

## Service Description

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### IBM ActionOI and IBM CareDiscovery

This Service Description describes the Cloud Service. The applicable order documents provide pricing and additional details about Client's order.

#### 1. Cloud Service

IBM ActionOI and IBM CareDiscovery combine extensive comparative benchmark databases, advanced analytical methods, and flexible reporting to enable healthcare providers to identify areas of opportunity for operational or clinical performance improvement and drive programs and strategies to reduce performance gaps.

##### 1.1 Offerings

The Client may select from the following available offerings.

##### 1.1.1 IBM ActionOI

IBM ActionOI is an operational performance improvement solution that allows Clients to evaluate and compare the operational and financial performance of healthcare providers against best-in-class organizations and facilities of similar size, payer mix, complexity, and patient population.

The following IBM ActionOI Cloud Services are available:

###### a. IBM ActionOI (Small, Medium, and Large Tiers)

IBM ActionOI provides access to financial and operational data for all of the healthcare organizations in the IBM ActionOI comparative databases, including actual and normalized data from over 250 departments for meaningful comparative analysis. It includes flexible report-generation tools to communicate findings, results, and operational changes, and a client-defined indicator wizard to define metrics important to Client's organization. IBM ActionOI also includes Data Sharing options to permit Client to share client-specific information with other IBM ActionOI clients. Access includes User IDs for unlimited users for the duration of the Cloud Service term as shown in the Transaction Documents.

###### b. IBM ActionOI for Small Hospitals

IBM ActionOI for Small Hospitals provides a focused content subset of the complete ActionOI operational benchmarking database limited to a Client-selected maximum of forty (40) departments.

###### c. IBM ActionOI for Non-Providers

IBM ActionOI for Non-Providers is an offering for clients that are not healthcare organizations. IBM ActionOI for Non-Providers provides access to financial and operational healthcare organization data and benchmarks from the IBM ActionOI comparative database for over 250 departments. It includes flexible report-generation tools to communicate findings, results, and operational changes, and a Client-defined indicator wizard to define metrics important to Client's organization. Access includes User IDs for unlimited users for the duration of the Cloud Service term as shown in the Transaction Documents.

###### d. IBM ActionOI Practice Insights

IBM ActionOI Practice Insights leverages the ActionOI framework to help drive performance improvement across physician practices. It provides customized practice-level comparative groups, including variables such as practice specialty, geographical location, accountable care organizations, and workload volumes. IBM ActionOI Practice Insights can be used stand-alone, or together with IBM ActionOI.

###### e. IBM ActionOI Corporate Access & Reporting

IBM ActionOI Corporate Access & Reporting provides access to health system staff in order to report data at the corporate level and access and compare data against other health system clients. It includes:

- Unlimited User Licenses to submit and access data from participating health systems.

- Consolidated data submissions and report generation at the health system level in order to compare to other ActionOI Health System clients.
- Data submission and report generation of shared services departments (e.g., Finance, Information Technology, Human Resources, etc.) at the corporate level only (does not include individual Participants subscribing to ActionOI).
- Data Sharing with other Health System Clients.

Note that IBM ActionOI Corporate Access & Reporting does not support data submissions and report generation at a Participant level.

### 1.1.2 IBM CareDiscovery

IBM CareDiscovery is a clinical performance improvement solution that enables hospitals and health systems to evaluate care outcomes and compare their performance to national norms and trends. Built-in dashboards provide clinicians with an objective picture of individual performance and help identify, support, and monitor improvements. An IBM CareDiscovery subscription includes the setup of up to two (2) Client clinical Data Sources. Additional Data Sources can be added through optional services.

The following IBM CareDiscovery Cloud Services are available:

#### a. **IBM CareDiscovery Transform (Small, Medium, and Large Tiers)**

IBM CareDiscovery Transform provides access to risk-adjusted outcomes of patient care, including length of stay, complications, mortality and costs/charges by department and enables users to benchmark clinical outcomes against IBM 100 Top Hospitals winners, peers groups, and national norms. IBM CareDiscovery Transform is offered is available in Small, Medium, and Large tiers based on hospital Net Patient Revenue (NPR). Access includes User IDs for unlimited users for the duration of the Cloud Service term as shown in the Transaction Documents.

