



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306**

Regular Meeting
Wednesday, February 16, 2022

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" REPRESENTS THE CONSENT AGENDA. CONSENT ITEMS WILL BE CONSIDERED FIRST AND MAY BE APPROVED BY ONE MOTION IF NO MEMBER OF THE BOARD OR AUDIENCE WISHES TO COMMENT OR ASK QUESTIONS. IF COMMENT OR DISCUSSION IS DESIRED BY ANYONE, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED IN LISTED SEQUENCE WITH AN OPPORTUNITY FOR ANY MEMBER OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING THE ITEM BEFORE ACTION IS TAKEN.

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. In addition, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2)) –

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Kern Medical Center employees from the Whole Person Care program –
MAKE PRESENTATION
- 4) Presentation by the Chief Executive Officer recognizing Karen S. Barnes, Vice-President and General Counsel, for her 20 years of dedicated service to Kern Medical Center and the County of Kern –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

- CA
- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVE; ADOPT RESOLUTION
- CA
- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on January 19, 2022 –
APPROVE
- CA
- 7) Proposed retroactive Asset Purchase Agreement with Walgreen Co., an independent contractor, containing non-standard terms and conditions, for the transfer of prescription files and remaining pharmaceutical inventory –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN
- CA
- 8) Proposed retroactive Side Letter of Agreement with Service Employees International Union, Local 521, to implement minimum wage increases, effective January 1, 2022 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 9) Proposed Service Agreement with GE Precision Healthcare, LLC, an independent contractor, containing non-standard terms and conditions, for maintenance and service of Q Street Imaging Center equipment, for the period February 16, 2022 through February 15, 2027, in an amount not to exceed \$900,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
- 10) Proposed Addendum to the Software Use Agreement 2017-025 with Strata Decision Technology, LLC, an independent contractor, for management reporting software for the period March 16, 2017 through March 15, 2022, extending the term for five years from March 16, 2022 through March 15, 2027, and increasing the maximum payable by \$1,809,105, from \$2,056,164 to \$3,865,269, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
- 11) Proposed Third Amendment to Credit Agreement 011-2019 with PNC Bank, National Association (PNC Bank) for a revolving line of credit for the period March 1, 2019 through February 28, 2022, extending the maturity date of the Line of Credit to a date not later than March 1, 2023, amending the Credit Agreement to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the Credit Agreement, and providing that the maximum available principal amount of credit provided under the Credit Agreement may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the General Security and Pledge Agreement, and delegating authority to certain officers –
APPROVE; ADOPT RESOLUTION; AUTHORIZE AND DIRECT ANY TWO OF THE FOLLOWING OFFICERS (EACH, AN “AUTHORIZED OFFICER”) OF THE AUTHORITY, FOR AND IN THE NAME OF AND ON BEHALF OF THE AUTHORITY, TO EXECUTE THE THIRD AMENDMENT TO CREDIT AGREEMENT, OR A NEW CREDIT AGREEMENT IF THE AUTHORIZED OFFICERS DETERMINE THAT A NEW CREDIT AGREEMENT IS ADVISABLE, AND AN AMENDMENT TO THE NOTE, OR A NEW NOTE IF THE AUTHORIZED OFFICERS DETERMINE THAT A NEW NOTE IS ADVISABLE, AS THE AUTHORIZED OFFICERS EXECUTING THE SAME, TOGETHER WITH THE VICE PRESIDENT & GENERAL COUNSEL OF THE AUTHORITY, SHALL APPROVE: CHAIRMAN OF THIS BOARD, VICE-CHAIRMAN OF THIS BOARD, CHIEF EXECUTIVE OFFICER OF THE AUTHORITY OR CHIEF FINANCIAL OFFICER OF THE AUTHORITY
- CA
- 12) Proposed retroactive Amendment No. 2 to Memorandum of Understanding 61320 with Kern Health Systems, an independent contractor, for translation services for Kern Medical Center patients for the period December 14, 2020 through December 13, 2021, extending the term for an additional period from December 14, 2021 through December 31, 2022, and increasing the maximum payable by \$600,000, from \$425,000 to \$1,025,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
- 13) Proposed Service Agreement with International Business Machine Corporation, an independent contractor, containing non-standard terms and conditions, for electronic resources for medication safety from February 16, 2022 through February 15, 2025, in an amount not to exceed \$80,212 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 14) Proposed retroactive Amendment No. 1 to Agreement 039-2021 with Healthcare Performance Group, Inc., an independent contractor, for professional consulting services to assist with staffing shortages related to Cerner Millennium support for the period June 11, 2021 through June 10, 2022, increasing the maximum payable by \$198,720, from \$200,000 to \$398,720, to cover the term –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 15) Proposed retroactive Amendment No. 2 to Agreement 006-2020 with Neurodiagnostic Workforce LLC, an independent contractor, for neurodiagnostic monitoring services for the period February 12, 2020 through February 11, 2022, extending the term for two years from February 12, 2022 through February 11, 2024, and increasing the maximum payable by \$900,000, from \$752,000 to \$1,652,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Amendment No. 1 to Agreement 03219 with Rehana Rafiq, M.D., a contract employee, for professional medical services in the Department of Family Medicine, Division of Pediatrics, from February 16, 2019 through February 15, 2022, extending the term for an additional period from February 16, 2022 through June 30, 2022, and increasing the maximum payable by \$60,000, from \$350,000 to \$410,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed retroactive Agreement with Patrick G. Pieper, M.D., a contract employee, for professional medical services in the Department of Surgery from February 1, 2022 through January 31, 2025, in an amount not to exceed \$1,846,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for construction services related to hospital pharmacy renovations and HVAC installation, effective February 16, 2022, in an amount not to exceed \$467,504 –
MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$467,504

CA

- 19) Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction services related to renovations at 3551 Q Street, effective February 16, 2022, in an amount not to exceed \$561,143 –
MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AND AUTHORIZE CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$567,143

CA

- 20) Proposed Amendment No. 3 to Agreement 07816 with Paul Dhanens Architect, Inc., an independent contractor, for architectural design services for budgeted construction projects for the period July 1, 2016 through June 30, 2023, increasing the maximum payable by \$250,000, from \$700,000 to \$950,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 21) Proposed Purchase Order Agreement with Acist Medical Systems, Inc., an independent contractor, containing non-standard terms and conditions, for repair of Cath lab equipment, effective February 16, 2022, in an amount not to exceed \$20,125 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 22) Kern County Hospital Authority Chief Financial Officer report –
RECEIVE AND FILE

- 23) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE

CA

- 24) Claims and Lawsuits Filed as of January 31, 2022 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 25) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 26) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Marcel Monji v. County of Kern, et al., United States District Court, Eastern District of California, Case No. 1:19-cv-01526-JLT-BAK (SKO) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MARCH 16, 2022 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

All agenda item supporting documentation is available for public review at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, 93306 during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday, following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

The Kern Medical Center Conference Room is accessible to persons with disabilities. Disabled individuals who need special assistance to attend or participate in a meeting of the Kern County Hospital Authority Board of Governors may request assistance at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, California, or by calling (661) 326-2102. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

23) CLAIMS AND LAWSUITS FILED AS OF JANUARY 31, 2021 –
RECEIVE AND FILE

- A) Claim in the matter of Laura Michelle Fuller
- B) Unfair Practice Charge in the matter of Service Employees International Union, Local 521 v. Kern Medical Center, Case NO. LA-CE-1553-M
- C) Amended Unfair Practice Charge in the matter of Service Employees International Union, Local 521 v. Kern Medical Center, Case NO. LA-CE-1553-M
- D) Notice of Filing of Discrimination Complaint in the matter of Maria Chavez; DFEH Case No. 202109-14859624; EEOC No. 37A-2022-00748-C



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings

Recommended Action: Approve; Adopt Resolution

Summary:

On March 17, 2020 Governor Newsom issued Executive Order N-29-20 due to the COVID-19 pandemic. These orders specified relaxed provisions of meetings under the Ralph M. Brown Act (California's open meeting law; "Brown Act") allowing meetings to be conducted through teleconferencing. Executive Order N-29-20 expired on September 30, 2021. In response, on September 16, 2021, Governor Newsom signed Assembly Bill (AB) 361, which amends Government Code Section 54953 clarifying the Brown Act regulations and restrictions relating to the use of teleconferencing to conduct public meetings.

Discussion:

Currently the Brown Act states that should a legislative body elect to use teleconferencing it must identify each teleconferencing location in the public notice and agenda. The agenda is required to be posted at all teleconferencing locations and all locations must be publicly accessible. Additionally, a quorum of the members of the legislative body must participate from a teleconferencing location that is physically within the jurisdictional boundaries of the public agency.

Governor Newsom issued Executive Order N-29-20 suspending the Brown Act requirements due to the COVID-19 pandemic with the intention of facilitating social distancing and the mitigation of COVID-19. The Executive Order expired on September 30, 2021. In response on September 16, 2021 Governor Newsom signed AB 361 to replace the expired Executive Order.

Similar to Executive Order N-29-20, AB 361 applies during a State of Emergency proclaimed by the Governor. In addition to the State of Emergency, one of the following conditions must apply:

- State or local officials have impose or recommended measures to promote social distancing,
- The legislative body is meeting to determine whether, because of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body has determined that, because of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

If the prerequisites mentioned above are met AB 361 provides an exemption to the regular Brown Act teleconferencing requirements and an alternate set of requirements will apply. Those requirements include:

- Adequate notice of the meeting and posting an agenda as required by the Brown Act;
- The agenda is not required to list each teleconference location or be physically posted at each teleconference location;
- If there is a disruption in the public broadcast or the call-in or internet-based meeting service, the legislative body must cease and take no further action on agenda items until public access is restored; and
- Local agencies cannot require that public comment be submitted prior to the meeting, and must allow for live public comment during the specified public comment period of the meeting.

AB 361 sunsets on January 1, 2024. If your Board determines that it is in the best interest of public health and safety to continue to hold virtual public meetings, continued reliance will require your Board to reevaluate and adopt a new resolution every 30 days.

Therefore, it is recommended that your Board adopt the attached Resolution.

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. 2022-____

**MAKING FINDINGS PURSUANT TO
GOVERNMENT CODE SECTION 54953, AS
AMENDED BY ASSEMBLY BILL 361, AND
AUTHORIZING THE CONTINUED USE OF
VIRTUAL MEETINGS**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of February, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) As a result of the COVID-19 pandemic, Governor Newsom issued Executive Order Nos. N-08-21, N-25-20 and N-29-20, which suspended certain provisions of the Ralph M. Brown Act to allow legislative bodies to conduct public meetings without strict compliance with the teleconferencing provisions of the Brown Act; and

(b) Assembly Bill 361, signed into law on September 16, 2021, amended Government Code section 54953, effective October 1, 2021, to provide relief from the teleconferencing provisions of the Brown Act under certain circumstances provided the legislative body makes certain findings; and

(c) As a result of the COVID-19 pandemic, the Governor proclaimed a state of emergency on March 4, 2020, in accordance with section 8625 of the California Emergency Services Act, and the state of emergency remains in effect; and

(d) As a result of the COVID-19 pandemic, the California Department of Public Health and County of Kern Public Health Services continue to recommend measures to promote social distancing.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. This Board hereby finds that the state of emergency continues to directly impact the ability of the members of the Board of Governors to meet safely in person, and further that state and local officials continue to impose or recommend measures to promote social distancing.

3. This Board hereby authorizes the Board of Governors to continue to conduct public meetings in accordance with Government Code section 54953, as amended by Assembly Bill 361.

4. This Resolution will be in effect during the period in which state or local public officials impose or recommend measures to promote social distancing.

5. This Resolution shall take effect immediately upon its adoption and remain in effect until March 16, 2022.

6. This Board shall reevaluate the above findings on March 16, 2022, and every 30 days thereafter.

7. Resolution No. 2022-001, adopted by the Board of Governors on January 19, 2022, is hereby repealed and superseded by this Resolution.

8. This Board hereby directs staff to take all actions necessary to carry out the intent and purpose of this Resolution.

9. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Members, Board of Governors
Chief Executive Officer
Legal Services Department



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306**

Regular Meeting
Wednesday, January 19, 2022

11:30 A.M.

BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Roll Call: 6 Present, 1 Absent - Alsop

NOTE: The vote is displayed in bold below each item. For example, Alsop-McLaughlin denotes Director Alsop made the motion and Director McLaughlin seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE CONSIDERED TO BE ROUTINE AND APPROVED BY ONE MOTION.

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. In addition, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

GABRIEL GARCIA, BRANDEE COFFIA, GENEVIEVE TOMADA, LAKISA DOSS, CORINA ANDERSON, LAURA CHAVEZ, MARGARET MURO, GEORGE PFISTER, CHLOE ENGLISH, LOREAL JAMES, APRIL OETTING, GUADALUPE ULLOA, LIVIER VIDALES, MONICA GONZALEZ, MARISOL CASTRO, JAMIE BANKS, ALECIA, ALECIA ROSETTE, REBECCA RADICA, JENNIFER ARVIZU, CEASAR SANCHEZ, TABATHA LYONS, EVA HERNANDEZ, NYDIA MADERA OBIEDO, ANGELA AGUILAR, MA LEAH KOLENDO, JENNY SANTOS, LINNELL JAMERO, THERESA WILKINS, TINA ZAPATA, MIRIAM PINEDA, JOVITA BRAVO, PAIGE CRUMB, AND ASHLEY BAILEY HEARD REGARDING SEIU, LOCAL 521 CONTRACT NEGOTIATIONS; DIRECTOR BERJIS REQUESTED CHIEF EXECUTIVE OFFICER SCOTT THYGERSON RESPOND; SCOTT THYGERSON RESPONDED WITH AN UPDATE ON THE STATUS OF CONTRACT NEGOTIATIONS

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2)) –
NO ONE HEARD

INTRODUCTION

- 3) Introduction of Kern County Hospital Authority Chief Nursing Officer Dawn C. LeRoy, RN, MSN, CEN-BC –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE INTRODUCTION; DAWN C. LEROY HEARD

RECOGNITION

- 4) Presentation by the Chief Executive Officer recognizing the 'Association of Kern County Nurse Leaders 2022' nominees from Kern Medical Center –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; CHAIRMAN BIGLER CONGRATULATED THE NOMINEES

ITEMS FOR CONSIDERATION

CA

- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVED; ADOPTED RESOLUTION 2022-001
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on December 15, 2021 –
APPROVED
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 7) Proposed retroactive Resolution reaffirming the prior appointments of Scott Thygerson, Andrew J. Cantu, Tyler S. Whitezell, and Glenn E. Goldis, M.D., and affirming the recent appointment of Dawn C. LeRoy, RN, MSN, CEN-BC, as Officers of the Kern County Hospital Authority, effective December 27, 2021 –
APPROVED; ADOPTED RESOLUTION 2022-002
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 8) Proposed Kern County Hospital Authority Organizational Chart effective January 19, 2022 –
APPROVED
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 9) Proposed Second Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, appointing Renee Villanueva to the Board of Managers in place of Russell V. Judd, effective January 19, 2022 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 001-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 10) Proposed Purchase Order with TSI, Inc., an independent contractor, containing non-standard terms and conditions, for annual calibration services of PortaCount devices used for N95 respirator mask fit testing from January 19, 2022 through January 18, 2027, in an amount not to exceed \$10,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 002-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 11) Proposed Software Subscription Agreement with Rarestep, Inc., doing business as Fleetio, an independent contractor, containing non-standard terms and conditions, for an electronic fleet management tracking system from January 31, 2022 through January 30, 2023, in an amount not to exceed \$4,632 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 003-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 12) Proposed Amendment No. 6 to Agreement 1048-2010 with Total Renal Care, Inc., an independent contractor, for acute dialysis services for the period December 1, 2010 through January 29, 2022, extending the term from January 30, 2022 through November 30, 2023, and increasing the maximum payable by \$3,061,000, from \$4,525,000 to \$7,586,000, to cover the term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 004-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

CA

- 13) Proposed retroactive Business Associate Agreement with Varian Medical Systems, Inc., an independent contractor, containing non-standard terms and conditions, for the term of the underlying services agreement from November 5, 2021 through November 4, 2024 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 005-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

- CA
14) Proposed retroactive Amendment No. 1 to Agreement 01317 with TALX Corporation, a provider of Equifax Workforce Solutions, an independent contractor, for employment verification and unemployment cost management services for the period January 1, 2017 through December 31, 2021, extending the term for three years from January 1, 2022 through December 31, 2024, in an amount not to exceed \$20,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 006-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- CA
15) Proposed Professional Service Agreement and Telemedicine Credentialing and Privileging Agreement with Retina Vue, P.C., an independent contractor, containing non-standard terms and conditions, for remote ophthalmology and delegated credentialing services, from January 19, 2022 through January 18, 2027, in an amount not to exceed \$200,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENTS 007-2022 AND 008-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- CA
16) Proposed Amendment No. 1 to Agreement 014-2020 with Virtual Radiologic Professionals of California, P.A., an independent contractor, for remote radiology afterhours interpretation services for the period April 15, 2020 through April 14, 2022, increasing the maximum payable by \$218,000, from \$910,000 to \$1,128,000, to cover the term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 009-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- CA
17) Proposed Purchase Order Agreement with TIMS Medical by Foresight Imaging, LLC, an independent contractor, containing non-standard terms and conditions, for preventive maintenance, repairs and required software updates of fluoroscopy equipment in the Radiology Department from January 19, 2022 through January 18, 2026, in an amount not to exceed \$10,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENTS 010-2022, 010A-2022 AND 011-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- CA
18) Proposed First Amendment to Enhanced Purchasing Agreement 2017-002A with Quorum Purchasing Advantage, LLC, an independent contractor, for access to group purchasing services, for the period February 1, 2017 through January 31, 2022, extending the term for five years from February 1, 2022 through January 31, 2027 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 012-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- CA
19) Proposed Service Request with Presidio Networked Solutions Group LLC, an independent contractor, containing non-standard terms and conditions, for network remediation and technical support, effective January 19, 2022, in an amount not to exceed \$92,250 plus applicable taxes –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 013-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

- CA
20) Proposed retroactive Side Letter of Agreement with Service Employees International Union, Local 521, to implement minimum wage increase, effective January 1, 2022 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN AGREEMENT SUBJECT TO APPROVAL AS TO FORM BY COUNSEL
WITHDRAWN
- CA
21) Proposed Engagement Letter from Moss-Adams LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2022, in an amount not to exceed \$203,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 014-2022
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- 22) Presentation on Report of Independent Auditors from Moss Adams LLP regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2021 – STELIAN DAMU, KIMBERLY SOKOLOFF AND KRISTIN OLKO, MOSS ADAMS LLP, HEARD; CHAIRMAN BIGLER THANKED CHIEF FINANCIAL OFFICER ANDREW CANTU AND HIS TEAM FOR THEIR WORK ON THE ANNUAL AUDIT; RECEIVED AND FILED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- NOTE: DIRECTOR ALSOP JOINED THE MEETING AFTER THE DISCUSSION AND VOTE ON ITEM 22
- 23) Kern County Hospital Authority Chief Financial Officer report – CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED
McLaughlin-Berjis: All Ayes
- 24) Kern County Hospital Authority Chief Executive Officer report – CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; RECEIVED AND FILED
Pelz-Berjis: All Ayes
- CA
25) Claims and Lawsuits Filed as of December 31, 2021 – RECEIVED AND FILED
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop

ADJOURNED TO CLOSED SESSION
McLaughlin-Alsop

CLOSED SESSION

- 26) Request for Closed Session regarding per review of health facilities (Health and Safety Code Section 101855(j)(2)) –SEE RESULTS BELOW
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: William Coughran v. Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County Superior Court Case No. BCV-21-100662 – SEE RESULTS BELOW

- 28) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL – SEE RESULTS BELOW
- 29) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Alsop-Brar

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 26 concerning Request for Closed Session regarding per review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 27 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: William Coughran v. Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County Superior Court Case No. BCV-21-100662 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 28 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 29 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, FEBRUARY 16, 2022 AT 11:30 A.M.

Alsop

/s/ Mona A. Allen
Authority Board Coordinator

/s/ Russell E. Bigler
Chairman, Board of Governors
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2021

Subject: Proposed Retroactive Asset Purchase Agreement with Walgreen Co. for the Transfer of Prescription Files and Remaining Pharmaceutical Inventory, Containing Non-Standard Terms and Conditions

Recommended Action: Approve; Authorize Chief Executive Officer to Sign

Summary:

On November 17, 2021, your Board held a public hearing to consider the proposed closure of the Kern Medical Center Campus Pharmacy, located at 2014 College Avenue, Bakersfield 93305, and Sagebrush Medical Plaza Pharmacy, located at 1111 Columbus Street, Suite 2000, Bakersfield 93305 due to the impacts of Governor Newsom's Executive Order N-01-19 which requires all Medi-Cal pharmacy services to transition from managed care to fee-for-service Medi-Cal. This directive, subsequently named Medi-Cal Rx results in outpatient pharmacy prescriptions being reimbursed at their acquisition cost plus a small dispensing fee, creating a significant financial shortfall in pharmacy operations. During this meeting, your Board approved the closure and directed staff to determine the specific actions necessary to implement the change in services.

In order to implement the closure, Kern Medical was required to transfer all prescription files to a successor licensed pharmacy. After a thorough search, Kern Medical identified Walgreen Co. (Walgreens) as a pharmacy willing and best able to serve the needs of our patient population due to their multiple locations and relative distance to the Kern Medical hospital and clinics and agreed to a combined purchase price of \$595,000, subject to final volume of records at transfer and the purchase of \$335,000 in inventory. This transfer became effective January 27, 2022. Due to the timing and nature of the transaction, Kern Medical agreed to the terms of the Agreement in order to minimize the financial impact of operating beyond the January 1, 2022 effective date of Medi-Cal Rx. Through this Agreement, Walgreens will notify all patients of the transfer of records.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel to the restrictive covenants in the Agreement. While likely unenforceable under existing law, the Agreement nonetheless restricts the ability of Kern Medical to operate, own, lease, engage or participate as an owner, partner, employee, etc., any retail drug store, clinic pharmacy, or pharmacy business that competes with Walgreens's retail pharmaceutical operation within a 15-mile radius of each Kern Medical pharmacy location for a period of five years from January 27, 2022. Efforts were made, including proposing a shorter term, to negotiate this nonstandard term to no avail. As noted above, in order to minimize the financial impact of continuing to operate the pharmacies, and due the lack of interest in available retail pharmacies to assume responsibility for the pharmacy records, as required by law, staff felt it was imperative that the agreement be signed with this nonstandard term.

Therefore, it is recommended that your Board retroactively approve the Asset Purchase Agreement with Walgreen Co., and authorize the Chief Executive Officer to sign.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of Jan. 25, 2022, by and among WALGREEN CO., an Illinois corporation ("Buyer"), KERN COUNTY HOSPITAL AUTHORITY, a California public agency (the "Seller").

WHEREAS, the Seller owns and operates the prescription pharmacies listed in Schedule I, attached hereto (each a "Pharmacy" and collectively, the "Pharmacies") in the locations listed in Schedule I (each a "Location" and collectively, the "Premises"); and

WHEREAS, Seller has served and currently serves as owner of the Pharmacies and will materially benefit from the transactions contemplated by this Agreement; and

WHEREAS, Buyer desires to purchase from the Seller, and the Seller desires to sell to Buyer, some or all of the Pharmacies' stock of prescription pharmaceutical inventory and prescription files located on the Premises, upon the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I. PURCHASED AND EXCLUDED ASSETS; EXCLUDED LIABILITIES

1.1 Assets to be Purchased. The Seller agrees to sell to Buyer, and Buyer agrees to purchase from the Seller, upon the terms and subject to the conditions set forth in this Agreement, the following assets (the "Purchased Assets");

(a) The Purchased Inventory (as defined and more fully described in Section 2.1), and all accompanying transaction history, transaction information and transaction statement (the "3T documentation"), as required pursuant to the Drug Supply Chain Security Act (the "DSCSA");

(b) Any and all of Seller's controlled substance invoices, DEA 222 forms (blue copies), and annual controlled substance inventory logs dated within the last twenty-four (24) months prior to Closing;

(c) Any and all prescriptions, prescription files and records, customer lists and patient profiles, including (i) any files or records maintained electronically; and (ii) any files or records added between the date of this Agreement and the date of transfer (collectively, the "Records"); and

(d) Any and all other books and records related to the Pharmacies or other assets of the Pharmacies, in each case that the parties agree should be transferred to Buyer in order to convey ownership of the Inventory or Records to Buyer or to otherwise effectuate the intention of this Agreement.

1.2 Excluded Assets. Notwithstanding the provisions of Section 1.1, the Purchased Assets shall not include the following assets of the Seller (collectively, the “Excluded Assets”):

(a) The Excluded Inventory described on Exhibit A (the “Excluded Inventory”); and

(b) All assets of the Seller not included in the Purchased Assets, including (i) all hard copy prescriptions, prescription files and records older than thirty-six (36) months prior to the Closing Date; (ii) prescription files and records maintained electronically older than thirty-six (36) months prior to the Closing Date; (iii) proof of receipt signature logs older than twenty-four (24) months prior to the Closing Date, if applicable; (iv) cash, cash deposits and accounts receivable related to periods ending prior to the Closing Date; (v) store and trade fixtures, furniture and equipment; (vi) licenses, permits, contracts and understandings of the Seller related to the Pharmacy; (vii) employee benefit plans, programs or arrangements and all contracts of insurance; (viii) computer software programs and systems (except those required to access the Records that are maintained electronically on the Pharmacy computer) and any web sites; (ix) any corporate minute books and the corporate seal of the Seller; (x) any and all of Seller’s controlled substance invoices, DEA 222 forms (blue copies), and annual controlled substance inventory logs dated older than twenty-four (24) months prior to Closing; and (xi) the 340B inventory.

1.3 Excluded Liabilities. Except as expressly set forth herein, Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of Seller whatsoever, regardless of whether any such liabilities or obligations are absolute or contingent, liquidated or unliquidated, or otherwise (collectively, the “Excluded Liabilities”). Seller shall remain liable for all Excluded Liabilities, including any obligations arising out of the operation of the Pharmacies prior to the Closing Date. Without limiting the generality of the foregoing, in no event shall Buyer assume (a) any obligations of Seller under HIPAA or other applicable laws or regulations, including the HIPAA privacy standard requiring accounting of certain disclosures of Protected Health Information (“PHI”), as that term is defined in the Health Insurance Portability and Accountability Act of 1996, P. L. 104-191, made by Seller prior to the Closing Date or (b) any type of successor liability as to trade creditors, unemployment, income, property, sales or other Taxes, or otherwise, it being understood that all such liabilities are Excluded Liabilities.

ARTICLE II. MERCHANDISE IDENTIFICATION AND VALUATION

2.1 Inventory included in Purchased Assets. Except for the Excluded Inventory, all items in the Pharmacy’s stock of prescription pharmaceutical inventory (“Pharmaceutical Inventory”) and any items in the Pharmacy’s stock of over-the-counter inventory (“Non Pharmaceutical Inventory”) specifically identified as inventory to be included in the Purchased Assets on Exhibit A and accompanied by 3T documentation (Pharmaceutical Inventory, together with Non-Pharmaceutical Inventory, collectively, the “Purchased Inventory”). If proper 3T documentation, as determined by Buyer in its sole discretion (“3T Documentation”), is not included with the Purchased Inventory, Buyer has a right to refuse to purchase any or all of the Purchased Inventory at Closing. In the event the Inventory count has occurred and Seller has not provided 3T Documentation, Buyer may elect to return the Inventory to Seller and retain the

Inventory Amount with no further obligation to the Seller. In addition to Buyer's rights to refuse or return Inventory, Seller shall reimburse Buyer for all actual out-of-pocket expenses incurred by Buyer due to Seller's failure to deliver 3T Documentation as provided in this Section 2.1.

2.2 Handling of Excluded Inventory. The parties understand that Buyer will purchase, and the Purchased Assets will include only those items of inventory that are determined to be Purchased Inventory according to the procedures set forth on Exhibit A and that Buyer will not purchase any Excluded Inventory. To the extent reasonably possible, Seller shall physically separate all items of Excluded Inventory from the Purchased Inventory prior to Closing.

2.3 Valuation of the Inventory. The parties shall commission RGIS Inventory Specialists or another mutually acceptable inventory valuation firm (the "Inventory Service") to conduct a full review and valuation of the Purchased Inventory using the methods, standards and procedures set forth in Exhibit A no later than two (2) business days following the Closing Date and to determine the aggregate value of the Purchased Inventory as of the Closing Date (such value, the "Inventory Amount"). The value of the Inventory Amount shall be determined in accordance with the valuation procedures set forth on Exhibit A; provided that in no event shall the Inventory Amount for the Purchased Inventory exceed the respective amount listed in Schedule I (collectively the "Inventory Amounts"). Buyer is not required to purchase such excess. Any Inventory Buyer declines to purchase hereunder shall be the property of Seller and shall constitute Excluded Inventory.

ARTICLE III. PRESCRIPTION VOLUME AND VALUATION

3.1 Prescription Volume. Seller represents and warrants to Buyer and agrees, as of the date of this Agreement, the average daily prescription count of the respective Pharmacy, calculated over a seven (7) day calendar week is at least the respective amount listed in Schedule I (each a "Current Volume" and collectively the "Current Volumes").

3.2 Maintenance of Prescription Volume; Audit Rights. Between the date of this Agreement and the Closing Date, Seller will take all steps reasonably necessary to maintain or increase the respective Current Volume. Buyer shall have the right, at any time before Closing upon reasonable notice and at Buyer's expense, to audit the Seller's prescription records to verify the then-current average daily prescription count.

3.3 Required Minimum Prescription Count; Termination Right. If, at any time between the date of this Agreement and the Closing Date, the average daily prescription count at the respective Pharmacy falls below 95% of the respective Current Volume (rounded up to the nearest whole number), Buyer shall have the right to terminate this Agreement.

3.4 Valuation. The parties agree that the Records are a material part of the Purchased Assets and, together with the Retention Bonus (as defined below) referred to in Section 4.2(b), if any, and the covenants referred to in Sections 4.3(b) and (c) are valued at the respective amount listed in Schedule I (each a "Records Amount" and collectively, the "Records Amounts"). The parties further agree that the respective Records Amount will decrease in the event there is a reduction in the daily prescription count at the respective Pharmacy between the date of this Agreement and the Closing Date, which decrease shall be calculated as follows: (a) on a date

within fifteen (15) days of Closing (such date the “Verification Date”) the parties shall measure, using the same procedures as used in measuring the Current Volumes, the average daily prescription count at the respective Pharmacy prior to such date (such count, each a “Verification Date Volume”); and (b) in the event the Verification Date Volume is less than the respective Current Volume by five (5) percent or more, then the respective Records Amount shall be reduced proportionately, without regard to the initial five (5) percent reduction. Solely for the purpose of example, if the decrease between respective Current Volume and respective Verification Date Volume is twenty-five (25) percent, then the decrease of the respective Records Amount would be twenty (20) percent. Buyer’s calculation of the Verification Date Volume shall be conclusive.

ARTICLE IV. PURCHASE PRICE, PAYMENT AND ALLOCATION

4.1 Purchase Price. The purchase price (the “Purchase Price”) for the Purchased Assets and the covenants and agreements set forth herein shall be an amount equal to the Records Amounts (set forth in Section 3.4), plus the Inventory Amounts (set forth in Section 2.3).

4.2 Payment Procedures. Subject to Section 7.1, Buyer will pay the Purchase Price as follows:

(a) An amount equal to the Records Amounts shall be paid at Closing by wire transfer of immediately available funds pursuant to the wire transfer instructions provided on Exhibit E, to an account or accounts designated by Seller, provided that if the Closing occurs after 12 p.m. CST on the Closing Date, such amount shall be paid on the date that is one (1) business day after the Closing Date. In the event that complete wire transfer instructions, applicable lien payoffs, applicable UCC terminations and/or W-9 forms for the wire recipient (collectively, the “Closing Payment Requirements”) are not provided to Buyer by 12pm CST the business day prior to the Closing Date, Buyer may delay payment of the Purchase Price until one (1) business day following receipt of the Closing Payment Requirements, even if such date is after the Closing Date.

(b) Within five (5) business days of Buyer’s receipt of each of (i) a complete inventory report, prepared in accordance with Article II (which report shall identify the Inventory and set forth the Inventory Amounts) and signed by representatives of Seller and Buyer; (ii) the Record Data from the Final Conversion, and (iii) confirmation that the 3T Documentation has been validated against the Purchased Inventory as being correct and received in an acceptable manner by Buyer, Buyer shall review the inventory report and either pay an amount equal to the Inventory Amounts by wire transfer of immediately available funds to an account specified by Seller or notify Seller of any dispute to the Inventory Amounts. In the event Buyer has notified Seller of a dispute, the parties shall negotiate in good faith to resolve the dispute. Within five (5) business days of the day the dispute is resolved, Buyer shall pay the agreed upon Inventory Amounts by wire transfer of immediately available funds to an account specified by Seller.

4.3 Allocation of the Purchase Price. The Purchase Price will be allocated for Tax purposes as set forth in this Section 4.3.

(a) For the Purchased Inventory, an amount equal to the Inventory Amounts determined as set forth in Article II.

(b) For the covenants not to compete set forth in Section 6.7, an amount equal to 20% of the Records Amounts actually paid, to be allocated among the covenantors at their discretion; and

(c) The remainder of the Records Amounts shall be allocated to the Records.

Buyer and Seller will file Internal Revenue Service Form 8594 and all federal, state, local and foreign Tax Returns in accordance with these allocations if applicable.

4.4 Sagebrush Medical Plaza Location Post-Closing Adjustment. Buyer and Seller agree that if, during the period commencing on the Closing Date and continuing through the period ending on the date that is the twenty-four (24) month anniversary of the Closing Date, any Person uses the Sagebrush Medical Plaza Location for, or in connection with any retail drug store and/or clinic pharmacy, then Seller shall reimburse Buyer an amount equal to twenty-five percent (25%) of the Purchase Price (and the Purchase Price shall be reduced by that amount for all purposes of this Agreement) within five (5) days of notice by Buyer to Seller of such restricted use of the Sagebrush Medical Plaza Location by wire transfer of immediately available funds to an account or accounts specified by Buyer. As used in this Section 4.4 and 4.5 below, the term "Person" means any individual, corporation, partnership, joint venture, trust, governmental body or other organization or entity.

4.5 Kern Medical Center Campus Pharmacy Location Post-Closing Adjustment. Buyer and Seller agree that if, during the period commencing on the Closing Date and continuing through the period ending on the date that is the twenty-four (24) month anniversary of the Closing Date, any Person uses the Kern Medical Center Campus Location for, or in connection with any retail drug store and/or clinic pharmacy, then Seller shall reimburse Buyer an amount equal to twenty-five percent (25%) of the Purchase Price (and the Purchase Price shall be reduced by that amount for all purposes of this Agreement) within five (5) days of notice by Buyer to Seller of such restricted use of the Kern Medical Center Campus Location by wire transfer of immediately available funds to an account or accounts specified by Buyer.

ARTICLE V. CLOSING

5.1 Closing. Assuming the satisfaction of the conditions precedent set forth in Article IX, the closing (the "Closing") of the purchase and sale of the Purchased Assets will occur on or before _____ (the "Anticipated Closing Date") or another mutually agreeable date. The time and date when Closing actually occurs is referred to herein as (the "Closing Date"). The purchase and sale of the Purchased Assets contemplated by this Agreement shall be deemed completed on the Closing Date.

5.2 Buyer's Deliveries at Closing. At Closing, Buyer shall deliver to Seller the following:

(a) The portion of the Purchase Price required to be paid by Buyer at Closing pursuant to Section 4.2, by wire transfer of immediately available funds to an account or accounts specified by Seller.

5.3 Seller's Deliveries at Closing. At or before Closing (as specified below), Seller shall deliver to Buyer each of the following:

(a) Possession of the Purchased Assets; provided, however, that delivery of the Purchased Inventory by Seller and Buyer's taking possession of the Purchased Inventory shall not occur until the bulk transfer notices as contemplated in Section 7.2 have been complied with;

(b) A Bill of Sale duly executed by an authorized officer of the Seller, in the form attached hereto as Exhibit B;

(c) By 12pm CST one (1) business day prior to Closing, an IRS Form W-9 duly executed by an authorized officer of the Seller;

(d) The Record Data, as contemplated by Section 6.3;

(e) A full and complete copy of Seller's 3T Documentation as required for the Purchased Inventory; and

(f) Such other instruments or documents as may be necessary or appropriate to carry out the transactions contemplated hereby.

ARTICLE VI. ADDITIONAL AGREEMENTS OF THE PARTIES

6.1 Operation of the Pharmacies before Closing.

(a) Between the date hereof and the Closing Date, Seller shall operate the Pharmacies only in the ordinary course and substantially as presently operated. Consistent with the foregoing, Seller shall keep and maintain the Purchased Assets in good operating condition and repair. Seller shall protect and preserve the integrity of all patient information, instituting all necessary safeguards to ensure that such patient information and other confidential information is delivered to Buyer. Seller shall preserve the goodwill of the suppliers, contractors, licensors, employees, customers, payors, distributors and others having business relations with the Pharmacies. In furtherance of the foregoing, Seller shall maintain the Pharmacies' normal operating hours, staffing levels, inventory levels and merchandise mix.

(b) Except as expressly contemplated by this Agreement or except with the express written approval of Buyer, Seller shall not: (i) take any action that is intended or may reasonably be expected to result in (1) any of the representations and warranties set forth in this Agreement being or becoming untrue in any material respect, (2) any of the conditions to the Closing set forth in this Agreement not being satisfied or (3) any violation of any provision of this Agreement, except, in each case, as may be required by applicable law; or (ii) sell, lease, transfer or otherwise dispose of (including any transfers from the

Seller to any of its Affiliates or employees), or impose or suffer to be imposed any encumbrance on, any of the Purchased Assets, including patient and other confidential information, other than minor amounts of pharmaceutical inventory sold or otherwise disposed of for fair value in the ordinary course of the Pharmacy's business consistent with past practice.

6.2 Signage. Seller shall permit Buyer to post a sign, provided by Buyer, at the front entrance to each respective Location for a period of ninety (90) days after the Closing Date advising customers that all prescription files have been transferred to a Walgreen drug store or other location designated by Buyer. Buyer and Seller agree that if such signage is not posted at any point during the required time period, then Seller shall pay twenty-five percent (25%) of the Records Amount to Buyer, by wire transfer, if the signage is not reposted within three (3) days of written notice from Buyer to Seller of the violation.

