

BUSINESS ASSOCIATE AGREEMENT

A. Cerner is providing services to Covered Entity and Covered Entity wishes to disclose certain information to Cerner pursuant to the terms of an underlying agreement between the parties (the "Underlying Agreement"), some of which may constitute Protected Health Information ("PHI") (defined below).

B. Covered Entity and Cerner intend to protect the privacy and provide for the security of PHI disclosed to Cerner pursuant to the Underlying Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the "HIPAA Final Rule"), which amended the Privacy Rule and the Security Rule (as those terms are defined below) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors.

C. The purpose of this Business Associate Agreement is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), and the HIPAA Final Rule, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and these Business Associate Agreement is hereby incorporated into the Underlying Agreement by reference (hereinafter the "BAA Exhibit").

In consideration of the mutual promises below and the exchange of information pursuant to this BAA Exhibit, the Parties agree as follows:

1. **Definitions.**

(a) "**Business Associate**" shall generally have the same meaning as the term "business associate" in 45 C.F.R. 160.103, and in reference to the Party to this BAA Exhibit, shall mean Cerner.

(b) "**Electronic Protected Health Information" or "Electronic PHI"** shall have the same meaning given to such term 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.

(c) "**Protected Health Information" or "PHI"** shall have 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.

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

(e) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

(f) "**Security Incident**" shall have the same meaning given to such term in 45 C.F.R. § 164.304.

(g) "**Security Rule**" shall mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

Capitalized terms used in this BAA Exhibit, but not otherwise defined, shall have the same meanings set forth in the Privacy Rule, the Security Rule and the HIPAA Final Rule, which definitions are incorporated in this BAA Exhibit by reference.

2. **Term.** This BAA Exhibit shall commence as of the Effective Date, and shall 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 Underlying Agreement.** Cerner may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Except as expressly provided in the Underlying Agreement or this BAA Exhibit, Cerner shall not assume any obligations of Covered Entity under the HIPAA 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 Underlying Agreement or this BAA Exhibit, Cerner shall 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 is permitted to 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 is permitted to 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 is permitted to 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 BAA Exhibit.

8. **Appropriate Safeguards.** Cerner shall establish and maintain appropriate safeguards and shall, 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 Underlying Agreement and this BAA Exhibit.

9. **Reports of Improper Use or Disclosure, Security Incident or Breach.** Cerner shall report to Covered Entity any use or disclosure of PHI not permitted under this BAA 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" shall include, but not be 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 shall

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 Agents.** In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Cerner shall 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 BAA 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 shall either 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 shall 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 shall 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 shall 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 BAA 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 shall either forward such request to Covered Entity or direct the Individual to Covered Entity.

14. **Mitigation.** To the extent practicable, Cerner shall 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 BAA Exhibit.

15. **Minimum Necessary.** The Parties agree that Cerner shall be permitted to 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. **HIPAA Final Rule Applicability.** Cerner acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Cerner under the Privacy Rule and the Security Rule. Cerner agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule.

18. **Responsibilities of Covered Entity.** Covered Entity shall:

(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 shall 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 shall provide such notice no later than fifteen (15) days prior to the effective date of the change. Covered Entity shall obtain any consent or authorization that may be required by the HIPAA 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 shall 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 Underlying Agreement or this BAA Exhibit, the Parties shall 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 HIPAA Final Rule if done by Covered Entity, except as permitted pursuant to the provisions of Sections 4- 7 of this BAA Exhibit.

19. **Effect of Termination.**

(a) Except as provided in paragraph (b) of this Section 19, upon termination of the Underlying Agreement or this BAA Exhibit for any reason, Cerner shall return or destroy all PHI received from Covered Entity, or created or received by Cerner on behalf of Covered Entity, and shall retain no copies of the PHI.

(b) If it is infeasible for Cerner to return or destroy the PHI upon termination of the Underlying Agreement or this Contract, Cerner shall: (i) extend the protections of this BAA 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.

20. **Termination for Cause.** Upon either Party's knowledge of a material breach by the other Party of this BAA Exhibit, such Party shall 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 BAA Exhibit and, at its election, the Underlying Agreement, if cure is not possible.

21. **Cooperation in Investigations.** The Parties acknowledge that certain breaches or violations of this BAA 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 shall 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.

22. **Survival.** The respective rights and obligations of Cerner under Section 19(b) of this BAA Exhibit shall survive the termination of this BAA Exhibit and the Underlying Agreement.

23. **No Third Party Beneficiaries.** Nothing herein, express or implied, is intended to or shall confer upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

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

25. **General.** This Contract is governed by, and shall be construed in accordance with, the laws of the State that govern the Underlying Agreement. If any part of a provision of this Contract is found illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Contract shall not be affected. This Contract may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. This Contract is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications and understandings (written and oral) regarding its subject matter.