#### b. **IBM CareDiscovery Advance (Small, Medium, and Large Tiers)**

IBM CareDiscovery Advance includes the features of IBM CareDiscovery Transform and adds more detailed billing data ("Transaction Detail Data") that can be used to analyze inpatient and outpatient care, including costs and charges by department. With CareDiscovery Advance clinicians can perform root cause analysis on critical patient outcomes and their drivers, and monitor strategy effectiveness, resource optimization, and quality issues affecting delivery of care. IBM CareDiscovery

#### c. **IBM CareDiscovery Secure ID Token**

IBM CareDiscovery Secure ID Token provides the replacement of a lost RSA Secure ID two-factor authentication fob. The RSA Secure ID fob is required by a CareDiscovery user to access IBM CareDiscovery Transform or IBM CareDiscovery Advance.

### 1.1.3 IBM Healthcare Cost and Care Insights

#### a. **IBM Healthcare Cost and Care Insights Operational Scorecard**

Client must acquire entitlements to this service when entitled to ActionOI. This service provides an interactive view of operational performance metrics accessible by stakeholders across the subscriber organization. Providing summary and detailed level operational performance views through system level, facility, and department metric comparisons.

Access includes User IDs for 10 users per Location for the duration of the Cloud Service term as shown in the Transaction Documents.

#### b. **IBM Healthcare Cost and Care Insights Outcome Measures Scorecard**

Client must acquire entitlements to this service when entitled to CareDiscovery. This service provides an interactive view of quality performance metrics accessible by stakeholders across the subscriber organization. Providing summary level quality views through service line, physician and clinical population metrics.

Access includes User IDs for 10 users per Location for the duration of the Cloud Service term as shown in the Transaction Documents.

c. **IBM Healthcare Cost and Care Insights Executive Scorecard**

Client must acquire entitlements to this service when entitled to ActionOI and CareDiscovery. This service provides an interactive view of quality and operational metrics accessible by stakeholders across the subscriber organization:

- (1) Executive level summary in a single view
- (2) Detailed Quality and Operational views
- (3) System level and Location comparison, along with department, service line, physician and clinical population metrics
- (4) Automated operational benchmark methodology – comparison against expected values based on factors that impact performance.
- (5) Patient Satisfaction comparison

Access includes User IDs for 20 users per Location for the duration of the Cloud Service term as shown in the Transaction Documents.

## **1.2 Optional Services**

### **1.2.1 IBM ActionOI**

No optional services are provided for IBM ActionOI.

### **1.2.2 IBM CareDiscovery**

The following optional services are provided for IBM CareDiscovery:

a. **IBM CareDiscovery Clinical Evidence Module**

IBM CareDiscovery Clinical Evidence Module provides CareDiscovery access to IBM Micromedex disease and condition management content to systematically identify clinical populations with potentially significant performance opportunities.

b. **IBM CareDiscovery Provider Profile**

IBM CareDiscovery Provider Profile provides user-configured, highly focused, physician-level performance reporting leveraging patient populations.

### **1.2.3 IBM Healthcare Cost and Care Insights Additional Users**

A Client can purchase additional authorized users for a fee for the duration of the Cloud Service term as shown in the Transaction Documents.

## **1.3 Acceleration Services**

### **1.3.1 IBM ActionOI**

The following acceleration services are provided for IBM ActionOI:

a. **IBM ActionOI Managed Data Submission Services**

IBM ActionOI Managed Data Submission Services is a service where an IBM ActionOI subject matter expert facilitates the collection and completion of data entry of financial, payroll, workload volume and general Location-level data for ActionOI on behalf of Client.

b. **IBM ActionOI Managed Reporting Services**

IBM ActionOI Managed Reporting Services provides an ActionOI subscribing hospital Location with assistance in developing and generating reports from the IBM ActionOI solution.

c. **IBM ActionOI Data Assessment Services**

IBM ActionOI Data Assessment Services is a service where an IBM subject matter expert performs a review of the ActionOI program configuration and data submission. The service provides an electronically delivered assessment report of the findings and recommendations, and a one-hour conference call to review the report with Client.

