



CERNER BUSINESS AGREEMENT

This Cerner Business Agreement (the "Agreement") is made on August 15, 2022 ("Effective Date"), between

**Lexington Fayette Urban County Government
Division of Community Corrections ("Client")**

and

Cerner Corporation ("Cerner")

Kentucky corporation with its principal place of business at:

600 Old Frankfort Circle
Lexington, KY 40510, United States
Telephone: 859-425-2700

a Delaware corporation with its principal place of business at:

2800 Rock Creek Parkway
North Kansas City, MO 64117, United States
Telephone: (816) 221-1024

Client wishes to implement a System pursuant to the terms and conditions of this Agreement. Cerner agrees to provide and assist in implementing certain Licensed Software, Sublicensed Software and Equipment. This Agreement will cover all of the licenses, solutions, hardware and services provided by Cerner to Client, and consists of the following documents:

- Basic Terms and Conditions
- Exhibit A – Support Services
- Exhibit B – Business Associate Provisions
- Cerner Sales Order

Cerner and Client may execute additional Ordering Documents for any additional licenses, solutions, hardware, and services in the future, which will be subject to the terms and conditions of this Agreement. Each capitalized term used in the Agreement has the meaning set forth in Section 7 of the Basic Terms and Conditions.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT DIVISION OF COMMUNITY CORRECTIONS

Authorized
Signatory: _____

(signature)

(printed name)

Title: _____

CERNER CORPORATION

Authorized
Signatory: _____

Teresa Waller

Title: _____

Sr. Director, Contract Management



Lexington Fayette Urban County Government Division of Community Corrections
OPT-0352423_LA-0000323940
August 13, 2022

Cerner Confidential Information

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BASIC TERMS AND CONDITIONS

1. LICENSED SOFTWARE

- 1.1 Cerner grants to Client a non-exclusive, non-transferable license to use the Licensed Software, subject to the terms of this Agreement and the applicable Ordering Document. Client represents that it has the authority to bind each User and Permitted Facility to the confidentiality and use restrictions set forth in this Agreement. The Licensed Software is proprietary to Cerner, is based upon and contains trade secrets and other Confidential Information. No right to use, print, copy, modify, create derivative works of, adapt, translate, distribute, disclose, decompile or reverse engineer the Licensed Software is granted, except as expressly set forth in this Agreement. Cerner reserves title to the Licensed Software and all rights not expressly granted hereunder. Client will not outsource its operation of the Licensed Software to any third party without Cerner's prior written consent.

2. SERVICES

- 2.1 **Services.** Cerner agrees to provide the Services set forth in each Ordering Document. Cerner uses a shared computing utility to deliver certain Services. Cerner may leverage a public cloud infrastructure to provide the Services.
- 2.2 **Support.** Cerner will provide the Support services set forth in Exhibit A. Client agrees to provide a single, centralized help desk for Support requests to Cerner. Unless Cerner is providing the applicable hosting services, Client will purchase any hardware and third-party software required to run New Releases. Upon request, Cerner will assist with the installation of New Releases at Cerner's then-current rates. Cerner is not obligated to provide Support for Licensed Software that is not the most current or next to most current New Release.
- 2.3 **Data Security.** Cerner has implemented reasonable security measures, systems, and procedures designed to protect against anticipated threats or hazards to the security or integrity of Client's Confidential Information. Cerner agrees to undergo an annual SSAE-18 review (or industry equivalent) of its data center operations. Upon request by Client, Cerner will provide a copy of the most recent service auditor's report.
- 2.4 **Client Responsibilities.** Client will not and will use reasonable efforts to ensure that its Users do not: (i) sell, resell, lease, lend, or otherwise make available the Services in whole or in part to a third party; (ii) modify, adapt, translate, or make derivative works of the Services; (iii) transmit any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data, or personal information; or (iv) sublicense or operate the Services for timesharing, rental, outsourcing, or service bureau operations, or to train persons other than its Users. Client will manage and maintain communications, connections, and devices for its Users at all locations. Client will also: (a) credential all Users and determine the correct privileges for each User, (b) use reasonable efforts to ensure that all Users use the Services in accordance with the Documentation and for no other purpose, and (c) be responsible for any activities that occur under the Client's or Users' accounts or passwords. Client will use reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Client will promptly notify Cerner of any unauthorized use of, or access to, the Services of which it becomes aware. Client agrees to provide information requested by Cerner to verify Client's compliance with this Agreement. Client is also responsible for its security and privacy compliance, including obtaining consents and authorizations where necessary, and implementing reasonable security capabilities and policies and procedures to minimize or prevent unlawful access by Client or its Users, and access by unauthorized persons.
- 2.5 **Suspension of Services.** If (i) there is any threat to the security of Cerner's systems or the Services, or (ii) Client's undisputed invoices are 60 days or more overdue, in addition to any other rights and remedies (including termination rights), Cerner may, upon notice to Client, suspend the Services without liability to Client until all issues are resolved to Cerner's reasonable satisfaction.



