



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, March 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 Kern Medical Center employees from Employee Health, Human Resources and Information Systems for their outstanding dedication and service throughout the COVID-19 pandemic –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) 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

- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on February 16, 2022 and special meeting on February 22, 2022 –
APPROVE

CA

- 6) Proposed Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology from April 1, 2022 through March 31, 2024, in an amount not to exceed \$800,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Amendment No. 1 to Agreement 029-2021 with Sepideh Babaei, M.D., a contract employee, for professional medical services in the Department of Radiology for the period July 7, 2021 through July 6, 2024, increasing the per diem rates for shifts worked in excess of the number of contracted shifts –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Amendment No. 2 to Teleradiology Service Agreement 014-2020 with Virtual Radiologic Professionals of California, P.A., an independent contractor, for teleradiology services in the Department of Radiology for the period April 13, 2020 through April 12, 2022, extending the term from April 13, 2022 through April 12, 2024, and increasing the maximum payable by \$1,600,000, from \$1,128,000 to \$2,728,000, to cover the extended term – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Amendment No. 1 to Agreement 017-2019 with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology for the period June 8, 2019 through June 7, 2022, increasing the per diem rates for shifts worked in excess of the number of contracted shifts, effective March 16, 2022, and increasing the maximum payable by \$450,000, from \$1,750,000 to \$2,200,000, to cover the term – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology from June 8, 2022 through June 7, 2027, in an amount not to exceed \$4,050,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Service Order Form with Therapeutic Research Center, an independent contractor, containing nonstandard terms and conditions, for industry specific continuing education resources for the Pharmacy Department from April 1, 2022 through March 31, 2025, in an amount not to exceed \$11,500 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed retroactive Sales Order OPT-0330879 with Cerner Corporation, an independent contractor, for purchase of additional electronic prescription licenses from January 28, 2022 through January 27, 2025, in an amount not to exceed \$41,904 – APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 13) Proposed Sales Order OPT-0287324 with Cerner Corporation, an independent contractor, containing nonstandard terms, for annual HemaTrax software maintenance for Blood Bank product labels from March 16, 2022 through March 15, 2023, in an amount not to exceed \$1,500 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Sales Order OPT-0280142 with Cerner Corporation, an independent contractor, for services to incorporate Butterfly Point of Care ultrasound images into the electronic health record, effective March 16, 2022, in an amount not to exceed \$31,801 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- CA
15) Proposed Amendment No. 1 to Lease Agreement 09217 with Truxtun Land Company, LLC, an independent contractor, containing nonstandard terms and conditions, for leased space located at 5101 Office Park Drive, Bakersfield, California, for the period April 1, 2017 through March 31, 2022, extending the term for a period of five years from April 1, 2022 through March 31, 2027, and increasing the maximum payable by \$1,199,227, from \$1,150,414 to \$2,349,641, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
16) Proposed Amendment No. 4 to Agreement 07020 with American Incorporated, an independent contractor, for maintenance and repair of HVAC units and air handlers for the period December 2, 2019 through December 1, 2022, increasing the maximum payable by \$550,000, from \$450,000 to \$1,000,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
17) Proposed Purchase Order Agreement with GE Healthcare business, an independent contractor, for the purchase and installation of 14 Giraffe OmniBed Carestations in the neonatal intensive care unit, effective March 16, 2022, in an amount not to exceed \$373,420 plus applicable taxes –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
18) Proposed Purchase Order and Service Agreement with Laborie Medical Technologies, Corp., an independent contractor, for the purchase and maintenance of a urodynamic system for critical bladder study testing from March 16, 2022 through March 15, 2027, in an amount not to exceed \$40,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
19) Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company from March 31, 2022 through March 31, 2023, with option to finance the earthquake premium through IPFS Corporation of California, in an amount not to exceed \$634,650 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN THE PREMIUM FINANCE AGREEMENT AND CERTIFICATE OF INCUMBENCY
- CA
20) Proposed retroactive RetinaVue Network End User License Agreement with Welch Allyn, Inc., an independent contractor, for software licenses to access diabetic retinopathy imaging from January 19, 2022 through December 31, 2027 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN
- CA
21) Proposed Agreement with Randolph Fok, M.D., an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from April 1, 2022 through March 31, 2024, in an amount not to exceed \$765,000 –
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 February 28, 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) 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 –
- 27) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
(Government Code Section 54956.9(d)(4)) Number of cases: One (1) Based on facts and circumstances, the Board of Governors has decided to initiate or is deciding whether to initiate litigation –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, APRIL 20, 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.

24) CLAIMS AND LAWSUITS FILED AS OF FEBRUARY 28, 2021 –
RECEIVE AND FILE

- A) Claim in the matter of Leonor Sanchez



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

March 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 March, 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 April 20, 2022.

6. This Board shall reevaluate the above findings on April 20, 2022, and every 30 days thereafter.

7. Resolution No. 2022-003, adopted by the Board of Governors on February 16, 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, February 16, 2022

11:30 A.M.

BOARD RECONVENED

Directors Present: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Directors Absent: None

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!**
NO ONE HEARD

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Kern Medical Center employees from the Whole Person Care program –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; CHAIRMAN BIGLER THANKED THE 14 EMPLOYEES FOR THEIR SERVICE
- 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 –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; CHIEF EXECUTIVE OFFICER SCOTT THYGERSON, KAREN BARNES, CHAIRMAN BIGLER, DIRECTOR BERJIS AND RUSSELL JUDD HEARD

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 2022-003
Pelz-McLaughlin: All Ayes

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on January 19, 2022 –
APPROVED
Pelz-McLaughlin: All Ayes

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 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 015-2022
Pelz-McLaughlin: All Ayes

CA

- 8) Proposed retroactive Side Letter of Agreement with Service Employees International Union, Local 521, to implement minimum wage increases, effective January 1, 2022 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 016-2022
Pelz-McLaughlin: All Ayes

- 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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 017-2022

Brar-McLaughlin: All Ayes

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 AGREEMENT 018-2022

Pelz-McLaughlin: All Ayes

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 –

APPROVED; ADOPTED RESOLUTION 2022-004; AUTHORIZED AND DIRECTED 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

Pelz-McLaughlin: All Ayes

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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 019-2022

Pelz-McLaughlin: All Ayes

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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 020-2022

Pelz-McLaughlin: All Ayes

- 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 –

APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 021-2022

Pelz-Berjis: All Ayes

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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 022-2022

Pelz-McLaughlin: All Ayes

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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 023-2022

Pelz-McLaughlin: All Ayes

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 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 024-2022

Pelz-McLaughlin: All Ayes

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 –

MADE FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 025-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$467,504

Pelz-McLaughlin: All Ayes

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 –
MADE FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 026-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$567,143
Pelz-McLaughlin: All Ayes

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 027-2022
Pelz-McLaughlin: All Ayes

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 028-2022
Pelz-McLaughlin: All Ayes

- 22) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED
Alsop-Berjis: All Ayes

NOTE: DIRECTOR BRAR LEFT THE MEETING PRIOR TO THE DISCUSSION AND VOTE ON ITEM 23

CA

- 23) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Pelz-Berjis: 6 Ayes; 1 Absent - Brar

- 24) Claims and Lawsuits Filed as of January 31, 2022 –
RECEIVED AND FILED
Pelz-McLaughlin: All Ayes

ADJOURNED TO CLOSED SESSION
Berjis-Alsop

CLOSED SESSION

- 25) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW

NOTE: DIRECTOR KITCHEN LEFT THE MEETING PRIOR TO THE DISCUSSION AND VOTE ON ITEM 26

- 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)) – SEE RESULTS BELOW
- 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) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION
McLaughlin-Pelz

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 25 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR ALSOP, SECOND BY DIRECTOR PELZ; 1 ABSENT - BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, CHANGE IN STAFF STATUS; VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 26 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – 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: 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) – HEARD; NO REPORTABLE ACTION TAKEN

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

/s/ Mona A. Allen
Authority Board Coordinator

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



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Special Meeting
Tuesday, February 22, 2022

11:30 A.M.

BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Roll Call: 5 Present; 2 Absent - Alsop, McLaughlin

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.

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!**
NO ONE HEARD

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

NOTE: DIRECTOR ALSOP JOINED THE MEETING PRIOR TO THE VOTE ON ITEM 3

ITEMS FOR CONSIDERATION

- 3) Proposed Third Amendment to Credit Agreement 011-2019 with PNC Bank, National Association (PNC Bank), an independent contractor, containing nonstandard terms and conditions, 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, 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 –
APPROVED; ADOPTED RESOLUTION 2022-005; AUTHORIZED AND DIRECTED 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, SUBSTANTIALLY IN THE FORM PRESENTED TO THIS BOARD, WITH SUCH CHANGES 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
Pelz-Brar: 6 Ayes; 1 Absent - McLaughlin

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

Pelz

/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**

March 16, 2021

SUBJECT: Proposed Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve this Agreement with Eugene H. Roos, D.O., for professional medical services in the Department of Radiology. Dr. Roos will provide remote radiology reading services for Kern Medical.

Dr. Roos has provided radiology services at Kern Medical as an independent contractor since December of 2008. Kern Medical continues to require the services of Dr. Roos to provide scheduled and as-needed coverage for the Department and both parties have agreed to the terms of a new two-year agreement, effective April 1, 2022. Dr. Roos will be compensated based on an hourly rate of \$220 per hour for weekday, weekend and holiday coverage, as assigned by the Department Chair. Kern Medical will bill and collect all professional fees for services provided by Dr. Roos during the term of the agreement.

Therefore, it is recommended that your Board approve the Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology, for the period April 1, 2022, through March 31, 2024, in an amount not to exceed \$800,000 over the two-year term of the agreement, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Eugene H. Roos, D.O.)**

This Agreement for Professional Services (“Agreement”) is made and entered into this _____ day of _____, 2022, between the Kern County Hospital Authority, a local unit of government (“Authority”), and Eugene H. Roos, D.O., a sole proprietor (“Contractor”), whose principal place of business is located at 31562 Wildwood Road, Laguna Beach, California 92651.

**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 owns and operates Kern Medical Center (“KMC”), a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California (the “Premises”), in which is located the Department of Radiology (the “Department”); and

(c) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians employed by Authority, as such services are unavailable from Authority resources, and Contractor agrees to provide such services on the terms and conditions set forth in this Agreement; and

(d) Contractor has special knowledge, training and experience, and is qualified to render such services;

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.** This Agreement shall be effective and the term shall commence as of April 1, 2022 (the “Effective Date”), and shall end March 31, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

2.2 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of his work will be performed and that his operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.5 Qualifications.

2.2.1 Licensure/Board Certification. Contractor shall at all times during the term of this Agreement be duly licensed as a physician and surgeon in the state of California, and certified or eligible for certification by the American Board of Radiology in diagnostic radiology-general.

2.2.2 Medical Staff Status. Contractor shall at all times during the term of this Agreement be a member in good standing of the KMC medical staff with "active" or "courtesy" staff status and hold all clinical privileges on the active or courtesy medical staff appropriate to the discharge of his obligations under this Agreement.

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

2.2.4 Training/Experience. Contractor shall have (i) recent diagnostic radiology experience, (ii) a background to include experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.3 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of his license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.4 Standards of Medical Practice. The standards of medical practice and professional duties of Contractor shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice 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.

2.5 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by Contractor. 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 Contractor will 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.

2.6 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Reading Station Equipment. Authority shall furnish for the use of Contractor such reading station equipment (“Equipment”), as is deemed necessary by KMC in order for Contractor to perform the services set forth in this Agreement at Contractor’s office space located at 28202 Cabot Road, Laguna Niguel, California. Contractor shall not relocate the Equipment without the prior written approval of KMC. KMC shall keep and maintain this Equipment in good order and repair and replace such Equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints. Contractor shall be responsible for installation and maintenance of any required connection to operate the Equipment. Contractor shall arrange with Authority’s assigned primary contact to return the Equipment to KMC upon termination or expiration of this Agreement.

3.5 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by KMC for follow-up action and evaluation of performance.

4. Payment for Services.

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor according to the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Shift Coverage. Authority shall pay Contractor an hourly rate of \$220 per hour for shift coverage, regardless of the number of assigned shifts per month.

4.1.2 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties’ good faith determination of the reasonable fair market value compensation for the services to be provided by Contractor under this Agreement.

4.1.3 Limitations on Compensation. The compensation paid to Contractor is inclusive of accommodations, mileage reimbursement, car rental, meals, and incidental expenses. Except as expressly stated herein, neither Contractor nor Group Physicians

shall receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$800,000 over the two (2) year term of this Agreement.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within sixty (60) days of the date of service or payment will not be made. Payment shall be made to Contractor within thirty (30) days of receipt and approval of each invoice by KMC.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "B," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor 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.

4.6 Managed Care Contracting. Contractor 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 Authority or KMC to participate in any third-party payer arrangements, Contractor shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from Authority and KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by Authority or 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.

5. Access to Books and Records. Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General

of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

6. **Anti-referral Laws.** Contractor acknowledges that he is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

7. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all his activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that Contractor, 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.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good

faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall automatically terminate at the end of such thirty (30) day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor 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.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of his duties described herein that he shall act, and cause his employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and his employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 **Trade Secrets.** The parties acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

15.3 Medical Records. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Contractor, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind (“Documents”), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party’s business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. Conflict of Interest. Contractor 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 or that would otherwise conflict in any manner or degree with the performance of his services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. 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.

17. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

18. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this

Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

19. **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.

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the Office of the Inspector General (“OIG”) or the Government Services Administration (“GSA”); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **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.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor’s failure to comply with this section.

23. **Indemnification and Hold Harmless.** Authority shall assume liability for and indemnify and hold Contractor harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys’ fees and judgments incurred by Contractor or for which Contractor becomes liable, arising out of or related to professional services rendered or which a third party

alleges should have been rendered by Contractor pursuant to this Agreement. Authority's obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Contractor 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 KMC 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 Contractor harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

26. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "C," attached hereto and incorporated herein by this reference.

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

29. **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 Contractor, 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. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

30. **Non-collusion Covenant.** Contractor represents and agrees that he has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

31. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

32. **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 Contractor. 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.

33. **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 Contractor:

Eugene H. Roos, D.O.
31562 Wildwood Road
Laguna Beach, California 92651

Notice to Authority:

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

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including all attachments hereto, 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.

36. **Termination.**

36.1 Termination without Cause. Either party may terminate this Agreement, without cause, upon thirty (30) days' prior written notice to the other party.

36.2 Termination by Authority. Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:

- A) Breach of this Agreement by Contractor where such breach is not cured within 30 calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;

- J) Contractor makes unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

37.1 **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 Contractor after the effective date of the termination, and Contractor shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

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

37.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

39. **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.

CONTRACTOR

By 
Eugene H. Roos, D.O.

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.Roos.022522

EXHIBIT "A"
DESCRIPTION OF SERVICES
Eugene H. Roos, D.O.

Contractor shall provide services, as assigned by the Department Chair, as follows:

1. Contractor shall provide radiology services on-site at KMC or remotely from an office located 28202 Cabot Road, Laguna Niguel, California, and in accordance with generally accepted professional standards. Contractor will provide professional services for all patients who present to KMC for treatment.
2. Contractor shall perform such administrative and teaching duties and responsibilities, as mutually agreed upon between Contractor and the Department Chair.
3. Contractor shall provide shift coverage Monday through Friday in eight (8) hour or ten (10) hour shifts, as assigned by the Department Chair.
4. Contractor shall provide shift coverage on Saturday and Sunday in eight (8) hour or ten (10) hour shifts or until the work is completed, as assigned by the Department Chair.
5. Contractor shall provide mutually agreed upon call coverage weekday nights from 6:00 p.m. to 8:00 a.m. and Saturday and Sunday, as assigned by the Department Chair. Contractor agrees to carry a pager when on call and respond to KMC within 30 minutes of being called. If assigned call coverage, Contractor will cover one weekend in three. If assigned call coverage, Contractor will cover one in three holidays and no fewer than four per year.
6. Contractor shall provide coverage an average of 15 shifts per months.
7. Contractor shall actively participate in assigned hospital and Department committees.
8. Contractor shall timely complete medical records and work to improve the quality, accuracy, and completeness of his documentation.

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EXHIBIT "B"
IRS FORM W-9

EXHIBIT “C” INSURANCE

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by Authority. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers’ Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor’s written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers’ Compensation and Employers Liability insurance.
- (b) Workers’ Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.

- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work.*
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: **“Agreement for Professional Services.”**
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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

March 16, 2022

SUBJECT: Proposed Amendment No. 1 to Agreement 029-2021 with Sepideh Babaei, M.D., a contract employee, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve Amendment No. 1 to Agreement 029-2021 with Sepideh Babaei, M.D., for professional medical services in the Department of Radiology. Dr. Babaei has been employed full time with Kern Medical since July 7, 2018.

As a provision of this agreement, Dr. Babaei is able to earn additional compensation by working additional days above and beyond her minimum number of shifts. This amendment increases the rate paid per weekday worked in excess of the contracted shifts to \$2,000 and rate paid per weekend worked in excess of the contracted shifts to \$2,200 as previous rates were insufficient to obtain sufficient staffing levels within the department. Due to shortages in staffing and the increased demand for imaging services due to the COVID-19 pandemic, the need for additional shifts worked has increased substantially. There is no proposed increase in the maximum payable under the agreement.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 029-2021 with Sepideh Babaei, M.D., for professional medical services in the Department of Radiology, increasing the per diem rates for shifts worked in excess of the number of contracted shifts, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Sepideh Babaei, 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 Sepideh Babaei, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #029-2021, dated June 16, 2021) (the “Agreement”), for the period July 7, 2021 through July 6, 2024, whereby Physician provides professional medical services in the Department of Radiology 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 March 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 5, Compensation Package, Section 5.2, Additional Shifts, shall be deleted in its entirety and replaced with the following:

“5.2 Additional Shifts. Authority shall pay Physician for additional shifts (excludes nonproductive time²; diagnostic imaging only) as follows:

5.2.1 Weekday Coverage. Physician shall be paid a fixed fee in the amount of \$2,000 for every weekday shift (Monday through Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.2 Weekend Coverage. Physician shall be paid a fixed fee in the amount of \$2,200 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.3 Holiday Coverage. Authority shall pay Physician a per diem rate in the amount of \$2,200 per day for holiday coverage (designated Authority holidays only).

² Nonproductive time is defined to include, without limitation, holidays, education leave, vacation, and sick leave.

5.2.4 Taxes. All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.”

2. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
3. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
4. 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.
5. Except as provided herein, all other terms, conditions and covenants of the Agreement shall remain in full force and effect.

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

PHYSICIAN

By _____
Sepideh Babaei, 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.Babaei.030422



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

March 16, 2022

Subject: Proposed Amendment No. 2 to Agreement 014-2020 for Teleradiology Services with Virtual Radiologic Professionals of California, P.A.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

On April 15, 2020, your Board approved the Teleradiology Services Agreement for remote radiology services for after-hours preliminary interpretation of radiologic images for the period of April 13, 2020 to April 12, 2021 with a one (1) year auto renewal period. On January 19, 2022, your Board approved Amendment No. 1 to this Agreement which increased the maximum payable by \$218,000 from \$910,000 to \$1,128,000, consistent with the increase of imaging volumes seen over the past year, and to cover the renewal term.

Amendment No. 2, effective April 13, 2022, will extend the term of the agreement through April 12, 2024 and will increase the total maximum payable by \$1,600,000 from \$1,128,000 to \$2,728,000, over the four-year term.

Amendment No. 2 contains nonstandard terms and cannot be approved as to form by Counsel due to its elimination of the ability to terminate the Agreement without cause. 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 Amendment No. 2, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the proposed Amendment No. 2 to the Teleradiology Services Agreement with Virtual Radiologic Professionals of California, P.A., effective April 13, 2022, extending the term two (2) years from April 12, 2022 to April 12, 2024, and increasing the total maximum payable by \$1,600,000 from \$1,128,000 to \$2,728,000, to cover the extended term, and authorize the Chairman to sign.

Contract Amendment
VIRTUAL RADIOLOGIC PROFESSIONALS OF CALIFORNIA, P.A.
and
KERN COUNTY HOSPITAL AUTHORITY (CA)

Second Amendment to April 13, 2020 Teleradiology Services Agreement (the Agreement)

Virtual Radiologic Corporation (**vRad**) and Kern Medical Hospital Authority (**Client**), hereby agree to the following changes to the Agreement:

(1) Sections 8.1 and 8.2 are deleted and replaced with the following:

8.1 Initial and Renewal Terms. This Agreement has an initial term of four (4) years from the Effective Date of April 13, 2020 to April 12, 2024.

8.2 Intentionally left blank.

(2) Section 8.5 is deleted and replaced with the following:

8.5 Termination Due to Change in Law. If any Change of Law results in an Adverse Consequence, the parties shall have twenty (20) days within which to renegotiate reasonable revisions to the Agreement to the minimum degree necessary to enable the Agreement, as revised, to fulfill, the maximum extent possible, the legitimate expectations of the parties. If the parties cannot agree to such revisions within such 20-day period, then either party may terminate the Agreement on ten (10) days written notice to the other party. **Change of Law** means (i) any new legislation enacted by the federal or any state government (ii) any new rule, regulation, guideline, requirement, prohibition, or interpretation issued or promulgated by any governmental agency, third-party payor, Client facility or medical staff; (iii) any judicial or administrative order or decree; (iv) any inquiry or investigation of or related to the parties conducted or made by any governmental agency. **Adverse Consequence** means any material prohibition, restriction, limitation or other material adverse effect on a party's rights or obligations hereunder, or a physician's rights or obligations, that frustrates, or can reasonably be expected to frustrate, the purpose of the Agreement or otherwise makes it desirable to restructure the relationship established hereunder.

(3) Section 16 is deleted and replaced with the following:

16. Maximum Payable. The maximum payable under this Agreement shall not exceed \$2,728,000 for the four (4) year term.

(4) Schedule A, Coverage Periods table is deleted and replaced with the following:

Covered Periods (All times Pacific Time)

Shift	Days		Covered Period
Weekday	Monday-Friday		5 PM -7 PM
Weeknights	Monday-Friday		7 PM – 8 AM
Weekends	Saturday-Sunday		8 AM – 8 AM (24 hours)
Holidays	New Year’s Eve and *New Year’s Day	December 31 through January 1	M- F 5 PM – 8 AM SA - SU 8 AM – 8 AM (24 hours)
	Memorial Day Weekend	Friday preceding Memorial Day through Memorial Day	
	*Independence Day	July 4	
	Labor Day Weekend	Friday preceding Labor Day through Labor Day	
	Thanksgiving Weekend	Thanksgiving Day through Sunday	
	Christmas Eve and *Christmas Day	December 24, 25	
	*If the legal holiday falls on a Saturday, the Holiday includes the preceding Friday. If the legal holiday falls on a Sunday, the Holiday includes the following Monday.		

(3) Effective 7:00 AM, Pacific Time, May 1 2022, Schedule B is deleted and replaced with the following:

Schedule B—Compensation Schedule

Client’s monthly invoice for Interpretations will equal

- (a) \$36,591 (the **Monthly Minimum**) or
- (b) the total fees for Studies Interpreted, whichever is greater.

Interpretations requested during Holiday Covered Period will be charged a 15% premium over the Weeknight/Weekend rate shown.

Preliminary Interpretations – Fee per Study

Study Type (CPT® Codes)	Weekday Rate	Weeknight/ Weekend Rate	Approx. Monthly Study Demand	Anticipated % of Monthly Study Volume
Computed Tomography (CT) – General	\$35.00	\$40.50	674	56%
CT - Abdomen/Pelvis (74176-74178)	\$52.50	\$60.75	263	22%
CT Angiography (CTA) - General (Head, Neck, Body)¹ (70496, 70498, 71275, 74175, 72191, 73206, 73706)	\$60.00	\$70.00	119	10%
CTA - Abdomen/Pelvis¹ (74174)	\$90.00	\$105.00	9	1%
CTA – Abdomen Aorta and Bilateral Lower¹ Extremity Run Off (75635)	\$90.00	\$106.00	<1	<1%
Magnetic Resonance (MR)- General (multiple CPTs, excludes Breast and MR Brain for perfusion)	\$55.00	\$65.00	41	3%
MR Angiography, MR Venography - General (multiple CPTs)	\$55.00	\$65.00	3	<1%
Nuclear Medicine - General (other than PT or PT/CT) (multiple CPTs)	\$40.00	\$46.00	<1	<1%
Ultrasound (US) - General (multiple CPTs, excludes Breast)	\$35.00	\$40.00	97	8%
X-Ray- General (excludes Breast)	\$14.00	\$16.00	2	<1%

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¹ Client or Facility, as applicable, will provide vRad with three-dimensional rendered reconstructions per ACR and CMS guidance, and shall provide any additional post-processed images reasonably requested by the Physician (e.g., maximum intensity pixels). 3D data must be compatible with standard DICOM-compliant devices including PACS systems and 3D Workstations. Multi-planar reconstructions are not acceptable for CTAs. All 3D images must be stored and made available consistent with CMS billing requirements. If Client requests vRad provide post-processing, the Reporting Time will increase by approximately 4 hours and an additional \$150 fee applies.



Rolling 7-day demand will be 285 Studies requiring Interpretation (the **Contracted Studies**). If the rolling 7-day demand exceeds 110% of the Contracted Studies, invoice may include 25% premium on all transactions above number of Contracted Studies, until the rolling 7-day demand is below 110% of Contracted Studies. On the anniversary of the Effective Date each year, vRad will re-establish the number of Contracted Studies based on the prior 12 months average weekly demand.

End of Schedule B

Effective with this executed amendment, vRad hereby rescinds its December 20, 2021 notice of termination.

This amendment is effective April 12, 2022.

The terms of the Agreement remain otherwise unchanged. The parties acknowledge there are no other representations or understandings concerning the parties' rights and duties that are not reflected in the Agreement. An encrypted digital signature or a signature transmitted by facsimile or PDF shall be deemed a valid, original signature. This amendment is not valid unless it is signed by all entities below and delivered to vRad.

Virtual Radiologic Professionals of California, P.A.

Kern County Hospital Authority

Signed _____

Signed _____

By Ryan Check—Co-Secretary

By Russell Bigler, Chairman, Board of Governors

Date _____

Date _____

Approved as to form:

Signed _____

By Gerald Fitterer—Chief Financial Officer

CDP 07257

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department



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

March 16, 2022

SUBJECT: Proposed Amendment No. 1 to Agreement 017-2019 with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve Amendment No. 1 to Agreement 017-2019 with Antony Minasaghanian, M.D., for professional medical services in the Department of Radiology. Dr. Minasaghanian has been employed full time with Kern Medical since June 8, 2019. The term of his current agreement expires June 7, 2022, and will be renewed for another three-year term.

As a provision of this agreement, Dr. Minasaghanian is able to earn additional compensation by working additional days above and beyond his minimum number of shifts. This amendment increases the rate paid per weekday worked in excess of the contracted shifts to \$2,000 and rate paid per weekend worked in excess of the contracted shifts to \$2,200 as previous rates were insufficient to obtain sufficient staffing levels within the department. Due to shortages in staffing and the increased demand for imaging services due to the COVID-19 pandemic, the number of additional shifts worked has exceeded the original estimate and requires increasing the maximum payable to provide for this additional work.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 017-2019 with Antony Minasaghanian, M.D., for professional medical services in the Department of Radiology, increasing the per diem rates for shifts worked in excess of the number of contracted shifts, increasing the maximum payable by \$450,000, from \$1,750,000 to \$2,200,000, over the three-year term of the agreement, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Antony Minasaghanian, 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 Antony Minasaghanian, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #017-2019, dated March 20, 2019) (the “Agreement”), for the period June 8, 2019 through June 7, 2022, whereby Physician provides professional medical services in the Department of Radiology 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 March 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 5, Compensation Package, Section 5.2, Additional Shifts, shall be deleted in its entirety and replaced with the following:

“5.2 Additional Shifts. Authority shall pay Physician for additional shifts as follows:

5.2.1 Weekday Coverage. Physician shall be paid a fixed fee in the amount of \$2,000 for every weekday shift (Monday through Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.2 Weekend Coverage. Physician shall be paid a fixed fee in the amount of \$2,200 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.3 Holiday Coverage. Authority shall pay Physician a per diem rate in the amount of \$2,200 per day for holiday coverage (designated Authority holidays only).

5.2.4 Taxes. All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.”

2. Section 5, Compensation Package, paragraph 5.6, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.6 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,200,000 over the three-year Initial Term of this Agreement.”

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

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

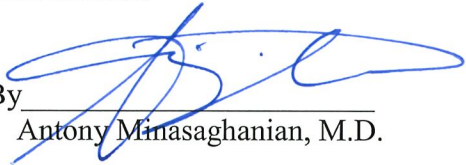
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.

6. 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 
Antony Minasaghian, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____ *TW*
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority



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

March 16, 2022

SUBJECT: Proposed Agreement with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve this Agreement with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology. Dr. Minasaghanian has been employed full time with Kern Medical since June 8, 2019. His current agreement expires June 7, 2022.

The proposed agreement is for a term of five years from June 8, 2022 through June 7, 2027. Dr. Minasaghanian's initial base salary of \$540,000 per year is based on 16 10-hour shifts per month and is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents reasonable fair market value compensation for the services provided, which include teaching and administrative duties and payment for care of KMC patients. He is required to maintain a median level (50th percentile) of worked relative value units in order to earn the base salary. He will receive salary increases of \$10,000 per year beginning June 8, 2025 and June 8, 2026. In addition to his base salary, Dr. Minasaghanian is able to earn additional compensation by working additional days above and beyond his minimum number of shifts. Dr. Minasaghanian also will receive an annual stipend of \$25,000 prorated biweekly for services as the Kern Medical Radiation Safety Officer. Dr. Minasaghanian will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days, CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Antony Minasaghanian, M.D., for professional medical services in the Department of Radiology, for the period June 8, 2022 through June 7, 2027, in an amount not to exceed \$4,050,000 over the five-year term of the agreement, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Antony Minasaghanian, 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 Antony Minasaghanian, 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 Radiology 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 (Agt. #017-2019, dated March 20, 2019), for the period June 8, 2019 through June 7, 2022; and

(e) Physician has met the conditions of paragraph 5.4 as set forth in Agt. #017-2019, which provides in relevant part that Physician shall be paid an annual retention bonus in the amount of \$10,000, less all applicable federal and state taxes and withholdings; and

(f) Each party expressly understands and agrees that Agt. #017-2019 is superseded by this Agreement as of the Commencement Date, with the exception of the retention bonus set forth in paragraph 5.4 of Agt. #017-2019, which becomes payable to Physician within 30 days of June 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 as follows:

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement (“Term”) shall be for a period of five (5) years, commencing as of June 8, 2022 (the “Commencement Date”), and shall end June 7, 2027 (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.**

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.

4.3.1 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.

4.3.2 Board Certification. Physician shall be board certified by the American Board of Radiology in diagnostic radiology-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 Effective June 8, 2022. 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.

5.1.2 Annual Salary Effective June 8, 2025. 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 \$550,000 per year, to be paid as follows: Physician shall be paid \$21,153.84 biweekly not to exceed \$550,000 annually.

5.1.3 Annual Salary Effective June 8, 2026. 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 \$560,000 per year, to be paid as follows: Physician shall be paid \$21,538.46 biweekly not to exceed \$560,000 annually.

5.1.4 Salary Methodology. 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.

5.1.5 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.

5.1.6 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 Additional Shifts. Authority shall pay Physician for additional shifts as described below in this paragraph 5.2 (excludes nonproductive time²). All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.

5.2.1 Weekday Coverage.

A) June 8, 2022 through June 7, 2024. Physician shall be paid a fixed fee in the amount of \$2,000 for every weekday shift (Monday through Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

B) June 8, 2024 through June 7, 2025. Physician shall be paid a fixed fee in the amount of \$2,050 for every weekday shift (Monday through Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

C) June 8, 2025 through June 7, 2027. Physician shall be paid a fixed fee in the amount of \$2,100 for every weekday shift (Monday through Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.2 Weekend Coverage.

A) June 8, 2022 through June 7, 2024. Physician shall be paid a fixed fee in the amount of \$2,200 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

B) June 8, 2024 through June 7, 2025. Physician shall be paid a fixed fee in the amount of \$2,250 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

C) June 8, 2025 through June 7, 2027. Physician shall be paid a fixed fee in the amount of \$2,300 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.3 Holiday Coverage.

² Nonproductive time is defined to include, without limitation, holidays, education leave, vacation, and sick leave.

A) June 8, 2022 through June 7, 2024. Authority shall pay Physician a per diem rate in the amount of \$2,200 per day for holiday coverage (designated Authority holidays only).

B) June 8, 2024 through June 7, 2025. Authority shall pay Physician a per diem rate in the amount of \$2,250 per day for holiday coverage (designated Authority holidays only).

C) June 8, 2025 through June 7, 2027. Authority shall pay Physician a per diem rate in the amount of \$2,300 per day for holiday coverage (designated Authority holidays only).

5.3 Radiation Safety Officer Stipend. Authority shall pay Physician a stipend of \$961.53 biweekly not to exceed \$25,000 annually for services as Radiation Safety Officer at all designated Practice Sites. If the conditions for Physician to receive the stipend are met, the stipend would become payable to Physician commencing June 8, 2022, and each biweekly pay period thereafter. Physician understands and agrees that he must remain in the position of Radiation Safety Officer 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 Signing Bonus.

5.4.1 Bonus. Physician shall receive a signing bonus in the amount of \$25,000, less all applicable federal and state taxes and withholdings, payable within 10 business days of the Commencement. Physician shall forfeit the signing bonus if he fails to report to work on the Commencement Date.

5.4.2 Repayment. In the event that Physician fails to report to work on the Commencement Date or voluntarily terminates his employment with Authority for any reason whatsoever before June 7, 2027, Physician will repay the entire amount of the signing bonus. Such repayment shall be made by Physician in full within 30 days of the effective date of his termination of employment with Authority.

5.4.3 Offset. Physician hereby authorizes Authority to offset against and reduce any amounts otherwise due to Physician for any amounts in respect of the obligation to repay the signing bonus.

5.5 Retention Bonus.

5.5.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$10,000, less all applicable federal and state taxes and withholdings, payable within 30 days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on June 8, 2023, for the previous Employment Year, and each June 8 thereafter.

5.5.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$10,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within 30 days of the effective date of his termination of employment with Authority.

5.5.3 Offset. Physician hereby authorizes Authority to offset against and reduce any amounts otherwise due to him for any amounts in respect of the obligation to repay the retention bonus.

