



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

HDM/FJN:GN/GK  
F. #2017R01113

*271 Cadman Plaza East  
Brooklyn, New York 11201*

November 1, 2024

By E-mail

Joon H. Kim  
Lisa Vicens  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York NY 10006

Re: Cerebral, Inc.

Dear Counsel:

The United States Attorney's Office for the Eastern District of New York ("USAO-EDNY" or the "Office") and Cerebral, Inc. ("Cerebral" or the "Company"), pursuant to authority granted by a resolution of the Board of Cerebral as reflected in Attachment B, enter into this Non-Prosecution Agreement ("Agreement").

Cerebral is an online telehealth company incorporated in Delaware. On the understandings specified below, the Office will not criminally prosecute Cerebral or any of its employees, officers, directors, subsidiaries, branches, direct and indirect affiliates, or group and parent companies for any crimes, including any violations of 21 U.S.C. §§ 841 and 846 (and except for any criminal tax violations, as to which the Office does not make any agreement) between January 1, 2019 and October 31, 2022 relating to: (1) any of the conduct described in the Statement of Facts attached hereto as Attachment A ("Statement of Facts"); or (2) any information that Cerebral disclosed prior to the Agreement pertaining to (i) the Office's investigation of Cerebral's telehealth services, including its prescription of controlled substances; and (ii) any failure to adequately disclose such activities or properly oversee and prevent such activities. To the extent there is conduct disclosed by Cerebral that is not described in the preceding sentence, such conduct will not be exempt from prosecution and is not within the scope of, or relevant to, the Agreement. Cerebral also agrees to the terms and obligations of the Agreement described below.

The Office enters into the Agreement based on the individual facts and circumstances presented by this case and as summarized in the attachments to this Agreement, including, among other things: (i) Cerebral voluntarily took a number of substantial remedial measures beginning in May 2022 to mitigate and correct the effects of the practices described in the Statements of Facts, including terminating the former Chief Executive Officer in May 2022 and

stopping all use of the metrics described in the Statement of Facts; (ii) Cerebral ceased prescribing controlled substances as of October 15, 2022 to all of its patients, and has agreed not to prescribe controlled substances in the future; (iii) the nature and seriousness of the offense conduct; (iv) Cerebral does not have a prior criminal history in the United States; (v) Cerebral readily cooperated with the Office in its investigation; and that (vi) Cerebral has agreed to continue to cooperate with the Office in any ongoing investigation of the conduct of Cerebral and its officers, directors, employees, and agents relating to violations of U.S. federal criminal laws for the period defined below.<sup>1</sup>

After considering (i) through (vi) above, the Office believes that an appropriate resolution of this case is an NPA for Cerebral; a fine of \$2,922,000.00, with an aggregate 20 percent discount taken from the fine amount; and forfeiture in the amount of \$3,652,000.00. In light of remedial measures that Cerebral has taken to date, its voluntary cessation of controlled substances prescription practices; and its agreement that it will not prescribe controlled substances, the Office has determined that an independent compliance monitor is unnecessary.

Cerebral admits, accepts, and acknowledges that it is responsible under U.S. law for the past acts of its former officers, directors, employees, and agents as set forth in the attached Statement of Facts, and that the facts described in the Statement of Facts are true and accurate and constitute potential violations of law, specifically attempted distribution of controlled substances, in violation of 21 U.S.C. §§ 841 and 846. Cerebral expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for Cerebral, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by Cerebral set forth above or the facts described in the attached Statement of Facts. Cerebral agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a written press release or holds a press conference in connection with this Agreement, Cerebral shall first consult the Office to determine: (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and Cerebral; and (b) whether the Office has any objection to the release.

Cerebral's obligations under the Agreement shall have a term of 30 months from the date on which the Agreement is executed (the "Term"). Cerebral agrees, however, that, in the event the Office determines, in its sole discretion, that Cerebral, or any of its subsidiaries, branches, or affiliates, has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of Cerebral's obligations under this Agreement, an extension or extensions of the Term may be imposed by the Office, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Office's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

Cerebral shall cooperate fully with the Office in any and all matters relating to the conduct described in the Agreement and the attached Statement of Facts and other conduct under investigation by the Office at any time during the Term, until the latter of (a) the date upon which

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<sup>1</sup> Because Cerebral did not inform the Office of its misconduct, it did not receive credit for voluntary self-disclosure.

all investigations and prosecutions arising out of such conduct are concluded or (b) the conclusion of the Term. At the request of the Office, Cerebral shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of Cerebral, its present or former subsidiaries or affiliates, or any of its present or former officers, directors, employees, agents, consultants, external asset managers or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Office at any time during the Term.

Cerebral represents that since 2021, it has made significant enhancements to ensure its own compliance with federal and state legal and regulatory requirements. In particular, Cerebral represents that it (1) terminated the former Chief Executive Officer in May 2022; (2) hired additional compliance and healthcare regulatory professionals; (3) voluntarily ceased prescribing controlled substances as of October 15, 2022; (4) ceased use of the prescription metrics identified in the Statement of Facts; and (5) improved clinical operations by, among other things, strengthening clinician onboarding processes, requiring formal treatment plans to be completed in collaboration with each client; and instituting formal patient referral-out processes.

