

Service Description

IBM Watson Care Manager Cloud Service

This Service Description describes the Cloud Service IBM provides to Client. Client means the company and its Authorized Users and recipients of the Cloud Service. The applicable Quotation and Proof of Entitlement (PoE) identify the specific Cloud Service and quantities selected by the Client, and are provided as separate Transaction Documents.

1. IBM Watson Care Manager

IBM Watson Care Manager (the “Cloud Service”) provides a scalable, high touch solution for person-centered, team-based care. Multidisciplinary care teams gain a holistic understanding of a Care Recipient through a comprehensive health summary powered by insights gained from best practice assessments, information from health and social care systems, and coordinate interactions with a Care Recipient. The Cloud Service integrates clinical, social and individual Data Sources, assisting care managers in delivering personalized care plans to prompt behavioral changes across their population. It provides a personalized approach to care management and enables care managers to extend their reach to more Care Recipients.

The Cloud Service includes the following capabilities:

- **Care Recipient Summary:** comprehensive health summary using information that spans across systems and information provided by care providers to create a view of a Care Recipient’s care status
- **Intelligent Care Best Practices:** industry standard interventions available for care managers to select appropriate interventions to scale best practices
- **Structured Programs & Business Processes:** deliver guided content and workflow to care managers, providers and others to automate interactions and activities across care programs and processes to improve care team efficiency and effectiveness
- **Person Centered Care Planning:** support the development, management, and sharing of individualized care plans, including outcome goals and barriers, interventions by the care team, and engaging a Care Recipient on his or her care plan tasks
- **Program Enrollment:** manage the referral and enrollment of Care Recipients and groups of Care Recipients (cohorts) into care programs
- **Care Team Assignment:** assign and manage care management activities for a Care Recipient
- **Care Team Management:** view the key stakeholders involved in the care of a Care Recipient
- **Care Recipient Information Management:** collect and update information on a Care Recipient through user interactions or from external systems
- **System Configuration and Administration:** configure the care management platform, including: Client Data, program workflows, assessments, care plans, teams, recommendations, goals and preconfigured action libraries

2. Definitions

Capitalized terms not otherwise defined in this Service Description are defined elsewhere in the Agreement and will have the same meaning in this Service Description as defined in the Agreement.

- a. **Applicable Law** – any law, rule, regulation, directive, mandatory standard, or other requirement issued by a governmental authority applicable to the provision or receipt of this Service Description.
- b. **Authorized Users** - an employee, agent, volunteer or other member of the Client’s workforce or of an independent contractor or Participant that Client permits to use an IBM Service, provided the Client binds such Authorized User to the same terms as between the Client and IBM regarding permitted uses of the IBM Data.
- c. **Care Recipient** – means an individual whose care is coordinated or managed by Client and/or Participant(s) using the Cloud Service.

- d. Client Data – all information provided to IBM by the Client (including, if applicable, Participant Data) for use with the selected Services. Such Client Data includes Client’s PHI and information related to patients and operations (for example, clinical, operational, or financial).
- e. Complex Organization – a network of Participants that coordinate and collaborate on the delivery of healthcare services or social services to a given population (e.g., accountable care organizations, physician health organizations, and clinically integrated networks).
- f. Data Source – a source of Client Data that is identified as having a unique origin, back-end database, and workflow implementation.
- g. Participant – each entity that a) has agreed with Client to participate in coordinated and/or collaborative activities involving health care delivery or participation in value-based reimbursement program; b) has agreed that Client can bind it to the terms of this Agreement; and c) which Client permits to access the Cloud Service.
- h. Participant Data – any information (including PI) provided to IBM by Participants directly or by Client on behalf of Participants, in connection with the Cloud Service.
- i. Personal Information (PI) – has the meaning set forth under Applicable Law, and if not so defined, means non-public information, documents, records and electronic data processed, stored or maintained by IBM that is not personal health data) that can identify an individual or which, IBM has actual knowledge, can be used in combination with other information to identify an individual.

3. Security Description

The Cloud Service follows IBM’s data security and privacy principles for IBM Cloud Services which are available at <http://www-03.ibm.com/software/sla/sladb.nsf/sla/dsp> and any additional terms provided in this section. Any change to IBM’s data security and privacy principles will not degrade the security of the Cloud Service.