d. **IBM ActionOI Data Correction Services**

IBM ActionOI Data Correction Services is a service typically provided as a follow-up to an ActionOI Data Assessment. IBM will implement changes in the ActionOI program configuration as

recommended in the ActionOI Data Assessment Report or otherwise or implement Client requested changes for the data reporting quarter period selected by Client.

e. **IBM ActionOI System Conversion Services**

IBM ActionOI System Conversion Services is implements changes to the Cloud Service configuration to address Client changes to their general ledger and/or payroll systems.

f. **IBM ActionOI Reimplementation Services**

IBM ActionOI Reimplementation Services is a service that can be used in the event that changes to the Client's Data and/or operational systems require a full reimplementation of client's previously deployed Cloud Service environment.

g. **IBM ActionOI New Program Coordinator Support and Transition Training**

IBM ActionOI New Program Coordinator Support and Transition Training is a remotely delivered education program designed for new Program Coordinators who have assumed responsibilities for collecting and submitting ActionOI data. The program helps develop the skills and knowledge needed to successfully submit ActionOI data on an ongoing basis and continue their organization's participation in the ActionOI program.

### 1.3.2 IBM CareDiscovery

The following acceleration services are provided for IBM CareDiscovery:

a. **IBM CareDiscovery Core Measure Data Import**

IBM CareDiscovery Core Measure Data Import allows viewing of core regulatory reporting measures from Client's core measure reporting system within IBM CareDiscovery.

b. **IBM CareDiscovery Historical Data Integration**

IBM CareDiscovery Historical Data Integration is a one-time setup option to integrate up to two years of client historical data for analysis in CareDiscovery.

c. **IBM CareDiscovery Data Updates for Client Error**

IBM CareDiscovery Data Updates for Client Error is a service for the correction of CareDiscovery data records resulting from a Client error in the submission of their CareDiscovery data. A standard charge applies for the first occurrence of a Client submission error. Additional charges apply for each successive Client submission error in the same calendar year.

d. **IBM CareDiscovery Limited Reimplementation to Add Client Outpatient Data**

IBM CareDiscovery Limited Reimplementation to Add Client Outpatient is a service that reconfigures the CareDiscovery implementation to enable processing of Client outpatient data.

e. **IBM CareDiscovery Limited Reimplementation to Convert Submission Format**

IBM CareDiscovery Limited Reimplementation to Convert Submission Format is a service that reconfigures the CareDiscovery implementation to accommodate changes in the data submitted by Client.

f. **IBM CareDiscovery Conversion to Advance**

IBM CareDiscovery Conversion to Advance is a service that reconfigures an IBM CareDiscovery Transform cloud service to an IBM CareDiscovery Advance cloud service.

g. **IBM CareDiscovery Conversion to Transform**

IBM CareDiscovery Conversion to Transform is a service that reconfigures an IBM CareDiscovery Advance cloud service to an IBM CareDiscovery Transform cloud service.

h. **IBM CareDiscovery Additional Data Source Integration**

IBM CareDiscovery Additional Data Source Integration is used for the setup of additional Content Data Sources not included under the IBM CareDiscovery Transform or IBM CareDiscovery Advance services.

i. **IBM CareDiscovery Advance Re-Implementation**

IBM CareDiscovery Advance Re-Implementation is a remotely delivered service engagement required in the event that changes to the Client's Data and/or EHR systems require a re-implementation of client's previously deployed Cloud Service environment.

j. **IBM CareDiscovery Transform Re-Implementation**

IBM CareDiscovery Transform Re-Implementation is a remotely delivered service engagement required in the event that changes to the Client's Data and/or EHR systems require a re-implementation of client's previously deployed Cloud Service environment.

k. **IBM CareDiscovery Cumulative Data Upload**

IBM CareDiscovery Cumulative Data Upload is a service that allows client to choose to provide a calendar year-to-date ("YTD") file with each monthly submission (e.g., for a September submission, Subscriber will send a file with January – September data), which will replace the previous submitted YTD file. The full yearly file can be resubmitted once during the year following December submission. Data files need to be submitted with clean time frames.

l. **IBM CareDiscovery Data Re-Submission**

IBM CareDiscovery Data Re-Submission is a remotely delivered service for the reprocessing of CareDiscovery data records.