Within seven days of the date of this Agreement, Cerebral agrees to pay forfeiture in the amount of \$3,652,000.00 (the “Forfeiture Amount”) to the United States. Cerebral also agrees that it is subject to a monetary penalty of \$2,922,000.00 (the “Monetary Penalty”) as provided below. The Forfeiture Amount is based on the amount of proceeds that could be reasonably attributed to the monthly increase in ADHD revenue generated by patients who were diagnosed with ADHD and subsequently prescribed stimulant prescriptions. Cerebral agrees that the Office could institute a civil and/or criminal forfeiture action against funds held by Cerebral in the amount of the Forfeiture Amount, and that such funds would be forfeitable pursuant to 21 U.S.C. § 853(a), which requires any person to forfeit (i) any property constituting, or derived from, any proceeds obtained directly or indirectly as the result of Cerebral’s violations of 21 U.S.C. §§ 841 and 846. The Forfeiture Amount shall be paid in accordance with payment instructions provided by the government.

The Monetary Penalty is also based on the amount of proceeds that could be reasonably attributed to the monthly increase in ADHD revenue generated by patients who were diagnosed with ADHD and subsequently prescribed stimulant prescriptions, and takes into account an aggregate 20 percent discount taken due to Cerebral’s timely cooperation in this investigation. Cerebral has represented to the Office that Cerebral is unable to pay the Monetary Penalty. Based on those representations and supportive documentation provided by Cerebral, the Office agrees to defer the Monetary Payment for the term of the NPA, and at the expiration of the NPA, will agree to waive the Monetary Payment unless the Office determines that Cerebral’s financial performance has materially changed such that payment of all or a portion of the Monetary Penalty would be warranted.

Cerebral releases any and all claims it may have to the Forfeiture Amount, agrees that the forfeiture of such funds may be accomplished either administratively or judicially at the Office’s election, and waives the requirements of any applicable laws, rules, or regulations governing the forfeiture of assets, including notice of the forfeiture. If the Office seeks to forfeit the Forfeiture Amount judicially, Cerebral consents to entry of an order of forfeiture directed to such funds. If the Office seeks to forfeit the Forfeiture Amount administratively, Cerebral consents

to the entry of a declaration of administrative forfeiture or order of forfeiture, and waives the requirements of 18 U.S.C. § 983 regarding notice of seizure in non-judicial forfeiture matters. Cerebral agrees to sign any additional documents necessary to complete forfeiture of the Forfeiture Amount. Cerebral also agrees that it shall not file any petitions for remission or restoration; any other assertion of ownership or request for return relating to the Forfeiture Amount; or any other action or motion seeking to collaterally attack the seizure, restraint, forfeiture, or conveyance of the Forfeiture Amount, nor shall it assist any others in filing any such claims, petitions, actions, or motions.

Cerebral agrees that it shall not claim, assert, or apply for, either directly or indirectly, any tax deduction, tax credit, or any other offset with regard to any U.S. federal, state, or local tax or taxable income in connection with the payment of any part of the Monetary Penalty. Cerebral shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the Monetary Penalty that Cerebral pays pursuant to the Agreement or any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the attached Statement of Facts. This provision is not intended to relate to derivative claims that have been or may be brought on behalf of Cerebral.

The Forfeiture Amount paid is final and shall not be refunded should the Office later determine that Cerebral has breached this Agreement and commence a prosecution against Cerebral. In the event of a breach of this Agreement and subsequent prosecution, the Office is not limited to the Forfeiture Amount and Monetary Penalty. The Office agrees that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amounts paid pursuant to this Agreement be offset against whatever forfeiture or fine the Court shall impose as part of its judgment. Cerebral understands that such a recommendation will not be binding on the Court.

The Office may use any information related to the conduct described in the attached Statement of Facts against Cerebral: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by Cerebral or any of its present or former subsidiaries or affiliates. In addition, the Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with Cerebral or any of its present or former subsidiaries or affiliates.

If, during the Term of the Agreement: (a) Cerebral commits any felony under U.S. federal law; (b) Cerebral provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) Cerebral fails to cooperate as set forth in the Agreement; or (d) Cerebral otherwise fails to completely perform or fulfill each of its obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term is complete, Cerebral shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Office in the Eastern District of New York, or any other appropriate venue. Determination of whether Cerebral has breached the Agreement and whether to pursue prosecution of Cerebral shall be in the Office's sole discretion. Any such

prosecution may be premised on information provided by Cerebral, its subsidiaries or affiliates, or its personnel, among others. The decision as to whether conduct or statements of any current director, officer, or employee or any person acting on behalf of, or at the direction of, Cerebral will be imputed to Cerebral for the purpose of determining whether Cerebral has violated any provision of this Agreement shall be in the sole discretion of the Office.

Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which the Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of the Agreement, may be commenced against Cerebral, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing the Agreement, Cerebral agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, Cerebral agrees that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Office is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event the Office determines that Cerebral has breached this Agreement, the Office agrees to provide Cerebral written notice of such breach prior to instituting any prosecution resulting from such breach. Cerebral shall have thirty (30) days upon receipt of notice of a breach to respond to the Office in writing to explain the nature and circumstances of such breach, as well as the actions taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of Cerebral.

In the event that the Office determines that Cerebral has breached the Agreement: (a) all statements made by or on behalf of Cerebral to the Office or to a court, including the attached Statement of Facts, and any testimony given by Cerebral before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, as well as any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against Cerebral; and (b) Cerebral shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of Cerebral prior or subsequent to the Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible.