5.6 Professional Fee Billing.

5.6.1 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.

5.6.2 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.

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$4,050,000 over the five-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 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:

Antony Minasaghanian, M.D.
11903 Gazebo Court
Bakersfield, California 93311

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.

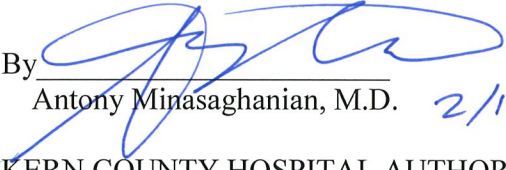
29.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Physician the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

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 
Antony Minasaghian, M.D. 2/18/2022

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____ Tw
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT “A”
JOB DESCRIPTION
Antony Minasaghanian, M.D.

Position Description: Reports to Chair, Department of Radiology; serves as Radiation Safety Officer; provides diagnostic radiology and special procedures with an emphasis on musculoskeletal imaging; works collaboratively with the Department manager to ensure efficient workflow and adequacy of support equipment.

Essential Functions:

1. Clinical Responsibilities

- Provides radiology services on-site at designated Practice Sites and in accordance with generally accepted professional standards
- Provides professional services for all patients who present to designated Practice Sites for treatment
- Participates in special procedures and in rotations in the various departmental image reading queues
- Provides weekday shift coverage, as assigned by the Department Chair
- Provides weekend shift coverage, as assigned by the Department Chair
- Provides call coverage weekday nights, as assigned by the Department Chair
- Provides 24-hour weekend call coverage, as assigned by the Department Chair
- Carries a pager when on call and responds to call within 10 minutes

2. Administrative Responsibilities

- Assists in clinical and administrative integration efforts across KMC as appropriate for the Department, assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates 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
- Supports the Department Chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Participates in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participates in the quality improvement and risk management activities, including peer review and quality control functions, as assigned to services in the Department
- Completes medical records in a timely fashion and works to improve the quality, accuracy, and completeness of documentation
- Works collaboratively with other clinical departments to develop further a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services

- Follows and complies with the Medical Staff bylaws, rules, regulations, and policies, Department rules, policies, and procedures, and Authority and KMC policies and procedures
- Attends department staff meetings and the annual Medical Staff meeting
- Attends and actively participates in Medical Staff and hospital committees, as assigned
- Participates in other clinical, academic, and administrative activities, as assigned by the Department Chair
- Participates in the training of residents and medical students, including the review of active and past case material, as required for patient care
- Participates in proficiency testing and performance improvement programs, as required
- Pursues optimized musculoskeletal imaging services, development of a comprehensive musculoskeletal imaging program, and works cooperatively with other physician specialties
- Participates in additional administrative responsibilities, as required

3. Radiation Safety Officer Responsibilities

- Serves as Chair of the Radiation Safety Committee
- Provides consultation on all aspects of radiation protection to staff at all levels
- Ensures that KMC policies and procedures reflect “as low as reasonably achievable” (ALARA) practices
- Reviews dosimetry radiation monitoring devices for all staff and ensures that radiation exposure is within allowable limits
- Ensures the KMC complies with 10 C.F.R. part 20 *Standards for Protection Against Radiation*
- Reviews the KMC Radiation Safety Program annually
- Reviews new purchases of radioactive materials or equipment

Employment Standards:

Completion of an accredited residency program in diagnostic radiology; one (1) year of post-residency experience in diagnostic radiology

AND

Possession of a current valid Physician’s and Surgeon’s Certificate issued by the state of California

AND

Certification by the American Board of Radiology in diagnostic radiology-general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to the field of diagnostic and musculoskeletal radiology; principles of effective supervision and program development.

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

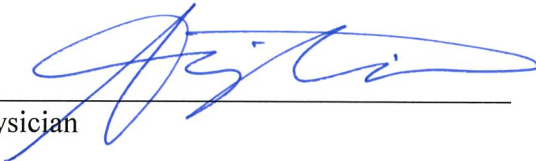
[Attached]

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

2/18/2022

Date



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

March 16, 2022

Subject: Proposed Service Order Form with Therapeutic Research Center

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Service Order Form with Therapeutic Research Center, which provides industry specific continuing education and resources to the Pharmacy Department.

The term of the Service Order Form is three years, effective April 1, 2022, with a total maximum payable not to exceed \$11,500.

This Service Order Form contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the inability to terminate the Service Order Form without cause. This service 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 Order Form, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Service Order Form with Therapeutic Research Center, effective April 1, 2022, with a maximum payable not to exceed \$11,500 for the three-year term, and authorize the Chairman to sign.



Service Order Form

This Service Order Form confirms (Subscriber's) intent to subscribe to Therapeutic Research Center's services as listed below and at the annual subscription fees listed ("Services and Fees"). A Purchase Order number is provided as further confirmation of Subscriber's intent to purchase. To the extent there is a conflict between the Service Order Form and the Terms & Conditions, the terms of the Service Order Form will control.

Subscriber
20285162
Kern Medical
Jay Joson
1700 Mount Vernon Ave
Bakersfield, CA 93306
jeremiah.joson@kernmedical.com
661.326.2000

Therapeutic Research Center
Nailah Walker
Customer Service Lead/Web Support Specialist
10100 Trinity Parkway, Suite 115
Stockton, CA 95219
Billing email: ar@trchealthcare.com
209.472.2240

Purchase Order No: _____

Billing Frequency: Annual - Payment schedule (if applicable) will be included with the first invoice.

Invoice Terms: Net 30

Payment by Credit Card: Therapeutic Research Center accepts credit card payments from Visa, Master Card and Amex. A 4% service fee will apply.

Services and Fees

Quantity Definition: Beds

Term End Date: 03/31/25

Qty	Description	Start Date	End Date	Sub-Total
222	CE Immunization Package	04/01/22	03/31/23	\$ 508.38
222	Hospital Pharmacist's Letter with CE	04/01/22	03/31/23	\$ 2,291.04
222	Learning Management Portal	04/01/22	03/31/23	\$ 892.44
222	CE Immunization Package	04/01/23	03/31/24	\$ 523.92
222	Learning Management Portal	04/01/23	03/31/24	\$ 919.08
222	Hospital Pharmacist's Letter with CE	04/01/23	03/31/24	\$ 2,359.86
222	CE Immunization Package	04/01/24	03/31/25	\$ 539.46
222	Hospital Pharmacist's Letter with CE	04/01/24	03/31/25	\$ 2,430.90
222	Learning Management Portal	04/01/24	03/31/25	\$ 947.94

Sub-Total: \$ 11,413.02

Estimated Sales Tax: \$ 0.00

Total: \$ 11,413.02

For organic growth (location count/hospital bed count or additional facilities) these additions will be accounted for at the anniversary date of the subscription. Subscriber shall inform TRC of any increases to store count/hospital bed count or additional facilities at least sixty (60) days prior to the anniversary date. For material acquisition or merger of 5% or more locations/hospital beds, TRC reserves the right to pro-rata invoice the additions at the time of acquisition or merger.



Permitted Access Start:

As of 04/01/2022, members of Subscriber's Authorized User list detailed below are authorized to access the Service(s) listed. Any change to this list shall be agreed in writing between Therapeutic Research Center and Subscriber via an amendment to this Service Order Form.

Term and Termination:

The term for each respective service as listed in the Services and Fees section above is 04/01/2022 to 03/31/2025.

Authorized Locations and/or Users:

Permitted subscriber locations and/or users are listed in Appendix A.

Taxes:

Therapeutic Research Center fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with the purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

Invoices:

Invoices will be directed to:
Kern Medical
Accounts Payable
1700 Mount Vernon Ave
Bakersfield, CA 93306
accountspayable@kernmedical.com

Affirmative Action Statement:

At Therapeutic Research Center all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. 41 C.F.R. § 1.41(a).

Site License Agreement (SLA):

By signing this Agreement, the Subscriber agrees to the terms of the SLA (<https://pharmacist.therapeuticresearch.com/termsconditions>).

Signed for on behalf of Subscriber

Signed for on behalf of Therapeutic Research Center By

Signature:

Signature: **Jill Morehead** Digitally signed by Jill Morehead
Date: 2022.02.28 08:17:11 -07'00'

Print Name: Russell Bigler

Print Name: Jill Morehead

Title: Chairman, Board of Governors

Title: Contracts Compliance Manager

Date:

Date: 2/28/2022

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



The Medication Learning Company
Update, Inform, Educate.

Appendix A – Authorized Locations List

Total Beds: 222

Location Name	Street Address	City	State	Zip	Beds	Member #
Kern Medical Center	1700 Mt Vernon Ave	Bakersfield	CA	93306	222	20285162

Terms and Conditions

Revised: December 9, 2021

These Terms and Conditions, along with any and all Service Order Forms and addenda between the parties referencing these Terms and Conditions (collectively, the "**Agreement**"), govern Subscriber's access to and use of the products and services listed on an approved Service Order Form, including products or services for which TRC acts as a reseller (collectively, the "**Service**"). To the extent of a conflict between the aforementioned documents, the terms of the Service Order Form(s) shall prevail. By accessing and using the Service, the subscriber listed on the Service Order Form (the "**Subscriber**") agrees on its behalf and on behalf of its Authorized Users to the following terms and conditions:

1. License Grant. During the Term and subject to the terms and conditions of this Agreement, Therapeutic Research Center, LLC and its affiliates ("**TRC**") hereby grant to Subscriber a limited, revocable, non-exclusive, nonsublicenseable, non-transferable right and license for Subscriber and its Authorized Users to: (i) access and use the Service; and (ii) access, use, download, print and copy all text, materials and other content made available by TRC through the Service (collectively, the "**Content**"), in each case, subject to the following conditions and restrictions (and such other conditions and restrictions set forth in this Agreement):

- a. Except as expressly permitted herein, the license rights granted in this Agreement do not include the right to copy, print or download the Content apart from the Service, and Subscriber shall not, and shall not permit its Authorized Users to, copy, print and/or download such Content apart from the Service.
- b. The license rights granted in this Agreement include the right to make printouts and/or copies of the Content, and distribute such printouts and/or copies, but only as follows: (i) for Content that includes or consists of patient handouts intended for use in Subscriber's pharmacy business ("**Patient Handouts**"), Subscriber may print and/or copy such Patient Handouts, and distribute such Patient Handouts, but only to patients of Subscriber's pharmacy business; and (ii) for all other Content (except where technologically restricted or limited by the Service), Subscriber's Authorized Users may make a reasonable number of printouts and/or copies of the Content, and internally distribute such printouts and/or copies, solely for each such Authorized User's individual, internal, non-commercial educational and informational use. Except as expressly authorized by TRC in writing, the use or distribution of copies or printouts of the Content within Subscriber's organization generally or by individuals or users other than Authorized Users is strictly prohibited. Any printouts or copies of the Content shall retain TRC's and/or its licensors' copyright and/or other proprietary rights notices, in addition to any and all disclaimers and/or limitations included in the Content. Subscriber shall monitor and police its Authorized Users' copying and/or making of printouts of the Content under this Section 1(b).
- c. Except as otherwise expressly set forth in this Section, downloading, printing, copying, distributing or otherwise using the Service and/or the Content for external commercial purposes, including commercial publication, sale or other personal gain, is expressly prohibited.

- d. Certain Content and/or Service functionality or features may be subject to additional and/or separate license terms and conditions or terms of use that accompany such Content or Service functionality and/or features. Subscriber will be required to "click to accept" or otherwise indicate its agreement to or acceptance of such additional and/or separate license terms and conditions or terms of use prior to making use of the Content and/or Service functionality or features. Subscriber agrees to strictly comply with any and all such additional and/or separate license terms and conditions or terms of use in its use of the Content and/or Service functionality or features.

2. Authorized Users.

- a. Only Subscriber and those users designated on the Service Order Form constitute "**Authorized Users**" under this Agreement. Subscriber shall limit the access and use of the Service and the Content solely to Authorized Users. Subscriber shall be responsible for ensuring that its Authorized Users strictly comply with all obligations and/or responsibilities of Subscriber and/or its Authorized Users hereunder. Any breach of this Agreement by an Authorized User shall be deemed a breach by Subscriber, provided that Subscriber will have the right to cure such breach pursuant to Section 7 below.
- b. Subscriber acknowledges and agrees that TRC may, in its discretion, condition access to and/or use of the Service and/or related Content on each Authorized User agreeing to TRC's standard end user license Agreement ("**EULA**") for the applicable Service and/or Content.

3. Secure/Remote Access. All access and use of the Service must be made via a secure network and secure authentication methods. Use of the Service by remote access is allowed unless otherwise stated on the Service Order Form. Subscriber will strictly limit any remote access to its Authorized Users through the use of passwords, IP address authentication measures, or other secure methods of user verification. Subscriber will immediately notify TRC if Subscriber believes its security has been compromised. Posting or sharing usernames or passwords, or otherwise enabling access for the benefit of non-subscribing institutions or users, is strictly prohibited.

4. Restrictions. Except as expressly permitted in this Agreement, Subscriber and its Authorized Users shall not:

- a. License, sublicense, lease, rent, timeshare, make available for service bureau use, distribute, disclose, permit access to, or transfer to any third party, any portion of the Service and/or the Content, whether for profit or without charge;
- b. Store, reproduce, distribute, transmit, modify, adapt, perform, display (including by "framing"), publish or sell the Service and/or any Content;
- c. Translate, reverse engineer, disassemble, decompile, discover, or modify the Service or TRC's and/or any of its licensors' software;
- d. Remove any copyright and other proprietary notices placed upon the Service or any Content retrieved from the Service;

- e. Circumvent any use-limitation or protection device contained in or placed upon the Service or any Content retrieved from the Service or access or attempt to access any portion of the Service or Content that Subscriber is not authorized to access;
- f. Use any location-restricted Content at any Subscriber location other than the location for which the use of the Content has been authorized;
- g. Use the Service to execute denial of service attacks;
- h. Perform automated searches against TRC's and/or its licensors' systems (except for non-burdensome federated search services), including automated "bots", link checkers or other scripts, without the prior written permission of TRC;
- i. Use the Service or Content to create products or perform services which compete or interfere with those of TRC or its licensors;
- j. Text mine, data mine or harvest metadata from the Service;
- k. Impair or overburden the Service or any servers or systems associated with the Service;
- l. Download all or parts of the Service in a systematic or regular manner or so as to create a collection of materials comprising all or a material subset of the Service, in any form;
- m. Use the Service in connection with life support systems, medical devices, or any application where failure or malfunction could lead to possible loss of life; or
- n. Access or use the Content or the Service in any jurisdiction or territory other than those jurisdictions or territories for which Subscriber has purchased rights to access or use the Content or the Service pursuant to the Service Order Form.

5. Fees and Payments. Subscriber agrees to pay the fees for the Service shown on the Service Order Form within 30 days of receipt of TRC's invoice unless otherwise specified on the Service Order Form. TRC may increase the fees as permitted in the Service Order Form.

6. Term. Subscriber's access to a particular Service shall continue for the subscription period stated on the Service Order Form, plus any agreed renewal period(s), unless this Agreement is terminated pursuant to Section 7 below (the "**Term**"). This Agreement shall, unless earlier terminated pursuant to Section 7, continue in force for so long as Subscriber subscribes to at least one Service. Thereafter, the following terms and conditions of this Agreement shall survive: Sections 5, 7, 9(c),9(d),and 10 through 19.

7. Termination. If a party breaches a material term of this Agreement and does not cure the breach within thirty (30) days of its receipt of written notice from the other party specifying the breach, the other party may immediately terminate this Agreement in whole or as to the affected Service. If this Agreement or any Service Order Form is terminated in whole or in part due to Subscriber's breach: (i) TRC will have the right to immediately disable access to any terminated Service; (ii) Subscriber shall destroy any files, information, data or software derived from any terminated Service in its possession or control, and certify destruction upon request; (iii) Subscriber forfeits all prepaid fees; and (iv) TRC reserves the right to pursue all available legal remedies.

8. Remedial Action. Without limiting the above, TRC may suspend delivery of the Service and/or the Content if it reasonably determines that Subscriber and/or its Authorized Users are failing to comply with this Agreement, including without limitation, by not making full and timely payment to TRC, or by increasing the number of Authorized Users or authorized locations

without permission. If delivery is suspended, TRC will restore Subscriber's access as soon as Subscriber comes back into compliance with the terms of this Agreement and any applicable Service Order Form. TRC's suspension of the Service and/or the Content is without prejudice to any right, claim or remedy of TRC under this Agreement, including without limitation, TRC's rights under Section 7 above.

9. Specific Content Terms. While appropriate care has been taken in organizing and presenting the Content, unless TRC expressly states otherwise with respect to particular Content, TRC does not warrant or guarantee the correctness, accuracy, or timeliness of the Content. Subscriber acknowledges and agrees that the Content has not been prepared to meet Subscriber's individual requirements; rather, the Content is provided by TRC for general educational and informational purposes only. TRC does not perform any independent analysis or investigation of the Content or any specific information, data or content set forth in the Content. Subscriber and its Authorized Users shall be solely responsible for complying with applicable local, state and federal laws in connection with Subscriber's and its Authorized Users' use of the Service and/or the Content. Subscriber further acknowledges and agrees that:

- a. **SOP Templates.** The Content made available via the Service may include certain template documents in the nature of Sterile Compounding Standard Operating Procedures and related data collection forms (collectively, the "**SOP Template(s)**"). The SOP Templates will be made available to Subscriber in the form of password-protected electronic files in MS Word format which Subscriber may access via a downloadable link. In the event TRC, in its sole discretion, makes updates available to the SOP Templates, Subscriber agrees that on receipt of such notice of updated SOP Templates, Subscriber will replace the previous portions of the SOP Templates that have been updated and will use only the updated SOP Templates thereafter. Any use of a prior version of the SOP Templates once an update has been made available by TRC shall be at Subscriber's sole and exclusive risk and liability. The SOP Templates may be modified by Subscriber only to include the name and any logo of Subscriber and to otherwise customize the SOP Templates to be specifically applicable within Subscriber's organization, including to accurately reflect Subscriber's specific desired practice(s). The SOP Templates may be reproduced for use only for Subscriber's internal business purposes at the authorized location(s) listed in the Service Order Form, and not for any commercial or other purposes or at any other Subscriber locations. The first page of each SOP Template (and all reproductions of the SOP Template, and whether or not the SOP Template has been modified) shall include the following notice, together with all other legends that may be included in the SOP Template, as provided to Subscriber by TRC: "Portions of this SOP Template are proprietary to, and subject to copyright ownership of, Therapeutic Research Center, LLC (or an affiliate) and have been modified by [Subscriber] under license and for limited internal use." Subscriber acknowledges and agrees: (i) that it will inform all its employees who obtain access to the SOP Templates that (A) they may not reproduce, modify, download, publish, disseminate, or transfer, in any form or by any means, any of the SOP Templates except as permitted above, and (B) TRC has disclaimed all warranties and liabilities arising out of the use of the SOP Templates by Subscriber and by any such employees; and (ii) Subscriber will be responsible and liable to TRC for any violation of such use restrictions or for any claims

made by such employees or by any third parties against TRC (or an affiliate) with respect to the SOP Templates.

- b. **CE Content.** The Content may include certain web-based continuing educational tools and/or modules ("**CE Content**"). The CE Content may be used by Subscriber and/or its Authorized Users to meet continuing education requirements or to comply with professional certifications or standards (collectively, "**Standard(s)**"). Where TRC indicates that the CE Content complies with a particular Standard, TRC will use commercially reasonable efforts to ensure such compliance; however, neither TRC nor any of its licensors warrant or guaranty such compliance. In the event of any failure of the CE Content to comply with such Standards, Subscriber acknowledges and agrees that TRC's sole and exclusive responsibility, and Subscriber's sole and exclusive remedy, shall be for TRC to: (i) correct the CE Content such that the CE Content complies with the identified Standard(s); or (ii) terminate Subscriber's subscription to access and/or use the non-compliant CE Content, in which case, TRC will refund to Subscriber, on a pro-rata basis, any fees prepaid by Subscriber but unearned by TRC as of the date on which TRC terminates Subscriber's subscription rights.
- c. **Medical Content.** The Service may include content and information regarding drugs and medications, as well as medical procedures or treatments ("**Medical Content**"). Neither TRC nor its licensors provide the Medical Content for purposes of providing medical diagnosis or treatment advice or recommendations. Subscriber acknowledges and agrees that neither TRC nor any of its licensors are endorsing or advocating the use of any particular product, procedure, treatment, pharmaceutical or medication described in the Medical Content. TRC and each of its licensors expressly disclaim responsibility for any consequence of the use or misuse of any such product, procedure, treatment, pharmaceutical or medication due to any errors or other inaccuracies in the Medical Content. With respect to any products, medications or pharmaceuticals described in the Medical Content, additional information on any such products, medication or pharmaceuticals may be obtained from the applicable manufacturer or supplier.
- d. **Regulatory and Compliance Content.** The Service may include pharmacy law, regulatory, and compliance information, including without limitation, forms, analyses and information regarding laws, regulations, and proposed legislation ("**Regulatory and Compliance Content**"). The Regulatory and Compliance Content is informational in nature and is not intended to and shall not be used as legal advice. No attorney-client relationship is formed between Subscriber or any of its Authorized Users and TRC as a result of TRC's provision of, or Subscriber's or any of its Authorized User's access to and use of, the Regulatory and Compliance Content. TRC and each of its licensors expressly disclaim responsibility for any consequence of the use or misuse of the Regulatory and Compliance Content. Subscriber and its Authorized Users access and use the Regulatory and Compliance Content at their own risk, and further acknowledge and agree that neither Subscriber nor any of its Authorized Users should act or refrain from acting on the basis of any information included in the Regulatory and Compliance Content without first seeking legal advice from counsel in the relevant jurisdiction.
- e. **Third Party Materials.** The Service may display or make available, and the Content may include, third party content (including data, information, applications and other products services and/or materials) or provide links to third party websites or services (collectively, "**Third Party Materials**"). Subscriber acknowledges and agrees that except

as otherwise set forth in this Agreement or where TRC expressly states otherwise, TRC is not responsible for the Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. TRC does not assume and will not have any liability or responsibility to Subscriber, its Authorized Users, or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to Subscriber and Subscriber and its Authorized Users access and use them entirely at their own risk and subject to such third parties' terms and conditions.

10. Intellectual Property Rights.

- a. The Service and the Content are the sole and exclusive property of TRC and/or its licensors, and are protected by copyright and other intellectual property rights laws. Except for the rights expressly granted by TRC to Subscriber in this Agreement, this Agreement grants no right, title, or interest in the Service, the Content, or any copyright, patent, trademark, trade secret, or any other intellectual property rights or other proprietary rights associated therewith or embodied therein. Subscriber does not acquire any intellectual property ownership or other rights in the Service (including without limitation, any associated software, systems, documentation) or the Content, whether by implication, estoppel or otherwise. All such rights and interests remain with TRC and its licensors.
- b. The Service may permit Subscriber or its Authorized Users to input into the Service certain data and other information regarding Subscriber's or the Authorized User's use of the Service and/or the Content ("**Subscriber Data**"). While the Subscriber Data is and shall at all times remain the property of Subscriber, Subscriber agrees that:
 - i. Subscriber hereby grants to TRC and/or its licensors, during any period of time in which TRC makes the Service and/or the Content available to Subscriber and/or its Authorized Users hereunder, a royalty-free, fully-paid, non-exclusive license to use the Subscriber Data in connection with TRC's and/or its licensors' maintenance, operation, and provision of the Service and/or the Content.
 - ii. TRC and/or its licensors shall have the unlimited and unrestricted right to obtain, maintain, use, distribute, disclose, exploit and/or commercialize the Subscriber Data for any lawful purpose so long as such Subscriber Data has been de-identified and/or aggregated with other data such that neither Subscriber nor the applicable Authorized User can be identified as the source of the Subscriber Data.
 - iii. For any Subscriber Data that constitutes or includes personal data, TRC will process such personal data in accordance with its privacy policy, accessible [here](#).
- c. Any comments, feedback, suggestions, or ideas ("**Feedback**") Subscriber provides to TRC either through or independent of the Service may be used by TRC, as determined in its sole and absolute discretion. While Subscriber may continue to own all rights in the Feedback, Subscriber hereby grants to TRC a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit such Feedback.

11. Service Levels. If the Service or Content is hosted by TRC, TRC will use commercially reasonable efforts to provide access to the Service on an uninterrupted basis (except for regularly

scheduled maintenance) and free from viruses or other harmful software. TRC shall not be liable for any failure or delay or interruption in the Service due to failure of any equipment or telecommunications networks, or for failures resulting from any cause beyond TRC's reasonable control. Subscriber is responsible for providing all required information for account set up and activation, and for any telecommunications connections and related third-party charges.

12. Disclaimer.

- a. THE SERVICE AND THE CONTENT IS PROVIDED "AS IS" AND "AS AVAILABLE." TRC AND ITS LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND RELATING TO THE SERVICE AND/OR THE CONTENT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AVAILABILITY, ACCURACY, TIMELINESS, CORRECTNESS, RELIABILITY, CURRENCY, OR COMPLETENESS OF THE SERVICE, THE CONTENT OR ANY INFORMATION OR RESULTS OBTAINED THROUGH THE SERVICE, EVEN IF ASSISTED BY TRC. TRC SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY TRC WITH THE SERVICE AND PROVIDES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE SERVICE.
- b. WHILE TRC HAS USED COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT THE CONTENT IS MATERIALLY UP TO DATE AND RELIABLE, TRC ASSUMES NO LIABILITY FOR THE CONTENT, INCLUDING WITHOUT LIMITATION, ITS ACCURACY, TIMELINESS, CORRECTNESS, COMPLETENESS, RELIABILITY, SUFFICIENCY, OR CURRENTNESS. IN USING THE CONTENT, EACH AUTHORIZED USER AGREES TO EXERCISE HIS OR HER OWN INDEPENDENT SKILL, EXPERIENCE, KNOWLEDGE AND PROFESSIONAL JUDGMENT IN MAKING LEGAL, CLINICAL, TREATMENT AND/OR PRESCRIPTION DECISIONS (OR WHERE APPLICABLE, TO SEEK APPROPRIATE PROFESSIONAL, MEDICAL OR LEGAL ADVICE IN MAKING SUCH DECISIONS), AND AS SUCH, THE SOLE RISK OF USING THE CONTENT IS WITH SUBSCRIBER AND/OR ITS AUTHORIZED USERS. NO SALESPERSON OR OTHER TRC REPRESENTATIVE INVOLVED IN THE DISTRIBUTION OF THE SERVICE IS AUTHORIZED TO MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICE OR THE CONTENT BEYOND THOSE CONTAINED IN THIS AGREEMENT. ORAL STATEMENTS DO NOT CONSTITUTE REPRESENTATIONS OR WARRANTIES, SHALL NOT BE RELIED UPON BY SUBSCRIBER, AND ARE NOT A PART OF THIS AGREEMENT.

13. Limitations of Liability. THE MAXIMUM LIABILITY OF TRC AND/OR ITS LICENSORS ARISING OUT OF OR RELATING TO THE SERVICE, THE CONTENT AND/OR THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, FOR INDEMNITY,

SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY TRC FROM SUBSCRIBER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR WHICH SUCH DAMAGES ARE ALLEGED TO BE OWED. IN NO EVENT SHALL TRC AND/OR ITS LICENSORS BE LIABLE TO SUBSCRIBER OR ITS AUTHORIZED USERS FOR: (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES; (ii) ANY CLAIM RELATED TO SUBSCRIBER'S OR ITS AUTHORIZED USERS' USE OF COVER IMAGES OR USER-GENERATED CONTENT PROVIDED AS PART OF THE SERVICE; OR (iii) ANY CLAIM RELATED TO THE UNAUTHORIZED USE OF THE SERVICE AND/OR THE CONTENT.

14. Indemnity.

- a. TRC will defend at its own expense any claim, action, demand or suit ("**Action**") brought against Subscriber and/or its Authorized Users by a third party to the extent that the Action arises out of or relates to the Service directly infringing any copyright owned by such third party. TRC will pay those costs and damages finally awarded against Subscriber and/or its Authorized Users in any such Action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of the Action. Notwithstanding the foregoing, TRC will have no obligation with respect to any infringement claim based upon: (i) the use of the Service other than as authorized in this Agreement; (ii) the combination of the Service with or into other products or services not approved by TRC; or (iii) the modification, alteration or change to the Service other than by TRC. TRC's indemnity obligations are further subject to and conditioned on Subscriber providing TRC prompt written notice of any such infringement Action of which it becomes aware, and Subscriber further providing TRC the right to direct and control the investigation, defense and settlement of any such infringement Action.
- b. Subscriber agrees to indemnify, defend and hold harmless TRC, its licensors, affiliates, successors and assigns, and each of their respective officers, directors, members, agents, contractors, and representatives, from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, but not limited to, attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) arising out of or related to: (i) Subscriber's breach of this Agreement; (ii) Subscriber's use of the Service and/or the Content other than as authorized in this Agreement; or (iii) the negligence or more willful misconduct of Subscriber.

15. Entire Agreement. This Agreement, including the Service Order Form, constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all previous and contemporaneous agreements between the parties with respect to the same subject matter and may not be amended, except in a writing signed by the parties. The parties intend that the express terms and conditions contained in this Agreement, including the Service Order Form, exclusively govern and control the parties' respective rights, obligations and responsibilities with respect to the Service. If any terms or conditions contained in any purchase order, acknowledgment, invoice, or similar document issued by Subscriber hereunder conflict with or

are otherwise different from or in addition to the terms and conditions of this Agreement, the terms and conditions of this Agreement will govern and control. Any such contrary, different, or additional terms contained in any purchase order, acknowledgment, invoice, or similar document issued by Subscriber hereunder are hereby automatically rejected by TRC.

16. Governing Law; Venue. This Agreement shall be governed by, construed and enforced according to the laws of the State of California, without regard to its conflict or choice of law principles. Any action arising out of or relating to this Agreement shall be brought only in the state courts located in San Joaquin County, California, and the federal courts located in Sacramento, California, and the parties expressly consent to such courts' exclusive jurisdiction and irrevocably waive any objection with respect to the same, including any objection based on forum non conveniens. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE SUBJECT MATTER OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES THEIR RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS. EACH PARTY MAY ONLY BRING CLAIMS AGAINST THE OTHER IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

17. Assignment. Subscriber shall not assign or otherwise transfer this Agreement or any of Subscriber's rights and obligations under this Agreement, without TRC's prior written consent. TRC may assign this Agreement without Subscriber's consent in connection with a merger, reorganization, acquisition or sale of all or substantially all of TRC's equity or assets. Any assignment or transfer in violation of this Section will be null and void *ab initio*.

18. Third Party Beneficiaries. Subscriber acknowledges and agrees that TRC's licensors may be third party beneficiaries under this Agreement having the right, but not the obligation, to enforce this Agreement in accordance with its terms. Except as set forth in the preceding sentence and in Section 14(b) above, there are no third party beneficiaries to this Agreement.

19. General. The parties agree as follows: (i) no waiver will be binding on a party unless it is in writing and signed by the party making the waiver and a party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision; (ii) the parties will have all remedies available to them at law or in equity; (iii) if any term or provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the term or provision in any other respect and of the remaining provisions of this Agreement will not be impaired; and (iv) both parties have full power and authority to enter into and perform this Agreement, and the representatives entering into this Agreement on behalf of the parties have been previously authorized and empowered to enter into this Agreement.



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

March 16, 2022

Subject: Proposed Retroactive Sales Order OPT-0330879 with Cerner Corporation to purchase additional Electronic Prescription Licenses

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests that your Board retroactively approve the proposed Sales Order (OPT-0330879) with Cerner Corporation for the additional electronic controlled substances prescription licenses. Due to a change in regulations and the requirement of complete electronic prescription submission, the need for all prescribing providers to have access to electronic prescribing software is now a requirement, which requires an increase in the number of available electronic prescription licenses.

The Cerner fee schedule is listed below for a total purchase amount of \$41,904.

Solution Description	Qty	Monthly Fee	Term	Total
Cerner Workflow Automation CTP-CERN-WORKFLOWC	50	15.00	36	750.00
Electronic Prescription of Controlled Substances EPCS-SW-RA-HFA-V	50	8.28	36	414.00
TOTAL				\$41,904

Therefore, it is recommended that your Board retroactively approve the Cerner Corporation Sales Order OPT-0330879 for ePCS licenses in the amount of \$41,904 for a three (3) year term beginning on January 28, 2022, and authorize the Chief Executive Officer to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on January 28, 2022 ("Effective Date"), between

Kern County Hospital Authority ("Client")

a local unit of government, which owns and operates Kern Medical Center

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States
Telephone: (661) 326-2000

and **Cerner Corporation ("Cerner")**

a Delaware corporation with its principal place of business at

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

Cerner Sales Contact: **Brittany Dayton**
+1 816 201 5136
brittany.dayton@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36), dated July 01, 2016, between Client and Cerner (the "Agreement").

Client understands that hand-written changes to this Cerner Sales Order will not be accepted. Client will engage their Cerner Sales Contact to request any revisions.

KERN COUNTY HOSPITAL AUTHORITY

Authorized signatory:

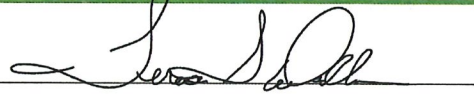

(signature)

Scott Thygerson
(printed name)

Title: Chief Executive Officer

CERNER CORPORATION

Authorized signatory:



Teresa Waller

Title: Sr. Director, Contract Management

CLIENT WILL COMPLETE THE FOLLOWING UPON EXECUTION OF THIS CERNER SALES ORDER:

Client Invoice Contact: _____

Contact Phone #: _____

Contact Email Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



Kern County Hospital Authority
OPT-0330879_Q-119179.2_LA-0000072349
January 28, 2022

Cerner Confidential Information
© Cerner Corporation. All rights reserved.



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SOLUTIONS		
Subscription Services	--	775.00
TOTALS:	0.00	775.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until April 27, 2022. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

MONTHLY RECURRING FEES		
Description	Percent (%) Of Total Due	Payment Due
Subscription Services	100%	Annually beginning on the Effective Date.

TERM AND TERMINATION

Other Services. Unless otherwise set forth herein, all other recurring Services (such as subscription services, application services, shared computing services, employer services, recurring professional services, and managed services) begin on the Effective Date and continue for the term set forth in the "Solutions", "Professional Services", or "Managed Services" sections.

