partnership, or like relationship between the Parties, and their relationship is and will remain that of independent Parties to a contractual service relationship. Neither Party will be liable for the debts or obligations of the other Party. Client shall not advertise, market, promote, or publicize in any manner its use of and access to athenaNet Services without the express written consent of Athena in each instance. Athena will obtain Client's consent (such consent not to be unreasonably withheld) before using Client's name or logo in a manner signifying an endorsement of Athena by Client; provided, however that Athena may refer to Client as a current customer without first obtaining Client's consent. Except as explicitly set forth herein, none of the provisions of this Agreement will be for the benefit of or enforceable by any third party. Section titles are for convenience only and will not affect the meaning of this Agreement. No failure by a Party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy hereunder will constitute a waiver. Despite the possibility that one Party or its representatives may have prepared the initial draft of this Agreement or any provision hereof or played a greater role in the preparation of subsequent drafts, neither Party shall be deemed the drafter of this Agreement and no provision hereof shall be construed in favor of one Party on the ground that such provision was drafted by the other. Client shall not join or consolidate claims by other clients, or pursue any claim as a representative or class action or in a private attorney general capacity. In connection with athenaNet Services, a copy of a signed document sent by PDF or telephone fax will be deemed an original in the hands of the recipient. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. This Agreement may be executed in one or more counterparts and exchanged by electronic means, each of which shall be deemed an original, and all of which together constitute only one agreement between the Parties. The following Sections of this Agreement will survive termination and continue in force: Sections 1, 2(b), 3(g), 5, 6, 7(e)(v), 8(c)-(g), 9, and 11 through 14.

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

The terms of this Proposal are incorporated by reference into the Athenahealth Master Services Agreement between the parties and shall become effective upon Athena's countersignature below.

ATHENAHEALTH, INC.

Fayette Regional Health System

By: Lara Whiteley
Lara Whiteley (Sep 29, 2017)

By: Samantha Bell-Jent

Name: Lara Whiteley

Name: Samantha Bell-Jent

Title: Executive Director, Finance



Title: CFO

Date: Sep 29, 2017

Date: 9/29/17

Auto Debit Authorization Form – Please Print Clearly

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

Financial Name: <u>Camerica Bank</u>	Branch: <u>Detroit, MI</u>	Address (Number, Street, City, State, and Zip): <u>500 Woodward Ave Detroit, MI 48226</u>
Type of Account: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	Client Tax ID Number:  <u>0741</u>	Account Number:  <u>0096</u> Routing Number: <u>1852-98057-0</u>

Full Legal Name of Client:

Fayette Regional Health System

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

Print Name and Position: Samantha Bell-Jent, CFO Date: 9/30/17
VP of Finance

Please send invoices to:

samb@fayetteregional.org

eindyr@fayetteregional.org

EXHIBIT A – Business Associate Agreement

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

Article 2. Athena's Duties. Athena shall:

(a) not Use or Disclose Client PHI except (i) as required or permitted by law; (ii) as permitted under the terms of the Agreement or any permission of Client under the Agreement; or (iii) as incidental under HIPAA to another permitted Use or Disclosure;

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

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

(d) limit its request for Client PHI to the minimum amount necessary to accomplish the intended purpose of requests for, and Uses and Disclosures of, Client PHI in accordance with 45 C.F.R. § 164.502(b)(1);

(e) report to Client as soon as practicable and as required by HIPAA and the HITECH Act any known Use or Disclosure of Client PHI by Athena not as provided by the Agreement resulting in a Breach of Unsecured PHI. Such notification shall be made without unreasonable delay following the date of discovery to enable Client to comply with the Breach disclosure requirements under the HITECH Act. Athena shall include within such notice identification, to the extent possible, of each individual whose Unsecured PHI has been, or is reasonably believed by Athena to have been, accessed, used, or disclosed through the Breach and any other valuable information known to Athena that Client is required to include in its notice to affected individuals. The reporting requirement set forth hereunder includes, without limitation, disclosures that Athena is aware of that would need to be included in Client's Accounting of Disclosures under HIPAA and/or HITECH Act, provided that Athena is required by HIPAA and the HITECH Act as a Business Associate of Client to include such disclosures;

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

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

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

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

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

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

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

Article 3. Client's Duties. Client shall:

(a) not request, direct, or cause Athena to Use or Disclose PHI unless such Use or Disclosure is in compliance with Applicable Law relating to

the privacy and security of patient data and is the minimum amount necessary for the legitimate purpose of such Use or Disclosure;

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

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

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

Article 4. Business Associate Permitted Purposes.

