# MASTER SERVICES AGREEMENT

This Master Services Agreement ("MSA") is made between CareDx Transplant Management, Inc. ("CTM"), a Nebraska corporation with an address at P.O. Box 642087, Omaha, NE 69164, and the customer set forth in the Order Form ("Customer") and is made effective as of the date of the Order Form ("Effective Date"). In consideration of the terms and conditions and mutual obligations contained in this Agreement, the parties agree as follows:

## 1. DEFINITIONS

The following terms used in this Agreement shall have the meanings set forth below:

1.1 "Agreement" means (a) the terms set forth in the body of this Master Services Agreement; (b) any and all Order Forms; (c) Documentation; and (d) the Business Associate Addendum (as defined in Section 5.1), if any.

1.2 "Customer Data" means all data, information, materials, and other content uploaded, submitted, or input into the SaaS by, or on behalf of, Customer and its Users. Where Customer subscribes to any two or more CTM SaaS or SaaS Products, Customer Data will automatically be integrated into a patient-specific profile.

1.3 "Order Form" means an order form signed by both Customer and CTM that references this Master Services Agreement and describes the SaaS and/or Professional Services to be provided by CTM to Customer hereunder and additional terms applicable thereto.

1.4 "Professional Services" means any training, consulting, administrative, or other services identified on an Order Form to be provided by CTM to Customer hereunder.

1.5 "SaaS" means any online software-as-a-service application identified as a "SaaS Product" on an Order Form to be provided by CTM to Customer.

1.6 "Solution" means any and all software, services, Documentation, Work Product (as defined in Section 7.1), SaaS Outputs (as defined in Section 7.2), and other materials made available by CTM to Customer under this Agreement, including any SaaS and Professional Services. The Solution does not include Customer Data.

## 2. SOFTWARE AS A SERVICE (SAAS)

2.1 **Access and Use.** If an Order Form specifies a SaaS Product, Customer, through its Users (as hereinafter defined), may access and use the SaaS solely for Customer's internal business purposes to support Customer's own medical, clinical, and administrative practice or facility, subject to the terms and conditions of this Agreement. Customer shall ensure that access to and use of the SaaS is limited to employees and consultants of Customer who are authorized by Customer to use the SaaS on behalf of Customer ("Users"). Customer shall be responsible for its Users' compliance with this Agreement and all activity occurring under its Users' accounts. Customer shall secure, and ensure that its Users secure, all User accounts and passwords. CTM is not responsible for any losses, damages, costs, expenses, or claims that result from stolen or lost passwords resulting from Customer's failure to secure. Customer will notify CTM promptly of any unauthorized access to, or use of, the SaaS. The subscription fee ("SaaS Subscription Fee") and any other fees associated with providing the SaaS Product shall be specified on the Order Form.

2.2 **Restrictions.** Customer shall not (a) use the SaaS except as explicitly permitted in, and in accordance with, this Agreement; (b) upload, submit, or input any Customer Data (or otherwise use the SaaS to store or transmit any content) that (i) is obscene, libelous, or otherwise unlawful or tortious or that violates any third

party rights (including privacy rights and intellectual property rights) or (ii) contains or redirects to a virus, Trojan horse, worm, or other harmful component; (c) use the SaaS to provide any time sharing or service bureau services or otherwise commercially exploit or make available the SaaS for the benefit of or on behalf of any third party; (d) directly or indirectly sublicense, relicense, distribute, or disclose the SaaS or any portion thereof; (e) modify or create any derivative works based upon the SaaS; (f) cause or permit any reverse engineering, disassembling, decompiling, or other attempts to derive source code from the SaaS or any part thereof; (g) disclose or publish performance benchmark results for the SaaS; (h) show, disclose, provide access to, or make any component of the Solution available to any CTM competitors or assist any third party in developing, improving, or enhancing any software based in whole or in part on the rules, training, support materials, data collection techniques, screen layouts, reports, or other proprietary aspects of the SaaS; (i) interfere with or disrupt the integrity or performance of the SaaS, CTM's computer systems, or CTM's business operations; (j) remove, modify, or obscure any proprietary notices associated with any part of the Solution; (k) use the SaaS in violation of any applicable laws, rules, or regulations; (l) use or represent that the SaaS can be used in a manner that would render it subject to regulation as a medical device by FDA; or (m) authorize, permit, or encourage any third party to do any of (a)-(k) above ((a)-(m), "Usage Restrictions").

2.3 **Suspension of SaaS.** Notwithstanding anything in this Agreement to the contrary, CTM reserves the right to suspend Customer's or any User's access to the SaaS with notice to the Customer in the event (a) Customer or any User violates any Usage Restrictions or otherwise breaches this Agreement; (b) Customer's use of the SaaS is reasonably likely to adversely affect the operation of the SaaS for other Customers or the integrity of the SaaS (e.g., extraordinary bandwidth usage, uploaded files that contain malicious content, etc.); (c) CTM reasonably believes that continued provision of the SaaS would result in violation of any law; (d) CTM reasonably believes that suspension is necessary to protect the security of Customer Data, the SaaS, or CTM's systems; or (e) Customer fails to pay any Fees or Expenses when due and does not remedy such failure within thirty (30) days of the applicable due date and after CTM provides prior notice to Customer.

2.4 **Documentation.** CTM may make available to Customer instructions, manuals, and other materials related to the SaaS ("Documentation"). Customer shall ensure that the SaaS is used only in accordance with applicable Documentation.

2.5 **Customer Systems; Internet Access.** As between CTM and Customer, Customer is responsible for (a) obtaining and maintaining Internet access and all hardware, software, equipment, and ancillary services (collectively, the "Customer Systems") that are necessary to access and use the SaaS; (b) ensuring that its Customer Systems meet any minimum requirements specified in the Documentation; (c) maintaining the security of Customer Systems and its access to the Internet; and (d) setting up, surveilling, and maintaining interfaces.

2.6 **Customer Data.** As between CTM and Customer, Customer is responsible for (a) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; and (b) providing notices to, and/or obtaining consents, permissions, or approvals from, third parties (including patients) as necessary to use the Customer Data with the SaaS.