**1.3.3 IBM Healthcare Cost and Care Insights Guidance**

This remotely delivered subscription service is required by Clients who subscribe to ActionOI and/or CareDiscovery and IBM Healthcare Cost and Care Insights. This service supports an organization's development of continuous improvement by identification of key performance opportunities, implementation of improvement plans, and measurement of performance. An IBM Client Success Management resource will:

- a. engage and align with stakeholders to identify key areas of improvement;
- b. work with improvement teams to establish targets, measure success metrics, and align on improvement approach and change management; and
- c. provide regular assessment of performance improvement program and progress to targets and communicate results.

**2. Data Processing and Protection Data Sheets**

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the Cloud Services and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies to personal data contained in Content, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

**IBM ActionOI**

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=3960EDE082B311E7A1A213628837956C>

**IBM CareDiscovery**

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=AF8C336052C711E7B92CB18ED43A434A>

**3. Service Levels and Technical Support**

**3.1 Service Level Agreement**

This Cloud Service does not provide an availability SLA.

**3.2 Technical Support**

Technical and content support for the Service is provided. Support contact information and other details about support operations can be found at: [https://www-01.ibm.com/software/support/watsonhealth/truven\\_support.html](https://www-01.ibm.com/software/support/watsonhealth/truven_support.html). Technical and content support is offered with the Service and is not available as a separate offering.

## 4. Charges

### 4.1 Charge Metrics

The charge metric(s) for the Cloud Service are specified in the Transaction Document.

The following charge metrics apply to this Cloud Service:

- Net Patient Revenue (NPR) is total inpatient and outpatient services revenue minus related expenses in US Dollars, as reported in the most recent data from the CMS Medicare Cost Report published by Definitive Healthcare, LLC. Non-US dollar currencies are converted to US dollars in accordance with the conversion unit table at [http://www.ibm.com/software/passportadvantage/conversion\\_unit\\_table.html](http://www.ibm.com/software/passportadvantage/conversion_unit_table.html).
- US Dollars Total Revenue is the total amount of Client's annual sales and other sources of income as stated in the most recent public report issued by the Client, or for non-public companies, Client's most recent audited financial report. Non-US Dollar currencies are converted to US Dollar equivalent in accordance with the conversion unit table at [http://www.ibm.com/software/passportadvantage/conversion\\_unit\\_table.html](http://www.ibm.com/software/passportadvantage/conversion_unit_table.html).
- Location is a single physical site corresponding with a business address for such physical site accessing the Cloud Services.
- Item is an occurrence of a specific item that is managed by, processed by, or related to the use of the Cloud Service.
- Request is the act by the Client authorizing IBM to perform a service submitted to or managed by the Cloud Services.
- Engagement is a professional or training service related to the Cloud Services.
- Authorized User is a unique user authorized to access to the Cloud Services in any manner directly or indirectly (for example, through a multiplexing program, device or application server) through any means.

### 4.2 Remote Services Charges

A remote service will expire 90 days from purchase regardless of whether the remote service has been used.

## 5. Additional Terms

For Cloud Service Agreements (or equivalent base cloud agreements) executed prior to January 1, 2019, the terms available at <https://www.ibm.com/acs> apply.

### 5.1 Client Responsibilities

#### 5.1.1 Authorized Users

Client is solely responsible for the use of the Cloud Service by its authorized users and will:

- a. ensure that each authorized user is an employee, agent, volunteer or other member of the Client's workforce or of a Contractor or Participant that Client permits to use the Cloud Service, and is bound to the same terms as between Client and IBM regarding access and permitted uses of the Cloud Service;
- b. safeguard any authorized user login credentials;
- c. be responsible for assigning appropriate user roles and access levels to each authorized user;
- d. promptly terminate authorized user accounts when applicable;
- e. promptly reassign authorized user roles and access levels as applicable; and
- f. notify IBM promptly if a compromise of an authorized user login credential is suspected or detected.

#### 5.1.2 Consent Management

Client is responsible for having and maintaining the consents, authorizations and/or other legal permissions required by federal, state or other applicable law to provide Content to IBM and to permit IBM to process and use Content and other personal data as specified in the Agreement, including with respect to all data provided by its Participants and authorized users. The consent management tools and systems associated with Content are maintained by Client outside the Cloud Service ("Client Consent Tools") and

it is the responsibility of the Client to ensure that Content in the Cloud Service is used, stored, and processed in accordance with such Client Consent Tools.