Client will not transfer any information from outside the country where the Cloud Service is provided, to the Cloud Service or by using the Cloud Service, unless Client and IBM have mutually agreed in writing that IBM can accept such data and Client and IBM have first executed an agreed upon cross-border transfer agreement.

4. Service Level Agreement

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS as specified in a PoE. The SLA is not a warranty. The SLA is available only to Client and applies only to use in production environments.

4.1 Availability Credits

Client must log a Severity 1 support ticket with the IBM technical support help desk within 24 hours of first becoming aware of an event that has impacted the IBM SaaS availability. Client must reasonably assist IBM with any problem diagnosis and resolution.

A support ticket claim for failure to meet an SLA must be submitted within three (3) business days after the end of the contracted month. Compensation for a valid SLA claim will be a credit against a future invoice for the IBM SaaS based on the duration of time during which production system processing for the IBM SaaS is not available (“Downtime”). Downtime is measured from the time Client reports the event until the time the IBM SaaS is restored and does not include time related to a scheduled or announced maintenance outage; causes beyond IBM’s control; problems with Client or third party content or technology, designs or instructions; unsupported system configurations and platforms or other Client errors; or Client-caused security incident or Client security testing. IBM will apply the highest applicable compensation based on the cumulative availability of the IBM SaaS during each contracted month, as shown in the table below. The total compensation with respect to any contracted month cannot exceed 10% of one twelfth (1/12th) of the annual charge for the IBM SaaS.

4.2 Service Levels

Availability of the IBM SaaS during a contracted month

Availability during a contracted month	Compensation (% of monthly subscription fee* for contracted month that is the subject of a claim)
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< 99.5%	2%
< 98.0%	5%
< 95.0%	10%

* If the IBM SaaS was acquired from an IBM Business Partner, the monthly subscription fee will be calculated on the then-current list price for the IBM SaaS in effect for the contracted month which is the subject of a claim, discounted at a rate of 50%. IBM will make a rebate directly available to Client.

Availability, expressed as a percentage, is calculated as: the total number of minutes in a contracted month minus the total number of minutes of Downtime in a contracted month divided by the total number

Example: 720 minutes total Downtime during contracted month

43,200 total minutes in a 30 day contracted month – 900 minutes Downtime = 42,300 minutes	= 5% Availability credit for 97.9% availability during the contracted month
<hr style="width: 50%; margin: 0 auto;"/> 43,200 total minutes	

5. Technical Support

Technical support and simple configuration requests for the Cloud Services are provided through electronic submission. Technical support contact information and other details regarding support operations can be found at: IBM SaaS Support Handbook:

<https://support.ibmcloud.com/FileManagement/Download/dbce75d712f44e2f9fa90fef2681797b>.

Technical support is offered with the Cloud Services and is not available as a separate offering.

6. Entitlement and Billing Information

6.1 Charge Metrics

The Cloud Service is available under the charge metric specified in the Transaction Document:

- 100 Person is a unit of measure by which the Cloud Service can be obtained. A Person is a single human being. Sufficient entitlements must be obtained to cover each Person processed by or managed by the Cloud Service during the measurement period specified in Client's PoE or Transaction Document.

6.2 Partial Month Charges

A partial month charge as specified in the Transaction Document may be assessed on a pro-rated basis.

6.3 Set-Up Charges

An initial one-time setup fee may apply at the rate and billing term specified in the Transaction Document.

6.4 Overage Charges

If actual usage of the Cloud Service during the measurement period exceeds the entitlement specified in the PoE, then Client will be invoiced for the overage, as set forth in the Transaction Document.

7. Term and Renewal Options

The term of the Cloud Service begins on the date set forth in the PoE. The PoE will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis or terminates at the end of the term.

For automatic renewal, unless Client provides written notice not to renew at least 90 days prior to the term expiration date, the Cloud Service will automatically renew for the term specified in the PoE.

For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides 90 days written notice of termination. The Cloud Service will remain available to the end of the calendar month after such 90 day period.

8. Client Responsibilities

8.1 Compliance with Laws

Client acknowledges and agrees that it is responsible for determining the applicability of and complying with all Applicable Laws, regulations and licensing requirements that apply to its use or other activities with respect to the Cloud Service.