2.7 **Service Levels.** CTM uses commercially reasonable efforts to make the SaaS accessible 24 hours a day, 7 days a week, except for (i) planned downtime (of which CTM shall give advance electronic notice) and (ii) any unavailability caused by circumstances beyond CTM's reasonable control (including Force Majeure Events).

2.8 **Security.** CTM shall implement security measures and maintain safeguards that are reasonably intended to preserve the confidentiality, integrity, and availability of the SaaS and Customer Data and which are consistent with current commercial practices in the industry. Customer will not attempt, and will not permit, any of its Users to attempt, to disable, modify, or circumvent any security safeguard adopted by CTM. Customer acknowledges and agrees that CTM may monitor, record, and audit Customer, including any User's, use of the SaaS in order to protect the security of all hosted information and the security of CTM's information systems. The parties

expressly recognize that, although CTM shall take such reasonable steps, or cause such reasonable steps to be taken, to prevent security breaches, it is impossible to maintain flawless security.

2.9 **Updates.** Customer acknowledges that the SaaS may be updated from time to time and that updates may result in changes to the SaaS, including changes in the appearance and/or functionality of the SaaS and/or the addition, modification, or removal of functionality or features. Such updates will not materially diminish the functionality of the features.

2.10 **Reservation of Rights.** Subject to the rights expressly granted hereunder, as between CTM and Customer, CTM retains all right, title, and interest in and to the Solution (excluding Customer Data). No intellectual property or other rights or licenses are granted or otherwise provided by CTM under this Agreement, by implication, estoppel, or otherwise, beyond those expressly provided for herein.

## 3. PROFESSIONAL SERVICES

3.1 **Implementation Services.** If described in an Order Form, CTM shall provide services for set-up/implementation of the SaaS in Customer's environment ("Implementation Services") in accordance with a mutually agreed to implementation plan that, to the extent appropriate for the engagement, defines roles and responsibilities, tasks, milestones, deliverables, and acceptance criteria. The implementation plan shall be set forth in, or attached to, the Order Form. Customer shall be deemed to have accepted the SaaS upon the earlier of (a) the date of Customer's first use of the SaaS and (b) the date CTM provides notice to Customer that the SaaS is ready for live use.

3.2 **Other Services.** In addition to Implementation Services, CTM may provide other Professional Services, if any, identified on an Order Form. Customer acknowledges that (a) the Professional Services will be performed, and any deliverables will be developed, solely in accordance with the requirements set forth on the Order Form, which requirements may or may not reflect the current or future business or technological needs of Customer, and (b) CTM shall not be responsible for any incompatibility or non-functionality of deliverables in the event Customer changes its business or technological plans or makes any updates or changes to Customer Systems (including in relation to data conversion or interface changes or updates).

3.3 **Changes.** Customer may request changes that affect the scope or duration of Professional Services. If Customer requests any such changes, then CTM shall promptly notify Customer if it believes that an adjustment in the fees or timelines set forth in an Order Form is required. Additionally, Customer acknowledges that in determining and establishing plans for Professional Services, CTM must rely on information provided by Customer and make certain assumptions based on such information, and Customer acknowledges that any deviation from such assumptions may require changes to the scope or duration of Professional Services. If the parties mutually determine that any adjustment to an Order Form is necessary, the parties shall negotiate in good faith to agree upon a reasonable and equitable adjustments and shall amend the Order Form accordingly.

## 4. PAYMENT

4.1 **Fees and Expenses.** Customer shall pay (a) the fees set forth on Order Form (subject to Section 4.5 below) ("Fees") and (b) travel and other out-of-pocket expenses incurred in connection with the performance of Professional Services ("Expenses"). With respect to travel Expenses, CTM will follow reasonable requirements in Customer's travel policy, provided that a written copy of such policy is provided to CTM prior to CTM incurring any Expenses. All Fees and Expenses are non-cancelable, non-refundable, and non-contingent. Upon Customer's reasonable request, CTM shall furnish appropriate documentation to verify Expenses.

4.2 **Invoicing; Payment.** CTM shall invoice Customer in accordance with the billing frequency specified in the Order Form. Customer shall pay invoices within thirty (30) days of the date of invoice. Payment must be in U.S. dollars and sent to the attention of CTM's Finance Department.

4.3 **Taxes.** All amounts payable by Customer under this Agreement are exclusive of applicable sales, use, VAT, and other taxes or similar governmental charges that may be assessed in any jurisdiction ("Taxes"). Customer will pay all Taxes unless Customer provides CTM with a valid certificate of exemption or other similar proof of exemption acceptable to the applicable taxing authority.

4.4 **Late Payments.** CTM may discontinue performance under this Agreement (subject to the notice requirements in Section 2.3(e) with respect to suspension of the SaaS) if Customer fails to pay any undisputed amounts when due. CTM reserves the right to charge and collect, and Customer agrees to pay, a service fee on any unpaid, undisputed past-due amounts equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law. Prior to charging any interest, CTM shall provide Customer with notice of Customer's late payment and provide Customer with a 10 business day cure period. If the invoice remains unpaid following such cure period, CTM may charge the interest described herein.

4.5 **Pricing Changes.** After the Initial Term as specified in the Order Form, Fees and Expenses may be increased upon thirty (30) days prior written notice to Customer; provided, however, CTM may not make any such adjustment more frequently than once every twelve (12) months.

4.6 **Disputed Amounts.** If Customer reasonably believes there are any errors on any invoice or otherwise in good faith disputes any invoiced amounts, Customer shall (a) contact CTM in writing within thirty (30) days of the date of the disputed invoice and provide a reasonably detailed explanation of why Customer disputes the amount, (b) pay all undisputed amounts in-full when due, and (c) cooperate diligently to resolve the dispute.