6.3 Record Data; Patient Notification.

(a) The parties agree that the Seller will engage Infoworks (the "Data Converter") to convert the Seller's prescription file and Record data (the "Record Data") to a format specified by Buyer. Seller agrees to provide such access, information and cooperation to the Data Converter as may be required to enable the Data Converter to deliver the Record Data to Buyer in English at least two (2) weeks prior to Anticipated Closing Date (the "Initial Conversion"). In the event that the Record Data is not or cannot be delivered to the Data Converter in English as of such date, or cannot be converted by Infoworks, Buyer, at Buyer's sole discretion, may either delay the Closing until the Record Data is delivered to Buyer, or terminate this Agreement. The parties further agree that in the event that despite having received the Record Data, the Data Converter is unable to convert such Record Data at least one (1) week prior to the Closing, Buyer, at Buyer's sole discretion, may either delay the Closing, or terminate this Agreement. The Seller shall deliver the Record Data for the period between the Initial Conversion and the Closing Date (the "Final Conversion"), to the Data Converter, so that the Data Converter can deliver the Final Conversion to Buyer as soon as possible on the Closing Date.

(b) The parties will engage PrintWerks or another distributor selected by Buyer (the "Third Party Distributor") to notify each customer of the Pharmacies who has had a prescription filled or refilled at the Pharmacies within the two (2) years prior to the Closing Date by mailing each of them a letter in the form attached as Exhibit C. The parties agree that, promptly after its receipt of the Record Data, the Data Converter will provide the Record Data to the Third Party Distributor in order to enable the Third Party Distributor to assemble and distribute these letters no sooner than the Closing Date.

(c) The Seller will retain a complete copy of all Record Data in accordance with applicable record retention laws and regulations. The Seller's point of contact for all inquiries related to the Seller's records ("Custodian of Records") is:

1700 Mount Vernon Avenue Bakersfield CA 93306, Attention: Chief Executive Officer

6.4 Telephone Numbers and Advertising.

(a) Upon Closing, Seller shall arrange for remote call forwarding for all patients, doctors, and fax telephone lines of each Pharmacy to a Walgreen drug store or other location designated by Buyer for a period of no less than ninety (90) days following Closing. For the period starting on the 91st day following Closing and ending on the 180th day following Closing, Seller shall disconnect existing telephone and fax lines and terminate any existing telephone or fax accounts, for each Pharmacy. Seller shall arrange for call referral for all calls to the number so canceled to a Walgreen drug store or other location designated by Buyer for a period of no less than ninety (90) days. There shall be no charge to Buyer for such remote call forwarding or referral service.

(b) The parties agree that following the Closing, Buyer shall arrange to have Seller's electronic prescription service forwarded to Seller's pharmacy fax number utilizing the SureScript NCPDP Transition Assist Process. In accordance with Section 6.4(a), the SureScript shall be faxed from Seller's fax machine to Buyer's drug store or other location designated by Buyer. In the event the Seller's electronic prescription service cannot be forwarded to the Seller's pharmacy fax number, then Buyer shall arrange to have Seller's electronic prescription service agreement terminated.

(c) All existing advertising and yellow pages agreements shall be discontinued immediately upon the Closing Date. Further, Seller shall update all social media pages and websites to indicate that the Pharmacies have closed and shall refer patients to Buyer's pharmacy location for further information.

6.5 Compliance with Law. The parties agree to comply fully with the provisions of the United States Controlled Substance Act of 1970, as such act may relate to the transfer of the Purchased Inventory, and with all applicable state laws as they may relate to the transfer of the Purchased Inventory. Seller shall notify the appropriate governmental agencies, including the appropriate State Board of Pharmacies or similar office and the regional office of the United States Drug Enforcement Agency, of the transactions contemplated by this Agreement.

6.6 Further Assurances. The parties agree to take all steps as may be reasonably necessary to put Buyer in actual possession and control of all the Purchased Assets. From time to time following Closing, Seller shall execute and deliver to Buyer such instruments of conveyance and transfer as Buyer may reasonably request or as may be otherwise necessary to more effectively convey and transfer to, and vest in, Buyer and put Buyer in possession of, any part of the Purchased Assets.

6.7 Non-Competition.

(a) For a period of five (5) years after the Closing Date or for the maximum time permitted by applicable law, whichever is shorter, Seller and each of their Affiliates agree not to: (i) in any manner whatsoever, directly or indirectly operate, own, lease (as landlord or tenant), engage or participate in as an owner, partner, employee, joint venturer, shareholder, director, assignor, seller, transferor, or as a sales or marketing agent or otherwise, in, for, or in connection with any retail drug store, clinic pharmacy, pharmacy business which competes with the Buyer's retail pharmaceutical operation, within a radius of fifteen (15) miles of each Location; (ii) directly or indirectly, call upon, solicit, write, direct, divert or accept business from any customer of Buyer or from any customer of the

Seller whose prescription files were acquired by Buyer hereunder; or (iv) directly or indirectly, use or permit any Person to use the trademarks and trade names used in the operation of the business of the Pharmacies.

(b) Seller covenants and agrees that it shall not, and that it shall use reasonable efforts to ensure that its Affiliates do not, divulge to any Person any Confidential Information of Buyer or the Pharmacies or use such Confidential Information for any purpose after Closing, except as required by law. As used in this Agreement, (i) “Confidential Information” means with respect to any Person, information regarding such Person that is not previously disclosed to the public or to the trade and includes information regarding, facilities, strategies, methods, trade secrets and other intellectual property, software, systems, procedures, operational policies, manuals, confidential reports, product price lists, pricing and cost policies, customer lists, inventory information, financial information (including revenue, costs or profits of the disclosing party), business plans, prospects, or opportunities, (ii) “Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person, and (iii) “Person” means any individual, corporation, partnership, joint venture, trust, governmental body or other organization or entity.

(c) The Seller covenants and agrees that it shall remove all pharmacy fixture types from each Location promptly after Closing, including removing all references to “pharmacy”.

(d) The parties hereby recognize, acknowledge and agree that the territorial and time limitations contained in this Agreement are reasonable and properly required for the adequate protection of the business of the Pharmacy, as it will be conducted by Buyer after Closing. The parties further agree that the geographical and temporal restrictions referred to in this Section 6.7 are divisible and severable.

(e) The parties hereto agree that any breach or threatened breach by Seller of any covenant contained in this Section 6.7 would result in substantial and irreparable damage to Buyer, the amount of which would be difficult, if not impossible, to ascertain. Therefore, Seller agrees that in the event of any such breach or threatened breach thereof, Buyer shall have the right to enforce this Section 6.7 by preliminary or permanent injunctive or other relief in equity, without the necessity of proving any actual damages or providing any bond or other security. The right of Buyer to obtain injunctive or other equitable relief to enforce the terms hereof shall be in addition to all other rights and remedies it may otherwise have at law, in equity, or otherwise. Such right to obtain injunctive or other equitable relief may be exercised, at the option of Buyer, concurrently with, prior to, after, or in lieu of the exercise of any other rights or remedies which Buyer may have as a result of any breach or threatened breach of any of the terms hereof.

(f) Notwithstanding the provisions of this Section 6.7, Seller may purchase or otherwise acquire, up to a non-controlling interest, of any class of securities of any enterprise that may be competitive with Buyer and the Pharmacy (but without other participation in the activities of such enterprise) as long as such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, as amended.

ARTICLE VII. BULK SALES; LIENS

7.1 UCC Searches. Buyer may conduct Uniform Commercial Code searches of state and county records. Any liens or encumbrances disclosed by any such searches shall be satisfied in full by Seller or released in full by the holder of such lien prior to Closing. Buyer may, at its option, retain any or all of the Purchase Price to satisfy any liens or encumbrances that have not been satisfied or released prior to Closing.

7.2 Bulk Sales. Seller shall not be required to comply with the provisions of the bulk transfers statute of the state in which the Premises are located, but Seller agrees to indemnify and hold Buyer harmless from and against all claims that arise from or are based upon (or are claimed so) the failure of the parties to comply fully with such statute.

ARTICLE VIII. REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties. As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Buyer and agrees, as of the date of this Agreement and as of the Closing Date, as follows:

(a) Organization and Authority. The Seller is a governmental entity duly organized and in good standing under the laws of the State of California and is qualified to do business in and in good standing in all other jurisdictions in which the Seller conducts business. Seller has the power and other authority to execute, deliver and perform this Agreement. The Seller owns all of the outstanding equity interests in the Seller. This Agreement and the transactions contemplated hereby have been approved by the Seller and by the Board of Governors of the Seller and, when fully executed and delivered, this Agreement and all documents and agreements required to be delivered hereunder, will be legal, valid and binding obligations of Seller enforceable in accordance with their terms, in each case subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights and to general equity principles.

(b) No Conflicts. The execution, delivery and performance of this Agreement by Seller does not and will not (i) constitute a breach of any contract to which Seller is a party, (ii) conflict with any order from a governmental body or any laws to which any of the Purchased Assets is subject or by which Seller is bound, or (iii) require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any Person.

(c) No Bankruptcy. Seller has not made an assignment for the benefit of creditors and is not subject to the jurisdiction of any bankruptcy court nor has it entered into any other arrangement or composition with creditors that would impede, prohibit or govern the disposition of its assets.

(d) Title to Assets. The Seller has full legal, equitable and marketable title to all of the Purchased Assets, free and clear of any lien, mortgage or encumbrance. At Closing, the Seller will transfer to Buyer full legal, equitable and marketable title to the

Purchased Assets and such property will not be subject to any lien, mortgage or encumbrance and will be conveyed free and clear of any right, title or interest of any Person.

(e) Prescriptions.

(i) The prescriptions filled at the Pharmacies have arisen from bona fide, legal transactions and the information included in the Records is accurate in all material respects. Except as set forth on Exhibit D, the Business Disclosure, none of the prescriptions filled at the Pharmacies result from any Non-standard Business, as defined herein. As used in this Agreement, "Non-standard Business" means (A) delivering prescriptions by mail, courier, automobile or other delivery system (in each case, including prescriptions filled via the Internet), (B) compounding, including both sterile and non-sterile compounding, (C) filling prescriptions that involve any unique, customized or non-standard packaging, including prescriptions filled for patients in independent living, assisted living, nursing home, long-term care or hospice facilities, (D) any business conducted pursuant to Section 340B of the Public Health Service Act, (E) any non-prescription business (including durable medical equipment) done through the pharmacy computers and included in the prescription count, (F) any prescriptions filled pursuant to any contract, agreement or understanding (other than a standard contract agreement or understanding with any third party payor or government payor providing health care coverage to individuals), or (G) any other business outside the scope of a customary pharmacy or retail drug-store business.

(ii) Seller acknowledges that Buyer maintains relationships with several third party payors and that such relationships may change from time to time without notice. Seller further acknowledges that it did not rely on the continuation of Buyer's current relationship with any third party payor when entering into this Agreement.

(f) Inventory. The Purchased Inventory is in good, merchantable and useable condition, and consists only of items of quality and quantity commercially usable and salable in the ordinary course of the Pharmacies business, except for any items of obsolete material or material below standard quality excluded under Exhibit A. All Purchased Inventory has been purchased from the wholesalers listed on Exhibit D.

(g) Legal Proceedings. Excluding the disclosure made in Schedule 8.1(g), there are no (i) claims, actions, suits, investigations or proceedings pending or, to Seller's knowledge, threatened by or against Seller or any director, officer or employee of the Seller relating to or affecting the Pharmacies or the Purchased Assets or (ii) judgments, decrees, orders, writs, injunctions, rulings, decisions or awards of any court or governmental body to which Seller is a party or is subject with respect to the Pharmacies or to which any of the Purchased Assets is subject. Seller has not received any notice of complaints filed against Seller under HIPAA or applicable patient privacy and data protection laws and, to Seller's knowledge, there has been no violation of such laws. Seller represents that to the best of its knowledge and belief, the Stipulated Settlement described on Schedule 8.1(g) will be approved by the California Board of Pharmacy (BOP). Seller further represents

that once the BOP has approved the Stipulated Settlement, Seller will make the Stipulated Payment and shall defend and hold Purchaser harmless from any liability associated with the Stipulated Settlement and the Stipulated Payment.

(h) Compliance with Law. Excluding the disclosure set forth in Schedule 8.1(g), Seller is not in violation, and Seller has not been in violation in the preceding three (3) years, of any laws, government regulations or other legal or regulatory requirements with respect to the Pharmacies. Seller has timely filed all material reports, registrations and statements required to be filed by it with any governmental body, and has paid all related fees and assessments due and payable, in each case with respect to the Pharmacies. Seller has not, and to Seller's knowledge, no director, officer or employee of the Seller, has received or filed for any Medicare or Medicaid overpayments or other improper billings with respect to the Pharmacies. All Medicare, Medicaid and third-party reports and claims filed or required to be filed by or on behalf of the Seller with respect to the Pharmacies have been timely filed and are complete and accurate in all material respects. Such reports and claims properly claim and disclose all information and other items to be disclosed for the periods covered thereby. Seller has not and no director, officer or employee of the Seller or its Affiliate who works or has worked at the Pharmacies has been disciplined or sanctioned by any governmental body or excluded from participation in any government healthcare payment program, including Medicare or Medicaid, nor are any of the foregoing Persons aware of any pending or threatened discipline, sanction, investigation or government action that may lead to such exclusion, fine or other remedy. Seller maintains all required 3T Documentation pursuant to the DSCSA. Seller has complied with each applicable subsection of FDCA Sec. 581 (27) (A)-(G).

(i) Taxes. If applicable, the Seller has, in respect of the Pharmacies, filed all Tax Returns that are required to be filed and has paid all Taxes that have become due pursuant to such Tax Returns or pursuant to any assessment that has become payable or for which Buyer may otherwise have any transferee liability. All monies required to be withheld by the Seller from employees of the Pharmacies for income Taxes and social security and other payroll Taxes have been collected or withheld, and either paid to the respective governmental bodies or set aside in accounts for such purpose. As used in this Agreement, "Tax" (and with correlative meaning "Taxes") means, all U.S. federal, state or local or foreign Taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, gross receipts, gains (including capital gains), sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security (or similar), unemployment, unclaimed property, premium, fringe benefits, goods and services, debits, windfall or excess profits, environmental (including Taxes under Section 59A of the Code), unincorporated business, information, disability, workers compensation, production, registrations, alternative or add-on minimum, accumulated earnings, personal holding, escheat payments, excise, severance, stamp, occupation, property and estimated Taxes, customs duties, and other governmental charges of any kind whatsoever, together with all interest, penalties, fines, additions to Tax or additional amounts imposed by any taxing authority with respect to such amounts. Further, as used in this Agreement, "Tax Returns" means any declaration, return, amended return, claim for refund, report, statement, information return or other document (including any related or supporting information) filed or required to be filed

with any governmental entity in connection with the determination, assessment, collection or administration of any Taxes or the administration of any laws, regulations, or administrative requirements relating to any Taxes, including any schedule or attachment thereto, and including any amendment thereof. The Seller's Federal Employer Identification Number is 475618278 and its State Business Tax Number is 94403169. The state tax unemployment account number for the Seller is 94403169.

(j) Employees. A true and correct copy of all of the Pharmacies' current employees, consultants and agents, with reference to each employee's, consultant's and agent's rate of pay and position, is attached hereto as Exhibit F.

(k) Disclosure. There are no material facts relating to the Pharmacies, the Premises or the Purchased Assets that have not been disclosed to Buyer, including but not limited to: (i) Seller is not an employee or consultant for another pharmacy, and (ii) Seller has no direct or indirect interest in any other pharmacy business, except as listed on Exhibit D.

8.2 Buyer's Representations and Warranties. As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Seller and agrees as follows: (a) Buyer is a corporation duly organized and in good standing under the laws of the State of Illinois and has the corporate power and other authority to execute, deliver and perform this Agreement; (b) when fully executed and delivered, this Agreement and all documents and agreements required to be delivered hereunder, will be legal, valid and binding obligations of Buyer enforceable in accordance with their terms, in each case subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights and to general equity principles, and (c) the execution, delivery and performance of this Agreement by Buyer does not and will not constitute a breach of any contract to which it is a party.

ARTICLE IX. CONDITIONS PRECEDENT

9.1 Seller's Conditions to Closing. The obligations of Seller under this Agreement shall, at the option of Seller, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions: (a) there shall have been no material breach by Buyer in the performance of any of its covenants and agreements herein which shall not have been remedied or cured; and (b) each of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Seller or any transaction contemplated in this Agreement.

9.2 Buyer's Conditions to Closing. The obligations of Buyer under this Agreement shall, at the option of Buyer, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions: (a) Seller shall have delivered all of the documents or other information required to be delivered by Seller hereunder; (b) there shall have been no material breach by Seller in the performance of any of its covenants and agreements herein which shall not have been remedied or cured; (c) each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made

on the Closing Date, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Buyer or any transaction contemplated in this Agreement; (d) Buyer shall have completed a site visit and due diligence review of the Premises and Buyer shall have obtained results that are satisfactory to Buyer of its due diligence review; (e) at least ten (10) days prior to the Closing Date, Buyer shall have had an opportunity to interview the staff at the Pharmacies; (f) Seller shall have paid the Stipulated Payment amount (defined in Schedule 8.1(g)) prior to Closing or has communicated its intention to do so in a timely manner following the BOP approval of the Stipulated Settlement (as defined in Schedule 8.1(g)); and (g) since the date of this Agreement, there shall have not occurred a Force Majeure Material Adverse Effect (as defined below); and (g) there shall not have been a material adverse change in the financial condition, results of operations or prospects of the Pharmacies (or any event or condition that would, with the passage of time, reasonably be expected to constitute such an effect or change). “Force Majeure Material Adverse Effect” means any event, development, circumstance, change, effect, condition or occurrence resulting from a Force Majeure Event that, individually or in the aggregate, (A) has, or would reasonably be expected to have, a material adverse effect on or with respect to the Purchased Assets, taken as a whole, or (B) prevents, materially delays or materially impairs the ability of the Buyer or Seller to complete the transactions contemplated by this Agreement. “Force Majeure Event” means, but not including, any act of God; war; riot; civil strife; act of terrorism, domestic and foreign; embargo; quarantines; governmental rule, regulation or decree; flood, fire, hurricane, tornado, earthquake or other casualty; strike, lockout, or other labor disturbance; the unavailability of labor or materials to the extent beyond the reasonable control of the party affected; pandemic or other disease outbreak or health crisis; or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing.

ARTICLE X. TERMINATION

10.1 Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to Closing: (a) by the mutual written consent of Buyer and Seller; (b) by Buyer in the event of any breach by Seller of any of its agreements, covenants, obligations, representations or warranties contained herein; (c) by Seller in the event of any breach by Buyer of any of Buyer’s agreements, covenants, obligations, representations or warranties contained herein; (d) by either Buyer or Seller if any governmental body shall have issued a final and non-appealable order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; (e) by Buyer in accordance with Section 3.3 or Section 6.3(a) or Section 9.2(d); or (f) by either Buyer or Seller if the Closing shall not have occurred on or before forty-five (45) days after the Anticipated Closing Date (or such later date as may be mutually agreed to in writing by Buyer and Seller), provided that the party seeking to exercise the right of termination granted under this subsection (f) has not breached its obligations hereunder.

10.2 Effects. In the event that a party terminates this Agreement, such termination shall be in addition to, and not by way of limitation of, its other rights and remedies in law and equity, including the right to sue for damages and sue for performance.

ARTICLE XI. INDEMNIFICATION

11.1 Indemnification of Buyer. Seller agrees, jointly and severally, to indemnify, defend and hold harmless Buyer, its Affiliates, directors, officers, employees and agents from and against any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges, including attorney's fees and costs (collectively, "Losses"), incurred by any of them in connection with or arising from: (a) any breach by Seller of any of its representations, warranties, covenants, agreements or obligations in this Agreement or in any agreement or document required to be delivered by Seller hereunder; (b) any Excluded Liability; (c) any claim, suit or action brought or asserted by any creditor, claimant, governmental body or other Person asserting a claim against Buyer or against any of the assets to be conveyed hereunder, related to the Pharmacies and arising as of or before the Closing Date, whether such claim is presently known or unknown, choate or inchoate; (d) the acts or omissions of Seller or its Affiliates, employees, agents and contractors, in connection with the transactions contemplated by this Agreement; (e) any claims for brokerage commissions or compensation arising out of the negotiation and execution of this Agreement and incurred due to the actions of Seller; and (f) any failure by Seller to comply with bulk sales or similar laws.

11.2 Indemnification of Seller. Buyer agrees, jointly and severally, to indemnify, defend and hold harmless Seller, its Affiliates, directors, officers, employees and agents from and against any and all Losses (as defined in Section 11.1) incurred by any of them in connection with a claim by a third party and arising from: (a) any breach by Buyer of any of its representations, warranties, covenants, agreements or obligations in this Agreement or in any agreement or document required to be delivered by Buyer hereunder; (b) the acts or omissions of Buyer or its Affiliates, employees, agents and contractors, in connection with the transactions contemplated by this Agreement; and (c) any claims for brokerage commissions or compensation arising out of the negotiation and execution of this Agreement and incurred due to the actions of Buyer.

ARTICLE XII. MISCELLANEOUS

12.1 Definitions and Interpretation. Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. References in this Agreement to Articles, Schedules or Exhibits shall be to the corresponding Articles, Schedules or Exhibits of this Agreement, unless the context otherwise requires. The Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. As used herein, the word "including" means "including without limitation."

12.2 Notices. All notices hereunder shall be in writing and sent by United States certified or registered mail, postage prepaid, addressed, (a) if to Seller, to 1700 Mount Vernon Avenue, Bakersfield, California 93306, Attention: Chief Executive Officer, or by email to Mona.Allen@kernmedical.com and (b) if to Buyer, to 104 Wilmot Road, MS #1446, Deerfield, Illinois 60015, Attention: Law Department (KEI/MLB) email: meg.bonney@walgreens.com, provided that each party by like notice may designate any further or different addresses to which subsequent notices shall be sent.

12.3 Successors and Assigns; No Third Party Beneficiaries. Following the Closing, either party may assign any of its rights hereunder, but no such assignment shall relieve it of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the parties

hereto and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns any right, remedy or claim under or by reason of this Agreement.

12.4 Risk of Loss. The risk of loss or damage to the assets described in Article I hereof shall be upon the Seller until Buyer receives physical possession of such assets in accordance with this Agreement.

12.5 Entire Agreement; No Waivers. This Agreement constitutes the entire agreement between the parties and supersedes all prior offers, negotiations, and understandings, whether oral or written, between the parties hereto and may only be modified by a writing executed by both parties. The failure of Buyer to insist on the performance of any term, condition, covenant or restriction of this Agreement shall not be construed as a waiver or relinquishment of any rights or remedies hereunder or for the future performance of any such term, condition, covenant or restriction and the obligations of officer with respect thereto shall continue in full force and effect. No waiver shall be binding upon any party unless set forth in writing signed by or on behalf of such party.

12.6 Expenses.

(a) Each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

(b) The parties acknowledge and agree that the expenses (the “Expenses”) associated with retaining (i) the Inventory Service, as contemplated by Section 2.3 and (ii) Infowerks, as contemplated by Section 6.3, are incurred for the mutual benefit of the parties solely in order to facilitate the transactions contemplated by this Agreement. For administrative convenience, Buyer agrees to pay and be liable for the Expenses.

(c) In the event of litigation between the parties in relation to the interpretation or enforcement of this Agreement, the reasonable attorney’s fees and court costs incurred by the party prevailing in such litigation shall be borne by the non-prevailing party.

12.7 Counterparts; Signatures. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. Original signatures and electronic signatures transmitted by facsimile or .pdf shall be sufficient and binding upon the parties hereto.

12.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, including all matters of construction, validity, performance and enforcement.

12.9 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such

invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. If, for any reason, any provision set forth herein is held by a court of competent jurisdiction to cover an area or a length of time which is unreasonable or in any other way is construed to be too broad or to any extent invalid, such provision shall not be determined null, void, and of no effect, but shall be reformed so as to be valid and enforceable under applicable law.

12.10 Survival of Obligations. All representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

12.11 Setoff. Either party shall be entitled to recover any indemnification payments due hereunder by setting off such amount against any other amount due from one party to the other party pursuant to this Agreement or any other Agreement between the parties.

12.12 Acknowledgement Regarding Representation. Seller acknowledges that: (a) they have consulted with or have had an opportunity to consult with independent counsel of their choice concerning this Agreement and the transactions contemplated hereby and have been advised to do so by Buyer; and (b) have read and understood this Agreement, are fully aware of its legal effect, and have entered into it freely based on their own judgment.

12.13 No Public Announcement. Seller and/or employees of Seller shall not, without the approval of Buyer, make any press release or other public announcement, including, but not limited to, social media postings or the like, concerning the transactions contemplated by this Agreement, except as and to the extent that Seller shall be so obligated by law, in which case Seller shall advise Buyer and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

**BUYER:
WALGREEN CO.**

KEI By: Aaron Friedman
Name: Aaron Friedman
Title: VP, Global M&A and Development

Digitally signed by Aaron
Friedman
Date: 2022.01.25 11:30:45
-06'00'

**SELLER:
KERN COUNTY HOSPITAL AUTHORITY**

By:  TW
Name: Scott Thygerson
Title: Chief Executive Officer

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By: 
Legal Services Department

EXHIBIT INDEX

SCHEDULE I Pharmacy Detail

SCHECULE 8.1(g) Disclosure

Exhibit A Inventory Instructions

Exhibit B Bills of Sale

Exhibit C Form of Patient Notification

Exhibit D Business Disclosure

Exhibit E Wire Transfer Instructions

Exhibit F Employee, Consultant and Agent List

SCHEDULE I

Pharmacy Detail

Pharmacy Name	Location Address	Inventory Amount	Records Amounts	Current Volume	Walgreens Store	Closing Date
Sagebrush Medical Plaza Pharmacy	1111 Columbus Street, Suite 2000, Bakersfield, CA	\$110,000	\$280,000	152	#3294	
Kern Medical Center Campus Pharmacy	2014 College Avenue, Bakersfield, CA 93305	\$225,000	\$315,000	211	#3294	

SCHEDULE 8.1(g)

Disclosure

The Attorney General for the State of California, on behalf of the California Board of Pharmacy (BOP), issued an Accusation to Seller related to a wrong patient and mislabeled medications. On November 23, 2021, a letter from the Deputy Attorney General was sent to the Administrative Law Judge indicating the parties had reached a stipulated settlement (“Stipulated Settlement”), which is being sent to the BOP for consideration. As of the date of this Agreement, Seller is waiting on the BOP to sign off and process on the settlement. As with any administrative proceeding involving a licensing agency in the State of California, the Executive Director of that agency has to agree to the resolution. The settlement involves a Public Reprimand and payment of costs totaling \$4,666.38 (the “Stipulated Payment”).

EXHIBIT A

INVENTORY INSTRUCTIONS

In connection with the Asset Purchase Agreement (the "Agreement") between WALGREEN CO. ("Buyer") and KERN COUNTY HOSPITAL AUTHORITY ("Seller") dated _____, 2021, this Exhibit A sets forth the agreed upon methods, standards and procedures for counting and determining the value of the inventory to be purchased by Buyer.

I. GENERAL INSTRUCTIONS

A. At least one qualified representative of both Buyer and Seller must be present throughout the inventory taking.

B. The cost of taking inventory will be paid by Buyer. Such costs shall be the regular charge by the Inventory Service. The Inventory Service shall invoice Buyer.

C. No pre-counting of inventory will be permitted.

D. Buyer's pharmacy supervisor will prepare two copies (or one original and one photocopy) of the "Physical Inventory Valuation Report" in the form shown on page 3 of this Exhibit and must be signed by representatives of both Buyer and Seller at the conclusion of the inventory. After the Physical Inventory Valuation has been signed by the respective parties, the seller and buyer will retain a copy of the same.

E. Buyer will reconcile the 3T Documentation against the Purchased Inventory to ensure accurate 3T Documentation is being transferred to Buyer.

F. Seller will provide accurate and complete temperature logs from all refrigerators that store Shingrix product. The temperature logs need to be for two (2) years prior to the Closing Date or the date Shingrix was first received, whichever comes first ("Shingrix Timeline").

G. Seller will separate the 340B inventory from the non-340B inventory prior to Closing.

II. CUT-OFF PROCEDURE

A. All merchandise received up to, but not including, the day of the inventory shall be included in the inventory. Seller shall be responsible for the payment of all invoices for merchandise received up to and including the day of inventory.

B. Seller shall not accept or permit the transfer of merchandise from any other store or from any warehouse of Seller as of the Closing Date.

III. PHARMACEUTICAL INVENTORY

A. Valuation - In calculating the aggregate value of the Pharmaceutical Inventory and determining the Inventory Amount (as defined in the Agreement), the Inventory Service shall value the

Inventory based on **Medi-Span's Average Wholesale Price ("AWP") that is within fourteen (14) days prior to the Closing Date AWP minus 20% for brand name Pharmaceutical Inventory, and AWP minus 90% for generic Pharmaceutical Inventory.**

B. Excluded Inventory - The Inventory Service shall not ascribe any value to Excluded Inventory. As used herein, "Excluded Inventory" means all items of inventory that fit within one or more of the following categories: (i) all inventory that is not salable in the ordinary course of business or that does not conform to inventory standards that are contained in the applicable inventory regulatory laws; (ii) all over-the-counter inventory (other than insulin, syringes and needles) and all over-the-counter inventory located behind the pharmacy counter, such as pseudoephedrine products; (iii) all private label inventory; (iv) sample inventory; (v) inventory out of date within one-hundred twenty (120) days from the Inventory Date, as shown by manufacturer's labeled expiration date (or already expired); (vi) prescription products, including but not limited to syringes and compounding chemicals/ingredients, which have a manufactured date of over three (3) years old; (vii) vials, bottles and similar products; (viii) diagnostic testing products (including machines, test strips and similar products); (ix) inventory that has been damaged or broken, is shopworn or faded (including faded labels), or that has visible deterioration; (x) inventory that has been repackaged or is not in its original packaging, including any product removed from automation devices; (xi) any product that does not contain a product identifier (2D barcode identifying serialization) or manufactured prior to November 2017 (grandfathered product by Federal Food, Drug, and Cosmetic Act Section 582) (xii) any compounding inventory; (xiii) obsolete inventory not currently being supplied by distributors to retail stores; (xiv) any items subject to a mandatory or voluntary recall; (xv) all vaccinations (excluding Shingrix vaccine, provided temperature logs are completed and in the correct temperature range within the Shingrix Timeline); (xvi) inventory that is reasonably determined by Buyer to constitute hazardous material; (xvii) all pharmaceuticals that require freezer storage, including but not limited to Zostavax prescriptions; (xviii) all inventory shipped directly to the Pharmacy from the manufacturer; (xix) all inventory not in compliance with Seller's 3T Documentation; (xx) inventory originating from wholesalers not listed on Exhibit D; (xxi) all limited distribution drugs; (xxii) all risk evaluation and medication strategy drugs, such as Isotretinoin, REMS and TIRF; (xxiii) AUVI-Q products; (xxiv) any and all 340B inventory; and (xxv) any other items that the parties mutually agree in writing (electronic mail shall be acceptable) to exclude. Seller agrees to remove, at Seller's sole cost and expense, all items of Excluded Inventory from the Premises no earlier than thirty (30) business days prior to the Closing, and no later than the start of the Inventory count.

C. Inventory Preparation - Open containers will be counted in tenths. The Seller must mark the open container with an "X" mark, and "faced in the front" of the similar type drugs. Items to be excluded from the sale will be pulled and accumulated at a pre-designated location for disposition at Seller's expense.

D. Matters Related To Prescriptions - Prior to the Closing, Seller shall use reasonable efforts to fill and deliver to pharmacy customers any partial-fill Prescriptions with a remaining quantity balance ("IOU Prescriptions"). For any IOU Prescriptions remaining on the Closing Date, Seller shall credit the Prescription to the customer or to the third-party payor, as appropriate, on the Closing Date. Buyer assumes no liability for IOU Prescriptions. In addition, prior to the Closing, Seller shall reverse and return to stock any filled Prescriptions that have not been picked up, providing all necessary notice to any third-party payors, and shall provide Buyer with a list of such Prescriptions so that Buyer is prepared to fill such Prescriptions on or after the Closing Date.

Physical Inventory Valuation Report – Sagebrush Medical Plaza Pharmacy

DATE OF INVENTORY _____

TIME STARTED _____

TIME COMPLETED _____

STORE LOCATION _____

SECTION TO BE COMPLETED BY BUYER'S REPRESENTATIVE

	<u>AWP/Ret \$</u>	<u>x Cost Factor</u>	<u>COST \$</u>
<u>Brand RX</u> [Brand = AWP minus 20%]	\$ _____	x 80%	\$ _____
<u>Generic RX</u> [Generic = AWP minus 90%]	\$ _____	x 10%	\$ _____
<u>Miscellaneous</u>	\$ _____	@ COST	\$ _____
TOTAL INVENTORY	\$ _____		\$ _____

**IF THE TOTAL EXCEEDS \$110,000.00 – DO NOT SIGN – CALL ANDREW HOWARD
(224) 226-0651 FOR DIRECTION ON HOW TO PROCEED DO NOT PURCHASE ANY
340B INVENTORY**

UPON COMPLETION, BOTH THE SELLER'S REPRESENTATIVE AND BUYER'S REPRESENTATIVE MUST SIGN WITH A THIRD PARTY WITNESS. IMMEDIATELY THEREAFTER, FAX BOTH THIS SHEET AND THE INVENTORY SERVICE FINAL COUNT SHEET TO 847-368-6325. PLEASE INCLUDE A COVERPAGE SHOWING THE NAME OF EACH PERSON WHO SIGNED THE DOCUMENT AND THEIR TITLE, AS WELL AS THE STORE NUMBER AND ADDRESS OF THE LOCATION INVENTORIED. PLEASE CONTACT ANDREW HOWARD (224) 226-0651 WITH ANY QUESTIONS.

The above and foregoing is accepted by both Buyer and Seller as the final total dollar value of the pharmaceutical and allowed non-pharmaceutical merchandise located at the captioned store, subject to the terms and conditions of the Asset Purchase Agreement, including, but not limited to, Section 4.2(b) thereto.

SELLER:

BUYER:

By: _____
Authorized Representative

By: _____
Authorized Representative

Physical Inventory Valuation Report - KERN MEDICAL CENTER CAMPUS PHARMACY

DATE OF INVENTORY _____

TIME STARTED _____

TIME COMPLETED _____

STORE LOCATION _____

SECTION TO BE COMPLETED BY BUYER'S REPRESENTATIVE

	<u>AWP/Ret \$</u>	<u>x Cost Factor</u>	<u>COST \$</u>
Brand RX [Brand = AWP minus 20%]	\$ _____	x 80%	\$ _____
Generic RX [Generic = AWP minus 90%]	\$ _____	x 10%	\$ _____
Miscellaneous	\$ _____	@ COST	\$ _____
TOTAL INVENTORY	\$ _____		\$ _____

IF THE TOTAL EXCEEDS \$225,000.00 – DO NOT SIGN – CALL ANDREW HOWARD
(224) 226-0651 FOR DIRECTION ON HOW TO PROCEED. **DO NOT PURCHASE ANY
340B INVENTORY**

UPON COMPLETION, BOTH THE SELLER'S REPRESENTATIVE AND BUYER'S REPRESENTATIVE MUST SIGN WITH A THIRD PARTY WITNESS. IMMEDIATELY THEREAFTER, FAX BOTH THIS SHEET AND THE INVENTORY SERVICE FINAL COUNT SHEET TO 847-368-6325. PLEASE INCLUDE A COVERPAGE SHOWING THE NAME OF EACH PERSON WHO SIGNED THE DOCUMENT AND THEIR TITLE, AS WELL AS THE STORE NUMBER AND ADDRESS OF THE LOCATION INVENTORIED. PLEASE CONTACT ANDREW HOWARD (224) 226-0651 WITH ANY QUESTIONS.

The above and foregoing is accepted by both Buyer and Seller as the final total dollar value of the pharmaceutical and allowed non-pharmaceutical merchandise located at the captioned store, subject to the terms and conditions of the Asset Purchase Agreement, including, but not limited to, Section 4.2(b) thereto.

SELLER:

BUYER:

By: _____
Authorized Representative

By: _____
Authorized Representative

EXHIBIT B

BILL OF SALE

Attached.

BILL OF SALE

THE UNDERSIGNED, for the consideration set forth in the Asset Purchase Agreement entered into on _____, 2022 (the "Agreement") among KERN COUNTY HOSPITAL AUTHORITY, a California public agency (the "Seller"), WALGREEN CO., an Illinois corporation ("Buyer"), for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, pursuant to the terms set forth in the Agreement, the Seller hereby sells, transfers and conveys unto Buyer the Purchased Assets (as defined in the Agreement), which Purchased Assets are comprised of personal assets and personal properties presently contained in the Seller's prescription pharmacies located at:

Pharmacy Name	Location Address
Sagebrush Medical Plaza Pharmacy	1111 Columbus Street, Suite 2000, Bakersfield, CA
Kern Medical Center Campus Pharmacy	2014 College Avenue, Bakersfield, CA 93305

Including:

1. The Inventory, as defined in the Agreement, which Inventory will be more particularly described on the recapitulation of inventory schedule made by the parties.
2. The Records, as defined in the Agreement.
3. Any other Purchased Assets described in the Agreement.

TO HAVE AND TO HOLD the said property described above unto Buyer, its successors and assigns, forever.

The representations and warranties made by the Seller in the Agreement are hereby incorporated by reference hereto with the same force and effect as if set forth in full herein. Further, the Seller, for itself and its successors and assigns, covenants with Buyer that the Seller will defend its title to said property against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Seller has hereunto caused this Bill of Sale to be executed this _____ day of _____, 2022.

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Title: _____

EXHIBIT C

FORM PATIENT LETTER

Attached.

Dear [Variable Name]:

We have decided to close our pharmacy's doors, but we wanted to assure you that your pharmacy records and health care needs are in good hands. To ensure your continued care, we've chosen to entrust your pharmacy records to Walgreens. Walgreens has been serving pharmacy patients for over 110 years, and we feel they can provide you with excellent service for years to come.

We chose Walgreens over other pharmacies because of their dedication to patient care and continued personal attention to your health conditions, potential drug interactions, and medication allergies. We also think you'll benefit from the many convenient services Walgreens offers, such as:

Unparalleled Access to Your Medications - With more than 9,000 pharmacies across the nation, Walgreens makes it convenient for you to pick up your medications, particularly when you are traveling.

Introducing myWalgreens™ A one-of-a-kind personalized experience that makes saving, shopping and your well-being easier. Designed for the one and only you. Enjoy exclusive membership benefits including earning unlimited 1% Walgreens Cash rewards storewide on eligible purchases, even at the pharmacy.* Join for free or learn more at myWalgreens.com.

Convenient Immunizations** - Available daily, including flu, shingles, pneumonia and meningitis. Walk in anytime.

For your convenience, we've included the address of the nearest Walgreens location below. Your prescriptions will be available at this location, but you can have them filled at any Walgreens Pharmacy. Locate the Walgreens location most convenient to you by visiting Walgreens.com/Findastore, or by calling 1-800-WALGREENS (1-800-925-4733).