Renewal. Unless otherwise set forth herein, at the end of the applicable term, each recurring Service will automatically renew for additional 12 month periods at the rate charged in the final period of the then-current term, unless either party provides the other party with written notification of its intent to terminate the relevant Service no less than 60 days prior to the expiration of the applicable then-current term.

FEE INCREASES

Cerner may increase the monthly fee for Support services and each recurring service (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) any time following the initial twelve (12) month period after such recurring service fees begin (but not more frequently than once in any twelve (12) month period) by giving Client sixty (60) days prior written notice of the price increase. The amount of any increase in the fees shall not exceed the previous calendar year's percentage increase in CPI, plus the Consumer Price Index (CPI) plus 5%, not to exceed 10% per annum% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner's fee to the third party.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.



Kern County Hospital Authority
OPT-0330879_Q-119179.2_LA-0000072349
January 28, 2022

SOLUTIONS

SUBSCRIPTION SERVICES

Mfg. Part No.	Solution Detail Description	Scope of Use Metric	Qty./ Scope of Use Limit	Term (Mo.)	Monthly Range	Extended One-Time Fees	Extended Monthly Fees	Solution Description Code	Third-Party Component(s)	Pass-Through Code	Per Unit One-Time Expansion Fees	Per Unit Monthly Expansion Fees
CTP-CERN-WORKFLOWC	Cerner Workflow Authenticalton	Users	50	36	1-36	0	400	SD100051_03	--	--	--	15.00
SUB-CID-EPCS-CW-RA-HFA-V	SUB: Confirm ID EPCS-CW-RA-HFA	Users	50	36	1-36	0	375	--	✓	100004_002	--	8.28
TOTAL:						--	775	--	--	--	--	--

SCOPE OF USE

Client will use the solutions set forth in this Cerner Sales Order in accordance with the Documentation and subject to the scope of use limits set forth in the Solutions section. If a scope of use limit is exceeded, Client agrees to pay the applicable expansion fees set forth in the Solutions section, which are valid for 2 year(s) after the Effective Date, and thereafter increase at a rate of 5% per year.

In the event Client requests additional scope beyond the limits set forth in the Solutions section and no Per Unit Expansion Fees are referenced therein, Client must execute a new Ordering Document setting forth the additional scope and fees at Cerner's then-current rates.

Scope of use will be measured periodically by Cerner's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g. FTEs or locations), Client will provide the relevant information (including records to verify the information) to Cerner at least once per year. Client agrees that if an event occurs that will affect Client's scope of use (such as the acquisition of a new hospital or other new facility), Client will notify Cerner in writing of such event no later than 30 days following the effective date of such event so that Client's scope of use can be reviewed. Any additional fees due under this Section will be payable within 60 days following Client's receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

The pricing in the Solutions section of this Cerner Sales Order is based on the following scope of use metrics, which are defined as follows.

Scope of Use Metric	Scope of Use Definition
Users	The total number of individuals registered in the System with a unique sign-on and authorized by Client to use the Licensed Software, Sublicensed Software, or Services as set forth in the Agreement.

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/Province	Zip/Postal Code	Country
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CERNER SALES ORDER

Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States
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The parties may add or substitute Permitted Facilities by amending this section.

SOLUTION DESCRIPTIONS

Each solution with a Solution Description has a code noted in the "Solutions" section of this Cerner Sales Order, and that code can be entered at <https://solutiondescriptions.cerner.com> to view the Solution Description. These Solution Descriptions are incorporated into this Cerner Sales Order by reference and may also be attached as an exhibit to this Cerner Sales Order.

PASS-THROUGH PROVISIONS

Where pass-through provisions are applicable to third-party products and services, these provisions are referenced by a pass-through code in the "Solutions", "Equipment/Sublicensed Software", "Professional Services", "Application Management Services", or "Managed Services" sections of this Cerner Sales Order, and that code can be entered at <https://passthroughprovisions.cerner.com> to view the pass-through provisions. These pass-through provisions are incorporated into this Cerner Sales Order by reference, and may also be attached as an exhibit to this Cerner Sales Order.

QUOTE ASSUMPTIONS

The following are general assumptions regarding the solutions, services, and project set forth in this Cerner Sales Order.



Kern County Hospital Authority
OPT-0330879_Q-119179.2_LA-0000072349
January 28, 2022



EVENT ACTIVITY REPORT

Client: Kern County Hospital Authority
 1700 Mount Vernon Ave
 Bakersfield, CA 93306-4018, United States

Subject: Software Delivery and Installation

Document ID: OPT-0330879

This Event Activity Report ("EAR") serves as confirmation that delivery has occurred of the solutions set forth below. This delivery event does not include customization or implementation of such solutions.

Mfg. Part Number	Solution Detail Description
CTP-CERN-WORKFLOWC	Cerner Workflow Authentication
SUB-CID-EPCS-CW-RA-HFA-V	SUB: Confirm ID EPCS-CW-RA-HFA

I acknowledge that delivery of these solutions occurred on _____.
 (Date)

The following signature represents completion of this delivery event.

**ACCEPTED FOR KERN COUNTY HOSPITAL
 AUTHORITY**

By: _____

(type or print)

Title: _____



Kern County Hospital Authority
 OPT-0330879_Q-119179.2_LA-0000072349
 January 28, 2022



EXECUTION INVOICE

Client: Kern County Hospital Authority
1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States

Invoice No: EXEC CSO No. LA-OPT-0330879
Invoice Date: January 28, 2022
Due Date: Effective Date

Remit: Via FedEx:
Cerner Corporation
Attn: Accounts Receivable, 5th Floor
2800 Rockcreek Parkway
Kansas City, MO 64117

OR

Via Wire Transfer:
ABA Routing Number: 101000187
Bank: US Bank
For Further Deposit to Bank Account: 5290000743

TOTAL AMOUNT DUE: \$9,300

Sales tax, if applicable, will be invoiced separately.

Description	Total Amount	Percent Payable	Net Amount
Subscription Services Monthly Fees - Year 1	\$9,300	100%	\$9,300
GRAND TOTAL:			\$9,300



Kern County Hospital Authority
OPT-0330879_Q-119179.2_LA-0000072349
January 28, 2022



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

March 16, 2022

Subject: Proposed Sales Order (OPT-0287324) with Cerner Corporation for the renewal of the HemaTrax software.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Sales Order (OPT-0287324) with Cerner Corporation for the renewal of the annual HemaTrax software maintenance for our Blood Bank product labels.

The Cerner fee schedule is listed below for a total contract amount of \$1,500.

Solution Description	Qty	One Time Fee	Term	Total
Annual software maintenance for HemaTrax LPS ISBT-128	1	1,500	12 months	1,500.00
8X5 M-F Phone Support				
TOTAL				\$1,500

The Agreement contains non-standard terms and conditions and other discrepancies that cannot be approved as to form by Counsel including but not limited to penalties if services are termination and issues with confidentiality of public records. Efforts were made to negotiate all items that could not be approved as form but Cerner was unable to remove the non-standard terms.

Even with these non-standard terms, the need for this software maintenance outweighs the risk of these possible issues. Therefore, it is recommended that your Board approve the Cerner Corporation Sales Order for the annual software renewal for HemaTrax for the amount of \$1,500.00, for a term of one (1) year, and authorize the Chairman to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on March 16, 2022 ("**Effective Date**"), between

Kern County Hospital Authority ("Client")

and **Cerner Corporation ("Cerner")**

a local unit of government with its principal place of business at

a Delaware corporation with its principal place of business at

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States
Telephone: (661) 326-2000

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

Cerner Sales Contact: Ryan Cameron
ryan.cameron@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-036), dated July 01, 2016, between Client and Cerner (the "**Agreement**").

Client understands that hand-written changes to this Cerner Sales Order will not be accepted. Client will engage their Cerner Sales Contact to request any revisions.

KERN COUNTY HOSPITAL AUTHORITY

CERNER CORPORATION

Authorized signatory: _____

(signature)

Russell Bigler

(printed name)

Title: Chairman, Board of Governors

Authorized signatory: _____

Teresa Waller

Title: Sr. Director, Contract Management

CLIENT WILL COMPLETE THE FOLLOWING UPON EXECUTION OF THIS CERNER SALES ORDER:

Client Invoice Contact: _____

Contact Phone #: _____

Contact Email Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By [Signature]
Legal Services Department



Kern County Hospital Authority
OPT-0287324_Q-75540.2_LA-0000076397
March 9, 2022



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SUBLICENSSED SOFTWARE		
Sublicensed Software Maintenance – Year 1 Total	1,500.00	--
TOTALS:	1,500.00	0.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until June 07, 2022. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

MONTHLY RECURRING FEES		
Description	Percent (%) Of Total Due	Payment Due
Sublicensed Software Maintenance	100%	Annually beginning upon shipment

TERM AND TERMINATION

Equipment and Sublicensed Software Maintenance. Maintenance warranties, if any, begin on the earlier of installation, or 30 days after shipment of the equipment and/or sublicensed software. Maintenance services will continue for the initial term set forth in the "Equipment/Sublicensed Software" section of this Cerner Sales Order. The initial term will automatically renew for additional periods of the same duration, unless Client provides Cerner with written notification of its intent to terminate Maintenance no less than 60 days prior to the expiration of the then-current period. Cerner may terminate Maintenance services if Client fails to pay invoices for Maintenance. All unpaid charges for Maintenance will be immediately due and payable upon such termination. Client will pay all applicable penalties or fees if Maintenance services are terminated, then later reinstated.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

EQUIPMENT/SUBLICENSSED SOFTWARE

Technology Changes. At the time of the actual order, Cerner may substitute individual technology solutions and/or Maintenance services based on availability or technological advancements. Cerner and Client may also agree to replace certain technology solutions with other Cerner offerings. If the substitute items or Maintenance services result in an increase in fees, Cerner and Client will discuss and agree upon the fee increase prior to ordering such items or Maintenance services.



Kern County Hospital Authority
OPT-0287324_Q-75540.2_LA-0000076397
March 9, 2022

SUBLICENSSED SOFTWARE MAINTENANCE

Quote: Q-75540.2

Line No.	Manufacturer Part No.	Solution Detail Description	Level of Service	Qty	Term (Mo.)	One-Time Fees Due – Year 1	One-Time Fees Due – Year 2	One-Time Fees Due – Year 3	One-Time Fees Due – Year 4	One-Time Fees Due – Year 5	One-Time Fees Due – Year 6 through End of Term
1	HT-LSS	Annual software maintenance for HemaTrax LPS ISBT-128	8X5 M-F Phone Support	1	12	1,500.00	--	--	--	--	--
2	HT-LSS	8X5 M-F Phone Support:MNT: Annual software maintenance for HemaTrax LPS ISBT-128	8X5 M-F Phone Support	1	12	0.00	--	--	--	--	--
TOTAL:						1,500.00	--	--	--	--	--

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States

The parties may add or substitute Permitted Facilities by amending this section.

ADDITIONAL TERMS AND PROVISIONS

EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE TERMS

Maintenance Services for Equipment. Maintenance services for Equipment are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) dispatching and coordinating the activities of the third party maintenance supplier; (c) communicating with the third party maintenance supplier throughout the resolution of the issue; (d) field change orders; and (e) inclusion of Equipment issues in a tracking database. Maintenance services for Equipment do not include consumables.

Maintenance Services for Sublicensed Software. Maintenance services for Sublicensed Software are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) providing all new versions, modifications, and patches of Sublicensed Software that Cerner is authorized to distribute; (c) communicating with third party maintenance providers throughout the resolution of the issue, (d) inclusion of Sublicensed Software issues in a tracking database.

Maintenance Renewals. The initial term for maintenance is set forth in the "Equipment/Sublicensed Software" section of this Cerner Sales Order, and automatically renews for additional periods of the same duration, unless Client provides written notification of termination no less than 60 days prior to the expiration of the then-current period. Client will also notify Cerner of any Equipment items that are no longer being used by Client, and therefore no longer require maintenance. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance.

Equipment Coverage Levels.

24x7 M-Su 4 HR. Monday through Sunday, 24 hours per day, 365 days per year, on-site coverage. Service effort is continuous until problem is resolved. 24x7 4 HR service does not guarantee that service will be completed same day due to part availability.

EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE TERMS

9x5 M-F 4 HR. Monday through Friday, 8 AM to 5 PM CST, on-site coverage. Service effort is continuous until problem is resolved, excluding country holidays. On-site coverage does not guarantee that service will be completed same day due to part availability.

9x5 M-F Next Business Day. Monday through Friday, 8 AM to 5 PM CST with the objective of completion the next business day.

9x5 M-F Depot. Monday through Friday, 8 AM to 5 PM CST for service calls. Equipment is shipped to the manufacturer where it is repaired and returned to Client's facility.

9x5 M-F Advanced Exchange. Monday through Friday, 8 AM to 5 PM CST for service calls. A replacement will be shipped the next business day and requires return of the replaced equipment within 15 days of receiving the replaced device. Service requests placed after 1 PM CST cannot be guaranteed next business day delivery. If more than one device is being requested for replacement, one will be Advance Exchange and the remaining will be returned on a best effort basis depending upon availability of replacements.

9x5 Su-Th 4 HR. Sunday through Thursday, 8 AM to 5 PM GST, on-site coverage. Service effort is continuous until problem is resolved, excluding country holidays. On-site coverage does not guarantee that service will be completed same day due to part availability.

Sublicensed Software Coverage Levels. Service effort is continuous until the problem is resolved.

24x7 M-Su Phone Support. Monday through Sunday, 24 hours per day, 365 days per year.

9x5 M-F Phone Support. Monday through Friday, 8 AM to 5 PM CST, for service calls.

9x5 Su-Th Phone Support. Sunday through Thursday, 8 AM to 5 PM GST, for service calls.

Changes to Maintenance Services. Changes to maintenance services must be requested in writing by Client, and will take effect within 60 days after receipt of a signed change order.

Technology components can be added to maintenance coverage if they are in good working order. If a component is not in good working order, Cerner can arrange for it to be repaired on a time and materials basis prior to being placed on maintenance. Serial numbers must be provided.

Inventory. Client will review all Maintenance renewal letters to ensure accuracy, and to avoid charges for uncovered items. Client will provide Cerner with any missing or incorrect serial numbers as soon as possible to keep records current. Client will notify Cerner when technology components are replaced.

Upgrades. Maintenance services do not include hardware/technology updates. Maintenance services include software updates once they become available and have been certified for use by Cerner.

Pricing and Allowances. Equipment and/or Sublicensed Software maintenance pricing and allowances granted by Cerner are confidential and are not to be discussed outside the context of this arrangement. Allowances are available for multi-year maintenance and prepaid terms of one year or greater. Prices do not include any applicable taxes.

Multi-Year Commitments. Fees associated with the initial term are deemed prepaid and are non-refundable.



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

March 16, 2021

Subject: Proposed Sales Order (OPT-0280142) with Cerner Corporation, an independent contractor, for Professional Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Sales Order (OPT-028042) with Cerner Corporation for the professional services needed to incorporate the Butterfly Point of Care Ultrasound images for the Emergency and Obstetrics Departments within the Cerner Millennium electronic health record. The image integration follows best practices for clinical and revenue cycle workflow.

The Cerner fee schedule is listed below for a total contract amount of \$31,801.00.

Solution Description	Qty	Hourly Rate	Total
Millennium Foreign System Interface Services			
Interface Architect	43	175	7,525
Technical Engagement Leader	64	165	10,560
System Engineer	108	127	13,716
TOTAL			\$31,801.00

Therefore, it is recommended that your Board approve the Cerner Corporation Sales Order for the professional services to integrate butterfly POCUS images into Cerner Millennium for the amount of \$31,801.00, and authorize the Chairman to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on March 16, 2022 (“Effective Date”), between

Kern County Hospital Authority (“Client”)

and

Cerner Corporation (“Cerner”)

a local unit of government with its principal place of business at

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States
Telephone: (661) 326-2000

a Delaware corporation with its principal place of business at

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

Cerner Sales Contact: Jake Westhoff
+1 816 571 6378
jake.westhoff@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36), dated July 01, 2016, between Client and Cerner (the “Agreement”).

KERN COUNTY HOSPITAL AUTHORITY

Authorized signatory: _____
(signature)
Russell Bigler

(printed name)
Title: Chairman, Board of Governors

CERNER CORPORATION

Authorized signatory: _____
Teresa Waller

Title: Sr. Director, Contract Management

CLIENT WILL COMPLETE THE FOLLOWING UPON EXECUTION OF THIS CERNER SALES ORDER:

Client Invoice Contact: _____
Contact Phone #: _____
Contact Email Address: _____

Client’s account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

APPROVED AS TO FORM
Legal Services Department

By _____
Kern County Hospital Authority



Kern County Hospital Authority
OPT-0280142_Q-113578.1_LA-0000067787
December 29, 2021



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
PROFESSIONAL SERVICES		
Fee for Service	31,801.00	--
TOTALS:	31,801.00	0.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until March 23, 2022. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

AS-INCURRED FEES		
Description	Percent (%) Of Total Due	Payment Due
Professional Services: Fee for Service	100%	Monthly in arrears

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

PROFESSIONAL SERVICES

FEE FOR SERVICE				
Service Project Detail	Role	Hourly Rate	Estimated Hours	Total Fees
<i>Bundled Services</i>				
--	Cerner Millennium Foreign System Interface Services	--	--	--
Professional Service	Interface Architect	175	43	7,525
Professional Service	Technical Engagement Leader	165	64	10,560
Professional Service	System Engineer	127	108	13,716
TOTALS:				31,801

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States

The parties may add or substitute Permitted Facilities by amending this section.



Kern County Hospital Authority
OPT-0280142_Q-113578.1_LA-0000067787
December 29, 2021



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

This Exhibit A defines the Service deliverables ("**Scope**") for the Services set forth in this Cerner Sales Order.

SCOPE NOTES

Cerner will provide professional service resources to assist Client with the implementation of:

An HL7 Observation Result (ORU) Discrete Results URL inbound interface to Cerner Millennium from a non-Cerner system, Butterfly

Estimated duration: 12 weeks

GENERAL SCOPE

PROFESSIONAL SERVICES

The following scope applies to all implementation services set forth in this Cerner Sales Order.

Scope Considerations; Control of Scope of Work. Cerner commits to delivering, in conjunction with Client, a design, build, test, and rollout of all applicable elements set forth in this Cerner Sales Order. The build for all Licensed Software and Cerner Services will be based upon Cerner's standard implementation processes. The project teams will reasonably accommodate design and build requests by Client, including non-Model Experience requests. Such requests may result in changes to project timelines and budget. Customization of reports, views, *MPages*, and rules are only included if specifically noted.

Client and Cerner must fulfill their responsibilities and adhere to the other requirements and descriptions set forth herein to meet the goals of an 'on-time' and 'on-budget' project. Modifications to this Scope shall be mutually agreed upon by Cerner and Client's executive steering committee and set forth on a new Cerner Sales Order, including changes in resources, professional services fees, and project timelines.

Project Start Date. The project start date will be based on the Effective Date of this Cerner Sales Order. Cerner requires a minimum of 90 days from the Effective Date to accommodate project staffing requests. After the project start date, Cerner and Client will begin activities such as planning, staffing, and technology activities.

Travel, Lodging, Out-of-Pocket Expenses, and Per Diem Rates. The fees in this Cerner Sales Order do not include travel, lodging, per diem, or other out-of-pocket expenses. Such fees will be billed to Client base on the underlying Agreement.

Fee-for-Service Implementation. Any fee-for-service hours specified in this Cerner Sales Order are estimates, and Client will pay any overage of the estimated hours as Cerner continues to work towards the agreed-upon Scope. Work and payment should continue until either Client notifies Cerner to stop work, or the Scope is delivered as agreed herein.



Kern County Hospital Authority
OPT-0280142_Q-113578.1_LA-0000067787
December 29, 2021



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

SOLUTION DETAIL SCOPE

PROFESSIONAL SERVICES

CERNER MILLENNIUM FOREIGN SYSTEM INTERFACE SERVICES (CTS-MILLFSI-SVCS)

Overview	<ul style="list-style-type: none"> Cerner will provide the services set forth herein and in the 'Scope Notes' section of this Cerner Sales Order, as applicable to the FSI Services.
Cerner Tasks/Activities	<ul style="list-style-type: none"> Design interface, including site-specific interface specification document(s) Build, code, and configure interface to the processing requirements Perform functional testing of the interface Support Client validation testing of the interface Attend regular project status meetings Migrate interface to production domain and support interface activation Provide conversion support during normal business hours (8 AM–5 PM CST)
Client Tasks/Activities	<ul style="list-style-type: none"> Synchronize data values between Cerner and the foreign supplier; including building of code value aliasing within Cerner that will be required for interface processing Modify <i>Cerner Millennium</i> application, if necessary Create and execute interface test plans Validate interface testing
Project Assumptions	<ul style="list-style-type: none"> Cerner standard interface specifications are available upon request <ul style="list-style-type: none"> Real-time interfaces will conform to the Cerner universal interface (UI) specifications requirements, which are based upon the <i>Health Level Seven International (HL7)</i> standards as they relate to the <i>Cerner Millennium</i> architecture. Batch interfaces will conform to the Cerner standard specification requirements, which are based upon the <i>Accredited Standards Committee (ASC) X12</i> standards or flat file protocol as they relate to the <i>Cerner Millennium</i> architecture. Cerner transmission protocols <ul style="list-style-type: none"> Real-time interfaces will utilize Transmission Control Protocol/Internet Protocol (TCP/IP) for data transfer and will be <i>Cerner Millennium HL7</i> UI compliant Batch interfaces will utilize Secure File Transfer Protocol (SFTP) for data transfer and will be either <i>Cerner Millennium</i> standard or <i>ASC X12</i> compliant unless otherwise noted in the 'Cerner Tasks/Activities' section of this Scope. Custom scripting required outside the standard Cerner UI is expected to be performed within Client's interface engine. If this is not possible or desirable, custom scripting can be performed within the <i>Cerner Millennium</i> interface but may require additional hours and fees. This Scope covers the initial configuration and testing of the interface in a designated build environment and 1 copy to the production environment. Any additional domain support, including copies to additional domains and rebuild due to domain refreshes or updates may require additional hours and fees.



Kern County Hospital Authority
OPT-0280142_Q-113578.1_LA-0000067787
December 29, 2021



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

CERNER MILLENNIUM FOREIGN SYSTEM INTERFACE SERVICES (CTS-MILLFSI-SVCS)

- Client and Cerner will work on this project concurrently on an agreed upon project timeline.
- Client shall incur additional fees if services are requested beyond this Scope.
- Adjustments supported as part of the standard scope of services:
 - o Moving an existing data element from one field to another in the same message
 - o Concatenation of two existing data elements
 - o Addition or subtraction of leading zeroes to a numeric value
 - o Hard coding a default value
 - o Nulling fields
 - o Basic conditional statements
 - o Repeating field filtering, such as PID-3, PID-4, and personnel fields
 - o Suppressing transaction types
 - o Removing special characters from a field, such as dashes in a social security number
- The following custom adjustments are supported outside the standard scope of services, and include any necessary Cerner-approved workaround:
 - o Querying data from standard *Cerner Millennium* tables and inserting into a field
 - o Full message character-string replacements
 - o Adding segments to a trigger not defined in Cerner Specifications
 - o Creating custom tables in *Cerner Millennium*, and inserting/updating/querying those tables
 - o Creating custom Z segments
- Adjustments not supported under this Scope:
 - o Modification of the clinical content of a result from any source, including OBX;3,4,5,6,7,8,11 and 14
 - o Creating custom insert statements to insert rows into standard *Cerner Millennium* database tables
- All work set forth herein will be performed virtually unless otherwise agreed upon by Cerner and Client.

Trademarks

- *HL7* is the registered trademark of *Health Level Seven International* and their use of this trademark does not constitute an endorsement by *HL7*.



Kern County Hospital Authority
OPT-0280142_Q-113578.1_LA-0000067787
December 29, 2021



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

March 16, 2022

Subject: Proposed Amendment No. 1 to Lease Agreement 09217 with Truxtun Land Company, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Amendment No. 1, effective March 16, 2022, to extend the Lease Agreement with Truxtun Land Company, LLC, for 12,676 square feet of office space at 5101 Office Park Drive, Bakersfield, California 93309. Several non-medical services work out of the location. The Amendment extends the term five (5) years through March 31, 2027, and increases the maximum payable by \$1,199,227 from \$1,150,414 to \$2,349,641, to cover the extended term.

Amendment No. 1 contains nonstandard terms and cannot be approved as to form by Counsel due to its elimination of the ability to terminate the Lease Agreement without cause. This lease provides a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with Amendment No. 1, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the proposed Amendment No. 1 to the Lease Agreement with Truxtun Land Company, LLC, extending the term five (5) years from April 1, 2022 to March 31, 2027, and increasing the total maximum payable by \$1,199,227 from \$1,150,414 to \$2,349,641, to cover the extended term, and authorize the Chairman to sign.

FIRST AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (“Amendment”) is entered into between **KERN COUNTY HOSPITAL AUTHORITY**, a local unit of government (“KCHA”) and **TRUXTUN LAND COMPANY, LLC** (“Sublessor”), and amends the Agreement for the Sublease between KCHA and Sublessor dated March 23, 2017 relating to the leased premises located on the third floor of 5101 Office Park Drive, Bakersfield, County of Kern, State of California, and is hereby effective March 16, 2022 (“Effective Date”).

For adequate consideration and the terms and provisions of this Amendment, the parties hereto have executed and agreed to the following:

1. Lease Extension. The parties hereto agree to extend term beginning April 1, 2022 and expiring March 31, 2027.

2. Rent. The Base Rent shall be \$1.50 per square foot per month with \$19,014.00 payable monthly commencing April 1, 2022 and increasing on each anniversary of April 1st by 2%, as shown below:

April 1, 2023	\$19,394.28 per month	\$232,731.36 per year
April 1, 2024	\$19,782.16 per month	\$237,385.92 per year
April 1, 2025	\$20,177.80 per month	\$242,133.60 per year
April 1, 2026	\$20,581.35 per month	\$246,976.20 per year

3. Utilities and Services; Modification of Utilities. Section 10 of the Lease is hereby restated in whole as follows: Sublessor shall provide HVAC, gas, trash, water and electricity for the Premises during normal business hours. Commencing April 1, 2022, KCHA shall pay to Sublessor for water, gas, trash and electricity for the Premises at a rate of \$4,938/month (“**Utility Rent**”), and thereafter the Utility Rent shall be increased each April 1st by 2%. However, Utility Rent may be increased by Sublessor in the event that KCHA’s usage unreasonably exceeds what would normally be used for commercial office space. Utility Rent shall be paid on the first of each month.

4. Insurance. Commencing April 1, 2022, Subsection 20.a.(i) of the Lease is hereby restated in whole as follows: **i) Commercial General Liability Insurance**, on an occurrence basis, with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the annual aggregate, including owners and contractors protective coverage, blanket contractual coverage, and personal injury coverage, covering the insuring provisions of this Agreement and the performance of KCHA of the indemnity and exemption of Sublessor and Lessor from liability agreements set forth herein

5. Right to Terminate. Section 3 of the Lease is hereby deleted, and of no further force or effect.

6. **Broker Commission.** Sublessor shall pay Colliers International, David Williams, a leasing commission of 3% of the Base Rent scheduled to be paid over the extended 5-year term of the Lease.

7. **Alterations.** Sublessor, at Sublessor's cost, shall convert one large open office into 3 private offices and soundproof the inner connection walls for the same, as shown on the attached Exhibit A - Floor Plan, and shall install new carpet throughout the Premises of KCHA's reasonable choice with Sublessor's approval. Sublessor will use reasonable efforts to complete such office conversion by June 1, 2022.

8. **Conflict.** If there is a conflict between the terms of this Amendment and the Lease, the terms of this Amendment shall prevail. Except as provided in this Amendment, all other terms of the Lease shall remain in force.

9. **Counterparts.** This Amendment shall be executed in two or more counterparts, each of which shall be deemed an original, but all which shall constitute one and the same instrument. For purposes of this Amendment, a facsimile, photocopy, PDF, or similar electronically scanned signatures shall be as valid and enforceable as an original.

10. **Interpretation.** To the extent a capitalized term is not otherwise defined in this Amendment, it shall have the same meaning as provided in the Lease.

IN WITNESS WHEREOF, the parties have entered into this Amendment to Lease to be effective as of the Effective Date.

SUBLESSOR:

KCHA:

TRUXTUN LAND COMPANY, LLC,
a California limited liability company

**KERN COUNTY HOSPITAL
AUTHORITY, a local unit of
government**

By: Granite Peak Robinson, LLC, its
Manager

By:

By: James Slaughter, Secretary

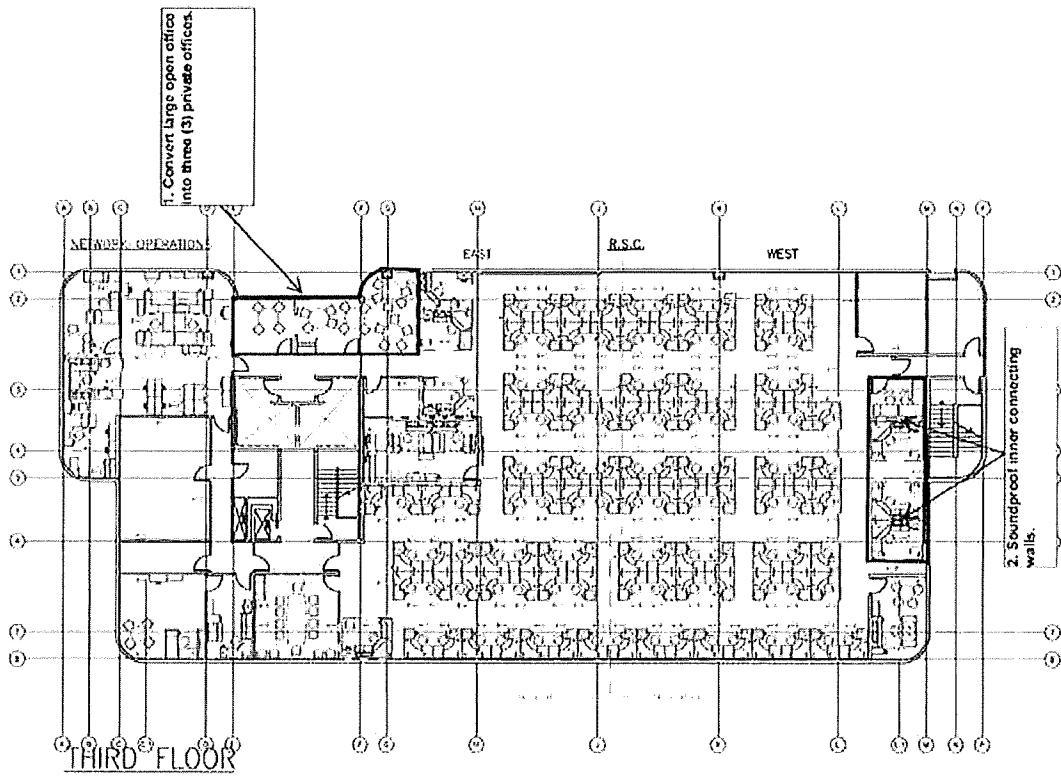
Its: Chairman, Board of Governors

**REVIEWED ONLY; NOT
APPROVED AS TO FORM:**
KCHA Legal Services Department

By: Jane [Signature]
Hospital Counsel

EXHIBIT A

Floor Plan





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

March 16, 2022

Subject: Proposed Amendment No. 4 to Agreement 07020 for Personal/Professional Services with American Incorporated

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 4, effective March 16, 2022, to the Personal/Professional Services Agreement with American Incorporated, for maintenance and repair of HVAC units and air handlers at Kern Medical and its outpatient clinics. The Amendment increases the maximum payable by \$550,000 from \$450,000 to \$1,000,000 for the period of December 2, 2019 to December 1, 2022, to cover the term.

Therefore, it is recommended that your Board approve Amendment No. 4 to the Personal/Professional Services Agreement, increasing the total maximum payable by \$550,000 from \$450,000 to \$1,000,000 for the period December 2, 2019 to December 1, 2022, and authorize the Chairman to sign.

**AMENDMENT NO. 4
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority–American Incorporated)**

THIS AMENDMENT TO AGREEMENT, effective March 16, 2022, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and American Incorporated ("Consultant") with its principal place of business located at 1345 North American Street, Visalia, California 93291.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement (KCHA Agt. #21320, effective December 2, 2019), Amendment No. 1 (KCHA Agt. #21320, effective April 22, 2020), Amendment No. 2 (KCHA Agt. # 47820, effective June 30, 2020), and Amendment No. 3 (KCHA Agt. # 24721, effective February 10, 2021) ("Agreement"), for the period December 2, 2019 through December 1, 2022; and

WHEREAS, the parties to the Agreement desire to amend the Agreement as specified herein below;

NOW, THEREFORE, KCHA and Consultant do mutually agree as follows (check those applicable):

- Term.** The Agreement shall be extended from XXXXX to XXXXX, unless sooner terminated as provided for in the Agreement.
- Fees** payable by KCHA under the Agreement shall increase by \$550,000, from \$450,000 to \$1,000,000.
- Travel Expenses** payable by KCHA under the Agreement shall increase from by XXXXX, from XXXXX to XXXXX.
- Services.** See Exhibits XXXXX and XXXXX, attached hereto and incorporated herein by this reference, for revised Services.
- Other**

Except as expressly amended herein, all provisions of the Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 4 to the Agreement has been executed as of the date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Russell Bigler, Chairman, Board of Governors
"KCHA"

Date: _____

**APPROVED AS TO CONTENT:
Responsible KCHA Department**

By Michael Fink
Michael Fink, Senior Director of Facilities

Date: 3-10-22

AMERICAN INCORPORATED
BAKERSFIELD
By [Signature]
Name: _____ Title: MANAGER
"Consultant"

Date: 3-10-22

**APPROVED AS TO FORM:
Legal Services Department**

By Jamie A. Mason
Jamie A. Mason, Hospital Counsel

Date: 3/10/22



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

March 16, 2022

Subject: Proposed Purchase Order Agreement with GE Healthcare business, an independent contractor

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Purchase Order Agreement with GE Healthcare business for the purchase and installation of fourteen (14) Giraffe OmniBed Carestations (“OmniBeds”). The OmniBeds provide neonatal intensive care unit (NICU) patients with advanced technology that creates a consistently controlled thermal environment and promotes healthy growth and development. Currently, Kern Medical has two (2) OmniBeds and adding additional OmniBeds will aid in increasing the number of NICU patients that may receive a higher level of care, if needed. The Purchase Order Agreement is effective March 16, 2022, with a maximum payable of \$373,420, plus taxes.