Except as may otherwise be agreed by the parties in connection with a particular transaction, and excluding the dissolutions of Cerebral and related asset sales and/or liquidations, Cerebral agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to Cerebral's consolidated operations or to the operations of any subsidiaries or affiliates involved in the conduct described in the attached Statement of Facts as they exist as of the date of the Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser or any successor in interest thereto to the obligations described in this Agreement and provide an acknowledgment that the Office's ability to determine that there has been

a breach under this Agreement is applicable in full force to that acquiring or successor entity. Cerebral agrees that the failure to include the Agreement's breach provisions in the transaction will make any such transaction null and void. Cerebral shall provide notice to the Office at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form and the Office shall notify Cerebral within that thirty (30) day period if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. In addition, if at any time during the Term, Cerebral has not provided notice to the Office at least thirty (30) days prior to undertaking such transaction(s), and the Office determines in their sole discretion that Cerebral has engaged in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of the Agreement, it may deem it a breach of the Agreement pursuant to the breach provisions of the Agreement. In the event that the Office determines that the transaction(s) would have the effect of circumventing or frustrating the Agreement, the Office shall notify Cerebral and provide Cerebral with an opportunity to address the Office's concerns within thirty (30) days. Nothing herein shall restrict Cerebral from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of the Agreement, as determined by the Office.

Cerebral shall take all steps necessary to ensure that, regardless of the dissolution of Cerebral, Cerebral's relevant records and information will be preserved and remain accessible in order to comply with its obligations under the Agreement.

This Agreement is binding on Cerebral and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of Cerebral and its compliance with its other obligations under the Agreement to the attention of such agencies and authorities if requested to do so by Cerebral.

It is further understood that Cerebral and the Office may disclose this Agreement to the public. Nothing in the Agreement shall require Cerebral to violate any applicable law or regulation.

The Agreement sets forth all the terms of the agreement between Cerebral and the Office. No amendments, modifications, or additions to this Agreement shall be valid unless they

are in writing and signed by the Office, the attorneys for Cerebral, and a duly authorized representative of Cerebral.

Sincerely,


BREON PEACE  
United States Attorney  
Eastern District of New York

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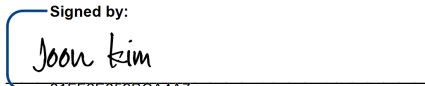
Genny Ngai  
Gillian Kassner  
Miranda Gonzalez  
Assistant United States Attorneys

AGREED AND CONSENTED TO:

Date: November 2, 2024

By:  Signed by:  
Norv McAndrew  
Chief Legal Officer, Cerebral, Inc.

Date: November 2, 2024

By:  Signed by:  
Joon H. Kim  
Lisa Vicens  
Cleary Gottlieb Steen & Hamilton LLP

**ATTACHMENT A**  
**STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement (the “Agreement”) between the United States Attorney’s Office for the Eastern District of New York (referred herein as the “United States”) and the defendant Cerebral, Inc. (“Cerebral” or the “Company”). Cerebral hereby agrees and stipulates that the following facts and conclusions of law are true and accurate. Certain of the facts herein are based on information obtained from third parties by the United States through its investigation and described to Cerebral. Cerebral admits, accepts, and acknowledges that under the laws of the United States, it is responsible for the acts of its officers, directors, employees, and agents as set forth below. If the United States determines that Cerebral has breached the Agreement and commences a prosecution of Cerebral, Cerebral agrees that it will neither contest the admissibility of, nor contradict, the Statement of Facts in any such proceeding. The facts set forth herein occurred in or about and between 2019 and 2022 (the “Relevant Time Period”) unless otherwise noted.

**A. Cerebral’s Operations**

1. Cerebral is an online telehealth company incorporated in Delaware. Executive 1 served as the Chief Executive Officer (“CEO”) of Cerebral from at least October 2019 until his termination on or about May 18, 2022. Executive 2 who previously served as the Company’s Chief Medical Officer (“CMO”) between March 2021 and May 2022 – assumed the position of CEO on May 18, 2022 and is the current CEO of Cerebral.

2. Since October 2019, Cerebral has promoted or sold subscription services offering online health care treatment, including mental health treatment and medication management services, through its website and mobile application, to hundreds of thousands of



patients struggling with depression, anxiety, and other mental health issues. Cerebral provided—and continues to provide—online mental health services to individuals across the United States, including within the Eastern District of New York. Cerebral began prescribing controlled substance medication to its patients in the spring of 2020 but voluntarily stopped prescribing controlled substances in October 2022.

3. During the Relevant Time Period, Cerebral operated primarily as a direct-to-consumer business. The Company generated revenue by offering tiered monthly subscription plans to its patients. Upon signing up, patients could subscribe for therapy sessions, medication management plans, or both. Cerebral then matched its patients with licensed medical professionals/treatment providers (the “Providers”) depending on the subscription plan the patients chose. The Providers then provided virtual treatment services to their patients, including the prescription of medication. Under Cerebral’s policies, initial telehealth visits were scheduled for 30 minutes. Follow-up appointments were available to be scheduled in 15-minute increments. Follow-up appointments were required for ADHD patients and any patients prescribed a controlled substance. In addition to required follow-up visits, patients and providers were able to schedule additional visits as they felt necessary. Cerebral did not maintain any physical facilities for Providers to meet with patients other than on its telehealth platform.

4. The majority of Cerebral’s Providers worked as independent contractors, and the Providers were paid per patient visit and generally received \$35-\$45 per visit.