Walgreens

[Street Address]
[City], [State] [Zip]
Phone: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX

Pharmacy Hours

Mon - Fri: X am – X pm
Sat: X am – X pm
Sun: X am – X pm



We'll certainly miss seeing you, but trust you'll be pleased with the service, professionalism and convenience offered by Walgreens. In an effort to ensure your care is continued, Walgreens may call you. If you prefer not to be contacted, please call 1-866-312-8654.

Sincerely,

[Owners Name]
[Pharmacy Name]

EXHIBIT D

BUSINESS DISCLOSURE

Please report the average for the last six (6) months:

** The information provided below is an average of the time period between 7/11/21 thru 1/12/22.

1. Delivered prescriptions per week: 210

2. Mailed prescriptions per week: 4

3. Compounded prescriptions per week: 0

4. Nursing home prescriptions per week: 0

a) The number of facilities 0

5. Assisted Living/ Group home prescriptions per week: 0

a) The number of facilities 0

6. Hospice prescriptions per week: 0

7. 340B prescriptions per week: 1,128

8. The number of monthly House Charge Accounts: a) Patients 23

b) MDs 0

9. Is DME/HME equipment processed through the pharmacy computer? Yes

a) The number processed per week: 62

10. List of other pharmacy businesses that Seller has an interest in or is involved in as an employee or a consultant. Kern Medical Center Justice Facility Pharmacy, Kern Medical Center Pharmacy (Inpatient)

11. List of pharmaceutical wholesalers. Cardinal Health

***** Please List Any Other Non-Standard Business:**

EXHIBIT E
WIRING INSTRUCTIONS*

Receiving Acct Number	<input type="text" value="1069955977"/>
Receiving Party Name	<input type="text" value="Kern County Hospital Authority"/>
Receiving Bank ABA Number	<input type="text" value="043000096"/>
Receiving Bank Name	<input type="text" value="PNC Bank"/>
Receiving Bank City and State	<input type="text" value="Pittsburgh, PA"/>

*Please confirm these instructions with your bank to ensure accuracy.

EXHIBIT F

EMPLOYEE, CONSULTANT AND AGENT LIST

Attached.

<u>Name</u>	<u>Position</u>	<u>Pay Rate</u>
<u>Angela Torres, PharmD</u>	<u>Pharmacist</u>	<u>\$75.67/Hr</u>
<u>Lee Lee Zhu, PharmD</u>	<u>Pharmacist</u>	<u>\$73.46/Hr</u>
<u>Bhadraksh Patel, RPh.</u>	<u>Pharmacist</u>	<u>\$75.67/Hr</u>
<u>Rachel Ellis, RPh.</u>	<u>Pharmacist</u>	<u>\$75.67/Hr</u>
<u>Kimberlina Davis</u>	<u>Technician</u>	<u>\$22.97/Hr</u>
<u>Krachele Roberson</u>	<u>Technician</u>	<u>\$22.97/Hr</u>
<u>Chrstina Stovall</u>	<u>Technician</u>	<u>\$22.97/Hr</u>
<u>Marisela Gonzalez</u>	<u>Technician</u>	<u>\$22.97/Hr</u>
<u>Nancy Valenzuela</u>	<u>Technician</u>	<u>\$26.15/Hr</u>
<u>Nicole Schwartz</u>	<u>Technician</u>	<u>\$22.30/Hr</u>
<u>Cheri Ancheta</u>	<u>Technician</u>	<u>\$22.97/Hr</u>
<u>Sonia Duran</u>	<u>Technician</u>	<u>\$35.66/Hr</u>



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2021

Subject: Proposed Retroactive Side Letter of Agreement with Service Employees International Union, Local 521

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern County Hospital Authority and Service Employees International Union, Local 521 (SEIU) have previously entered into a Memorandum of Understanding (“MOU”) regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, for the period September 19, 2018 through October 31, 2020. The Authority and SEIU are currently negotiating the terms of a successor MOU.

Pursuant to Senate Bill No. 3, an act to amend Sections 245.5, 246, and 1182.12 of the Labor Code, the state minimum wage increased to \$15 per hour for employers with 26 or more employees effective January 1, 2022. As required by state law, the Authority is subject to this minimum wage increase.

On December 22, 2021, after negotiating in good faith, the Authority and SEIU agreed to minimum wage rate range increases for those Authority employees affected by the minimum wage increase and that the minimum wage rate range increases would be applied retroactively to January 1, 2022, the effective date of the minimum wage increase required by state law. The proposed Side Letter of Agreement memorializes the minimum wage rate range increases agreed upon by the Authority and SEIU on December 22. A total of 357 employees in 54 job classifications received salary increases as a result of the increase in the state minimum wage.

Therefore, it is recommended that your Board retroactively approve the Side Letter of Agreement with Service Employees International Union, Local 521, for minimum wage rate range increases, effective January 1, 2022, and authorize the Chairman to sign.

**SIDE LETTER OF AGREEMENT
BETWEEN
KERN COUNTY HOSPITAL AUTHORITY
AND
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521**

This Side Letter of Agreement (“Side Letter”) between Kern County Hospital Authority (“Authority”), a local unit of government, which owns and operates Kern Medical Center, and Service Employees International Union, Local 521 (“SEIU”), is entered into this ____ day of _____, 2022, with respect to the following:

WHEREAS, the parties have previously entered into a Memorandum of Understanding (“MOU”) regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, as more particularly set forth in Section 2 of the MOU, for the period September 19, 2018 through October 31, 2020; and

WHEREAS, pursuant to Senate Bill No. 3 (SB 3), an act to amend Sections 245.5, 246, and 1182.12 of the Labor Code, relating to labor, the state minimum wage increased to \$15 per hour for employers with 26 or more employees effective January 1, 2022; and

WHEREAS, Authority is subject to the minimum wage increase, effective January 1, 2022, as required by state law; and

WHEREAS, on Wednesday, December 22, 2021, after negotiating in good faith, the parties agreed to minimum wage rate range increases for those Authority employees affected by the minimum wage increase; and

WHEREAS, during the process of negotiating with SEIU to come to agreement on these minimum wage rate range increases, the parties agreed that, in order to ensure clarity and to memorialize the agreement, a Side Letter to the MOU should be executed articulating the intent of Authority to increase the minimum wage for those employees affected by the minimum wage increase on January 1, 2022; and

WHEREAS, the parties agree that the minimum wage rate range increases will be applied retroactively to January 1, 2022, the effective date of the minimum wage increase required by state law;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties agree as follows:

- (A) Exhibit A, Minimum Wage Rate Range Increases, Effective January 1, 2022, attached hereto and incorporated herein by this reference, shall be made part of the MOU.
- (B) Nothing in this Side Letter shall be construed to expand the rights of any employee affected by the minimum wage increase, except as provided herein.

- (C) The provisions of this Side Letter shall be effective Saturday, January 1, 2022.
- (D) The minimum wage rate range increases shall be paid out to those employees affected by the minimum wage increase commencing January 25, 2022 (pay period 2022-01, which starts on January 1, 2022, with the effective date of the Side Letter)
- (E) SEIU understands and agrees that it will not file any grievance with Authority or an Unfair Practice Charge with California Public Employment Relations Board on any matter pertaining to the minimum wage increase, as a result of Authority's actions to implement the minimum wage rate range increases as agreed to by the parties on December 22, 2021. SEIU retains its right to enforce the terms of this Side Letter Agreement.
- (F) All capitalized terms used in this Side Letter and not otherwise defined, shall have the meaning ascribed thereto in the MOU.
- (G) This Side Letter shall be governed by and construed in accordance with the laws of the state of California.
- (H) This Side Letter may be amended only by mutual, written consent of duly authorized representatives of the parties.
- (I) In the event of any inconsistency between the provisions of this Side Letter and any provision of the MOU, the terms of this Side Letter shall govern and control.

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Side Letter as of the day and year first written above.

Service Employees International Union, Local 521

A handwritten signature in blue ink that reads "Yvonne Davila". The signature is written in a cursive style and is positioned above a horizontal line.

By _____
Yvonne Davila
Director, Region 5

Kern County Hospital Authority

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT A

EXHIBIT A, MINIMUM WAGE RATE RANGE INCREASES, EFFECTIVE JANUARY 1, 2022



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2021

Subject: Proposed Service Agreement with GE Precision Healthcare LLC, a GE Healthcare business

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Service Agreement with GE Precision Healthcare LLC, a GE Healthcare business for continued maintenance and service of the Revolution EVO Gen 3 CT Machine and Senographe Pristina Mammography following the expiration of the one-year manufacturer's warranty.

The term of this agreement is five years, effective February 16, 2022, with a total maximum payable not to exceed \$900,000.

The Service Agreement contains non-standard terms and cannot be approved as to form by Counsel due to the inability to terminate the Service Agreement without cause. The five-year term of this agreement guarantees rates that would be unattainable through a shorter-term agreement and the services provide a critical function to which there is no current alternative. Kern Medical believes the benefit outweighs the risk of moving forward with the Service Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Service Agreement with GE Precision Healthcare LLC, a GE Healthcare business, effective February 16, 2022, with a maximum payable not to exceed \$900,000 for the five-year term, and authorize the Chairman to sign.



Addendum to Agreement

GE Healthcare

This Addendum ("Addendum") is made by Kern County Hospital Authority with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and GE Precision Healthcare LLC, a GE Healthcare business, with an address at 3000 N. Grandview Blvd., Waukesha, WI 53188 ("GE Healthcare"), parties to Quotation # 154E058 ("Quotation", attached as Exhibit A) for the products and/or services listed on the Quotation in accordance with the terms and conditions identified in the Quotation ("Agreement").

The Agreement is amended as follows:

1. Section 16.1 ("Confidentiality") of the GE Healthcare Service Terms and Conditions is amended to read as follows:

"Each party will treat this Agreement and the other party's proprietary information as confidential, meaning it will not use or disclose the information to third parties unless permitted in this Agreement or required by law. Customers are not prohibited from discussing patient safety issues in appropriate venues. GE Healthcare is aware that Customer is a government entity and is subject to the California Public Records Act, Cal.Govt.Code §6250 et seq., the Brown Act, Cal.Govt.Code §54950 et seq., and other laws pertaining to government entities. If Customer receives a demand for the disclosure of any information related to this Agreement that GE Healthcare has claimed to be confidential and proprietary, such as GE Healthcare's pricing, programs, services, business practices or procedures, it is not prohibited from complying with demand; however, Customer must: (a) promptly notify GE Healthcare in writing of the demand, (b) give GE Healthcare sufficient time to challenge the request or redact any necessary information to the extent permitted by law, and (c) only provide such information as is necessary to comply with the California Public Records Act."

2. Section 17.2 ("Security") of the GE Healthcare Service Terms and Conditions is amended to read as follows:

"GE Healthcare is not responsible for: (i) securing Customer's network; (ii) preventing unauthorized access to Customer's network or the Product; (iii) backup management; (iv) data integrity; (v) recovery of lost, corrupted or damaged data, images, software or equipment; (vi) third party operating systems, unless specifically provided in the Quotation; or (vii) providing or validating antivirus or related IT safeguards unless sold to Customer by GE Healthcare. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR DAMAGES CAUSED BY UNAUTHORIZED ACCESS TO THE NETWORK OR PRODUCTS REGARDLESS OF A PARTY'S COMPLIANT SECURITY MEASURES, EXCEPT TO THE EXTENT SUCH DAMAGES ARE DIRECTLY ATTRIBUTABLE TO GE HEALTHCARE'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT."

3. Section 18.1 ("Binding Arbitration") of the GE Healthcare Service Terms and Conditions is amended to read as follows:

"Other than collection matters and actions seeking injunctive relief to prevent or cease a violation of intellectual property rights related to Products or Services, the parties agree to submit all disputes arising under or relating to this Agreement to the American Arbitration Association ("AAA") office closest to the largest metropolitan area of the location where the Product is installed or the Service is provided for binding arbitration conducted in accordance with AAA's then-current Commercial Arbitration Rules. Costs, including arbitrator fees and expenses, will be shared equally, and each party will bear its own attorneys' fees. The arbitrator will have authority to award damages only to the extent available under this Agreement. Nothing in this Section shall allow either party to arbitrate claims of any third-party not a party to this Agreement."

4. Section 20.1 ("Late Payment") of the GE Healthcare Service Terms and Conditions is amended to read as follows:

"Customer must raise payment disputes before the payment due date. For any undisputed late payment, GE Healthcare may: (i) suspend performance under this Agreement until all past due amounts are paid; and (ii) use unapplied funds due to Customer to offset any of Customer's outstanding balance. If GE Healthcare suspends performance, any downtime will not be included in the calculation of any uptime commitment. If Customer fails to pay when due: (a) GE Healthcare may revoke its credit and designate Customer to be on credit hold; and (b) all subsequent shipments and Services must be paid in full on receipt."

5. Notwithstanding anything to the contrary in the Agreement, the following will apply:

- a. **No Cause Termination.** Pricing for the Agreement is based on the term of the Agreement. Customer may, however, terminate this Agreement without cause on the third (3rd) anniversary date of this Agreement or on each anniversary thereafter; provided however, that (i) written notice is provided to GE Healthcare at least ninety (90) days prior to the relevant anniversary date; and, (ii) an additional liquidated amount of fifteen percent (15%) of the total remaining total normal fixed charges under this Agreement is paid to GE Healthcare prior to the date of termination. Upon termination, neither party shall have any further obligations under this Agreement except for (i) payment obligations arising prior to the date of termination and (ii) obligations, promises or covenants contained in this Agreement which by their terms must extend beyond the termination date."

6. Except as set forth in this Addendum, the Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and the Agreement or any other earlier amendment, the terms of this Addendum will prevail. Except as otherwise expressly provided in this Addendum, the parties agree that all provisions of the Agreement are hereby ratified and agreed to be in full force and effect and are incorporated herein by reference. This Addendum and the Agreement contain the entire agreement among the parties relating to the subject matter herein and all prior proposals, discussions and writings by and among the parties and relating to the subject matter herein are superseded hereby and thereby.

7. Customer's tax status is:

Initial to indicate tax status:

----- Exempt from Sales and Use Tax (Note: GEHC must have a Current Tax Exemption Certificate)

----- Subject to Sales and Use Tax*

*Subject to Sales and Use Tax is the default option if this Addendum is signed and the tax status is not indicated above.

The parties have caused this Addendum to be executed by their authorized representative as of the last signature date below. By signing below, the signor certifies that no modification or additions have been made to the Agreement or this Addendum. Any such modification or additions will be void.

Kern County Hospital Authority

Signature: _____
Print Name: Russell Bigler
Title: Chairman, Board of Governors
Date: _____

GE Healthcare

Signature: Dharmini Smith
Print Name: Dharmini Smith
Title: Market GM - Service
Date: 1-17-2022

REVIEWED ONLY
NOT APPROVED AS TO FORM

By Jamie [Signature]
Legal Services Department

Exhibit A

Quotation # 154E058
Please see attached



GE Healthcare Service Quotation

AGREEMENT# _____ ACCOUNT# **130382** QUOTATION ID# **154E050**

Customer Name: **KERN COUNTY HOSPITAL AUTHORITY**
Information: Address: **1700 MOUNT VERNON AVE**
City: **BAKERSFIELD** State: **CA** Zip: **93306**

Service Billing Option (choose one)

HFS Combined Billing (Service payments billed through Healthcare Financial Services equipment financing agreement):

By selecting this box & signing below, the payments related to this service agreement will be administered through GE Healthcare Financial Services. See HFS Equipment Financing agreement for Service billing details. See rest of Agreement (as defined below) for remainder of terms and conditions. If not selecting HFS Combined Billing option, please complete the remainder of the agreement below in its entirety.

Standard:

Term: **60** months
Billing Frequency: **Monthly - Advance**
Payment Terms: **Net 30 days of invoice date**
Payment Schedule***: **_**
The following payments have non-date effective dates:
\$2,987.25 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty
\$81.25 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty
\$1,025.00 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty
\$251.25 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty
\$8,451.92 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty
\$625.25 Monthly - Advance, Effective at End of Warranty through 60 Months
After End of System Warranty

Agreement Start Date**: **End of Warranty**
Quotation Expiration Date: **December 17, 2021**
PO Requirement: Yes (hardcopy PO required) No
PO #: _____ PO Expiration Date: _____
Sales And Use Tax Status: **No Exemption Certification on file**

Customer Billing Information: Name: **ACCOUNTS PAYABLE**
Address: **PO BOX 3519**
City: **BAKERSFIELD** State: **CA** Zip: **93306**

Is the above billing address correct? Yes No If no, please provide the correct billing address below:

Customer Billing Information: Name: _____
Address: _____
City: _____ State: _____ Zip: _____

Please provide the contact name and email address of the following person(s):

	Contact Name:	Email address:
1. To be notified when this Agreement is processed:	_____	_____
2. To receive all invoices electronically via email:	_____	_____

Service Sales Rep.: Rae Mueller Phone: 414-534-2743 Email: Rachael.Mueller@ge.com

**Agreement Start Date: The "Agreement Start Date" begins on: (a) the above date if Customer signs and returns this Agreement within 30 calendar days of that date; or (b) the date of signature if Customer does not sign and return this Agreement within 30 calendar days of the above date.

Annual Charges: See Product Schedule for annual charges, offerings, coverage, and start dates for each Product. Charges are based on Product inventory, offerings, and coverage as of the Agreement Start Date and may change to reflect inventory and coverage modifications, variable charges and other adjustments as specified in this Agreement. If this Agreement's annual charges are less than \$12,000, GE Healthcare reserves the right to enforce automatic bill payment (via ACH or credit card).

***Payment Schedule: Charges are payable in installments as set forth above plus applicable taxes. These charges may change based on Product additions/deletions, inflation adjustments or other modifications permitted by this Agreement. Customer will be billed beginning on the Agreement Start Date. Payment is due per above Billing Frequency and Payment Terms. If the Agreement Start Date is not the first of the month, the first and last payments will be prorated.

Agreement: This Agreement is between the "Customer" identified above and the GE Healthcare business identified below ("GE Healthcare"), for the sale and purchase of the Services and/or the Subscription identified in this Quotation, together with any applicable schedules referred to herein ("Quotation"). "Agreement" is defined as the GE Healthcare: (1) Quotation; (2) Product Schedule; (3) Statement of Service Deliverables; and (4) Service Terms & Conditions, that apply to the Products, Services and/or Subscription identified in this Quotation. In the event of conflict, the order of precedence is as listed. GE Healthcare can withdraw this Quotation at any time before "Quotation Acceptance", which occurs when Customer either: (i) signs and returns this Quotation; or (ii) provides evidence of Quotation acceptance satisfactory to GE Healthcare. On Quotation Acceptance, this Agreement is the complete and final agreement of the parties relating to the Services and/or Subscription identified in this Quotation. There is no reliance on any terms other than those expressly stated or incorporated by reference in this Agreement and, except as permitted in this Agreement, no attempt to modify will be binding unless agreed to in writing by the parties. Modifications may result in additional fees and cannot be made without GE Healthcare's prior written consent.

Handwritten or electronic modifications on this Agreement (except signatures on the signature blocks below) are void. This Agreement is not part of an umbrella or other group purchasing agreement unless otherwise indicated.

The parties have caused this Agreement to be executed by their authorized representative as of the last signature date below.

Customer:

GE Precision Healthcare LLC, a GE Healthcare business

Signature: _____

Signature: Rae Mueller

Print Name: Russell Bigler

Print Name: Rae Mueller

Title: Chairman, Board of Governors

Title: Service Account Manager

Date: _____

Date: 12/2/2021

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department

KERN MEDICAL

Support and prices quoted below are valid provided the customer signs and returns this quote to GE Healthcare by 12/17/2021

Equipment Identifiers	Trans. Type	Equipment	Effective Date	Offering	Options	Features	Annual Amount	Comments
System ID: TBD0001 Phy Loc Acct: 130382 Global Order #: TBD0001	ADD POS	GE XR SENOGRAPHE PRISTINA (NON- MOBILE) (XMM567)	End of Warranty for 60 Months	AssurePoint Standard	<p>INCLUDED:</p> <ul style="list-style-type: none"> BREAST TOMOSYNTHESIS DETECTOR DUETA GE-SOURCED MAMMO PADDLES ILINQ RESPONSE TIME: 30 MIN. TUBE COVERAGE: TUBE COV W/O SENOBRIGHT (CESM) <p>EXCLUDED:</p> <ul style="list-style-type: none"> Continuity PERIPHERAL DEVICES Printers UNINTERRUPTED POWER SUPPLY WORKSTATION 	<ul style="list-style-type: none"> FE Coverage Weekdays: MON-FRI, 8AM-9PM FE Coverage Weekend: NO COVERAGE HRS FE Onsite Response Time: 4-Hours iCenter InSite Response: 30 InSite/Tech Phone Support PM Coverage HOURS/DAYS: MON-FRI, 8AM-9PM Repair Parts: Included, Next Day 10:30 AM LST-GDXR Software and Quality Updates Third Party Software: Excluded TIP Answer Line Uptime Commitment: 97% 	\$35,847	
System ID: TBD0002 Phy Loc Acct: 130382 Global Order #: TBD0002	ADD POS	GE WORKSTATION SENOIRIS CONNECT HARDWARE + SOFTWARE (X#0NC2)	End of Warranty for 60 Months	AssurePoint Standard	<p>EXCLUDED:</p> <ul style="list-style-type: none"> Continuity MONITOR PERIPHERAL DEVICES SENOIRIS DIAGNOSE SENOIRIS REVIEW UNINTERRUPTED POWER SUPPLY 	<ul style="list-style-type: none"> FE Coverage Weekdays: MON-FRI, 8AM-5PM FE Coverage Weekend: NO COVERAGE HRS FE Onsite Response Time: 4-Hours iCenter IDI Professional Services: 1 Hour InSite/Tech Phone Support PM Coverage HOURS/DAYS: MON-FRI, 8AM-5PM Repair Parts: Included, Next Day 10:30 AM LST-GDXR Software and Quality Updates Third Party Software: Excluded TIP Answer Line Uptime Commitment: 97% 	\$975	
System ID: TBD0005 Phy Loc Acct: 130382 Global Order #: TBD0005	ADD POS	GE XR SERENA BIOPSY (X#60PS)	End of Warranty for 60 Months	AssurePoint Standard	<p>INCLUDED:</p> <ul style="list-style-type: none"> CARTS Pristina PM Coverage: 1 Pristina Serena: Serena: 3D <p>EXCLUDED:</p> <ul style="list-style-type: none"> PERIPHERAL DEVICES UNINTERRUPTED POWER SUPPLY 	<ul style="list-style-type: none"> FE Coverage Weekdays: MON-FRI, 8AM-9PM FE Coverage Weekend: NO COVERAGE HRS FE Onsite Response Time: 4-Hours iCenter InSite Response: 30 InSite/Tech Phone Support PM Coverage HOURS/DAYS: MON-FRI, 8AM-9PM Repair Parts: Included, Next Day 10:30 AM LST-GDXR Software and Quality Updates Third Party Software: Excluded TIP Answer Line Uptime Commitment: 97% 	\$12,300	



Equipment Identifiers	Trans. Type	Equipment	Effective Date	Offering	Options	Features	Annual Amount	Comments
System ID: TBD0007 Phy Loc Acct: 130382 Global Order #: TBD0007	ADD POS	GE XR SENSORYSUITE (XMM563)	End of Warranty for 60 Months	AssurePoint Standard	INCLUDED: • PACKAGE: Platinum	<ul style="list-style-type: none"> • FE Coverage Weekdays: MON-FRI, 8AM-5PM • FE Onsite Response Time: 24 Hours • iCenter • InSite/Tech Phone Support • Repair Parts: Included, Next Day 10:30 AM LST-GDXR • Software and Quality Updates • Third Party Software: Excluded • TIP Answer Line 	\$3,015	<ul style="list-style-type: none"> » SensorySuite Interactive Experience » 2 Large Monitors/1 Tablet » Scent Diffuser » Fragrance Tablets » Bookmarks » Decorative Blades: 1-Large/3-Small » 1 Large Monitor/1 Tablet » Decorative Blades: 1 Large » 1 Small Monitor/1 Tablet » Decorative Blades: 1 Small
System ID: TBD0008 Phy Loc Acct: 130382 Global Order #: TBD0008	ADD POS	GE CT REVOLUTION EVO EL/EX/ES (C#15F)	End of Warranty for 60 Months	AssurePoint Standard	<p>INCLUDED:</p> <ul style="list-style-type: none"> • APM Predict: OnWatch • ILINQ RESPONSE TIME: 30 MIN. • SYSTEM AND TUBE COVERAGE: EL, Up to 0005000 Patients <p>EXCLUDED:</p> <ul style="list-style-type: none"> • Continuity • MOBILE UNIT • PERIPHERAL DEVICES • Printers • UNINTERRUPTED POWER SUPPLY • WORKSTATION 	<ul style="list-style-type: none"> • FE Coverage Weekdays: MON-FRI, 8AM-9PM • FE Coverage Weekend: NO COVERAGE HRS • FE Onsite Response Time: 4-Hours • iCenter • InSite Response: 30 • InSite/Tech Phone Support • PM Coverage HOURS/DAYS: MON-FRI, 8AM-9PM • Repair Parts: Included, Next Day 10:30 AM LST-CT • Software and Quality Updates • Third Party Software: Excluded • TIP Answer Line • TIP-Ed Online(TV) Subscription • Uptime Commitment: 97% 	\$101,423	
System ID: TBD0010 Phy Loc Acct: 130382 Global Order #: TBD0010	ADD POS	GE WORKSTATION AW SERVER (8,000 - 40,000 Slice Configuration) (CAWL02)	End of Warranty for 60 Months	AssurePoint Standard	<p>INCLUDED:</p> <ul style="list-style-type: none"> • SLICE CONFIGURATION: 8,000 - 40,000 Slice Configuration <p>EXCLUDED:</p> <ul style="list-style-type: none"> • Continuity 	<ul style="list-style-type: none"> • FE Coverage Weekdays: MON-FRI, 8AM-5PM • FE Coverage Weekend: NO COVERAGE HRS • FE Onsite Response Time: 4-Hours • iCenter • InSite Response: 30 • InSite/Tech Phone Support • PM Coverage HOURS/DAYS: MON-FRI, 8AM-5PM • Repair Parts: Included, Next Day 10:30 AM LST-GENERAL • Software and Quality Updates • Third Party Software: Excluded • TIP Answer Line • Uptime Commitment: 95% 	\$7,503	

NET ANNUAL VALUE: \$161,063





GE Healthcare Service Terms & Conditions

- 1. Definitions.** As identified in this Agreement, "Equipment" is hardware and embedded software that is licensed with the purchase of the hardware delivered to Customer in GE Healthcare's packaging and with its labeling; "Software" is software developed by GE Healthcare and/or delivered to Customer in GE Healthcare's packaging and with its labeling, and Documentation associated with the software; "Third Party Software" and "Third Party Equipment" are respectively software developed by a third party, and hardware and embedded software that is licensed with the purchase of the hardware, that is delivered to Customer in the third party's packaging and with its labeling (collectively, "Third Party Product"); "Product" is Equipment, Software and Third Party Product; "Services" are Product support or professional services; and "Subscription" is a limited-term, non-transferable license to access and use a Product (except Healthcare Digital Products), including any associated Services. "Healthcare Digital Products" are: (i) Software identified in the Quotation as "Centricity"; (ii) Third Party Software licensed for use in connection with Centricity Software; (iii) hardware used to operate Centricity or Third Party Software; (iv) Services provided for implementation, installation or support and maintenance of Centricity or Third Party Software licensed for use in connection with Centricity Software; and/or (v) any Product or Service that is identified in a Healthcare Digital Quotation. "Specifications" are GE Healthcare's written specifications and manuals as of the date the Equipment shipped. "Documentation" is the online help functions, user instructions and manuals regarding the installation and operation of the Product as made available by GE Healthcare to Customer.
- 2. Term and Termination.** Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate this Agreement. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination.
- 3. Inventory.** GE Healthcare will complete an inventory of Products and provide an updated Product schedule ("Product Schedule"). Products must be in safe, normal operating condition and comply with original equipment manufacturer ("OEM") specifications in order to be added to the Product Schedule, and GE Healthcare is not liable or responsible for any preexisting defect, malfunction or necessary repairs.
- 4. Product Removal.** Product sold (excluding an assignment of this Agreement) or scrapped by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted on the later of the end of the notice period or the date the Product is sold or scrapped. Customer has no right to remove a Product at its convenience.
- 5. Warranty.** GE Healthcare warrants that its Service will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will re-perform non-conforming Service as long as Customer provides prompt written notice to GE Healthcare. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. DOCUMENTATION IS PROVIDED "AS IS".
- 6. Loaner Units.** GE Healthcare may provide a loaner unit during extended periods of Service. If a loaner unit is provided: (i) it is for Customer's temporary use at the location identified in the Quotation; (ii) it will be returned to GE Healthcare within 5 days after the Product is returned to Customer, and if it is not, GE Healthcare may repossess it or invoice Customer for its full list price; (iii) it, and all programs and information pertaining to it, remain GE Healthcare property; (iv) risk of loss is with Customer during its possession; (v) Customer will maintain and return it in proper condition, normal wear and tear excepted, in accordance with GE Healthcare's instructions; (vi) it will not be repaired except by GE Healthcare; (vii) GE Healthcare will be given reasonable access to it; (viii) Customer is not paying for its use, and Customer will ensure charges or claims submitted to a government healthcare program or patient are submitted accordingly; and (ix) prior to returning it to GE Healthcare, Customer will delete all information, including PHI, from it and its accessories, in compliance with industry standards and instructions provided by GE Healthcare.
- 7. License Registration.** Online registration as a licensee may be required for receipt of Software and Documentation.
- 8. Customer Responsibilities.** Customer must: (i) maintain power quality, grounding, temperature, humidity and repairs due to power anomalies, all as necessary for Products to operate within OEM specifications; (ii) ensure labeling complies with regulations; (iii) provide Third Party Product warranty and operating and maintenance manuals, maintenance and service requirements (e.g., software, tools, phantoms), or pay GE Healthcare for acquiring these materials; (iv) repair accessories unless the item is identified on the Product Schedule; (v) replace accessories, supplies and consumables; (vi) dispose of accessories, supplies and consumables unless GE Healthcare is legally required to take the item back; (vii) update Third Party Product; (viii) maintain licenses, permits and other approvals required to receive or use radioactive sources and provide the sources needed for calibration and performance checks; (ix) provide access to Products during Service coverage hours; and (x) if required by GE Healthcare, sign an agency authorization letter to provide Services. Service for Products not maintained to OEM specifications may result in additional charges. Customer cannot stockpile replacement parts.
- 9. End of Support.** If GE Healthcare determines that: (i) a Product or component thereof has been declared end of life/support by the OEM; (ii) its ability to Service or maintain a Product or component thereof is hindered due to the unavailability of parts or trained personnel; or (iii) it can no longer Service or maintain the Product in a safe or effective manner, then GE Healthcare may, upon notice: (a) remove the item from this Agreement and adjust fees without otherwise affecting this Agreement, or (b) move the item to "end of service life" coverage.
- 10. Return for Repair.** Prior to shipping Product to GE Healthcare for repair, Customer will back up and remove data stored on the Product. Customer is responsible for damage during shipment to GE Healthcare. GE Healthcare may remove data stored on the Product prior to sending it back to Customer and will provide standard shipping.
- 11. Exclusions.** Unless identified on the Product Schedule, this Agreement does not cover: (i) tubes, detectors, probes, chillers, crystals, batteries, accessories, consumables, user-replaceable items, supplies, cosmetic upgrades or parts used to correct/enhance Product appearance; (ii) a defect, deficiency or repairs due to improper storage or handling, failure to maintain Product according to OEM instructions/specifications, inadequate backup or virus protection, cyber-attacks, or any cause external to the Product or beyond GE Healthcare's control; (iii) payment/reimbursement of facility costs arising from repair/replacement of Product; (iv) adjustment, alignment, calibration, or planned maintenance; (v) Third Party Product that was not commercially available from the OEM on the date the item was

installed; (vi) OEM warranty service or recalls; (vii) Product upgrades, certification surveys and relocations; (viii) consultation, training or assistance with use, development, or modification of items/materials (e.g., software and protocols); (ix) installation and reusing existing facilities for testing, training and other purposes; (x) MR-related defect from failure of a Customer water chiller system or service to water chiller system; (xi) Healthcare Digital Products; and (xii) non-GE Healthcare network/antenna installations/troubleshooting.

12. **Existing Service Arrangements.** This Agreement does not apply to Products covered by arrangements/warranties from other vendors until the end or termination of those arrangements/warranties. If Products covered by another arrangement/warranty are added to this Agreement, they will be added on the day following the end or termination of the other arrangement/warranty.

13. **Hourly Billed Services.** Services not covered by this Agreement are hourly-billed services and may have a 2-hour minimum charge.

14. **Inflation.** After the first year of this Agreement, but no more than annually and with 60 days' prior notice provided in the same manner as Customer's invoices, GE Healthcare may increase fees by an amount no more than the prior 12-month increase in the U.S. Bureau of Labor Statistics ("BLS") Employment Cost Index for "Service-providing industries: Natural resources, construction, and maintenance (not seasonally adjusted, total compensation)" or any replacement index as determined by BLS, capped at 5% annually.

15. **Product Specific Service Terms.**

15.1. **Tube Support (Excluding C-Arms).** If tube support/coverage is identified on the Product Schedule, GE Healthcare will provide tubes, on an exchange basis, to replace failed tubes. Customer will: (i) maintain a Product maintenance and repair program, including tube warm up, in accordance with GE Healthcare planned maintenance and repair requirements; (ii) repair the Product with repair parts that meet OEM specifications; and (iii) protect Product configuration against alteration except as authorized by GE Healthcare. Product must have an operational tube on the Agreement Start Date (as defined in the Quotation). No credit will be provided to Customer for the tube. Tubes provided under tube support/coverage are on an "AS IS" basis with no warranties of any kind. Claims reported after expiration or termination of tube support/coverage are not covered even if a tube failure occurred prior to such expiration or termination.

15.2. **Magnetic Resonance ("MR").**

15.2.1. **Magnet Maintenance.**

15.2.1.1. If magnet maintenance for MR systems with Lhe/Ln and shield cooler-configured magnets and condenser-configured magnets (K4 technology) is identified on the Product Schedule, GE Healthcare will: (i) adjust, repair, or replace covered components (i.e., MR magnet, cryostat, coldhead, cryo-cooler compressor, shim coils); (ii) monitor cryogen levels within the magnet cryostat, based on Customer cryostat meter readings; and (iii) perform magnetic field homogeneity adjustments to the extent required by magnet ramping or covered component adjustment, repair or replacement. Customer will ensure that the Product's cryo-cooler system and water chiller system used with the cryo-cooler system (including in vans or trailers in transit) are operational at all times and maintained, and immediately notify GE Healthcare if it is not.

15.2.1.2. If magnet maintenance for MR systems with permanent magnets is identified on the Product Schedule, GE Healthcare will perform magnetic field homogeneity adjustments to the extent required by a covered component adjustment, repair or replacement.

15.2.2. **Remote Magnet Monitoring for non-GE Healthcare Systems.** If remote magnet monitoring for non-GE Healthcare systems is identified on the Product Schedule, GE Healthcare will: (i) remotely monitor operating parameters of the MR magnet refrigeration system; (ii) oversee installation of remote monitoring hardware; and (iii) maintain the hardware. Customer will provide power, access and remote connectivity as needed for remote magnet monitoring.

15.2.3. **Cryogen Coverage.** If cryogens for GE Healthcare MR systems are identified on the Product Schedule as included in the Service for the Equipment, GE Healthcare will provide: (i) monitoring of cryogen levels; and (ii) cryogen delivery and transfill service Monday-Friday, between 9pm-6am local time (excluding GE Healthcare holidays), to replenish cryogen losses resulting from (a) the normal operation of the Equipment in accordance with Specifications, or (b) GE Healthcare's failure to maintain the Equipment in accordance with Specifications. Notwithstanding the foregoing, if Customer's failure to maintain or use the Equipment in accordance with Specifications results in cryogen loss, Customer will be billed for resulting lost liquid helium liters (whether or not a refill was immediately required to replace lost liters) at GE Healthcare's then-current rates. Subject to the foregoing, if cryogens are identified on the Product Schedule as included in the Service for the Equipment, cryogen delivery and transfill service will be provided either: (1) on an unlimited (as needed) basis, or (2) if the cryogens are at the required target fill level, on a 1 cryogen liter per contract year basis. See Product Schedule and AssurePoint Reserve terms and conditions (if applicable) for details. Customer will inform GE Healthcare of its authorized cryogen representative who will provide GE Healthcare accurate cryostat meter readings and receive notifications relative to cryogen quantity and delivery schedules (for Lhe/Ln and shield cooler configured magnets only); and provide a delivery dock and storage facility. GE Healthcare is not responsible or liable for: cryogen loss or transfer efficiency during transfer to the cryostat; cryogens if cryogens are identified on the Product Schedule as excluded; or service needed on Equipment due to cryogen transfill service not otherwise provided by GE Healthcare.

15.2.4. **Cryogen Cost Increases.** If GE Healthcare's cryogen cost increases by more than 12%, as measured against its cost as of the Agreement Start Date (as defined in the Quotation) or its cost on the date of the most recent adjustment, GE Healthcare may increase Service fees in an amount equal to such cost increase.

15.3. **Cyclotron.** GE Healthcare will work in accordance with its health and safety rules and applicable radiation and radioactive materials safety laws and regulations, whichever is more stringent, including assessment and management of radiation dose in accordance with the As Low As Reasonably Achievable ("ALARA") standard. Customer will follow all ALARA guidelines to maintain and control the radiation exposures as far below the dose limits as possible. Customer will: (i) if requested by GE Healthcare, remove targets prior to Service; (ii) place targets in an appropriately shielded area/container during Service; (iii) replace targets following Service; (iv) provide at least 24 hours of Product downtime prior to planned maintenance; (v) provide GE Healthcare with Customer's emergency and site-specific safety procedures; (vi) ensure that a Customer representative is available in the work area during Service; (vii) confirm that GE Healthcare personnel and their tools and accessories are free from contamination prior to leaving Customer's facility; and (viii) store and dispose of waste generated by Service in compliance with applicable laws and regulations. GE Healthcare reserves the right not to enter areas with dose rates in excess of 2

mSv/hour. Other radiation exposure limits may apply to Service, including daily or personal cumulative dose limits, and local requirements, which could prevent Service of the cyclotron until radiation levels are reduced.

16. General Terms.

16.1. **Confidentiality.** Each party will treat this Agreement and the other party's proprietary information as confidential, meaning it will not use or disclose the information to third parties unless permitted in this Agreement or required by law. Customers are not prohibited from discussing patient safety issues in appropriate venues.

16.2. **Governing Law.** The law of the state where the Product is installed, the Service is provided, or the Subscription is accessed will govern this Agreement.