Therefore, it is recommended that your Board approve the Purchase Order Agreement with GE Healthcare business, effective March 16, 2022, with a maximum payable not to exceed \$373,420 plus taxes, and authorize the Chairman to sign.



GE Healthcare

Date: 10-14-2021
Quote #: PR14-C82349
Version #: 13
Q-Exp-Date: 12-17-2021

Issued By:

Datex-Ohmeda, Inc
FEIN: 22-3029570

Customer Address:

Kern Medical
1700 Mount Vernon Ave
Bakersfield CA 93306-4018

Attention:

Miguel Sandoval
1700 Mount Vernon Ave Bakersfield
CA 93306

This Agreement (as defined below) is by and between the Customer and the GE Healthcare business ("GE Healthcare"), each as identified herein. "Agreement" is defined as this Quotation and the terms and conditions set forth in either (i) the Governing Agreement identified below or (ii) if no Governing Agreement is identified, the following documents:

- 1) This Quotation that identifies the Product offerings purchased or licensed by Customer;
- 2) The following documents, as applicable, if attached to this Quotation: (i) GE Healthcare Warranty(ies); (ii) GE Healthcare Additional Terms and Conditions; (iii) GE Healthcare Product Terms and Conditions; and (iv) GE Healthcare General Terms and Conditions. In the event of conflict among the foregoing items, the order of precedence is as listed above.

This Quotation is subject to withdrawal by GE Healthcare at any time before acceptance. Customer accepts by signing and returning this Quotation or by otherwise providing evidence of acceptance satisfactory to GE Healthcare. Upon acceptance, this Quotation and the related terms and conditions listed above (or the Governing Agreement, if any) shall constitute the complete and final agreement of the parties relating to the Products identified in this Quotation.

No agreement or understanding, oral or written, in any way purporting to modify this Agreement, whether contained in Customer's purchase order or shipping release forms, or elsewhere, shall be binding unless hereafter agreed to in writing by authorized representatives of both parties.

By signing below, each party certifies that it has not made any handwritten modifications.

Governing Agreement:	HPG
Customer Number:	1-23R4ES
Terms of Delivery:	FOB DESTINATION
Billing Terms:	80% delivery / 20% Installation
Payment Terms:	NET 30
Total Quote Net Selling Price:	\$373,419.67
Sales And Use Tax Status:	No Exemption Certificate on File

** The following ship to states do not impose a sales/use tax (AK, DE, MT, NH, OR). No exemption certificate required.

IMPORTANT CUSTOMER ACTIONS:	
Please select your planned source of funds. Source of funds is assumed to be cash unless you chose another option. Once equipment has been shipped, source of funds changes cannot be allowed.	
<input type="checkbox"/> Cash	
<input type="checkbox"/> GE HFS Loan	<input type="checkbox"/> GE HFS Lease
<input type="checkbox"/> Other Financing Loan	<input type="checkbox"/> Other Financing Lease Provide Finance Company Name_____

By signing below, each party certifies that it has not made any handwritten modifications. Manual changes or mark-ups on this Agreement (except signatures in the signature blocks and an indication in the form of payment section below) will be void.

Each party has caused this agreement to be executed by its duly authorized representative as of the date set forth below.


CUSTOMER

_____	_____
Authorized Customer Signature	Date
Russell Bigler	Chairman, KCHA
Print Name	Print Title

Purchase Order Number (if applicable)

Datex-Ohmeda, Inc., a GE Healthcare business	
Madison Mayfield	10-14-2021
_____	_____
Signature	Date
Maternal Infant Care Sales Specialist	
Email: Madison.Mayfield@ge.com	
Office: +12626175652	

**APPROVED AS TO FORM
Legal Services Department**

By 
Kern County Hospital Authority



GE Healthcare

Date: 10-14-2021
Quote #: PR14-C82349
Version #: 13
Q-Exp-Date: 12-17-2021

Total Quote Selling Price	\$373,419.67
Trade-In and Other Credits	\$0.00

Total Quote Net Selling Price	\$373,419.67

To Accept this Quotation
Please sign and return this Quotation together with your Purchase Order To:
Madison Mayfield
Office: +12626175652
Email: Madison.Mayfield@ge.com

Payment Instructions
Please **Remit** Payment for invoices associated with this quotation to:
Datex-Ohmeda, Inc.
PO Box 641936
Pittsburgh, PA 15264-1936

To Accept This Quotation

- Please sign the quote and any included attachments (where requested).
- If requested, please indicate, your form of payment.
- If you include the purchase order, please make sure it references the following information
 - The correct Quote number and version number above
 - The correct Remit To information as indicated in "**Payment Instructions**" above
 - The correct SHIP TO site name and address
 - The correct BILL TO site name and address
 - The correct Total Quote Net Selling Price as indicated above

"Upon submission of a purchase order in response to this quotation, GE Healthcare requests the following to evidence agreement to contract terms. Signature page on quote filled out with signature and P.O. number.

*****OR*****

Verbiage on the purchase order must state one of the following: (i) Per the terms of Quotation # _____; (ii) Per the terms of GPO#^{HPG 500072} _____; (iii) Per the terms of MPA # _____; or (iv) Per the terms of SAA # _____. Include the applicable quote/agreement number with the reference on the purchase order.

In addition, source of funds (choice of: Cash/Third Party Loan or GE HEF Lease or GE HEF Loan or Third Party Lease through _____), must be indicated, which may be done on the quote signature page (for signed quotes), on the purchase order (where quotes are not signed) or via a separate written source of funds statement (if provided by GE Healthcare)."



GE Healthcare

Date: 10-14-2021
 Quote #: PR14-C82349
 Version #: 13
 Q-Exp-Date: 12-17-2021

Line #	QTY	Item #	DESCRIPTION	Contract Price	Discount	Ext Sell Price
1	14	2082844-001	GIRAFFE OMNIBED CARESTATION CS1			
	14	2071262-207	UNITED STATES	Incl.	Incl.	Incl.
	14	2078815-004	115/230V WITH COLOR DISPLAY	\$36,894.67	35.00%	\$335,741.56
	14	2075957-002	115 VOLT OPTION	Incl.	Incl.	Incl.
	14	2075964-010	NORTH AMERICAN POWER CORD (NEMA 5-15 HOSPITAL GRADE)	Incl.	Incl.	Incl.
	14	2075969-001	ENGLISH SOFTWARE	Incl.	Incl.	Incl.
	14	2086333-100	ENGLISH (CD)	Incl.	Incl.	Incl.
	14	2075966-001	GROMMET	Incl.	Incl.	Incl.
	14	2075962-001	OMNIBED DEFAULT PACKAGING	Incl.	Incl.	Incl.
2	14	6600-0055-851	Retaining Clips (6)	\$54.00	36.00%	\$483.84
3	14	6600-0865-700	Instrument Shelf 12in x 12in, 90 degree rotation	\$260.00	36.00%	\$2,329.60
4	14	6600-0851-800	Rotating IV Pole	\$510.00	36.00%	\$4,569.60
5	14	M1125056	SCALE GIRAFFE IN-BED	\$1,484.51	36.00%	\$13,301.26
6	14	6600-0837-800	Tubing Management Arm	\$150.00	36.00%	\$1,344.00
7	28	6600-1793-500	Corner Tray - SE and NW	\$8.00	36.00%	\$143.36
8	28	6600-1794-500	Corner Tray - SW and NE	\$8.00	36.00%	\$143.36
9	14	6600-0825-800	Giraffe OmniBed Hood Cover	\$210.00	36.00%	\$1,881.60
10	14	2105360-001	LED EXAM LT SYSTEM IEC	\$835.00	36.00%	\$7,481.60
11	14	2083497-001	INFANT CARE INSTALLATION FEE	\$250.00	0.00%	\$3,500.00
12	14	CF-2074816-001	DISPOSABLE PATIENT PROBE ROHS QUANTITY 10	\$102.00	100.00%	Incl.
13	1	M1110261	Basic-Go Live Clinical Training (onsite)	\$2,500.00	0.00%	\$2,500.00



GE Healthcare

Date: 10-14-2021
 Quote #: PR14-C82349
 Version #: 13
 Q-Exp-Date: 12-17-2021

Line #QTY	Item #	DESCRIPTION	Contract Price	Discount	Ext Sell Price
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Quote Summary:

Total Quote Discount (34.88%)	(\$200,030.88)
Total Extended Selling Price	\$373,419.67
Total Quote Net Selling Price:	\$373,419.67

(Quoted prices do not reflect state and local taxes if applicable)

Select Service Agreements include an Onsite Technical Overview. The Onsite Technical Overview will provide a two hour summary of your equipment's technical features and does not replace full classroom training sessions. GE Healthcare encourages biomedical engineers to separately enroll in our full training courses. To find out more about our technical training please visit www.gehealthcare.com/training or call 608-221-1551 x3452.

If this Quotation contains a trade-in, such trade-in shall be governed by the terms and conditions set forth on the Trade-In Addendum to GE Healthcare Quotation attached to or provided with this Quotation.

All GE Healthcare pricing is confidential and proprietary. Any reporting requires GEHC's consent..

If applicable, for more information on this device's operating system, please visit GE Healthcare's product security portal at: <https://securityupdate.gehealthcare.com/en/products>



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

March 16, 2022

Subject: Proposed Purchase Order and Service Agreement with Laborie Medical Technologies, Corp.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Purchase Order and Service Agreement with Laborie Medical Technologies, Corp., for the purchase and maintenance of a urodynamic system, which allows for critical bladder study testing to be performed in the urology/urogynecology clinic setting, instead of pre-operatively in a hospital setting, improving the continuity of care.

The term of the Purchase Order and Service Agreement is five years, effective March 16, 2022, with a total maximum payable not to exceed \$40,000.

Therefore, it is recommended that your Board approve the Purchase Order and Service Agreement with Laborie Medical Technologies, Corp., effective March 16, 2022, with a maximum payable not to exceed \$40,000 for the five-year term, and authorize the Chairman to sign.

Customer: Kern Medical
Attention: Dr. Yufan Brandon Chen
Title: MD, FACOG
End User Address: 9330 Stockdale Hwy #400
City, State, Zip: Bakersfield, CA 93311
Phone: 661-664-2200
Email: Yufan.Chen@kernmedical.com

Quote Date: 1/5/2022
Quote Expires: 1/31/2022
Quote Number: CA KM 010522 GCT EG
Territory Manager: Eric Glass
Phone: 714-264-7755
Fax: 802-878-1122
Email: eglass@laborie.com

GOBY CT Urodynamic System

Features: Laborie's INTELLIGENT CATH-ID SYSTEM for supporting patient safety, enhancing urodynamics quality and facilitating RFID traceability Full Urodynamic Test Capability

- World most compact urodynamic system
- Excels in everyday Urodynamic studies

User-Friendly

- Intuitive software, voice guidance and customizable workflows

Streamlines Office Efficiency

- Intelligently manages appointments, previous visits patient information and test data

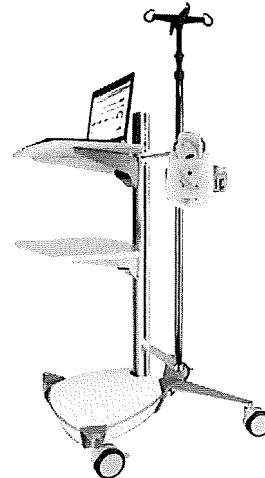
Backed by LABORIE's Outstanding Service Program:

- CME-accredited training courses and certified on-site clinical training.
- Live telephone support and remote online assistance.

<u>QTY</u>	<u>Item No.</u>	<u>Description</u>	
1	UDS-1	Goby CT System	\$34,995

Includes the following features and components:

- Wireless Roam
- Goby hub with infusion pump
- Custom cart with LIT
- UDS Software & manuals
- 110V LIT
- Inkjet Printer on cart
- PDF Printer
- Air-charged Pressure Transducers
 - ▣ Short ▣ Long
- EMG Recording Channel
- Urocap IV Weight Cell Flowmeter
- Folding Commode w/ Funnel
- Windows 10 Laptop computer
- Handheld RFID Scanner





LABORIE MEDICAL TECHNOLOGIES, CORP.
Pease International Tradeport 180 International Drive, Portsmouth, NH 03801 USA
1-800-522-6743 or (802) 857-1300 Fax: (802) 878-1122
www.LABORIE.com

Customer: Kern Medical Attention: Dr. Yufan Brandon Chen Title: MD, FACOG	Quote Date: 1/5/2022 Quote Expires: 1/31/2022 Quote Number: CA KM 010522 GCT EG
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ADDITIONAL OPTIONS

Options

Service Contracts:

SERGUT02	Goby Silver Uptime Contract Year 2	\$2,420
SERGUT03	Goby Silver Uptime Contract Year 3	\$2,662
SERGUT04	Goby Silver Uptime Contract Year 4	\$2,928
SERGUT05	Goby Silver Uptime Contract Year 5	\$3,221

Customer: Kern Medical Attention: Dr. Yufan Brandon Chen Title: MD, FACOG	Quote Date: 1/5/2022 Quote Expires: 1/31/2022 Quote Number: CA KM 010522 GCT EG
Goby CT Terms & Acceptance Form	

This Quote does not include applicable state taxes unless specifically stated E.&O.E.

Discount Expires:	January 31, 2022	Goby CT Price:	\$34,995
		Loyalty Discount:	-\$6,000
		Freight:	\$550
		TOTAL	\$29,545

Customer Responsibilities: All patient care activities are the sole responsibility of the customer. This includes, but is not limited to: patient instruction, and insuring all institution protocols and safety guidelines are met. Customer will arrange for 2 or 3 patients to be available for patient testing during the in-service.

Staffing: In order to ensure the successful education of the customer staff, LABORIE requests all staff members involved in the operation of the urodynamics equipment be present during training and whenever possible to refrain from other duties.

Supplies: Customer is responsible for ensuring there are enough supplies on hand to complete the patient tests scheduled during training.

LABORIE Responsibilities: LABORIE will provide in-service training on the LABORIE equipment purchased. Customization of the LABORIE equipment will be completed based on your specific needs. Complete user manuals and verbal instruction will be provided, along with contact information for on-going support and supply ordering.

Additional Training: If you feel you need additional training days at the time of installation, please contact your sales executive as soon as possible. Additional fees are applicable.

Service Packages: Extended Service contracts are available after the system's warranty period expires.

Payment Terms: NET 30 days from date of invoice with approved credit.

Freight and Handling: Customer pays \$950 freight/additional freight charges if S2 or S3 Sonesta table is ordered and \$1125 for the Sonesta 6210.

Warranty: 1 year parts and labor

Delivery: 4 - 6 weeks ARO, FOB Origin, Prepaid & Add

Upon customer signing below or issuing a purchase order against this quote, Customer agrees to all terms contained hereof including the General Customer Order as quoted: Conditions of Sale found at www.laborie.com. Customer agrees that any other additional terms and conditions, whether on customer's purchase order or otherwise, shall not apply unless both parties agree in writing.

Russell Bigler, Chairman, Board of Governors


Name and Title

Authorized Signature Date

9 Digit Federal Tax ID # (Required to ship)

Ordering Information:
For sites requiring purchase orders, this equipment order cannot be processed without a copy of the purchase order.
FAX ORDERS TO: 802-878-1122
EMAIL ORDERS TO: EQUIPMENT@LABORIE.COM

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority

CA KM 010522 GCT EG

EXHIBIT A

Terms and Conditions of Sale

GENERAL CONDITIONS OF SALE

These terms and conditions ("Agreement") shall govern the provision of products and services to you by Laborie Medical Technologies Corp. ("LABORIE") unless otherwise agreed upon in a separate, written agreement between you and LABORIE.

1. PRICING AND PAYMENT

1.1 All prices are in U.S. dollars unless otherwise stated on the quotation. LABORIE reserves the right to change prices without notice. Prices in effect at the time your order is accepted will prevail. Pricing is subject to the terms of this Agreement and the quotation.

1.2 Prices are exclusive of, and you will pay: (a) all applicable federal, state, provincial and local taxes (including all applicable sales, use, consumption, goods and service, value added, and withholding taxes), unless you have provided LABORIE with an appropriate tax exemption certificate or number, and (b) all fees and charges related to customs, duties and brokerage.

1.3 Payment terms are net thirty (30) days from the date of LABORIE's invoice date. Payment shall be made in full and without deduction or set-off.

2. ORDERS, DELIVERY AND SHIPPING

2.1 LABORIE will make reasonable efforts to accommodate your delivery requirements; however, delivery is subject to availability of resources at the time of order placement and is dependent on your availability to provide input and to perform reviews. LABORIE shall therefore not be liable in any way for any delay or damage arising from LABORIE's failure to meet such delivery requirements or any delivery dates.

2.2 All orders are subject to acceptance by LABORIE. All shipments shall be made FCA LABORIE's facilities (Incoterms 2000) as indicated on the quotation. Risk of loss for products shall pass to you upon delivery to the carrier. You therefore assume all responsibility for claims against the carrier for loss or damage. If goods are received short or in damaged condition, you must immediately notify the carrier and insist on a notation of the loss or damage across the face of the freight bill, otherwise a claim cannot be enforced against the carrier. If you provide the carrier with a clear receipt for goods that have been visibly damaged or lost in transit, you do so at your own risk and expense.

2.3 You are responsible for examining all shipments promptly upon receipt and for preparing your facilities for installation of the products. If you discover any shortages or incorrect products in the shipment, you must notify LABORIE immediately. Please check your order carefully, as no claim for shortages or deficiencies will be accepted by LABORIE after one (1) day from delivery of the products. If you discover any concealed loss or damage to the products, such loss or damage is your responsibility, in accordance with Section 2.2 above. You must retain all packing materials, immediately notify the carrier and follow the requisite steps for resolution. Generally, a concealed damage report must be made within seven (7) days of delivery or the carrier will not entertain any claim for loss or damage.

2.4 LABORIE reserves the right to make partial shipments unless otherwise agreed to in writing. Such partial shipments shall become due and payable in accordance with this Agreement.

3. RETURNS

3.1 Products may be returned to LABORIE within ten (10) days of delivery for credit, if the products are unused, in a new and intact condition, and in their original containers, subject to LABORIE's return procedures. You must obtain a valid, written Return Materials Authorization (RMA) from LABORIE before products may be returned. LABORIE reserves the right to refuse or return collect any products sent back without an RMA. Returned products are subject to a restocking charge which may range from 20-50%. You are also responsible for paying the full cost of refurbishing or repairing the products and all return LABORIE Medical handling and shipping costs. Disposable/Sterile products are also subject to expiration date and compromised packaging considerations. Consult LABORIE for details and RMA.

4. TITLE, INTELLECTUAL PROPERTY AND USE RESTRICTIONS

4.1 You shall not obtain title and/or any right of possession to the products sold to you until you pay all amounts due for such products. NOTWITHSTANDING THE FOREGOING, TITLE TO SOFTWARE SHALL NOT PASS TO YOU. YOUR USE OF ANY LABORIE SOFTWARE SUPPLIED TO YOU UNDER THIS AGREEMENT IS GOVERNED BY AND SUBJECT TO LABORIE'S SOFTWARE LICENSE TERMS APPLICABLE TO SUCH SOFTWARE.

4.2 You do not acquire any intellectual property or other proprietary rights under this Agreement, including without limitation any right, title or interest in and to patents, copyrights, trade-marks, industrial designs, confidential information, or trade secrets, whether registered or unregistered, relating to LABORIE products, services, or any part thereof. Your only rights to LABORIE products, services, or any part thereof shall be those rights expressly licensed or granted to you under this Agreement. Any rights not expressly granted under this Agreement are reserved.

4.3 Except to the extent expressly agreed upon in writing by you and LABORIE, you shall not, and you shall not permit any third party to, copy, reproduce, distribute, modify, decompile, disassemble or reverse engineer any software or other products provided to you by LABORIE, nor shall you use such products or services except to facilitate your internal business functions.

5. CHANGES

5.1 LABORIE reserves the right to make changes in the design of its products or services without the obligation to make equivalent changes to products or services that have previously been supplied to you. LABORIE further reserves the right to change part numbers and specifications without prior notice.

5.2 You shall not be entitled to change or cancel any order without the prior written agreement of LABORIE.

6. CANCELLATION AND TERMINATION

6.1 LABORIE may terminate this Agreement upon written notice to you, and may also stop any products in transit to you and suspend the delivery of products and services to you without penalty, if: (a) you commit a material breach of this Agreement and fail to remedy such breach within thirty (30) days of receiving notice of such breach, or (b) you become involved in any legal proceeding concerning your solvency, have a receiver or administrator appointed of any of

your assets, cease or threaten to cease operations, or otherwise have a serious and reasonable doubt arise respecting your solvency.

6.2 Upon termination of this Agreement for your breach or insolvency: (a) all of LABORIE's performance obligations hereunder shall immediately cease, (b) your license to use any software provided to you hereunder shall immediately cease, and you shall either return all such software to LABORIE or have an officer of your company certify that such software has been destroyed, and (c) any payments then due to LABORIE become immediately payable in full.

7. COMPLIANCE WITH LAWS

7.1 Each party shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies (including import and export laws and regulations), including federal, provincial, state, municipal and local governing bodies, of any country having jurisdiction over the products and LABORIE Medical services or any part thereof.

8. WARRANTY

8.1 LABORIE warrants that, for a period of one (1) year from the date that the products are delivered to you: (a) the products will comply with LABORIE's specifications for such products, and (b) the products will be free from material defects in material, design and workmanship. LABORIE does not warrant that the operation of the products or services will be uninterrupted or error-free.

8.2 If you notify LABORIE of any such material defects or non-conformance with the products within such one (1) year period, LABORIE will, at its option, repair or replace the products. If LABORIE is unable to repair or replace such products within a reasonable timeframe, LABORIE may refund you the amounts paid for such defective or non-conforming products. All shipment of such products is at your expense.

8.3 The above warranty shall not apply to defects or non-conformities resulting from: (a) improper or inadequate maintenance or installation of the products, (b) use of the products or services in combination with software, interfaces, or other materials that are not supplied or specifically authorized by LABORIE, (c) unauthorized or improper use, modification maintenance or repair of the products or services, (d) abuse, negligence, accident, or other damage from external sources, or (e) improper preparation of your facilities for product installation and use.

8.4 THE WARRANTY SET FORTH IN THIS SECTION 8 IS THE EXCLUSIVE WARRANTY MADE BY LABORIE TO YOU. LABORIE DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE LABORIE PRODUCTS AND SERVICES PROVIDED HEREUNDER. Some jurisdictions may not allow the exclusion or limitation of implied warranties and conditions. To the extent permitted by law, any implied warranties or conditions relating to the products and services to the extent that they cannot be excluded as set out above are limited to one (1) year from the date that the products are delivered to you. Notwithstanding anything to the contrary,

Laborie's limitations of liability shall not apply to, affect, or limit: (i) any of Laborie's duties to indemnify Customer in accordance with this agreement and/or (ii) any third party claims.

9. INDEMNITY

9.1 You shall defend, indemnify and hold LABORIE, its successors, assigns, officers, directors, employees and agents harmless from any and all claims, damages, judgments, settlements, losses or expenses, including but not limited to attorney's fees and charges, and court and arbitration costs, arising out of or relating to this Agreement (including without limitation (a) a claim of infringement of any intellectual property or proprietary right arising from your combination or use of the products or services with software, interfaces, or other materials that are not supplied or specifically authorized by LABORIE, (b) a claim of infringement of any intellectual property or proprietary right arising from LABORIE's adherence to your instructions, (c) a claim respecting any injury, death or property damage in connection with your use or misuse of the products or services, (d) any third party claim arising from your unauthorized or improper use or modification of the products or services, and (e) any third party claim arising out of your material breach of this Agreement). This indemnity obligation excludes any direct damages to the extent arising from negligent act or omissions of Laborie and product defect.

9.2 LABORIE will defend, indemnify and hold you harmless with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation attorney's fees and court costs, arising from (a) a claim that the products or services furnished and used within the scope of this Agreement infringe(s) such third party's copyright, patent or other intellectual property right enforceable in the territory in which you have been authorized to use such products or services and (b) Laborie's negligence. Notwithstanding the foregoing, LABORIE shall have no liability for any claim of infringement to the extent based on: (a) use of a superseded or altered release or version of any product if the infringement would have been avoided by the use of a current unaltered release or version of such product that LABORIE has, as of the time the LABORIE Medical claim arose, made commercially available at no charge to you or (b) any claim for which you are obligated to indemnify LABORIE.

9.3 Each party's indemnity obligations hereunder are conditional upon: (a) the indemnified party notifying the indemnifying party in sufficient time to allow the indemnifying party to protect its legal interests; (b) the indemnifying party having sole control of the defense and all related settlement negotiations, provided, however, that the indemnifying party shall act reasonably and in good faith to protect the indemnified party's interests, and (c) the indemnified party providing the indemnifying party with the assistance, information and authority necessary to perform the indemnifying party's obligations under this paragraph. Reasonable out-of-pocket expenses incurred by the indemnified party in providing such assistance will be reimbursed by the indemnifying party.

10. LIMITATIONS OF LIABILITY

10.1 Except as expressly stated herein, in no event will LABORIE be liable under this Agreement for any damages other than your direct damages to the extent arising from LABORIE's gross negligence or willful misconduct, and in no event shall LABORIE's aggregate liability exceed the amounts paid by you to LABORIE for the products and services that gave rise to the claim.

10.2 No claim may be brought against LABORIE, whether in contract, tort or otherwise, more than two years after the products were delivered and services were completed or terminated under this agreement.

10.3 EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 10, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL LABORIE BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, DATA, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT LABORIE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding anything to the contrary, Laborie's limitations of liability shall not apply to, affect, or limit: (i) any of Laborie's duties to indemnify Customer in accordance with this agreement and/or (ii) any third party claims.

11. CONFIDENTIALITY

11.1 Each party recognizes that it may in the course of this Agreement come into possession of confidential or proprietary information of the other party. Each party therefore agrees that at all times during the term of this Agreement and following termination of this Agreement: (a) each party shall maintain the confidential information of the other party in strict confidence, shall take all necessary precautions against unauthorized disclosure of such confidential information, and shall not directly or indirectly, disclose, allow access to, transmit or transfer any confidential information to a third party without the knowledge and express written consent of the other party, (b) neither party shall use, disclose or reproduce the other party's confidential information except as reasonably required in the performance of this Agreement, and then only to employees who have a need to know and are bound by a written obligation of confidentiality, and (c) each party agrees to advise the other party immediately in writing of any misappropriation, disclosure, conversion or misuse by any person of any confidential information of which it may become aware.

11.2 The confidentiality obligations under this Agreement shall not apply to confidential information which: (a) is, or becomes, readily available to the public other than through a breach of this Agreement; (b) was lawfully known to the receiving party without any confidentiality obligation prior to receipt of the confidential information from the disclosing party; or (c) was independently developed or discovered outside of the course of the performance of obligations under this Agreement. Laborie 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. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

12. GENERAL

12.1 Independent Contractor: Each party is acting as an independent contractor, and not in any way as the agent or representative of the other party. Neither party has the authority to bind the other in any way.

12.2 Force majeure: Neither party shall be deemed to be in default of this Agreement for failure to fulfill its obligations due to causes beyond its reasonable control. This provision shall not be construed as excusing any payment obligations of either party hereunder.

12.3 Notices: Any notices, reports or other mandatory communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier or facsimile addressed to LABORIE or you at their respective addresses.

12.4 No Waiver: No waiver by either party of a breach or omission by the other party under this Agreement shall be binding on the waiving party unless it is expressly made in writing and signed by the waiving party. Any waiver by a party of a particular breach or omission by the other party shall not affect or impair the rights of the waiving party in respect of any subsequent breach or omission of the same or different kind.

12.5 Assignment: Neither party shall assign or transfer this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon the parties hereto and their respective lawful successors and permitted assigns.

12.6 Severability: If any one or more of the provisions of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, any such provision shall be severable from this Agreement, in which event this Agreement shall be construed as if such provision had never been contained herein.

12.7 Survival: Any provision of this Agreement which expressly states that it is to continue in effect after termination or expiration of this Agreement, or which by its nature would survive the termination or expiration of this Agreement, shall do so.

12.8 Entire Agreement/Modification: This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and understandings relating to the subject matter hereof. This Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both parties. Your additional or different terms and conditions, whether on your purchase order or otherwise, shall not apply.

12.9 Counterparts: This Agreement may be executed in counterparts, or facsimile counterparts, each of which when executed by either of the parties shall be deemed to be an original and such counterparts shall together constitute one and the same Agreement.

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

March 16, 2022

SUBJECT: Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company

RECOMMENDED ACTION: Approve renewal and binding of all-risk property insurance and earthquake coverage from March 31, 2022 through March 31, 2023, in an amount not to exceed \$634,650; Authorize the Chief Executive Officer to sign the Premium Finance Agreement and Certificate of Incumbency with IPFS Corporation

SUMMARY: The Authority requests your Board approve the renewal and binding of the following insurance coverages for the period March 31, 2022 through March 31, 2023:

- Property
- Earthquake

Property

The Authority recommends renewing property coverage through PRISM for all-risk coverage protecting buildings, contents, equipment, business interruption and flood.

- Insurance Carriers: Various Carriers within Tower I of the PRISM Program
- A.M. Best Rating: Pursuant to PRISM's minimum financial rating specifications
- Term: March 31, 2022 – March 31, 2023
- Coverage: Provides the Authority and its named-insureds with all-risk property coverage, through various carriers in a group policy procured and through a Joint Powers Authority, to include buildings, contents, equipment, business interruption and flood
- Limit per Occurrence: \$600,000,000 All Risk; \$200,000,000 Flood
- Retention (SIR): \$100,000
- Annual Premium: \$276,182 (Not yet finalized; refer to attached summary)

Earthquake

The Authority recommends renewing earth movement coverage through Specialty Risk Underwriters and Evanston Insurance Company for coverage protecting buildings, contents, equipment and business interruption against the peril of earthquake.

- Insurance Carriers: Specialty Risk Underwriters (with Lloyd's syndicates and other insurers) and Evanston Insurance Company

- A.M. Best Rating:
 - Specialty Risk Underwriters, All syndicates and other insurers with a minimum of (A- (Excellent) IX)
 - Evanston Insurance Company (A (Excellent) XV)
- Term: March 31, 2022 – March 31, 2023
- Coverage: Provides the Authority and its named-insureds with dedicated limits of coverage against the peril of earthquake, through various underwriters/syndicates and insurance companies for buildings, contents, equipment, and business interruption
- Limit per Occurrence: \$25,000,000
- Retention (SIR): 5% per unit / \$100,000 minimum
- Annual Premium: \$353,493

Total Annual Premiums: \$629,675 (as recommended)

Summary Regarding Variance in Property Premiums:

The Authority presently insures its property, including contents, via a member-directed insurance risk sharing pool administered by Public Risk, Innovation, Solutions, and Management (PRISM). PRISM, a Joint Powers Authority, provides to its members an ultra-competitively priced all-risk policy, including business interruption. Coverage is for damage to real and personal property from all risk perils, including flood.

For the renewing term starting March 31, 2022, the combined cost for all-risk property coverage (excluding earthquake) has yet to be finalized due to a continuing volatile and hard market. However, the latest premium estimate (version 3) provided by PRISM to the Authority reflects a preliminary not-to-exceed premium of \$276,182 versus last year's final premium of \$221,226. This represents an increase of up to 25% over the prior year (\$54,956) with a final premium allocation to be determined and disclosed by PRISM following its March 16 board meeting. Given the market volatility and increasing severity of catastrophic events, we expect rates to continue to rise each subsequent renewal term for the foreseeable future. This situation is not unique to the Authority.

Summary Regarding Variance in Earthquake Premiums:

For the term renewing March 31, 2022, Specialty Risk Underwriters and Evanston, the incumbent carrier/underwriter, have offered to renew the policy with the same policy limits as expiring with a slight increase in premium. This was primarily the result of an increase in trended property and business interruption values allocated to the various locations covered by the policy. The renewing policy period, when compared to the expiring period, represents an increase of 7% for a total of \$23,920 over last year.

Premium Financing

PRISM provides in-house premium financing for the property insurance coverage referenced above. Financing rates have decreased from 1.4% to 1.2%.

Following negotiations, IPFS has agreed to offer premium financing for the earthquake policy at the same 2.5% rate as last year. IPFS also agreed to lock in this same rate for our upcoming renewals in July instead of implementing two separate rate increases scheduled for April and June. This will produce a significant savings as total interest from financed premiums for the July renewals will be substantially higher.

The Authority recommends financing the referenced premiums as follows:

1. PRISM will provide in-house financing of the property coverage for an additional fee of up to \$1,521 (or less, depending on the final premium allocation) with the cost of coverage and financing split between 12 equal payments; and
2. IPFS Corporation of California will finance the earthquake coverage. Financing will require a 15% cash down payment (\$53,000), plus finance charges at a rate of 2.5% (up to \$3,454), for total payments (excluding down payment) not to exceed \$303,947, as set forth below:

Total Premium	\$353,493
Cash down payment	\$53,000
Amount Financed	\$300,493
Finance charges (2.5%)	\$3,454
Total Payments (Excluding Down Payment)	\$303,947

3. Financing through IPFS Corporation requires a separate Premium Finance Agreement and Certificate of Incumbency.

Therefore, it is recommended that your Board approve the renewal and binding of property and earthquake insurance coverage from March 31, 2022 through March 31, 2023, with the option to finance property premiums through PRISM and earthquake premiums through IPFS Corporation of California, in an amount not to exceed \$634,650, which includes administrative and finance fees; and authorize the Chief Executive Officer to sign the Premium Finance Agreement with IPFS Corporation and Certificate of Incumbency.

CERTIFICATE OF INCUMBENCY

I, MONA A. ALLEN, do hereby certify that I am the duly elected or appointed and acting Secretary or Clerk of the Kern County Hospital Authority (Insured), that I have custody of the records of such entity, and that each individual named below is, and was as of the date each individual affixed his or her signature to the Premium Finance Agreement, between the Insured and IPFS Corporation of California (IPFS) (the Agreement), a duly elected or appointed officer of such entity holding the title or office set forth opposite his or her name below. I further certify that: (i) the signature set opposite each individual's name is true and authentic signature of that individual and (ii) each such individual has (and had on the date each such individual affixed his or her signature to the Agreement) the authority on behalf of the Insured to enter into the Agreement.

Signature

Scott Thygerson
Chief Executive Officer
Kern County Hospital Authority

IN WITNESS WHEREOF, I have duly executed this Certificate of Incumbency and affixed the Insured's seal hereto this 16th day of March, 2022.