5. Cerebral internally referred to its nurse practitioners and doctors as “prescribers.” Within Cerebral, Providers were supervised by Clinical Managers who in turn were supervised by associate Medical Operations Team Directors (“Associate Medical

Directors”). Associate Medical Directors directly reported to the Director of Medical Team Operations, and had a dotted line report into the Chief Medical Officer

6. Attention-Deficit/Hyperactivity Disorder (ADHD) was one of the mental health conditions Cerebral Providers diagnosed and treated. Cerebral first launched its ADHD line of service in or around February 2021. Thereafter, Cerebral began offering ADHD treatment services to the public across the United States, rolling services out on a state-by-state basis. Throughout this time, Executive 1 and other senior executives at the Company considered Cerebral’s ADHD services to be a profitable line of business and one that had the potential to increase patient retention at the Company.

7. Prescription stimulants, such as Adderall, are Schedule II drugs under the Controlled Substances Act.

8. Between October 2020 and October 2022, Cerebral permitted Providers to prescribe medications—including controlled substances—to Cerebral patients. Between February 2021 and October 2022, Providers could prescribe stimulants to ADHD patients.

**B. Cerebral’s Prescription Metrics**

9. Between January 2020 and October 2022, Cerebral measured certain business and individual employee performance through the use of internal metrics known as “Objectives and Key Results” (“OKRs”). Cerebral used OKRs to quantitatively monitor the Company’s performance in a number of different categories, including but not limited to “prescriber churn” (i.e. the rate at which Providers left the Company), patient retention (i.e. the length of time patients continued to subscribe to Cerebral’s services), and the rate at which drug prescriptions were issued by Providers. Cerebral set internal target goals for its OKRs and assigned one or more employees, including senior executives, to be primarily responsible for meeting the targeted objectives. Cerebral then monitored the actual performance of the

Company in each OKR category on a monthly basis to determine whether the Company was satisfactorily achieving that OKR, and, by extension, whether the assigned employees were successful in carrying out their responsibilities. “Tier 1 OKRs” were considered by Executive 1 to be the most important objectives for the Company to meet, and, accordingly, for assigned employees to achieve.

10. As set forth in following detail, between February 2021 and October 2022, Cerebral monitored the rates at which its Providers prescribed medications, including controlled substances, primarily through two metrics, which measured: (1) the number of drug prescriptions issued to patients after their first 30-minute telehealth visit; and (2) the number of stimulant prescriptions prescribed to patients diagnosed with ADHD who had no comorbidities, which was generally suggested as the first line treatment for such a diagnosis for most adult patients. Executive 1 assigned internal goals for both metrics, which Executive 1 designated “Tier 1 OKRs” and assigned to Cerebral employees for purposes of assessing the employees’ performance and potential compensation. Through the application of both metrics, Cerebral sought to increase the prescriptions of medications with a goal of boosting patient retention and, by extension, Cerebral’s revenue. Cerebral did not consult with any members of its clinical advisory board—which included multiple experts in the fields of psychology and psychiatry—prior to implementing campaigns to improve both metrics.

*Initial Visit Rx Rate*

11. Beginning in at least May 2021, to improve patient retention, executive and management-level employees, which included Executive 1 (hereinafter “Cerebral’s Leadership Team”) initiated a coordinated strategy to improve the percentage of patients on medication management plans who were prescribed medication after an initial patient visit. In

particular, Cerebral implemented a metric that monitored the percentage of patients on medication management plans who received a drug prescription (regardless of whether it was a controlled substance or not) after an initial 30-minute telehealth visit. At various times, this metric was internally referred to as: “% initial visits with Rx written,” “% Activated (1<sup>st</sup> Rx Written),” “initial visit Rx rate,” “% of Rx prescribed in visit,” and “% of 1<sup>st</sup> prescriber visits resulting in prescription” (herein referred to as the “Initial Visit Rx Rate”).

12. Initially, Cerebral calculated the Initial Visit Rx Rate using a denominator of all medication management plan patients’ initial visits with a Provider, without taking into account the particular patients’ medical conditions and whether drugs were clinically warranted for the patients.

13. In or about May 2021, Executive 1 learned that the Initial Visit Rx Rate had decreased from about 95% in January 2021 to 91% in March 2021. Executive 1 indicated that he believed that higher drug prescription rates corresponded to higher customer retention at Cerebral. Executive 1 subsequently directed that the Company take measures to increase its Initial Visit Rx Rate to 95% by identifying ways to increase Providers’ prescriptions of drugs to medication management plan patients after their first visit.

14. Executive 1 considered this Initial Visit Rx Rate as the Company’s “HIGHEST PRIORITY” and assigned the metric as an OKR to Executive 2 and two clinical managers. In effect, Executive 1 directed his employees, including certain members of Cerebral’s Leadership Team, to ensure that 95% or more of Cerebral’s patients received a drug prescription after an initial visit, without taking into account the basis for the visit or whether medication was clinically warranted. Executive 1 also used this metric, among others, to

evaluate clinician performance as well as the assigned employees' performance and compensation.

15. In connection with Executive 1's directive, in or about July 2021, Executive 2, two Senior Clinical Managers, and a Clinical Manager at Cerebral conducted "data discovery calls" with 45 Providers to understand why their individual Initial Visit Rx Rate metrics were either high or low. Internal documents created for these "data discovery calls" indicated that Cerebral sought to convey to its medication management plan Providers the following information: an assessment of where their individual Initial Visit Rx metric fell within the range ("at the very top" or "in the bottom third"); the assertion the "vast majority of patients who see us could benefit from a medication;" the assertion that "data shows that those who are prescribed a medication have better clinical outcomes and adherence rates;" and the suggestion that the "optimal %" for the initial Rx rate was "90-95%" but that the rate was "not supposed to be 100%."