16.3. **Force Majeure.** Performance time for non-monetary obligations will be reasonably extended for delays beyond a party's control.

16.4. **Assignment; Use of Subcontractors.** Rights and obligations under this Agreement cannot be assigned without the other party's prior written consent, unless: (i) it is to an entity (except to a GE Healthcare competitor) that (a) is an affiliate or parent of the party or (b) acquires substantially all of the stock or assets of such party's applicable business, Product line, or Service thereof; and (ii) the assignee agrees in writing to be bound by this Agreement, including payment of outstanding fees. GE Healthcare may hire subcontractors to perform work under this Agreement but will remain responsible for its obligations.

16.5. **Waiver; Survival.** If any provision of this Agreement is not enforced, it is not a waiver of that provision or of a party's right to later enforce it. Terms in this Agreement related to intellectual property, compliance, data rights and terms that by their nature are intended to survive will survive the Agreement's expiration or termination.

16.6. **Intellectual Property.** GE Healthcare owns all rights to the intellectual property in GE Healthcare's Products, Services, Documentation, Specifications, and statements of work related to a Quotation or otherwise. Customer may provide GE Healthcare with feedback related to Products, Services, and related Documentation, and GE Healthcare may use it in an unrestricted manner.

17. Compliance.

17.1. **Generally.** Each party will comply with applicable laws and regulations. Customer is only purchasing or licensing Products for its own medical, billing and/or non-entertainment use in the United States. GE Healthcare will not deliver, install, service or train if it discovers Products have been or are intended to be used contrary to this Agreement. This Agreement is subject to GE Healthcare's ongoing credit review and approval. Customer is aware of its legal obligations for cost reporting, including 42 C.F.R. § 1001.952(g) and (h), and will request from GE Healthcare any information beyond the invoice needed to fulfill Customer's cost reporting obligations. GE Healthcare will provide safety-related updates for Equipment and Software required by applicable laws and regulations at no additional charge.

17.2. **Security.** GE Healthcare is not responsible for: (i) securing Customer's network; (ii) preventing unauthorized access to Customer's network or the Product; (iii) backup management; (iv) data integrity; (v) recovery of lost, corrupted or damaged data, images, software or equipment; (vi) third party operating systems, unless specifically provided in the Quotation; or (vii) providing or validating antivirus or related IT safeguards unless sold to Customer by GE Healthcare. **NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR DAMAGES CAUSED BY UNAUTHORIZED ACCESS TO THE NETWORK OR PRODUCTS REGARDLESS OF A PARTY'S COMPLIANT SECURITY MEASURES.**

17.3. **Environmental Health and Safety ("EHS").** GE Healthcare personnel may stop work without penalty due to safety concerns. Customer must: (i) comply with GE Healthcare's EHS requirements; (ii) provide a safe environment for GE Healthcare personnel; (iii) tell GE Healthcare about chemicals or hazardous materials that might come in contact with Products or GE Healthcare personnel; (iv) perform decommissioning or disposal at Customer facilities; (v) obtain and maintain necessary permits; (vi) thoroughly clean Products before Service; (vii) provide radioactive materials required for testing Products; and (viii) dispose of waste related to Products and installations.

17.4. **Parts and Tubes.** GE Healthcare: (i) recommends the use of parts it has validated for use with the Product; (ii) is not responsible for the quality of parts supplied by third parties to Customer; and (iii) cannot assure Product functionality or performance when non-validated parts are used. Certain Products are designed to recognize GE Healthcare-supplied tubes and report the presence of a non-GE Healthcare tube; GE Healthcare is not responsible for the use of, or effects from, non-GE Healthcare supplied tubes.

17.5. **Training.** GE Healthcare's training does not guarantee that: (i) Customer trainees are fully trained on Product use, maintenance or operation; or (ii) training will satisfy any licensure or accreditation. Customer must ensure its trainees are fully qualified in the use and operation of the Product. Unless otherwise identified in the training catalog, Customer will complete training within 12 months of: (a) the date of Product delivery for a Product purchase; (b) the respective start date for Services or Subscription for purchase of Service or Subscription; or (c) the date training is ordered for training-only purchases. If not completed within this time period, other than because of GE Healthcare's fault, training expires without refund.

17.6. **Medical Diagnosis and Treatment.** All clinical and medical treatment, diagnostic and/or billing decisions are Customer's responsibility.

17.7. **Connectivity.** If a Product has remote access capability: (i) Customer will provide GE Healthcare with, and maintain, a GE Healthcare-validated remote access connection to service the Product; or (ii) GE Healthcare reserves the right to charge Customer for onsite support at GE Healthcare's then-current billing rate. This remote access and collection of machine data (e.g., temperature, helium level) will continue after the end of this Agreement unless Customer requests in writing that GE Healthcare disable it.

17.8. Use of Data.

17.8.1. **Protected Health Information.** If GE Healthcare creates, receives, maintains, transmits or otherwise has access to Protected Health Information (as defined in 45 C.F.R. § 160.103) ("PHI"), GE Healthcare may use and disclose the PHI only as permitted by law and by the Business Associate Agreement. Before returning any Product to GE Healthcare, Customer must ensure that all PHI stored in it is deleted.

17.8.2. **Data Rights.** GE Healthcare may collect, prepare derivatives from and otherwise use non-PHI data related to Products and/or Services for such things as training, demonstration, research, development, benchmarking, continuous improvement and facilitating the

provision of its products, software and services. GE Healthcare will own all intellectual property and other rights that could result from this collection, preparation and use. The non-PHI data will not be used to identify Customer or sold by GE Healthcare without Customer's consent.

17.9. **Customer Policies.** GE Healthcare will use reasonable efforts to respect Customer-provided policies that apply to GE Healthcare and do not materially contradict GE Healthcare policies. Failure to respect Customer policies is not a material breach unless it is willful and adversely affects GE Healthcare's ability to perform its obligations.

17.10. **Insurance.** GE Healthcare will maintain coverage in accordance with its standard certificate of insurance.

17.11. **Excluded Provider.** To its knowledge, neither GE Healthcare nor its employees performing Services under this Agreement have been excluded from participation in a Federal Healthcare Program. If an employee performing Services under this Agreement is excluded, GE Healthcare will replace that employee within a reasonable time; if GE Healthcare is excluded, Customer may terminate this Agreement upon written notice to GE Healthcare.

18. Disputes and Arbitration.

18.1. **Binding Arbitration.** Other than collection matters and actions seeking injunctive relief to prevent or cease a violation of intellectual property rights related to Products or Services, the parties agree to submit all disputes arising under or relating to this Agreement to the American Arbitration Association ("AAA") office closest to the largest metropolitan area of the location where the Product is installed or the Service is provided for binding arbitration conducted in accordance with AAA's then-current Commercial Arbitration Rules. Costs, including arbitrator fees and expenses, will be shared equally, and each party will bear its own attorneys' fees. The arbitrator will have authority to award damages only to the extent available under this Agreement. Nothing in this Section shall allow either party to arbitrate claims of any third-party not a party to this Agreement. The parties further agree to keep confidential: (i) the fact that any arbitration occurred; (ii) the results of any arbitration; (iii) all materials used, or created for use, in the arbitration; and (iv) all other documents produced by another party in the arbitration and not otherwise in the public domain.

19. Liability and Indemnity.

19.1. **Limitation of Liability.** GE HEALTHCARE'S LIABILITY FOR DIRECT DAMAGES TO CUSTOMER UNDER THIS AGREEMENT WILL NOT EXCEED: (I) FOR PRODUCTS, THE PRICE FOR THE PRODUCT THAT IS THE BASIS FOR THE CLAIM; OR (II) FOR SERVICE OR SUBSCRIPTIONS, THE AMOUNT OF SERVICE OR SUBSCRIPTION FEES FOR THE 12 MONTHS PRECEDING THE ACTION THAT IS THE BASIS FOR THE CLAIM. THIS LIMITATION WILL NOT APPLY TO GE HEALTHCARE'S DUTIES TO INDEMNIFY CUSTOMER UNDER THIS AGREEMENT.

19.2. **Exclusion of Damages.** NEITHER PARTY WILL HAVE ANY OBLIGATION FOR: (I) CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT OR REPUTATIONAL DAMAGES; (II) PROFIT, DATA OR REVENUE LOSS; OR (III) CAPITAL, REPLACEMENT OR INCREASED OPERATING COSTS.

19.3. **IP Indemnification.** GE Healthcare will indemnify, defend and hold Customer harmless from third-party claims for infringement of United States intellectual property rights arising from Customer's use of the Equipment or Software in accordance with the Specifications, Documentation and license.

19.4. General Indemnification.

19.4.1. GE Healthcare will indemnify, defend and hold Customer harmless for losses which Customer becomes legally obligated to pay arising from third party claims brought against Customer for bodily injury or damage to real or tangible personal property to the extent the damage was caused by GE Healthcare's: (i) design or manufacturing defect; (ii) negligent failure to warn, negligent installation or negligent Services; or (iii) material breach of this Agreement.

19.4.2. Customer will indemnify, defend and hold GE Healthcare harmless for losses which GE Healthcare becomes legally obligated to pay arising from third party claims brought against GE Healthcare for bodily injury or damage to real or tangible personal property to the extent the damage was caused by Customer's: (i) medical diagnosis or treatment decisions; (ii) misuse or negligent use of the Product; (iii) modification of the Product; or (iv) material breach of this Agreement.

19.5. **Indemnification Procedure.** For all indemnities under this Agreement: (i) the indemnified party must give the other party written notice before claiming indemnification; (ii) the indemnifying party will control the defense; (iii) the indemnified party may retain counsel at its own expense; and (iv) the indemnifying party is not responsible for any settlement without its written consent.

20. Payment and Finance.

20.1. **Late Payment.** Customer must raise payment disputes before the payment due date. For any undisputed late payment, GE Healthcare may: (i) suspend performance under this Agreement until all past due amounts are paid; (ii) charge interest at a rate no more than the maximum rate permitted by applicable law; and (iii) use unapplied funds due to Customer to offset any of Customer's outstanding balance. If GE Healthcare suspends performance, any downtime will not be included in the calculation of any uptime commitment. If Customer fails to pay when due: (a) GE Healthcare may revoke its credit and designate Customer to be on credit hold; and (b) all subsequent shipments and Services must be paid in full on receipt.

20.2. **Taxes.** Prices do not include applicable taxes, which are Customer's responsibility.

21. **Notices.** Notices will be in writing and considered delivered when received if sent by certified mail, postage prepaid, return receipt requested, by overnight mail, or by fax. Notice to Customer will be directed to the address on this Agreement, and notice to GE Healthcare to General Counsel, 9900 W Innovation Dr., Wauwatosa, WI 53226.



Statement of Service Deliverables Full Service Options

This Statement of Service Deliverables Full Service Options applies to the following GE Healthcare AssurePoint ("AP") service offerings: Standard, Rapid, Access, PM, Limited, Select, Performance, and Advance.

	Standard	Rapid	Access	PM	Limited	Select	Performance	Advance
Corrective Maintenance *	•	•	•		°	°	•	•
Planned Maintenance	•	•	•	•	•	•	•	•
Replacement Parts	•	•	•	•	•	•	•	•
Software Updates	•	•	•	•	•	•	•	•
Phone Clinical Applications Support	•	•	•		•	•	•	•
TIP Options #	°	°	°		°	°	°	°
MyGEHealthcare Equipment *	°	°	°				°	°
Remote Diagnostic Service *	°	°	°	°	°	°	°	°
Uptime Performance *	°	°	°				°	°
Specialty Component Options (Complete, Reserve, Pro) #	°	°	°	°	°	°	°	°
No Charge Special Parts Handling		°						
Quality Assurance Activities							°	°
Refresh #	°	°	°	°	°	°	°	°
Remote Console * #	°	°	°				•	•
APM Predict: OnWatch * #	°	°						°
Tube Watch * #	°	°						°
Continuity * #	°	°	°				°	°
Supplemental Services During Warranty	°	°					°	°
Overtime Hours Allowance	°	°	°	°	°	°	°	°

• Included (to the extent provided herein)

° Optional (if available/identified on the Product Schedule)

* Requires Connectivity (if Product has remote access capability)

See supplemental terms of offering

1. Corrective Maintenance. GE Healthcare or its agents will use commercially reasonable efforts to resolve any verifiable and reproducible service issue of the Product (defined as the Product not substantially meeting original equipment manufacturer ("OEM") published specifications) in a reasonable period of time after notification by Customer, through remote or on-site services. Technical phone support is available 24 hours per day, 7 days per week (excluding GE Healthcare holidays, extent of phone support may differ by product type). On-site support is identified on the Product Schedule (if not listed, 8am to 5pm local time). GE Healthcare will use reasonable efforts to meet the response time for on-site support as identified on the Product Schedule. Corrective maintenance outside of coverage hours, on GE Healthcare holidays, or expedited beyond the response time (at Customer's request) will be billed at GE Healthcare's then-current rates. Corrective maintenance includes corrective maintenance-related Replacement Parts (subject to availability).

- AP PM. Corrective maintenance and corrective maintenance-related Replacement Parts are excluded.

- AP Limited and AP Select. GE Healthcare will provide a limited number of corrective maintenance events as identified on the Product Schedule. Each Customer call/request for corrective maintenance will be applied to the limited number of corrective maintenance events, unless Customer purchases service separately at GE Healthcare's then-current rates at the time it contacts GE Healthcare for such service.

2. Planned Maintenance. GE Healthcare or its agents will provide planned maintenance service ("PM") pursuant to OEM recommended frequencies and published specifications as set forth in the OEM service manuals (where available), or pursuant to documented alternate PM frequencies and specifications based on GE Healthcare's risk-based assessment. PM will be performed at mutually agreed upon times during

PM coverage hours (excluding weekends and GE Healthcare holidays unless otherwise specified) as identified on the Product Schedule. PM includes PM-related Replacement Parts (subject to availability). PM and PM-related Replacement Parts for PM activities with a frequency of 7 years or greater are excluded.

3. **Replacement Parts.** "Replacement Parts" mean the lowest level component repair part available that will bring the Product to OEM published specifications. GE Healthcare will provide subassemblies or assemblies if a lower replacement part is not available. Accessories and supplies are not Replacement Parts. Replacement Parts may be provided on a new or refurbished/repared (exchange) basis, at GE Healthcare's sole discretion. If an exchange part is provided, the original part becomes GE Healthcare property and GE Healthcare will remove it from Customer's site or Customer must return it to GE Healthcare within a reasonable timeframe of replacement to avoid being billed for the non-returned part. Replacement Parts are shipped freight included (excluding "Special Order" parts, which are not stocked by GE Healthcare due to low demand). If delivery priority is identified on the Product Schedule, it will be subject to shipment cut-off times for the applicable distribution center. Expedited parts delivery is available for an additional fee.

- AP PM. Corrective maintenance-related Replacement Parts are excluded.

4. **Software Updates and Upgrades.** Software updates consist of any error correction or modification to Equipment that maintain existing software features and functionality made generally available to GE Healthcare's installed customer base. Software updates may be installed during PM, or as otherwise agreed to by the parties. Software updates do not include any separately licensed software modules which provide additional functionality related to an application or feature for the hardware or software. Software upgrades are not included, which consist of any revision or enhancement to the Software by GE Healthcare that improve or expand existing software features or functionality that are made generally available for purchase. Additional hardware and/or software (including upgrades to third party software or operating system software) required for software updates or software upgrades, training, project management, and integration services are excluded.

5. **Phone Clinical Applications Support.**

- All Products. GE Healthcare will provide clinical applications support by telephone, Monday-Friday, 8am to 5pm CST (unless otherwise identified on the Product Schedule), excluding OEM holidays. Off-hours support is available for an additional fee.

- Equipment. Only available for Customer personnel trained by GE Healthcare to use the Equipment.

- Third Party Product. Only provided if identified on the Product Schedule and available via the OEM.

6. **TIP Options.** Not all TIP options are available with all Products or with all GE Healthcare service options. See Product Schedule for a list of TIP options included in the Agreement.

-TIP Answer Line. Not available for Third Party Product. Provides toll-free access to GE Healthcare application staff. Hours of operation based on product type (times available upon request).

-TIP-Ed Online. Continuing education training and business programming for healthcare professionals. See TIP-Ed Online Statement of Service Deliverables for additional terms and conditions.

-TIP Elevate. Training credits which can be used for trainings conducted at Customer's facility, via remote training sessions and at GE Healthcare's Healthcare Institute for the following diagnostic imaging products: MR, CT, Mammography, PET, Nuclear Medicine, Vascular and XR. See TIP Elevate Statement of Service Deliverables for additional terms and conditions.

7. **MyGEHealthcare Equipment.** MyGEHealthcare Equipment is a cloud-based asset maintenance and management software application that provides data and analytics on Product status, location, service and maintenance history, and Equipment utilization ("MyGEHealthcare Equipment"). If identified on the Product Schedule, GE Healthcare grants Customer during this Agreement a non-exclusive, non-transferable, non-sublicensable, limited subscription license to access and use MyGEHealthcare Equipment for the Products covered under this Agreement only for Customer's internal business operations in the United States. Customer must ensure its employee users maintain individually-assigned confidential user identifications and control mechanisms to access MyGEHealthcare Equipment, and notify GE Healthcare immediately of unauthorized access to or use of a username, password or other breach of security. MyGEHealthcare Equipment and the information therein are provided on an "AS IS" and "AS AVAILABLE" basis. NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, OR DATA ACCURACY, APPLY. GE Healthcare may monitor use of MyGEHealthcare Equipment for purposes including, but not limited to, ensuring appropriate use, product and service enhancements, performance monitoring and marketing. GE Healthcare may upgrade, modify, suspend, replace or disable MyGEHealthcare Equipment or portions thereof at any time. Customer cannot: (i) modify, reverse engineer, decompile, disassemble, copy or create derivative works of MyGEHealthcare Equipment; (ii) modify markings, labels or notices of proprietary rights; or (iii) make MyGEHealthcare Equipment or the information therein available to third-parties. GE Healthcare retains all ownership and intellectual property rights to MyGEHealthcare Equipment. No rights are granted except as expressly provided in this Agreement.

8. **Remote Diagnostic Services.** If identified on the Product Schedule as included, the Agreement includes GE Healthcare's then-current InSite, iLinq, or iLinq Diagnostic tools. Not available on all Products. Hours of operation based on product type.

9. **Uptime Performance.** If a Product fails to meet GE Healthcare's uptime commitment identified on the Product Schedule during any year of the Agreement, GE Healthcare will provide the applicable remedy listed below (which is Customer's sole and exclusive remedy). Uptime is calculated as follows: (Uptime-Downtime)/Uptime, with Uptime measured as the coverage hours identified on the Product Schedule (hours per day x days per week x 52 weeks). Downtime is measured as the number of hours the Product is inoperable and out of service. PM time and software update/upgrade installation are excluded from downtime calculation. Product is considered down from the time the service request is received by GE Healthcare until it is turned over to Customer for operation/use. Product is considered in service if Customer fails to give GE Healthcare immediate and unencumbered access to it or continues to obtain scans from it after notifying GE Healthcare of Product failure. Product is considered out of service if it is unavailable for scanning patients and diagnosing images on the display console or operator's console. Peripheral equipment (e.g., remote console, magnetic tape drive, hard copy devices, multi-format, laser cameras) are excluded. Services required for anything other than Product failure, and damage or inoperability beyond GE Healthcare's control, are excluded.



Statement of Service Deliverables APM Predict: OnWatch and Tube Watch Rider

1. APM Predict: OnWatch (if identified on the Product Schedule)

1.1 **APM Predict: OnWatch.** GE Healthcare will use its then-current APM Predict: OnWatch service to monitor (i) the performance of a limited number of components in the Equipment, and (ii) a limited number of environmental conditions where the Equipment is located. GE Healthcare will receive electronic service alerts of potential and/or emerging issues (e.g., Equipment identification number, description of identified issue) that it may use to service or maintain the Equipment.

2. Tube Watch (if identified on the Product Schedule)

2.1 **Tube Monitoring.** Tube Watch provides monitoring of GE Healthcare liquid-bearing tubes installed in the Equipment identified on the Product Schedule. Following GE Healthcare's receipt of a "tube-health" notice from the Equipment, GE Healthcare will notify Customer and request access to the Equipment ("**Customer Notice**"). Within 72 hours of Customer Notice, GE Healthcare will access the Equipment to begin tube and related component inspection, service and/or tube replacement. Tube Watch is solely a monitoring service that applies to GE Healthcare manufactured liquid-bearing tubes; corrective maintenance, tube replacement coverage, replacement parts and labor are not included.

2.2 **Performance Guarantee.** If a GE Healthcare liquid-bearing tube prevents the Equipment from scanning: (i) before Customer Notice; or (ii) within 72 hours of Customer Notice (each, a "**Failure**"), then, subject to the conditions in this Rider, GE Healthcare will provide Customer a service credit equaling the Tube Watch performance guarantee amount identified on the Product Schedule for such Equipment in the contract year in which the Failure occurred ("**Performance Guarantee**"). The Performance Guarantee is limited to 1 service credit per contract year regardless of whether multiple Failures occur on the same Equipment in a contract year.

2.3 **Restrictions.** Tube Watch and the Performance Guarantee are conditioned on: (i) Customer granting GE Healthcare physical access to the Equipment upon GE Healthcare's request; (ii) Customer providing GE Healthcare with, and maintaining, remote access to the Equipment at all times during this Agreement; (iii) the GE Healthcare liquid-bearing tube being in an unaltered and unmodified condition and in compliance with GE Healthcare specifications at all times during this Agreement; and (iv) the GE Healthcare liquid-bearing tube being installed in the Equipment in accordance with GE Healthcare specifications at all times during this Agreement. Tube Watch is void if a non-GE Healthcare tube and/or high voltage chain components not sourced by GE Healthcare (e.g., high voltage tank, inverter, high voltage cables) are installed in the Equipment.



Statement of Service Deliverables TiP-Ed Online

1. **TiP-Ed Online.** TiP-Ed Online content is available through GE Healthcare's Learning System website with access to courses, supplemental materials, CE assessments and certificates of completion. Access to TiP-Ed Online content requires Customer to have Internet broadband connectivity. GE Healthcare is not responsible or liable for technical issues, loss of connection or internal delivery problems.

1.1 **TiP-Ed Online Access and Use.** GE Healthcare grants Customer during this Agreement a non-exclusive, non-transferable, non-sublicensable, limited subscription license to access and use TiP-Ed Online and content therein for Customer's internal business operations in the United States. Customer must ensure its employee users maintain individually-assigned confidential user identifications and control mechanisms to access TiP-Ed Online, and notify GE Healthcare immediately of unauthorized access to or use of a username, password or other breach of security. TiP-Ed Online and content therein are provided on an "AS IS" and "AS AVAILABLE" basis. NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, OR DATA ACCURACY, APPLY. GE Healthcare may monitor use of TiP-Ed Online for purposes including, but not limited to, ensuring appropriate use, product and service enhancements, performance monitoring and marketing. GE Healthcare may upgrade, modify, suspend, replace or disable TiP-Ed Online or portions thereof at any time during this Agreement. Customer cannot: (i) modify, reverse engineer, decompile, disassemble, copy or create derivative works of TiP-Ed Online or content therein; (ii) modify markings, labels or notices of proprietary rights; or (iii) make TiP-Ed Online or content therein available to third-parties. GE Healthcare retains all ownership and intellectual property rights to TiP-Ed Online and content therein. No rights are granted except as expressly provided in this Agreement.

1.2 **Customer's TiP-Ed Online Responsibilities.** Customer will: (i) assist GE Healthcare or its agents to determine the compatibility of Customer's existing on-line system to access TiP-Ed Online content; (ii) maintain its facilities in order to receive TiP-Ed Online content through the use of GE Healthcare's Learning System; and (iii) designate an education coordinator for each Customer facility utilizing TiP-Ed Online.

1.3 **GE Healthcare's TiP-Ed Online Responsibilities.** GE Healthcare will provide: (i) telephone assistance during the initial setup of TiP-Ed Online; (ii) utilization tools and processes for promoting participation in TiP-Ed Online (e.g., schedules, calendars); (iii) access via 1 user name and password to site-specific education records for 1 designated education coordinator per participating facility; and (iv) toll-free customer service support 24 hours per day, 7 days per week (excluding GE Healthcare holidays).

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("**GE Healthcare**" or "**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of date of the underlying Agreement (the "**Effective Date**").

RECITALS

WHEREAS, Covered Entity is a "Covered Entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, ("**HIPAA**"), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**"), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("**HIPAA Rules**");

WHEREAS, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information ("**PHI**");

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the "**HITECH Act**") and its implementing regulations and guidance issued by the Secretary; and

WHEREAS, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 "**Breach**" shall have the meaning given under 45 C.F.R. § 164.402.
- 1.2 "**Breach Notification Rule**" shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.
- 1.3 "**Designated Record Set**" shall have the meaning given such term under 45 C.F.R. § 164.501.
- 1.4 "**Disclose**" and "**Disclosure**" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.
- 1.5 "**Electronic PHI**" or "**e-PHI**" means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.

1.6 **"Protected Health Information"** and **"PHI"** mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

1.7 **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

1.8 **"Security Rule"** shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

1.9 **"Services"** shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the **"Underlying Agreement"**), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.

1.10 **"SubContractor"** shall have the meaning given to such term under 45 C.F.R. § 160.103.

1.11 **"Unsecured PHI"** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402, and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

1.12 **"Use"** or **"Uses"** mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate's internal operations, as set forth in 45 C.F.R. § 160.103.

1.13 **"Workforce"** shall have the meaning given to such term under 45 C.F.R. § 160.103

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than five (5) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.3.3 Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted

by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.5 Use of SubContractors. Business Associate shall require each of its SubContractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such SubContractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

2.8 Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its SubContractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

2.9 Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to

accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

4.2.1 A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA

Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

4.3.1 Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

4.3.2 Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

ARTICLE V MISCELLANEOUS

5.1 Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

5.4 Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

5.5 Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and SubContractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any SubContractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.9 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

5.10 Notice of Request or Subpoena for Data. GE Healthcare [or Business Associate] agrees to notify Covered Entity, without unreasonable delay, of any subpoena, discovery request, other legal request or demand of GE Healthcare [or Business Associate] for disclosure or production of Covered Entity's PHI, provided that such notification does not violate any applicable law, confidentiality obligations, or legal privileges held by GE Healthcare [or Business Associate].

5.11 Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt

requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer
contracts@kernmedical.com

Business Associate's Notice Address:

GE Precision Healthcare, LLC
9900 W. Innovation Drive
Wauwatosa, WI 53226
Attn: Legal Department

5.13 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent Consultant and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

5.14 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

5.15 Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

5.16 Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

5.17 Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

5.18 Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

5.19 Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

5.20 Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or Consultants may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or Consultants to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

The Parties hereto have executed this BAA as of the Effective Date.

COVERED ENTITY:

The Kern County Hospital Authority

Title: Chief Executive Officer

Date: _____

BUSINESS ASSOCIATE:

GE Precision Healthcare, LLC

Catherine Kaphingst

Title: Commercial Legal Operations Specialist

Date: January 12, 2022

APPROVED AS TO FORM
Legal Services Department

By 

Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Addendum to the Software Use Agreement (HA2017-025) dated March 16, 2017 with Strata Decision Technology, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed addendum with Strata Decision Technology, LLC a software and consulting company providing decision support, cost accounting, and operating budget solutions.

Strata Decision Technology has provided Kern Medical with a robust software platform needed to build and support the annual operating budget for the hospital and its clinics. In addition, the Strata system supports full-time equivalent (FTE) employee productivity reporting, management reporting, management financial reporting, capital project management, decision support analyses, and cost accounting analyses which assists the departments and human resources to adequately staff to meet the needs of the community.

This addendum will extend the Software Use Agreement for five (5) years, effective March 16, 2022, increasing the maximum payable by \$1,809,105 from \$2,056,164 to \$3,865,269, to cover the term.

Therefore, it is recommended that your Board approve the proposed addendum with Strata Decision Technology LLC and authorize the Chairman to sign.



ADDENDUM TO SOFTWARE USE AGREEMENT

This is an Addendum to the Software Use Agreement (“Agreement”) dated March 16, 2017 (the “Effective Date”) by and between Strata Decision Technology, LLC (“Strata”) and Kern County Hospital Authority (“Customer”).

The purpose of this Addendum is bulleted below and is effective as of March 16, 2022 (the “Addendum Effective Date”):

- To extend Customer’s Commitment Period for the following Programs from to 3/16/2022 – 3/15/2027

Programs:

- StrataJazz Capital Budgeting & Tracking for 65 System Users
- StrataJazz Equipment Replacement for 10 System Users
- StrataJazz Management Reporting for 125 System Users
- StrataJazz Operating Budgeting for 125 System Users
- StrataJazz Productivity Reporting for 125 System Users
- StrataJazz Cost Accounting (Hospitals) for 2 System Users and 63 Report Users
- StrataJazz Cost Accounting (Physicians) for 2 System Users and 63 Report Users
- StrataJazz Contract Analytics (Physicians) for 2 System Users
- StrataJazz Contract Analytics (Hospitals) for 2 System Users
- StrataJazz Continuous Cost Improvement for 10 System Users
- StrataJazz eLearning for 65 System Users

1. Annual Fees

The annual fee for the Programs listed above (the “Annual Fees”) is due in advance of each successive 12-month period during the Commitment Period.

2. Fee Structure

Description	Billed 3/16/2022	Due 3/16/2023	Due 3/16/2024	Due 3/16/2025	Due 3/16/2026
Annual Fees	\$361,821	\$361,821	\$361,821	\$361,821	\$361,821



3. Annual Consulting Days

Customer will be granted the consulting days outlined below per year starting in year one of the Commitment Period. The allotment of person-days for a given contract year is to be used within one (1) year, and will not carry over from year to year. Annual consulting days will be broken out in the following way:

<u>Description</u>	<u>Number of Days</u>
Capital Budgeting & Tracking	2 Days
Equipment Replacement	1 Day
Management Reporting	1 Day
Operating Budgeting	3 Days
Productivity Reporting	1 Day
Cost Accounting (Hospitals)	4 Days
Cost Accounting (Physicians)	4 Days
Contract Analytics (Hospitals)	2 Days
Contract Analytics (Physicians)	2 Days
Continuous Cost Improvement	2 Days

All other terms, conditions and obligations of the Agreement are hereby ratified, reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum. The undersigned each individually represents that he or she is duly authorized to execute this Addendum.

STRATA DECISION TECHNOLOGY, LLC

By:  _____

Authorized Signature

Name: John Martino

Title: COO/CFO

Date: February 4, 2022

CUSTOMER:

KERN COUNTY HOSPITAL AUTHORITY

By: _____

Authorized Signature

Name: Russell Bigler

Title: Chairman, Board of Governors

Date: _____

APPROVED AS TO FORM
Legal Services Department

By:  _____
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Third Amendment to Credit Agreement 011-2019 with PNC Bank, National Association (PNC Bank) for a revolving line of credit for the period March 1, 2019 through February 28, 2022, extending the maturity date of the Line of Credit to a date not later than March 1, 2023, amending the Credit Agreement to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the Credit Agreement, and providing that the maximum available principal amount of credit provided under the Credit Agreement may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the General Security and Pledge Agreement, and delegating authority to certain officers

Recommended Action: Approve; Adopt Resolution; Authorize and direct any two of the following officers (each, an "Authorized Officer") of the Authority, for and in the name of and on behalf of the Authority, to execute the Third Amendment to Credit Agreement, or a new credit agreement if the Authorized Officers determine that a new credit agreement is advisable, and an amendment to the Note, or a new note if the Authorized Officers determine that a new note is advisable, as the Authorized Officers executing the same, together with the Vice President & General Counsel of the Authority, shall approve: Chairman of this Board, Vice-Chairman of this Board, Chief Executive Officer of the Authority or Chief Financial Officer of the Authority

Summary:

Pursuant to the authority granted in Resolution No. 2019-004 adopted by your Board on February 20, 2019, and Resolution No. 2019-040, adopted by the Kern County Board of Supervisors on February 26, 2019, the Authority entered into a Credit Agreement with PNC Bank, effective March 1, 2019, to establish a revolving line of credit for the purpose of obtaining funding from time to time for the Authority's working capital and other financial needs.

The Credit Agreement provided for a maximum available principal amount of credit not in excess of \$50,000,000 for a 120-day period and not in excess of \$20,000,000 at any other time (the "Line of Credit") and executed and delivered to PNC Bank a General Security and Pledge Agreement that provided for all indebtedness under the Credit Agreement to be secured by certain personal property of the Authority.

The Credit Agreement provided that interest on draws under the Line of Credit accrued at interest rates based on LIBOR and further provided that the Line of Credit would initially mature on March 1, 2021.

On January 20, 2021, YOUR Board adopted Resolution No. 2021-003, which, among other things, approved the extension of the maturity date of the Line of Credit to March 1, 2022 and the terms and provisions of the Second Amendment to Credit Agreement.

Owned and Operated by the Kern County Hospital Authority
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

PNC Bank has advised that it is willing to extend the maturity date of the Line of Credit and has advised that it will be necessary to further amend the Credit Agreement and certain related instruments and documents to provide for an alternate interest rate for draws under the Line of Credit because, as of January 1, 2022, the U.K. Financial Conduct Authority, which is the body that regulates and supervises the publication of LIBOR, no longer compels banks to submit rates for the calculation of LIBOR, which effectively renders LIBOR obsolete. PNC Bank has advised that, upon amendment of the Credit Agreement, the interest rate for draws under the Line of Credit will be based on One Month Bloomberg Short-Term Bank Yield Index, which after application of the applicable spread, will result in an interest rate generally equivalent to the LIBOR-based interest rate currently paid under the Line of Credit.

Extending the maturity date of the Line of Credit and further amending the Credit Agreement and certain related instruments and documents to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index is advisable and in the best interests of the Authority. To do so requires that your Board authorize and approve the extension of the maturity date of the Line of Credit to a date not later than March 1, 2023 and the amendment of the Credit Agreement to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the Credit Agreement (as amended prior to the date hereof) and provided further that the maximum available principal amount of credit provided to the Authority thereunder may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the General Security and Pledge Agreement.

Therefore, it is recommended that your Board approve the above-referenced recommended action.

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. 2022-____

**APPROVING THE THIRD AMENDMENT TO THE
CREDIT AGREEMENT, BETWEEN THE
AUTHORITY AND PNC BANK, NATIONAL
ASSOCIATION, AND DELEGATING AUTHORITY
TO CERTAIN OFFICERS**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of February, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) On February 20, 2019, the Board of Governors adopted Resolution No. 2019-004, which, among other things, authorized and approved the Kern County Hospital Authority (the "Authority") to incur debt pursuant to a revolving line of credit to be provided by PNC Bank, National Association ("PNC Bank"), and authorized certain officers of the Authority to execute, acknowledge, deliver, record and file such agreements,

documents, instruments and certificates necessary to effect the purposes of Resolution No. 2019-004; and

(b) On February 26, 2019, the County of Kern, by action of its Board of Supervisors, adopted Resolution No. 2019-040, which approved the Authority's incurrence of debt under a revolving line of credit to be provided by PNC Bank; and

(c) On March 1, 2019, the Authority entered into a Credit Agreement, with PNC Bank, that provided for a maximum available principal amount of credit not in excess of \$50,000,000 for a 120-day period and not in excess of \$20,000,000 at any other time (the "Line of Credit") and executed and delivered to PNC Bank a General Security and Pledge Agreement that provided for all indebtedness under the Credit Agreement to be secured by certain personal property of the Authority; and

(d) The Credit Agreement provided that interest on draws under the Line of Credit accrued at interest rates based on LIBOR and further provided that the Line of Credit would initially mature on March 1, 2021; and

(e) On January 20, 2021, the Board of Governors adopted Resolution No. 2021-003, which, among other things, approved the extension of the maturity date of the Line of Credit to March 1, 2022 and the terms and provisions of the Second Amendment to Credit Agreement; and

(f) PNC Bank has advised that it is willing to extend the maturity date of the Line of Credit and has advised that it will be necessary to further amend the Credit Agreement and certain related instruments and documents to provide for an alternate interest rate for draws under the Line of Credit because, as of January 1, 2022, the U.K. Financial Conduct Authority, which is the body that regulates and supervises the publication of LIBOR, no longer compels banks to submit rates for the calculation of LIBOR, which effectively renders LIBOR obsolete; and

(g) PNC Bank has advised that, upon amendment of the Credit Agreement, the interest rate for draws under the Line of Credit will be based on One Month Bloomberg Short-Term Bank Yield Index, which after application of the applicable spread, will result in an interest rate generally equivalent to the LIBOR-based interest rate currently paid under the Line of Credit; and

(h) Management of the Authority has advised this Board that extending the maturity date of the Line of Credit and further amending the Credit Agreement and certain related instruments and documents to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index is advisable and in the best interests of the Authority.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. This Board hereby authorizes and approves the extension of the maturity date of the Line of Credit to a date not later than March 1, 2023 and the amendment of the Credit Agreement to provide for an interest rate based on One Month Bloomberg Short-Term Bank Yield Index, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the Credit Agreement (as amended prior to the date hereof) and provided further that the maximum available principal amount of credit provided to the Authority thereunder may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the General Security and Pledge Agreement.

3. This Board hereby authorizes and directs any two of the following officers (each, an “Authorized Officer”), for and in the name of and on behalf of the Authority, to execute an amendment to the Credit Agreement, or a new credit agreement if the Authorized Officers determine that a new credit agreement is advisable to effect the purposes of this Resolution, and an amendment to the Note, or a new note if the Authorized Officers determine that a new note is advisable to effect the purposes of this Resolution, as the Authorized Officers executing the same, together with the Vice President & General Counsel of the Authority, shall approve: Chair of this Board, Vice-Chair of this Board, Chief Executive Officer of the Authority, or Chief Financial Officer of the Authority. The execution by any two Authorized Officers shall evidence the approval hereby required.

4. This Board hereby authorizes and directs any two Authorized Officers, for and in the name of and on behalf of the Authority, to execute, acknowledge, deliver, record and file such agreements, documents, instruments and certificates, and revisions and corrections thereof and amendments thereto, in each case in a form approved by the Vice President & General Counsel of the Authority, and to perform such other acts and deeds as may, in any such Authorized Officer’s discretion and with the approval of the Vice President & General Counsel of the Authority, be deemed necessary or otherwise proper, to effect the purposes of this Resolution and the actions herein authorized.

5. All actions heretofore taken by any Authorized Officer, which are in conformity with the purposes and intent of this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved in all respects.

6. The authority conferred upon each Authorized Officer by this Resolution shall remain in full force and effect until written notice of revocation by further resolutions of this Board shall have been delivered to the other parties to such agreements.

7. The provisions of this Resolution are hereby declared to be severable, and, if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

8. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Kern Medical Center
Legal Services Department
PNC Bank, National Association



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed retroactive Amendment No. 2 to Memorandum of Understanding 61320 with Kern Health Systems for Translation Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends that your Board retroactively approve the attached proposed Amendment No. 2 to the Memorandum of Understanding (MOU) with Kern Health Systems (KHS) for translation services for all Kern Medical patients, which includes KHS Members.

