



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, April 20, 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 certified nurses–
MAKE PRESENTATION
- 4) Presentation by the Chief Executive Officer recognizing Kern Medical Center employees who responded to the F Ward fire –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

- CA
- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVE; ADOPT RESOLUTION
- CA
- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on March 16, 2022 –
APPROVE
- CA
- 7) Proposed reappointments of Directors Russell Bigler and Philip McLaughlin to the Kern County Hospital Authority Board of Governors, terms to expire June 30, 2025 –
REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENTS
- CA
- 8) Proposed retroactive Amendment No. 1 to Master Services Agreement 002-2019 with CIOX Health, LLC, an independent contractor, for the period January 16, 2019 through January 15, 2022, for medical record reproduction services, extending the term for two years from January 16, 2022 through January 15, 2024, and increasing the maximum payable by \$250,000, from \$225,000 to \$475,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Master Terms and Conditions with BFLY Operations, Inc., an independent contractor, containing nonstandard terms and conditions, for portable ultrasound devices and software from April 20, 2022 through April 19, 2025, in an amount not to exceed \$206,786 plus applicable taxes –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Sales Order OPT-0276640 with Cerner Corporation, an independent contractor, for 21st Century CURES Professional Services platform to access prescription databases, effective April 20, 2022, in an amount not to exceed \$94,600 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Sales Order OPT-0302150 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of the Electronic Clinical Reporting Solution to comply with CURES reporting requirements, for a term of 60 months, effective April 20, 2022, in an amount not to exceed \$146,920 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed retroactive Amendment No. 6 to Agreement 317-2012 with Ross University School of Medicine, an independent contractor, for the period September 3, 2012 through September 2, 2022, to revise the termination date from September 2, 2022 to July 31, 2022, and waive fees for unfilled clerkship positions, effective February 16, 2022 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed retroactive Equipment Sale Agreement and Master Product Agreement with Siemens Healthcare Diagnostics, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of clinical laboratory chemistry testing equipment and reagents, for a term of five years, effective March 31, 2022, in an amount not to exceed \$640,000 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 14) Proposed retroactive Lease Agreement with First American Commercial Bancorp, Inc., an independent contractor, containing nonstandard terms and conditions, for financing of clinical laboratory chemistry testing equipment, for a term of five years, effective March 31, 2022, in an amount not to exceed \$186,000 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 15) Proposed Amendment No. 3 to Agreement 53119 with Rajinder P. Singh, M.D., an independent contractor, for professional medical services in the Department of Radiology, for the period October 7, 2019 through October 6, 2022, increasing the maximum payable by \$350,000, from \$750,000 to \$1,100,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Amendment No. 1 to Agreement 038-2020 with Katayoun Sabetian, M.D., Inc., an independent contractor, for professional medical services in the Department of Medicine, for the period September 1, 2020 through August 31, 2022, extending the term for two years from September 1, 2022 through August 31, 2024, adding a stipend for Medical Student Clerkship Director services, and increasing the maximum payable by \$660,000, from \$610,000 to \$1,270,000, to cover the cost of additional services and extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed retroactive Terms and Conditions of Service with TrueLearn, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of licenses for graduate medical education test preparation software, for a term of three years, effective March 31, 2022, in an amount not to exceed \$19,680 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed retroactive Substitute Equipment Agreement with Olympus America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of an urology image processor, for a term of 60 days, effective April 14, 2022, in an amount not to exceed \$500 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

- 19) Proposed Affiliation Agreement with Western University Health Sciences/College of Osteopathic Medicine of the Pacific, and independent contractor, for clinical training of third- and fourth-year medical students for a term of three years from August 1, 2022 through July 31, 2024 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

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

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

CA

- 22) Claims and Lawsuits Filed as of March 31, 2022 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 23) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 24) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

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

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MAY 18, 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.

22) CLAIMS AND LAWSUITS FILED AS OF MARCH 31, 2021 –
RECEIVE AND FILE

- A) Claim in the matter of Jesus Martin Olivas
- B) Claim in the matter of Jesus Martin Olivas
- C) Claim in the matter of Joshua Edward Bauer
- D) Claim in the matter of Celina Marquez Rivas
- E) Claim in the matter of Juan Fernando Garcia
- F) Claim in the matter of Yesenia Felix
- G) Service Employees International Union Local 521 v. Kern County Hospital Authority, Unfair Practice Charge No. LA-CE-1569-M
- H) Service Employees International Union Local 521 v. Kern County Hospital Authority, Unfair Practice Charge No. LA-CE-1573-M

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

April 20, 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 20th day of April, 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 May 18, 2022.

6. This Board shall reevaluate the above findings on May 18, 2022, and every 30 days thereafter.

7. Resolution No. 2022-006, adopted by the Board of Governors on March 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, March 16, 2022

11:30 A.M.