3. THIRD-PARTY SOFTWARE, SERVICES, AND EQUIPMENT

- 3.1 **Pass-Through Provisions.** Sublicensed Software, Third-Party Services, and Equipment will be provided under the applicable terms required by the third-party supplier. The Ordering Document will identify applicable pass-through terms which will be available on Cerner's website (<https://passthroughprovisions.cerner.com/>). Unless otherwise set forth in the applicable pass-through provisions, Cerner grants to Client a non-exclusive, non-transferable sublicense to use the Sublicensed Software on the terms for end users in the license granted to Cerner by the applicable Sublicensed Software supplier.
- 3.2 **Equipment.** The Equipment is priced FOB the supplier's point of origin. Cerner will arrange, pre-pay, and invoice Client for shipping and in-transit insurance for the Equipment. If Client has agreed in writing to a shipment date, Client agrees to pay all cancellation, re-stocking, storage and additional transportation fees due to the return or re-routing of Equipment. Cerner retains a security interest in each item of Equipment until Client pays for the Equipment.

4. PAYMENTS

- 4.1 **Payment.** Client will pay all invoices within thirty (30) days after receipt. Client will pay a finance charge on all undisputed amounts that are more than forty-five (45) days past due at a rate of interest equal to the lesser of 1.5% per month or the maximum permissible legal rate. Client will reimburse Cerner for reasonable collection costs, including attorneys' fees, for past due amounts.
- 4.2 **Taxes.** Client will pay all taxes imposed in conjunction with this Agreement, including, but not limited to, sales, use, excise, and similar taxes based on or measured by charges payable under this Agreement and imposed under authority of federal, state, or local taxing jurisdictions, but excluding foreign, federal, state, and local taxes on Cerner's net income or corporate existence. If tax exempt, Client will provide Cerner a copy of its sales tax exemption certificate.
- 4.3 **Reimbursable Expenses.** Client agrees to reimburse Cerner for the following travel expenses incurred by Cerner in its performance of Services: (a) air travel, not to exceed the coach class rate; (b) auto rentals; (c) lodging and miscellaneous expenses, such as parking, taxi fares, and fuel; and (d) a per diem rate for meals, as published and updated by the U.S. General Services Administration.
- 4.4 **Assignment of Payments.** Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Agreement in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a security interest. Cerner will continue to perform its obligations under this Agreement following an assignment of payments or granting of a security interest.

5. WARRANTY, INDEMNITY, AND LIABILITY LIMITATION

- 5.1 **Functionality Warranty.** Cerner warrants that, as long as Client (a) remains continuously on Support and (b) is operating the most current or next to most current New Release, the Licensed Software will, without Material Error, perform the functions implemented by Client set forth in the Solution Descriptions when operated in accordance with the Documentation. In the event of a breach of this warranty, Cerner will repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty. If, after repeated efforts (not to exceed 6 months from the date Cerner receives written notice of the warranty breach), Cerner is unable to repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty, Client may, at Cerner's expense, return the failing item of Licensed Software and receive a refund of the item's license fee (calculated on a 5-year straight line depreciated basis), as well as the item's Support fees paid since the failure was first reported to Cerner. CLIENT'S RIGHTS UNDER THIS SECTION CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND CERNER'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY BREACH OF THIS WARRANTY.
- 5.2 **Services Warranty.** Cerner warrants that it will perform the Cerner Services in a professional manner in accordance with the applicable Solution Description.