8.2 Authorized Users

Client agrees that it is solely responsible for its Authorized Users' use of the Cloud Services. Client will:

- a. safeguard any Authorized User login credentials;
- b. notify IBM promptly if a compromise of an Authorized User login credential is suspected or detected;
- c. be responsible for assigning appropriate Authorized User roles and access levels to each Authorized User;
- d. promptly terminate Authorized User accounts when applicable; and
- e. promptly reassign Authorized User roles and access levels as applicable.

8.3 Data Sources

If applicable, the Client will make Client's and Participants' Data Sources (including existing and future electronically-stored data regarding health and social care data related to Client's Care Recipients) available to IBM only to the extent necessary for IBM to comply with its obligations under this Agreement; and

Client acknowledges and agrees that changes to its Data Sources or changes to implement new codes or functionality may cause compatibility issues with the Cloud Service for which IBM is not responsible. At Client's request, IBM will perform services to resolve the compatibility issues caused by such changes pursuant to a separate Statement of Work and for an additional charge.

8.4 Malware Scanning

Client acknowledges it will not cause harm, interfere with or violate the integrity or security of the Cloud Service and any IBM network or system with the use of viruses or harmful code. Client agrees to scan all attachments prior to uploading to the Cloud Service.

9. Client Data Rights and Use

Client agrees, to the extent permitted by Applicable Law, to the terms of this section titled Client Data Rights and Use:

9.1 Assignment

Client agrees and represents that it has obtained, and is responsible for maintaining, all necessary rights, permissions, consents, authorizations, and permitted waivers of the same (including those required by applicable federal and state law) to disclose the Client Data to IBM and to grant the assignments and licenses described below.

Client will cooperate with IBM and sign any further documents and take any other actions to effectuate the assignment and license rights set forth in this section. This section Client Data Rights and Use and subsections Assignment and License to Client Data survive any termination or expiration of the Cloud Service.

9.2 License to Client Data

Client grants IBM a worldwide, perpetual, fully-paid, royalty-free, irrevocable license to use, import, modify, copy, transmit, display, reproduce, sublicense, aggregate, compile, decompile, manipulate, supplement, adapt, translate and create derivative works based on the Client Data to the extent permitted by Applicable Law.

10. Indemnification

Client agrees to indemnify and defend IBM, its subsidiaries, affiliates, officers, directors, agents, employees, and assigns from and against any third party claims, damages, or losses, including without

limitation penalties imposed by any federal or state government agency, arising from any use of Client Data by IBM in accordance with the Agreement.

11. Termination

11.1 Access and Data Use

Upon termination or expiration of the Cloud Service:

- a. IBM will discontinue Client's (and any Authorized Users') access to the Cloud Service and have no obligation to provide Client (and any Authorized Users, if applicable) access to the Cloud Service; and
- b. in accordance with the terms of the Agreement and to the extent permitted by Applicable Laws, the parties may continue to use any information, Client Data, PI, analyses, or reports generated prior to the termination or expiration date.

11.2 Termination for Cause

IBM may terminate the Cloud Service for cause and without penalty, immediately, if Client fails to comply with any of the terms in the sections titled Client Responsibilities, Client Data Rights and Use or Participants and Complex Organizations. Any failure by Client to comply with these sections will constitute a material breach of the Agreement.

12. Medical Disclaimer

Client acknowledges and agrees the Cloud Service is in no way intended for use in the diagnosis of disease or other conditions, in the cure, mitigation, treatment, or prevention of disease, or for any other purpose that would cause the Cloud Service to be regulated as a medical device in any jurisdiction, as defined under Applicable Law.

Client acknowledges and agrees that the Cloud Service is an information resource only, and is not intended or implied as a substitute for professional medical advice or to be relied upon to provide diagnoses, treatment or otherwise supersede or replace the clinical judgment of licensed medical professionals acting within their scope of practice. Client agrees that it is solely responsible for any practice of medicine or provision of medical services, including any medical decisions, judgments, and actions that it or its Authorized Users may undertake, as well as being solely responsible for ensuring that the documentation of any medical care or patient information provided by Client or Participant's, or by Client's employees or agents is accurate and complete. Client agrees that IBM and its subsidiaries, affiliates, officers, directors, agents, employees and assigns have no responsibility for any decisions made or actions taken or not taken in rendering medical care or providing medical services, or for information provided to patients or caregivers.