On December 11, 2020, Kern Medical and KHS entered into the MOU whereby KHS provided the necessary equipment for use by Kern Medical to access audio and video translation services for the entire Kern Medical patient population for a period not to exceed six months, commencing December 14, 2020. Amendment No. 1, approved by your Board on August 18, 2021, extended the term of the MOU from June 14, 2021 through December 13, 2021, and provided for a maximum payable of \$425,000 over the term. Kern Medical has continued to pay KHS an amount not to exceed 70% of monthly utilization of the KHS Language Line Translation Services as originally agreed upon in the MOU.

The proposed Amendment extends the term of the MOU from December 14, 2021 through December 31, 2022, and increases the maximum payable by \$600,000, from \$425,000 to \$1,025,000, to cover the extended term. The new maximum payable was calculated based on the average monthly usage of approximately \$40,000 per month, and provides additional dollars in the event there is a spike in usage.

Therefore, it is recommended that your Board retroactively approve Amendment No. 2 to the MOU with Kern Health Systems for the continued provision of translation services, extending the term from December 14, 2021 through December 31, 2022, in an amount not to exceed \$1,025,000 over cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
MEMORANDUM OF UNDERSTANDING
(Kern County Hospital Authority – Kern Health Systems)**

This Amendment No. 2 to the Memorandum of Understanding is made and entered into this _____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Kern Health Systems, a county health authority (“KHS”).

RECITALS

(a) Authority and KHS have heretofore entered into a Memorandum of Understanding (Agt. #61320, dated December 11, 2020) and Amendment No. 1 (Agt. #043-2021, dated August 18, 2021) (“MOU”), whereby KHS provides Translation Services KHS Members and patients of KMC, as such services are unavailable from Authority resources; and

(b) The parties agree to amend certain terms and conditions of the MOU as hereinafter set forth; and

(c) The Agreement is amended effective December 14, 2021;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follows:

1. Section 1, Responsibilities of KHS, paragraph A, shall be deleted in its entirety and replaced with the following:

“A. KHS will maintain Translation Services for KHS Members and will make such services available to KMC for the entire KMC patient population for the period commencing December 14, 2020, and continuing through December 31, 2022 (the “Term”).”

2. Section 3, Payment for Services, paragraph B, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“B. Maximum Payable. The maximum payable under this MOU shall not exceed \$1,025,000 over the Term of this MOU.”

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the MOU.

4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

6. Except as provided herein, all other terms, conditions, and covenants of the MOU and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 2 as of the day and year first written above.

KERN HEALTH SYSTEMS

By: _____
Douglas A. Hayward
Chief Executive Officer

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By: _____
Scott Thygerson
Chief Executive Officer
Kern County Hospital Authority

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
Karen S. Barnes,
Vice President & General Counsel
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Service Agreement with International Business Machine Corporation

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Service Agreement with International Business Machine Corporation (IBM) for the electronic resources, Micromedex and NeoFax. These resources provide access to full-text tertiary literature and evidence-based drug information which improves medication safety and efficacy of patient care. These resources have been used at Kern Medical for several years and is the preferred database for healthcare personnel.

The term of the Service Agreement is three years, effective February 16, 2022, with a total maximum payable not to exceed \$80,212.

The Service Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the inability to terminate the Service Agreement without cause. Kern Medical receives a discounted rate for committing to a three-year term without the ability to terminate. This database provides a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Service Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Service Agreement with International Business Machine Corporation, effective February 16, 2022, with a maximum payable not to exceed \$80,212 for the three-year term, and authorize the Chairman to sign.



Firm Order Letter

To: Order Management

I have full authority to commit funding of 80,211.64 USD for payment under Quote Number 19194103, dated 26-Jan-2022 plus any additional on-demand, overage, and partial month charges associated with contracted Software as a Service on this quote on behalf of KERN COUNTY HOSPITAL AUTHORITY. All approvals required to issue payment have been obtained. Notwithstanding the terms of the Contract or our prior practice, payment is not contingent upon issuance of a Purchase Order. This order is firm, irrevocable, and payment is due as specified in the IBM invoice.

Bill to:

KERN COUNTY HOSPITAL AUTHORITY
1700 MT. VERNON AVE.
BAKERSFIELD CA 93306-4018
UNITED STATES

Ship to:

KERN COUNTY HOSPITAL AUTHORITY
CENTER 1700 MT. VERNON AVE.
BAKERSFIELD CA 93306-4018
UNITED STATES

Contact Name: Anne Frostad
Contact Email: frostada@kernmedctr.com
Contact Phone: 661/326-2431

Contact Name: Anne Frostad
Contact Email: frostada@kernmedctr.com
Contact Phone: 661/326-2431

Quote Contact:

Contact Name: Beth Anne Garcia
Contact Email: bethann.garcia@kernmedical.com
Contact Phone: (661) 326-2688

Authorized Signature: _____
Name(type or print): _____
Title: _____
Date: _____

IBM Sales Rep: GORDON K MCKENNON
E-mail Address: Gordon.McKennon@ibm.com

REVIEWED ONLY
NOT APPROVED AS TO FORM

By  _____
Legal Services Department

Cloud Services Order Document



By signing below, Client is ordering the Cloud Services identified in this Order Document. This Order Document and applicable Transaction Documents and the Base Agreement identified in the "Signature Acceptance" section govern Client's use of the Cloud Services.

1. Cloud Services

1.1 Ordered Cloud Services

The Cloud Services ordered and the charges and other terms are specified in the Quotation attached as Exhibit A.

2. Service Descriptions

The Service Descriptions for the ordered Cloud Services are referenced in the table below.

Cloud Service	Service Description
IBM Micromedex Cloud Services	https://www.ibm.com/support/customer/csol/terms/?id=i126-8112

3. Overriding Terms

This Order Document modifies the Base Agreement as follows:

3.1 Base Agreement

These modifications override the terms of the Base Agreement:

- a. Section 8 (Governing Laws and Geographic Scope), subsection b. (Applicable Laws), bullet 1:

"Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles."

Is hereby deleted and replaced with:

"Both parties agree to the application of the laws of the State of California, United States, without regard to conflict of law principles."

4. General

4.1 Firm Order

Notwithstanding the terms of this Agreement or our prior practice, payment is not contingent upon issuance of a Purchase Order. All approvals required to issue payment have been obtained.

Payment in full is due upon receipt of invoice. The bill to, ship to addresses along with specific ordering information and amounts due under this Agreement are included herein or in other documents related hereto. This order is firm and irrevocable.

4.2 Confidentiality

This terms of this Order Document are confidential. Each party agrees not to disclose these terms to any third party without the other party's prior written consent, except as required by law.

4.3 Signature Acceptance

This Order Document, applicable Transaction Documents, and the Base Agreement identified below are the complete agreement regarding the Cloud Services, and supersede any course of dealing, discussions, or representations between Client and IBM.

Each Party accepts the terms of this Order Document by signing below by hand or, where recognized by law, electronically. Any reproduction of this Order Document made by reliable means is considered an original.

IBM agrees to provide the Cloud Services provided Client accepts this Order Document, without modification, by signing in the space provided below on or before **March 25, 2022**.

Agreed to:
Kern County Hospital Authority

Agreed to:
International Business Machines Corporation

By _____
Authorized signature

E-SIGNED by Gordon Mckennon
on 2022-02-07 23:48:09 GMT
By _____
Authorized signature

Name (type or print):

Name (type or print): **Gordon Mckennon**

Title:

Title: *Strategic Account Executive*

Date:

Date: **2022-02-07**

Client number: 5726264

Base Agreement Name: Cloud Services Agreement
("CSA") available at <https://ibm.com/terms/csa>

Client address:

Quotation Number: 19194103

1700 Mt. Vernon Ave.

IBM address:

Bakersfield, CA. 93306-4018

590 Madison Avenue

New York, NY 10022

Please sign and return to IBM to place your order for Cloud Services. IBM accepts your order upon enablement of your Cloud Services or if requested by you or as required by law by signing above.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department

Exhibit A Quotation

[see attached]

International Business Machines Corporation
International Business Machines Corporation, 1 North Castle Drive, Armonk, NY
10504



IBM Quotation

Attn: Beth Anne Garcia
KERN COUNTY HOSPITAL AUTHORITY
1700 MT. VERNON AVE. BAKERSFIELD
CA 93306-4018 UNITED STATES

IBM Site Number: 4011978 IBM Customer
Number: 5726264

Dear Beth Anne Garcia

Thank you for being an IBM Client. We are delighted to provide this quote for IBM offerings.

Worldwide, companies like yours are increasingly demanding more from their information technology infrastructure, increased flexibility, scalability and agility to meet changing business needs. At the same time, they want reduced cost, rapid deployment and investment recovery.

Over the years, our products, services and solutions capabilities have given our Clients the reliability, availability, security, and manageability to improve operations and achieve efficiency while accommodating growth at reduced cost. These characteristics have been and will remain fundamental to the IBM portfolio.

This quotation is valid from 26-Jan-2022 and will expire on 25-Mar-2022.
We look forward to your order.

If you need assistance with placing your order or wish to discuss your quotation, please contact the IBM Representative noted below.

Yours sincerely,

GORDON K MCKENNON
Phone Number:
Fax Number:
E-mail Address: Gordon.McKennon@ibm.com



IBM Quotation

Quotation Information

Number: 19194103
Effective Date: 26-Jan-2022
Expiration Date: 25-Mar-2022

Customer Information

Attn: **Beth Anne Garcia**
KERN COUNTY HOSPITAL AUTHORITY
1700 MT. VERNON AVE. BAKERSFIELD
CA 93306-4018 UNITED STATES

Sales Representative

IBM Contact: **GORDON K MCKENNON**
E-mail Address: Gordon.McKennon@ibm.com

IBM Site Number: 4011978
IBM Customer Number: 5726264

Summary

Software, Appliance, and Subscription and Support Total	0.00
Software as a Service Total	80,211.64
Total	80,211.64 USD

Software as a Service

Subscription Entitlements

IBM Micromedex Clinical Evidence Premium Package for Hospitals Staffed Bed per Month

Subscription Part#: **D1XQKLL**
Billing: **Annual**

Committed Term: **36 Months**
Committed Term Price Change: **Increase 3.000 % every 12 Months**
Renewal Type: **Terminate at end of current term**

Item	Quantity	Month	Subscription Rate	Item Price
1	222	1-12		
2	222	13-24		
3	222	25-36		

Subscriptions Sub-Total 80,211.64 USD

Applicable tax will be recalculated at the time of order processing.

IBM acceptance of the order is subject to credit approval.
Upon placing your order, please supply a Purchase Order or, if not PO driven, a signed Firm Order Letter. The Purchase Order value must cover the applicable charges for a minimum of one year. If the Total Term is less than one year, the Purchase Order value must cover the Total Commit Value.



Potential Price Adjustment for Other Billing Frequency Options*

This quotation is currently based on Annual billing frequency for the Subscription Entitlements. The following table shows the potential price adjustment of placing the order under alternative billing options:

Billing Options	Subscription Price	Potential Price Adjustment
Monthly in Advance/Quarterly	84,222.22 USD	Increase by 4,010.58 USD
Upfront	76,201.05 USD	Decrease by 4,010.59 USD
Annual	80,211.64 USD	Not applicable

If you would like to place your order using a different billing frequency than Annual, please notify the IBM contact for this quotation so they can provide you with an updated quotation that reflects your desired billing frequency.

***Billing frequency price adjustments are applicable when term criteria are met (minimum 9 months for annual billing and minimum 24 months for upfront billing).**



PAYMENT SCHEDULE PAGE

This is an estimate of payments, final determination of billing dependent on order date.

Month	Setup Products and Services	Subscription	Total
1	0.00	25,950.90	25,950.90
13	0.00	26,729.43	26,729.43
25	0.00	27,531.31	27,531.31
Total in USD	0.00	80,211.64	80,211.64

International Business Machines Corporation

International Business Machines Corporation, 1 North Castle Drive, Armonk, NY 10504



IBM Terms for IBM Cloud Offering Transactions

The referenced Cloud Services are governed by the terms of your Cloud Service Agreement <https://ibm.com/terms/csa>, its associated attachment(s), and the referenced Transaction Documents. Your order and use of the Cloud Services are your acceptance of the prices and terms referenced in this document, except to the extent superseded by a written amendment or agreement signed by both of us.

Final coverage dates for offerings listed are provided in your Proof of Entitlement.

Transaction Documents

Service Description(s) for ordered Cloud Services:

IBM MICROMEDEX CLOUD SERVICES

<https://www.ibm.com/support/customer/csol/terms/?id=i126-8112>

Please read all terms for each of the above referenced Transaction Document(s) to ensure you are agreeing to the most recent version of the document. If you have any trouble with the link provided, please copy and paste the appropriate URL in your browser's navigation bar.

Billing and Provisioning

At time of acceptance of this quote either by Purchase Order or Firm Order Letter, IBM will begin billing for the SaaS Subscription(s) as indicated above. When IBM is ready to provision the SaaS Subscription(s) in the quote IBM will use information provided by the Client, as well as default technical data to configure the clients SaaS Subscription for access. IBM will notify the Client with details on the provisioning on the date in which the Client can access the SaaS and the term for the SaaS will begin on the date indicated. If provisioning information needs to be updated please refer to the IBM Software as a Service (SaaS) Support Handbook.

Please work with your IBM Sales Representative or your IBM Business Partner to complete the provisioning data at or prior to time of order.

Complete Agreement: This Cloud Services Agreement (CSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CSA (together, the Agreement) under which Client may order Cloud Services.

Transaction Documents: Transaction Documents (TDs) detail the specifics of transactions, such as charges and a description of and information about the Cloud Services. Examples of TDs include statements of work, service descriptions, ordering documents and invoices. There may be more than one TD applicable to a transaction.

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

Any conflicting terms in an Attachment or TD that override terms of this CSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

-
- a. IBM Cloud Services**
- IBM Cloud Services are "as a service" IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, or infrastructure as a service.
 - Each IBM Cloud Service is described in a TD.
 - IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.
 - Technical support and service level commitments, if any, are specified in an Attachment or TD.
-
- b. Non-IBM Services**
- IBM may offer third party Cloud Services, or IBM Cloud Services may enable access to third party Cloud Services (Non-IBM Services).
 - A TD will identify any applicable third party terms that govern Client's use of Non-IBM Services. Use of Non-IBM Services constitutes Client's agreement with the third party terms.
 - IBM is not a party to any third party terms and is not responsible for Non-IBM Services.
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- c. Order Acceptance**
- Client accepts the applicable Attachment or TD for Cloud Services by ordering, enrolling, using, or making a payment.
 - IBM accepts Client's order by confirming the order or enabling access.
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- d. What IBM Provides**
- IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services.
 - IBM provides generally available user guides and documentation to support Client's use of IBM Cloud Services.
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- e. Enabling Software**
- Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD.
 - Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD.
 - The licensing terms will specify applicable warranties, if any. **Otherwise, Enabling Software is provided as is, without warranties of any kind.**
-
- f. What Client Provides**
- Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
-
- g. Right to Use and Client Responsibilities**
- Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires.
 - Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
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- h. Acceptable Use Terms**
- Cloud Services may not be used for unlawful, harmful, obscene, offensive, or fraudulent Content or activity. Examples of prohibited activities are advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, introducing viruses or harmful code, or violating third party rights.
 - Client may not use Cloud Services if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage.
 - Client may not:
 - (1) reverse engineer any portion of a Cloud Service;
 - (2) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or
 - (3) combine a Cloud Service with Client's value add to create a Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
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- i. Preview Cloud Services**
- Cloud Services or features of Cloud Services are considered "preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview-designated Cloud Services.
 - Any preview Cloud Service is excluded from available service level agreements and may not be supported.
 - IBM may change or discontinue a preview Cloud Service at any time and without notice.
 - IBM is not obligated to release preview Cloud Services or make an equivalent service generally available.
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2. Content and Data Protection

- a. Content Client Provides**
- Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services.
 - Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services.
 - Use of the IBM Cloud Services will not affect Client's ownership or license rights in Content.
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- b. Use of Content**
- IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service.
 - IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services.
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- c. Client Responsibilities**
- Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services.
 - Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services.
 - If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures.
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- d. Data Protection**
- IBM Data Security and Privacy Principles (DSP), at <http://www.ibm.com/cloud/data-security>, apply for standard IBM Cloud Services that are generally available.
 - Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD.
 - Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services.
-

- Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use. Client acknowledges that the Cloud Services used meet Client's requirements and processing instructions required to comply with applicable laws.

e. IBM's Data Processing Addendum

- IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>.
- Each IBM Cloud Service has a DPA Exhibit that specifies how IBM will process Client's data.
- The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply.
- Upon request by either party, IBM, Client or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

f. Removal of Content

- For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services, or earlier upon Client's request.
- IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format).
- IBM does not archive Content; however, some Content may remain in the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.

3. Changes and Withdrawal of Cloud Services

a. IBM Right to Change Cloud Services

- At any time and at IBM's discretion, IBM may change:
 - (1) the IBM Cloud Services, including the corresponding published descriptions; and
 - (2) the DSP and other published data security and privacy documentation for the IBM Cloud Services.
- The intent of any change to the above will be to:
 - (1) make available additional features and functionality;
 - (2) improve and clarify existing commitments; or
 - (3) maintain alignment to current adopted operational and security standards or applicable laws.
- The intent is not to degrade the security or data protection features or functionality of the IBM Cloud Services.
- Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date.
- Any changes that do not meet conditions specified above will only take effect, and Client accepts, upon:
 - (1) a new order;
 - (2) the term renewal date for the Cloud Services that automatically renew; or
 - (3) notification from IBM of the change effective date for ongoing services that do not have a specified term.

b. Withdrawal of a Cloud Service

- IBM may withdraw an IBM Cloud Services on 12 months' notice.
- IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering.
- Non-IBM Services may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.

4. Warranties

a. IBM Warrants

- IBM warrants that it provides IBM Cloud Services or other IBM services using commercially reasonable care and skill and as described in the applicable TD.

- These warranties end when the IBM Cloud Services or other IBM services end.
 - These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.
-

b. Warranty Limitations

- IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services.
 - IBM does not warrant it will correct all defects.
 - While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access.
 - IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM.
 - IBM makes preview Cloud Services or Non-IBM Services under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.
-

5. Charges, Taxes, and Payment

a. Charges

- Client agrees to pay all applicable charges specified in a TD and charges for use in excess of authorizations.
 - Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges.
 - Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply.
 - Prepaid services must be used within the applicable period.
 - IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid, except as provided in the Agreement.
 - If IBM commits to pricing as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing on thirty days' notice.
-

b. Withholding Taxes

- Client agrees to:
 - (1) pay withholding tax directly to the appropriate government entity where required by law;
 - (2) furnish a tax certificate evidencing such payment to IBM;
 - (3) pay IBM only the net proceeds after tax; and
 - (4) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
 - Where taxes are based upon the location(s) receiving the benefit of the Cloud Services, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.
-

c. Invoicing

- IBM will invoice:
 - (1) recurring charges at the beginning of the selected billing frequency term;
 - (2) overage and usage charges in arrears; and
 - (3) one-time charges upon IBM's acceptance of an order.
-

6. Liability and Indemnity

a. Liability for Damages

- IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim.
-

- IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.
- These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.

b. What Damages are Not Limited

- The following amounts are not subject to the above cap:
 - (1) third party payments referred to in the Infringement Claims subsection below; and
 - (2) damages that cannot be limited under applicable law.

c. Infringement Claims

- If a third party asserts a claim against Client that the IBM Cloud Service infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM.
- To obtain IBM's defense against and payment of infringement claims, Client must promptly:
 - (1) notify IBM in writing of the claim;
 - (2) supply information requested by IBM; and
 - (3) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts.
- IBM's defense and payment obligations for infringement claims extend to claims based on Open Source Code that IBM selects and embeds in the IBM Cloud Services. Open Source Code is software code licensed from a third party meeting the Open Source Definition defined at <https://opensource.org/osd>.

d. Claims Not Covered

- IBM has no responsibility for claims based on:
 - (1) non-IBM products and services, including Non-IBM Services;
 - (2) items not provided by IBM; or
 - (3) any violation of law or third party rights caused by Content, materials, designs, or specifications.

7. Term and Termination

a. Term of a Cloud Service

- The term begins on the date IBM notifies Client that Client can access the Cloud Services.
- The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term.
- For automatic renewal, unless Client provides written notice of non-renewal to IBM or the IBM Business Partner involved in the Cloud Services at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term.
- For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after the 30-day period.

b. Suspension of an IBM Cloud Service

- IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a:
 - (1) material breach of Client's obligations;
 - (2) security breach;
 - (3) violation of law; or
 - (4) breach of the Acceptable Use Terms.
- IBM will provide notice prior to a suspension as commercially reasonable.
- If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the IBM Cloud Services.

c. Termination of Cloud Services

- Client may terminate the IBM Cloud Services on 30 days' notice:

- (1) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services;
 - (2) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; or
 - (3) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect.
- In the event of any such Client termination above or a similar termination of a Non-IBM Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination.
 - Client may terminate the IBM Cloud Services for material breach of IBM's obligations by giving notice and reasonable time to comply.
 - If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Agreement.
 - Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
-

- d. Termination of this CSA**
- Either party may terminate this CSA:
 - (1) without cause on at least 30 days' notice to the other after expiration or termination of its obligations under the Agreement; or
 - (2) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply.
 - Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
 - Termination of this CSA does not terminate TDs, and provisions of this CSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.
 - Failure to pay is a material breach.
-

8. Governing Laws and Geographic Scope

- a. Compliance with Laws**
- Each party is responsible for complying with:
 - (1) laws and regulations applicable to its business and Content; and
 - (2) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
-
- b. Applicable Laws**
- Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles.
 - The rights and obligations of each party are valid only in the country of Client's business address.
 - If Client or any user exports or imports Content or uses any portion of the Cloud Services outside the country of Client's business address, IBM will not serve as the exporter or importer, except as required by data protection laws.
 - If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect.
 - Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract.
 - The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.
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9. General

- a. IBM's Role**
- IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary.
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- IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of Cloud Services.
- IBM is acting as an information technology provider only.
- IBM's direction, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice.
- Each party is responsible for determining the assignment of its and its affiliates personnel, and their respective contractors, and for their direction, control, and compensation.

b. CSA Changes

- IBM may change this CSA by providing Client at least three months' notice.
- CSA changes are not retroactive. They will only apply as of the effective date to:
 - (1) new orders;
 - (2) continuous Cloud Services that do not expire; and
 - (3) renewals.
- For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period.
- Client accepts changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice.
- Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.

c. Business Conduct

- IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud.
- IBM and its personnel comply with such policies and require contractors to have similar policies.

d. Business Contact and Account Usage Information

- IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content.
- Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, and user ID.
- Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services.
- The IBM Privacy Statement at <https://www.ibm.com/privacy/> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information.
- When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.

e. IBM Business Partners

- IBM Business Partners who use or make available Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
- If IBM notifies Client their current IBM Business Partner will no longer resell Cloud Services, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.

f. Assignment

- Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other.
 - IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations.
 - Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes the Cloud Services is not restricted.
 - IBM may share this Agreement and related documents in conjunction with any assignment.
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- g. Enterprise Companies**
- This CSA applies to IBM and Client (accepting this CSA) and their respective Enterprise companies that provide or acquire Cloud Services under this CSA.
 - The parties shall coordinate the activities of their own Enterprise companies under the CSA.
 - Enterprise companies include:
 - (1) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and
 - (2) any other entity that controls, is controlled by, or is under common control with Client or IBM and has signed a participation agreement.
-

- h. Notices and Administration**
- All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address.
 - The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing.
 - Any reproduction of the Agreement made by reliable means is considered an original.
 - The Agreement supersedes any course of dealing, discussions, or representations between the parties.
 - Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
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- i. Cause of Action**
- No right or cause of action for any third party is created by the Agreement or any transaction under it.
 - Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose.
 - Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
 - Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.
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- j. Global Resources**
- IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Cloud Services.
 - Client's use of the Cloud Services may result in the transfer of Content, including personal data, across country borders.
 - A list of countries where Content may be transferred and processed for an IBM Cloud Service is included in the applicable TD.
 - IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations for the IBM Cloud Services.
-

- k. Other Services**
- IBM may offer additional customization, configuration, or other services to support Cloud Services, as detailed in a TD.



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Retroactive Amendment No. 1 to the Agreement 039-2021 with Healthcare Performance Group, Inc. for Professional Consulting Services

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests that your Board retroactively approve the proposed Amendment No. 1 to the Agreement for Professional Consulting Services with Healthcare Performance Group, Inc. (HPG), in the amount of \$198,720 for consulting services support to assist with current staffing shortages.

HPG will provide application support, consulting and other application related services for Cerner Millennium applications. The scope of work includes Cerner Millennium, mPages, CommonWell, SurgiNet, and Ambulatory Organizer. There is a critical need to use HPG as temporary backfill in the very specialized Cerner application analyst role in order to keep up with daily ticket volume and current project needs. Kern Medical believes the consulting expense is an offset of the labor expense and will not negatively impact the overall operations budget.

Therefore, it is recommended that your Board retroactively approve the proposed Amendment No. 1 to Agreement 039-2021 for Professional Consulting Services with Healthcare Performance Group, Inc. for consulting services to assist with Cerner application support for the period June 11, 2021 through June 10, 2022, increasing the maximum payable by \$198,720, from \$200,000 to \$398,720, to cover the term, and authorize the Chief Executive Officer to sign.

Amendment No. 1 To
Agreement for Professional Consulting Services
(Healthcare Performance Group, Inc. - Kern County Hospital Authority)

This Amendment No. 1 to the Agreement for Professional Consulting Services is entered into this 8th day of February 2022, by and between Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (CUSTOMER) and Healthcare Performance Group, (HPG).

RECITALS

- A. Customer and HPG have heretofore entered into an Agreement for Professional Consulting Services (Customer Agt.#039-2021, dated July 14, 2021) for the period of June 11, 2021 through June 10, 2022, to provide professional consulting services; and
- B. Customer requires additional services of HPG and HPG has agreed to provide these services; and
- C. The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth; and
- D. The Agreement is amended effective February 8, 2022.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follow:

1. Schedule A-2

Schedule A-2, to Amendment No. 1 is added to the Agreement and incorporated herein by this reference.

2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 1 have the meaning set forth in the Agreement.

3. This Amendment No. 1 shall be governed by and construed in accordance with the laws of the state of California.

4. This Amendment No. 1 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 1 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

HEALTHCARE PERFORMANCE GROUP, INC.

By _____
Scott Thygerson
Chief Executive Officer

DocuSigned by:
By Matthew Terstriep
Printed Name: Matthew Terstriep
Title/Position: Co-CEO and Board Chairman

APPROVED AS TO CONTENT:
Kern Medical Center

By _____
Reynaldo Lopez
Chief Information Officer

APPROVED AS TO FORM:
Legal Services Department

By [Signature]
Hospital Counsel
Kern County Hospital Authority

Schedule “A-2”

Project Background

CUSTOMER has licensed the Millennium clinical applications from Cerner Corporation and is in the process of implementing and supporting these applications. CUSTOMER requires additional support in the capacity of HPG’s Support Center Services. Key responsibilities of this project engagement are as follows:

- Provide implementation support in all areas of CUSTOMER’s licensed Cerner Millennium applications within HPG’s expertise and skillset
- Provide testing, validation and troubleshooting support for applications
- Ensure best practice design, build and workflows are provided to the CUSTOMER
- Provide application knowledge transfer to CUSTOMER team
- Provide weekly status reports to designated CUSTOMER contact
- Additional services as mutually agreed upon by HPG and CUSTOMER

Engagement Scope and Approach

HPG will provide the services of HPG’s Support Center Team and will designate a Support Center Manager as the CUSTOMER’S main point of contact. The Support Center Team will assist the CUSTOMER in the project as described above and will report to the appropriate resources as defined by CUSTOMER. The HPG Support Center Team will begin this engagement on or about February 8, 2022, and expire 3 months from execution. Should the CUSTOMER wish to extend these services, written notification is required by the CUSTOMER. The CUSTOMER commits to a minimum of 15 hours per week, with a maximum of 120 hours per week.

HPG Associates are required to submit a weekly status report to a designated contact for timely signatory approval of services performed. Customer agrees to review and approve all status reports within four (4) days of receipt, or the status report will be considered approved. CUSTOMER is responsible for full payment of any undisputed timely submitted status reports.

Fees, Timing & Payment

The professional service fee for these services is \$138 per hour. The not-to-exceed for this total engagement is \$198,720. Professional services fees and reasonable travel and out-of-pocket expenses in accordance with Schedule I, will be invoiced biweekly. Should this engagement extend beyond 12 consecutive months, HPG may adjust the rate based upon agreement by both parties, but no more than 5%. The Invoice will be sent to the attention of Rey Lopez at Rey.Lopez@Kernmedical.com.

CUSTOMER agrees to provide HPG with a thirty (30) day notice for termination of services. Should CUSTOMER wish to add additional hours to this project, both parties will complete a project addendum or new Schedule.

Payment is expected by either () electronic payment* or by () check and is due within 30 days of the Invoice Date. HPG does not accept credit card payments.

Non-Solicit Agreement:

Each party agrees not to knowingly solicit the other's employees or subcontractors during this Agreement and for a period of one (1) year after the termination of this Agreement. If either becomes aware of an agreement outside of the terms set herein, such party will be entitled to fees equal to Twenty-Five Percent (25%) of the fees/salary for one year of the other part's subcontractor/employee relationship.

All other terms and conditions of the original Agreement remain unchanged.

ACCEPTED by:

CUSTOMER:

SIGNATURE: _____ DATE: _____

HPG:

SIGNATURE  DATE: 2/9/2022 | 5:00 PM CST

***ABA routing number: 101100045; *Account number: 005048626030; Address: Healthcare Performance Group, Inc., P.O. Box 588, Spring Hill, KS 66083**



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

SUBJECT: Proposed Retroactive Amendment No. 2 to Agreement 006-2020 with Neurodiagnostic Workforce LLC

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed retroactive Amendment No. 2 to Agreement 006-2020 with Neurodiagnostic Workforce LLC, an independent contractor, for neurodiagnostic monitoring services.

Kern Medical has contracted with Neurodiagnostic Workforce since February 12, 2020. Neurodiagnostic Workforce currently provides the support of three full-time EEG technicians and a part-time Chief Technician who perform inpatient and outpatient monitoring services, including routine EEG monitoring services, for continuous monitoring of patients in the ICU, ambulatory and outpatient clinic setting, and epilepsy monitoring unit on an 24/7 on-call basis. These services are vital to the success of our neurosurgery and neurology programs and a critical component of the Epilepsy Monitoring Unit.

The proposed Amendment extends the term of the Agreement for two years from February 12, 2022 through February 11, 2024, increases the number of EEG technicians from three to four, provides for 24/7 in-house coverage Monday through Friday, excluding holidays, and 24/7 on-call coverage on weekends and holidays, and increases and annual compensation by \$74,000 from \$376,000 to \$450,000 per year.

Therefore, it is recommended that your Board retroactively approve Amendment No. 2 to Agreement 006-2020 with Neurodiagnostic Workforce LLC, for neurodiagnostic monitoring services for the period February 12, 2020 through February 11, 2022, extending the term for two years from February 12, 2022 through February 11, 2024, and increasing the maximum payable by \$900,000, from \$752,000 to \$1,652,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Neurodiagnostic Workforce LLC)**

This Amendment No. 2 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Neurodiagnostic Workforce LLC, a California limited liability company (“Contractor”), with its principal place of business located at 11604 Crabbet Park Drive, Bakersfield, California 93311.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #006-2020, dated April 3, 2020) and Amendment No. 1 (Agt. #008-2021, dated February 17, 2021) (“Agreement”), for the period February 12, 2020 through February 11, 2022, for neurophysiological monitoring and EEG technician support at KMC; and

(b) The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth; and

(c) The Agreement is amended effective February 12, 2022;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follows:

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** This Agreement shall be effective and the term shall commence as of February 12, 2020 (the “Effective Date”), and shall end February 11, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 2, Obligations of Contractor, paragraph 2.1, Specified Services, subparagraph 2.1.1, Neurophysiological Monitoring, shall be deleted in its entirety and replaced with the following:

“2.1.1 **Neurophysiological Monitoring.** Contractor shall: (i) support KMC in its efforts to establish and maintain a program for seizures in the intensive care unit and the epilepsy monitoring unit, and a neurological surgery epilepsy service with the goal to maintain Level 3 Epilepsy Center accreditation by the National Association of Epilepsy Centers; (ii) furnish the necessary competent non-physician professional personnel, including patient care and EEG Technicians, to perform inpatient and outpatient monitoring services, including routine EEG monitoring services, for continuous monitoring of patients in the ICU, ambulatory and outpatient clinic setting, and epilepsy

monitoring unit; (iii) provide services 24/7 in-house Monday through Friday, excluding holidays; (iv) provide services 24/7 on an “on-call” basis on weekends and holidays; (v) provide education, as appropriate, to KMC personnel; (vi) communicate with KMC staff at time of arrival and departure from location where monitoring services are being performed; (vii) complete any and all documentation and reports required in accordance with KMC policy and the KMC medical staff bylaws, rules, regulations, and policies; and (viii) support all quality improvement and research efforts for the program.”

3. Section 2, Obligations of Contractor, paragraph 2.1, Specified Services, subparagraph 2.1.2, EEG Technician Support, shall be deleted in its entirety and replaced with the following:

“2.1.2 EEG Technician Support. Contractor shall provide EEG Technician support as follows: (i) four (4) full-time equivalent (FTE) EEG Technicians (one “FTE” equates to 2080 hours per year); and (ii) one (1) part-time “Chief” Technician who provides a minimum of 1200 hours per year.”

4. Section 4, Payment for Services, paragraph 4.1, Compensation, paragraph 4.1.1, Coverage, shall be deleted in its entirety and replaced with the following:

“4.1.1 Coverage. Authority shall pay Contractor a fixed fee in the amount of \$450,000 per year at the rate of \$37,500 per month for coverage provided by EEG Technicians in the outpatient clinic, ICU, and inpatient epilepsy monitoring unit.”

5. Section 4, Payment for Services, paragraph 4.2, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$1,652,000 over the four-year term of this Agreement.”

6. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.

7. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

8. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

9. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 2 as of the day and year first written above.

NEURODIAGNOSTIC WORKFORCE LLC

By 
Adora Calistro
Its Managing Member

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend2.Neurodiagnostic Workforce.020822



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Amendment No. 1 to Agreement 03219 with Rehana Rafiq, M.D., a contract employee, for professional medical services in the Department of Family Medicine, Division of Pediatrics

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 1 to Agreement 03219 with Rehana Rafiq, M.D., for professional medical services in the Department of Family Medicine, Division of Pediatrics. Dr. Rafiq has been employed by Kern Medical since February 16, 2019. She intends to retire within the next few months.

The proposed amendment extends her employment with Kern Medical through June 30, 2022. Her current salary and benefits will remain in effect.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 03219 with Rehana Rafiq, M.D., for professional medical services in the Department of Family Medicine, Division of Pediatrics, extending the term from February 16, 2022 through June 30, 2022, increasing the maximum payable by \$60,000, from \$350,000 to \$410,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Rehana Rafiq, M.D.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Rehana Rafiq, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #03219, dated January 30, 2019) (the “Agreement”), for the period February 16, 2019 through February 15, 2022, whereby Physician provides professional medical services in the Department of Family Medicine at KMC; and

(b) The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth; and

(c) The Agreement is amended effective February 16, 2022;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follows:

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The term of this Agreement shall commence as of February 16, 2019 (the “Commencement Date”), and shall end June 30, 2022 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.”

2. Section 5, Compensation Package, paragraph 5.4, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.4 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$410,000 over the Term of this Agreement.”

3. Section 6, Benefits Package, paragraph 6.3, Holidays, shall be deleted in its entirety and replaced with the following:

“6.3 Holidays. Physician shall be entitled to paid holidays subject to Authority policy, as amended from time to time. Physician will not be paid for banked holidays upon termination of employment.”

4. Section 6, Benefits Package, paragraph 6.4, Vacation, shall be deleted in its entirety and replaced with the following:

“6.4 Vacation. Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician’s current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.”

5. Section 6, Benefits Package, paragraph 6.5, Sick Leave, shall be deleted in its entirety and replaced with the following:

“6.5 Sick Leave. Physician shall be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.”

6. Section 6, Benefits Package, paragraph 6.8, Kern\$Flex, shall be deleted in its entirety and replaced with the following:

“6.8 Flexible Spending Plan. Physician shall be eligible to participate in flexible spending plans to pay for dependent care, non-reimbursed medical expenses, and certain insurance premiums on a pre-tax basis through payroll deduction. This is a voluntary benefit that is paid by Physician if she elects to participate in the plan.”

7. Section 28, Termination, paragraph 28.1, Termination without Cause, shall be deleted in its entirety and replaced with the following:

“28.1 Termination without Cause. Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than 10 days’ prior written notice to the other party.”

8. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.

9. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

10. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.

11. Except as provided herein, all other terms, conditions and covenants of the Agreement shall remain in full force and effect.

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 1 as of the day and year first written above.

PHYSICIAN

By Rehana Rafiq
Rehana Rafiq, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend1.Rafiq.020122



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Retroactive Agreement with Patrick G. Pieper, M.D., a contract employee, for professional medical services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary: Kern Medical requests your Board retroactively approve an agreement with Patrick G. Pieper, M.D., for professional medical services in the Department of Surgery. Dr. Pieper serves as a full-time otolaryngologist, head and neck surgeon in the Department as well as Medical Director of the Laser and Aesthetics Center. Dr. Pieper has been employed by Kern Medical since February 1, 2019.

The proposed Agreement is for a term of three-years from February 1, 2022 through January 31, 2025. Dr. Pieper will continue to be compensated as follows:

Annual Salary	\$540,000 base salary for teaching and administrative duties and payment for care of Kern Medical patients
Excess Call Coverage	\$1,200 per 24-hour day for weekend call coverage that exceeds one (1) weekend per month and \$500 per day for weekday call coverage that exceeds one in four (1:4)
Medical Director Stipend	\$1,153.84 biweekly not to exceed \$30,000 annually for services as Medical Director of the Laser and Aesthetics Center
Benefits	Dr. Pieper will receive the standard complement of physician benefits

The maximum payable will not to exceed \$1,846,000, plus applicable benefits, over the three-year term of the Agreement.

Dr. Pieper’s annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided by Dr. Pieper.

Therefore, it is recommended that your Board retroactively approve the Agreement with Patrick G. Pieper, M.D., for professional medical services in the Department of Surgery from February 1, 2022 through January 31, 2025, in an amount not to exceed \$1,846,000 over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Patrick G. Pieper, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2022, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Patrick G. Pieper, M.D. (“Physician”).