- 5.3 **Disclaimer of All Other Warranties.** Cerner makes no representations or warranties concerning the Equipment, Sublicensed Software or Third-Party Services. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND CERNER DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE AND ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. CERNER DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ALL DEFECTS WILL BE CORRECTED, OR WILL MEET CLIENT'S REQUIREMENTS. CERNER DOES NOT WARRANT THAT ANY ALERTS OR OTHER INFORMATION PROVIDED THROUGH THE SERVICES HAVE THE ABILITY TO IMPROVE THE HEALTH STATUS OF A PATIENT OR SAVE PATIENT LIVES. THE SERVICES AND CONTENT ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS AND ARE SUBJECT TO TIME DELAYS.
- 5.4 **Cerner Indemnity.** Cerner will defend, indemnify, and hold Client and its officers, directors, employees, and agents harmless from and against third-party claims, liabilities, obligations, judgments, and causes of actions ("Third-Party Claims") and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of (a) Cerner's negligence or willful misconduct in providing the Cerner Services, or (b) an allegation that the Licensed Software or Cerner Services infringe a third party's U.S. patent, trademark, or copyright. Cerner's indemnification obligation will not apply to the extent that the Third-Party Claim is based upon: (i) the use of any item of Licensed Software or Cerner Services in combination with any product, service or activity (or any part thereof) not furnished, performed or recommended in writing by Cerner; or (ii) the use of Licensed Software or Cerner Services in violation of this Agreement; (iii) the use of Licensed Software not updated to the latest version offered by Cerner, where the latest version incorporates modifications that, in Cerner's opinion, avoid the infringement claim; or (iv) third-party content supplied or transmitted by Client or Users. If there is a Third-Party Claim relating to Client's use of the Licensed Software or Cerner Services due to an infringement, or if, in Cerner's opinion, any of the Licensed Software or Cerner Services are likely to become the subject of a Third-Party Claim of infringement, Cerner will at its option and expense, and as Client's sole and exclusive remedy, use reasonable efforts to procure the right for Client to use the Licensed Software or Cerner Services that are the subject of the infringement Third-Party Claim, replace or modify the Licensed Software or Cerner Services so that they become non-infringing, or terminate the Licensed Software or Cerner Services and provide Client with a refund of the item's license fee (calculated on a 5-year straight line depreciated basis) and any prepaid amounts for Cerner Services not yet performed.
- 5.5 **Client Indemnity.** Client will defend, indemnify, and hold Cerner and its officers, directors, employees, and agents harmless from and against Third-Party Claims and associated costs and expenses (including reasonable attorneys' fees) arising out of the use of the System or Services by Client; provided however, that the foregoing indemnity will not apply to the extent Client has used the System and Services in accordance with the Documentation and applicable standards of good clinical practice and the proximate and direct cause of the Third-Party Claim is Cerner's negligence or willful misconduct in providing the Licensed Software or Cerner Services.
- 5.6 **Indemnification Process.** To be indemnified, the party seeking indemnification must: (i) give the other party timely written notice of the Third-Party Claim (unless the other party already has notice of the Third-Party Claim); (ii) give the indemnifying party authority, information, and assistance for the Third-Party Claim's defense and settlement; and (iii) not materially prejudice the indemnifying party's ability to satisfactorily defend or settle the Third-Party Claim. The indemnifying party has the right, at its option, to defend the Third-Party Claim at its own expense and with its own counsel. The indemnifying party has the right to settle the claim without the indemnified party's consent so long as the settlement does not require the indemnified party to pay any money or admit fault. The indemnified party will have the right, at its option, to participate in the defense of the Third-Party Claim, with its own counsel and at its own expense, but the indemnifying party will retain control of the Third-Party Claim's defense.
- 5.7 **Limitation of Liability.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS, PAYMENT OF FEES DUE UNDER THIS AGREEMENT, AND FOR CLIENT'S BREACH OF SECTION 1.1, NEITHER PARTY IS LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. THE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS; LOSS OF SAVINGS OR REVENUE; LOSS OF USE OF THE EQUIPMENT, SUBLICENSSED SOFTWARE, LICENSED SOFTWARE, SERVICES, OR DATA; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES; THIRD PARTY CONSEQUENTIAL DAMAGES; AND INJURY TO PROPERTY. Cerner is not liable for any damages of any kind or nature related to or arising from the Sublicensed Software, Equipment, or Third-Party Services. Any liability limitations set forth



in the third-party pass-through provisions state the maximum liability of the applicable supplier with respect to that product or service. Notwithstanding any other provision herein, Cerner's maximum liability for any claim or series of related claims arising under this Agreement is limited to the amount paid by Client to Cerner for the affected solution or Cerner Services during the 12 months preceding the event giving rise to the claim.

- 5.8 **Force Majeure.** Except for obligations to pay for Services performed and products delivered, neither party will be responsible for failing to perform due to causes beyond its reasonable control, including, but not limited to, failures by Cerner's suppliers or subcontractors, war, sabotage, riots, civil disobedience, acts of governments and government agencies, labor disputes, accidents, fires, acts of terrorism, or natural disasters. The delayed party will perform its obligations within a reasonable time after the cause of the failure has been remedied, and the other party will accept the delayed performance.
- 5.9 **Limitation on Actions.** Neither party may bring any action arising out of any transaction (other than failures to pay) under this Agreement more than one year after the cause of action accrues.