Mona A. Allen, Authority Board Coordinator

A	CASH PRICE (TOTAL PREMIUMS)	\$353,492.90
B	CASH DOWN PAYMENT	\$53,000.00
C	PRINCIPAL BALANCE (A MINUS B)	\$300,492.90

AGENT (Name & Place of business) ALLIANT INSURANCE SERVICES INC 100 PINE ST STE 1100 SAN FRANCISCO, CA 94111-5113 (415)403-1400 FAX: (415)403-0773	INSURED (Name & Residence or business) KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 (661)326-2868 steven.chandler@kernmedical.com
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Commercial

Account #: _____

LOAN DISCLOSURE
 Additional Policies Scheduled on Page 3

Quote Number: 18747518

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 2.500%	FINANCE CHARGE The dollar amount the credit will cost you. \$3,453.90	AMOUNT FINANCED The amount of credit provided to you or on your behalf. \$300,492.90	TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled \$303,946.80
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YOUR PAYMENT SCHEDULE WILL BE

Number Of Payments 10	Amount Of Payments \$30,394.68	When Payments Are Due Beginning: MONTHLY 04/30/2022
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ITEMIZATION OF THE AMOUNT FINANCED: THE AMOUNT FINANCED IS FOR APPLICATION TO THE PREMIUMS SET FORTH IN THE SCHEDULE OF POLICIES UNLESS OTHERWISE NOTED.

Security: Refer to paragraph 1 below for a description of the collateral assigned to Lender to secure this loan.

Late Charges: A late charge will be imposed on any installment in default 10 days or more. This late charge will be 5.00% of the installment due.

Prepayment: If you pay your account off early, you may be entitled to a refund of a portion of the finance charge computed as provided in Sec. 18635, California Statute or as otherwise allowed by law. The finance charge includes a predetermined interest rate plus a non-refundable service/origination fee of \$25.00. See the terms below and on the next page for additional information about nonpayment, default and penalties.

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	SCHEDULE OF POLICIES INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	03/31/2022	LLOYD'S LONDON - CERTAIN UNDERWRITE AMWINS INS. BROKERAGE OF CA, LLC	EARTHQUAK E	35.00%	12	205,000.00 Fee: 699.00 Tax: 6,685.22
Broker Fee:						\$0.00
TOTAL:						\$353,492.90

The undersigned insured directs IPFS Corporation of California (herein, "Lender") to pay the premiums on the policies described on the Schedule of Policies. In consideration of such premium payments, subject to the provisions set forth herein, the insured agrees to pay Lender at the branch office address shown above, or as otherwise directed by Lender, the amount stated as Total of Payments in accordance with the Payment Schedule, in each case as shown in the above Loan Disclosure. The named insured(s), on a joint and several basis if more than one, hereby agree to the following provisions set forth on pages 1 and 2 of this Agreement: **1. SECURITY:** To secure payment of all amounts due under this Agreement, insured assigns Lender a security interest in all right, title and interest to the scheduled policies, including (but only to the extent permitted by applicable law): (a) all money that is or may be due insured because of a loss under any such policy that reduces the unearned premiums (subject to the interest of any applicable mortgagee or loss payee), (b) any unearned premium under each such policy, (c) dividends which may become due insured in connection with any such policy and (d) interests arising under a state guarantee fund. **2. POWER OF ATTORNEY:** Insured irrevocably appoints Lender attorney-in-fact with full power of substitution and full authority upon default to cancel all policies above identified, receive all sums assigned to its Lender or in which it has granted Lender a security interest and to execute and deliver on behalf of the insured documents, instruments, forms and notices relating to the listed insurance policies in furtherance of this Agreement. **3. POLICY EFFECTIVE DATES:** The finance charge begins to accrue as of the earliest policy effective date.

NOTICE: A. Do not sign this agreement before you read it or if it contains any blank space. B. You are entitled to a completely filled in copy of this agreement. C. Under the law, you have the right to pay in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. D. Keep your copy of this agreement to protect your legal rights.

**FOR INFORMATION CONTACT THE
 DEPARTMENT OF FINANCIAL INSTITUTIONS,
 STATE OF CALIFORNIA**

The undersigned hereby warrants and agrees to Agent's Representations set forth herein.

 Signature of Insured or Authorized Agent
 Scott Thygerson, Chief Executive Officer

 DATE

 Signature of Agent

 DATE

Insured and Lender further agree that: **4. AGREEMENT EFFECTIVE DATE:** This Agreement shall be effective when written acceptance is mailed to the insured by Lender. **5. DEFAULT AND DELINQUENT PAYMENTS** If any of the following happens insured will be in default: (a) a payment is not made when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against insured, or (c) insured fails to keep any promise the insured makes in this Agreement; provided, however, that, to the extent required by applicable law, insured may be held to be in default only upon the occurrence of an event described in clause (a) above. The acceptance by Lender of one or more late payments from the insured shall not estop Lender or be a waiver of the rights of Lender to exercise all of its rights hereunder or under applicable law in the event of any subsequent late payment. **6. CANCELLATION:** Lender may cancel the scheduled policies after providing at least 10 days notice of its intent to cancel or any other required statutory notice if the insured does not pay any installment according to the terms of this Agreement or transfers any of the scheduled policies to a third party and the unpaid balance due to Lender shall be immediately due and payable by the insured. Lender at its option may enforce payment of this debt without recourse to the security given to Lender. **7. CANCELLATION CHARGES:** If Lender cancels any insurance policy in accordance with the terms of this Agreement and applicable law, then the insured shall pay Lender a cancellation charge equal to \$15.00 or the maximum amount permitted by law. If cancellation occurs, the insured agrees to pay a finance charge on the outstanding indebtedness at the maximum rate authorized by applicable state law in effect on the date of cancellation until the outstanding indebtedness is paid in full or until such other date as required by law. **8. INSUFFICIENT FUNDS (NSF) CHARGES:** If insured's check or electronic funding is dishonored for any reason, the insured will pay to Lender a fee of \$15.00 or the maximum amount permitted by law. **9. MONEY RECEIVED AFTER CANCELLATION:** Any payments made to Lender after Lender's Notice of Cancellation of the insurance policy(ies) has been mailed may be credited to the insured's account without any obligation on the part of Lender to request reinstatement of any policy. Any money Lender receives from an insurance company shall be credited to the balance due Lender with any surplus refunded to whomever is entitled to the money. In the event that Lender does request a reinstatement of the policy(ies) on behalf of the insured, such a request does not guarantee that coverage under the policy(ies) will be reinstated or continued. Only the insurance company has authority to reinstate the policy(ies). The insured agrees that Lender has no liability to the insured if the policy(ies) is not reinstated and Lender may charge a reinstatement fee where permitted up to the maximum amount allowed by law. **10. ASSIGNMENT:** The insured agrees not to assign this Agreement or any policy listed hereon or any interest therein (except for the interest of mortgagees or loss payees), without the written consent of Lender, and that Lender may sell, transfer and assign its rights hereunder or under any policy without the consent of the insured, and that all agreements made by the insured hereunder and all rights and benefits conferred upon Lender shall inure to the benefit of Lender's successors and assigns (and any assignees thereof). **11. INSURANCE AGENT OR BROKER:** The insured agrees that the insurance agent or broker soliciting the policies or through whom the policies were issued is not the agent of Lender; and the agent or broker named on the front of this Agreement is neither authorized by Lender to receive installment payments under this Agreement nor to make representations, orally or in writing, to the insured on Lender's behalf (except to the extent expressly required by applicable law). As and where permissible by law, Lender may compensate your agent/broker for assisting in arranging the financing of your insurance premiums. If you have any questions about this compensation you should contact your agent/broker. **12. FINANCING NOT A CONDITION:** The law does not require a person to enter into a premium finance agreement as a condition of the purchase of insurance. **13. COLLECTION COSTS:** Insured agrees to pay attorney fees and other collection costs to Lender to the extent permitted by law if this Agreement is referred to an attorney or collection agency who is not a salaried employee of Lender, to collect any money insured owes under this Agreement. **14. LIMITATION OF LIABILITY:** The insured agrees that Lender's liability to the insured, any other person or entity for breach of any of the terms of this Agreement for the wrongful or improper exercise of any of its powers under this Agreement shall be limited to the amount of the principal balance outstanding, except in the event of Lender's gross negligence or willful misconduct. Insured recognizes and agrees that Lender is a lender only and not an insurance company and that in no event does Lender assume any liability as an insurer hereunder or otherwise. **15. CLASSIFICATION AND FORMATION OF AGREEMENT:** This Agreement is and will be a general intangible and not an instrument (as those terms are used in the Uniform Commercial Code) for all purposes. Any electronic signature or electronic record may be used in the formation of this Agreement, and the signatures of the insured and agent and the record of this Agreement may be in electronic form (as those terms are used in the Uniform Electronic Transactions Act). A photocopy, a facsimile or other paper or electronic record of this Agreement shall have the same legal effect as a manually signed copy. **16. REPRESENTATIONS AND WARRANTIES** The insured represents that (a) the insured is not insolvent or presently the subject of any insolvency proceeding (or if the insured is a debtor of bankruptcy, the bankruptcy court has authorized this transaction), (b) if the insured is not an individual, that the signatory is authorized to sign this Agreement on behalf of the insured, (c) all parties responsible for payment of the premium are named and have signed this Agreement, and (d) there is no term or provision in any of the scheduled policies that would require Lender to notify or get the consent of any third party to effect cancellation of any such policy. **17. ADDITIONAL PREMIUM FINANCING:** Insured authorizes Lender to make additional advances under this premium finance agreement at the request of either the Insured or the Insured's agent with the Insured's express authorization, and subject to the approval of Lender, for any additional premium on any policy listed in the Schedule of Policies due to changes in the insurable risk. If Lender consents to the request for an additional advance, Lender will send Insured a revised payment amount ("Revised Payment Amount"). Insured agrees to pay the Revised Payment Amount, which may include additional finance charges on the newly advanced amount, and acknowledges that Lender will maintain its security interest in the Policy with full authority to cancel all policies and receive all unearned premium if Insured fails to pay the Revised Payment Amount. **18. PRIVACY:** Our privacy policy may be found at <https://ipfs.com/Privacy>. **19. ENTIRE DOCUMENT / GOVERNING LAW:** This document is the entire Agreement between Lender and the insured and can only be changed in writing and signed by both parties except that the insured authorizes Lender to insert or correct on this Agreement, if omitted or incorrect, the insurer's name and the policy number(s). Lender is also authorized to correct patent errors and omissions in this Agreement. In the event that any provision of this Agreement is found to be illegal or unenforceable, it shall be deemed severed from the remaining provisions, which shall remain in full force and effect. The laws of the State of California will govern this Agreement. **20. AUTHORIZATION:** The insurance company(ies) and their agents, any intermediaries and the agent / broker named in this Agreement and their successors and assigns are hereby authorized and directed by insured to provide Lender with full and complete information regarding all financed insurance policy(ies), including without limitation the status and calculation of unearned premiums, and Lender is authorized and directed to provide such parties with full and complete information and documentation regarding the financing of such insurance policy(ies), including a copy of this Agreement and any related notices. **21. WAIVER OF SOVERIGN IMMUNITY:** The insured expressly waives any sovereign immunity available to the insured, and agrees to be subject to the laws as set forth in this Agreement (and the jurisdiction of federal and/or state courts) for all matters relating to the collection and enforcement of amounts owed under this Agreement and the security interest in the scheduled policies granted hereby.

AGENT/BROKER REPRESENTATIONS

The agent/broker executing this, and any future, agreements represents, warrants and agrees: (1) installment payments totaling \$0.00 and all applicable down payment(s) have been received from the insured in immediately available funds, (2) the insured has received a copy of this Agreement; if the agent/broker has signed this Agreement on the insured's behalf, the insured has expressly authorized the agent/broker to sign this Agreement on its behalf or, if the insured has signed, to the best of the undersigned's knowledge and belief such signature is genuine, (3) the policies are in full force and effect and the information in the Schedule of Policies including the premium amounts is correct, (4) no direct company bill, audit, or reporting form policies or policies subject to retrospective rating or to minimum earned premium are included, except as indicated, and the deposit of provisional premiums is not less than anticipated premiums to be earned for the full term of the policies, (5) the policies can be cancelled by the insured or Lender (or its successors and assigns) on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated, (6) there are no bankruptcy, receivership, or insolvency proceedings affecting the insured, (7) to hold Lender, its successors and assigns harmless against any loss or expense (including attorney fees) resulting from these representations or from errors, omissions or inaccuracies of agent/broker in preparing this Agreement, (8) to pay the down payment and any funding amounts received from Lender under this Agreement to the insurance company or general agent (less any commissions where applicable), (9) to hold in trust for Lender or its assigns any payments made or credited to the insured through or to agent/broker directly or indirectly, actually or constructively by the insurance companies and to pay the monies, as well as the unearned commissions to Lender or its assigns upon demand to satisfy the outstanding indebtedness of the insured, (10) all material information concerning the insured and the financed policies necessary for Lender to cancel such policies and receive the unearned premium has been disclosed to Lender, (11) no term or provision of any financed policy requires Lender to notify or get the consent of any third party to effect cancellation of such policy, and (12) to promptly notify Lender in writing if any information on this Agreement becomes inaccurate.

AGENT
 (Name & Place of business)
 ALLIANT INSURANCE SERVICES INC
 100 PINE ST STE 1100
 SAN FRANCISCO, CA 94111-5113
 (415)403-1400 FAX: (415)403-0773

INSURED
 (Name & Residence or business)
 KERN COUNTY HOSPITAL AUTHORITY
 1700 MOUNT VERNON AVE
 BAKERSFIELD, CA 93306-4018
 (661)326-2868
 steven.chandler@kernmedical.com

Account #: _____

**SCHEDULE OF POLICIES
 (continued)**

Quote Number: 18747518

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	03/31/2022	EVANSTON INSURANCE CO AMWINS INS. BROKERAGE OF CA, LLC	EARTHQUAKE	25.00%	12	136,667.00 Tax: 4,441.68

TOTAL: \$353,492.90

Line of Coverage	FY 20/21	FY 21/22	FY 22/23			% Change from 21/22 to 22/23
1 Property	\$ 170,448	\$ 221,226	\$ 276,182			24.84%
2 Earthquake	\$ 294,970	\$ 329,573	\$ 353,493			7.26%
Total	\$ 465,418	\$ 550,799	\$ 629,675			Average % 16.05%

Summary of Significant Changes Per Policy Year

1 Property

In **FY 20/21**, KCHA opted not to include the peril of earthquake within the property policy due to a significant increase in costs, the inability to choose alternate coverage amounts nor an option for dedicated vs. shared limits.

For **FY 21/22**, the incumbent carrier eliminated Communicable Disease Coverage in response to the present pandemic as well as reduced coverage for acts of terror from \$200M to \$100M.

For **FY 22/23**, no substantial or material changes have been made to the renewing policy when compared to the expiring.

Premium shown above is represented as PRISM's 'Not to Exceed'

2 Earthquake

In **FY 20/21**, KCHA opted to purchase a stand-alone earthquake policy with dedicated limits of \$25M resulting in a reduced annual premium.

For **FY 21/22**, the incumbent carrier, Specialty Risk Underwriters, has declined to write or offer the same policy limits of \$25M. Instead, Specialty Risk Underwriters has offered to write \$15M at an increased premium per dollar of coverage. Alliant, KCHA's broker, sourced another carrier, Evanston Insurance Company, for the remaining \$10M in coverage for a total combined limit of \$25M.

For **FY 22/23**, the incumbent carrier, both Specialty Risk Underwriters and Evanston have agreed to renew the same coverages, with no material changes, for a nominal change in premium due in large part to an increase in total insured values.

Beginning FY 20/21, property and earthquake coverage was presented to the Board separately from the annual renewal of all other coverages. This was partly due to all other coverages renewing on 07/01/2021 but primarily due to the placement of earthquake separately with a standalone carrier as opposed to a covered peril within the property policy.



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

March 16, 2022

Subject: Proposed Retroactive RetinaVue Network End User License Agreement with Welch Allyn, Inc.

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the RetinaVue Network End User License Agreement with Welch Allyn, Inc. to provide the software licenses for access to image readings. Your Board recently entered into an agreement with Welch Allyn, Inc to provide credentialed providers to screen and diagnose diabetic retinopathy readings. The professional services agreement and Business Associate's Agreement have already been approved, but we need your additional approval to access the software.

Our engagement with Welch Allyn, Inc. is to meet a state Quality Improvement Project which is to improve the number of diabetic patients receiving their required yearly vision appointment. This End User License Agreement will allow us to see more patients by supporting the required image readings from the Welch Allyn, Inc. physicians.

Therefore, it is recommended that your Board approve the retroactive RetinaVue Network End User License Agreement with Welch Allyn, Inc. for software licenses, for a term of five (5) years beginning on January 19, 2022 through December 31, 2027, and authorize the Chief Executive Officer to sign.

RETINAVUE NETWORK END USER LICENSE AGREEMENT

This RetinaVue Network End User License Agreement (“Agreement”) is made by and between the Customer identified below (“You” and “Your”), with a principal address of [ADDRESS] and Welch Allyn, Inc. (“Welch Allyn”), with a principal address of P.O. Box 220, 4341 State Street Road, Skaneateles Falls, New York 13153.

1. Definitions.

- i. **Affiliate** means an entity that controls, is controlled by, or is under common control with a party, with “control” (including the terms “controlling,” “controlled by,” and “under common control with”) meaning possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, through membership, by contract or otherwise, but only for so long as such control continues to exist.
- ii. **Authorized Users** means Your employees or independent contractors authorized to perform Image Acquisition and/or use the RetinaVue Network.
- iii. **Customer** means a health care provider, a health care system, a health plan, a group purchasing organization, a vendor of in-home or mobile medical services, or other RetinaVue Care Delivery Model customer.
- iv. **Data** means the statistics related to Your use of the RetinaVue Network (e.g., utilization, Retina Image clarity, and aggregate disease diagnosis) compiled and displayed by the population health management and quality reporting tools in the Customer Portal.
- v. **Image Acquisition** means Authorized Users’ operation of a Retinal Camera to acquire Retina Images and upload them to the RetinaVue Network.
- vi. **Patient Information** means any protected health information (as such term is defined under the Health Insurance Portability and Accountability Act of 1996, as amended, and all implementing regulations (“HIPAA”)), including Retina Images, that is transmitted by and stored in the RetinaVue Network.
- vii. **Physician** means a retinal specialist, an ophthalmologist, or an optometrist.
- viii. **Professional Service** means a Physician’s professional evaluation and interpretation of Retina Images for purposes of diagnosing diabetic retinopathy and other conditions.
- ix. **Professional Service Agreement (“PSA”)** means the agreement between You and RetinaVue, P.C. (“P.C.”) that governs Your responsibilities with respect to the Professional Service provided by the P.C.’s Physicians and Your payment of the Software Plan Fee.
- x. **Report** means the report of the results of the Professional Service.
- xi. **Retinal Camera** means a digital eye-fundus camera.
- xii. **RetinaVue Care Delivery Model** means Welch Allyn’s solution for detecting vision loss that consists of the Retinal Camera, the RetinaVue Network, and the Professional Service.
- xiii. **RetinaVue Network** means proprietary software developed and owned by Welch Allyn that transmits and stores Patient Information, including Retina Images and Reports, and that is accessed by You via the “Customer Portal.”
- xiv. **Retina Images** means digital fundus images acquired by the Retinal Camera.
- xv. **Software Plan** means the license to the RetinaVue Network purchased by You for each active Retinal Camera.
- xvi. **Software Plan Fee** means the fee for each of Your Software Plans payable by You to (i) the P.C., as Welch Allyn’s agent, under the PSA or (ii) Welch Allyn under the SPOA.
- xvii. **Software Plan Only Agreement (“SPOA”)** means the agreement between You and Welch Allyn that governs Your responsibilities with respect to the Professional Service provided by Your Physicians and Your payment of the Software Plan Fee.

2. Grant of License. Subject to the terms and conditions of this Agreement and in consideration of Your payment of the Software Plan Fee(s) under, as applicable, the PSA or the SPOA, Welch Allyn hereby grants You and Your Authorized Users the non-exclusive, non-transferable, non-sub-licensable limited

license to use the RetinaVue Network solely for Your internal business purposes of providing health care services.

3. Ownership. The RetinaVue Network is licensed, not sold, to You. The RetinaVue Network and all copies thereof are the proprietary property of Welch Allyn, and all right, title and interest in and to the RetinaVue Network, including, without limitation, all intellectual property rights, are retained by Welch Allyn.

4. License Restrictions. You and Your Authorized Users shall not:

- i. modify, adapt, or create derivative works of the RetinaVue Network;
- ii. translate, de-compile, reverse compile, reverse engineer, disassemble or otherwise decode the RetinaVue Network;
- iii. sublicense, sell, resell, publish, disclose, assign, rent, lease, lend, transfer (whether through a local area network or other network system or through any computer subscriber system or “bulletin board” system, or otherwise), post, transmit, distribute or otherwise make the RetinaVue Network available to anyone else, or make the RetinaVue Network available through time sharing or managed services, in whole or in part;
- iv. interfere with or disrupt servers or networks used by the RetinaVue Network or other users of the RetinaVue Network;
- v. use or attempt to use the RetinaVue Network to gain unauthorized access to any other RetinaVue Network account, computer system or network, through password mining or any other means; or
- vi. remove, obscure or alter any proprietary rights notice pertaining to the RetinaVue Network.

5. Your Obligations. You shall:

- i. obtain and maintain the computer and network hardware (other than network hardware owned or controlled by Welch Allyn) and internet connection necessary to access and use the RetinaVue Network;
- ii. promptly report to Welch Allyn any malfunction of the RetinaVue Network;
- iii. ensure Your Authorized Users comply with all security measures incorporated into the design of the RetinaVue Network to authenticate identity, including, without limitation, maintaining the confidentiality of log-ins and passwords;
- iv. ensure Your Authorized Users comply with the terms and conditions of this Agreement to the fullest extent they apply;
- v. ensure Your Authorized Users understand that: (a) the RetinaVue Network is a support tool only and not intended or designed to be relied upon as a sole source of information in connection with medical diagnoses or treatment of patients; and (b) all questions regarding medical diagnoses or treatment of patients must be directed to a physician or qualified healthcare provider; and
- vi. determine in Your sole discretion whether the RetinaVue Network will achieve the results You desire.

6. Patient Information.

- i. You agree to meet all HIPAA requirements in connection with Patient Information in Your possession, custody, or control, and obtain any authorizations from patients that may be necessary for the transmission and storage of Patient Information by the RetinaVue Network.
- i. You own all of Your Patient Information.
- ii. You hereby grant Welch Allyn a non-exclusive royalty-free license to create and maintain, in accordance with HIPAA, a record of Patient Information in the RetinaVue Network, and to retain same, on behalf of Physicians, for the period required under applicable state medical record retention laws.
- iii. You agree that Welch Allyn may de-identify Patient Information and aggregate, analyze, use, and disclose such de-identified Patient Information solely for Welch Allyn’s own internal business purposes of research and development, product improvement, and quality assurance. Welch Allyn will not disclose or sell such de-identified Patient Information, or any aggregations, analyses, reports, programs, and output based on or including such de-identified Patient Information (“De-

identified Work Product”), to any third party. Welch Allyn shall own all right, title, and interest in and to such de-identified Patient Information and any De-identified Work Product, and shall retain all such de-identified Patient Information and any De-identified Work Product after termination of this Agreement.

7. Data. Welch Allyn will treat Data as Your confidential information and will not disclose Data to any third party for any reason except as authorized by You in writing. You agree that Welch Allyn may anonymize Data and aggregate, analyze, use, and disclose such anonymized Data solely for Welch Allyn’s own internal business purposes of research and development, product improvement, and quality assurance. Welch Allyn will not disclose or sell such anonymized Data, or any aggregations, analyses, reports, programs, and output based on or including such anonymized Data (“Anonymized Data Work Product”), to any third party. Welch Allyn shall own all right, title, and interest in and to such anonymized Data and any Anonymized Data Work Product, and shall retain all such anonymized Data and any Anonymized Data Work Product after termination of this Agreement.

8. Term; Termination. The term of this Agreement will commence upon Your initial installation of the RetinaVue Network client and/or Your initial access of the Customer Portal following execution of this Agreement and except as otherwise provided herein, will be co-terminus with the term of, as applicable, the PSA or the SPOA. Welch Allyn may terminate the license grant and this Agreement in writing with immediate effect upon Your or Your Authorized Users’ material breach of this Agreement. Upon Your or Your Authorized Users’ material breach of this Agreement, Welch Allyn will be entitled to exercise any and all rights and remedies available to it at law or in equity. Welch Allyn’s remedies may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy or to preclude the exercise of any other remedy. Welch Allyn will terminate Your access to the RetinaVue Network 30 calendar days after the date of termination of this Agreement; during such 30-day period You may access the RetinaVue Network solely for the purpose of downloading Patient Information and any Data.

9. Downtime. Welch Allyn will use commercially reasonable efforts to schedule RetinaVue Network downtime during non-business hours and will provide at least 24 hours’ prior notice of any such scheduled downtime. Welch Allyn will use commercially reasonable efforts to provide prior notice of any unscheduled RetinaVue Network downtime, or, where prior notice is not practicable, notice as soon as possible following the commencement of any such unscheduled downtime. Unscheduled RetinaVue Network downtime may occur because of, by way of example and not limitation, suspicion or detection of any malicious code or virus, or technical problems and outages (including suspension of managed hosting services by Welch Allyn’s vendor because of a threat to such vendor’s network or other customers).

10. Warranty of Non-Infringement; Disclaimer of Warranties. Welch Allyn represents and warrants that the RetinaVue Network does not infringe or misappropriate the intellectual property rights of any third party. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE RETINAVUE NETWORK IS PROVIDED “AS-IS,” AND WELCH ALLYN DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE RETINAVUE NETWORK OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT WELCH ALLYN KNOWS, OR HAS REASON TO KNOW, OF SUCH PURPOSE). WELCH ALLYN DOES NOT WARRANT THAT THE RETINAVUE NETWORK WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE RETINAVUE NETWORK WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY ERRORS WILL BE CORRECTED.

11. Indemnification. Welch Allyn will indemnify, defend and hold harmless You and Your directors, officers, employees, and agents, from and against any loss, cost, or liability (including, without limitation, reasonable attorney fees and expenses) to the extent arising out of any claim that Your use of the RetinaVue Network in accordance with the terms and conditions of this Agreement infringes or misappropriates the intellectual property rights of a third party, provided, however, that Welch Allyn will

have no obligation to indemnify, defend, and hold harmless hereunder to the extent You made unauthorized modifications to the RetinaVue Network or combined the RetinaVue Network with any other product, part, accessory, system or technology not supplied or approved by Welch Allyn. Welch Allyn's defense and indemnification obligations will be conditioned on You notifying Welch Allyn promptly in writing of any such claim and giving Welch Allyn authority for and assistance with the defense and settlement (subject to Your reasonable approval) of such claim.

12. LIMITATION OF LIABILITY. EXCEPT FOR WELCH ALLYN'S OBLIGATIONS OF INDEMNIFICATION HEREUNDER, IN NO EVENT WILL WELCH ALLYN BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE RETINAVUE NETWORK, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF WELCH ALLYN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

13. Assignment. Neither Welch Allyn nor You, may assign this Agreement without the other's express prior written consent, and any attempted assignment in contravention of the foregoing will be null and void, provided, however, that either Welch Allyn or You, may assign this Agreement to an Affiliate so long as (i) the assigning party promptly notifies the non-assigning party in writing of assignment of this Agreement to its Affiliate, and (ii) the assigning party's Affiliate assignee agrees in writing to comply with the assigning party's obligations hereunder and to be bound by this Agreement.

14. Independent Contractors. Welch Allyn and You are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the terms of this Agreement. Welch Allyn has no authority to make contracts on Your behalf, or to bind You to perform obligations or incur liabilities for third parties, and You have no authority to make contracts on Welch Allyn's behalf, or to bind Welch Allyn to perform obligations or incur liabilities for third parties.

15. Force Majeure. Welch Allyn shall be excused from performing its obligations under this Agreement to the extent any event or circumstance not caused by Welch Allyn, regardless of whether it was foreseeable, prevents Welch Allyn from performing such obligations.

16. Export. You shall not use, export, re-export, import, sell or transfer the RetinaVue Network except as authorized by United States law, the laws of the jurisdiction in which You obtained the RetinaVue Network, and any other applicable laws and regulations.

17. Entire Agreement. This Agreement constitutes the entire agreement between Welch Allyn and You with respect to Your RetinaVue Network license and supersedes all previous representations, understandings, and agreements relating to the subject matter hereof.

18. Separability. All provisions of this Agreement will be considered separate terms and conditions and in the event any provision is held illegal, invalid, or unenforceable, all the other provisions hereof will remain in full force and effect as if the illegal, invalid, or unenforceable provision was not a part of this Agreement.

19. Survival. The provisions of this Agreement concerning post-termination rights, indemnification, limitation of liability, and any other provision that, by its nature, is intended to survive this Agreement, shall survive the termination this Agreement.

20. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of **California** without regard to principles of choice of law or conflicts of laws.

21. Conflict. If You or Your Authorized Users are required to accept the terms of a clickwrap version of the RetinaVue Network End User License Agreement (the “Clickwrap”) in order to install the RetinaVue Network client or access the Customer Portal, to the extent of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Clickwrap, the terms and conditions of this Agreement will prevail and control. For the avoidance of doubt and as an example of the foregoing sentence, the terms and conditions of any business associate addendum contained in the Clickwrap are null and void, and the terms and conditions of the business associate agreement entered into by You and Welch Allyn pursuant to Section 6 of this Agreement will prevail and control.

You and Welch Allyn have caused this Agreement to be executed as of the date of last signature below.

WELCH ALLYN, INC.

CUSTOMER: KERN COUNTY

By: _____

HOSPITAL AUTHORITY

Name: Niesa Johnson

By: _____

Title: Executive Director, Vision Care

Name: _____

Date: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (the “BAA”) is entered into by and between a Covered Entity or Business Associate (“You” and “Your”) and Welch Allyn, Inc. (“Welch Allyn”) as a Business Associate of Yours.

RECITALS

WHEREAS, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) that protects the confidentiality of health information;

WHEREAS, pursuant to HIPAA, the United States Department of Health and Human Services (“HHS”) promulgated Breach Notification Standards, Privacy Standards, and Security Standards (collectively, the “HIPAA Standards”), each as defined below, governing confidential health information;

WHEREAS, Welch Allyn licenses its proprietary software, the RetinaVue Network, to You under the terms and conditions of the RetinaVue Network End User License Agreement by and between You and Welch Allyn (“EULA”);

WHEREAS, Your use of the RetinaVue Network under the EULA requires Welch Allyn to create, receive, maintain, or transmit Protected Health Information on Your behalf; and

WHEREAS, in order to comply with the Business Associate requirements of HIPAA and its implementing regulations, You and Welch Allyn must enter into an agreement that governs the Uses and Disclosures of such Protected Health Information by Welch Allyn.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Welch Allyn and You agree as follows:

1. DEFINITIONS. For purposes of this BAA, the following words shall have the following meanings.

1.1 “Breach” shall have the meaning set forth in 45 C.F.R. § 164.402; with respect to all other uses of the word “breach” in this BAA, the word shall have its ordinary contract meaning.

1.2 “Breach Notification Standards” shall mean the Breach Notification for Unsecured Protected Health Information Rule, 45 C.F.R. Parts 160 and 164, Subparts A and D, as currently in effect.

1.3 “Business Associate” shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this BAA, Welch Allyn is a Business Associate of Yours.

1.4 “Covered Entity” shall have the meaning set forth in 45 C.F.R. § 160.103.

1.5 “Electronic Health Record” shall have the meaning set forth in Section 13400(5) of the HITECH Act, i.e., an electronic record of health-related information on an Individual that is created, gathered, managed and consulted by health care clinicians and staff.

1.6 “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, effective February 17, 2009.

1.7 “Individual” shall have the meaning as set forth in 45 C.F.R. § 160.103, i.e., the person who is the subject of Protected Health Information, and shall include a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.8 “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E, as currently in effect.

1.9 “Protected Health Information” or “PHI” shall have the meaning set forth at 45 C.F.R. § 160.103 for “protected health information” except that, for purposes of this BAA, Protected Health Information and all variations of the term (including Electronic Protected Health Information, PHI and Unsecured Protected Health Information) shall be limited to information that Welch Allyn creates, receives, maintains, or transmits on Your behalf.

1.10 “Secretary” shall mean the Secretary of the HHS or any office or person within the HHS to which/whom the Secretary has delegated his or her authority to administer the HIPAA Standards, such as the Director of the Office for Civil Rights.

1.11 “Security Standards” shall mean the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and C.

1.12 Capitalized terms used but not defined herein shall have the meanings ascribed to them in the HIPAA Standards.

2. WELCH ALLYN’S OBLIGATIONS AS YOUR BUSINESS ASSOCIATE. Welch Allyn shall comply with the following terms of this BAA:

2.1 Permitted Uses and Disclosures.

2.1.1 Except as otherwise provided in this BAA, Welch Allyn may Use and make Disclosures of PHI as necessary to fulfill its responsibilities under the EULA and as otherwise specifically requested by You, so long as such Use or Disclosure would not violate the Privacy Standards if done by You, and provided that Welch Allyn is notified in writing by You of additional limitations on Uses or Disclosures.

2.1.2 Except as otherwise provided in this BAA, Welch Allyn may Use PHI for its proper management and administration, to fulfill its legal responsibilities, or as Required by Law. Welch Allyn may make Disclosures of PHI in its possession to third parties for its proper management and administration or to fulfill any of its legal responsibilities, but only if (i) the Disclosure is Required by Law, or (ii) Welch Allyn has received written assurances from the third party that the PHI will be held confidentially and Used or made subject to further Disclosure only as Required by Law or for the purpose for which it was disclosed to the third party and that the third party will notify Welch Allyn of any instances of which it is aware in which the confidentiality of the PHI has been breached.

2.1.3 Welch Allyn may Use PHI to create de-identified information consistent with the standards of 45 C.F.R. §164.514(a)-(c), and may Use and make Disclosures of such de-identified information solely for Welch Allyn’s own internal business purposes of research and development, product improvement, and quality assurance. Welch Allyn will not disclose or sell such de-identified information, or any aggregations, analyses, reports, programs, and output based on or including such de-identified information (“De-identified Work Product”), to any third party. Welch Allyn shall own all right, title, and interest in and to such de-identified information and any De-identified Work Product, and shall retain all such de-identified information and any De-identified Work Product after any expiration or termination of this BAA.