**I.
RECITALS**

(a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Authority requires the assistance of Physician to provide professional medical and administrative services in the Department of Surgery at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

(c) Physician has special training, knowledge and experience to provide such services; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #004-2019, dated January 16, 2019), for the period February 1, 2019 through January 31, 2022; and

(e) Each party expressly understands and agrees that Agt. #004-2019 is superseded by this Agreement as of the Commencement Date;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree as follows:

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement (“Term”) shall be for a period of three (3) years, commencing as of February 1, 2022 (the “Commencement Date”), and shall end January 31, 2025 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Authority hereby employs Physician for the practice of medicine in the care and treatment of patients at KMC, or at such other clinic sites as KMC may designate (collectively referred to as the “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority’s employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician’s license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician’s medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person¹; (vi) Physician is not currently the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; and (vii) Physician has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the state of California and staff membership and privileges at KMC.

4. **Obligations of Physician.**

4.1 **Services.** Physician shall engage in the practice of medicine on a full-time basis exclusively as an exempt employee of Authority. Physician shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference.

4.2 **Use of Premises.** Physician shall use the Practice Sites as designated by Authority or KMC exclusively for the practice of medicine in the care and treatment of patients and shall comply with all applicable federal, state, and local laws, rules and regulations related thereto.

4.3 **Qualifications.**

4.3.1 **Licensure.** Physician shall maintain a current valid license to practice medicine in the state of California at all times during the Term of this Agreement.

¹ An “Ineligible Person” is an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs; or (ii) has been convicted of a criminal offense that falls within the range of activities described in 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

4.3.2 Board Certification. Physician shall be board certified by the American Board of Otolaryngology in head and neck surgery-general and maintain such certification at all times during the Term of this Agreement.

4.3.3 Medical Staff Status. Physician shall at all times during the Term of this Agreement be a member in good standing of the KMC medical staff with “active” staff status and hold all clinical privileges on the active medical staff appropriate to the discharge of his obligations under this Agreement.

4.3.4 TJC and ACGME Compliance. Physician shall observe and comply with all applicable standards and recommendations of The Joint Commission and Accreditation Council for Graduate Medical Education.

4.4 Loss or Limitation. Physician shall notify KMC in writing as soon as possible (but in any event within three (3) business days) after any of the following events occur: (i) Physician’s license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (ii) Physician’s medical staff privileges at KMC or any other health care facility are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (iii) Physician’s Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (iv) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (v) Physician becomes the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; or (vi) an event occurs that substantially interrupts all or a portion of Physician’s professional practice or that materially adversely affects Physician’s ability to perform Physician’s obligations hereunder.

4.5 Standards of Medical Practice. The standards of medical practice and professional duties of Physician at designated Practice Sites shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for physicians established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.

4.6 Managed Care Contracting. Physician shall cooperate in all reasonable respects necessary to facilitate KMC’s entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable KMC to participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a “Managed Care Organization”) designated by KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written

agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

4.7 Authorization to Release Information. Physician hereby authorizes Managed Care Organizations, government programs, hospitals and other third parties to release to KMC and its agents any information requested by KMC or its agents from time to time relating to Physician's professional qualifications or competency. Physician agrees to execute the Authorization to Release Information in the form set forth in Exhibit "B," attached hereto and incorporated herein by this reference, and to execute all other documents required by KMC from time to time and otherwise fully cooperate with KMC to enable KMC and its agents to obtain such information from third parties.

4.8 Medical Records. Physician shall cause a complete medical record to be timely prepared and maintained for each patient seen by Physician. This record shall be prepared in compliance with all state and federal regulations, standards of The Joint Commission, and the KMC medical staff bylaws, rules, regulations, and policies. Documentation by Physician shall conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016–15018, inclusive. All patient medical records of Practice Sites, including without limitation, patient medical records generated during the Term of this Agreement, shall be the property of KMC subject to the rights of the respective patients. Upon the expiration or termination of this Agreement by either party for any reason, KMC shall retain custody and control of such patient medical records.

4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide similar services to other organizations, directly or indirectly, during the Term of this Agreement or any extensions thereof.

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician's activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician's own account or as an employee, landlord, lender, trustee, associate, consultant, partner, agent, principal, contractor, owner, officer, director, investor, member or stockholder of any other person, or in any other capacity, directly or indirectly, in whole or in part: (i) engage in any activities that are in competition with KMC, including the operation of any medical practice or offering of any medical services that are similar to services offered at the Practice Sites; (ii) solicit or encourage the resignation of any employee of Authority or KMC with whom Physician had a working relationship during Physician's employment with Authority; (iii) solicit or divert patients with whom Physician had personal contact during such employment; or (iv) influence or attempt to influence any payer, provider or other person or entity to cease, reduce or alter any business relationship with Authority or KMC relating to the Practice Sites.

5. Compensation Package.

5.1 Annual Compensation. Physician shall work full time, which is a minimum of 80 hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$540,000 per year, to be paid as follows: Physician shall be paid \$20,769.23 biweekly not to exceed \$540,000 annually. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.2 Biweekly Payment. Physician shall be paid biweekly on the same schedule as regular Authority employees. The exact date of said biweekly payments shall be at the sole discretion of Authority. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.1.3 Fair Market Value Compensation. The compensation provided under section 5.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Physician under this Agreement.

5.2 Call Coverage. Authority shall pay Physician for call coverage as follows: (i) Physician shall be paid a fixed fee in the amount of \$1,200 per 24-hour day for weekend² call coverage that exceeds one (1) weekend per month; and (ii) Physician shall be paid a fixed fee in

² For purposes of weekend call coverage, a "weekend is defined as Saturday from 7:00 a.m. to Monday at 7:00 a.m. or, in the event of a holiday, from Friday at 7:00 a.m. to Monday at 7:00 a.m. or Saturday at 7:00 a.m. to Tuesday at 7:00 a.m.

the amount of \$500 per day for weekday³ call coverage that exceeds one (1) in four (4) weekdays. All payments made by Authority to Physician shall be subject to applicable federal and state taxes and withholding requirements.

5.3 Medical Director Stipend. Authority shall pay Physician a stipend of \$1,153.84 biweekly not to exceed \$30,000 annually for services as Medical Director of the Laser and Aesthetics Center. If the conditions for Physician to receive the stipend are met, the stipend would become payable to Physician commencing February 1, 2022, and each biweekly pay period thereafter. Physician understands and agrees that he must remain in the position of Medical Director of the Laser and Aesthetics Center as of each biweekly payout date in order to earn and receive the stipend payment. All stipend payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.4 Professional Fee Billing.

5.4.1 Assignment. KMC shall have the exclusive right and authority to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Physician at the Practice sites during the Term of this Agreement. All professional fees generated by Physician for services rendered at the Practice Sites during the Term of this Agreement, including without limitation, both cash collections and accounts receivable, capitated risk pool fees, professional retainer fees, honoraria, professional consulting and teaching fees, and fees for expert testimony (but excluding Physician's private investment and nonprofessional income), will be the sole and exclusive property of KMC, whether received by KMC or by Physician and whether received during the Term of this Agreement or anytime thereafter. Physician hereby assigns all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers.

5.4.2 Remittance of Professional Fee Charges. Physician shall remit all professional fee charges to KMC within 45 days of the date direct patient care services are provided by Physician. Any professional fee charges not remitted by Physician to KMC within 45 days of the date of such service, or any charges for which relevant documentation has not been provided, will not be credited to Physician as Worked RVU.

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,846,000 over the three-year Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"), a qualified defined

³ For purposes of weekday call coverage, a "weekday" is defined as Monday through Friday or, in the event of a holiday, Tuesday through Friday.

contribution pension plan, pursuant to the terms of the instrument under which the Plan has been established, as from time to time amended. Physician is not eligible to participate in any other retirement plan established by Authority for its employees, including but not limited to the Kern County Employees' Retirement Association, and this Agreement does not confer upon Physician any right to claim entitlement to benefits under any such retirement plan(s).

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is 20% of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 40 hours per biweekly pay period to be eligible for coverage.

6.3 Holidays. Physician shall be entitled to paid holidays subject to Authority policy, as amended from time to time. Physician will not be paid for banked holidays upon termination of employment.

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

6.5 Sick Leave. Physician shall retain his sick leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

6.6 Education Leave. Physician shall receive 80 hours paid education leave annually. The first 80 hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional 80 hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

6.7 CME Expense Reimbursement. Authority shall reimburse Physician for all approved reasonable and necessary expenditures related to continuing medical education in an amount not to exceed \$2,500 per Employment Year, payable in arrears, in accordance with Authority policy, as amended from time to time. This amount may not be accumulated or accrued and does not continue to the following Employment Year.

6.8 Flexible Spending Plan. Physician shall be eligible to participate in flexible spending plans to pay for dependent care, non-reimbursed medical expenses, and certain

insurance premiums on a pre-tax basis through payroll deduction. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.9 Attendance at Meetings. Physician shall be permitted to be absent from KMC during normal working days to attend professional meetings and to attend to such outside professional duties in the healthcare field as may be mutually agreed upon between Physician and the Department Chair. Attendance at such approved meetings and accomplishment of approved professional duties shall be fully compensated service time and will not be considered vacation or education leave.

6.10 Unpaid Leave of Absence. Physician may take an unpaid leave of absence in accordance with Authority policies in effect at the time the leave is taken.

6.11 Social Security. Physician is exempt from payment of Social Security taxes as the Kern County Hospital Authority Pension Plan for Physician Employees is a qualified alternative to the insurance system established by the federal Social Security Act.

6.12 Deferred Compensation. Physician shall be eligible to participate in the Kern County Deferred Compensation Plan ("457 Plan") on a pre-tax basis. Physician shall make all contributions if he elects to participate in the 457 Plan.

6.13 Disability Insurance. Physician shall be eligible to purchase Long Term Disability or Short Term Disability insurance coverage through payroll deduction on a post-tax basis. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.14 Employee Assistance/Wellness Programs. Physician shall be eligible to participate in any Authority-sponsored employee assistance and employee wellness programs.

6.15 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

7. **Assignment.** Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority.

8. **Assistance in Litigation.** Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.

9. **Authority to Incur Financial Obligation.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.
12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.
14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.
15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court. All costs of any dispute resolution procedure shall be borne equally by the parties.
17. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by

Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

19. **Invalidity of a Portion.** Should a portion, section, paragraph, or term of this Agreement be construed as invalid by a court of competent jurisdiction, or a competent state or federal agency, the balance of the Agreement shall remain in full force and effect. Further, to the extent any term or portion of this Agreement is found invalid, void or inoperative, the parties agree that a court may construe the Agreement in such a manner as will carry into force and effect the intent appearing herein.

20. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

21. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Physician, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Physician shall be given 30 days' prior written notice in the event that Authority requires such an action.

22. **Nondiscrimination.** No party to this Agreement shall discriminate on the basis of race, color, religion, sex, national origin, age, marital status or sexual orientation, ancestry, physical or mental disability, medical conditions, political affiliation, veteran's status, citizenship or marital or domestic partnership status or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics.

23. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Physician. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

24. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Physician:

Patrick G. Pieper, M.D.
28051 Hart Oak Court
Keene, California 93531

Notice to Authority:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

25. **Relationship.** Authority and Physician recognize that Physician is rendering specialized, professional services. The parties recognize that each is possessed of legal knowledge and skill, and that this Agreement is fully understood by the parties, and is the result of bargaining between the parties. Each party acknowledges their opportunity to fully and independently review and consider this Agreement and affirm complete understanding of the effect and operation of its terms prior to entering into the same.

26. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the state of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

27. **Sole Agreement.** This Agreement contains the entire agreement between the parties relating to the services, rights, obligations, and covenants contained herein and assumed by the parties respectively. No inducements, representations, or promises have been made, other than those recited in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.

28. **Termination.**

28.1 **Termination without Cause.** Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than 90 days' prior written notice to the other party.

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or

other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC, which conduct persists for five (5) business days after written notice to Physician; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment, which failure persists for five (5) business days after written notice to Physician; or (xv) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

29.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, Authority shall have no further obligation to pay for any services rendered or expenses incurred by Physician after the effective date of the termination, and Physician shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

29.2 **Vacate Premises.** Upon expiration or earlier termination of this Agreement, Physician shall immediately vacate KMC, removing at such time any and all personal property of Physician. KMC may remove and store, at the expense of Physician, any personal property that Physician has not so removed.

29.3 **No Interference.** Following the expiration or earlier termination of this Agreement, Physician shall not do anything or cause any person to do anything that might interfere with any efforts by Authority or KMC to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between KMC and any person who may replace Physician.


29.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Physician the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

30. **Liability of Authority.** The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

PHYSICIAN

By  _____
Patrick G. Pieper, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Pieper.012822

EXHIBIT “A”
JOB DESCRIPTION
Patrick G. Pieper, M.D.

Position Summary: Position Summary: Reports to Chair, Department of Surgery and Chief, Division of Otolaryngology; serves as a full-time otolaryngology, head and neck surgeon in the Department; serves as Medical Director, Laser and Aesthetics Center; work effort will be a minimum of 2,500 hours annually in teaching, administrative, and clinical activity; day-to-day activities and clinical workload will include call coverage for facial trauma and general otolaryngology; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of surgery, direct patient care, support of resident education; works collaboratively with clinic and surgery staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities and Assignments.

- Coordinate with current otolaryngology faculty schedules and activities to provide service and improve efficiency for otolaryngology clinical activities
- Serves as an attending physician in the Division of Otolaryngology
- Provide service and improve efficiency for otolaryngology surgery cases
- Provide faculty service for otolaryngology and facial trauma surgery call coverage
- Supervise surgery Physician Assistant/Nurse Practitioner activity and competence
- Inpatient rounds – five (5) days per week
- Otolaryngology Clinic – minimum of two (2) days per week at any KMC location (i.e., main hospital campus, Q Street Clinic, Stockdale, Laser and Aesthetics Center, etc.)
- Laser and Aesthetics Center – minimum of one (1) day per week
- Operating Room – minimum of two (2) half days per week at any KMC location (i.e., main hospital campus or Kern Medical Surgery Center, LLC)
- Call coverage for facial trauma and general otolaryngology – weekday coverage, Monday through Thursday, one (1) in four (4) weekdays up to a maximum of 52 weekday call shifts per year; weekend coverage, one (1) in four (4) weekends up to a maximum of 13 weekends per year

2. Administrative Responsibilities.

- Assist in clinical and administrative integration efforts across KMC as appropriate for otolaryngology surgery assisting with proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
- Gather data through best practices and collaborate with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Support the Department chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes for plastic and hand surgery services
- Attend and actively participate in assigned Medical Staff and hospital committees

- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment
 - Participate in the preparation, monitoring, review, and performance of clinical activity in the Department
 - Participate in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
 - Provide didactic teaching and resident physician and medical student education as assigned and participate in setting goals and expectations for the surgery resident and medical student rotations
 - Complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation
 - Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
 - Follow and comply with the Medical Staff bylaws, rules, regulations, and policies and Authority and KMC policies and procedures
3. Teaching Responsibilities.
- Assist with didactic curriculum and teaching conference activity for otolaryngology surgery
 - Assist in resident research and scholarly activity
4. Medical Director Responsibilities for Laser and Aesthetics Center (“Center”).
- Work collaboratively with hospital administration, Center management, and other medical and clinical staff at the Center to provide medical supervision
 - Provide clinical oversight of the Center
 - Oversee and support education and training of medical and clinical staff at the Center
 - Support and oversee the development of written policies, procedures, and protocols as relates to patient care and obtain approval of such protocols as needed through appropriate hospital and medical staff committees
 - Provide oversight to coordinate performance improvement activities
 - Work to ensure excellent care through chart review, direct observation, and data analysis

Employment Standards:

Completion of an accredited residency program in otolaryngology; one (1) year of post-residency experience in otolaryngology and head and neck surgery desirable

AND

Possession of a current valid Physician’s and Surgeon’s Certificate issued by the state of California

AND

Certification by the by the American Board of Otolaryngology in head and neck surgery-general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to otolaryngology; principles of effective supervision and program development.

[Intentionally left blank]

EXHIBIT "B"

AUTHORIZATION TO RELEASE INFORMATION


[See attached]

AUTHORIZATION TO RELEASE INFORMATION

I, the undersigned physician, hereby authorize Kern Medical Center (“KMC”) and its duly authorized representatives to obtain information from time to time about my professional education, training, licensure, credentials competence, ethics and character from any source having such information. This information may include, without limitation, peer review information, DRG and RVU analyses, ancillary usage information and other utilization and quality related data.

I hereby release the Kern County Hospital Authority and KMC, its authorized representatives and any third parties from any liability for actions, recommendations, statements, reports, records or disclosures, including privileged and confidential information, involving me that are made, requested, taken or received by KMC or its authorized representatives to, from or by any third parties in good faith and relating to or arising from my professional conduct, character and capabilities.

I agree that this authorization to release information shall remain effective until termination of my employment by the Kern County Hospital Authority and KMC. A duplicate of this authorization may be relied upon to the same degree as the original by any third party providing information pursuant to this request.



Physician

Date



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Agreement with McMurtrey Lince, Inc.

Recommended Action: Make a finding the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve; authorize Chairman to sign; authorize Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$467,504.

Summary:

Kern Medical requests your Board approve the proposed Agreement with McMurtrey Lince, Inc., for renovations to the hospital pharmacy, including installation of an additional HVAC unit to meet temperature control and filtration requirements for compounding operations. The Agreement is effective as of February 16, 2022 and construction is anticipated to be completed within 6 months.

Therefore, it is recommended that your Board make a finding the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve; authorize Chairman to sign; authorize the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$467,504.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this 16th day of February, 2022, is by and between **McMurtrey Lince, Inc.**, whose place of business is located at **1025 Espee Street, Bakersfield, CA 93301** ("Contractor"), and the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

WHEREAS, in consideration for the promises and payment to be made and performed by Authority, and under the conditions expressed in the incorporated Bid Proposal (Bid), bonds and related papers, Contractor agrees to do all the work and furnish all the materials at the expense of Contractor (except such as the Specifications state will be furnished by Authority) necessary to construct and complete in a good and workmanlike manner to the satisfaction of the Chief Executive Officer for the Kern County Hospital Authority all the work shown and described in the plans and specifications for the project known as:

Pharmacy Air Conditioning Upgrades 10087

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **four hundred sixty-seven thousand, five hundred and four dollars (\$467,504)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).

- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **90 Working Days**, as defined in Document 01422, from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner Five Hundred Dollars (\$500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00700 (General Conditions).

ARTICLE 4 - CONTRACT DOCUMENTS

4.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00001	Title Page
Document 00100	Notice to Contractors
Document 00200	Instruction to Bidders
Document 00300	Geotechnical Data and Existing Conditions
Document 00410	Bid Form
Document 00412	Bidder Registration Form
Document 00431	Subcontractors List
Document 00452	Non-Collusion Declaration
Document 00455	Bidder Certifications
Document 00500	Agreement
Document 00501	Proposed Contract Documents Transmittal
Document 00601	Construction Performance Bond
Document 00602	Construction Labor and Material Payment Bond
Document 00603	Guaranty
Document 00590	Release of Claims
Document 00700	General Conditions
Document 00738	Apprenticeship Programs
Document 00800	Supplementary Conditions – Insurance
Master Specifications	Divisions 1 through 16
Drawings	

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

ARTICLE 5 – LIABILITY OF AUTHORITY

5.01 The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the State of California.

ARTICLE 6 – MISCELLANEOUS

6.01 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.

6.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

6.02 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under

Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.

6.03 This project is subject to prevailing wage laws. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.04 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Kern, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

IN WITNESS WHEREOF the parties have executed seven original Agreements on the day and year first above written.

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

KERN COUNTY HOSPITAL AUTHORITY

By 
Jamie Mason, Hospital Counsel

By _____
Russell Bigler, Chairman
"AUTHORITY"

APPROVED AS TO CONTENT:
KERN MEDICAL HOSPITAL

Contractor's Name

McMURTREY LINC INC.

Type of Entity

(corporation, partnership, sole proprietorship)

By _____
Michael Fink, Director of Facilities

By 
Signature

By _____
Scott Thygerson, Chief Executive Officer

James McMURTREY
Typed Name

VP/CEO
Title of Individual Executing
Document on behalf of Firm

"CONTRACTOR"

NOTICE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED

Rev. 0
April 12, 2014

TO THE REGISTRAR OF THAT BOARD, WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD,
1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814.

END OF DOCUMENT



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction

Recommended Action: Make a finding the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve; authorize Chairman to sign; and authorize Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$567,143

Summary:

Kern Medical requests your Board approve the proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction in the amount of \$567,143 for renovations to existing space at the Kern Medical Q Street Clinic, which includes installation of imaging equipment, registration modifications, IT upgrades, flooring and paint. The Agreement is effective as of February 16, 2022 and construction is anticipated to be completed within four (4) months.

Therefore, it is recommended that your Board make a finding the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve; authorize Chairman to sign; and authorize the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$567,143.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this 16th day of February, 2022, is by and between James E. Thompson, Inc., dba: JTS Construction, whose place of business is located at 7001 McDivitt, Suite B, Bakersfield, CA 93313, with a mailing address at P.O. Box 41765, Bakersfield, CA 93384 ("Contractor"), and the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

WHEREAS, in consideration for the promises and payment to be made and performed by Authority, and under the conditions expressed in the incorporated Bid Proposal (Bid), bonds and related papers, Contractor agrees to do all the work and furnish all the materials at the expense of Contractor (except such as the Specifications state will be furnished by Authority) necessary to construct and complete in a good and workmanlike manner to the satisfaction of the Chief Executive Officer for the Kern County Hospital Authority all the work shown and described in the plans and specifications for the project known as:

Radiology Clinic TI (10091)

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **five hundred sixty-seven thousand, once hundred forty-three dollars (\$567,143.00)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **60 Working Days**, as defined in Document 01422, from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner two-thousand dollars (\$2,000.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00700 (General Conditions).

ARTICLE 4 - CONTRACT DOCUMENTS

4.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00001	Title Page
Document 00100	Notice to Contractors
Document 00200	Instruction to Bidders
Document 00300	Geotechnical Data and Existing Conditions
Document 00410	Bid Form
Document 00412	Bidder Registration Form
Document 00431	Subcontractors List
Document 00452	Non-Collusion Declaration
Document 00455	Bidder Certifications
Document 00500	Agreement
Document 00501	Proposed Contract Documents Transmittal
Document 00601	Construction Performance Bond
Document 00602	Construction Labor and Material Payment Bond
Document 00603	Guaranty
Document 00590	Release of Claims
Document 00700	General Conditions
Document 00738	Apprenticeship Programs
Document 00800	Supplementary Conditions – Insurance
Master Specifications	Divisions 1 through 16
Drawings	

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

ARTICLE 5 – LIABILITY OF AUTHORITY

5.01 The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the State of California.

ARTICLE 6 – MISCELLANEOUS

6.01 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.

6.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

6.02 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to

the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.


6.03 This project is subject to prevailing wage laws. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.04 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Kern, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

IN WITNESS WHEREOF the parties have executed seven original Agreements on the day and year first above written.

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

KERN COUNTY HOSPITAL AUTHORITY

By  _____
Jamie Mason, Hospital Counsel

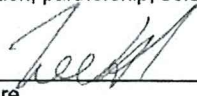
By _____
Russell Bigler, Chairman
"AUTHORITY"

APPROVED AS TO CONTENT:
KERN MEDICAL HOSPITAL

Contractor's Name JTS Construction

By _____
Scott Thygerson, CEO

Type of Entity Corporation
(corporation, partnership, sole proprietorship)

By  _____
Signature

Lee Hawkins

Typed Name

President

Title of Individual Executing
Document on behalf of Firm

"CONTRACTOR"

NOTICE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED

Rev. 0
April 12, 2014

TO THE REGISTRAR OF THAT BOARD, WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD,
1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814.

END OF DOCUMENT



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Proposed Amendment No. 3 to Engineering Services Agreement (#07816PA) with Paul Dhanens Architect, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve Amendment No. 3, effective February 16, 2022, to the Engineering Services Agreement with Paul Dhanens Architect, Inc., which provides design services for budgeted construction projects at Kern Medical's main campus and clinic locations. Amendment No. 3 will increase the maximum payable of the Agreement by \$250,000, from \$700,000 to \$950,000, to cover the term. Budgeted construction projects for this fiscal year include, but are not limited to: (1) New MRI & Registration Building; and (2) D Wing Medical Gas Air Dryer. The increase in the maximum payable is necessary due to an influx of approved projects requiring design services.

Therefore, it is recommended that your Board approve Amendment No. 3 to the Engineering Services Agreement with Paul Dhanens Architect, Inc., for the period of July 1, 2016 through June 30, 2023, increasing the total maximum payable by \$250,000, from \$700,000 to \$950,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 3
TO
ENGINEERING SERVICES AGREEMENT
(Kern County Hospital Authority – Paul Dhanens Architect, Inc.)**

This Amendment No. 3 to the Agreement for Engineering Services is entered into this 16th day of February 2022 ("Effective Date"), by and between, the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center, ("KCHA") with its principal location at 1700 Mount Vernon Avenue, Bakersfield, California 93306, and Paul Dhanens Architect, Inc., ("Consultant"), with its principal place of business located at 5100 California Avenue, Suite 107, Bakersfield, California 93309.

RECITALS

- A. KCHA and Consultant have entered into an Agreement for Architectural Services (KCHA Agt. # 07816PA, dated July 1, 2016), Amendment No. 1 (KCHA Agt. #084-2018, dated December 12, 2018), and Amendment No. 2 (KCHA Agt. #45521, dated August 18, 2021) ("Agreement"), to provide Architectural and Engineering Services for various projects; and
- B. KCHA would like to use Consultant for additional approved projects other than previously contemplated and Consultant is willing and qualified to complete these additional projects; and
- C. The Parties agree to increase the not-to-exceed amount from \$700,000 to \$950,000 to cover the cost of the additional projects; and
- D. The Agreement is amended effective February 16, 2022.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the Parties hereto agree to amend the Agreement as follows: (check those applicable):

X Fees payable by KCHA under the Agreement shall increase by \$250,000 from \$700,000 to \$950,000.

Except as otherwise defined herein, all capitalized terms used in this Amendment No. 3 have the meaning set forth in the Agreement.


Except as expressly amended herein, all provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 3 to the Agreement has been executed as of the Effective Date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

PAUL DHANENS ARCHITECT, INC.


By _____
Russell Bigler
Chairman, Board of Governors

By  _____
Paul Dhanens
Architect/Owner

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Scott Thygeron
Chief Executive Officer

APPROVED AS TO FORM:
Legal Services Department

By  _____
Hospital Counsel



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

SUBJECT: Proposed Purchase Order Agreement with Acist Medical Systems, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Purchase Order Agreement with Acist Medical Systems, Inc. for repair of the injector that is used in the Kern Medical Cardiac Catheterization Laboratory and provide a loaner injector for use during the repair.

The term of this agreement is effective February 16, 2022 and will remain in effect until the injector repair is complete, with at total maximum payable not to exceed \$20,125.

The Purchase Order Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) limitation on insurance coverage, with Acist Medical Systems, Inc. maintaining only product liability insurance; (2) limitations on liability, with Kern Medical waiving any claim of liability against Acist Medical Systems, Inc.; and (3) no indemnification from Acist Medical Systems, Inc. Efforts were made to negotiate these nonstandard terms to no avail. These services provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Purchase Order Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the proposed Purchase Order Agreement with Acist Medical Systems, Inc., effective February 16, 2022, with at total maximum payable not to exceed \$20,125, and authorize the Chairman to sign.

KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS
(Kern County Hospital Authority – Acist Medical Systems, Inc.)

This Purchase Order is entered into this the 16th day of February 2022 ("Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA") and Acist Medical System, Inc. ("Vendor"), with its principal place of business at 7905 Fuller Road, Eden Prairie, MN 55344.

Vendors must comply with all Instructions, and the following conditions shall apply to any order awarded pursuant to this Purchase Order:

Obligations of Vendor

1. Vendor shall provide products/services as set forth in Purchase Order, Exhibit A, attached hereto. Such order(s) may be modified by mutual agreement, by a written Purchase Order Amendment
2. Vendor shall provide products/services at the pricing identified in the Purchase Order. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the products and/or services involved herein.
4. ACIST maintains product liability insurance underwritten by various insurance companies, which, in our determination, will adequately respond to losses. ACIST will provide confirmation of such insurance setting forth its standard conditions on an individual basis upon specific request in writing.
5. Unless otherwise specifically agreed in writing by ACIST, all products sold by ACIST are sold with the manufacturer's then applicable standard limited warranty. ACIST itself makes no representations, warranties or guarantees concerning any of the products and Buyer agrees to rely solely on the respective product's manufacturer for all warranty questions and issues. Additionally, ACIST cannot control the conditions or circumstances under which the product may be used and ACIST specifically disclaims any responsibility or liability for the suitability of any product for any particular medical treatment or for any medical complications resulting from the use of any product.

Buyer agrees and acknowledges that ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED FROM THIS QUOTATION OR ANY SALE PURSUANT HERETO.

ACIST specifically disclaims and Buyer waives any claim against ACIST for liability of any type for any damages (whether special, direct or indirect, consequential, incidental or otherwise) including, without limitation, expenditures or loss of profits or projected profits.

6. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

Obligations of KCHA

7. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.
8. KCHA shall notify Vendor of any discrepancies in products shipped or services rendered, be the quantity, condition, or otherwise, promptly upon completion of the receiving inspection

Delivery, Invoicing, and Payment

9. Unless stated otherwise on the Purchase Order, all goods and services shall be delivered Free On Board (F.O.B) Destination, with transfer of title and risk of loss to rest with Vendor until goods delivered to KCHA.
10. As consideration for the products/services provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Purchase Order. KCHA's finance office pays claims and Purchase Orders each week. The maximum payable of this Purchase Order is \$20,125.00 plus freight and sales tax.
11. Invoices for payment shall be submitted in a form approved by KCHA and list each good ordered and received. Invoices shall be sent to KCHA for review and processing within 60 days of receipt of goods or payment will not be made. Payment shall be made to Vendor within 30 days of receipt and approval of each invoice by KMC.
12. KCHA may, without cause, terminate this Agreement by written notice ("Notice of Termination"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Party, Vendor shall submit to KCHA all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this Section 13, KCHA shall pay Vendor for all Services rendered by Vendor prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Purchase Order.
13. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination.
14. The liabilities or obligations of KCHA with respect to its activities pursuant to this Purchase Order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

General Provisions

15. This Purchase Order, including any attachments hereto, contains the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing the KCHA PO terms and conditions, Vendor agrees that in the event there is any inconsistency or conflict between the KCHA Purchase Order terms and conditions and Vendor's terms and conditions, the KCHA Purchase Order terms and conditions shall control.

16. Governing Law. Intentionally omitted.

17. Disqualified Persons. Vendor represents and warrants that no person providing goods and/or services under the terms of this Purchase Order (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Vendor agrees that if any individuals providing goods and/or services under the terms of this Purchase Order becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Vendor shall immediately notify KMC and such individual shall be immediately removed by Vendor from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to KMC patients; provided, however, that if Vendor is directly involved in the Enforcement Action, any agreement between KCHA and Vendor shall terminate immediately.

18. Non-collusion Covenant. Vendor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Purchase Order with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Purchase Order from KCHA.

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Russell Bigler
Chairman, Board of Governors

Date: _____

ACIST MEDICAL SYSTEMS, INC.

By Tom Priebe
Tom Priebe (Print Name)
VP Ops Service (Title)
03-Feb-22

Date: _____

APPROVED AS TO CONTENT:
Kern Medical Center

By _____
Michael Fink
Director of Facilities

REVIEWED ONLY, NOT APPROVED AS TO FORM:
Legal Services Department

By Jamie A. Mason
Jamie A. Mason
Hospital Counsel



ACIST Medical Systems, Inc.

7905 Fuller Road
Eden Prairie, MN 55344

Phone Number: (888) 670-7701
Fax Number: (952) 253-4524
E-mail: Customer.Support@acistmedical.com

Service Repair Quote

Page 1 of 1
Repair Quotation Number: 7000228467
Name of creator: DEVOSS
Order Date: 12/29/2021
Quote Expiration Date: 03/01/2022

BILL-TO

KERN COUNTY HOSPITAL AUTHORITY
PO BOX 3519
BAKERSFIELD CA 93385

SHIP-TO

KERN COUNTY HOSPITAL AUTHORITY
1700 MOUNT VERNON AVE
BAKERSFIELD CA 93306

Service Item						
Equipment Serial number		Equipment Description				
Service Line						
Type	Material No.	Description	Serial Number/Equipment description	Quantity	Unit Price	Amount
Item	894022-001	Loaner Fee		1.000	\$4,995.00	\$4,995.00
		30006127				
Item	892000-001	Flat Rate		1.000	\$15,130.00	\$15,130.00
		Repair - CV IH				
Total						Total Amount
						\$20,125.00

Field Service, In House Repair, Loaners: The rates quoted above are an estimate of service rates and parts. Additional parts may be required to complete repairs. This estimate does not include applicable freight and sales tax. These charges will be added to the final invoice.

The service rates quoted above are exclusive of parts and any applicable freight and sales tax. These charges will be added to the order at time of invoice.



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Kern County Hospital Authority Financial Report – December 2021

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Average Daily Census of 179 for December is 41 more than the December budget of 138 and 5 less than the 184 average over the last three months
- Admissions of 1,778 for December are 923 more than the December budget of 855 and 518 more than the 1,260 average over the last three months
- Total Surgeries of 482 for December are 47 more than the December budget of 435 and 7 more than the 475 average over the last three months
- Clinic Visits of 15,393 for December are 147 less than the December budget of 15,540 and 2,683 less than the 18,076 average over the last three months. The total includes 2,063 COVID-19 vaccination visits

The following items have budget variances for the month of December 2021:

Patient Revenue:

Gross patient revenue has a favorable budget variance for December and on a year-to-date basis mainly because of strong average daily census levels due to the pandemic. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Year-to-date gross patient revenue has increased 17% compared to prior year.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month and year-to-date. The variance is due to \$2.3 million of additional GPP revenue recognized based on the final FY 2021 reconciliation for the program.

Other Operating Revenue:

Other operating revenue has a favorable budget variance for December and year-to-date mainly due to the receipt of funds from the County of Kern for the operation of COVID-19 testing facilities and COVID-19 mobile vaccination units. This revenue is offset by Kern Medical's costs to provide these services for the County of Kern. In addition, Proposition 56 funding received in December was more than the monthly average received from this program.

Owned and Operated by the Kern County Hospital Authority
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month and year-to-date because federal and state COVID-19 related funding is budgeted evenly throughout FY 2022 as other non-operating revenue; however, this COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Nurse Registry Expense:

Nurse registry expense is over budget for the month and on a year-to-date basis because of higher than average registry usage in the hospital. The increase is primarily due to the pandemic. However, the current high census levels at Kern Medical consist of many other patients besides those with COVID-19, increasing the need for contract nurse services.

Medical Fees:

For the month of December, Kern Medical was over budget for medical fees due to higher than average costs for Total Renal Care, Inc. dialysis services. On a year-to-date basis medical fees are under budget because several physicians either no longer provide services for Kern Medical, or they have provided relatively less services during the past few months than budgeted for in FY 2022.

Other Professional Fees:

Other professional fees are over budget for the month because of IT contract labor. IT contract labor was previously capitalized as part of construction-in-progress (CIP) projects that were recently completed. IT contract labor will transition to new CIP projects in January. On a year-to-date basis, other professional fees are over budget in part because of an implementation fee charged by the Acute Care Surgery Group and because of the contract labor positions added to accommodate high census levels.

Supplies Expense:

Supplies expense continues to be over budget for the month and on a year-to-date basis due to ongoing operations of the outpatient pharmacy. In addition, there are monthly radiology imaging software expenses that were part of an IT construction-in-progress project in prior year. These software costs were not budgeted for as supplies expenses in FY 2022 and contribute to the unfavorable budget variance.

Purchased Services:

Purchased services are over budget for the month due to Cerner expenses that were previously capitalized as part of CIP projects that were recently completed. On a year-to-date basis, purchased services are over budget due in large part to COVID-19 mobile clinic expenses that are reported on this line item. The mobile clinic expenses are offset by reimbursement received from the County of Kern and reported as other operating revenue.

Other Expenses:

Other expenses are over budget for the month in part because of the cost of additional hospital beds rented from Hill-Rom to accommodate high patient census levels. On a year-to-date basis, other expenses are over budget because of higher than average repairs and maintenance expenses, an air conditioning and heating unit rental from Hertz Equipment Rental Company (HERC) for the MRI, and because of higher than average utility costs.

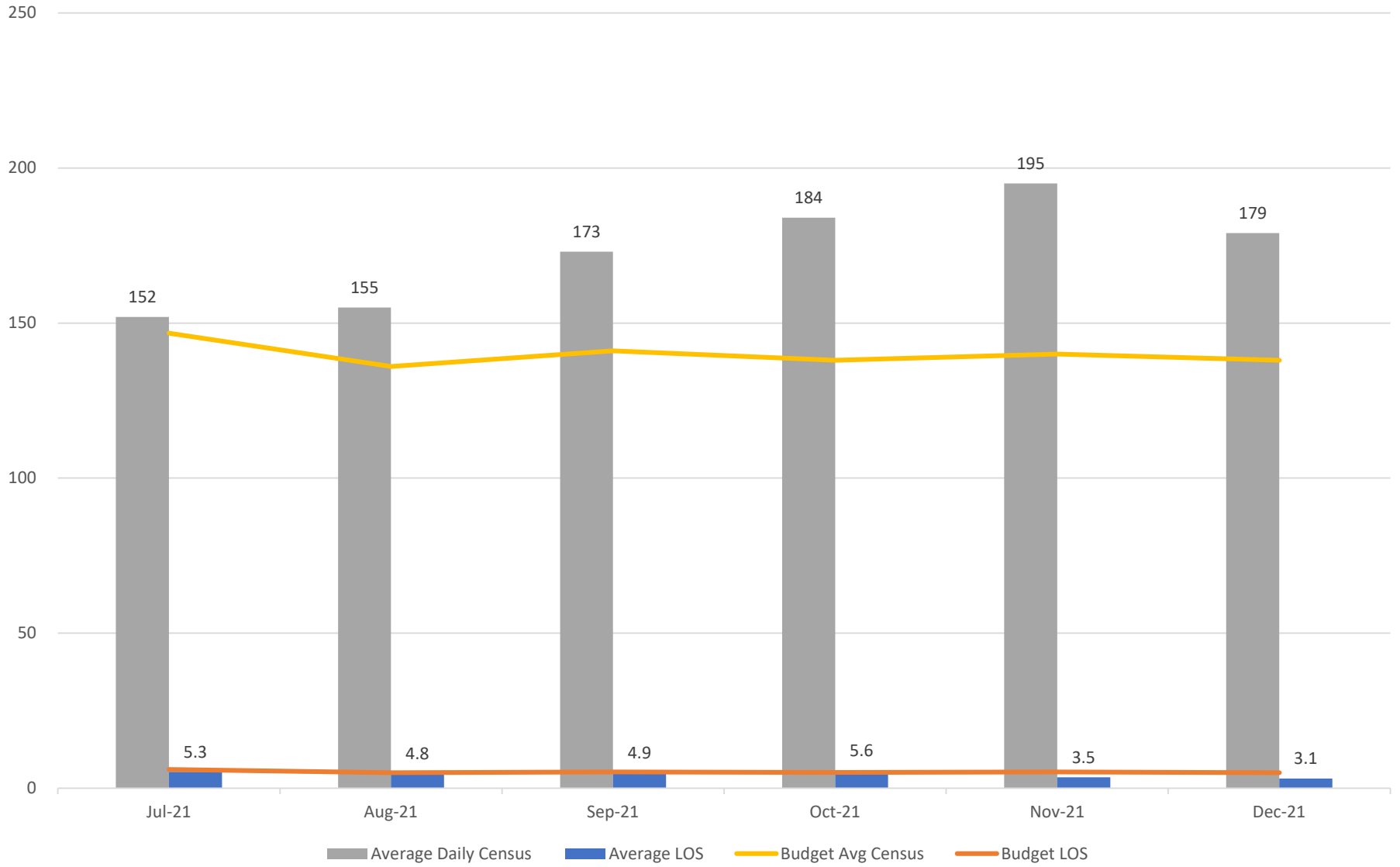
Depreciation and Amortization Expense:

Depreciation expense is over budget for the month and year-to-date because of construction-in-progress (CIP) projects that were put into service and have now started depreciating each month.