6. GENERAL PROVISIONS

- 6.1 **Termination of Services.** Client may not terminate Support before the end of twelve (12) months after First Productive Use of the applicable Licensed Software, after which time it may terminate Support for an item of Licensed Software upon 365 days' prior written notice to Cerner. If Client terminates Support and later elects to re-start Support, Client will pay a catch-up payment equal to the amount of Support fees that would have been due during the suspension period. Cerner may not terminate Support for an item of Licensed Software for a period of 2 years after First Productive Use of such item; however, Cerner may suspend Support or other services if Client (a) fails to pay invoices, (b) attempts to modify the Licensed Software, or (c) creates and uses programs that write to Cerner databases.
- 6.2 **Termination of the Agreement.** This Agreement remains effective until all Services expire or are terminated in accordance with this Agreement.
- A. **Termination of Agreement.** Either party may terminate this Agreement if the other party materially breaches this Agreement by sending a notice specifying each breach with reasonable detail and this Agreement will be terminated, unless (i) the breaching party cures the breach within 30 days following receipt of the notice, or (ii) with respect to a breach which may not reasonably be cured within a 30-day period, the breaching party commences, is diligently pursuing cure of, and cures the breach as soon as practical.
- B. **Termination of Ordering Documents.** Either party may terminate an Ordering Document if the other party materially breaches any provision of the Ordering Document (including any terms of this Agreement applicable to the Ordering Document) so long as the terminating party sends a notice of termination to the other party specifying each breach. The applicable Ordering Document (and any associated Services) will be terminated 30 days following delivery of the notice unless the breach is cured within the 30-day period.
- C. **Transition and Termination.** If this Agreement expires or either party has a right to terminate this Agreement, Cerner will, upon request by Client, provide reasonable assistance on a time-and-materials basis for up to 24 months after notice of termination to allow Client to transfer to another vendor. Upon termination, Client will pay for all Services provided up to the date of termination and all other amounts owed under this Agreement including, but not limited to, fees due for the remaining contracted term (or renewal term) for the applicable Services. In addition, Client will immediately cease all use of the Licensed Software, Sublicensed Software and Services, and each party will promptly destroy all copies of the other party's Confidential Information.
- 6.3 **Arbitration and Injunctive Relief.** Cerner and Client will work cooperatively to resolve any dispute arising out of or relating to this Agreement (including claims relating to the negotiations and the inducement to enter into the Agreement) ("**Dispute**") amicably at appropriate management levels. If a Dispute remains unresolved and a party wishes to escalate to a formal dispute resolution forum, the party will submit the Dispute to binding arbitration at a site in the Kansas City, Missouri metropolitan area under the Federal Arbitration Act ("**FAA**") and under the then-current Commercial Arbitration Rules of the American Arbitration Association, Inc. ("**AAA**"). The arbitrator(s) will follow the Federal Rules of Evidence. The provisions of this Agreement will control over both the rules and procedures of the FAA, AAA, and Federal Rules of Evidence. No arbitration proceeding will include class action arbitration. The parties will share equally in the fees and expenses of the arbitrator(s) and the cost of the facilities used for the arbitration hearing, but will otherwise bear their

respective fees, expenses, and costs incurred in connection with the arbitration. Judgment on any arbitration award, including damages, may be entered and enforced in any U.S. court having jurisdiction. Each party acknowledges that any breach of its obligations with respect to the other party's intellectual property rights will result in an irreparable injury for which money damages will not be an adequate remedy and that the non-breaching party is entitled to injunctive relief in addition to any other relief a court may deem proper.

- 6.4 Availability of Records.** Until 4 years after the furnishing of services hereunder, Cerner will make available to the Secretary of the Department of Health and Human Services and the U.S. Comptroller General, or their representatives, its books, documents, and records necessary to verify the nature and extent of the costs of those services, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980.
- 6.5 FDA.** Client and Cerner agree to promptly notify the other party of, and cooperate fully in responding to, inquiries and inspections by the U.S. Food and Drug Administration (the "FDA") and other regulatory bodies with respect to the System. Client agrees that prior to First Productive Use of the System, it will perform whatever tests it deems necessary to verify that the System, as used by Client, complies with all FDA and other governmental, accrediting, and professional regulatory requirements applicable to Client's use of the System in Client's environment.
- 6.6 Information Management Tools.** Client acknowledges and agrees that the Licensed Software and Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Licensed Software or Services. Client further acknowledges and agrees that the Licensed Software and Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.
- 6.7 Intellectual Property.** Cerner retains all right, title, and interest, including intellectual property rights and all other rights, in the Licensed Software, Services, and Work Product. Cerner grants to Client a non-exclusive, non-transferable license to use Work Product for Client's own internal purposes in conjunction with the Services and for no other purpose.
- 6.8 Confidentiality.** Except as permitted under this Agreement or as otherwise necessary to perform its obligations hereunder, Cerner and Client will not, nor will they permit their respective employees, agents, attorneys, or independent contractors to, disclose, use, distribute, sell, license, publish, or otherwise make available Confidential Information of the other party. Cerner and Client will each (a) secure and protect the other party's Confidential Information using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but no less than a reasonable degree of care, and (b) require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Client will use Cerner Confidential Information accessed on restricted portions of Cerner.com only for the purpose of supporting its permitted use of the System or Services. Either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, including without limitation any applicable Freedom of Information Act or sunshine law, or by order of a court or other governmental entity, in which case the disclosing party will notify the other party as soon as practicable prior to such disclosure and no later than 5 business days after receipt of the order or request.
- 6.9 HIPAA.** For Services requiring Cerner's use or disclosure of "protected health information" as defined under HIPAA, the parties agree to comply with the Business Associate Agreement attached as Exhibit B, which is incorporated herein by reference.
- 6.10 Access to Data.** Cerner may use and disclose the Data for purposes permitted by HIPAA, and as necessary to perform and improve the Services or as agreed upon in an Ordering Document. Client agrees that Cerner may use and disclose performance and usage data for any purpose permitted by law so long as the data does not contain protected health information (as defined under HIPAA) or Client-specific identifiable information. In addition, Cerner may de-identify Data in accordance with the standards set forth in 45 C.F.R. 164.514(b) and may use and disclose such Data unless prohibited by applicable law.