16. Certain members of Cerebral's Leadership Team were aware that there were a variety of legitimate reasons why Providers did not, and would not, prescribe drugs to patients immediately after the patient's initial visit. For example, in a meeting on July 8, 2021, Executive 2 told the former Chief Operating Officer and the former Vice President of Clinical Operations that "there are good reasons why a prescription wouldn't be written during the first visit" including the fact that a patient may "not [be] ready for meds; [or] wants time to consider[;]" or is "drug-seeking."

17. Certain members of Cerebral's Leadership Team were also aware that the Initial Visit Rx Rate could perversely incentivize Providers into prescribing medication that was not necessary. Certain members of Cerebral's Leadership Team were also aware that a targeted

initial visit Rx rate of 95% was not based on any established data or benchmark in medical or scientific literature.

18. Furthermore, certain members of Cerebral's Leadership Team recognized that the initial Rx rate metric was limited because it captured prescription rates for all medication management plan patients after an initial visit, without taking into account whether patients were diagnosed with conditions where a drug prescriptions were clinically appropriate.

19. Although there were internal discussions to change the method in which the Initial Visit Rx Rate was calculated, the Company did not develop a more refined metric during Executive 1's tenure.

20. Relying on the Initial Visit Rx metric, Cerebral's Leadership Team identified a steady decline in the Initial Rx rate metric from approximately 90-91% in March 2021 to approximately 83% in December 2021.

21. Subsequently, in January 2022, certain members of Cerebral's Leadership Team including Executive 1, discussed whether to adopt different ways to increase this metric, including providing positive feedback to "good performers" and "muted feedback" for "average and below average performers"; providing "prescriber monthly reports" with this metric; providing "re-education" of "low-performing" Providers; assigning the metric to Clinical Managers and tying their bonuses to the metric; and issuing disciplinary "flags" or even terminating underperforming Providers.

22. Through May 2022, and until Executive 1 was terminated from the Company, Cerebral implemented a number of these measures to increase the rate of drug prescriptions to medication management plan patients after their first visit at Cerebral. For example, Cerebral sent "prescriber monthly reports," i.e., monthly emails to Providers setting

forth various information about each Provider's individual performance on various OKRs. Cerebral included the Initial Visit Rx metric in the prescriber monthly reports for one month, before removing the metric from the monthly reports.

23. Cerebral also regularly reviewed Providers' Initial Visit Rx metric and directed Clinical Supervisors to speak with Providers who Cerebral considered underperformers on this metric. In instances where Providers had more than 20% of patients who did not receive an Rx after their initial visit, Cerebral directed supervisors to speak with the Providers to determine whether there was a valid clinical reason for not writing a prescription after the first visit and to issue disciplinary flags or strikes when appropriate.

24. Cerebral was aware that its efforts to monitor and address the Initial Visit Rx metric through "individual clinical coaching and re-education" and/or disciplinary action were negatively received by some Providers. Indeed, internal documents show that certain members of Cerebral's Leadership Team actively "had to step back" from its enforcement actions "due to negative pushback." Moreover, Cerebral acknowledged that it was "not entirely clear [there was a] correlation between a lower score [on the Initial Visit Rx metric] and inappropriate clinical care." Certain members of Cerebral's Leadership Team were also aware that some clinicians questioned whether this metric might be perceived as a form of "pill pushing" and as "pressuring prescribers to prescribe with this metric directly."

25. Beginning in January 2022, at Executive 1's direction, Cerebral also implemented a bonus structure that awarded bonuses to Clinical Managers and Associate Medical Operations Team Directors at Cerebral if they increased the Initial Visit Rx metric among the Providers they directly supervised. Cerebral offered to pay bonuses to these supervisory individuals on a sliding scale, which meant that the higher the Clinical

Managers/Associate Medical Operations Team Directors increased the Initial Visit Rx metric, the more money they potentially could receive as a bonus. Bonuses were determined using the following two-variable matrix:

Baseline - Q4 2022  
DKR

\*Amounts are shown in annualized terms  
\*Bonus payment terms semi-annually (2x/year)  
\*Metrics evaluated over last 6 months on weighted average