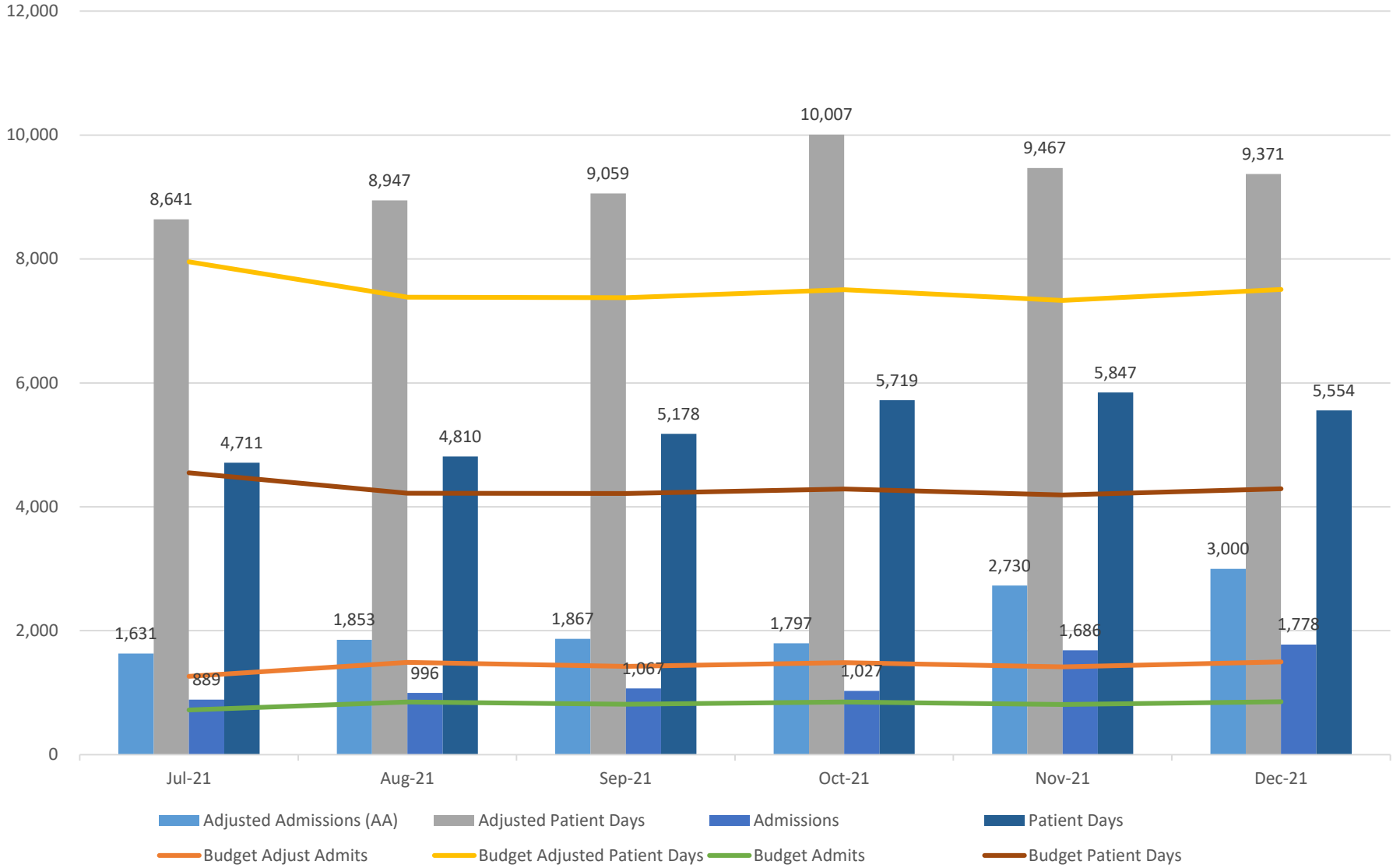


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – DECEMBER 2021**

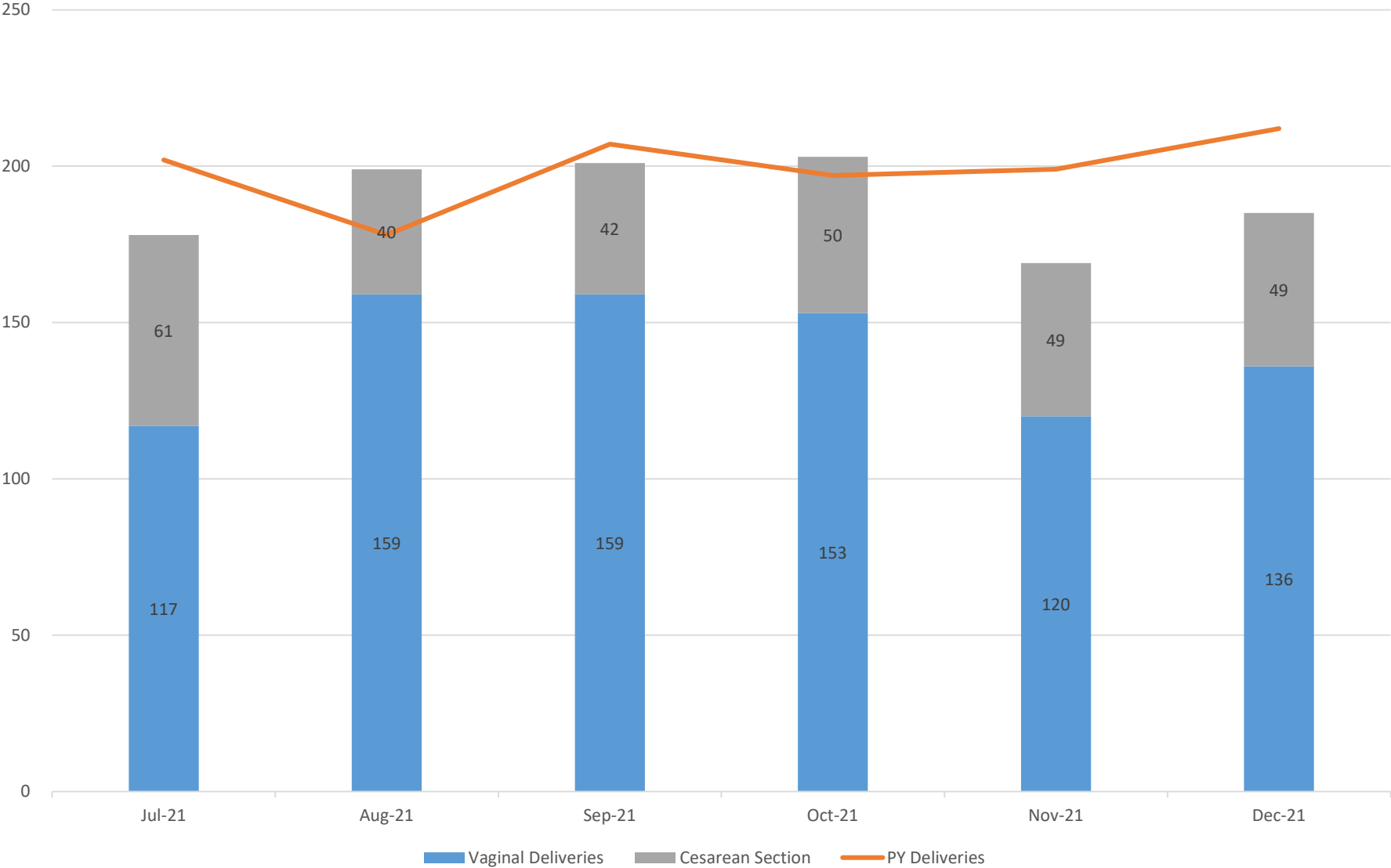
Census & ALOS



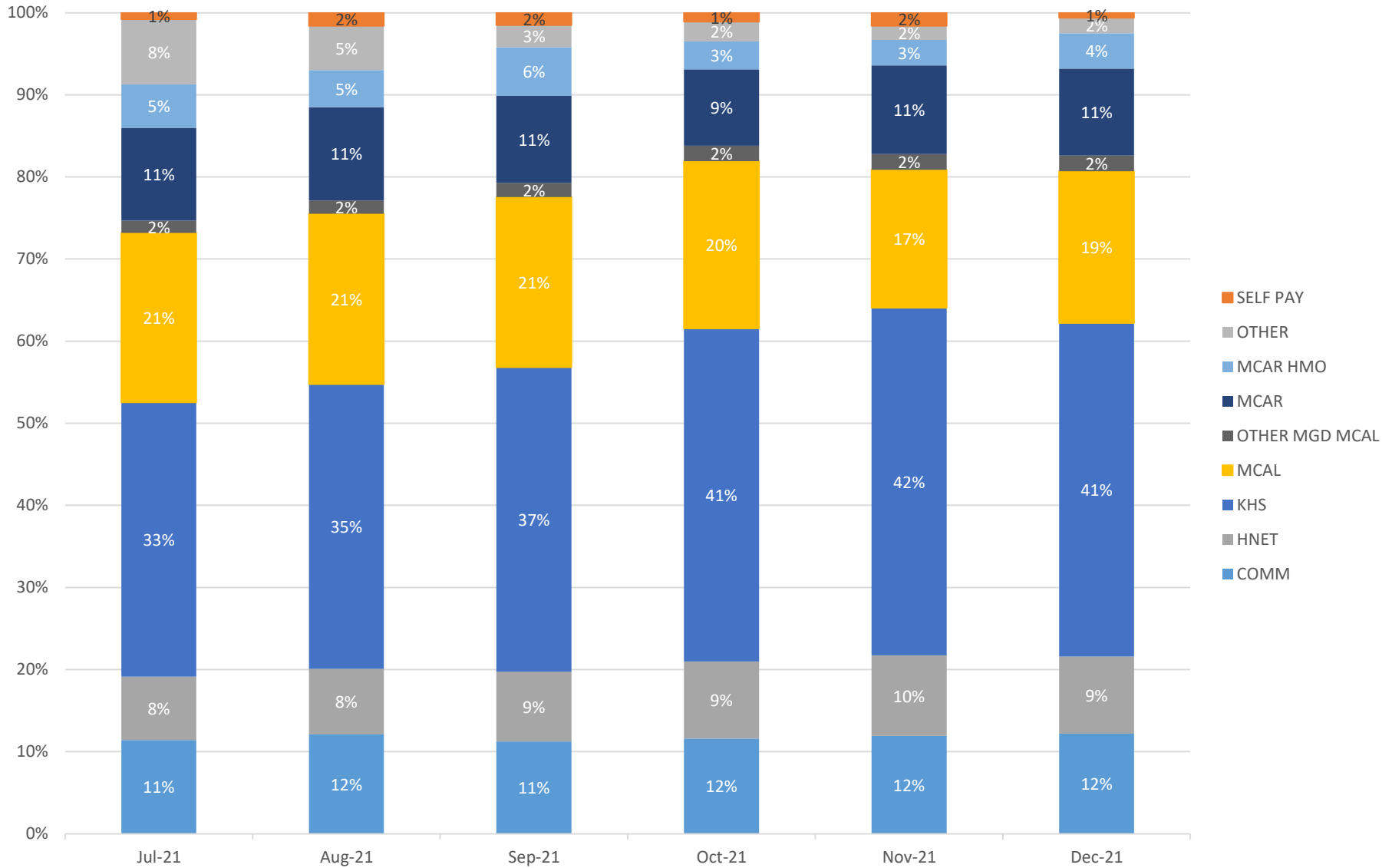
Hospital Volumes



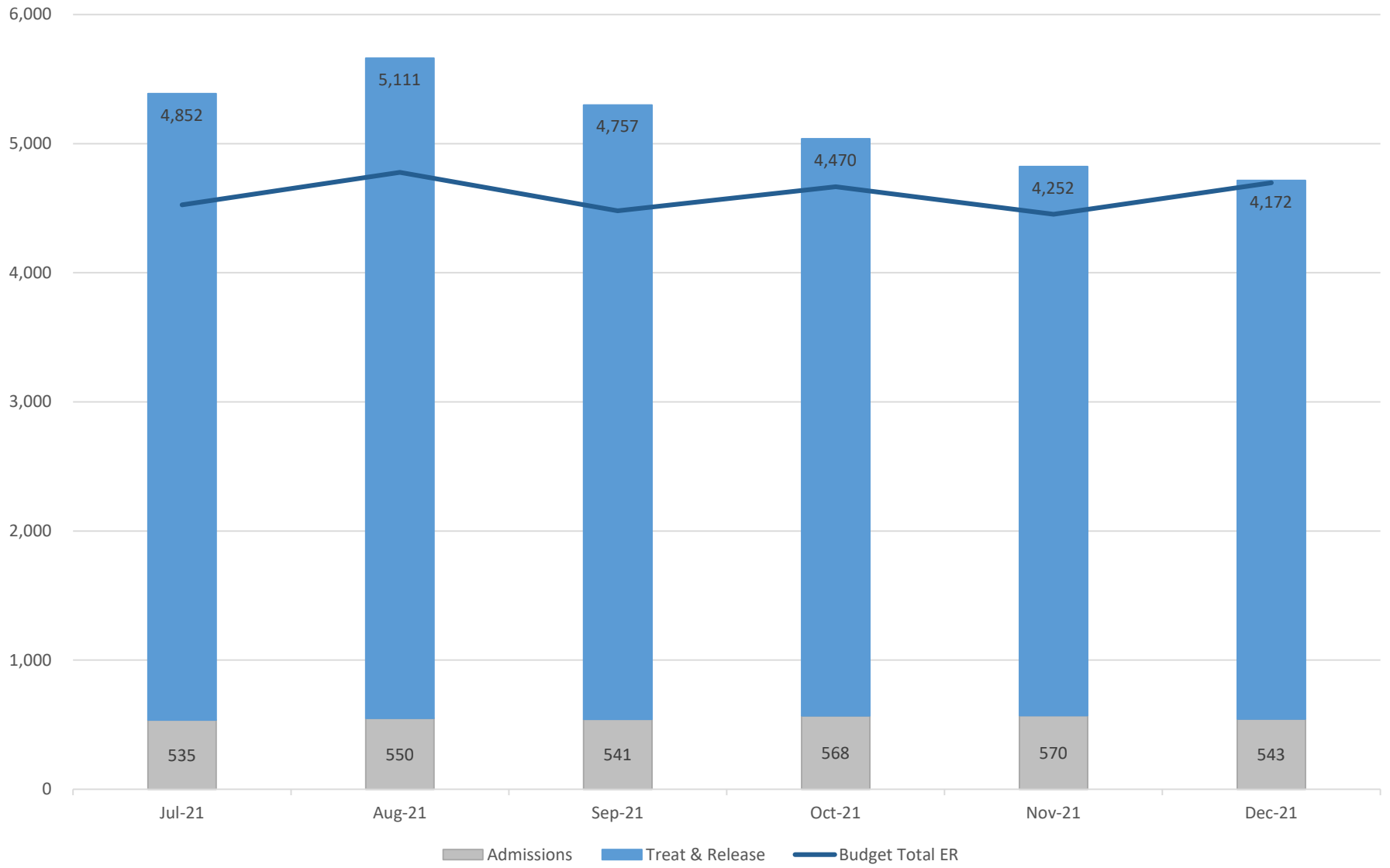
Deliveries



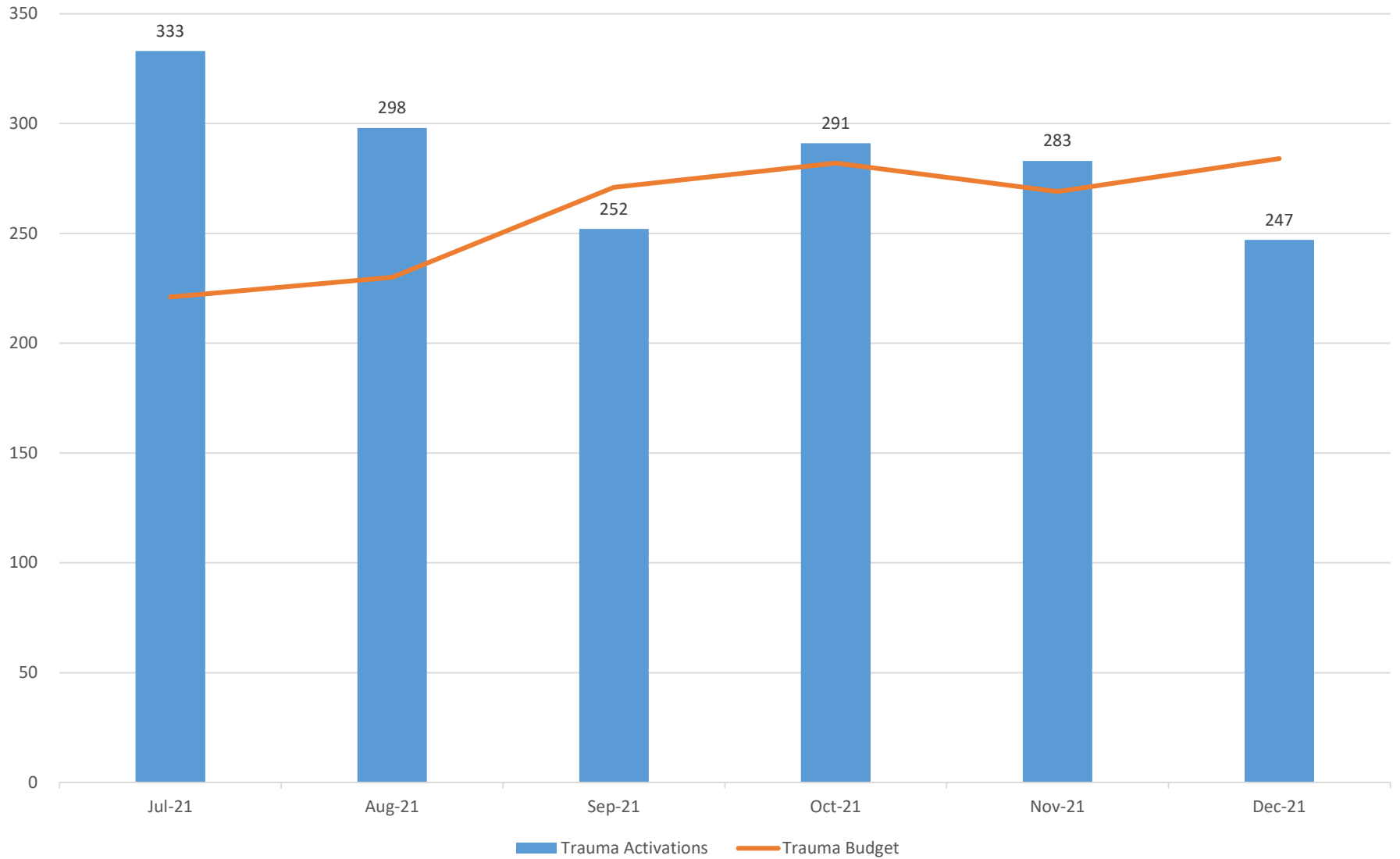
PAYER MIX



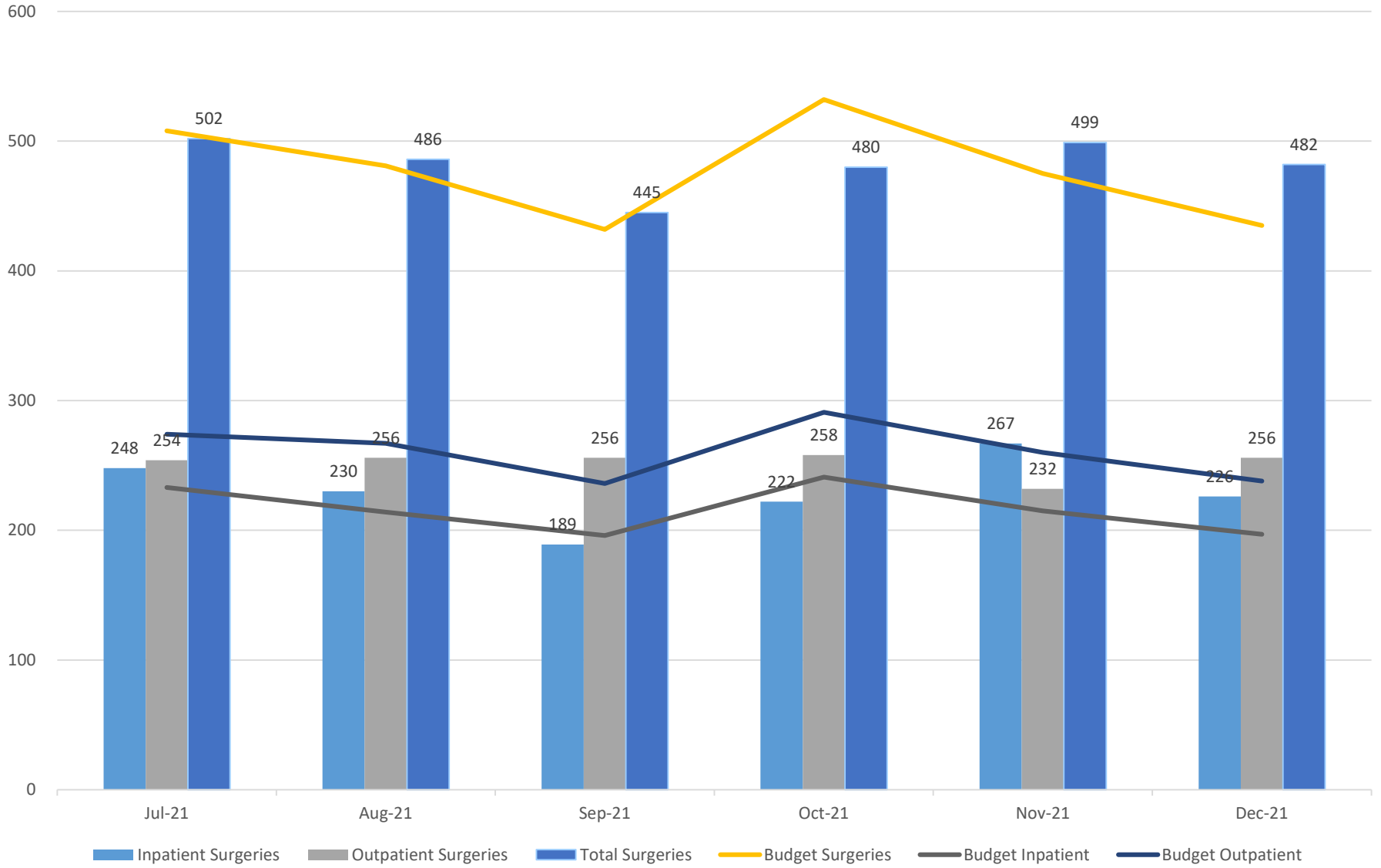
Emergency Room Volume



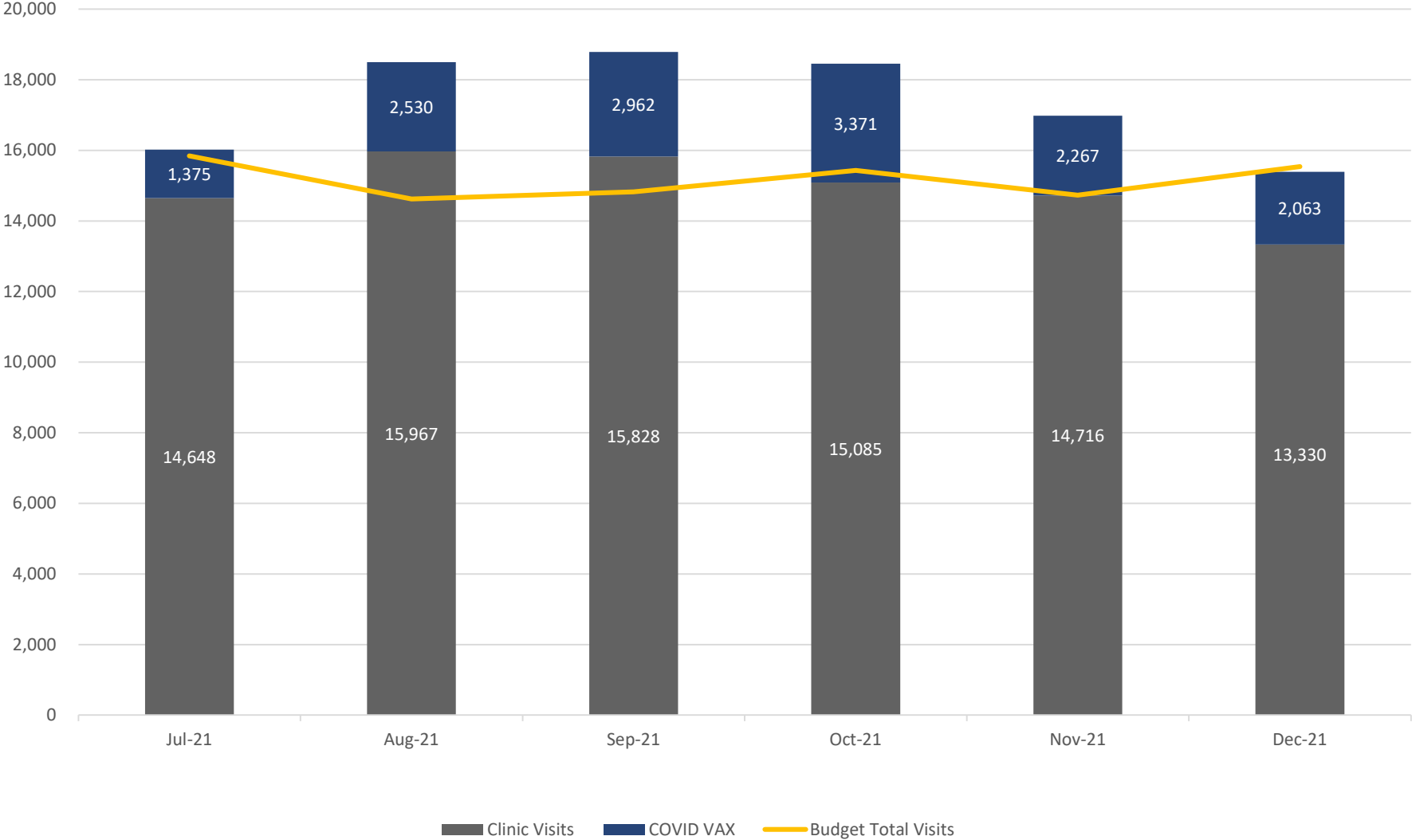
Trauma Activations



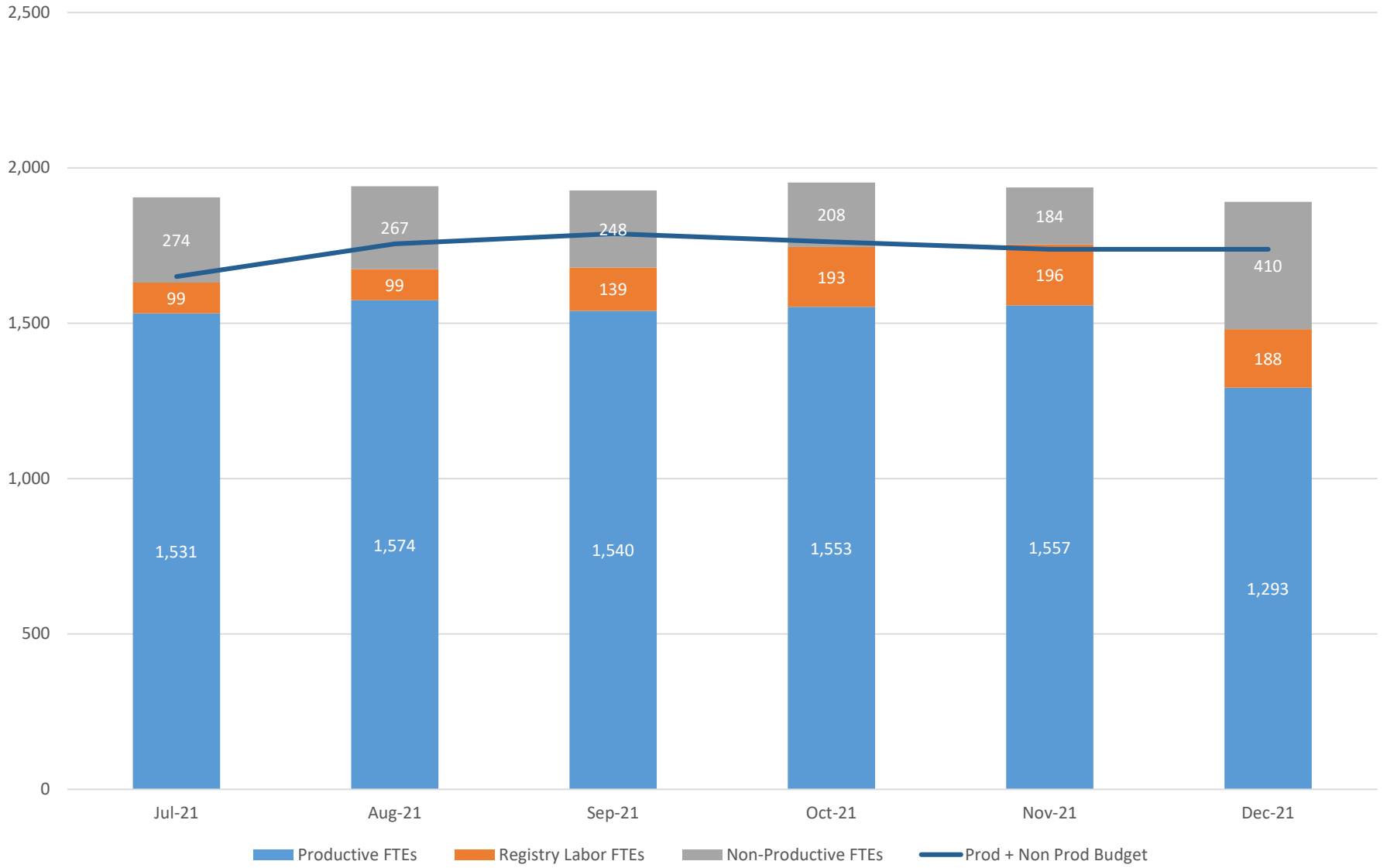
Surgical Volume



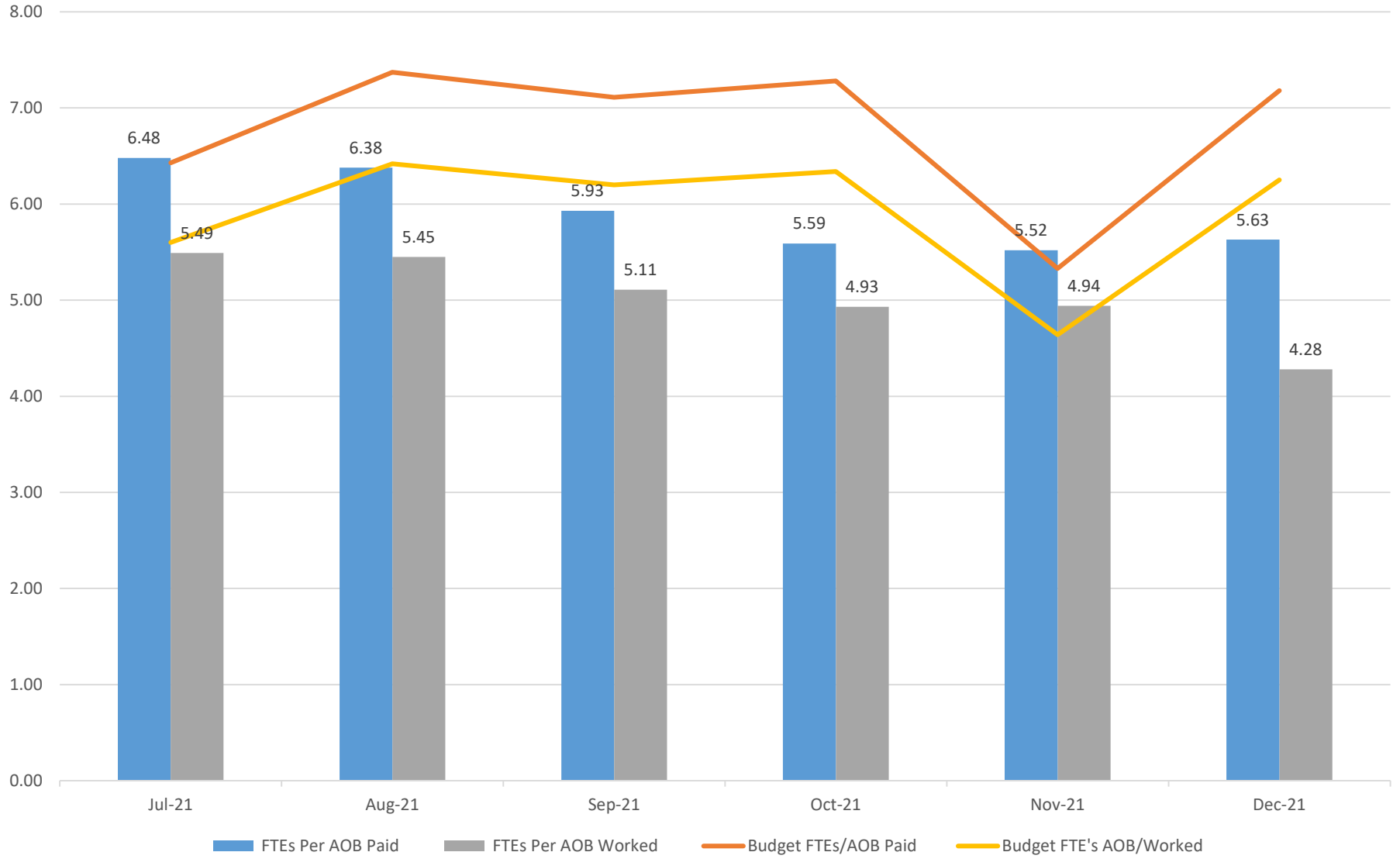
Clinic Visits



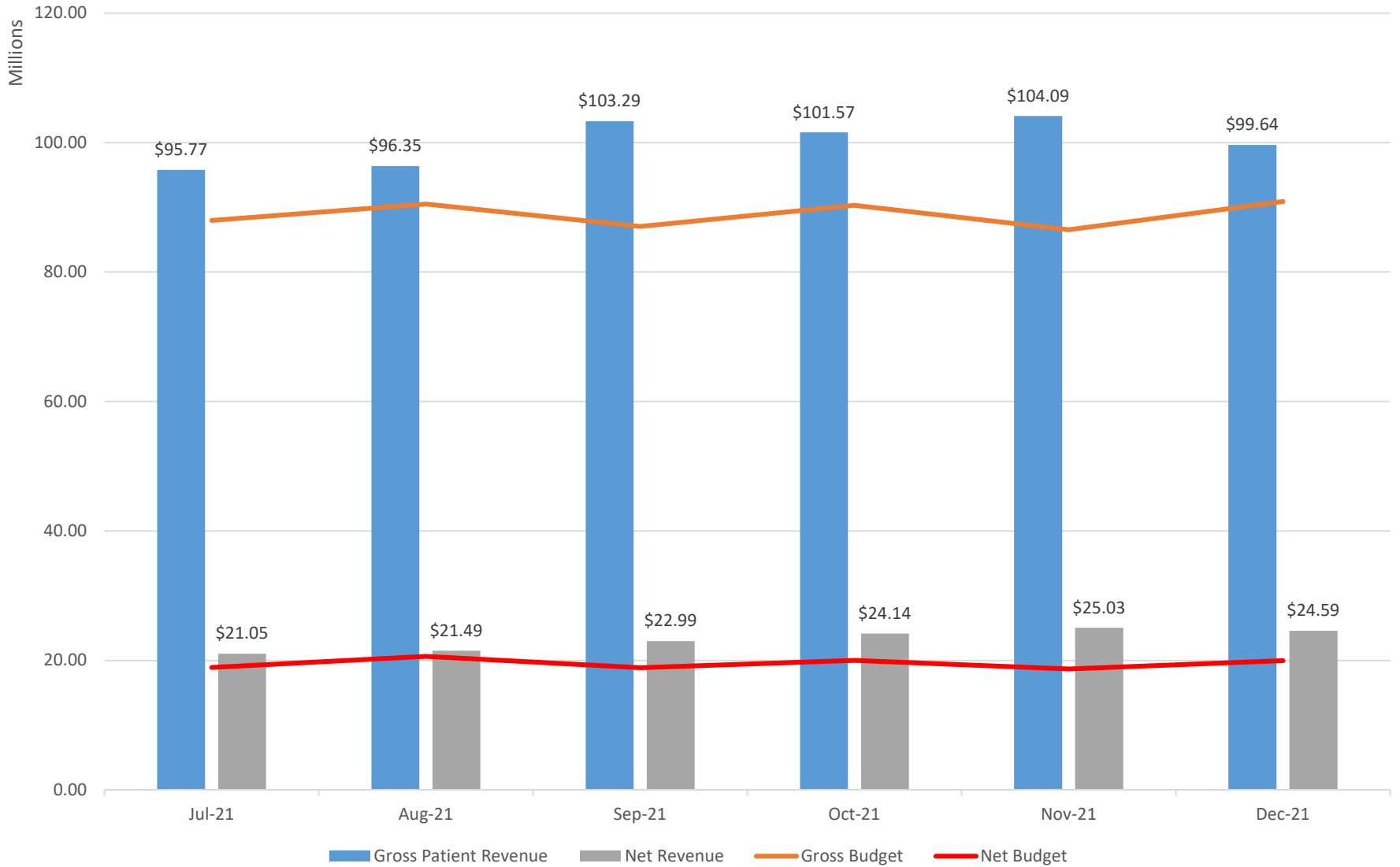
Productivity



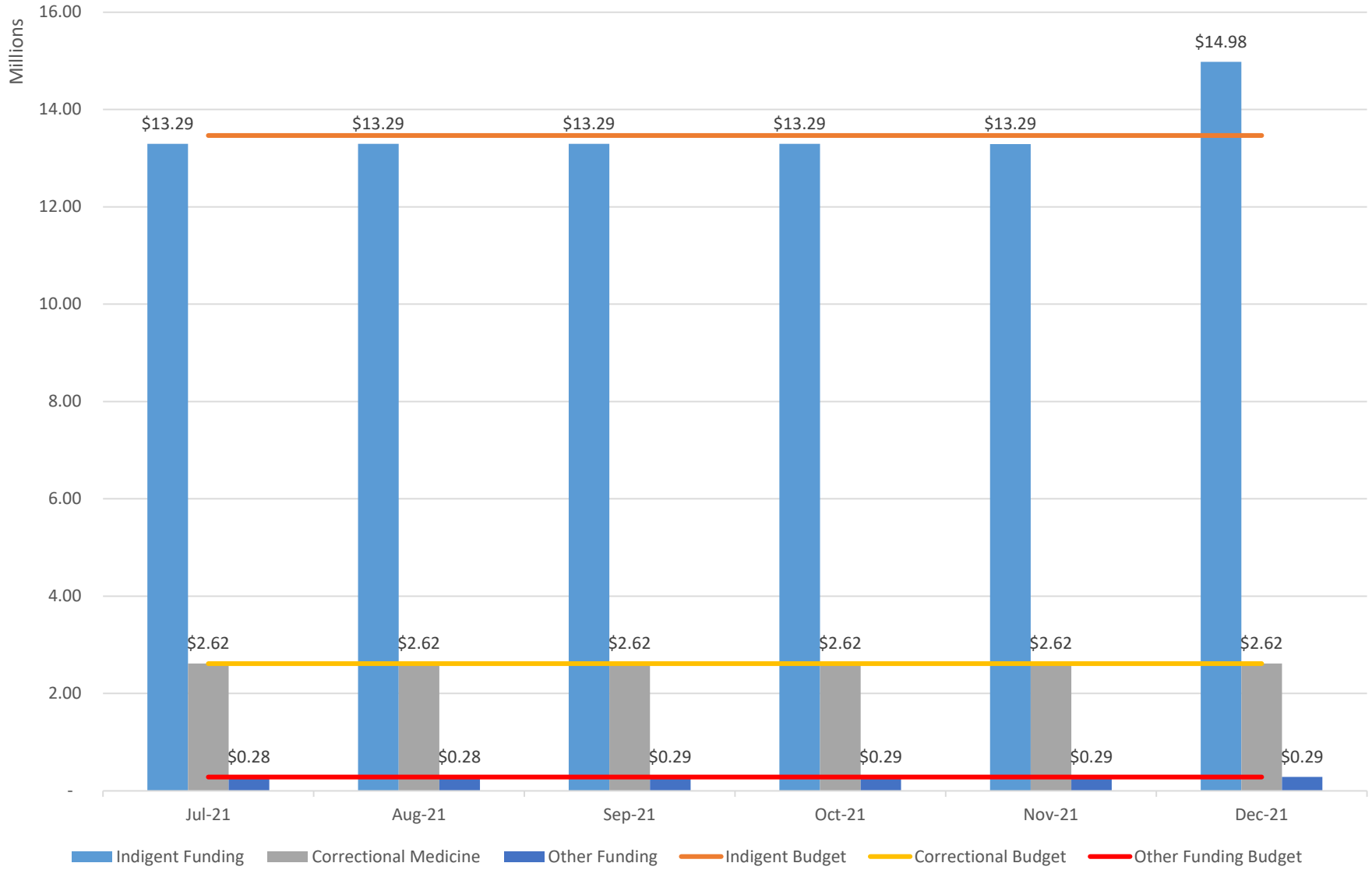
Labor Metrics



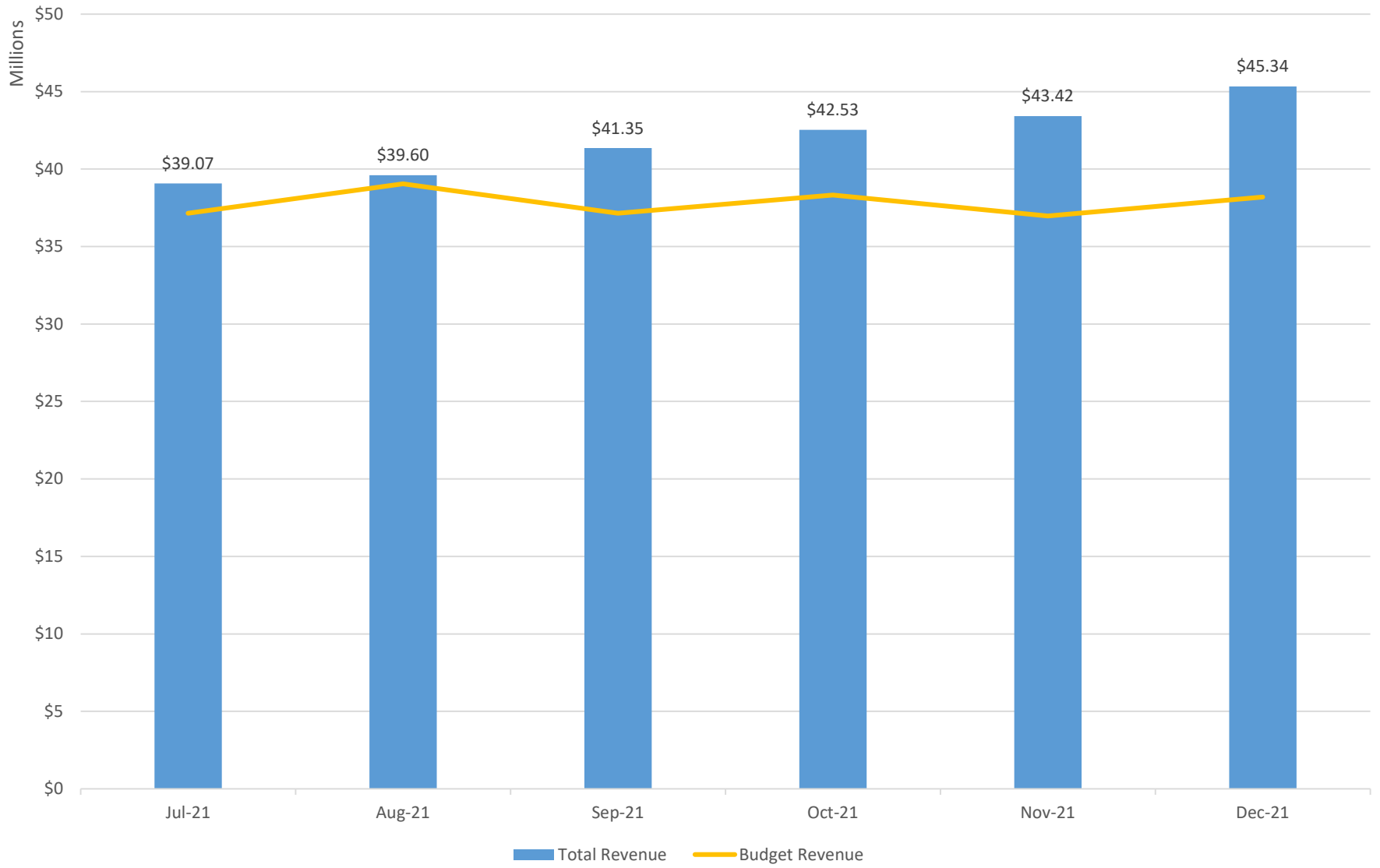
Patient Revenue



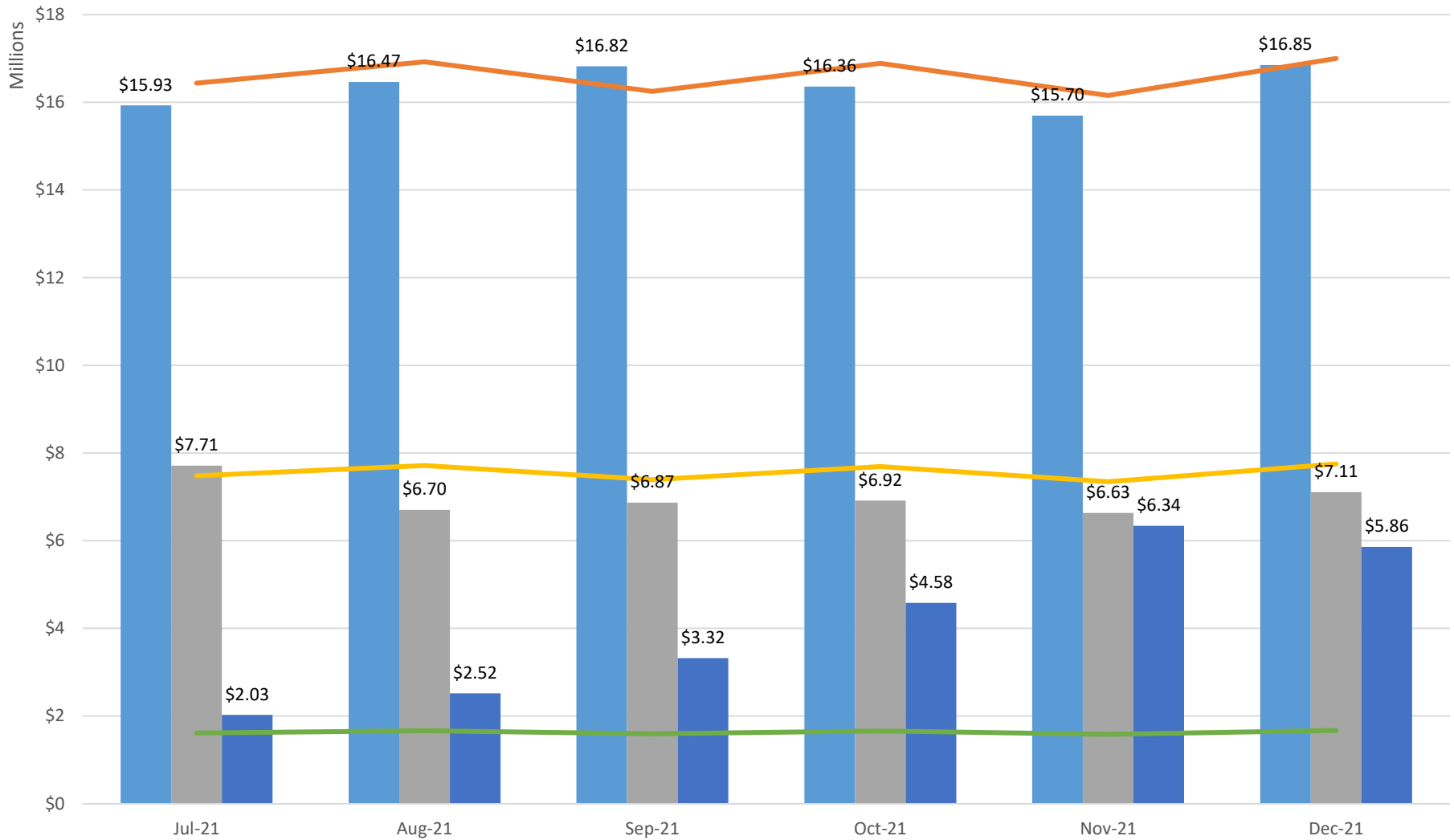
Indigent & Correctional Revenue



Total Revenue

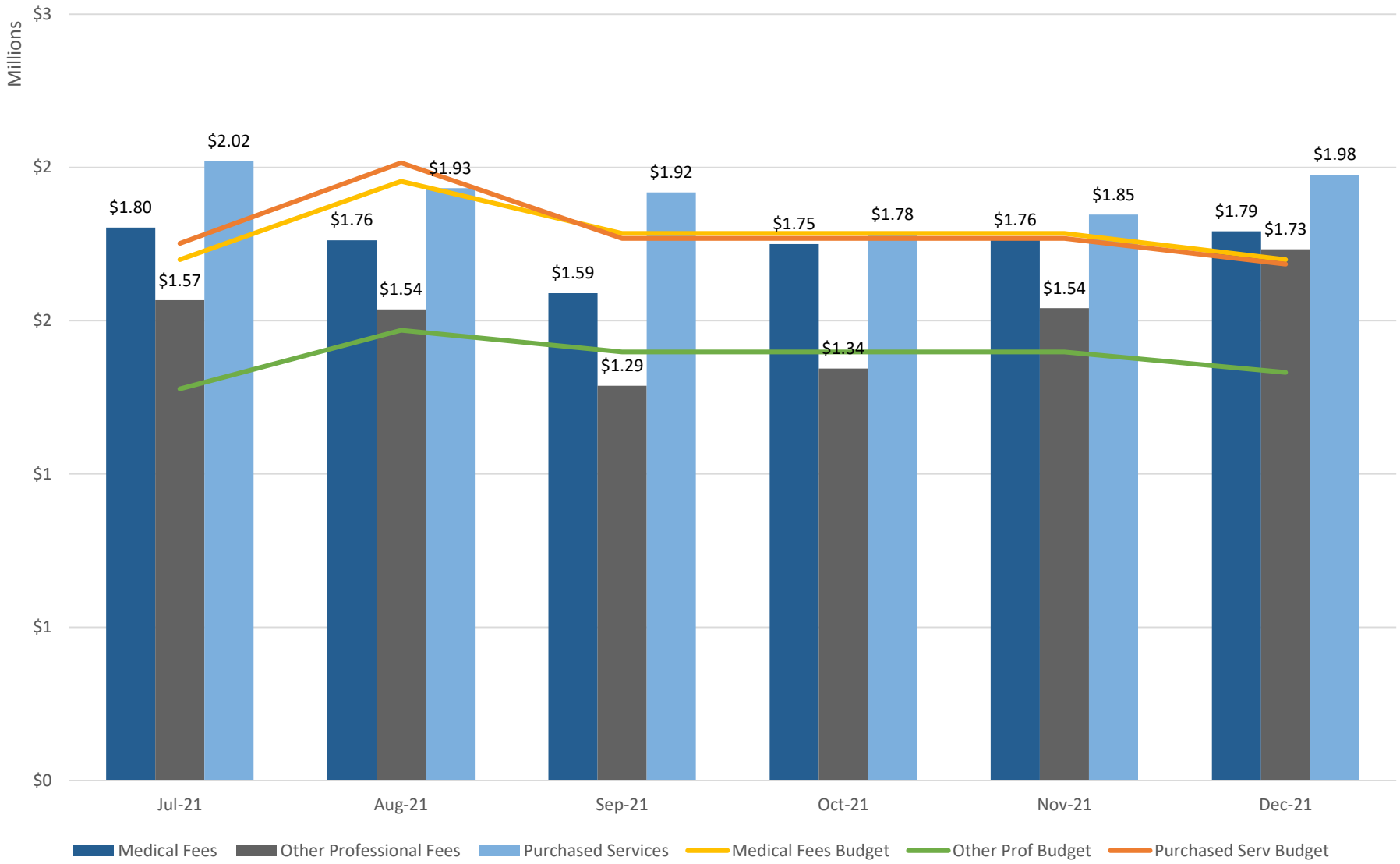


Expenses

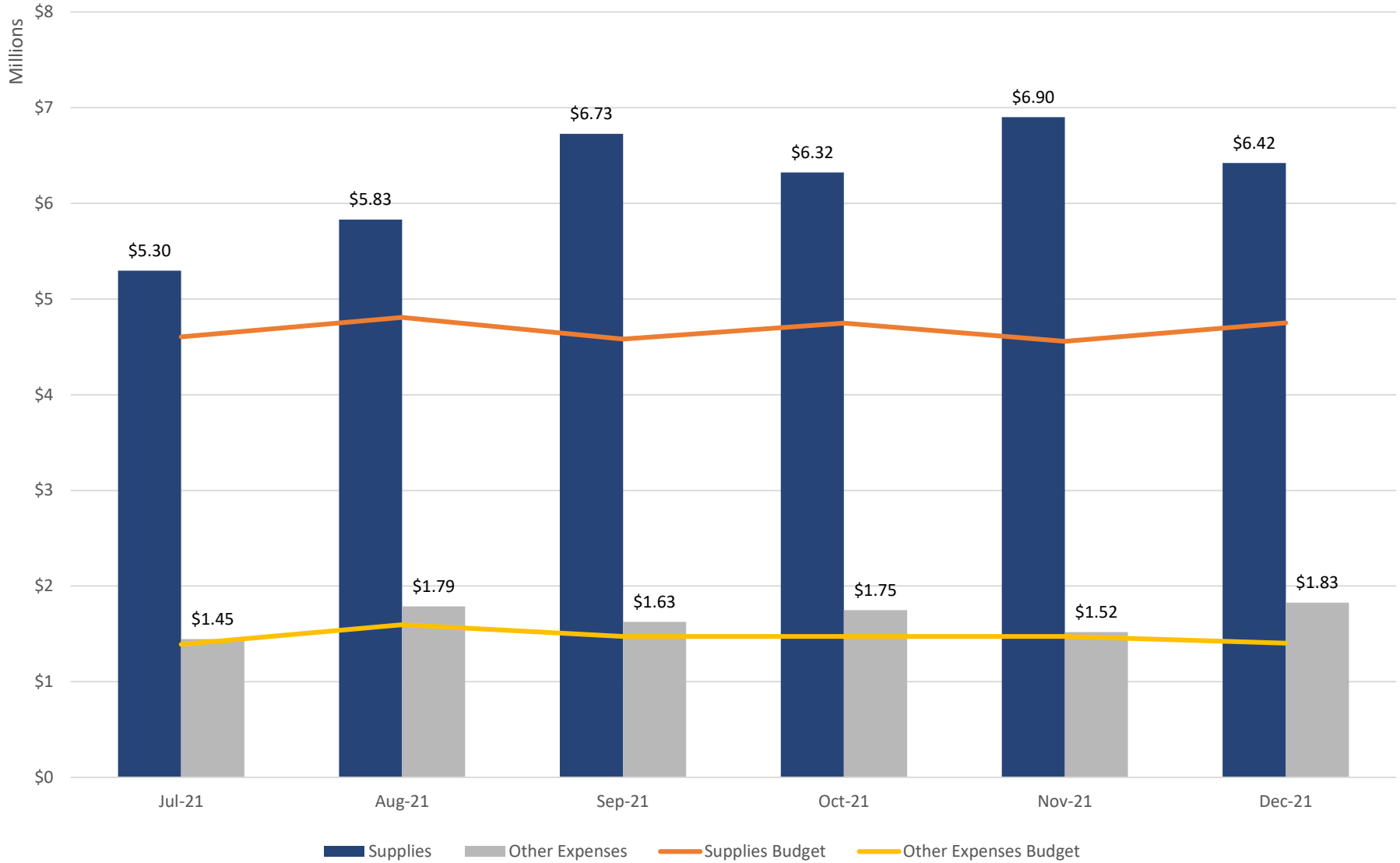


■ Salaries
 ■ Employee Benefits
 ■ Registry
 — Salaries Budget
 — Benefits Budget
 — Registry Budget

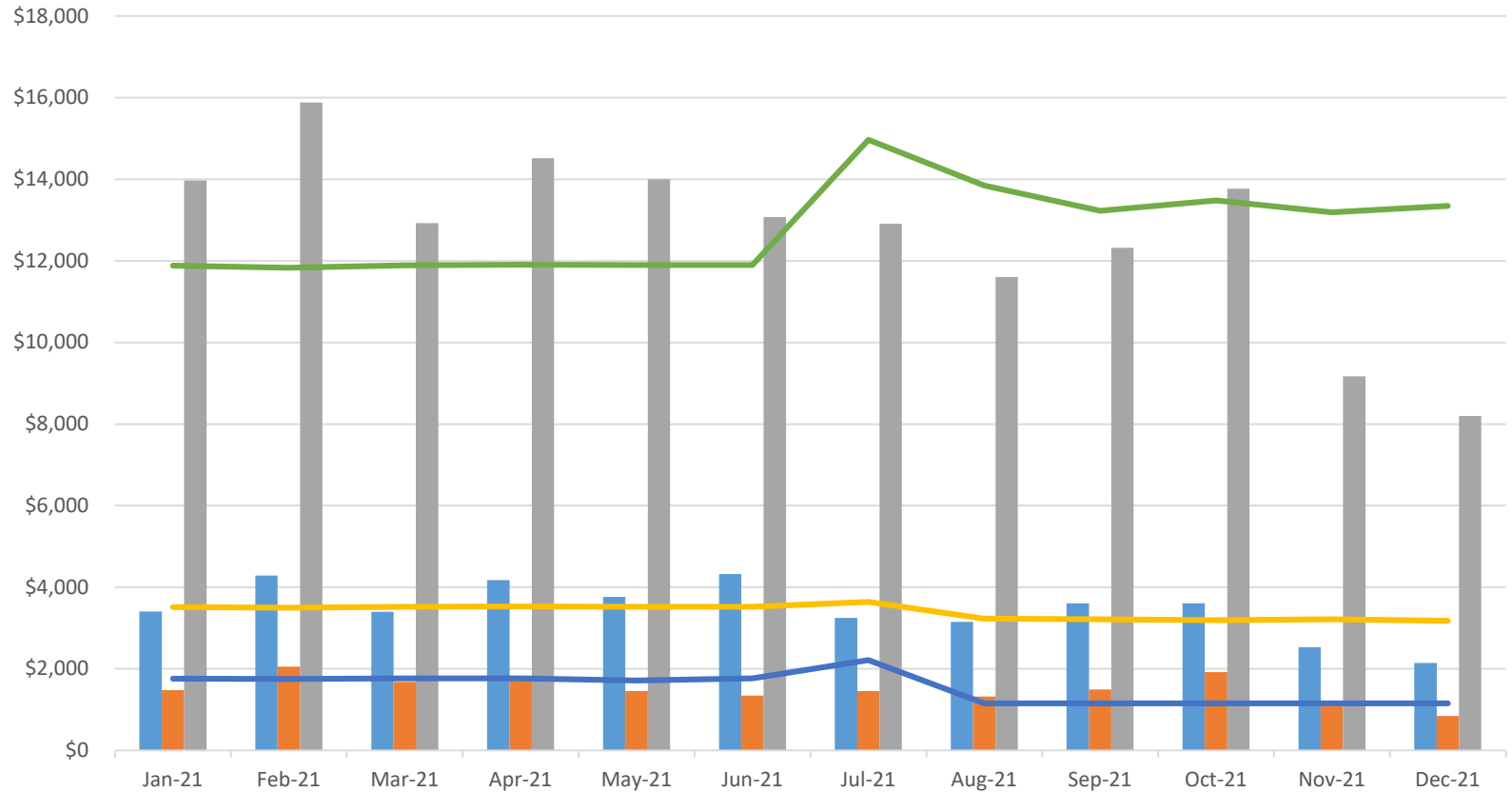
Expenses



Expenses

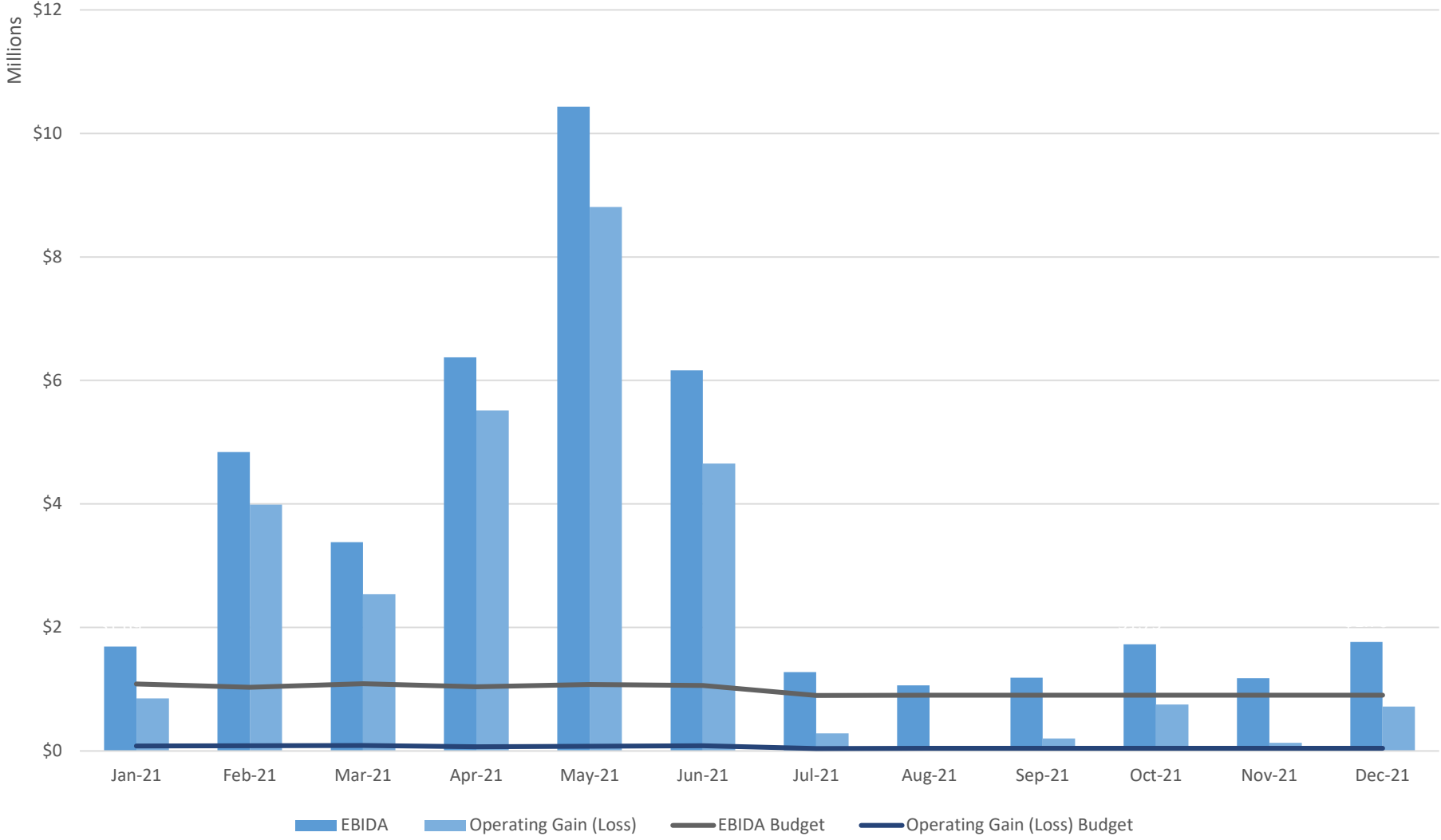


Operating Metrics

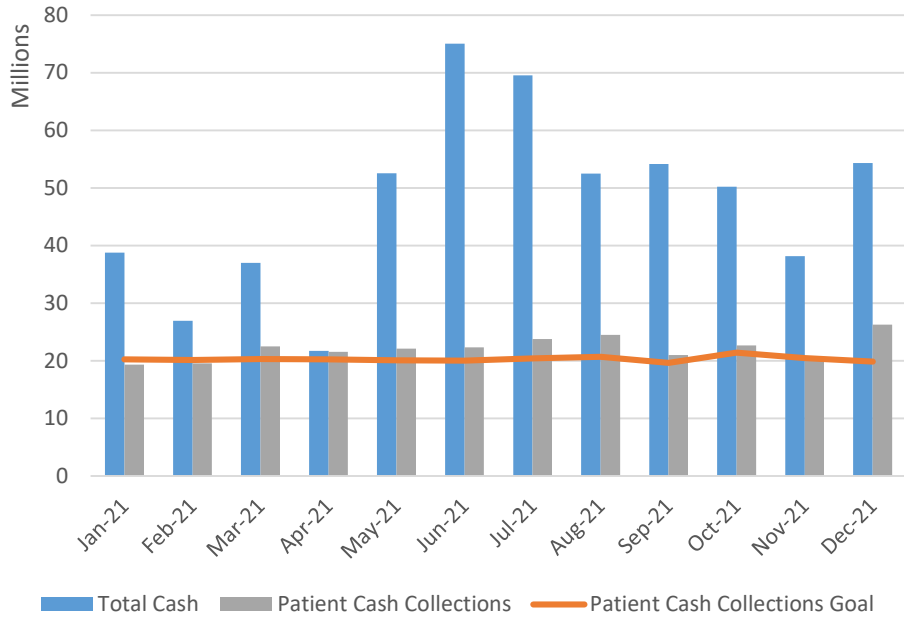


	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21
■ Supply Expense per AA	\$3,408	\$4,285	\$3,396	\$4,176	\$3,765	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528	\$2,141
■ Pharm Cost per AA	\$1,481	\$2,050	\$1,678	\$1,809	\$1,458	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081	\$846
■ Net Revenue Per AA	\$13,968	\$15,879	\$12,922	\$14,513	\$13,999	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170	\$8,196
— Budget Supp/AA	\$3,511	\$3,501	\$3,518	\$3,526	\$3,522	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217	\$3,175
— Budget Pharm/AA	\$1,759	\$1,755	\$1,763	\$1,767	\$1,714	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156	\$1,153
— Budget Net Rev/AA	\$11,882	\$11,833	\$11,892	\$11,902	\$11,900	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187	\$13,344

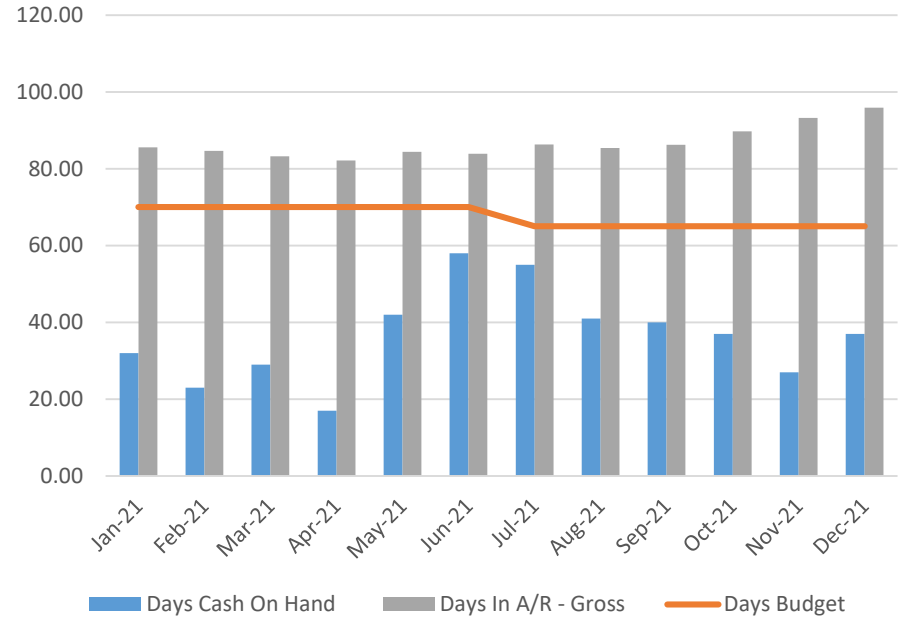
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
December 31, 2021

	OCTOBER	NOVEMBER	DECEMBER	BUDGET DECEMBER	VARIANCE POS (NEG)	PY DECEMBER
Gross Patient Revenue	\$ 101,572,680	\$ 104,093,541	\$ 99,644,301	\$ 90,887,637	10%	\$ 86,608,737
Contractual Deductions	(77,429,746)	(79,061,114)	(75,056,605)	(70,924,049)	6%	(61,698,362)
Net Revenue	24,142,935	25,032,427	24,587,696	19,963,587	23%	24,910,375
Indigent Funding	13,293,612	13,289,890	14,979,851	13,468,684	11%	35,946,278
Correctional Medicine	2,616,667	2,616,667	2,616,667	2,616,667	0%	2,531,665
County Contribution	285,211	285,211	285,211	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	707,727
Net Patient Revenue	40,338,424	41,224,195	42,469,425	36,331,832	17%	64,381,256
Other Operating Revenue	2,175,678	2,187,437	2,861,169	1,575,338	82%	2,673,406
Other Non-Operating Revenue	12,864	11,642	6,574	283,903	(98%)	(1,229,818)
Total Revenue	42,526,966	43,423,275	45,337,169	38,191,074	19%	65,824,844
Expenses						
Salaries	16,356,020	15,697,803	16,852,720	16,997,803	(1%)	16,736,777
Employee Benefits	6,916,640	6,634,978	7,108,983	7,747,792	(8%)	9,791,275
Registry	4,582,330	6,341,786	5,861,624	1,672,634	250%	1,352,040
Medical Fees	1,749,796	1,762,687	1,791,931	1,699,575	5%	1,691,974
Other Professional Fees	1,343,747	1,540,595	1,733,253	1,331,140	30%	1,365,864
Supplies	6,322,164	6,901,408	6,421,341	4,750,595	35%	5,844,300
Purchased Services	1,781,505	1,846,351	1,976,158	1,684,113	17%	1,915,140
Other Expenses	1,748,770	1,519,325	1,827,048	1,404,279	30%	3,399,859
Operating Expenses	40,800,971	42,244,934	43,573,058	37,287,931	17%	42,097,228
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,725,995	\$ 1,178,341	\$ 1,764,111	\$ 903,143	95%	\$ 23,727,616
EBIDA Margin	4%	3%	4%	2%	65%	36%
Interest	84,468	84,329	84,746	138,079	(39%)	224,105
Depreciation	665,319	665,749	661,883	466,931	42%	471,695
Amortization	224,132	296,755	296,755	254,168	17%	256,257
Total Expenses	41,774,890	43,291,767	44,616,442	38,147,109	17%	43,049,286