## 5. ADDITIONAL RIGHTS AND OBLIGATIONS

5.1 **HIPAA.** If Customer is a "covered entity" as defined by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") and the Customer Data includes Protected Health Information as such term is defined in HIPAA ("PHI"), then the provision of the Solution under this Agreement will be subject to, and Customer and CTM agree to be bound by the terms of, the Business Associate Addendum (BAA) between Customer and CTM attached hereto as Appendix A ("Business Associate Addendum"). Customer agrees that CTM may use, where necessary, PHI, limited in time to the duration of the Agreement, to configure and calibrate the services delivered. Customer acknowledges that improvements to the configuration, calibration, and accuracy of the SaaS offerings are part of the delivery of services to the Customer, and Customer further acknowledges that such improvements in accuracy, efficacy, calibration and usefulness will incidentally be improved for all users. However, no PHI will be shared with any third party to introduce such improvements, and no PHI will ever be retained beyond the termination of the Agreement with the Customer subject to the termination provisions found in the BAA.

5.2 **Third Party Products.**

(a) Customer may want to integrate the SaaS with various third party products, services, and hardware ("Third Party Products"). Unless otherwise expressly set forth in an Order Form, Customer is responsible for obtaining Third Party Products and all costs associated therewith. Customer is responsible for complying with all terms and conditions applicable to Third Party Products. CTM does not warrant or support Third Party Products and CTM shall have no responsibility or liability to Customer arising out of Third Party Products. CTM is not responsible for any disclosure, modification, or deletion of Customer Data resulting from access or use of Third Party Products.

(b) The SaaS may contain features designed to interoperate with Third Party Products. CTM cannot guarantee the continued availability of such SaaS features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if, for example and without limitation, the provider of a Third Party Product ceases to make the Third Party Product available for interoperation with the corresponding SaaS features in a manner acceptable to CTM.

c. Third Party Products do not include products, services, and hardware that CTM has incorporated into the SaaS.

5.3 **Customer Facilities, Personnel, and Information**. Customer shall permit CTM to have reasonable access to Customer's systems as reasonably necessary to (a) provide the Solution; and (b) determine Customer's compliance with the terms and conditions of this Agreement, subject, in each case, to Customer's reasonable and generally applicable rules and procedures. As reasonably requested by CTM, Customer will assist CTM with providing the Solution, including by providing configuration advice, consultation and problem analysis, and requirement specification and by promptly responding to CTM's requests. Customer acknowledges and agrees that CTM may be dependent upon or use technical data, material, and other information furnished by the Customer. Customer warrants the accuracy and completeness of such information, and CTM shall be entitled to rely upon the accuracy and completeness of such information during the provision of the services with no obligation to make an independent investigation or inquiry. Customer shall promptly inform CTM of any changes in any information previously furnished by it.

5.4 **Savings Clause.** CTM's failure to perform any responsibilities or obligations under this Agreement shall be excused to the extent CTM's non-performance is caused by Customer's omission to act, delay, wrongful action, or failure to perform its responsibilities and obligations under this Agreement; provided that (a) CTM provides written notice to Customer of such occurrence and the services affected by such failure, action, or delay and (b) CTM uses commercially reasonable efforts to recommence performance as soon as reasonably practicable.

5.5 **Record Access.** If and to the extent that Fees and Expenses paid by Customer to CTM pursuant to this Agreement are costs for which Customer is entitled to reimbursement in whole or in part under Title XVIII of the Social Security Act (the "Act"), then in accordance with 42 U.S.C. § 1395x et seq. and implementing regulations, CTM agrees:

(a) Until four (4) years after the last furnishing of services for which CTM charges Customer pursuant to this Agreement, upon written request by the Secretary of the United States Department of Health and Human Services ("Secretary"), or upon written request by the United States Comptroller General ("Comptroller General") or any of their duly authorized representatives, CTM will make available to the same this Master Agreement and such books, documents and records of CTM as are necessary to verify the nature and extent of the charges that CTM has billed to Customer for which Customer seeks reimbursement.

(b) If CTM carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars ($10,000) or more in any twelve (12) month period through an organization that is related to Customer (as "related organization" is defined with regard to a provider in 42 C.F.R. Section 413.17), CTM will do so via a written contract that contains a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon request by the Secretary, Comptroller General or any of their duly authorized representatives, the subcontract and such books, documents and records of such related organization as are necessary to verify the nature and extent of such costs.

(c) This Section 5.6 is included pursuant to and is governed by the requirements of the Act and regulations 42 C.F.R. §§ 420.300-420.304. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Customer or CTM by virtue of this Section 5.6.

(d) If the Secretary or Comptroller General requests access as described in this Section 5.6, CTM will promptly notify Customer of the request and CTM's response thereto and will make the same records available to Customer.

5.6 **Feedback.** From time to time, Customer may provide suggestions, comments, enhancement requests, recommendations, corrections, or other feedback to CTM with respect to the Solution ("Feedback"). Feedback is not th Confidential Information of Customer and does not contain the Confidential Information of Customer. CTM may freely use, copy, disclose, license, distribute, and exploit any Feedback in any manner without any obligation, royalty, or restriction.

## 6. TERM AND TERMINATION

6.1 **Term.** Each Order Form shall specify a term for such Order Form ("Order Form Term"). This Agreement commences on the Effective Date and continues until all Order Forms have expired or are terminated in accordance with Section 6.2 ("Agreement Term").

6.2 **Termination.** Any Order Form may be terminated upon written notice by a party if the other party is in breach of any material obligation under this Agreement, which breach has not been cured within thirty (30) days after receipt of written notice of such breach (or such additional cure period as the non-breaching party may authorize in writing) ("Cause").

6.3 **Effect of Termination or Expiration.**

(a) Upon expiration or termination of an Order Form for any reason, (i) all rights and licenses granted to Customer hereunder (including all rights to access or use the applicable SaaS) shall immediately terminate and Customer shall cease to use and access the applicable SaaS or any portion thereof and (ii) CTM shall not be obligated to provide any support or other services to Customer with respect to the applicable SaaS.

(b) Upon expiration or termination of an Order Form for any reason, upon Customer's request and provided that Customer does not already have an electronic copy of Customer Data, CTM will use reasonable efforts to transfer an electronic copy of Customer Data (in the format in which it is stored by CTM) to Customer. Unless otherwise stated in the Business Associate Addendum, CTM will maintain a copy of Customer Data for no more than six (6) months following expiration or termination of this Agreement, after which time Customer Data may, at CTM's discretion, be destroyed or archived according to CTM's data retention policies.