		% initial visits with Rx written																
		99%	98%	97%	96%	95%	94%	93%	92%	91%	90%	89%	88%	87%	86%	85%	84%	83%
Prescriber Churn	1.5%	\$39,250	\$37,000	\$34,750	\$32,500	\$30,250	\$28,000	\$25,750	\$23,500	\$21,250	\$19,000	\$17,000	\$15,000	\$13,000	\$11,000	\$9,000	\$6,800	\$0
	2.0%	\$38,500	\$36,250	\$34,000	\$31,750	\$29,500	\$27,250	\$25,000	\$22,750	\$20,500	\$18,250	\$16,250	\$14,250	\$12,250	\$10,250	\$8,250	\$6,050	\$0
	2.5%	\$37,750	\$35,500	\$33,250	\$31,000	\$28,750	\$26,500	\$24,250	\$22,000	\$19,750	\$17,500	\$15,500	\$13,500	\$11,500	\$9,500	\$7,500	\$5,300	\$0
	3.0%	\$37,000	\$34,750	\$32,500	\$30,250	\$28,000	\$25,750	\$23,500	\$21,250	\$19,000	\$16,750	\$14,750	\$12,750	\$10,750	\$8,750	\$6,750	\$4,550	\$0
	3.5%	\$36,250	\$34,000	\$31,750	\$29,500	\$27,250	\$25,000	\$22,750	\$20,500	\$18,250	\$16,000	\$14,000	\$12,000	\$10,000	\$8,000	\$6,000	\$3,800	\$0
	4.0%	\$35,500	\$33,250	\$31,000	\$28,750	\$26,500	\$24,250	\$22,000	\$19,750	\$17,500	\$15,250	\$13,250	\$11,250	\$9,250	\$7,250	\$5,250	\$3,050	\$0
	4.5%	\$34,750	\$32,500	\$30,250	\$28,000	\$25,750	\$23,500	\$21,250	\$19,000	\$16,750	\$14,500	\$12,500	\$10,500	\$8,500	\$6,500	\$4,500	\$2,300	\$0
	5.0%	\$34,000	\$31,750	\$29,500	\$27,250	\$25,000	\$22,750	\$20,500	\$18,250	\$16,000	\$13,750	\$11,750	\$9,750	\$7,750	\$5,750	\$3,750	\$1,550	\$0
	5.5%	\$33,250	\$31,000	\$28,750	\$26,500	\$24,250	\$22,000	\$19,750	\$17,500	\$15,250	\$13,000	\$11,000	\$9,000	\$7,000	\$5,000	\$3,000	\$3,000	\$0
	6.0%	\$32,500	\$30,250	\$28,000	\$25,750	\$23,500	\$21,250	\$19,000	\$16,750	\$14,500	\$12,250	\$10,250	\$8,250	\$6,250	\$4,250	\$2,250	\$0	\$0
	6.5%	\$31,750	\$29,500	\$27,250	\$25,000	\$22,750	\$20,500	\$18,250	\$16,000	\$13,750	\$11,500	\$9,500	\$7,500	\$5,500	\$3,500	\$1,500	\$0	\$0
	7.0%	\$31,250	\$29,000	\$26,750	\$24,500	\$22,250	\$20,000	\$17,750	\$15,500	\$13,250	\$11,000	\$9,000	\$7,000	\$5,000	\$3,000	\$750	\$0	\$0
	7.5%	\$30,500	\$28,250	\$26,000	\$23,750	\$21,500	\$19,250	\$17,000	\$14,750	\$12,500	\$10,250	\$8,250	\$6,250	\$4,250	\$2,250	\$0	\$0	\$0
	8.0%	\$29,750	\$27,500	\$25,250	\$23,000	\$20,750	\$18,500	\$16,250	\$14,000	\$11,750	\$9,500	\$7,500	\$5,500	\$3,500	\$1,500	\$0	\$0	\$0
	8.5%	\$29,000	\$26,750	\$24,500	\$22,250	\$20,000	\$17,750	\$15,500	\$13,250	\$11,000	\$8,750	\$6,750	\$4,750	\$2,750	\$750	\$0	\$0	\$0

26. In total, two Associate Medical Operations Team Directors received bonuses of \$1,500 each based on the Initial Visit Rx metric. In or about May 2022, Cerebral re-evaluated the manner in which the bonuses were issued and re-issued the bonus to these two individuals based on alternative grounds.

27. Despite the Company’s efforts to increase its performance on the Initial Visit Rx metric, it did not improve after December 2021.

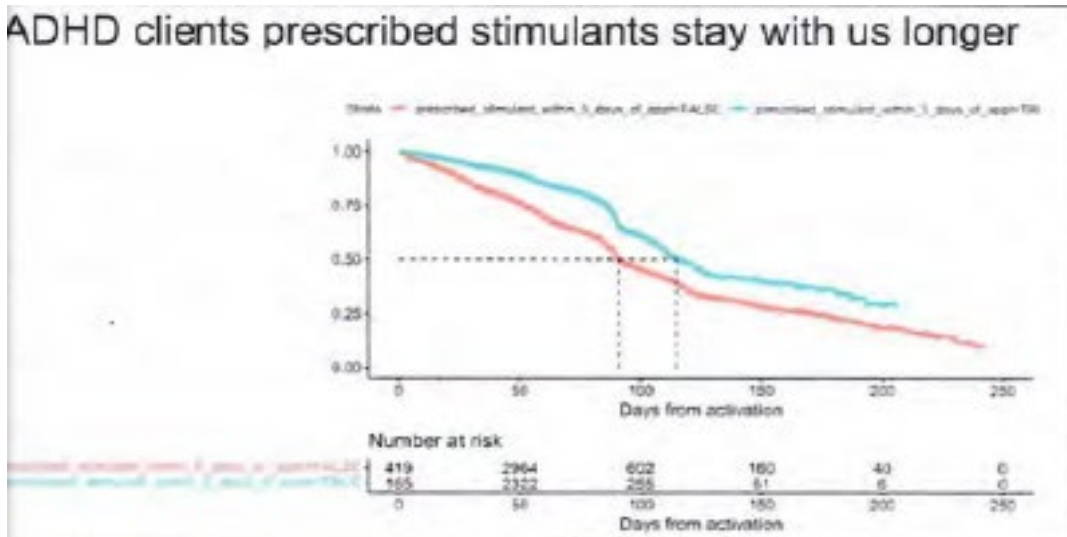
28. In May 2022, after Executive 1 was terminated from the Company, Cerebral stopped using the Initial Rx rate metric.

ADHD Stimulant Rx Metric

29. Cerebral also analyzed whether patient retention would improve if patients diagnosed with ADHD and no comorbidities were prescribed controlled substances versus non-controlled substances. In October 2021, Cerebral’s Leadership Team identified approximately a 5-8% increase in patient retention if the patient was prescribed a controlled substance versus a



non-controlled ADHD medication. Executive 1 noted in internal documents that this was “very significant” and “[s]ince stimulants are first line treatment, we should not be shying away from providing first line care that clients will adhere to an achieve outcomes from.”