BOARD RECONVENED

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

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

NOTE: DIRECTOR BRAR JOINED THE MEETING IMMEDIATELY FOLLOWING THE ROLL CALL

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

NOTE: Following consideration of Item No. 23, the Board considered a motion to reopen Public Presentations in order to hear from members of the public –

MOTION TO REOPEN ITEM NO. 1, PUBLIC PRESENTATIONS, TO HEAR FROM MEMBERS OF THE PUBLIC

Berjis-Pelz: 6 Ayes; 1 Absent - Alsop

BRANDEE COFFIA, OUTPATIENT CONSULT REPRESENTATIVE; TABATHA LYONS, PATIENT CARE TECHNICIAN, BEHAVIORAL HEALTH UNIT; ANTONIETA MORROW, CLINICAL LABORATORY ASSISTANT; MARCO CRUZ, PATIENT ACCESS SERVICES REPRESENTATIVE; AND MONICA GONZALEZ, CLINICAL LABORATORY SCIENTIST, HEARD REGARDING ONGOING LABOR NEGOTIATIONS

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

DIRECTOR BERJIS REPORTED ON EFFORTS TO INCREASE COLLABORATION WITH DAVID GEFEN SCHOOL OF MEDICINE AT UCLA FOR MEDICAL STUDENT ROTATIONS AT KERN MEDICAL CENTER

DIRECTOR BERJIS REPORTED THAT KERN MEDICAL CENTER WILL HOST A RECOGNITION DINNER FOR GRADUATING RESIDENTS ON JUNE 2, 2022; CHAIRMAN BIGLER COMMENTED ON PAST ATTENDANCE AND ACKNOWLEDGED THE HARD WORK OF STAFF TO COORDINATE THE EVENT

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 –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; CHAIRMAN BIGLER AND DIRECTOR KITCHEN EXPRESSED THEIR APPRECIATION TO STAFF

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 –

APPROVED; ADOPTED RESOLUTION 2022-006

Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –

APPROVED

Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 030-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 031-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 032-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 033-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 034-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 035-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

- 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 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 036-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 037-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 038-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 039-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 040-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 041-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

- 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 –
APPROVED; AUTHORIZE CHAIRMAN TO SIGN AGREEMENT 042-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN PREMIUM FINANCE AGREEMENT 043-2022 AND CERTIFICATE OF INCUMBENCY
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 044-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 045-2022
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop
- 22) Kern County Hospital Authority Chief Financial Officer report –
CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED
Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop
- 23) Kern County Hospital Authority Chief Executive Officer report –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; RECEIVED AND FILED
Berjis-Kitchen: 6 Ayes; 1 Absent - Alsop
- CA
24) Claims and Lawsuits Filed as of February 28, 2022 –
RECEIVE AND FILE
Kitchen-Pelz: 6 Ayes; 1 Absent - Alsop

ADJOURNED TO CLOSED SESSION
Pelz-McLaughlin

CLOSED SESSION

- 25) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 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 – SEE RESULTS BELOW
- 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 – 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 MCLAUGHLIN, SECOND BY DIRECTOR BERJIS; 1 ABSENT DIRECTOR ALSOP), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 26 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 27 concerning 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 – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, APRIL 20, 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**

April 20, 2022

Subject: Proposed reappointments of Directors Russell Bigler and Philip McLaughlin to the Kern County Hospital Authority Board of Governors, terms to expire June 30, 2025

Recommended Action: Refer to Kern County Board of Supervisors to make appointments

Summary:

Directors Russell Bigler and Philip McLaughlin were reappointed to the Board of Governors for terms of three years. Their terms expire June 30, 2022. Members may serve an unlimited number of terms if reappointed by the Kern County Board of Supervisors.

Directors Bigler and McLaughlin, as required by the authority's Bylaws for Governance (Bylaws), have notified the Chairman in writing of their intent to seek reappointment to the Board of Governors. They are not required to submit a new application for reappointment. The Bylaws requires your Board to notify the Board of Supervisors of a member's intent to continue to serve on the Board of Governors.

Therefore, it is recommended that your Board refer this item to the Kern County Board of Supervisors to make the reappointments of Directors Bigler and McLaughlin for three-year terms expiring June 30, 2025.



March 31, 2022

HAND DELIVERED

Members, Board of Governors
Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306

Re: Reappointment to Kern County Hospital Authority Board of Governors

Dear Honorable Board Members:

As you may know, my term of office on the Kern County Hospital Authority Board of Governors expires June 30, 2022. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2025. Such notice is provided pursuant to Section 2.05 of the Kern County Hospital Authority Bylaws for Governance. Please take appropriate measures to ensure the Kern County Board of Supervisors is notified timely of my intent to continue to serve on the Board of Governors, as required by the Bylaws for Governance.

Very truly yours,

A handwritten signature in blue ink that reads "Russell E. Bigler".