Operating Gain (Loss)	\$ 752,076	\$ 131,508	\$ 720,727	\$ 43,965	1,539%	\$ 22,775,557
Operating Margin	1.8%	0.3%	1.6%	0.12%	1,281%	34.60%

KERN MEDICAL
Year-to-Date: Revenue & Expense
December 31, 2021

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 600,718,709	\$ 533,247,883	13%	\$ 513,627,871	17%
Contractual Deductions	(461,423,275)	(416,171,330)	11%	(389,230,847)	19%
Net Revenue	139,295,434	117,076,553	19%	124,397,024	
Indigent Funding	81,444,189	80,812,107	1%	99,486,946	(18%)
Correctional Medicine	15,700,000	15,700,000	0%	15,505,171	1.3%
County Contribution	1,711,265	1,697,362	1%	1,711,305	(0.002%)
Incentive Funding	0	0	0%	2,763,580	(100%)
Net Patient Revenue	238,150,888	215,286,022	11%	243,864,025	(2%)
Other Operating Revenue	13,079,879	9,849,000	33%	9,566,276	37%
Other Non-Operating Revenue	75,043	1,685,102	(96%)	1,028,168	(93%)
Total Revenue	251,305,811	226,820,124	11%	254,458,470	(1%)
Expenses					
Salaries	98,120,587	99,651,224	(2%)	94,378,892	4%
Employee Benefits	41,943,541	45,367,128	(8%)	44,920,878	(7%)
Registry	24,649,760	9,794,091	152%	9,464,021	160%
Medical Fees	10,460,245	10,707,322	(2%)	10,211,418	2%
Other Professional Fees	9,008,434	8,270,583	9%	8,198,820	10%
Supplies	37,497,612	28,052,292	34%	33,738,209	11%
Purchased Services	11,474,993	10,755,625	7%	11,605,758	(1.13%)
Other Expenses	9,954,891	8,810,522	13%	11,782,926	(16%)
Operating Expenses	243,110,063	221,408,788	10%	224,300,922	8%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 8,195,748	\$ 5,411,336	51%	\$ 30,157,548	(73%)
EBIDA Margin	3%	2%	37%	12%	(72%)
Interest	507,173	828,476	(39%)	828,476	(39%)
Depreciation	4,030,272	2,801,584	44%	2,824,610	43%
Amortization	1,490,040	1,525,011	(2.3%)	1,537,545	(3%)
Total Expenses	249,137,548	226,563,858	10%	229,491,553	9%
Operating Gain (Loss)	\$ 2,168,263	\$ 256,266	746%	\$ 24,966,916	(91%)
Operating Margin	1%	0.1%	664%	10%	(91%)

**KERN MEDICAL
BALANCE SHEET**

	DECEMBER 2021	DECEMBER 2020
ASSETS:		
<i>Total Cash</i>	\$ 54,306,426	\$ 51,377,258
Patient Receivables Subtotal	318,251,910	242,105,078
Contractual Subtotal	(270,551,361)	(195,595,530)
<i>Net Patient Receivable</i>	47,700,549	46,509,548
Total Indigent Receivable	140,604,286	126,418,946
Total Other Receivable	12,813,253	4,634,040
Total Prepaid Expenses	5,214,311	3,578,871
Total Inventory	4,425,672	5,976,114
<i>Total Current Assets</i>	265,064,497	238,494,777
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	222,768,777	194,708,284
Total Construction in Progress	2,662,680	22,066,126
<i>Total Property, Plant & Equipment</i>	225,431,456	216,774,410
Total Accumulated Depr & Amortization	(130,903,122)	(120,043,589)
<i>Net Property, Plant, and Equipment</i>	94,528,334	96,730,822
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 486,883,686	\$ 423,089,060

**KERN MEDICAL
BALANCE SHEET**

	DECEMBER 2021	DECEMBER 2020
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 20,029,838	\$ 11,710,547
Total Accrued Compensation	30,238,519	33,493,689
Total Due Government Agencies	15,751,112	37,635,965
Total Other Accrued Liabilities	49,494,839	43,180,672
<i>Total Current Liabilities</i>	115,514,308	126,020,874
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	64,286,919	96,456,658
<i>Total Long-Term Liabilities</i>	445,439,730	418,560,455
<i>Total Liabilities</i>	560,954,038	544,581,329
Fund Balance	36,714,022	36,714,022
Retained Earnings	(110,784,373)	(158,206,290)
<i>Total Fund Balance</i>	(74,070,352)	(121,492,269)
<i>Total Liabilities and Fund Balance</i>	\$ 486,883,686	\$ 423,089,060



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 16, 2022

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on February 16, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 X Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on February 16, 2022, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 X Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on February 16, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

 X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Marcel Monji v. County
of Kern, et al., United States District Court, Eastern District of California, Case No.
1:19-cv-01526-JLT-BAK (SKO) –