30. At Executive 1’s direction, Cerebral instituted and began tracking an internal metric known as the “ADHD Stimulant Rx” metric. This metric measured the percentage of controlled substances prescriptions issued to patients who had been diagnosed with ADHD without comorbidities, for which a stimulant was generally suggested as the first line treatment for most adult patients. Internal data from November 2021 showed that at the time, 52.7% out of 2,128 clients with ADHD and no comorbidities had been prescribed a stimulant.

31. Members of Cerebral’s Leadership Team subsequently developed an “ADHD Prescribing/Monitoring Clinical Quality Improvement Plan” to increase the ADHD Stimulant Rx metric from “50% to 70% . . . within 2 months of rollout” and to achieve a targeted goal of “near 100%” of ADHD patients for whom a stimulant was the first line treatment for most adult patients. Executive 1 internally assigned Executive 2 the task of increasing the ADHD Stimulant Rx metric to 100% of ADHD patients with no comorbidity.

32. Under the ADHD Prescribing/Monitoring Clinical Quality Improvement Plan, Cerebral monitored and audited Providers' prescription practices with respect to ADHD diagnoses and reached out to Providers who "deviated from recommended clinical guidance." For example, for a period of time, the Company sent out bi-weekly emails to Providers regarding their "ADHD quality care metrics" that identified, among other things, "situations where medication regimens may not be optimized" and requested Providers to review patient files in instances where stimulants had not been prescribed to patients diagnosed with ADHD and no comorbidity, and to "consider making any necessary adjustments to your clients' treatment plan on their next visit" including "(a) switching medication to a first line treatment or (b) amending the patient's diagnostic codes to more accurately reflect and justify their treatment plan."

33. Between December 2021 and February 2022 alone, Cerebral sent emails to over 500 clinicians and flagged over 1,700 patient charts for Providers to re-review. Internal communications indicated that these monitoring emails changed Providers' prescribing behavior. In February 2022, certain members of Cerebral's Leadership Team analyzed the results of these emails learned that "out of 800 patients that were flagged over one month, 30% were addressed by Providers, meaning 240 patients were prescribed medications who otherwise would not have been prescribed without this effort."

34. Certain senior members of Cerebral's Leadership Team, including Executive 1 and Executive 2, were aware of some Providers' concerns about prescribing stimulants to certain patients. For example, internal communications from August 2021 showed that some providers had concerns that "ADHD patients sometimes are med seeking," that the providers "get a lot of patients that are questionable as to whether they actually have ADHD"

and are “solely dependent on what the patient is telling us,” and that some patients “just want a stimulant” and get “very angry” when clinicians do not prescribe stimulants.

35. In February 2022, members of Cerebral’s Leadership Team, including Executive 1, discussed increasing the ADHD Stimulant Rx metric through individual discussions during monthly meetings with Providers and using disciplinary actions such as issuing “flags” for underperformance

*Financial Incentives Related to Controlled Substances, Including ADHD Treatment*

36. Prescription Drug Monitoring Programs (PDMP)/Prescription Monitoring Program (PMP) databases are electronic databases which, collect, maintain and disseminate controlled substance prescription information specific to each jurisdiction’s laws and regulations. Cerebral was aware that checking PDMP/PMP data is a necessary step prior to prescribing controlled substances and ensures that controlled substances are not being issued to drug seekers.

37. In addition to the above, Cerebral provided additional compensation to its Providers when they issued and/or refilled stimulant prescriptions for ADHD patients. Cerebral paid its Providers an additional \$10 for conducting required pre-prescription checks of the PDMP/PMP databases every time they prescribed and/or refilled a stimulant drug for ADHD, regardless of how much time or effort the background checks actually took.

38. Up until May 2022, Cerebral only compensated Providers for PDMP/PMP checks completed for patients diagnosed with ADHD. Cerebral did not compensate Providers to conduct PDMP/PMP checks for patients with any other medical diagnoses or patient needs. This ADHD-specific practice continued at Cerebral even though Executive 2 and other members of Cerebral’s leadership recognized that such payments for ADHD treatment could be construed as “incentivizing prescribers to diagnose clients with ADHD.”

39. In addition, Cerebral employed “Out of Office R.N.s” to fill in and ensure that customers received prescriptions if their treating clinicians had left their employment at Cerebral or were otherwise unavailable. Cerebral paid “Out of Office R.N.s,” per prescription—\$10 for non-controlled substances and \$25 for controlled substances—thereby offering a direct financial incentivization for the issuance of controlled substance prescriptions.

40. In addition, from approximately August 2021 to approximately December 2021, Cerebral sought to increase the number of practitioners who could prescribe controlled substances to its ADHD patients. In general, pursuant to the Controlled Substances Act, practitioners must obtain a license from the Drug Enforcement Administration (DEA) prior to administering, prescribing, or dispensing any controlled substances. Cerebral offered to pay a one-time \$900 payment to nurse practitioners who were not yet licensed with the DEA if they satisfied certain requirements. Specifically, in order to receive the \$900 payment, the practitioners had to obtain a DEA license in a certain state (e.g., Nevada, Kansas, Colorado, Oregon, California, New York, Florida, Washington, and Illinois), and complete approximately between 100 to 300 initial appointments with clients who self-reported an ADHD diagnosis, a requirement that few, if any, Providers met.