13. Participants and Complex Organizations

13.1 Participant Agreement

If Client is a Complex Organization, it may allow its Participants to access and use the Cloud Services, subject to the terms of this section. Client is solely responsible for enforcing the terms of the Agreement on its Participants, overseeing the Participants' use of the Cloud Services, confirming such use is compliant with this Agreement and paying all applicable charges arising from its Participants' access and use of the Cloud Service.

13.2 Participant Rights

A person who is not a party to this Agreement does not have any rights to enforce any term of this Agreement. A Participant is not a party to this Agreement. In no event will IBM have any liability with respect to any claims brought by, or relating to, a Participant. A Participant's sole recourse as between the parties shall be recourse against the Client. In no event may a Participant seek indemnification, or file any action or claim against IBM in connection with or with respect to any matter arising out of the Agreement. Client's agreement with each Participant shall explicitly acknowledge these terms. Notwithstanding IBM's obligation to indemnify Client for an infringement of a third party patent or copyright by the Cloud Service, IBM will have no obligation to indemnify with respect to any third party claim brought against a Participant for infringement of a third party patent or copyright by a Cloud Service.

13.3 Amendments

Client will notify each Participant within thirty (30) calendar days if an amendment to the Agreement is made and will notify IBM, in writing, of any termination of the participation of a Participant within two (2)

calendar days of such termination. Client will also promptly contractually bind its Participants to any amendment made to the Agreement.

13.4 Communication

All communications with IBM regarding any Participants, or Authorized Users affiliated with any Participants, will originate from Client. Neither Participants, nor Authorized Users affiliated with Participants, may communicate directly with IBM.

13.5 Termination

Upon written notice from IBM, Client will promptly take any and all action required to terminate a Participant's access to and use of the Cloud Services, without penalty, if a Participant materially breaches, in IBM's sole judgment, any terms of the Agreement.

13.6 Audit Rights

Upon reasonable notice during the term of the Cloud Service, IBM may audit Client's compliance with this section if it has reasonable cause to believe that Client is in breach of this section. Additionally, IBM may audit Client's compliance with this section without cause, but no more than once per calendar year during the term of the Cloud Service.

13.7 Client Responsibilities for Participants

Client represents and warrants that it has obtained the necessary rights, permissions, consents authorizations, permitted waivers of the same and documentation from any Participants using the Cloud Services to grant the license rights described herein to any Participant Data provided to the Cloud Service.

Client will:

- a. enter into a separate agreement with Participant prior to allowing access to the Cloud Service in order to bind Participant to the terms of this Agreement including but not limited to the terms of the applicable Data Rights and Use sections;
- b. obtain and maintain from each Participant all necessary rights, permissions, consents, authorizations and permitted waivers of the same (including those required by Applicable Law) for Client to grant to IBM the rights and licenses described herein to any Participant Data that may be provided to the Cloud Service;
- c. maintain and provide IBM with a current list of all Participants (including the Participants' business address) who are accessing and using the Cloud Service and promptly provide IBM with updates to such list, including upon request; and
- d. indemnify and defend IBM, its subsidiaries, affiliates, officers, directors, agents, employees, and assigns from and against claims, damages or losses arising from or are related to (i) Participant's use of the Cloud Service or (ii) Client's breach of the terms of this section.

14. Cookies

Client is aware and agrees that IBM may, as part of the normal operation and support of the Cloud Service, collect personal information from Client (your employees and contractors) related to the use of the Cloud Service, through tracking and other technologies. IBM does so to gather usage statistics and information about effectiveness of our Cloud Service for the purpose of improving user experience and/or tailoring interactions with Client. Client confirms that it will obtain or have obtained consent to allow IBM to process the collected personal information for the above purpose within IBM, other IBM companies and their subcontractors, wherever we and our subcontractors do business, in compliance with applicable law. IBM will comply with requests from Client's employees and contractors to access, update, correct or delete their collected personal information.

Appendix A: United States

The following terms replace or modify the referenced terms in the Service Description (SD) for Cloud Services delivered in the United States (US). All terms in the Service Description that are not changed by these Amendments remain unmodified and in effect. This Appendix is comprised of amendments to this SD that are specific to the Client's desired country of operation.