- 6.11 **Notices.** All notices, requests, demands, or other communications relating to the other party's failure to perform or which otherwise affect either party's rights under this Agreement will be deemed properly given when furnished by receipted hand-delivery to the other party, deposited with an express courier, or deposited with the U.S. Postal Service (postage prepaid, certified mail, return receipt requested). The sender will address all notices, requests, demands, or other communications to the recipient's address as set forth on the signature page, and in the case of Cerner, to the attention of President; in the case of Client, to the attention of _____
- 6.12 **Change of Product Line.** Cerner may add, delete, or change the specifications with respect to products comprising Cerner's product line (but in no case reduce the overall functionality of same), and neither Client nor any third party will have a claim against Cerner regarding such modification.
- 6.13 **Governing Law.** This Agreement will be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Missouri, excluding Missouri's conflict of laws rules that would apply the substantive law of another jurisdiction.
- 6.14 **Severability.** This Agreement obligates the parties only to the extent that its provisions are lawful. Any provision prohibited by law will be ineffective (but only to the extent that, and in the locations where, the prohibition is applicable). The remainder of the Agreement will remain in full force and effect if the Agreement can continue to be performed in furtherance of the Agreement's objectives.
- 6.15 **Assignment.** Neither party may assign this Agreement or any Ordering Document, in whole or in part, without the prior written consent of the other party, except to an affiliate or pursuant to a merger, acquisition or the purchase of all or substantially all of the party's assets; provided, however, any assignment to a competitor of the other party will be void unless the other party provides its prior written consent. Any assignment of this Agreement or any Ordering Document in violation of this section is void.
- 6.16 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties for the subject matter of the Agreement. This Agreement supersedes and terminates any prior and contemporaneous agreements, understandings, representations, claims, statements, or negotiations with respect to the subject matter of this Agreement. This Agreement may not be amended or qualified except by a writing executed by authorized officers of each party.
- 6.17 **Survival.** The following sections survive termination of this Agreement: 1 (Licensed Software), with respect to Cerner proprietary rights; 3.1 (PassThroughProvisions); 5.4 (CernerIndemnity) with respect to any Third-Party Claims arising prior to termination; 5.5 (ClientIndemnity); with respect to any Claims arising prior to termination and any use of the Licensed Software or Services following termination; 5.7 (Limitation of Liability); 5.9 (LimitationonActions); 6.3 (ArbitrationandInjunctiveRelief); 6.6 (InformationManagementTools); 6.7 (IntellectualProperty); 6.8 (Confidentiality); 6.11 (Notices); and 6.13 (Governing Law).
- 6.18 **Waiver.** Waivers of and consents to any term, condition, right or remedy under this Agreement must be in writing to be effective. No waiver or consent granted for one matter or incident will be a waiver or consent for any different or subsequent matter or incident.
- 6.19 **Purchase Orders.** If Client submits its own form of purchase order to request products or Services from Cerner, any terms and conditions on the purchase order are of no force or effect and are superseded by this Agreement.
- 6.20 **Independent Contractor.** Cerner is an independent contractor, and none of Cerner's employees or agents will be deemed employees or agents of Client. None of the terms in this Agreement will be construed as creating a partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between Client and Cerner or any of their employees.
- 6.21 **Allocation of Risk.** The parties are both sophisticated entities. The prices paid, the warranties, warranty disclaimers, limitations of liability, remedy limitations, and all other provisions of this Agreement, were negotiated to reflect and support an informed and voluntary allocation of risks between Client and Cerner, and both parties waive all protections of any trade practices statutes.
- 6.22 **Compliance with Laws.** Each party agrees to comply with all applicable laws, rules, and regulations.