**C. Diversion Risks at Cerebral**

41. Cerebral did not maintain effective controls against drug diversion, even when risks of drug diversion were elevated to or acknowledged by certain members of Cerebral’s Leadership Team. For example:

42. Cerebral had thousands of duplicate patient accounts (i.e. multiple accounts that belonged to the same individual) that were not fully addressed internally until at least early 2022. At various points prior to 2022, more than one Cerebral employee knew that

more than 2,000 duplicate patient addresses existed on Cerebral's platform, and had raised the issue with one or more members of Cerebral's Leadership Team. In particular, a Cerebral employee stated internally that duplicate patient accounts were being used to "receive numerous prescriptions" and flagged these accounts as both a business risk and a "significant clinical quality/safety issue (clients receiving contradicting meds or multiple CS prescriptions from multiple prescribers who don't have a way of reviewing the other, pre-existing treatment plans)." Cerebral's Leadership Team acknowledged that the Company needed to "prevent duplicate accounts for safety and regulatory reasons" but did not address this diversion risk until at least early 2022. As a result of the failure to timely identify and remove duplicate accounts, at least one patient was able to obtain stimulant prescriptions from multiple Cerebral Providers, even after having been previously flagged as having misused stimulants.

43. Prior to 2022, Cerebral's platform also permitted drug-seeking patients who were not prescribed controlled substances in the first instance to seek reassignment to different Providers. Internal concerns regarding a patient's ability to "doctor shop" and to seek a more lenient prescriber were communicated to certain members of Cerebral's Leadership Team, including Executive 2. Nonetheless, Cerebral did not fully address this diversion risk until at least 2022, where Cerebral's Leadership Team acknowledged that its reassignment process incentivized "clients [who were] unhappy with treatment plan [to] doctor shop[] to get specific drugs."

44. Furthermore, in the fall of 2021, Cerebral, at the direction of Executive 1, also relaxed its clinician hiring standards (for example, by removing certain qualifying steps in the hiring process) so that the Company could hire more clinicians to meet the needs of its growing patient base. As a result, the Company's "rejection rate due to lack of experience"

decreased from approximately 6-8% to approximately 1%. Certain members of Cerebral's Leadership Team acknowledged that the Company's relaxed hiring standards "lowered [the] quality" of its Providers and created safety and business risks. These relaxed standards were reversed in early 2022.

45. Prior to mid-2022, Cerebral also approved and rolled out advertisements and marketing tactics that associated the Company with "dancing pill bottles" and promoted correlations between undiagnosed ADHD and young women who were overeating and/or binge-eating. Certain members of Cerebral's Leadership Team understood that these advertisements were not based on clinical or scientific evidence and could contribute to the perception that Cerebral was a "pill mill" by advertising ease of access to drugs.

46. Moreover, in March 2022, certain members of Cerebral's Leadership Team also acknowledged to Executive 1 that Cerebral's services suffered from clinical quality issues as a direct result of the Company's extreme focus on growth. Their message to Executive 1 stated,

The recent press and upcoming press with [Wall Street Journal] investigating, points to a 'growth at all costs' mentality. While we share the ambition to continue to grow and spread Cerebral's impact, we are seeing too many clinical quality and operational breaks to continue at this pace. Clinical quality and ethics are not factored into decisions and are not valued – not in our actual values, not in our OKRs, and not in how we assess impact. We see these concerns shared by former and current employees as well as prospective and current partners. We believe that this continued mentality and the press's spotlight on it will put Cerebral in existential risk, leading to insurance network terminations, commercial partnership rejections, and a mass exodus of employees starting at the executive level.

47. Cerebral terminated Executive 1 on May 18, 2022, and took a number of other remedial measures both in the lead up and aftermath to his dismissal. For example, on

March 21, 2022, Cerebral hired a Chief Compliance Ethics & Privacy Officer, who then hired five additional experienced compliance professionals and a healthcare regulatory attorney with over twenty years of direct healthcare and telehealth experience. Additionally, on May 20, 2022, Cerebral stopped issuing any prescriptions of controlled substances to new patients (excluding for patients treated for opioid use disorder) and only renewed controlled substance prescriptions to existing patients until they were transferred to non-Cerebral providers or were switched to an appropriate non-controlled medication. And on October 15, 2022, Cerebral stopped prescribing controlled substances altogether.

## ATTACHMENT B

### Resolution of the Board of Directors of Cerebral, Inc. (“Cerebral”)

The Board of Directors of Cerebral, which is headquartered in Delaware, has agreed by a unanimous decision among the non-recused Directors as follows:

1. Joon H. Kim and Lisa Vicens of Cleary Gottlieb Steen & Hamilton LLP are attorneys for Cerebral in this matter.
2. Each Member of the Board has read the entire Agreement between Cerebral and the United States, including the Statement of Facts attached as Attachment A; understands and agrees to the terms of the Agreement; and acknowledges the accuracy of the Statement of Facts to the best of each Member’s knowledge and belief;
3. Richard Hamilton, the Designated Representative of the Board of Directors, is authorized to sign the Agreement on behalf of Cerebral;
4. Cerebral is fully satisfied with the performance of its attorneys in relation to the investigation and negotiation of the Agreement in this matter;
5. Cerebral’s agreement to enter into this Agreement is voluntary and is not the subject of force, threats, or promise (other than the promises contained in this Agreement); and
6. The Board Member signing below acknowledges the Board’s approval of the Agreement and has the authorization to bind Cerebral under U.S. law and under Cerebral’s Memorandum and Articles of Incorporation, and any other instruments relevant to the governance of Cerebral.

Signed by:

*Richard Hamilton*

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Richard Hamilton  
Director, Cerebral Inc.