2.1.4 Welch Allyn may Use PHI in its possession to provide Data Aggregation services relating to Your Health Care Operations or, if You are a Business Associate, for the Covered Entity on whose behalf You are acting.

2.1.5 Consistent with the requirements of 45 C.F.R. § 164.502(j)(1), Welch Allyn may make Disclosures of PHI to report conduct that is unlawful or otherwise violates professional or clinical standards, or that care, services, or conditions potentially endangers one or more patients, workers, or the public.

2.1.6 Welch Allyn agrees to make reasonable efforts to limit the Use and/or Disclosure of PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request in accordance with 45 C.F.R. §§ 164.502(b) and 164.514(d) and any guidance issued by the Secretary.

2.1.7 Welch Allyn will not Use or make Disclosures of PHI other than as permitted or required by this BAA or as Required by Law.

2.2 Disclosures to Subcontractors. Welch Allyn shall ensure that any Subcontractors that create, receive, maintain, or transmit PHI on Welch Allyn's behalf have entered into an agreement containing the same terms and conditions set forth in this BAA, including the obligation to comply with the applicable requirements of the Security Standards.

2.3 Appropriate Safeguards. Welch Allyn shall implement appropriate administrative, technical, and physical safeguards to prevent any Use or Disclosure of PHI not authorized by this BAA.

2.4 Compliance with Security Standards. Welch Allyn shall comply with the applicable requirements of the Security Standards.

2.5 Reporting of Illegal, Unauthorized, or Improper Uses or Disclosures and Remedial Actions. Welch Allyn shall report to You any illegal, unauthorized, or improper Use or Disclosure of PHI, Security Incident, or Breach of Unsecured PHI (collectively, "Identified Event") by it within **five (5) calendar days** of obtaining knowledge of such Identified Event. In the case of a Breach of Unsecured PHI, the initial notice will contain all relevant information available to Welch Allyn at the time such notice is provided. Without unreasonable delay and within **ten (10) calendar** days following discovery of any Breach of Unsecured PHI by Welch Allyn, Welch Allyn shall provide You a notice containing all information required to be included in such notice pursuant to 45 C.F.R. § 164.410(c). Welch Allyn shall take commercially reasonable actions to mitigate the negative impact of any Identified Event and adopt additional or improve existing safeguards to prevent recurrence. Welch Allyn and You agree and acknowledge that, to the extent Welch Allyn transmits PHI on Your behalf, Welch Allyn shall have no obligation to report any impermissible Use or Disclosure by the recipient of PHI unless the recipient is acting on Welch Allyn's behalf. Notwithstanding the preceding, Welch Allyn and You acknowledge and agree that this section constitutes notice by Welch Allyn to You of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (defined below) for which no additional notice to You shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Welch Allyn's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of PHI.

2.6 Internal Practices, Books, and Records. Welch Allyn shall make its internal practices, books, and records relating to the Use and Disclosure of PHI created, received, maintained, or transmitted by Welch Allyn on Your behalf available to the Secretary, or the Secretary's designees, for purposes of determining Welch Allyn's and Your compliance with the Privacy Standards. Nothing in this Section shall be construed as a waiver of any legal privilege or of any protections for trade secrets or confidential commercial information by Welch Allyn.

2.7 Access to PHI. To the extent PHI in Welch Allyn's possession constitutes a Designated Record Set, within fifteen (15) days of Your written request Welch Allyn shall make available to You PHI in a Designated Record Set as necessary to satisfy Your obligations under 45 CFR § 164.524, and, if requested by You, shall provide or send a hard or soft copy to a designated third party. Welch Allyn will

not respond directly to an Individual's request for access to PHI in a Designated Record Set and will direct such Individual to You so that You may timely respond to such Individual's request.

2.8 Amendments to PHI. To the extent PHI in Welch Allyn's possession constitutes a Designated Record Set, within fifteen (15) days of Your written request Welch Allyn shall make any amendment(s) to PHI in a Designated Record Set as necessary to satisfy Your obligations under 45 CFR § 164.526. Welch Allyn will not respond directly to an Individual's request for an amendment of PHI in a Designated Record Set and will direct such Individual to You so that You may timely respond to such Individual's request.

2.9 Accounting of Disclosures. To the extent applicable, Welch Allyn shall document and, within fifteen (15) days of Your written request, provide You with an accounting of all Disclosures of PHI as necessary to satisfy Your obligations under 45 C.F.R. § 164.528. Welch Allyn will not respond directly to an Individual's request for an accounting of Disclosures of PHI and will direct such Individual to You so that You may timely respond to such Individual's request.

2.10 Compliance with Privacy Standards. Welch Allyn shall comply with the requirements of the Privacy Standards applicable to You to the extent that Welch Allyn carries out any of Your obligations under the Privacy Standards.

3. YOUR OBLIGATIONS. You shall comply with the following terms of this BAA:

3.1 Notice of Privacy Practices. To the extent that You are a Covered Entity that is required to provide to Individuals a notice of privacy practices pursuant to 45 C.F.R. § 164.520, You shall ensure, throughout the term of this BAA, that such notice adequately describes all the Uses and Disclosures of PHI that Welch Allyn is allowed to make pursuant to this BAA. To the extent that You are a Business Associate, You shall notify Welch Allyn of any applicable limitation(s) of which You are aware in the notice of privacy practices of a Covered Entity under 45 C.F.R. § 164.520 to the extent such limitation(s) may affect Welch Allyn's Use or Disclosure of PHI under this BAA.

3.2 Individual Permission. You shall notify Welch Allyn of changes in, or revocation of, permission by an Individual to Use or make Disclosures of PHI of which You are aware to the extent such changes affect Welch Allyn's permitted Uses or Disclosures of PHI under this BAA.

3.3 Impermissible Requests. You shall not request Welch Allyn to Use or Disclose PHI in any manner that would not be permissible under the Privacy Standards if done by You.

4. TERM AND TERMINATION.

4.1 Term. The term of this BAA shall commence on and this BAA shall be effective as of the date of Your initial installation of the RetinaVue Network following Your agreement to and acceptance of the terms and conditions of the EULA. This BAA shall be co-terminus with the term of the EULA except as otherwise provided herein.

4.2 Termination for Cause. In the event either party determines that the other has breached a material term of this BAA, including engaging in a pattern of activity or practice that constitutes a material breach of a term of this BAA, and such violation continues for thirty (30) calendar days after written notice of such breach has been provided, notwithstanding anything to the contrary in the EULA, the party claiming a breach shall have the right to terminate the EULA for cause.

4.3 Return or Destruction of PHI; Disposition Because Return or Destruction Is Not Feasible. The parties hereby acknowledge that, upon the termination of this BAA, the return or destruction of PHI created, received, maintained, or transmitted by Welch Allyn on Your behalf is not feasible and that, therefore, Welch Allyn may retain a copy of such PHI. The provisions of this BAA shall continue to

apply to any such PHI retained following termination of this BAA, and Welch Allyn shall limit Uses and Disclosures of such PHI to those purposes that make the return or destruction thereof not feasible for as long as Welch Allyn maintains such PHI.

5. MISCELLANEOUS.

5.1 Regulatory References. A reference in this BAA to a section in HIPAA, the HITECH Act, or the HIPAA Standards shall mean the section as in effect or as amended at the time.

5.2 Survival. The rights and obligations of Welch Allyn under Section 4.3 shall survive the termination of this BAA.

5.3 Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Welch Allyn and You to comply with the HIPAA and state of California privacy Standards.

5.4 Integration. This BAA is the sole and complete agreement between Welch Allyn and You with respect to the HIPAA Standards as they apply to Your use of the RetinaVue Network and supersedes any prior agreements between Welch Allyn and You with respect to the HIPAA Standards as they apply to Your use of the RetinaVue Network. To the extent the terms and conditions of this BAA that relate to the HIPAA Standards are inconsistent with the terms and conditions of the EULA, the terms and conditions of this BAA shall govern. To the extent the terms and conditions of the EULA that do not relate to the HIPAA Standards are inconsistent with the terms and conditions of this BAA, the terms and conditions of the EULA shall govern. For the avoidance of doubt, the terms and conditions of the EULA shall govern all rights and obligations of Welch Allyn and You with respect to the limited license to use the RetinaVue Network granted by Welch Allyn to You thereunder.

5.5 Amendment. The Parties reserves the right to amend the terms and conditions of this BAA as necessary to comply with any changes in law, including, but not limited to, the promulgation of amendments to the HIPAA Standards required by the HITECH Act or any other future laws, applicable to or affecting the rights, duties, and obligations of Welch Allyn and You under this BAA or the EULA.

5.6 Notices. All notices under this BAA shall be in writing and shall be deemed to have been given when: (i) personally delivered (which notice shall be deemed to have been received upon delivery), (ii) sent by registered mail, postage prepaid (which notice shall be deemed to have been received on the third (3rd) business day following the date on which it is mailed), or (iii) sent overnight by a commercial overnight courier that provides a receipt (which notice shall be deemed to be received on the next business day following the date on which it is sent), to the addresses for notices set forth below, or such other address a party may provide by giving notice to the other party in compliance with this BAA.

5.7 Governing Law. This BAA will be governed by and interpreted in accordance with the laws of the State of California without regard to principles of choice of law or conflicts of laws.

5.8 Limitation of Liability. In no event shall either party be liable to the other party for any indirect, consequential, incidental, exemplary, special or punitive damages (including lost profits and lost business), arising out of or in connection with this BAA, even if it has been advised or is aware of the possibility of such damages, and regardless of whether arising in tort (including negligence), contract, or other legal theory.

5.9 No Third Party Beneficiaries. This BAA is entered into by and between You and Business Associate solely for our respective benefits. Nothing in this BAA is intended to confer, nor shall anything herein confer, upon any person or entity other than You, Welch Allyn, and our respective successors or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.

[Signature Page Follows]

IN WITNESS WHEREOF, You and Welch Allyn have caused this BAA to be executed as of the date of last signature below.

WELCH ALLYN, INC.

CUSTOMER: [NAME]

By: _____

By: _____

Name: Niesa Johnson

Name: _____

Title: Executive Director, Vision Care

Title: _____

Date: _____

Date: _____

Address for notices:

Welch Allyn, Inc.
P.O. Box 220
4341 State Street Road
Skaneateles Falls, New York 13153
Attn: Legal Department

Address for notices:

5.10 Insurance. In addition to any general and/or professional liability insurance required of Welch Allen, Welch Allen 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 Welch Allen, 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 You at You's request.

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

5.12 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, Welch Allen hereby agrees to indemnify and hold harmless You 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 Welch Allen'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 Welch Allen to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.13 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Welch Allen shall advise You 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 You 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.

5.14 Notice of Request or Subpoena for Data. Welch Allen agrees to notify You promptly, but no later than five (5) business days after Welch Allen's receipt of any request or subpoena for PHI or an accounting thereof. Welch Allen shall promptly comply with You's instructions for responding to any such request or subpoena, unless such instructions would prejudice Welch Allen. To the extent that You decide to assume responsibility for challenging the validity of such request, Welch Allen agrees to reasonably cooperate with You in such challenge. The provisions of this Section shall survive the termination of this BAA.



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

March 16, 2022

SUBJECT: Proposed Agreement with Randolph Fok, M.D., an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends your Board approval an Agreement with Randolph Fok, M.D., for professional medical services in the Department of Obstetrics and Gynecology. Dr. Fok, who specializes in the diagnosis and treatment of women with high risk pregnancies, serves as Chief of Kern Medical's Division of Maternal-Fetal Medicine. Dr. Fok has provided services at Kern Medical since 1985.

The Agreement is for a term of two years from April 1, 2022 through March 31, 2024. Dr. Fok is compensated annually based on a fixed fee in the amount of \$335,000 that is prorated monthly in two payments. He is also paid for call coverage and as-needed shift coverage. The maximum payable under the Agreement will not exceed \$765,000 over the two-year term.

Therefore, it is recommended that your Board approve the Agreement with Randolph Fok, M.D., for professional medical services in the Department of Obstetrics and Gynecology, for a term of two years from April 1, 2022 through March 31, 2024, in an amount not to exceed \$765,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Randolph Fok, M.D.)**

This Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), and Randolph Fok, M.D., a sole proprietor (“Contractor”), whose principal place of business is located at 2330 Truxtun Avenue, Suite A, Bakersfield, California 93301.

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 owns and operates Kern Medical Center (“KMC”), a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California (the “Premises”), in which is located the Department of Obstetrics and Gynecology (the “Department”); and

(c) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians and medical students, as such services are unavailable from Authority resources, and Contractor agrees to provide such services on the terms and conditions set forth in this Agreement; and

(d) Contractor has special knowledge, training and experience, and is qualified to render such services;

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.** This Agreement shall be effective and the term shall commence as of April 1, 2022 (the “Effective Date”), and shall end March 31, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

2.2 **Qualifications.**

2.2.1 Licensure/Board Certification. Contractor shall at all times during the term of this Agreement be duly licensed as a physician and surgeon in the state of California, practicing in the medical specialty of maternal-fetal medicine, and board certified by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general maternal-fetal medicine-subspecialty, and maintain such certifications at all times during the term of this Agreement.

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

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

2.2.4 Training/Experience. Contractor shall have (i) recent experience in obstetrics and gynecology and maternal-fetal medicine including without limitation, the diagnosis and treatment of women who have complicated or high-risk pregnancies, (ii) an academic background to include teaching and working in an academic medical center, experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.3 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.4 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of his work will be performed and that his operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by Authority shall not operate as a waiver or release.

2.5 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor’s profession. If Authority determines that any of Contractor’s work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b)

terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.6 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of his license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.7 Standards of Medical Practice. The standards of medical practice and professional duties of Contractor shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice 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.

2.8 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by Contractor. 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 Contractor will 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.

2.9 Quality Improvement and Risk Management. Contractor agrees that he shall participate in (i) the quality improvement and risk management programs of KMC and serve on such committees as may be required; (ii) ongoing quality improvement activities, such as audits, which will be conducted annually in the Department in order to evaluate and enhance the quality of patient care; and (iii) risk management activities designed to identify, evaluate and reduce the risk of patient injury associated with care. Contractor shall ensure that the quality improvement program consists of the following integrated components: (i) professional development that provides continuous performance feedback that is benchmarked, evaluated, and rated individually and collectively; (ii) clinical standards that are evidence-based and grounded in industry best practices; (iii) performance improvement that is outcomes-focused and based on quality indicators/metrics with quarterly reporting of same; and (iv) customer satisfaction that is feedback/survey-driven and objectively and comparatively measured, tracked/trended, and analyzed. The appropriate review mechanism will be applied in accordance with the provisions of the KMC medical staff bylaws, The Joint Commission, and applicable law.

2.10 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.11 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of Authority.**

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Equipment. KMC shall furnish for the use of the Department such equipment as is deemed necessary by KMC for the proper operation and conduct of the Department consistent with community standards. KMC shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints.

3.5 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor in accordance with the fee schedule set forth in this paragraph 4.1.

4.1.1 Maternal-Fetal/High Risk Obstetrical Coverage. Authority shall pay Contractor an annual fixed fee in the amount of \$335,000 per year for maternal-fetal and high-risk obstetrical coverage as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$13,958.33, payable on or before the tenth (10th) day and the twentieth (20th) day of each month during the term of this Agreement. Invoices for payment shall be submitted in a form approved by Authority. Invoices shall be sent to KMC for review and processing on or before the first (1st) day and tenth (10th) day of each month.

4.1.2 Shift Coverage. Authority shall pay Contractor an hourly rate of \$125 per hour for as-needed shift coverage for the obstetrics and gynecology service at KMC (excludes call and the High-Risk OB Clinic).

4.1.3 Call Coverage. Authority shall pay Contractor for call coverage as follows: (i) Contractor shall be paid a fixed fee in the amount of \$2,400 per twenty-four (24) hour day for weekend and holiday call coverage assigned (Saturday and Sunday; designated Authority holidays only); (ii) Contractor shall be paid a fixed fee in the amount of \$1,200 for every weekday night of call coverage assigned (Monday through Friday); and (iii) Contractor shall be paid a fixed fee in the amount of \$500 for backup call coverage if called to come to the hospital.

4.1.4 Limitations on Compensation. Except as expressly stated herein, Contractor shall not receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement. The compensation paid to Contractor is inclusive of accommodations, mileage reimbursement, car rental, meals, and incidental expenses.

4.1.5 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Contractor under this Agreement.

4.2 Quality Bonus. Upon satisfaction of the relevant criteria set forth below and subject to the other terms and conditions set forth in this Agreement, in addition to the fixed-fee compensation set forth in paragraph 4.1, Contractor shall be eligible to receive a quality bonus based on the following measures:

4.2.1 Quality/Safety Measure(s). Contractor shall be eligible to receive a quality bonus in an amount not to exceed \$6,250 annually if Contractor achieves certain quality/safety measure(s). Measures shall be determined annually. Measures shall be calculated within sixty (60) days of the end of each fiscal year ending June 30. If multiple measures are used (i.e., more than one measure annually), the annual bonus amount of \$6,250 shall be divided by the total number of measures and the prorated amount paid if the target metric is achieved.

4.2.2 Patient Satisfaction Measure(s). Contractor shall be eligible to receive a quality bonus in an amount not to exceed \$6,250 annually if Contractor achieves certain patient satisfaction measure(s). Measures shall be determined annually. Measures shall be calculated within sixty (60) days of the end of each fiscal year ending June 30. If multiple measures are used (i.e., more than one measure annually), the annual bonus amount of \$6,250 shall be divided by the total number of measures and the prorated amount paid if the target metric is achieved.

4.3 Maximum Payable. The maximum payable under this Agreement shall not exceed \$765,000 over the two (2) year term of this Agreement.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "B," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients during the Term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor 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.

4.6 High-risk Cesarean Deliveries. Notwithstanding paragraph 4.5 to the contrary, Contractor shall have the exclusive right to bill, collect and retain all professional fees for high-risk Cesarean deliveries provided by Contractor under this Agreement not to exceed ten (10) such deliveries per year.

4.7 Managed Care Contracting. Contractor shall cooperate, and shall ensure that Group Physicians 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 Authority or KMC to participate in any third-party payer arrangements, Contractor and/or Group Physicians shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from Authority and KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by Authority or 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.

5. **Access to Books and Records.** Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

6. **Anti-referral Laws.** Contractor acknowledges that he is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

7. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all his activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that Contractor, 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.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall automatically terminate at the end of such thirty (30) day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor 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.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of his duties described herein that he shall act, and cause his employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and his employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 Trade Secrets. The parties acknowledge that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

15.3 Medical Records. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Contractor, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind ("Documents"), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format, as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. Conflict of Interest. Contractor 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 or that would otherwise conflict in any manner or degree with the performance of his services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. 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.

17. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

18. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

19. **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.

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the Office of the Inspector General (“OIG”) or the Government Services Administration (“GSA”); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **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.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend,

and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

23. **Indemnification and Hold Harmless.** Authority agrees to assume liability for and indemnify and hold Contractor harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Contractor or for which Contractor becomes liable to pay, arising out of or related to the services rendered (including without limitation, those services described in section 2 and Exhibit "A" hereof) or which a third party alleges should have been rendered by Contractor on behalf of Authority or KMC pursuant to this Agreement. The obligation of Authority under this section shall arise as to all services rendered or which a third party alleges should have been rendered by Contractor on behalf of Authority or KMC on and after April 1, 2022 and prior to termination or expiration of this Agreement. This section shall survive termination or expiration of this Agreement and shall apply to all claims made during or after the termination or expiration of this Agreement, which allegedly arise out of services rendered or which allegedly should have been rendered by Contractor during the term of this Agreement; provided, however, that the provisions of this section shall not apply to any services rendered at any location other than KMC 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 Contractor harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

26. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "C," attached hereto and incorporated herein by this reference.

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

29. **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 Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this section is exercised. Contractor will be given thirty (30) days' prior written notice in the event that Authority requires such an action.

30. **Non-collusion Covenant.** Contractor represents and agrees that he has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

31. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

32. **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 Contractor. 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.

33. **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 Contractor:

Randolph Fok, M.D.
2330 Truxtun Avenue, Suite A
Bakersfield, California 93301

Notice to Authority:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93301
Attn.: Chief Executive Officer

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including all attachments hereto, 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.

36. **Termination.**

36.1 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon thirty (30) days' prior written notice to the other party.

36.2 **Immediate Termination.** Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;

- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

37.1 **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 Contractor after the effective date of the termination, and Contractor shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

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

37.4 No Hearing Rights. Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

39. 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.

CONTRACTOR

By _____
Randolph Fok, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO FORM:
KERN MEDICAL CENTER

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Fok.030822

EXHIBIT “A”
DESCRIPTION OF SERVICES
Randolph Fok, M.D.

Contractor shall provide services, as assigned by the Department Chair, as follows:

1. Serve as Chief, Division of Maternal-Fetal Medicine.
2. Provide coverage for High-Risk OB Clinic at KMC to see, manage and treat patients, interact with Department staff and train resident physicians and medical students; supervise resident physicians and medical students during all assigned clinical activity.
3. Provide mutually agreed upon as-needed coverage for the obstetrics and gynecology service at KMC including labor and delivery and the outpatient clinic (excludes call and the High-Risk OB Clinic).
4. Provide regular and scheduled rounds with resident physicians and Department staff to discuss patients of special interest and needs.
5. Give lectures to Department staff and resident physicians on subjects in maternal-fetal medicine, prenatal diagnoses and obstetrics.
6. Design and participate in clinical research projects; assist resident physicians in designing and conducting clinical research.
7. Consult with Department staff and assist in the management of in-house obstetrical patients.
8. Perform ultrasound examinations, genetics consultations, and other consultations on patients referred to KMC.
9. Provide training to resident physicians in the performance and interpretation of obstetrical ultrasound.
10. Participate in Department and hospital quality improvement programs as required by the KMC medical staff bylaws, rules, regulations and policies.
11. Make every effort to attend Department staff meetings, the annual medical staff meeting, and committee meetings assigned by the president of the medical staff.

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EXHIBIT "B"
IRS FORM W-9

EXHIBIT “C” INSURANCE

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by Authority. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers’ Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor’s written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers’ Compensation and Employers Liability insurance.
- (b) Workers’ Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.

- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work.*
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: “**Agreement for Professional Services.**”
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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

March 16, 2022

Subject: Kern County Hospital Authority Financial Report – January 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Average Daily Census of 178 for January is 41 more than the January budget of 137 and 8 less than the 186 average over the last three months
- Admissions of 1,183 for January are 326 more than the January budget of 857 and 314 less than the 1,497 average over the last three months
- Total Surgeries of 496 for January are 58 more than the January budget of 438 and 9 more than the 487 average over the last three months
- Clinic Visits of 16,774 for January are 1,198 more than the January budget of 15,576 and 170 less than the 16,944 average over the last three months. The total includes 2,812 COVID-19 vaccination visits

The following items have budget variances for the month of January 2022:

Patient Revenue:

Gross patient revenue has a favorable budget variance for January 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 16% compared to prior year.

Indigent Funding Revenue:

Indigent funding has an unfavorable budget variance for the month and year-to-date due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2022 Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), the Whole Person Care Program (WPC), the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

Other Operating Revenue:

Other operating revenue has a favorable budget variance for January 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 January was more than the monthly average received from this program.

Other Non-Operating Revenue:

Other non-operating revenue has a favorable budget variance for the month and on a year-to-date basis because of the recognition of a \$2 million program true up for the fiscal year, which will continue through the rest of the year.

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 due to high pandemic-related census levels and significant registry cost increases. Year-to-date registry expenses were over \$30 million compared to a planned budget of \$11.5 million. Federal American Rescue Plan Act (ARPA) funding has been used to offset a portion but does not resolve the entire expense variance.

Medical Fees:

For the month of January, Kern Medical operated at the budgeted dollar amount for medical fees. 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. On a year-to-date basis, other professional fees are over budget in part because of IT contract labor and also because of an implementation fee charged by the Acute Care Surgery Group. There have also been 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 the ongoing operation 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 under accruals in prior month for ambulance fees and for Health Advocates services. 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.

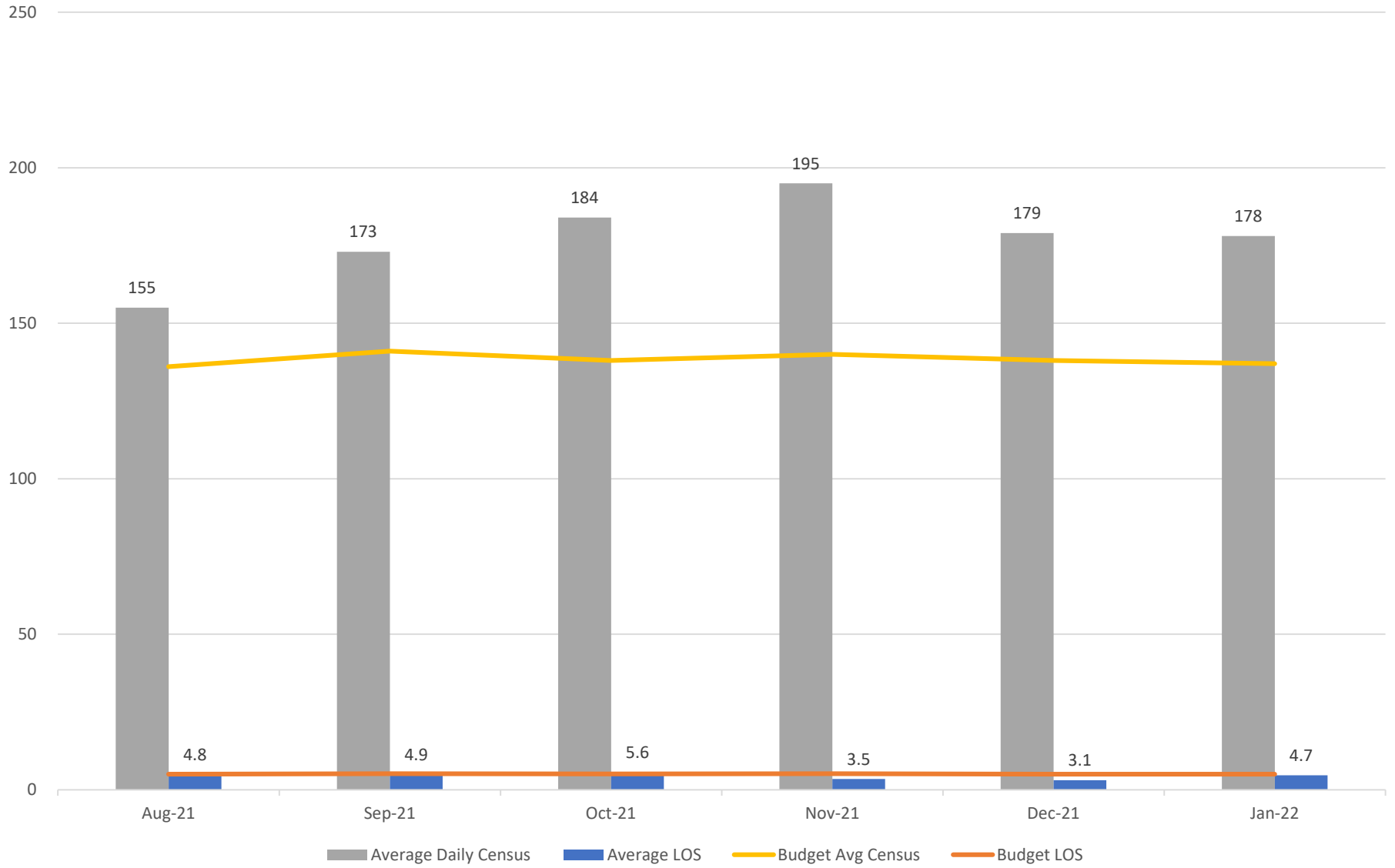
Depreciation and Amortization Expense:

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.