### **5.1.3 Data Governance**

Client is responsible for designing, updating and enforcing data governance policies for Content ("Data Governance Policies"), which must include at least: documentation about which authorized users and/or Participants or authorized users of Participants may access which Content and any authorized user or authorized user of a Participant-specific access restrictions and documentation of any data elements that should be excluded prior to configuration of a Data Source, and that it is authorized to design, update, and enforce such policies on behalf of its Participants (if applicable).

### **5.1.4 Data Sources**

Client will ensure that all Content submitted to the Cloud Service is prepared and provided to IBM in accordance with IBM's standard policies schedules, formats and specifications in effect (the "Submission Requirements"). In the event of a failure to comply with the Submission Requirements IBM will maintain Client's access to the Cloud Service but IBM will not process Content for the then-current data cycle, and Client will continue to be responsible for all charges set forth in the PoE.

## **5.2 IBM Micromedex RED BOOK™ Disclaimer**

IBM CareDiscovery may make use of IBM Micromedex RED BOOK data within its analytical algorithms. The prices contained in RED BOOK are based on data reported by pharmaceutical and device manufacturers. IBM has not performed any independent analysis of the actual prices paid by wholesalers and medical providers in the marketplace. Thus, actual prices paid by wholesalers and medical providers may well vary from the prices contained in this database and all prices are subject to change without notice.

## **5.3 IBM ActionOI for Non-Providers**

In addition to any other restrictions:

- a. Client will ensure that its authorized users will use the Cloud Service only for Client's internal business operations and analysis, except that summaries, reports and analyses prepared by Client as a consultant to Client's healthcare provider and health system customers ("Healthcare Customers") may incorporate information generated by the Cloud Service, provided that: Client may not: i) assign or resell direct access to information from the Cloud Services to a third party outside Client's Enterprise; or iii) combine information from the Cloud Services with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed; or iii) assign or resell information from the Cloud Services as a stand-alone deliverable.
- b. Client's Customer Reports shall include a citation in substantially the following form:  
*Certain data used in this study was supplied by International Business Machines Corporation. Any analysis, interpretation, or conclusion based on this data is solely that of the authors, and not International Business Machines Corporation.*

## **5.4 Client Acknowledgments**

IBM is acting as an information technology provider only. IBM does not purport to be engaged in the practice of medicine or any other professional clinical or licensed activity, and the Cloud Service, all components thereof and future updates thereto, and all deliverables of related IBM professional services are not designed or intended to constitute protocols for delivering medical care, a substitute for professional medical advice, diagnosis or treatment or judgment, a drug, drug-adjunct technology, or drug development tool subject to quality system requirements or medical device as defined under the laws of any jurisdiction. As between IBM and Client, Client is solely responsible for complying with all such laws and regulations relative to Client's use of the Cloud Service and IBM's professional services.

Client is solely responsible for any practice of medicine or medical services, including any medical decisions, judgments, and actions that it or its Participants or authorized users may undertake, and is solely responsible for ensuring that the documentation of any medical care or patient information provided by it, its employees or agents is accurate and complete. IBM and its employees have no responsibility for any decisions made or actions taken or not taken in rendering medical care, or for information provided to patients or caregivers.

Client agrees not to use any name, trade name, trademark, or other designation of IBM, including any contraction, abbreviation, or simulation of any of the foregoing in advertising, promotion, publication, publicity, or any marketing activity without IBM's prior written consent.

The Cloud Service contains materials from third party copyrighted sources. Client agrees to additional terms imposed by such third parties which are contained or referenced in Exhibit A below ("Third Party Notices"). In the event that any third party source of data included by IBM in the Cloud Service terminates the release of such data, or modifies the terms of disclosure or nature of such data, in either event such that the fundamental nature or value of the Cloud Services provided by IBM are materially and adversely affected as determined by IBM in its discretion, then IBM may terminate the Transaction Document and refund to Client any portion of the fees which are attributable to the remaining portion of the Term as indicated in the Transaction Documents, as full satisfaction of all obligations of IBM pursuant to the Base Agreement.