(a) Athena's Use and Disclosure of Client PHI is permitted for the following purposes: (i) to provide athenaNet Services (including, but not limited to, receipt from and disclosure to payers, patients, vendors, and others in order to provide athenaNet Services); (ii) for Payment, Health Care Operations, and Treatment (including, without limitation, testing and set up of electronic linkages for Payment transactions); (iii) as requested by Client or an authorized governmental agent for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); (iv) to provide data aggregation services as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); and (v) to de-identify Client PHI in accordance with 45 C.F.R. §164.514(b), and use or disclose such de-identified information as permitted by Applicable Law. All de-identified information created by Athena in compliance with the Agreement will belong exclusively to Athena, provided that Client will not hereby be prevented from itself creating and using its own de-identified information.

(b) Athena may Use Client PHI to carry out its legal responsibilities or for its proper management and administration, including, without limitation, making and maintaining reasonable business records of transactions in which Athena has participated or athenaNet has been used (including back-up documentation).

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

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

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

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



Client: FAYETTE REGIONA
 Contract Type: Fayette Regional Health Hhs
 athenaOne for Hospitals & Health Systems
 Client ID: 16871
 Invoice Number: INV4728716
 Invoice Date: 10/11/2018
 Service Period: 09/01/2018 to 09/30/2018

Billing Address:

Fayette Regional Health System
 1941 Virginia Ave
 Connersville, IN 47331-2833

Summary of Current Charges

Service	Description	Quantity	Rate	Total Charges Due	Notes
athenaOne for Hospitals & Health Systems	% of collections Base	\$2,805,751.19	3.72 %	\$104,373.94	
athenaOne Total				\$104,373.94	(b)
Additional Services					
	Fee for Patient Statements	2,226	\$0.00	\$0.00	
Additional Services Total				\$0.00	
				Total Fee for Services	\$ 104,373.94
				Sales tax	\$ 0.00
				Total	\$ 104,373.94

(b) athenaOne fees are subject to a cap of (\$0.00) and a minimum of \$0.00

Total due of \$104,373.94 will be debited from your account on 10/18/2018

athenaOne for Hospitals & Health Systems Collections were reduced by \$0.00 owing to contractual obligations.

The athenaNet Services covered in this invoice may be subject to a warranty or discount as described in Client's Agreement, including any applicable amendments thereto. The value of any discount or warranty credited or earned by Client as of the date of this invoice is detailed in the Additional Services section of this invoice and to the extent that the value of any discount or warranty item is not fully known as of the date of this invoice, such detail will be included in a subsequent invoice or invoices. If applicable, Client must fully and accurately report the discount/warranty value in its applicable cost report(s) and provide, upon request, information regarding the discount/warranty.

Shrink your service bill. Refer a colleague to athenahealth, and receive up to \$3,000 per physician who joins the network! Contact your Account Manager or visit athenahealth.com/yournetwork for information.

Remit To:

Athenahealth, Inc
 P.O. Box 415615
 Boston, MA 02241-5615



Client: FAYETTE REGIONA
 Contract Type: Fayette Regional Health Hhs
 athenaOne for Hospitals & Health Systems
 Client ID: 16871
 Invoice Number: INV4785812
 Invoice Date: 11/13/2018
 Service Period: 10/01/2018 to 10/09/2018

Billing Address:

Fayette Regional Health System
 1941 Virginia Ave
 Connersville, IN 47331-2833

Summary of Current Charges

Service	Description	Quantity	Rate	Total Charges Due	Notes
	athenaOne for Hospitals & Health Systems % of collections 10/01/18 -10/09/18	\$642,562.99	3.72 %	\$23,903.34	
athenaOne Total				\$23,903.34	
Additional Services					
	Fee for Patient Statements	2,294	\$0.00	\$0.00	
Additional Services Total				\$0.00	
				Total Fee for Services	\$ \$23,903.34
				Sales tax	\$ 0.00
				Total	\$ \$23,903.34

Remit To:
 Athenahealth, Inc
 P.O. Box 415615
 Boston, MA 02241-5615