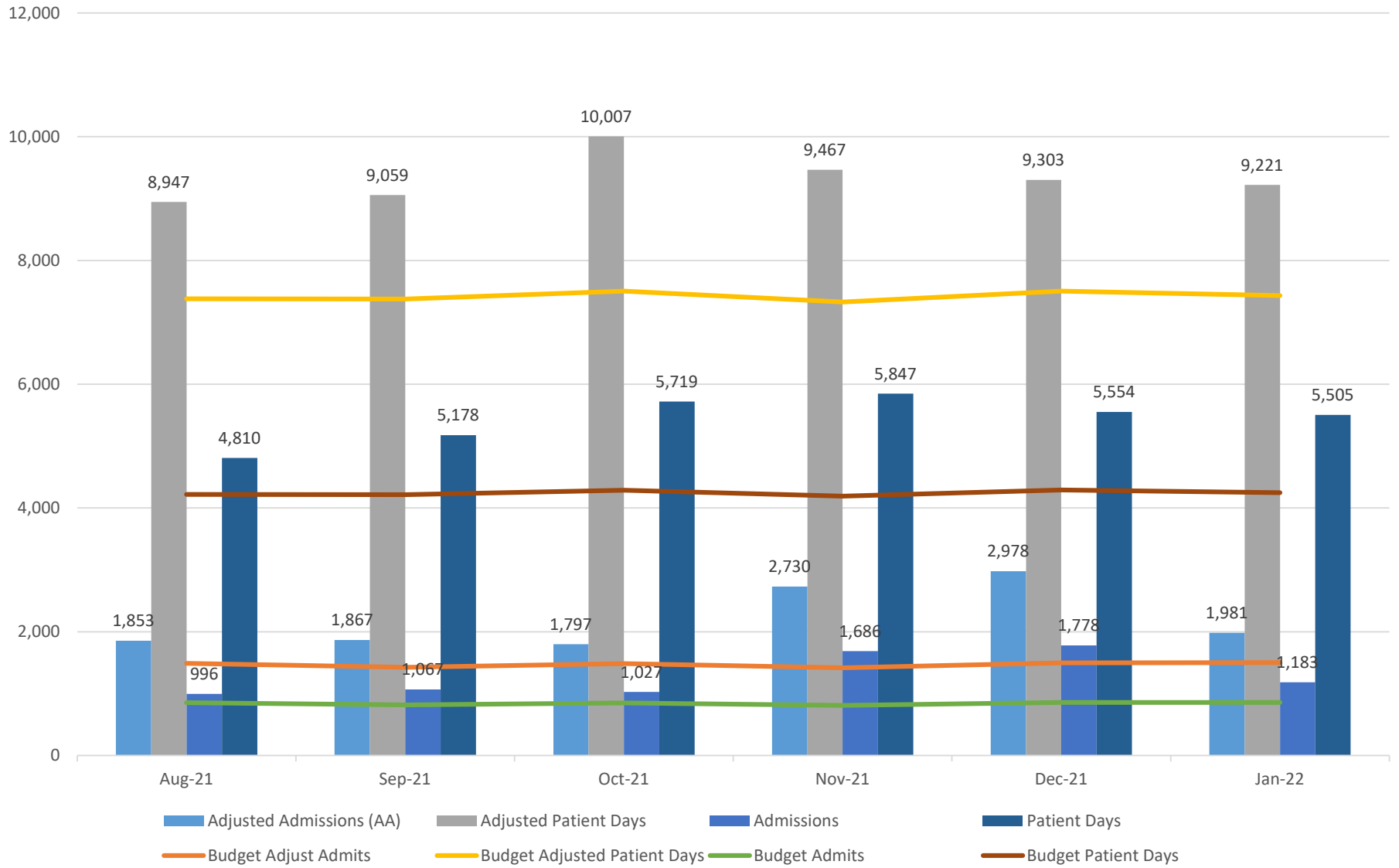


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – JANUARY 2022**

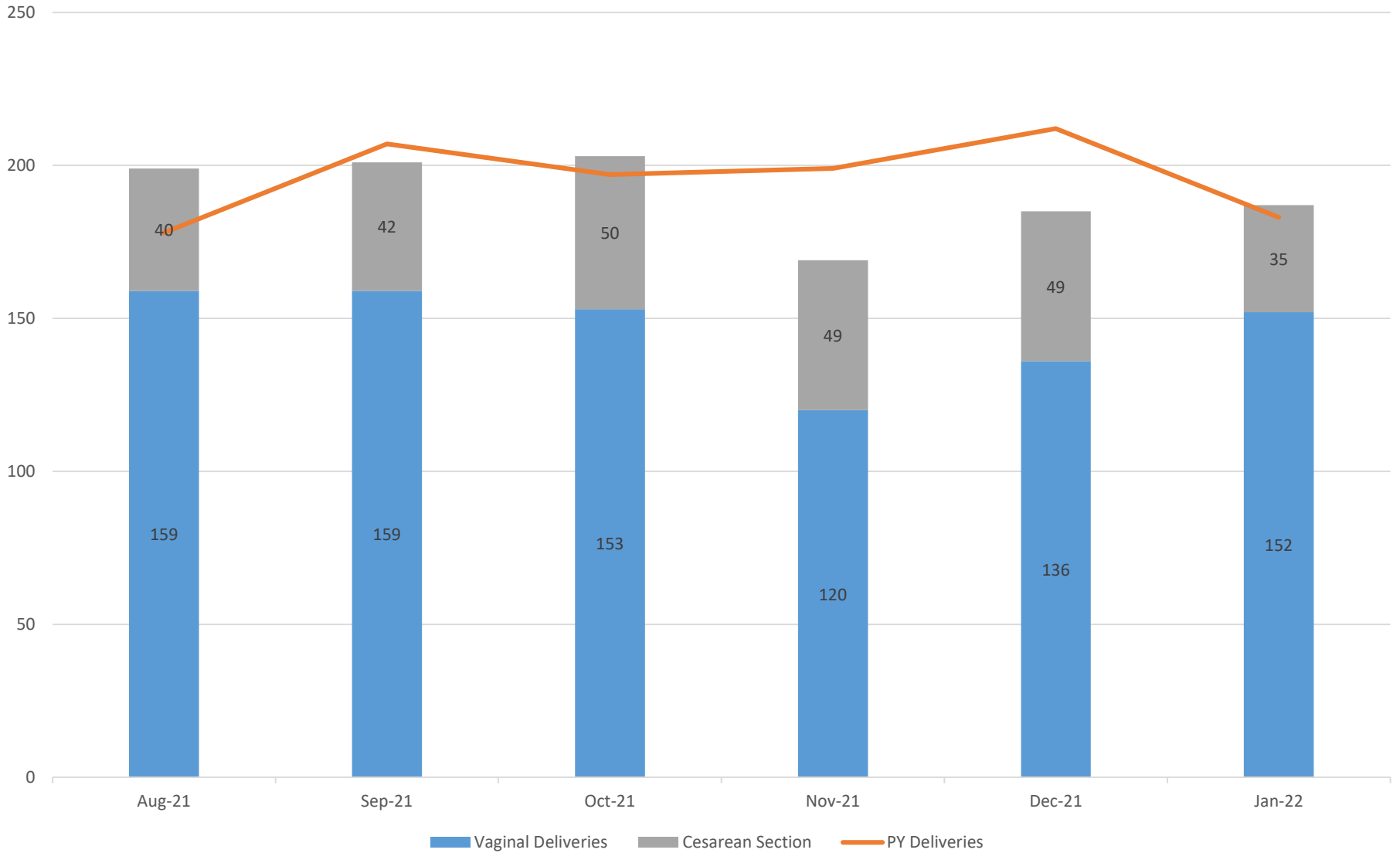
Census & ALOS



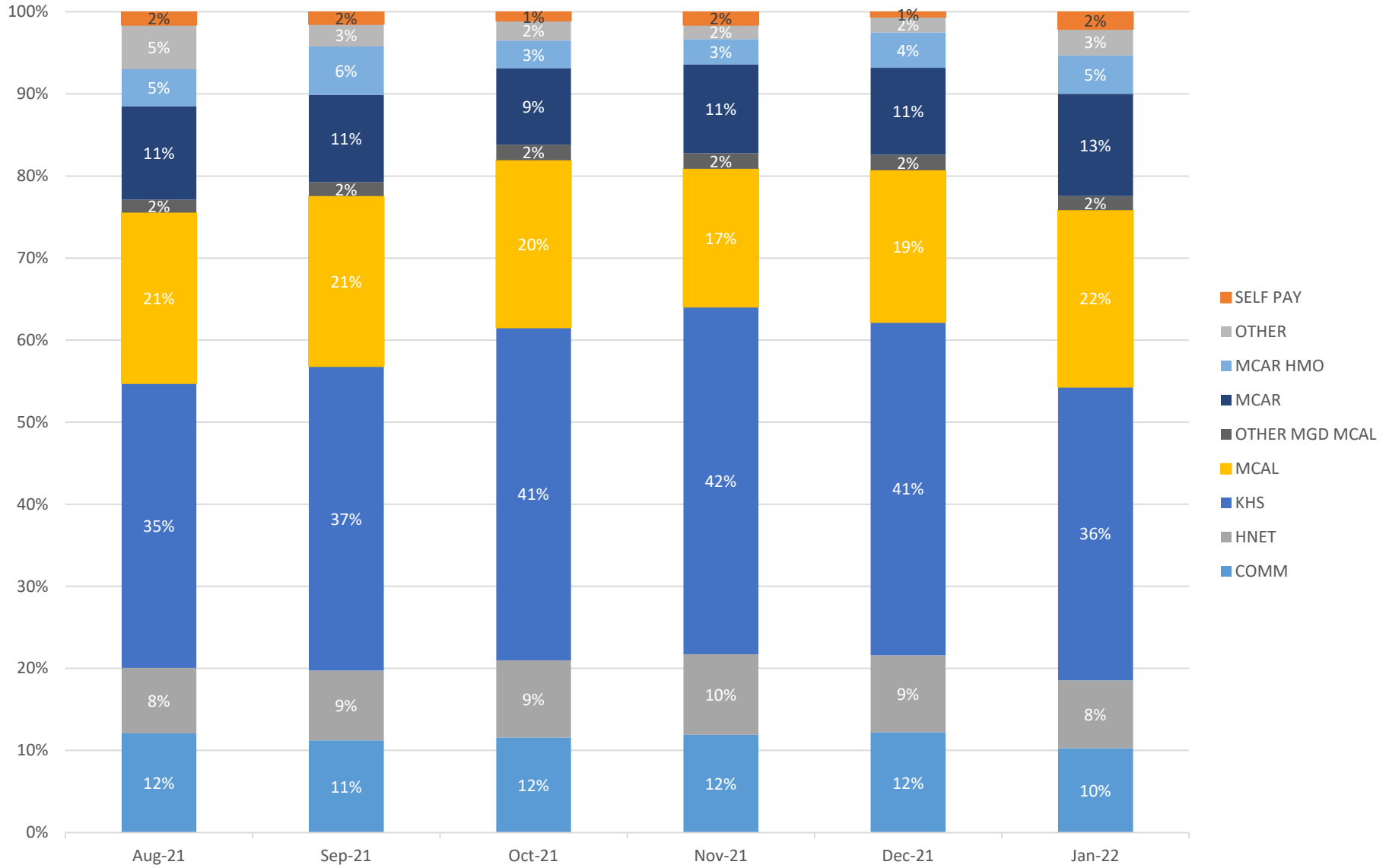
Hospital Volumes



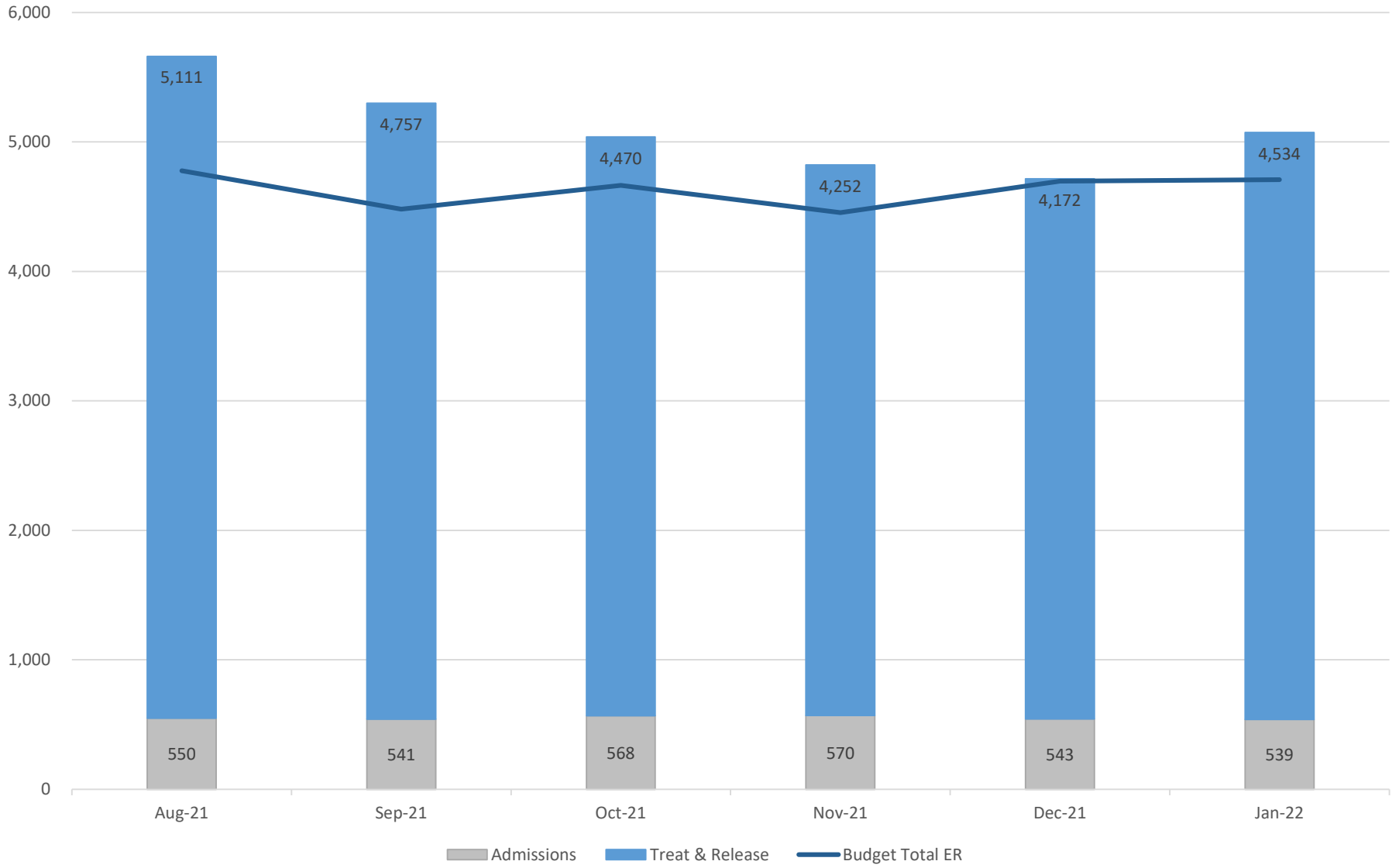
Deliveries



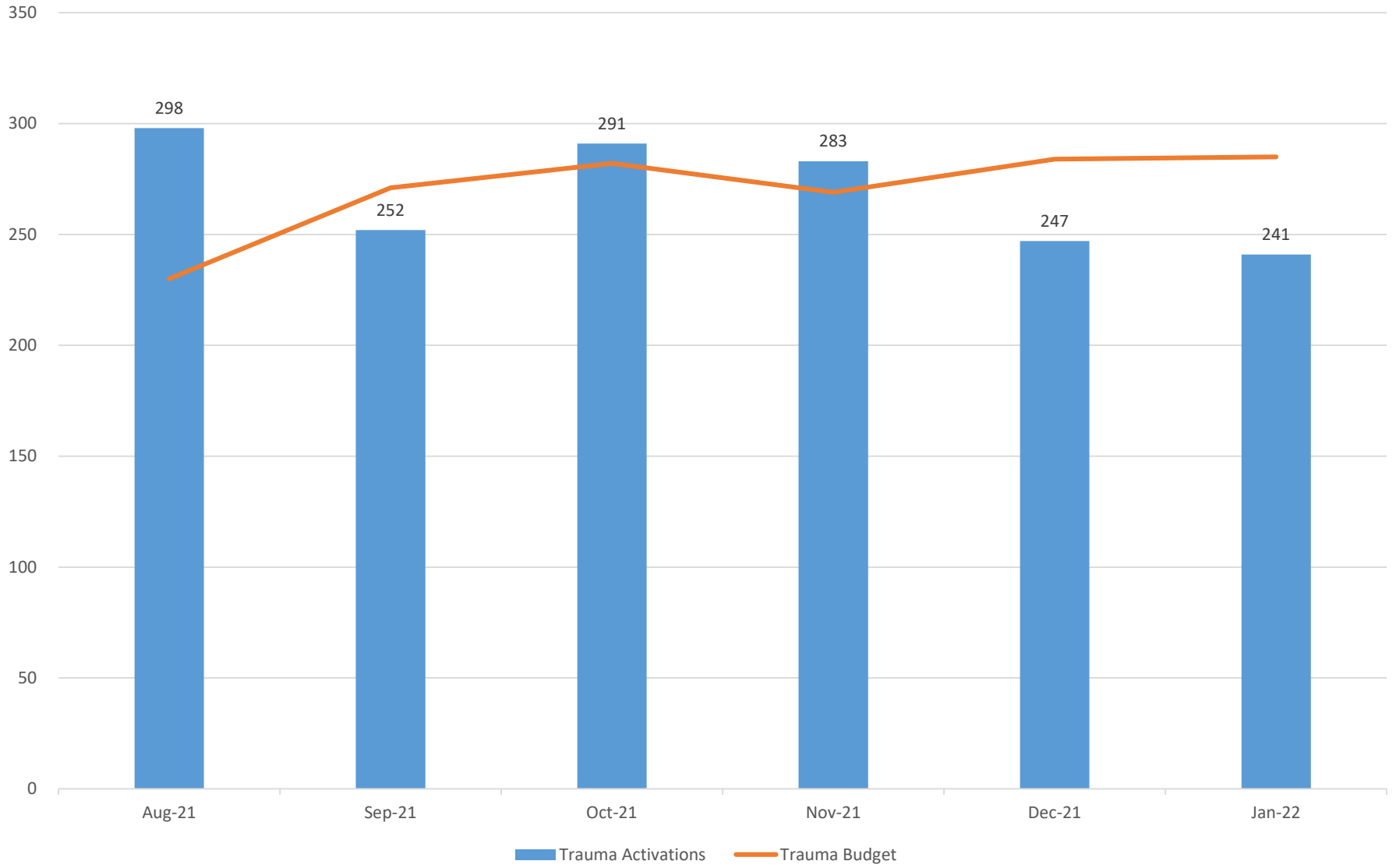
PAYER MIX



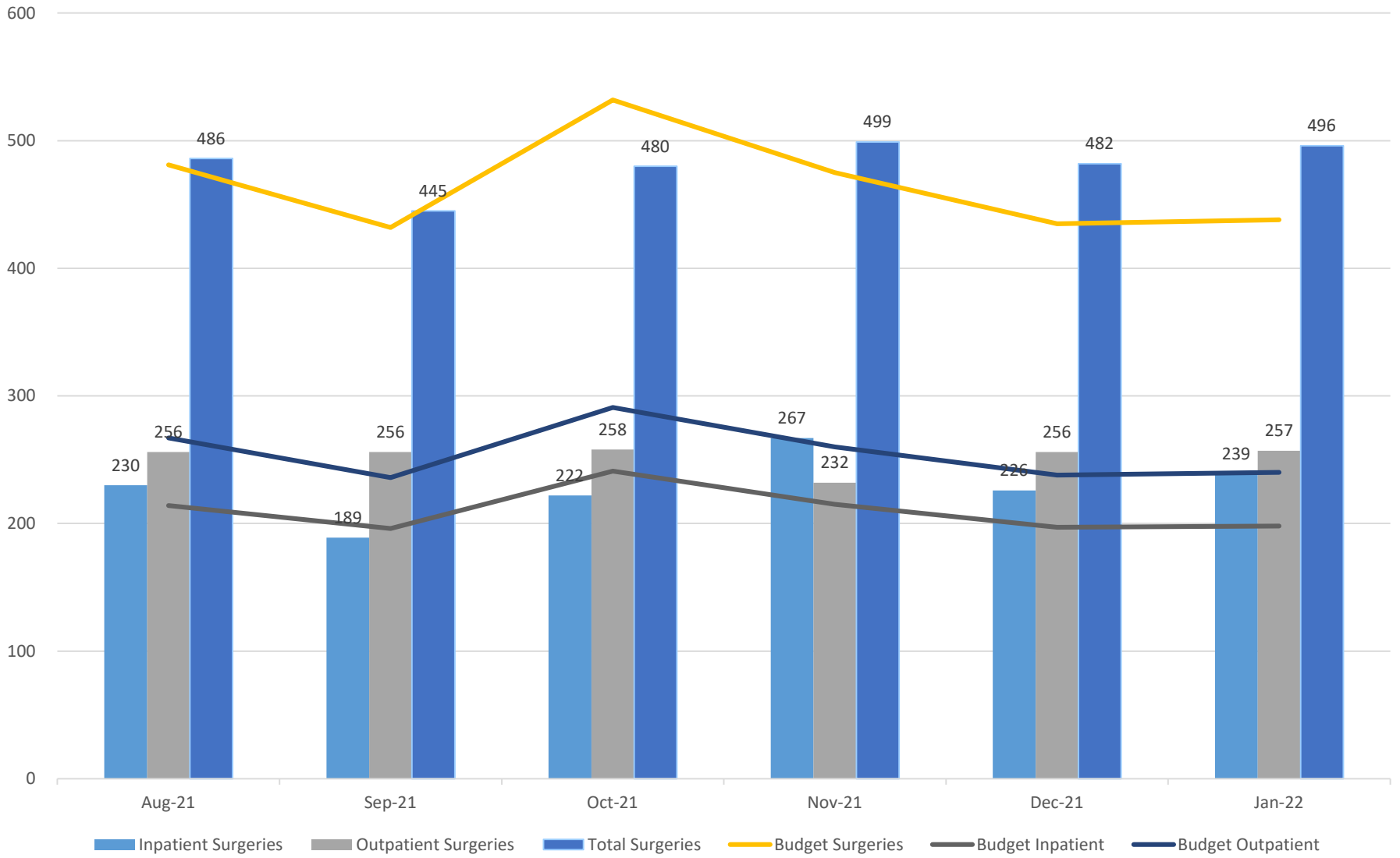
Emergency Room Volume



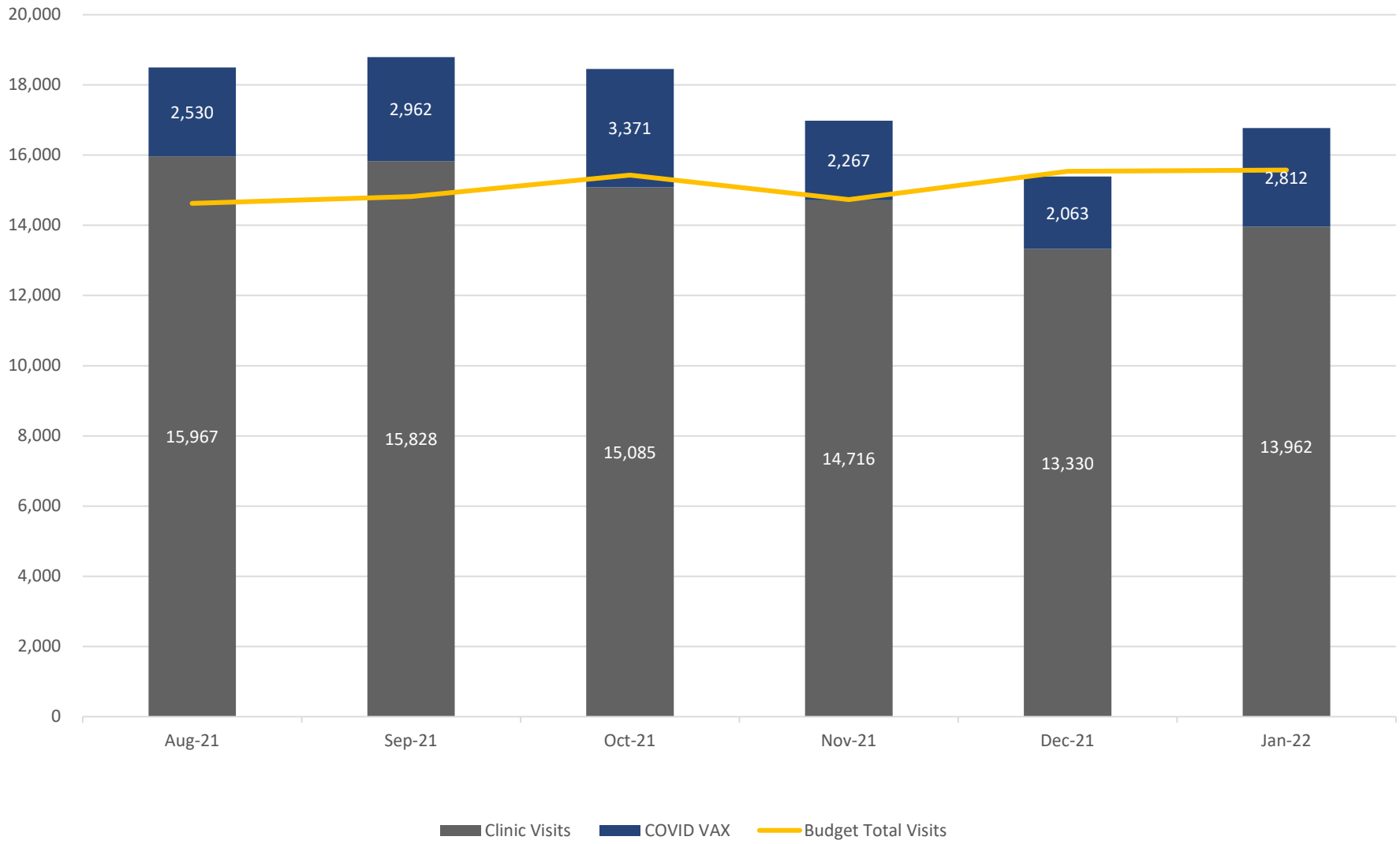
Trauma Activations



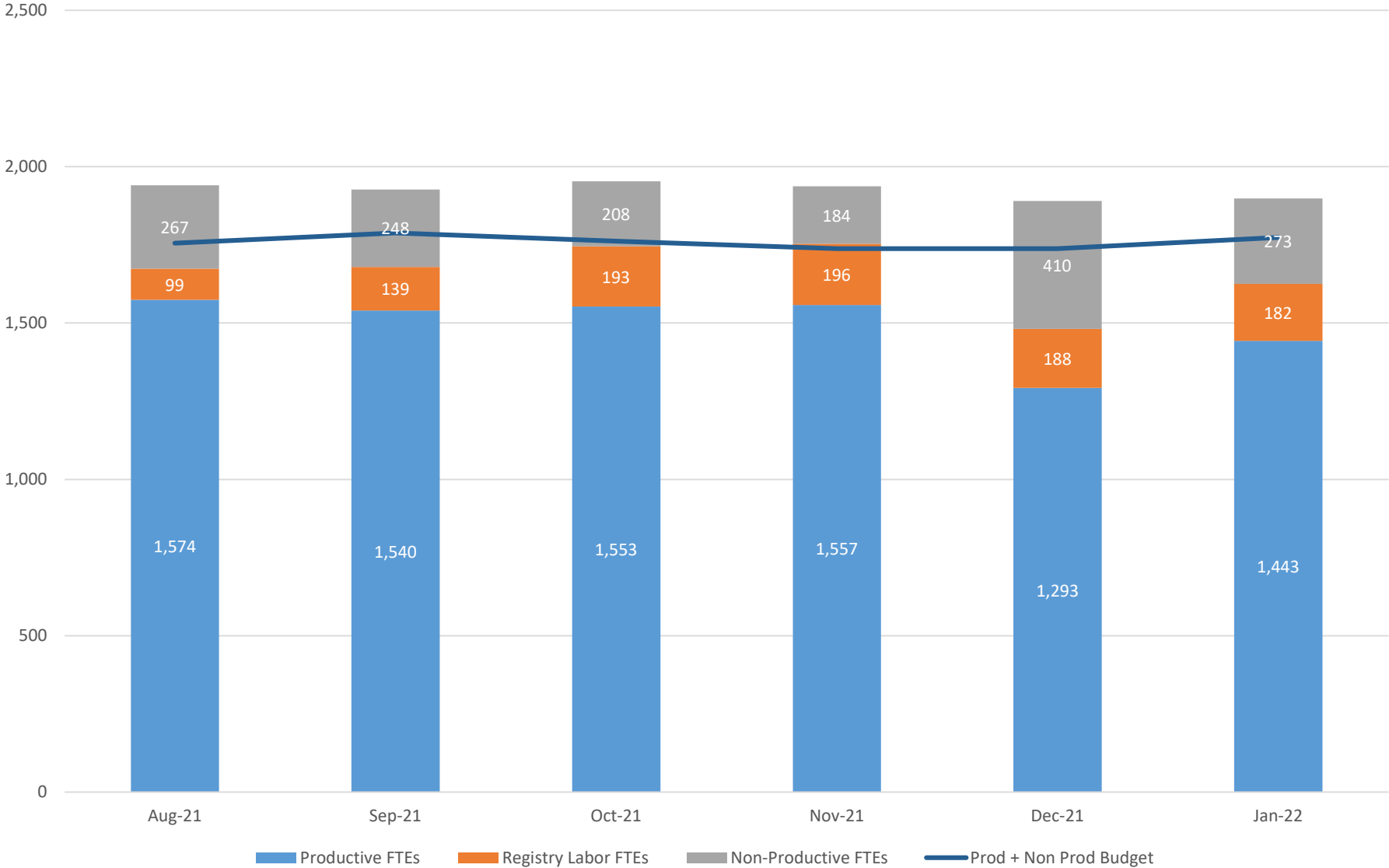
Surgical Volume



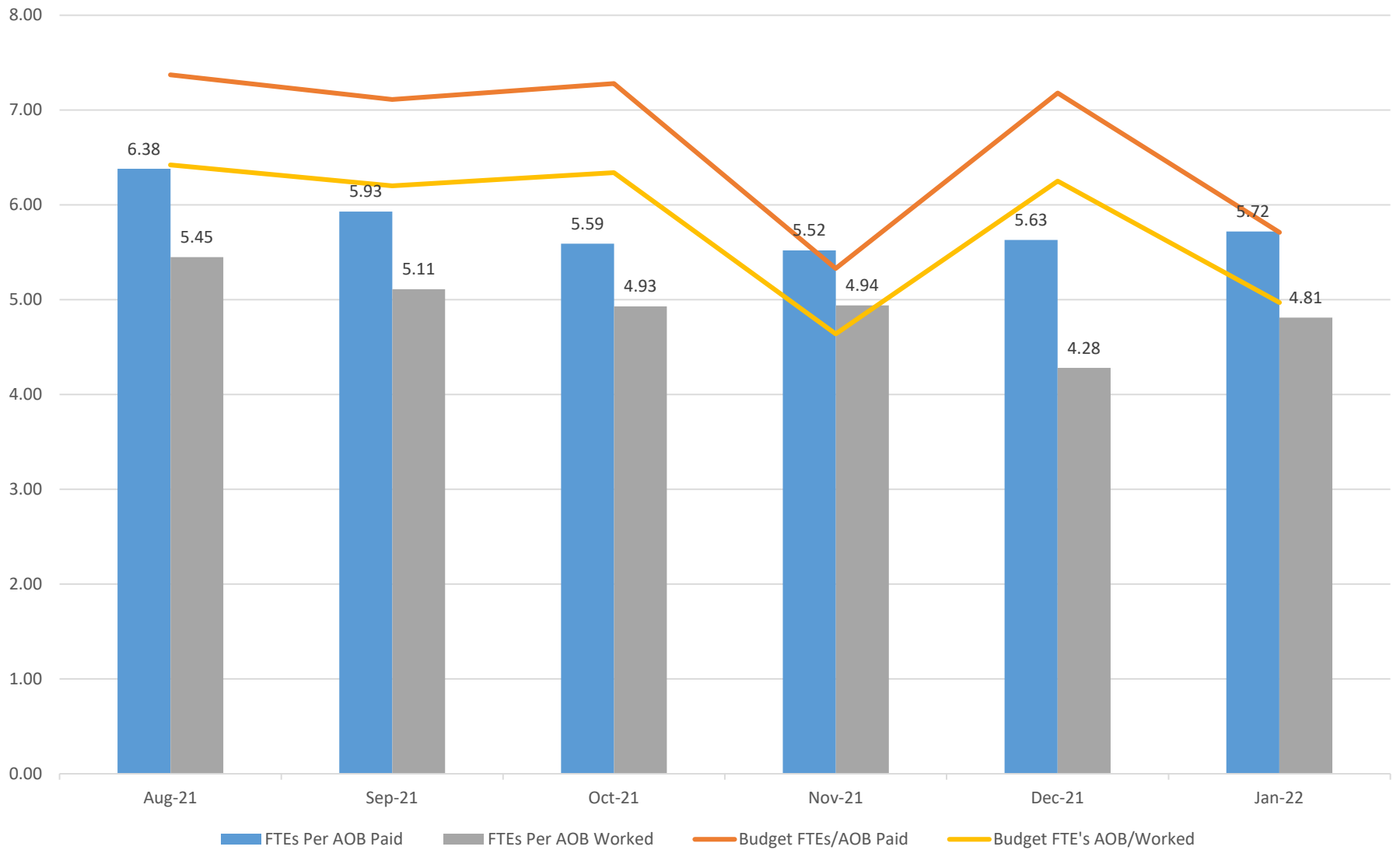
Clinic Visits



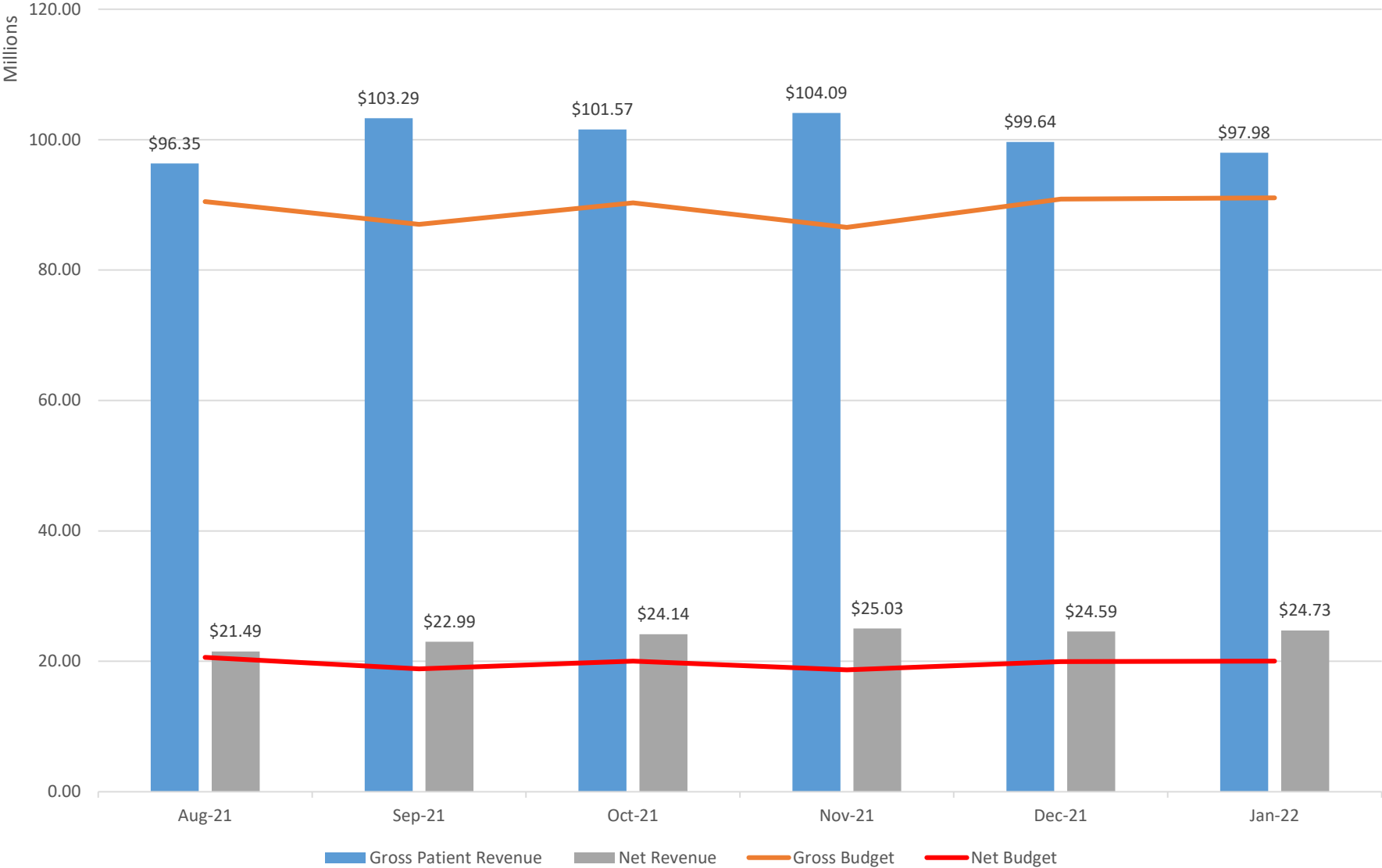
Productivity



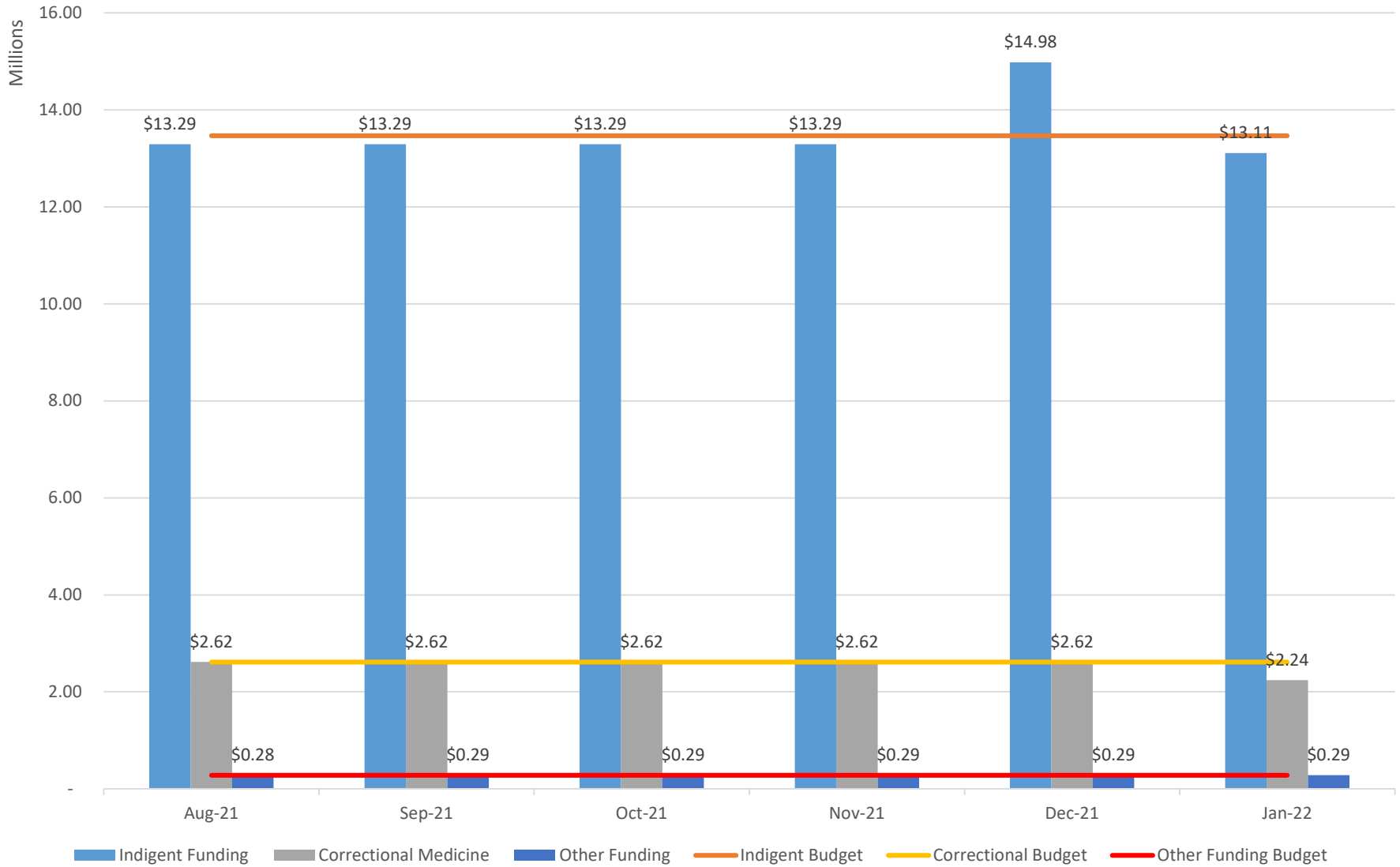
Labor Metrics



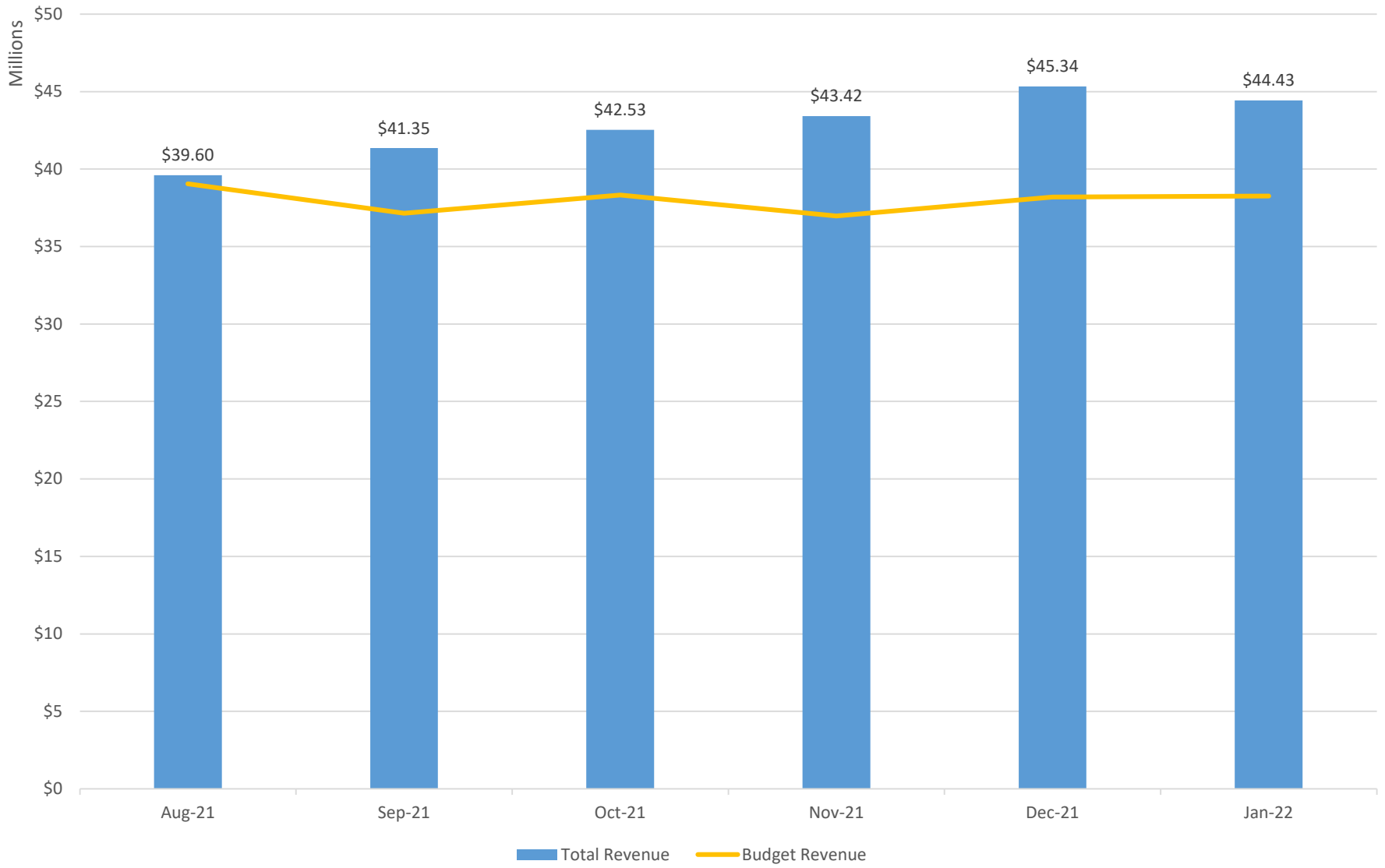
Patient Revenue



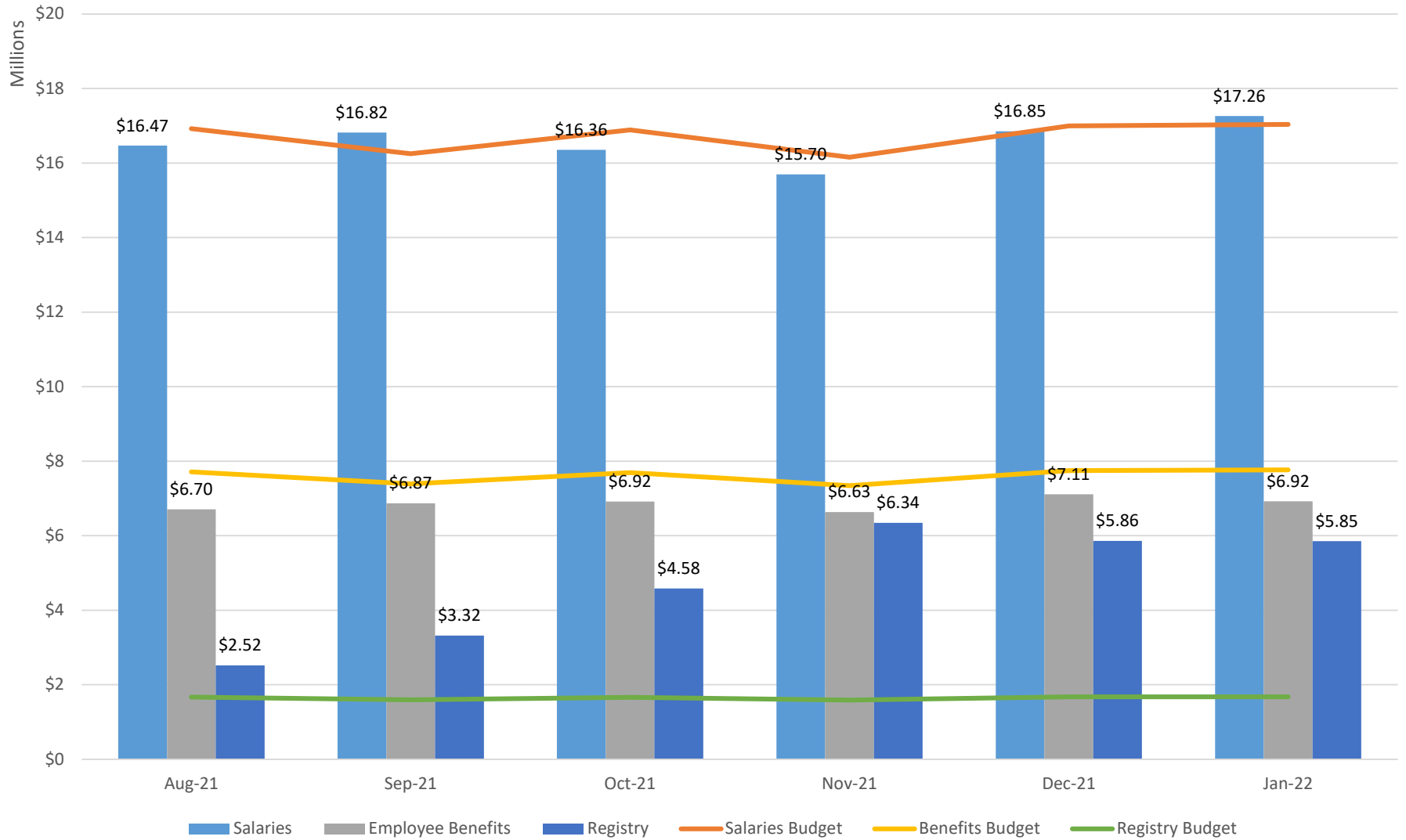
Indigent & Correctional Revenue



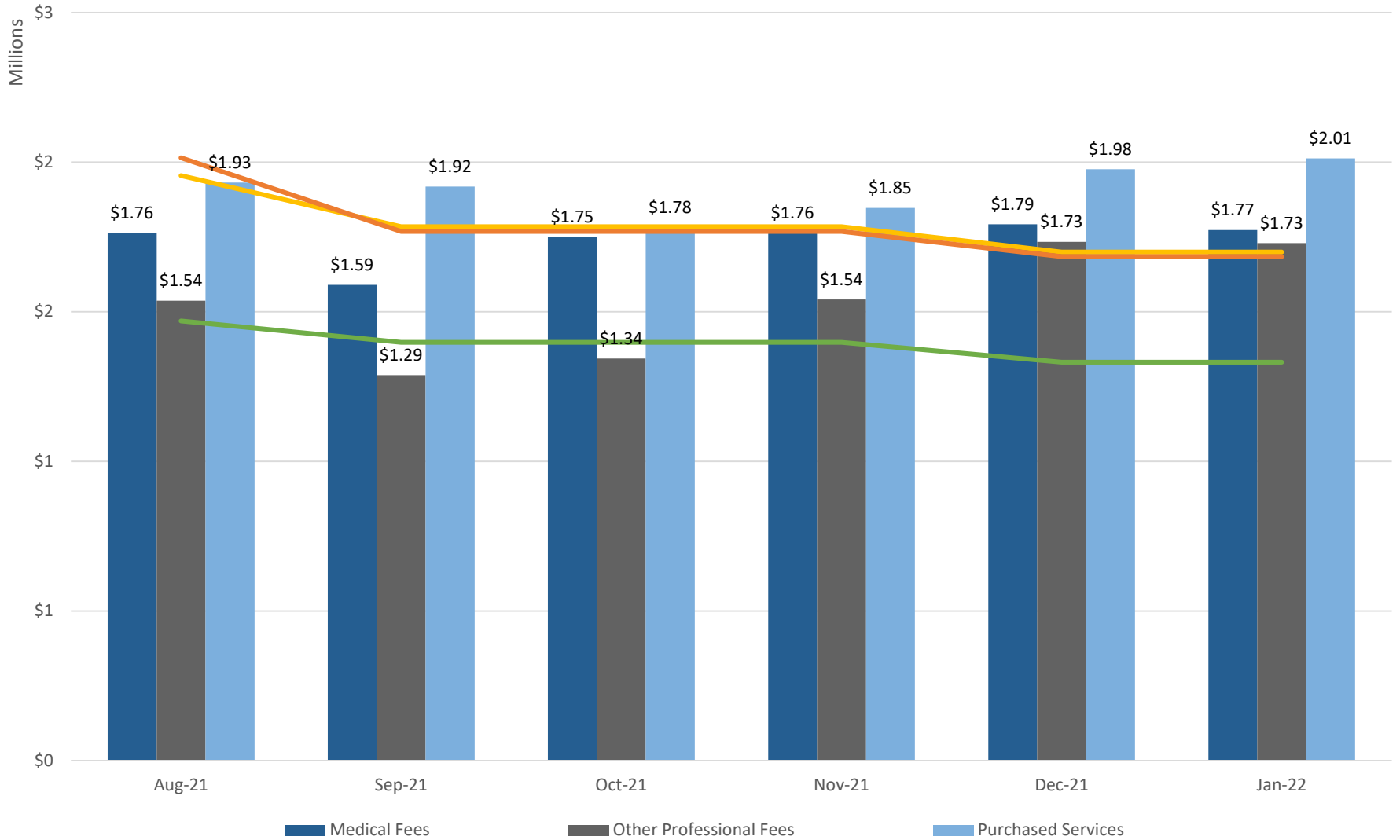
Total Revenue



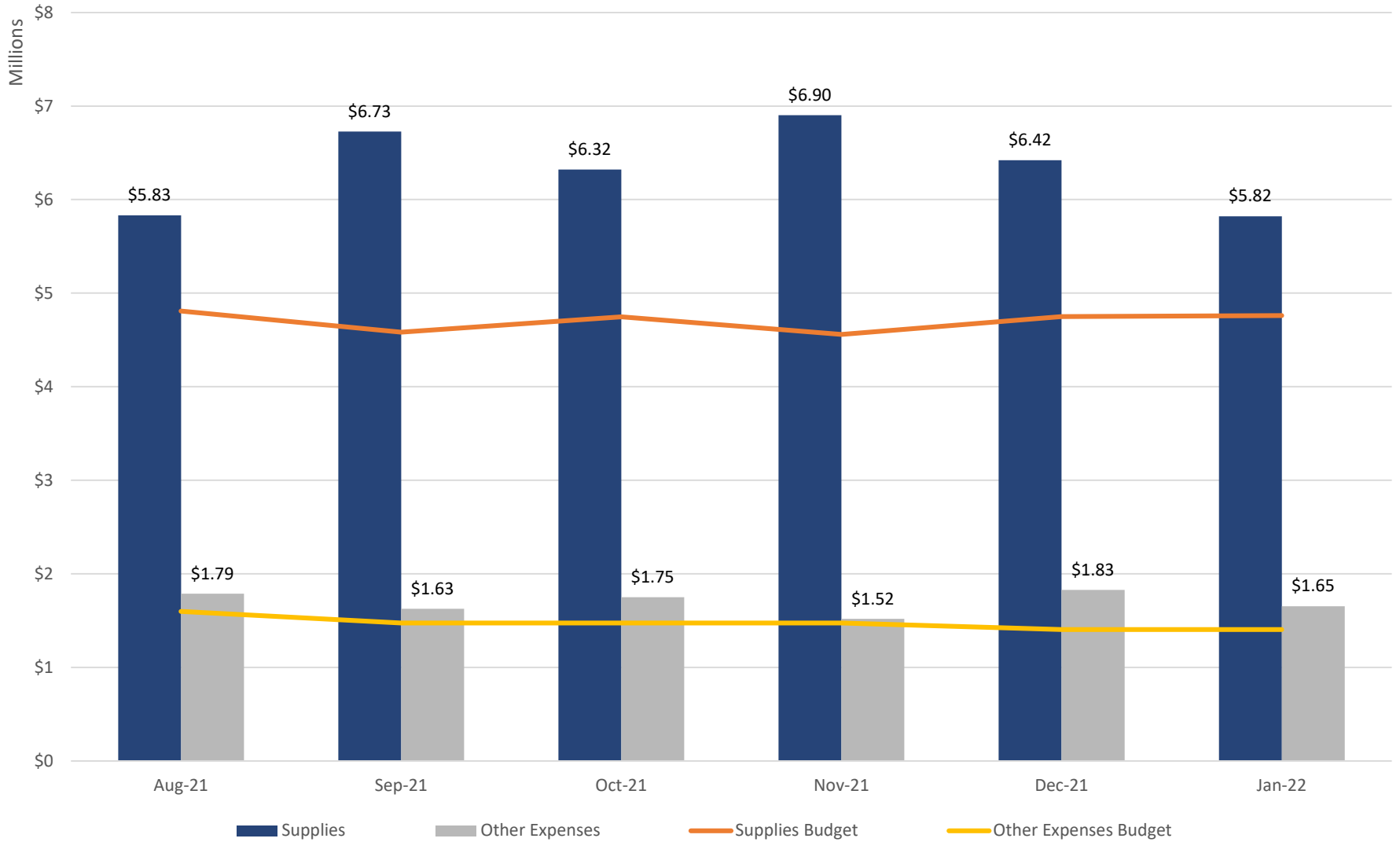
Expenses



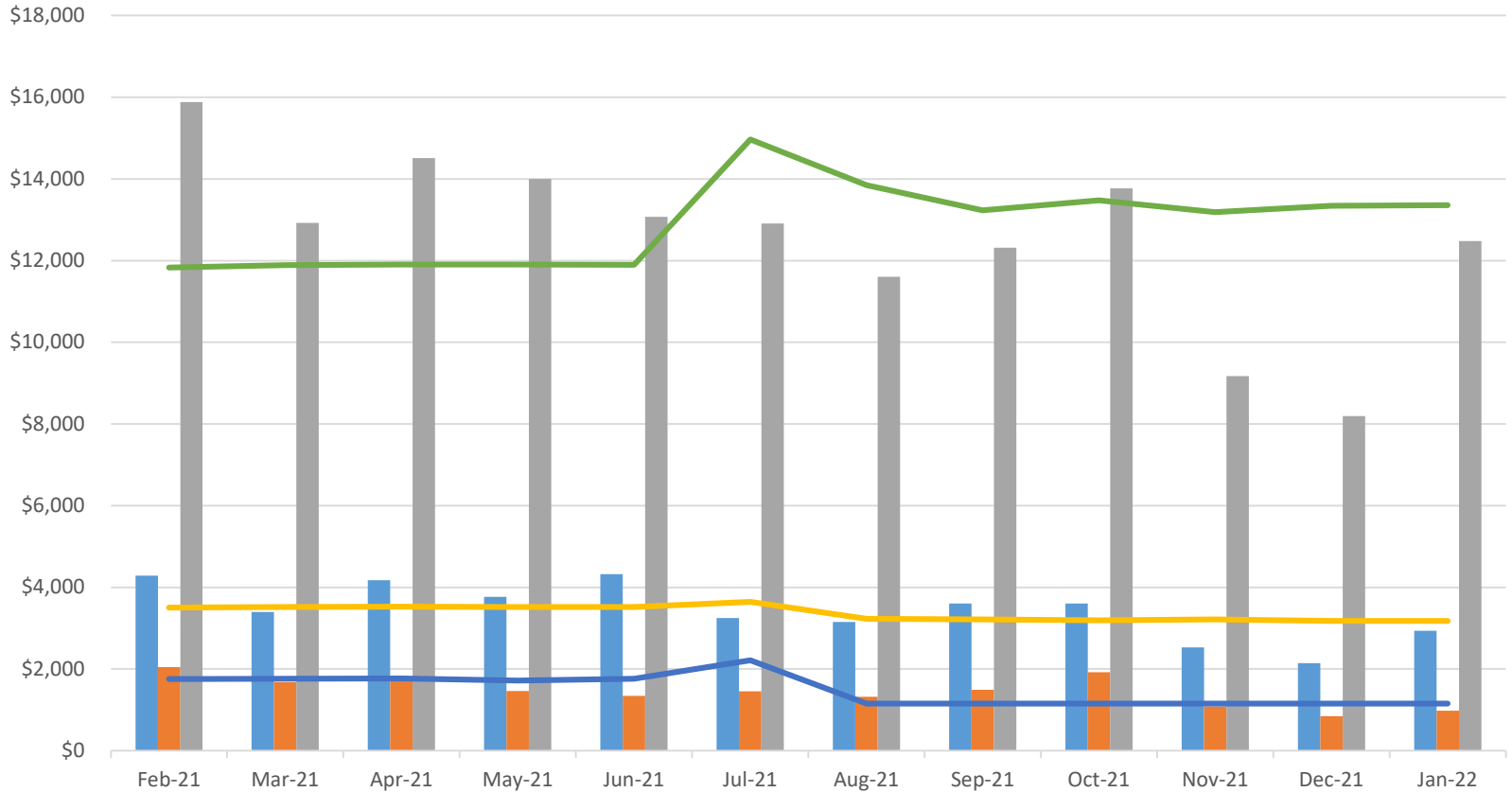
Expenses



Expenses

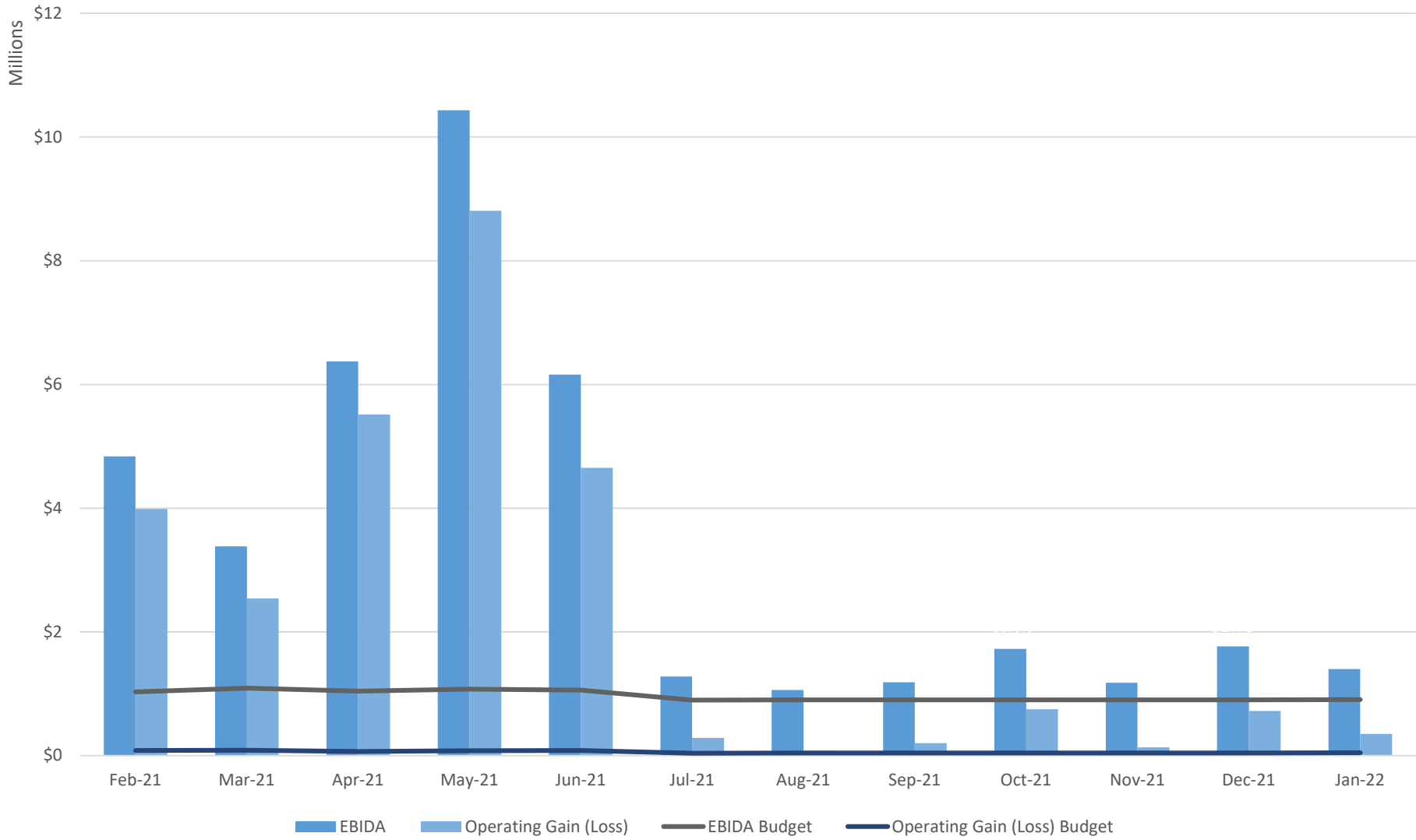


Operating Metrics

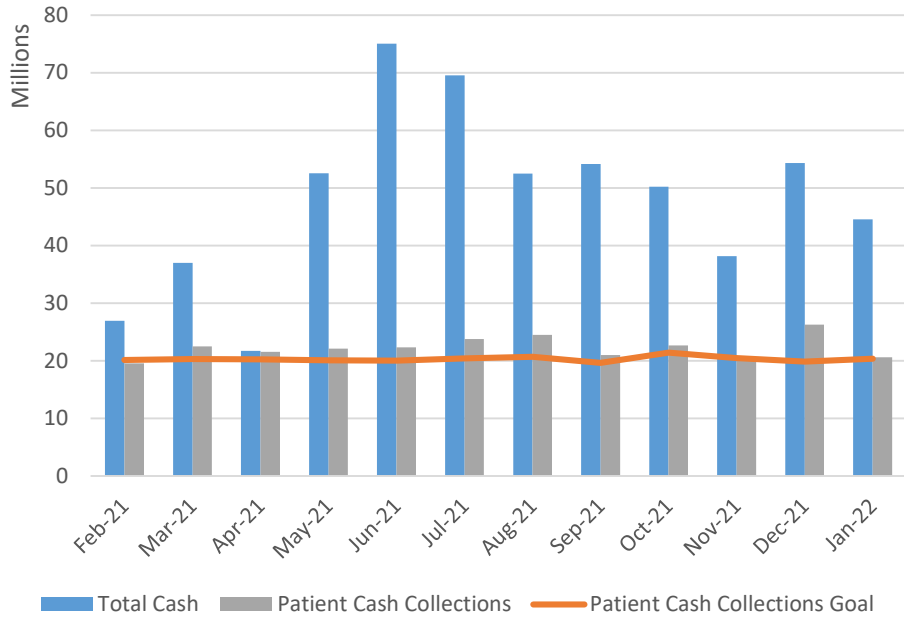


	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22
Supply Expense per AA	\$4,285	\$3,396	\$4,176	\$3,765	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528	\$2,141	\$2,938
Pharm Cost per AA	\$2,050	\$1,678	\$1,809	\$1,458	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081	\$846	\$982
Net Revenue Per AA	\$15,879	\$12,922	\$14,513	\$13,999	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170	\$8,196	\$12,479
Budget Supp/AA	\$3,501	\$3,518	\$3,526	\$3,522	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217	\$3,175	\$3,174
Budget Pharm/AA	\$1,755	\$1,763	\$1,767	\$1,714	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156	\$1,153	\$1,153
Budget Net Rev/AA	\$11,833	\$11,892	\$11,902	\$11,900	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187	\$13,344	\$13,359

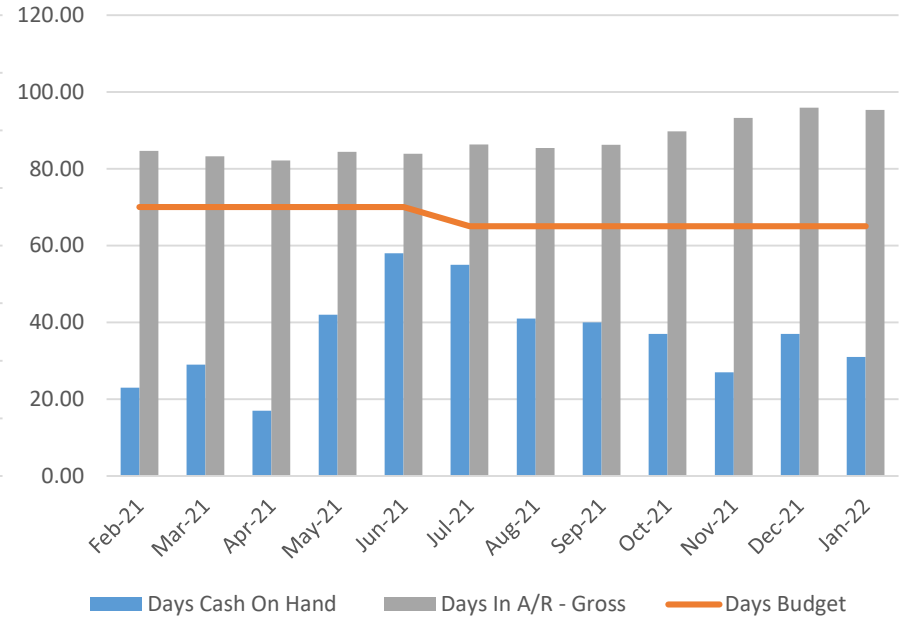
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
January 31, 2022

	NOVEMBER	DECEMBER	JANUARY	BUDGET JANUARY	VARIANCE POS (NEG)	PY JANUARY
Gross Patient Revenue	\$ 104,093,541	\$ 99,644,301	\$ 97,984,263	\$ 91,080,884	8%	\$ 87,386,015
Contractual Deductions	(79,061,114)	(75,056,605)	(73,256,917)	(71,047,980)	3%	(63,349,423)
Net Revenue	25,032,427	24,587,696	24,727,346	20,032,903	23%	24,036,592
Indigent Funding	13,289,890	14,979,851	13,111,881	13,468,684	(3%)	32,394,412
Correctional Medicine	2,616,667	2,616,667	2,242,175	2,616,667	(14%)	2,531,665
County Contribution	285,211	285,211	285,526	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	716,247
Net Patient Revenue	41,224,195	42,469,425	40,366,928	36,401,148	11%	59,964,126
Gain/(Loss) on Health-Related Entity	0	0	0	0	0%	0
Other Operating Revenue	2,187,437	2,861,169	2,057,914	1,575,338	31%	2,650,810
Other Non-Operating Revenue	11,642	6,574	2,004,765	283,903	606%	(1,233,447)
Total Revenue	43,423,275	45,337,169	44,429,606	38,260,390	16%	61,381,489
Expenses						
Salaries	15,697,803	16,852,720	17,262,049	17,035,172	1%	16,401,152
Employee Benefits	6,634,978	7,108,983	6,921,972	7,765,706	(11%)	9,444,436
Registry	6,341,786	5,861,624	5,854,184	1,676,501	249%	1,621,967
Medical Fees	1,762,687	1,791,931	1,772,682	1,699,575	4%	1,827,050
Other Professional Fees	1,540,595	1,733,253	1,729,246	1,331,140	30%	1,462,804
Supplies	6,901,408	6,421,341	5,822,112	4,760,297	22%	4,965,542
Purchased Services	1,846,351	1,976,158	2,012,686	1,684,113	20%	1,582,805
Other Expenses	1,519,325	1,827,048	1,653,957	1,403,579	18%	3,488,436
Operating Expenses	42,244,934	43,573,058	43,028,888	37,356,084	15%	40,794,192
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,178,341	\$ 1,764,111	\$ 1,400,718	\$ 904,306	55%	\$ 20,587,297
EBIDA Margin	3%	4%	3%	2%	33%	34%
Interest	84,329	84,746	84,468	138,079	(39%)	124,986
Depreciation	665,749	661,883	671,551	466,931	44%	458,972
Amortization	296,755	296,755	295,228	254,168	16%	256,257
Total Expenses	43,291,767	44,616,442	44,080,135	38,215,263	15%	41,634,408
Operating Gain (Loss)	\$ 131,508	\$ 720,727	\$ 349,471	\$ 45,127	674%	\$ 19,747,081
Operating Margin	0.3%	1.6%	0.8%	0.12%	567%	32.17%

KERN MEDICAL