## 5.5 Definitions

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

- a. **BAA** – has the meaning set forth in HIPAA.
- b. **Complex Organization** – a network of Participants that coordinates and collaborates on the delivery of healthcare services to a given patient population (for example, accountable care organizations, physician health organizations and clinically integrated networks).
- c. **Data Source** – a source of Content that is identified as having a unique origin, back-end database, and workflow implementation.
- d. **HIPAA** – the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act, both as amended, including their implementing regulations promulgated at 45 C.F.R. Parts 160 and 164.
- e. **Participant** – each entity that a) has agreed with Client to participate in coordinated and/or collaborative activities involving health care; b) has agreed that Client can bind it to the terms of this Agreement; and c) which Client permits to access the Cloud Service.
- f. **Participant Data** – any information (including personal health data such as PHI) provided to IBM by Participants directly or by Client on behalf of Participants, in connection with the Cloud Service. Participant Data is Content as such term is used in the Agreement.
- g. **Protected Health Information (PHI)** – has the meaning set forth in HIPAA.

## 5.6 Participants

If Client is a Complex Organization, it may allow its Participants to access and use the Cloud Service, subject to the terms of this section. Prior to allowing a Participant to access and use the Cloud Service, Client will enter into an agreement with such Participant to bind it to the terms of the Agreement. Client will maintain a current list of all Participants (including the Participants' business address) who are accessing and using the Cloud Service, and promptly provide IBM with such list and any updates to such list, upon request. All communications with IBM regarding Participants will originate from Client. Participants may not communicate directly with IBM. Client will notify IBM, in writing, of any termination of the participation of a Participant within two (2) calendar days of such termination. Upon written notice from IBM, Client will promptly take all action required to terminate a Participant's use of the Cloud Service if a Participant materially breaches any terms of the Agreement.

## 5.7 United States Additional Terms

PHI may only be used with the Cloud Service provided that a BAA that will govern such PHI has been validly executed between Client and IBM and is linked to the transaction documents by which Client has acquired access to the Cloud Service. Such BAA shall govern any PHI used with the Cloud Service, and is incorporated herein by reference.

Any BAA entered into between IBM and Client: a) engages IBM as a business associate of Client and b) engages IBM as the downstream business associate of each Participant through operation of the business associate agreements between such Participants and Client. IBM is not separately executing business associate agreements directly with such Participants. Client is solely responsible for a) entering into any required upstream business associate agreements or other consents 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 all Data that constitutes PHI.

## **5.8 Debarment**

To the extent applicable to the services being provided to Client, IBM will not use any individual to perform services for Client who is currently on the exclusion list issued by the Office of the Inspector General of the U.S. Department of Health and Human Services pursuant to the provisions of U.S.C. §1320a(7) or the excluded parties list system maintained by the U.S. General Services Administration, or is otherwise debarred, disqualified, excluded or subject to sanctions by any U.S. federal or state government or regulatory authority. If IBM becomes aware that an individual used by IBM to perform services for Client has been debarred, disqualified, excluded or sanctioned, IBM will promptly notify Client and cease utilizing such individual to perform services for Client. Client may terminate Client's subscription to the Cloud Service without penalty, if IBM is debarred, disqualified, excluded or subject to sanctions by any U.S. federal or state government or regulatory authority.

## **6. Overriding Terms**

### **6.1 Data Use**

The following prevails over anything to the contrary in the Content and Data Protection section of the base Cloud Service terms between the parties: IBM will not use or disclose the results arising from Client's use of the Cloud Service that are unique to Client's Content (Insights) or that otherwise identify Client. IBM may however use Content and other information (except for Insights) that results from Content in the course of providing the Cloud Service subject to removing personal identifiers; so that any personal data can no longer be attributed to a specific individual without the use of additional information. IBM will use such data only for research, testing, offering development and data aggregation services. The provisions of this section will survive the termination or expiration of the transaction.

In addition to the permitted uses and disclosures granted in the BAA, Client also provides IBM the right, as well as the necessary permission as a business associate, to create de-identified data sets from Content as well as create limited data sets and perform data aggregation services. Additionally, IBM has the right to use, modify, disclose and distribute those data sets for any purpose during and after the term of the Agreement and Client's subscription to the Cloud Service.