(c) Within fifteen (15) business days of the date of termination of this Agreement, Customer, at its expense, shall destroy all copies of all Documentation and Work Product.

6.4 **Survival.** Termination of this Agreement shall not impair either party's then accrued rights, obligations, liabilities, or remedies. Notwithstanding any other provisions of this Section 6.4 to the contrary, Section 1 (Certain Definitions), Section 2.2 (Restrictions), Section 2.10 (Reservation of Rights), Section 4 (Payment), Section 6.3 (Effect of Termination or Expiration), Section 6.4 (Survival), Section 7 (Intellectual Property), Section 8 (Confidentiality), Section 9.4 (Warranty Limitations), Section 9.5 (Warranty Disclaimer), Section 10 (Indemnification), Section 11 (Limitation of Liability), and Section 12 (Miscellaneous), and any other clauses that by their nature would survive termination of this Agreement, shall survive the termination of this Agreement.

## 7. INTELLECTUAL PROPERTY AND DATA USAGE RIGHTS

7.1 **Solution.** As between the parties, CTM retains all right, title, and interest in and to the Solution, including all copyright, trade secret, patent, trademark, and other intellectual property rights in and to the Solution. Without limiting the foregoing. the parties agree that all source code, object code, diagrams, reports, documents, designs, inventions, data, and materials of any kind developed or prepared by CTM in the course of performing services under this Agreement, including deliverables under any Order Form, (collectively, the "Work Product") is owned by CTM. To the extent that title to any of the Work Product may not, by operation of law, vest in CTM, all right, title, and interest therein is hereby irrevocably assigned to CTM by Customer without further consideration. Customer agrees to fully cooperate with CTM in connection with perfecting and protecting CTM's exclusive right and title to the Work Product, and to execute any documents of assignment, transfer, conveyance, and registration as requested by CTM at CTM's expense. Upon the provision of any Work Product to Customer by CTM, CTM hereby grants to Customer a non-exclusive, non-transferable license to use such Work Product in connection with the Solution, which license shall expire upon termination of the related portion of the Solution.

7.2 **SaaS Outputs.** CTM hereby grants Customer a perpetual, non-exclusive license to use outputs from the SaaS (e.g., reports, data sets) ("SaaS Outputs") for Customer's internal business purpose to support its medical, clinical, and administrative practice or facility, but Customer shall not (a) use SaaS Outputs to, or assist others to,

reverse-engineer the SaaS or create a competitive platform or (b) distribute SaaS Outputs to third parties in connection with operating a service bureau in which Customer provides services to third parties.

7.3 **Customer Data.** CTM may use and disclose Customer Data (including any PHI contained therein) for any of the following purposes (collectively, the "Purpose"): (a) to provide the Solution (including submitting Customer Data via the SaaS to other health care providers, third party service providers, insurance companies, CTM's affiliates and other persons and entities as directed by Customer through the SaaS or otherwise in accordance with the Documentation); (b) to otherwise perform its obligations under this Agreement; (c) to aggregate information relating to transactions for statistical analysis and business measures of the performance of the SaaS; (d) for testing, system maintenance, support, and as needed to investigate alleged privacy violations and security issues; (e) as permitted by a patient in accordance with HIPAA (f) as set forth in Section 7.4; and/or (g) to monitor Customer's and Users' compliance with the terms of this Agreement and to enforce the terms of this Agreement. In addition to the Purpose, CTM may also use and disclose PHI contained in Customer Data as permitted or required by the Business Associate Addendum. As between the parties, with regard to Customer Data that is not PHI, Customer has and will retain all rights of ownership in such Customer Data, provided that Customer hereby grants to CTM a fully paid-up, royalty-free, non-exclusive, non-assignable (except to the extent this Agreement is assignable), perpetual, irrevocable, license to access, use, copy, disclose, display, distribute, transmit, publish, and process the Customer Data for the Purpose.

7.4 **De-Identified Data.** Customer hereby grants CTM and its affiliates permission to use Customer Data, including PHI contained therein, to create de-identified and aggregated information and process and use such de-identified data for the purposes of analytics and to improve and develop products and services. For the avoidance of doubt, the parties acknowledge and agree that de-identified data is not PHI and shall not be subject to the Business Associate Addendum.

## 8. CONFIDENTIALITY

8.1 **Confidential Information.** Each party (the "disclosing party") has disclosed or may disclose to the other party (the "receiving party") proprietary and non-public information relating to its business ("Confidential Information"). CTM's Confidential Information includes the terms of this Agreement (including pricing), the SaaS, and all non-public and proprietary information regarding the Solution. Notwithstanding the foregoing, Confidential Information shall not include information that (a) is or becomes publicly available other than by an unauthorized disclosure by the receiving party; (b) can be demonstrated to have been independently developed by the receiving party without use of or access to any Confidential Information of the disclosing party, as shown by written Documentation and other competent evidence in the receiving party's possession; (c) is received from a third party who has lawfully obtained such Confidential Information without a confidentiality restriction; or (d) was in the receiving party's possession or known by the receiving party prior to receipt from the disclosing party other than through anyone's breach of confidentiality.

8.2 **Disclosure and Use of Confidential Information.** Subject to Sections 7.3 and 7.4, and the Business Associate Addendum, the receiving party shall (a) hold Confidential Information of the disclosing party in confidence and exercise at least the same degree of care to protect the confidentiality of the disclosing party's Confidential Information that it exercises to protect the confidentiality of its own similar Confidential Information, but in no event less than reasonable care; (b) use Confidential Information of the disclosing party only for the purposes of performing, or exercising its rights, under this Agreement; and (c) not disclose Confidential Information of the disclosing party to any third party without prior written approval of the disclosing party. To the extent required by order of a court, administrative agency or governmental body, or by subpoena or legal process, the receiving party may disclose to such authority data, information, or materials involving or pertaining to Confidential Information, provided that the receiving party (i) provides the disclosing party with prompt written notice of such required disclosure so that the disclosing party may seek an appropriate protective order or other appropriate remedy and

(ii) discloses only the portion of the disclosing party's Confidential Information that the receiving party is legally required to disclose.