7. DEFINITIONS

- 7.1 **Cerner Services** means the services provided by Cerner and set forth in an Ordering Document.
- 7.2 **Communications Rule** means the requirements set forth in 45 CFR § 170.403, *Communications*, of the 21st Century Cures Act.
- 7.3 **Confidential Information** means all technical, business, financial, and other information that is disclosed by either party to the other, whether orally or in writing, any disputes between the parties, the terms of this Agreement, pricing, Services, Work Product, Data (other than Protected Health Information, as defined by the Health Insurance Portability and Accountability Act, which is protected in accordance with the Business Associate Agreement), Documentation, all information and materials accessible on Cerner.com “Client-only” access, and all non-public information related to Cerner products, services and/or methodologies. “Confidential Information” does not include (a) information publicly available through no breach of this Agreement, (b) information independently developed or previously known by Client or Cerner, (c) information rightfully acquired from a third party not under an obligation of confidentiality, or (d) Protected Communications.
- 7.4 **Data** means data that is collected, stored, processed or generated through Client’s use of the System or Services.
- 7.5 **Documentation** means the printed and on-line materials that assist Users, as updated from time to time.
- 7.6 **Equipment** means all equipment components provided by Cerner under an Ordering Document.
- 7.7 **First Productive Use** means Client’s first use of an item of Licensed Software or a service to send patient, health plan, or materials information for clinical, financial, or operational use.
- 7.8 **Licensed Software** means the machine-readable form of software programs developed by Cerner and identified in an Ordering Document and all items of applicable Documentation. It also includes New Releases, as well as any Cerner-developed content. “Licensed Software” does not include source code, Sublicensed Software, or any third-party program.
- 7.9 **Material Error** means either an error that materially, adversely affects operation of the entire System or that creates a serious loss of functionality important in the daily operation of a single module and for which a work around is not available.
- 7.10 **New Release** means the distinctly identified (e.g. Release HNAM.20XX.01), comprehensive collection of updates and enhancements to the Licensed Software that Cerner makes generally commercially available.
- 7.11 **Ordering Document** means the document (such as a schedule or sales order) setting forth the items being purchased by Client, scope of use, pricing, payment terms, and any other relevant terms, which will be a part of and be governed by the terms and conditions of this Agreement.
- 7.12 **Permitted Facility** means an entity identified as such in an Ordering Document and for whom Client (a) owns at least 50%, or (b) has the right to determine management direction.
- 7.13 **Protected Communications** means those communications protected by the Communications Rule which include: (i) the usability, interoperability, or security of the Licensed Software or Cerner Services, (ii) relevant information regarding Users’ experiences when using the Licensed Software or Cerner Services, (iii) Cerner’s business practices related to exchanging electronic health information, and (iv) the manner in which a User uses the Licensed Software or Cerner Services.

Client may only engage in Protected Communication involving the use of screenshots or videos if Client (i) does not alter the screenshot or video other than to annotate or resize it; and (ii) limits the sharing of the screenshot or video to the number and length needed to accomplish the purpose of the Protected Communication. Client may only engage in Protected Communications involving videos to the extent the video addresses temporal matters that cannot be communicated through screenshots or other forms of communication.

Protected Communications do not include the following: (i) non-user-facing aspects of the Licensed Software or Cerner Services (such as source and object code, software documentation, design specifications, flowcharts, algorithms, file and

data formats, and security vulnerabilities that are not public knowledge), (ii) communication that involves the use or disclosure of intellectual property within the Licensed Software or Cerner Services (other than those communications which would reasonably constitute “fair use” under applicable intellectual property law), and (iii) information or knowledge solely acquired in the course of Client’s participation in pre-market development and testing activities. Notwithstanding the foregoing, Protected Communications may not be restricted to the extent the communication is required by law or is about:

(a) adverse events, hazards, and other unsafe conditions and is made to government agencies, health care accreditation organizations, and patient safety organizations;

(b) cybersecurity threats and incidents and is made to government agencies;

(c) information blocking and other unlawful practices and is made to government agencies; or

(d) Cerner’s failure to comply with a Condition of Certification requirement under the 21st Century Cures Act, or with any other requirement of this part and is made to the Office of the National Coordinator or an ONC-Authorized Certification Body.

Client recognizes that Cerner has a legitimate interest in the Protected Communications, and that if Cerner is not made aware of the issues detailed in a Protected Communication, Cerner is not able to resolve, correct, or explain them. As such, Cerner encourages Client to report all such issues and Protected Communications through Cerner’s standard support process. This definition shall be construed to enable full compliance with the Communications Rule.

- 7.14 **Services** mean the Cerner Services and Third-Party Services, as modified and enhanced from time to time.
- 7.15 **Solution Description** means the document provided by Cerner describing the applicable Licensed Software or Service.
- 7.16 **Sublicensed Software** means all third-party software and content listed on an Ordering Document.
- 7.17 **Support** means Cerner’s ongoing effort to keep the Licensed Software in working order and to sustain the useful life of the Licensed Software, including New Releases.
- 7.18 **System** means the Equipment, Sublicensed Software, and Licensed Software listed on an Ordering Document.
- 7.19 **Third-Party Services** means the services provided by a third party and described in an Ordering Document.
- 7.20 **User** means an individual person to whom Client provides a unique password and sign-on ID for access to the Licensed Software or Services.
- 7.21 **Work Product** means any documentation, techniques, methodologies, inventions, analysis frameworks, software, or procedures developed, conceived, or introduced by Cerner in the course of Cerner performing Services, whether acting alone or in conjunction with Client or its employees, Users, affiliates or others. Work Product does not include any Confidential Information of Client.