### **6.2 Processing of Personal Data**

The following prevails over anything to the contrary in the Content and Data Protection section of the base Cloud Service terms between the parties: Pursuant to the Agreement, both Client and IBM understand that IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit(s) apply and supplement the Agreement if and only to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in Content. This Cloud Service is not currently designed to process any personal data subject to the GDPR and as such, the DPA and any applicable DPA Exhibit(s) are out of scope for the Cloud Services. Client warrants that no personal data subject to GDPR is or will be contained in Content or provided to IBM as a Processor on behalf of the Client as part of the Cloud Service provision.

If Client does seek to provide personal data subject to the GDPR to IBM as a processor, then prior to providing such data, the Client shall notify IBM in writing and if IBM consents in writing to receive such data, after such consent, Client may provide such data, and Client and IBM will comply with their respective obligations under the GDPR, then the DPA and applicable DPA Exhibit(s) referenced in the Agreement shall apply and supplement the Agreement.

### **6.3 Use of Content**

The following prevails over anything to the contrary in the Content and Data Protection section of the base Cloud Service terms between the parties: Client grants IBM a worldwide, nonexclusive, perpetual, royalty-free right to use, copy, distribute, display, modify, sub-license, sell, lease, assign and incorporate into other products and services:

- a. Client Information, masked to prevent identification of patients or Client as the source of specific data (except to the extent Client may in accordance with a Data Sharing agreement be identified as among the organizations covered by such agreement, if any such agreement is executed by Client

hereunder); including the combining and aggregation with Client Information received from other Clients of IBM for the provision of data aggregation services.

#### **6.4 Feedback**

The following prevails over anything to the contrary in the Content and Data Protection section of the base Cloud Service terms between the parties: Client may suggest that IBM enhance the Cloud Service or IBM's other offerings or services ("Feedback"). Client is under no obligation to provide Feedback and IBM is free to use all Feedback that Client provides.

## Third Party Licensee Provisions and Agreements

### 1. American Medical Association

IBM is authorized by the American Medical Association (AMA) to distribute and sublicense Current Procedural Terminology, Fourth Edition, a coding system of nomenclature and codes for reporting of healthcare services (collectively, "CPT"), as part of the Program, provided that Licensee is bound by certain terms and conditions. Licensee's rights to use the CPT terminate if Licensee fails to comply with any of the material terms and conditions thereof.

The terms and conditions that apply to the Program generally also apply to the CPT. The following are the additional terms and conditions that apply to the CPT:

- a. Licensee's right to use the CPT contained within the Program is nontransferable, nonexclusive, and for the sole purpose of internal use by Licensee, and only within:  
Algeria, Argentina, Australia, Bahamas, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Republic of Korea (South Korea), Lebanon, Mexico, New Zealand, Norway, Panama, Philippines, Portugal, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and its territories, and Venezuela.
- b. Licensee is prohibited from publishing, distributing via the Internet or other public computer-based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party, the CPT, or a copy or portion of the CPT.
- c. The provision of an updated version of CPT in the Program is dependent upon IBM's continuing contractual relations with the AMA.
- d. Licensee shall require that anyone who has authorized access to the Program complies with the terms and conditions that apply to the Program.
- e. CPT is copyrighted by the AMA and is a registered trademark of the AMA.
- f. The Program includes CPT which is commercial technical data which was developed exclusively at private expense by the American Medical Association, 330 North Wabash Avenue, Chicago, Illinois 60611. The American Medical Association does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items) or any other license provision. The American Medical Association reserves all rights to approve any license with any Federal agency.
- g. Licensee may only make copies of the CPT for back up or archival purposes.
- h. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back-up or archival copies made.
- i. The CPT is provided "as is" without any warranty from or liability to the AMA, including, without limitation, liability for consequential or special damages or lost profits for sequence, accuracy or completeness of data, or that it will meet Licensee's requirements, and the AMA's sole responsibility is to make available replacement copies of the CPT if the data is not intact, and the AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in the CPT.
- j. Licensee's rights to use the CPT terminates in the event of default.
- k. In the event that a provision is determined to violate any law or is unenforceable the remainder of the terms and conditions that apply to the Program shall remain in full force and effect.
- l. To the extent necessary to enforce its intellectual property rights that arise as a result of material breaches of the terms and conditions that apply to the Program, the AMA is a third-party beneficiary.