Section 2 Definitions of the SD is amended to include the following:

- k. **42 CFR Part 2** – means the implementing regulations for section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act, as amended by section 527 of the Public Health Service Act, promulgated by the Substance Abuse and Mental Health Services Administration and amended from time to time.
- l. **BAA** – a Business Associate Agreement or Downstream Business Associate Agreement, as applicable, entered into between Client and IBM when Client is a covered entity and IBM is acting as a business associate of Client, as such terms are defined by HIPAA.
- m. **Data Use Agreement (DUA)** – has the meaning set forth under HIPAA.
- n. **De-identified Data** – information that has been de-identified in accordance with HIPAA.
- o. **HIPAA** – the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic & Clinical Health Act, both as amended, including their respective implementing regulations promulgated at 45 C.F.R. Parts 160 and 164.
- p. **Limited Data Set** – has the meaning set forth under HIPAA.
- q. **Part 2 Data – Client Data**, whether or not recorded, which: (i) would identify a Care Recipient as having alcohol or drug abuse disorder either directly, by reference to other publicly available information or through verification of such identification by another person; and (ii) is alcohol or drug abuse information obtained by a Part 2 Program for the purpose of treating alcohol or drug abuse, making diagnosis for that treatment, or making a referral for that treatment.
- r. **Part 2 Program** – means a Program (as defined by 42 CFR Part 2) that receives federal assistance (as set forth under 42 CFR Part 2)
- s. **Protected Health Information (PHI)** – has the meaning set forth under HIPAA.

Section 3 Security Description of the SD is amended to include the following:

IBM agrees to maintain security capabilities and procedures with respect to the Electronic Protected Health Information provided by Client in accordance with the BAA in place between the Parties.

Section 6 Client Responsibilities of the SD is amended to include the following:

6.4 Prohibited Data

Client will not:

- a. input PHI or PI into a task or command pane when that pane is not part of a Care Recipient's identified record;
- b. use the Cloud Service to collect, store or disseminate criminal history record information (as defined by 28 C.F.R. Part 20) to or from Criminal Justice Information Systems ("CJIS Data"); or
- c. use the Cloud Service to process or otherwise transfer any PHI or PI in or to any country outside the US unless Client and IBM have mutually agreed in writing that IBM can accept such data in the In-Scope Jurisdiction and Client and IBM have executed EU model clauses or other agreed applicable and appropriate cross-border transfer documents.

Section 8 Client Data Rights and Use of the SD is amended to include the following:

8.3 HIPAA Regulated Data Rights and Use

If the Client is a “covered entity” or “business associate” (as such terms are defined in HIPAA) or if the Client Data used for the Cloud Service is otherwise PHI, Client agrees to the following:

8.3.1 HIPAA Regulated Assignment

- a. Client agrees and represents that it has obtained, and is responsible for maintaining, all necessary rights, permissions, consents, authorizations, and permitted waivers of the same (including those required by applicable federal and state law) to disclose PHI to IBM and to grant the assignments and licenses described below, subject to the section titled Part 2 Regulated Data Rights and Use if applicable.
- b. Client will cooperate with IBM and sign any further documents and take any other actions to effectuate the assignment and license rights set forth in this section. This section titled HIPAA Regulated Data Rights and Use and subsections titled Assignment, License to Client Data, Data Aggregation and Assignment of De-identified Data, Business Associate Agreement survive any termination or expiration of the Cloud Service.

8.3.2 Business Associate Agreement

To the extent appropriate and required by HIPAA, IBM and Client will enter into a BAA, which will be incorporated into the Agreement and govern the use of PHI in the Cloud Service. PHI may only be used in the Cloud Service pursuant to a fully executed BAA.

8.3.3 License to HIPAA Regulated Data

In addition to the permitted uses and disclosures provided for in the BAA, Client provides IBM the right, as well as the necessary permission as a business associate, to create de-identified data sets from Client PHI. Client also hereby provides IBM the right to use, reproduce, modify, display, disclose and distribute those de-identified data sets for any purpose during and after the term of the Agreement, including aggregating the de-identified data with other de-identified data sets in order to provide services (e.g., insights with respect to data) after which the data may not be disaggregated. Client represents that Client has and will maintain the consents, including those required by applicable federal or state law (e.g., TCPA, HIPAA and HITECH) or other rights needed to provide the rights in this Agreement to IBM.