**EXHIBIT A
SUPPORT SERVICES**

Following is a high-level description of the benefits received through the payment of Support fees:

- | | | |
|-----|---|--|
| 1) | Immediate Response Center ("IRC") | Cerner's support center that is staffed 24 hours per day, 7 days per week to resolve client mission-critical issues |
| 2) | Call Center | Cerner's support center that is available for non-mission critical problem determination, resolution, or identification of alternatives through consultative assistance on solution functionality. |
| 3) | Client Care Team | Cerner's support center that is available for training, Cerner events, financial and quote information. |
| 4) | Secured Communication | A data communications mechanism that facilitates problem resolution at the client site (secure and efficient method for service and support). |
| 5) | New Releases | Licensed Software updates that deliver increased functionality over time and allow the software to remain current with various technologies. |
| 6) | Knowledge transfer during service events | Education provided to Client's personnel during problem resolution leading to greater Client self-sufficiency. |
| 7) | Service Escalation Process | Defined process for any client to escalate an issue (whenever the client feels a service or support issue is not being addressed) to receive executive management focus. |
| 8) | Complete Service Record | Complete client service record identifying service issues, history, trends, and patterns. |
| 9) | On-Line Demographic Profile (Solution/technical attributes) | Knowledge of client technical environment, supporting an efficient and effective problem resolution process (assumes hardware and Sublicensed Software Maintenance through Cerner). |
| 10) | Telephone, e-mail, Internet | For the convenience of Client, Cerner offers multiple avenues of communication for support requests and for support services. |
| 11) | Cerner.com | Internet access to solution documentation, communities of interest, announcements, on-line service request entry and the ability to review service activity. |
| 12) | Proactive Solution and Service Flashes | Advance information concerning new solutions, upcoming corrections, patches, etc. |
| 13) | Access To Cerner Direct | Access to a direct channel for ordering technology with 24-hour turnaround with discounted or competitive pricing through Cerner.com or the Cerner Direct Order Desk. |

Cerner periodically improves and revises the content and delivery of its Support services to better meet the needs of clients; therefore, more specific details concerning the above services are available on Cerner.com.

EXHIBIT B
BUSINESS ASSOCIATE PROVISIONS

1. **Definitions.** Capitalized terms used in this Exhibit, but not otherwise defined, shall have the same meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Omnibus Final Rule (the "Final Rule"), which definitions are incorporated into this Exhibit by reference.

Electronic Protected Health Information or **Electronic PHI** has the same meaning as the term "protected health information" under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Cerner creates, receives, maintains or transmits from or on behalf of Covered Entity.

Protected Health Information or **PHI** has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Cerner from or on behalf of Covered Entity.

"**Individual**" has the same meaning as the term "Individual" in 45 C.F.R. § 164.501 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

Security Incident has the same meaning given to such term in 45 C.F.R. § 164.304.

Security Rule means the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
2. **Term.** This Exhibit commences on the Effective Date and will terminate when all of the PHI provided by Covered Entity to Cerner, or created or received by Cerner on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 19(b) below.
3. **Uses and Disclosures of PHI Pursuant to Cerner Business Agreement.** Cerner may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Cerner Business Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Except as expressly provided in the Cerner Business Agreement or this Exhibit, Cerner will not assume any obligations of Covered Entity under the Final Rule. To the extent that Cerner is to carry out any of Covered Entity's obligations under the Privacy Rule pursuant to the terms of the Cerner Business Agreement or this Exhibit, Cerner will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s).
4. **Use of PHI for Management, Administration, and Legal Responsibilities.** Cerner may use PHI as necessary for the proper management and administration of Cerner or to carry out legal responsibilities of Cerner.
5. **Disclosure of PHI for Management, Administration, and Legal Responsibilities.** Cerner may disclose PHI received from Covered Entity for the proper management and administration of Cerner or to carry out legal responsibilities of Cerner, provided: (i) the disclosure is Required by Law; or (ii) Cerner obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the PHI, and the person notifies Cerner of any instance of which it is aware in which the confidentiality of the PHI has been breached.
6. **Data Aggregation.** Cerner may use or disclose PHI to provide data aggregation services for the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law.
7. **De-Identified Data.** Cerner may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such data for any purpose. The Parties agree that any PHI provided to Cerner hereunder which is later de-identified and therefore no longer identifies an Individual (i.e., is no longer "protected health information" as defined by 45 C.F.R. § 160.103) will no longer be subject to the provisions set forth in this Exhibit.