8.3 **Continuing Obligation.** The obligations of the receiving party under Section 8.2 with respect to Confidential Information shall survive the expiration or termination of this Agreement for a period of five (5) years and, with respect to any trade secret information, shall continue indefinitely as long as such information remains a trade secret of the disclosing party (or for so long as permitted by applicable law).

## 9. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

9.1 **Mutual Representations and Warranties.** Each party represents and warrants that it has the full power and authority to enter into this Agreement and to grant the rights herein conveyed.

9.2 **SaaS Warranty.** Subject to Section 5.2, CTM warrants that (a) the SaaS will perform materially in accordance with the applicable Documentation, and (b) CTM will not materially decrease the overall functionality of the SaaS during the applicable Order Form Term. As CTM's sole obligation, and Customer's sole remedy, for any breach of Section 9.2(a), CTM shall use commercially reasonable efforts to correct, or cause to be corrected, any reproducible error or defect.

9.3 **Professional Services Warranty.** CTM warrants that the Professional Services will be performed in a professional workmanlike manner consistent with industry standards. As CTM's sole obligation, and Customer's sole remedy, for any breach of this limited service warranty, CTM shall re-perform the Professional Services at no additional cost to Customer.

9.4 **Warranty Limitations.** No warranties or obligations under this Section 9 shall apply to CTM if (a) Customer is using the Solution in a manner inconsistent with any Documentation or this Agreement; (b) the error or defect is not reproducible, or (c) the error or defect is determined to be caused by Third Party Products, errors or defects in Customer Data, or Customer's failure to maintain the proper operating environment.

9.5 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION 9, CTM MAKES NO REPRESENTATION OR WARRANTY THAT THE SOLUTION SHALL PERFORM ACCURATELY OR RELIABLY, THAT ANY INFORMATION DELIVERED TO CUSTOMER, USERS, OR TO THIRD PARTIES ON CUSTOMER'S BEHALF, BY OR THROUGH CTM OR THE SAAS WILL BE CORRECT OR COMPLETE, OR THAT USE OF THE SOLUTION WILL OBTAIN ANY CERTAIN RESULTS. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 9, THE SOLUTION IS PROVIED "AS IS" AND CTM DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, REGARDING OR RELATING TO THE SOLUTION. CTM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALING BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE), NON-INFRINGEMENT, THAT THE SAAS WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFICIENCES, ERRORS, DEFECTS, OR NONCONFORMITIES WILL BE CORRECTED, OR THAT THE SOLUTION WILL MEET CUSTOMER'S SPECIFIC REQUIREMENTS.

## 10. INDEMNIFICATION

10.1 **Indemnification by CTM.** Subject to this Section 10, and except to the extent Customer is obligated to indemnify CTM as set forth in Section 10.5, CTM shall defend, indemnify, and hold harmless Customer against any and all claims, demands, and actions brought by a third party arising out of or related to (a) CTM's gross negligence or material breach; (b) CTM's breach of the Business Associate Addendum; or (c) CTM's infringement of a third party's United States copyright or patent registered as of the date hereof as a result of CTM's provision of the SaaS to Customer. CTM's obligations under this Section 10.1 are subject to the following conditions: (a) Customer gives CTM prompt written notice of all actions, claims, or threats against Customer of infringement of any intellectual property rights; (b) Customer permits CTM to elect to assume complete control of such claims at its sole discretion and expense; and (c) Customer cooperates with CTM in defending against claims, including making known or available to CTM all Customer records and documents pertaining to such claims.

10.2 **Excluded Claims.** CTM's obligations under this Section 10 shall not apply to a claim of infringement based upon (a) the combination, operation, or use of the SaaS with any third-party software, programs, hardware, or data not supplied by CTM; (b) specifications provided by Customer or a specific modification or customization requested by Customer; or (c) use of the SaaS in breach of this Agreement (all of the foregoing, "Excluded Claims").

10.3 **Right to Mitigate.** If Customer's use of the SaaS (or any component thereof) is or, in the opinion of CTM, is likely to be prohibited by judicial order or by agreement as a result of a third party's claim of infringement, CTM may, at its own expense, elect to either (a) replace or modify the SaaS without material loss of functionality or performance; (b) procure for Customer the right to continue using the SaaS; (c) remove the allegedly infringing components of the SaaS; or (d) terminate Customer's subscription for the SaaS and refund to Customer any prepaid SaaS Subscription Fees covering the remainder of the Order Form Term.

10.4 **Exclusive Remedy.** The foregoing provisions of this Section 10 state the entire liability of CTM and the exclusive remedies of Customer with respect to the infringement claims related to the Solution.

10.5 **Indemnification by Customer.** Customer will defend, indemnify, and hold harmless CTM and its affiliates, and its and their contractors, agents, employees, officers, directors, and shareholders from and against any claim, loss, liability, or expenses (including, but not limited to, attorney fees) arising out of or related to (a) any Excluded Claims; (b) Customer's (including its contractors', agents', employees', officers', directors', and shareholders') negligence, willful misconduct, or violation of applicable law or regulation; (c) any medical malpractice claims; or (d) any Customer Data or claims by patients of Customer.

## 11. LIMITATION OF LIABILITY

11.1 **Maximum Liability.** IN NO EVENT WILL EITHER PARTY'S CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING ANY RELATED CAUSE OF ACTION, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO THE INITIAL CLAIM FOR WHICH DAMAGES ARE RECOVERED HEREUNDER. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS FOR FEES AND EXPENSES OR OTHER OUTSTANDING AMOUNTS OWED UNDER THIS AGREEMENT.

11.2 **No Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, EXEMPLARY, PUNITIVE, OR CONSEQUANTIAL DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR THE USE, PERFORMANCE OR NONPERFORMANCE OF THE SOLUTION, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS OR ECONOMIC OPPORTUNITY, LOSS OF PROFITS, LOSS OF DATA, OR LOSS OF GOODWILL, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 **Exclusions and Supercap.** The limitations of liability in Section 11.1 and Section 11.2 do not apply to (a) the parties' indemnification obligations under Section 10 or (b) any breach of the Usage Restrictions or (c) breach of the Business Associate Addendum ("Excluded Claims"). A Party's maximum liability for the Excluded Claims shall be $250,000.