Year-to-Date: Revenue & Expense
January 31, 2022

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 698,702,972	\$ 624,328,766	12%	\$ 601,013,886	16%
Contractual Deductions	(534,680,192)	(487,219,310)	10%	(456,263,746)	17%
Net Revenue	164,022,780	137,109,456	20%	144,750,140	
Indigent Funding	94,556,070	94,280,791	0%	112,363,194	(16%)
Correctional Medicine	17,942,175	18,316,667	(2%)	18,036,836	(0.5%)
County Contribution	1,996,791	1,980,256	1%	1,996,516	0.014%
Incentive Funding	0	0	0%	3,479,827	(100%)
Net Patient Revenue	278,517,816	251,687,170	11%	280,626,512	(1%)
Gain/(Loss) on Health-Related Entity	0	0	0%	0	0%
Other Operating Revenue	15,137,793	11,424,339	33%	11,190,238	35%
Other Non-Operating Revenue	2,079,808	1,969,005	6%	1,040,540	100%
Total Revenue	295,735,417	265,080,514	12%	292,857,291	1%
Expenses					
Salaries	115,382,636	116,686,396	(1%)	110,780,044	4%
Employee Benefits	48,865,513	53,132,834	(8%)	52,308,643	(7%)
Registry	30,503,944	11,470,592	166%	11,085,987	175%
Medical Fees	12,232,927	12,406,897	(1%)	12,038,468	2%
Other Professional Fees	10,737,680	9,601,724	12%	9,661,624	11%
Supplies	43,319,724	32,812,590	32%	38,703,751	12%
Purchased Services	13,487,679	12,439,738	8%	13,188,563	2.27%
Other Expenses	11,608,848	10,214,101	14%	13,242,819	(12%)
Operating Expenses	286,138,951	258,764,872	11%	261,009,899	10%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 9,596,466	\$ 6,315,642	52%	\$ 31,847,391	(70%)
EBIDA Margin	3%	2%	36%	11%	(70%)
Interest	591,641	966,555	(39%)	953,462	(38%)
Depreciation	4,701,823	3,268,514	44%	3,283,583	43%
Amortization	1,785,268	1,779,179	0.3%	1,793,802	(0%)
Total Expenses	293,217,683	264,779,120	11%	267,040,746	10%
Operating Gain (Loss)	\$ 2,517,734	\$ 301,393	735%	\$ 25,816,544	(90%)
Operating Margin	1%	0.1%	649%	9%	(90%)

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2022	JANUARY 2021
ASSETS:		
<i>Total Cash</i>	\$ 44,548,955	\$ 38,778,746
Patient Receivables Subtotal	329,850,591	253,995,945
Contractual Subtotal	(278,674,282)	(208,851,768)
<i>Net Patient Receivable</i>	51,176,309	45,144,177
Total Indigent Receivable	154,345,503	134,651,928
Total Other Receivable	6,488,551	7,272,154
Total Prepaid Expenses	5,290,121	4,086,598
Total Inventory	4,425,652	6,067,269
<i>Total Current Assets</i>	266,275,091	236,000,873
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	223,085,065	195,164,680
Total Construction in Progress	2,931,352	22,737,950
<i>Total Property, Plant & Equipment</i>	226,016,416	217,902,630
Total Accumulated Depr & Amortization	(131,869,901)	(120,758,818)
<i>Net Property, Plant, and Equipment</i>	94,146,515	97,143,811
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 487,712,461	\$ 421,008,146

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2022	JANUARY 2021
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 12,285,813	\$ 7,869,148
Total Accrued Compensation	33,424,256	34,947,223
Total Due Government Agencies	15,860,995	37,778,645
Total Other Accrued Liabilities	54,422,548	42,495,316
 <i>Total Current Liabilities</i>	 115,993,611	 123,090,332
 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>	<u>445,439,730</u>	<u>418,560,455</u>
 <i>Total Liabilities</i>	 <u>561,433,341</u>	 <u>541,650,787</u>
 Fund Balance	 36,714,022	 36,714,022
Retained Earnings	(110,434,902)	(157,356,662)
<i>Total Fund Balance</i>	<u>(73,720,880)</u>	<u>(120,642,641)</u>
 <i>Total Liabilities and Fund Balance</i>	 <u>\$ 487,712,461</u>	 <u>\$ 421,008,146</u>



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

March 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 March 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**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on March 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: Farzin Tayefeh, M.D.,
et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-
100647 –

**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 March 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 – ANTICIPATED LITIGATION
(Government Code Section 54956.9(d)(4)) Number of cases: One (1) Based on facts and circumstances, the Board of Governors has decided to initiate or is deciding whether to initiate litigation –