8. **Appropriate Safeguards.** Cerner will establish and maintain appropriate safeguards and will, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such Electronic PHI other than as provided for by the Cerner Business Agreement and this Exhibit.
9. **Reports of Improper Use or Disclosure, Security Incident or Breach.** Cerner will report to Covered Entity any use or disclosure of PHI not permitted under this Exhibit, Breach of Unsecured PHI or Security Incident, without unreasonable delay, and in any event no more than thirty (30) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Cerner to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" include, but are not limited to, pings and other broadcast attacks on Cerner's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Cerner's notification to Covered Entity of a Breach include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Cerner to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Covered Entity would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404.
10. **Subcontractors and Agent.** In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Cerner will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Cerner for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Exhibit to Cerner with respect to such PHI.
11. **Designated Record Set.** To the extent Cerner maintains PHI in a Designated Record Set, Cerner shall:
 - A. To the extent applicable, make available PHI in accordance with 45 C.F.R. § 164.524. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Cerner, or inquires about his or her right to access, Cerner will either, at Cerner's discretion, respond to such request, forward such request to Covered Entity, or direct the Individual to Covered Entity.
 - B. To the extent applicable, make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526. The evaluation of and requests for amendment of PHI maintained by Cerner will be the responsibility of Covered Entity. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Cerner, or inquires about his or her right to amendment, Cerner will either forward such request to Covered Entity or direct the Individual to Covered Entity.
12. **Documentation of Disclosures.** Cerner agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Cerner will document, at a minimum, the following information ("Disclosure Information"): (i) the date of the disclosure, (ii) the name and, if known, the address of the recipient of the PHI, (iii) a brief description of the PHI disclosed, (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure, and (v) any additional information required under the HITECH Act and any implementing regulations.
13. **Provide Accounting of Disclosures.** Cerner agrees to provide to Covered Entity, information collected in accordance with Section 12 of this Exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual makes a request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Cerner, or inquires about his or her right to an accounting of disclosures of PHI, Cerner will either forward such request to Covered Entity or direct the Individual to Covered Entity.
14. **Mitigation.** To the extent practicable, Cerner will reasonably cooperate with Covered Entity's efforts to mitigate a harmful effect that is known to Cerner of a use or disclosure of PHI that is not permitted by this Exhibit.
15. **Minimum Necessary.** Cerner may use and disclose PHI provided or made available from Covered Entity to the minimum extent necessary to accomplish the intended purpose of the use, disclosure, or request, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.



16. **Access to Books and Records.** Cerner agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Cerner on behalf of, Covered Entity available to the Secretary of the Department of Health and Human Services or the Secretary's designee for purposes of determining Covered Entity's compliance with the Privacy Rule.
17. **Responsibilities of Covered Entity.** Covered Entity will:
- A. Promptly notify Cerner of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notice no later than fifteen (15) days prior to the effective date of the limitation;
 - B. Promptly notify Cerner of any changes in, or revocation of, permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notice no later than fifteen (15) days prior to the effective date of the change. Covered Entity will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing Cerner with PHI;
 - C. Promptly notify Cerner of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notification no later than fifteen (15) days prior to the effective date of the restriction. If Cerner reasonably believes that any restriction agreed to by Covered Entity pursuant to this Section may materially impair Cerner's ability to perform its obligations under the Cerner Business Agreement or this Exhibit, the Parties will mutually agree upon any necessary modification of Cerner's obligations under such agreements; and
 - D. Not request Cerner to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the Final Rule if done by Covered Entity, except as permitted pursuant to the provisions of Sections 4- 7 of this Exhibit.
18. **Effect of Termination.**
- A. Except as provided in Paragraph B of this Section 18, upon termination of the Cerner Business Agreement or this Exhibit for any reason, Cerner will return or destroy all PHI received from Covered Entity, or created or received by Cerner on behalf of Covered Entity, and will retain no copies of the PHI.
 - B. If it is infeasible for Cerner to return or destroy the PHI upon termination of the Cerner Business Agreement or this Exhibit, Cerner will: (i) extend the protections of this Exhibit to such PHI; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Cerner maintains such PHI.
19. **Termination for Cause.** Upon either Party's knowledge of a material breach by the other Party of this Exhibit, such Party will provide written notice to the breaching Party stating the nature of the breach and providing an opportunity to cure the breach within sixty (60) days. Upon the expiration of such 60-day cure period, the non-breaching Party may terminate this Exhibit and, at its election, the Cerner Business Agreement, if cure is not possible.
20. **Cooperation in Investigations.** The Parties acknowledge that certain breaches or violations of this Exhibit may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.
21. **No Third-Party Beneficiaries.** Nothing herein, express or implied, is intended to or confers upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Exhibit.



Cerner Confidential Information



22. **Effect of Contract.** In the event of inconsistency between the provisions of this Exhibit and mandatory provisions of the Privacy Rule, the Security Rule or the Final Rule, or their interpretation by any court or regulatory agency with authority over Cerner or Covered Entity, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule, or the Final Rule is amended in a manner that changes the obligations of Cerner or Covered Entity that are embodied in terms of this Exhibit, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Exhibit to give effect to such revised obligations. Where provisions of this Exhibit are different from those mandated in the Privacy Rule, the Security Rule or the Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Exhibit will control.



Cerner Confidential Information