11.4 **Independent Judgment.** CTM does not engage in the practice of medicine. Customer acknowledges that CTM is in no way responsible for any pharmaceutical, medical, legal, or similar information contained in, entered into, or used in connection with the Solution, and Customer independently will verify the accuracy and completeness of such information. Customer further agrees and acknowledges that: (a) no physician/patient relationship is established with CTM or any contractor, agent, employee, officer, director, or shareholder of CTM; (b) the use of the Solution by Customer or its personnel for any purpose related to patient care cannot be controlled by CTM; (c) the use of the Solution by Customer or its personnel is not intended to, and shall not, be substituted for the professional skill and judgment of a health care professional; (d) it is Customer's sole responsibility to make

final judgments in all instances regarding patient care; the use of clinical data, reports, and output; and the Solution; and (e) Customer has a personal and independent duty to analyze and professionally examine Customer Data.

11.5 **Allocation of Risk; Basis of the Bargain.** Customer acknowledges that CTM has set its prices and fees in reliance on the warranty disclaimers and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

## 12. MISCELLANEOUS

12.1 **Entire Agreement.** This Agreement and any usage terms displayed in the SaaS constitute the entire agreement between the parties and supersede any and all prior agreements and proposals, understandings, representations, and other communications between the parties relating to the subject matter hereof, whether oral or written. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

12.2 **Order of Precedence.** In the event of a conflict or ambiguity between or among the provisions of the various documents that comprise this Agreement, such conflict or ambiguity shall be resolved in favor of the terms and conditions of the document with the higher or highest priority as follows (listed in order of highest priority to lowest priority): (a) the Business Associate Addendum; (b) the terms set forth in the body of this Master Services Agreement; (c) an Order Form; and (d) Documentation. However, notwithstanding the foregoing, (i) the provisions of any document may amend or override provisions of a higher or all higher priority documents if (and to the extent that) such provisions specifically identify the provision(s) the parties intend to amend or override and expressly state that such provisions are superseded and (ii) in the event that any portion of Section 8 conflicts with the commitments of CTM in the Business Associate Addendum with respect to PHI, the commitments in the Business Associate Addendum shall govern with respect to PHI. No provision set forth or cross-referenced in any purchase order or other Customer payment Documentation will be construed to amend, add to, or supersede any provision of this Agreement.

12.3 **Headings.** The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to limit or affect any of the provisions hereof.

12.4 **Amendment.** No amendment to this Agreement is effective unless it is in writing and signed by both parties. No course of dealing or trade usage between the parties shall be effective to supplement, amend, modify, or alter this Agreement.

12.5 **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, such provision shall be carried out as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

12.6 **Notices.** Any notice, demand, or other communication required or permitted by any provision of this Agreement shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, (c) on the fifth day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), (d) when delivered via email to the notified party's email provider for delivery to such notified party, or (e) on the day of facsimile transmission if a business day or if not a business day, the first business day following the day of facsimile transmission; in each case addressed (as applicable) (i) to Customer at the address specified on the first page of this Agreement as Customer Contact Information, and (ii) to CTM at the address specified in the preamble to this Agreement and marked "Attention: VP-Transplant Software" with a copy provided simultaneously to legal@caredx.com. The address for notice may be subsequently modified by a party pursuant to written notice to the other party that is provided in accordance with this Section 12.6.

12.7 **Waiver.** The failure to enforce or to require the performance at any time of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions and shall not affect either the validity

of this Agreement or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

12.8 **Independent Contractors.** The parties are independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement.

12.9 **Cumulative Remedies.** Except as expressly stated otherwise herein, each party's rights and remedies provided for in this Agreement shall be cumulative, and such rights and remedies are in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise. The exercise of, or failure to exercise, any remedy shall not prevent any future exercise of the same or any other remedies by either party nor release either party from its respective obligations under this Agreement.

12.10 **Force Majeure.** Neither party shall have any liability for damages arising from errors, delays or nonperformance due to events beyond its reasonable control, including but not limited to fire, explosion, epidemics, earthquake, lightening, failures or fluctuations in electrical power or telecommunications equipment, accidents, floods, acts of God, the elements, war, civil disturbances, terrorist acts, acts of civil or military authorities or the public enemy, accidents, Internet service interruptions or slowdowns, vandalism or hacker attacks, unavailability or failure of Third Party Products, fuel or energy shortages, epidemics, quarantines, strikes, labor disputes, regulatory restrictions, restraining orders or decrees of any court, changes in law or regulation, or other acts of governmental authority (each a "Force Majeure Event"), provided that Customer's obligation hereunder to pay CTM for portions of the Solution previously furnished hereunder at the time of the occurrence of any force majeure condition shall not be excused or delayed by such force majeure condition.

12.11 **Assignment.** Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, which shall not be unreasonably withheld, except that without securing such prior consent, either party may assign or transfer this Agreement to a successor to all or substantially all of its business; provided, however, (a) no assignment shall be binding and valid until and unless the assignee shall have assumed in writing all of the duties and obligations of the assignor; and (b) the assignor shall remain liable and responsible to the non-assigning party hereto for the performance and observance of all such duties and obligations. Furthermore, without securing such prior consent, CTM may assign this Agreement, in whole or in part, to a majority-owned subsidiary of CTM or an affiliate under the same common control as CTM. Any assignment by either party in violation of this subsection shall be void and without force or effect.

12.12 **Subcontracting.** CTM may subcontract any or all of its rights and duties under this Agreement, but will remain responsible for the performance of each subcontractor.

12.13 **Export Compliance.** Customer acknowledges that the Solution may be subject to export control laws. Customer will not, directly or indirectly, export or permit use of any portion of the Solution outside of the United States without prior government authorization to the extent required by applicable regulation.

