



CERNER SERVICES AGREEMENT

This Cerner Services Agreement ("Agreement") is made on November 09, 2018 ("Effective Date"), between

Lake County Behavioral Health ("Client")

and

Cerner Corporation ("Cerner")

a California corporation with its principal place of business at:

PO Box 1024
6302 13th Avenue
Lucerne, CA 95458-1024, USA
Telephone: (707) 274-9101

a Delaware corporation with its principal place of business at:

2800 Rockcreek Parkway
Kansas City, MO 64117, U.S.A.

Telephone: (816) 221-1024

This Agreement consists of the following documents:

- Basic Terms and Conditions
- Cerner Sales Order

LAKE COUNTY BEHAVIORAL HEALTH

By: _____
(signature)

(type or print)

Title: _____

CERNER CORPORATION

By: _____

Teresa Waller

Title: _____
Senior Director, Contract Management



BASIC TERMS AND CONDITIONS**1. SERVICES**

- 1.1 **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.
- 1.2 **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 written request from Client, Cerner will provide a copy of the most recent service auditor's report.
- 1.3 **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: (i) credential all Users and determine the correct privileges for each User; (ii) use reasonable efforts to ensure that all Users use the Services in accordance with the Documentation and for no other purpose; and (iii) 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, policies and procedures to minimize or prevent: (a) unlawful access by Client or its Users; and (b) access by unauthorized persons.
- 1.4 **Suspension of Services.** If (i) there is a 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.

2. THIRD PARTY SERVICES AND EQUIPMENT

- 2.1 **Pass-Through Provisions.** 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/>).
- 2.2 **Shipping of 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.

3. PAYMENTS

- 3.1 **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 thirty (30) 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.
- 3.2 **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.

- 3.3 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.
- 3.4 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.

4. WARRANTY, INDEMNITY, AND LIABILITY LIMITATION

- 4.1 Services Warranty.** Cerner warrants that it will perform the Cerner Services in a professional manner in accordance with the applicable Solution Description.
- 4.2 Disclaimer of All Other Warranties.** Cerner makes no representations or warranties concerning the Equipment 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 SUBJECT TO TIME DELAYS.
- 4.3 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 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 on: (i) the use of the Cerner Services in combination with any product, service, or activity (or any part thereof) not furnished, performed or recommended in writing by Cerner; (ii) the use of the Cerner Services in violation of this Agreement; or (iii) third party content supplied or transmitted by Client or Users. If there is a Third Party Claim relating to Client's use of the Cerner Services due to an infringement, or if, in Cerner's opinion, any of the 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, replace, or modify the Cerner Services that are the subject of the infringement Third Party Claim so that they become non-infringing or terminate the Cerner Services and provide Client with a refund of any prepaid amounts for Cerner Services not yet performed.
- 4.4 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 Services by Client; provided however, that the foregoing indemnity will not apply to the extent Client has used the 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 Cerner Services.
- 4.5 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.

- 4.6 Limitation of Liability.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND PAYMENT OF FEES DUE UNDER THIS AGREEMENT, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, 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, 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 out of the Third Party Services or Equipment. 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 Cerner Services during the 12 months preceding the event giving rise to the claim.
- 4.7 Force Majeure.** Except for obligations to pay for Services performed and Equipment 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.
- 4.8 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.

5. GENERAL PROVISIONS

- 5.1 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 will be terminated 30 days following delivery of the notice unless the breach is cured within the 30-day period. Upon termination of an Ordering Document for any reason, Client will immediately cease all use of the terminated Services and each party will promptly destroy all copies of the other party's Confidential Information related to the terminated Ordering Document.
- C. **Termination.** 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 Services and each party will promptly destroy all copies of the other party's Confidential Information.
- 5.2 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.

- 5.3 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.
- 5.4 Information Management Tools.** Client acknowledges and agrees that the 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 Services. Client further acknowledges and agrees that the 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.
- 5.5 Intellectual Property.** Cerner retains all right, title, and interest, including intellectual property rights and all other rights, in the 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.
- 5.6 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 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 the disclosure and no later than 5 business days after receipt of the order or request.
- 5.7 HIPAA.** For Services requiring Cerner's use or disclosure of "protected health information" as defined under HIPAA, the parties agree to comply with the then-current terms and conditions of the Business Associate Agreement (available at <https://store.cerner.com/contracts/baa.pdf> or www.cerner.com), which terms are incorporated herein by reference.
- 5.8 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.
- 5.9 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 _____.
- 5.10 Governing Law.** This Agreement will be governed by, 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.
- 5.11 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.

- 5.12 Assignment.** Neither party may assign this Agreement 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 in violation of this section is void.
- 5.13 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.
- 5.14 Survival.** The following sections survive termination of this Agreement: 2.1 (Pass Through Provisions); 4.3 (Cerner Indemnity) with respect to any Third Party Claims arising prior to termination; 4.4 (Client Indemnity); with respect to any Third Party Claims arising prior to termination and any use of the Services following termination; 4.6 (Limitation of Liability); 4.8 (Limitation on Actions); 5.2 (Arbitration and Injunctive Relief); 5.4 (Information Management Tools); 5.5 (Intellectual Property); 5.6 (Confidentiality); 5.9 (Notices); 5.10 (Governing Law); and 5.15 (No Hire).
- 5.15 No Hire.** Cerner and Client agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other party's employees until one year after this Agreement is terminated. However, the foregoing does not prohibit a general non-targeted solicitation of employment in the ordinary course of business or prohibit a party from hiring a person who contacts the hiring party at his or her own initiative without any direct or indirect solicitation by or encouragement from the hiring party.
- 5.16 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.
- 5.17 Purchase Orders.** If Client submits its own form of purchase order to request Equipment or Services from Cerner, any terms and conditions on the purchase order are of no force or effect and are superseded by this Agreement.
- 5.18 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.
- 5.19 Allocation of Risk.** The parties are both sophisticated entities. The prices paid, the warranty, 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.
- 5.20 Compliance with Laws.** Each party agrees to comply with all applicable laws, rules, and regulations.

6. DEFINITIONS

- 6.1** **Cerner Services** means the services provided by Cerner and set forth in an Ordering Document.
- 6.2** **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 at least one of Cerner services or methodologies. "Confidential Information" does not include information (a) publicly available through no breach of this Agreement, (b) independently developed or previously known by Client or Cerner, or (c) rightfully acquired from a third party not under an obligation of confidentiality.
- 6.3** ~~**Data** means data that is collected, stored, processed, or generated through Client's use of the Services.~~
- 6.4** **Documentation** means the printed and on-line materials that assist Users, as updated from time to time.
- 6.5** **Equipment** means all equipment components provided by Cerner under an Ordering Document.

- 6.6 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.
- 6.7 Services** means the Cerner Services and Third Party Services, as modified and enhanced from time to time.
- 6.8 Solution Description** means the document provided by Cerner describing the applicable Service.
- 6.9 Third Party Services** means the services provided by a third party and described in an Ordering Document.
- 6.10 User** means an individual person to whom Client provides a unique password and sign-on ID for access to the Services.
- 6.11 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.