8.3.4 HIPAA Regulated Data Sources

Client acknowledges and agrees that changes to Client Data Sources or changes to implement new codes or functionality due to HHS required changes to the International Statistical Classification of Diseases and Related Health Problems may cause compatibility issues with the Cloud Service for which IBM is not responsible. At Client’s request, IBM will perform services to resolve the compatibility issues caused by such changes pursuant to a separate Statement of Work and for an additional charge.

8.4 Part 2 Regulated Data Rights and Use

With respect to Part 2 Data disclosed to IBM through the Cloud Service, Client agrees, to the extent permitted by Applicable Law, to the terms of this section titled Part 2 Regulated Data Rights and Use:

8.4.1 Part 2 Regulated Data Assignment

Client agrees and represents that it has obtained, and is responsible for maintaining, all necessary rights, permissions, consents, authorizations, and permitted waivers of the same (including those required by Applicable Law) to disclose Part 2 Data to IBM and to grant the assignments and licenses described below.

Client will cooperate with IBM and sign any further documents and take any other actions to effectuate the assignment and license rights set forth in this section. This section titled Part 2 Regulated Data Rights and Use and subsections Part 2 Regulated Data Assignment and License to Part 2 Regulated Data survive any termination or expiration of the Cloud Service.

8.4.2 License to Part 2 Regulated Data

Client grants IBM a worldwide, perpetual, fully-paid, royalty-free, irrevocable license to use, import, modify, copy, transmit, display, reproduce, aggregate, compile, decompile, manipulate, supplement, adapt, translate and create derivative works based on the Client Data for the purposes of:

- a. providing the Cloud Service to Client; and
- b. analyzing and improving the Cloud Service.

8.4.3 Part 2 Regulated Data Express Consent

Client agrees and represents that if it intends to disclose Part 2 Data to IBM, or if it intends to receive Part 2 Data from a Part 2 Program through the Cloud Service, it will or require the Part 2 Program to:

- a. include IBM as a named recipient of Part 2 Data on the written consent form required under 42 CFR Part 2 (the "Part 2 Consent Form"); and
- b. in the section of the Part 2 Consent Form that describes the permitted purposes of the disclosure, include the following purposes:
 - (1) monitoring of the [Care Recipient]'s progress with treatment provided by the Part 2 Program and otherwise administer the Client's drug court program;
 - (2) coordination among the entities that make up Client and the Part 2 Program;
 - (3) efforts by IBM and the Client to evaluate the quality and effectiveness of the Client;
 - (4) efforts by IBM to analyze and improve the Cloud Service; and
 - (5) efforts by IBM to provide cognitive capabilities to Client.

Section 10 Termination of the SD is amended to include the following:

10.1 Access and Data Use

Upon termination or expiration of the Cloud Service:

- a. IBM will discontinue Client's (and any Authorized Users') access to the Cloud Service and have no obligation to provide Client (and any Authorized Users, if applicable) access to the Cloud Service; and
- b. in accordance with the terms of the Agreement and to the extent permitted by Applicable Laws, the parties may continue to use any information, Client Data, PI, analyses, or reports generated prior to the termination or expiration date.
- c. If Client and IBM have entered into a BAA, IBM will return or destroy any PHI in accordance with the terms of the BAA.

10.2 Termination for Cause

IBM or Client may terminate the Cloud Service for cause and without penalty, immediately, if an individual employed by IBM or Client (or by a Participant, if applicable) has been:

- a. placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a(7);
- b. excluded from government contracts by the General Services Administration; or
- c. convicted of a felony or any crime relating to healthcare.

Section 12 Participants and Complex Organizations of the SD is amended to include the following:

12.8 Participant Business Associate Agreement

Any BAA entered into between IBM and Client: a) engages IBM as a business associate of Client and/or b) engages IBM as the downstream business associate of each Participant through operation of the BAA between such Participants and Client, if applicable. Client agrees and acknowledges that IBM is not separately executing BAA's with Participants. Client further acknowledges and agrees that it is solely responsible for

- a. entering into any required upstream BAA's with each Participant;
- b. ensuring that such upstream arrangements authorize Client to engage IBM as the downstream business associate of all Participants; and
- c. ensuring that such upstream arrangements contain all necessary terms to enable the disclosure of Participant Data that constitutes PHI to IBM and for the Client and Participants to comply with their respective obligations under this Agreement.