12.14 **Publicity.** Customer agrees that CTM may use Customer's name and logo to identify that Customer uses the Solution, including use on CTM's website, in the SaaS, and in informational and promotional materials for the Solution. Customer hereby grants CTM a non-exclusive license during the Agreement Term to use and display its name and logo for the foregoing purposes.

12.15 **No Contingences.** Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any further functionality or features nor depending on any oral or written comments made by CTM regarding future functionality or features. Fees paid or payable for the Solution are not contingent under any circumstances upon the performance of any component of the Solution.

12.16 **Third Party Beneficiaries.** This Agreement shall not be construed to create any third-party beneficiary rights.

12.17 **Interpretation.** For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation" and (b) references to the Solution means in whole or in part (i.e., any aspect/component of the Solution that is provided by CTM to Customer). This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

12.18 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.19 **Equitable Relief.** The parties acknowledge that the use, reproduction, or disclosure of the Solution in a manner inconsistent with this Agreement could give rise to irreparable injury to CTM that would be inadequately compensated in money damages. Accordingly, CTM shall have the right to equitable and injunctive relief to prevent such unauthorized use, reproduction, or disclosure. Customer agrees that CTM will not be required to post a bond in seeking any injunctive relief.

12.20 **Dispute Resolution.** In the event of any controversy or claim arising under or related to this Agreement, the parties agree to use their best efforts to determine, for a reasonable period of time not to exceed thirty (30) days, a mutually agreeable solution by submitting the matter to the respective account or project managers to review, and if no resolution is reached, escalating the matter to higher levels of management who can and will provide objective input into a resolution, prior to resorting to litigation.

12.21 **Governing Law.** The laws of the State of California, without regard to its conflict of law provisions, shall govern the validity, construction, interpretation, effect and enforcement of this Agreement. The parties agree that any cause of action or litigation involving the alleged breach or enforcement of this Agreement or any claim arising hereunder shall be filed exclusively in state or federal court in San Mateo County, California, and the parties hereby irrevocably consent to the jurisdiction of such California courts and waive any objections to venue of such courts.

**Appendix A**

**BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (the "Addendum") is part of the MSA between the Customer set forth in the Order Form ("Covered Entity") and CareDx Transplant Management, Inc. ("Business Associate"). This Addendum is effective as of the Effective Date.

**RECITALS**

Business Associate is performing services on behalf of Covered Entity under the MSA under which Covered Entity discloses or may disclose individually identifiable health information to Business Associate, as defined below.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. **Definitions**

a. **Catch-all definition**. The following terms used in this Addendum shall have the same respective meanings as ascribed to those terms in the HIPAA Rules (defined below). Breach, Data Aggregation, Designated Record Set, Disclose or Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information or PHI, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other capitalized terms shall have the same meaning as defined in the MSA.

b. **Specific Definitions**

(1) **"Business Associate"** shall generally have the same meaning as the term "Business Associate" at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean the party identified above as Business Associate.

(2) **"Business Associate Functions"** means all functions performed by Business Associate under one or more Order Forms on behalf of Covered Entity which involve the creation, receipt, maintenance or transmission of PHI by Business Associate or its agents or Subcontractors on behalf of Covered Entity.

(3) **"Covered Entity"** shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean the Customer.

(4) **"HIPAA Rules"** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended by any other statute, rule and/or regulation, including Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. No., 111-5), otherwise known as the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and the regulations set forth at 45 C.F.R. Parts 160 and 164, subparts A and E (the "**Privacy Rule**"), 45 C.F.R. Part 164, subparts A and C (the "**Security Rule**"), and 45 C.F.R. Part 164, Subpart D (the "**Breach Notification Rule**"), as the same may be amended from time to time. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect at the time the section is to be applied.

2. **Obligations of Business Associate**

a. **Permitted Uses and Disclosures**

(1) **Performance of MSA**. Except as otherwise provided in this Addendum or the MSA, Business Associate may Use and Disclose PHI as reasonably necessary to provide the services described in the Order Form to Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this Addendum or as required by law.

(2) **Proper Management**. Business Associate may Use and Disclose PHI (i) for the proper management and administration of Business Associate, and (ii) to carry out Business Associate's legal responsibilities; provided that such Disclosure for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities is either Required by Law or Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that (A) it will be held confidentially and used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to such person, and (B) the person will notify Business Associate of any instances of which such person is aware in which the confidentiality of the PHI has been Breached.

(3) **Configuration of Services**. Business Associate may use PHI to configure and calibrate the Services delivered. Covered Entity acknowledges that improvements to the configuration, calibration, and accuracy of the software is part of the delivery of Services to the Covered Entity, and Covered Entity further acknowledges that such improvements in accuracy, efficacy, calibration and usefulness of the product will incidentally be improved for all users of the product. However, no PHI will be shared with any third party to introduce such improvements, and no PHI will ever be retained beyond the termination of the MSA with Covered Entity subject to the termination provisions found in this Addendum.

(4) **Data Aggregation**. As part of the delivery of the SaaS solution, Business Associate may use PHI to provide Data Aggregation services related to the Business Associate Functions and benchmarking of such SaaS solution.

(5) **De-identification**. Business Associate may Use PHI to create a de-identified data as permitted by the MSA and in accordance with the HIPAA Rules at 45 C.F.R. 164.514.

(6) Any Uses and Disclosures by Business Associate not expressly permitted herein are prohibited without prior written consent of Covered Entity.

c. **Safeguards for Electronic Protected Health Information**. Business Associate shall use appropriate safeguards and comply with the Security Rule with respect to Electronic Protected Health Information ("**ePHI**"), to prevent Use or Disclosure of ePHI other than as provided for in this Addendum. Business Associate shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of ePHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.

d. **Minimum Necessary Standard**. Business Associate agrees that it shall not Use or Disclose more than the minimum amount of PHI necessary to accomplish the intended purpose of the permitted/permissible Use or Disclosure under the MSA or this Addendum.

e. **Reporting of Improper Uses or Disclosures**

(1) If Business Associate becomes aware of any reportable Use or Disclosure of PHI not provided for in this Addendum, then Business Associate shall report to Covered Entity's designated point of contact, without unreasonable delay but in no event more than five (5) days after discovery by Business Associate of any Breach of Unsecured Protected Health Information as required at 45 CFR 164.410, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. If Business Associate does not have available complete information in satisfaction of 45 CFR 164.410(c) within five (5) days of discovery of the Breach, Business Associate shall provide all information it has at such time, and immediately update Covered Entity with additional information as it becomes available through prompt investigation.

(2) In the event that Business Associate becomes aware of any Security Incident involving ePHI, Business Associate shall report such Security Incident to Covered Entity's privacy official in the following manner: (i) any actual, successful Security Incident will be reported to Covered Entity in writing, including any remedial or mitigating action taken or proposed to be taken with respect thereto, without unreasonable delay, but in no event more than five (5) days after Business Associate becomes aware of such Security Incident, and (ii) regarding any attempted, unsuccessful Security Incident of which Business Associate becomes aware, this Addendum hereby serves as Business Associate's notice to Covered Entity that attempted but unsuccessful Security Incidents regularly occur and that no further notice will be made by Business Associate unless there has been a successful Security Incident or attempts or patterns of attempts that Business Associate determines to be suspicious.

f. **Mitigation**. Business Associate shall take reasonable steps to mitigate, to the extent practicable, any harmful effect known to Business Associate regarding a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

g. **Subcontractors**. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

h. **Access to PHI**. Within fifteen (15) business days of receipt of a written request from an Individual or Covered Entity for access to PHI about such Individual, Business Associate shall make available to Covered Entity the Individual's PHI contained in a Designated Record Set maintained by Business Associate for Covered Entity, if any, in accordance with 45 CFR 164.524. If the requested PHI is maintained in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such PHI, Business Associate shall provide Covered Entity with access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format within the routine technical capability of Business Associate. Business Associate is not authorized to independently provide access to PHI in response to an Individual's request and shall refer all direct requests to Covered Entity. Covered Entity shall have sole responsibility for determining whether to approve any request and for granting access to PHI.

i. **Amendment of PHI**. Within fifteen (15) business days of receipt of a written request from Covered Entity for the amendment of an Individual's PHI contained in a Designated Record Set maintained by Business Associate for Covered Entity, if any, Business Associate shall provide such information to Covered Entity for such amendment and incorporate any such amendments into the PHI (for so long as Business Associate maintains such information in the Designated Record Set) as required by 45 C.F.R.164.526. Business Associate is not authorized to independently agree to any amendment of PHI in response to an Individual's request and shall refer all direct requests to Covered Entity. Covered Entity shall have sole responsibility for determining whether to approve any request for amendment.

j. **Accounting of Disclosures**. Business Associate shall maintain a record of those Disclosures of PHI by Business Associate or its agents or Subcontractors which are subject to the Individual's right to an accounting under 45 C.F.R. 164.528. Within thirty (30) business days of written notification by Covered Entity that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and in a form permitting Covered Entity to respond to the Individual's request for an accounting. Business Associate is not authorized to independently respond to an Individual's request for an accounting and shall refer all direct requests to Covered Entity. Covered Entity shall have sole responsibility for providing an accounting to the Individual in accordance with 45 C.F.R.164.528.

k. **Availability of Books and Records**. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from, created or received by Business Associate on behalf of, Covered Entity under this Addendum available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.

3. **Responsibilities of Covered Entity**

a. **Permissible Requests**. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

b. **Permissions**. Covered Entity warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under the HIPAA Rules and other applicable law for the disclosure of PHI to Business Associate. Covered Entity shall notify Business Associate promptly of any changes in, or revocation of, the permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

c. **Amendments of PHI**. Covered Entity shall promptly provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under 45 CFR 164.526 and which Covered Entity believes will apply to PHI maintained by Business Associate in a Designated Record Set.

d. **Minimum Necessary PHI**. When Covered Entity discloses PHI to Business Associate, Covered Entity shall provide the minimum amount of PHI necessary for the accomplishment of Business Associate's purpose.

e. **Notice of Privacy Practices**. Except as Required by Law, with Business Associate's consent or as set forth in the MSA, Covered Entity shall not include any limitation in the Covered Entity's Notice of Privacy of Practices (provided in accordance with 45 C.F.R. 164.520) that limits Business Associate's Use or Disclosure of PHI under the MSA.

4. **Termination**

a. **Termination**. Any other provision of the MSA notwithstanding, the MSA and this Addendum may be terminated by either party (the "**Non-Breaching Party**") upon thirty (30) days written notice to the other party (the "**Breaching Party**") in the event that the Breaching Party breaches any provision of this Addendum in any material respect and such breach is not cured within such thirty (30)-day period.

b. **Business Associate Obligations Upon Termination**. Upon termination of the MSA for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, and which Business Associate still maintains as PHI, and shall retain no copies of such information. Notwithstanding the foregoing, to the extent that Business Associate reasonably and in good faith determines that it is not feasible to return or destroy such PHI, the terms and provisions of this Addendum shall survive termination of the MSA, and such PHI shall be Used or Disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

5. **Miscellaneous**

a. **Entire Agreement**. This Addendum, together with the MSA and Order Form, is intended by the parties as a final, complete and exclusive expression of the terms of their agreement and supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the SaaS offering and Business Associate Functions. The terms of this Addendum shall supersede any conflicting or inconsistent terms and provisions in the MSA, including all exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent of the conflict or inconsistency. This Addendum shall not modify or supersede any other provision of the MSA.

b. **Interpretation**. This Addendum shall be interpreted and applied in a manner consistent with Covered Entity's and Business Associate's obligations under the HIPAA Rules.

c. **Amendment**. A reference in this Addendum to a section of the HIPAA Rules means the section as it may be amended from time to time. Any future amendments to the HIPAA Rules affecting business associate agreements are hereby incorporated by reference into this Addendum as if set forth in this Addendum in their entirety, effective on the later of the effective date of the MSA or such subsequent date as may be specified in the HIPAA Rules. All other amendments shall be in writing and signed by both parties. This Addendum is intended to cover the entire Business Associate relationship between the parties, as amended, from time to time, through a MSA or other means.