Russell E. Bigler



March 31, 2022

HAND DELIVERED

Russell E. Bigler, Chairman
Board of Governors
Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306

Re: Reappointment to Kern County Hospital Authority Board of Governors

Dear Mr. Bigler:

As you may know, my term of office on the Kern County Hospital Authority Board of Governors expires June 30, 2022. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2025. Such notice is provided pursuant to Section 2.05 of the Kern County Hospital Authority Bylaws for Governance. Please take appropriate measures to ensure the Kern County Board of Supervisors is notified timely of my intent to continue to serve on the Board of Governors, as required by the Bylaws for Governance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Philip McLaughlin".

Philip McLaughlin



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

April 20, 2022

Subject: Proposed Retroactive Amendment No. 1 to Master Services Agreement (Agt#002-2019) with CIOX Health, LLC for medical record reproduction services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve Amendment No. 1 to the Master Services Agreement #002-2019 with CIOX Health, LLC to provide medical record reproduction services.

Kern Medical entered into the original agreement with CIOX Health, LLC, formerly HealthPort Technologies, LLC, beginning in September 21, 2010 to provide copies of medical records that are requested by patients, insurance companies, attorneys, law enforcement, governmental entities, and any other agencies/person that have the legal right and/or authorization to procure medical record information.

CIOX Health, LLC ensures that all of their staff who process and interact with the protected health information are trained and educated on all regulatory requirements for handling, transmitting, and storing documents that require high-level confidentiality and security.

The budgeted yearly cost of this Amendment is \$125,000 per year. The cost is based on an average of the past two years of pages copied by CIOX Health, LLC at \$0.25 per page and the potential business office services as needed. The actual cost varies due to the number of requests we receive and the services we request of CIOX Health, LLC.

Agreement Year – Actual Cost	Proposed Amendment Cost	Variance
2023 - Estimated	\$125,000	\$0
2022 - Estimated	\$125,000	\$19,749
2021- \$105,251		\$32,174
2020 - \$73,077		\$25,513
2019 - \$50,564		

Therefore, it is recommended that your Board approve the retroactive Amendment No. 1 to the Master Services Agreement with CIOX Health, LLC for medical record reproduction services, effective January 16, 2022 through January 15, 2024, in an amount not to exceed \$250,000, and authorize the Chairman to sign.

**AMENDMENT NO. 1 TO
MASTER SERVICES AGREEMENT
(Kern County Hospital Authority – CIOX Health, LLC)**

This Amendment No. 1 to the Master Services Agreement (“Amendment No. 1”) is entered into as of April 20, 2022 (“Effective Date”), by and between Ciox Health, LLC (“Ciox”) located at 925 North Point Parkway, Suite 350, Alpharetta, GA 30005, and the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (“Medical Facility”).

RECITALS

- A. Ciox and Medical Facility have entered into a Master Services Agreement (Agt. #002-2019, dated January 16, 2019), to provide medical record reproduction services (“Agreement”).
- B. The Agreement expired January 15, 2022; and
- C. Medical Facility continues to require the services of CIOX and CIOX has agreed to continue to provide such services; and
- D. The parties agrees to renew the Agreement pursuant to section 5.1.1 of the Agreement; and
- E. The Agreement is amended effective January 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 follow:

- 1. Section 5.1.3 shall be added to the Agreement and incorporated herein by this reference:
“5.1.3 This Agreement is amended for an additional one (1) year term effective January 16, 2022 for a total four (4) year term.”
- 2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 1 have the meaning set forth in the Agreement.
- 4. This Amendment No. 1 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 5. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

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

KERN COUNTY HOSPITAL AUTHORITY

CIOX HEALTH, LLC

By _____
Russell Bigler
Chairman, Board of Governors
Date:

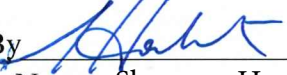
DocuSigned by:

By _____
Printed Name: Lori Reel
Title/Position: CFO
Date: 3/11/2022

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Andrew Cantu
Chief Financial Officer
Date:

APPROVED AS TO FORM:
Legal Services Department

By  _____
Name: Shannon Hochstein
Hospital Counsel
Date: 3/15/2022



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

April 20, 2022

Subject: Proposed Master Terms and Conditions with BFLY Operations, Inc. to provide portable ultrasound devices and software

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Master Terms and Conditions (“Agreement”) with BFLY Operations, Inc. provide portable ultrasound devices and software

This Agreement will support and improve patient care through-out the hospital and create the foundation for a Point of Care Ultrasound program for Residents. The intent is to develop a full Point of Care Ultrasound program for Kern Medical that can span across the entire organization leading to improved patient care and improved clinical documentation and billing. Devices will be provided by the Agreement, as well as, remote hosting of the images that will be integrated within our electronic health record, Cerner Millennium.

QTY	Product	Description	Total
12	Butterfly iQ+ Lightning	Ultrasound Device	\$ 25,909.20
12	3 Year device Warranty	Device warranty	\$ 9,576.00
1	Butterfly Transform Implementation		\$ 15,000.00
17	Butterfly Transform Enterprise Workflow	Software Bundle and Training	\$ 153,000.00
		Estimated Travel	\$ 3,000.00
		Shipping & Handling	\$ 300.00
		Total	\$ 206,785.20

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel including but not limited to the limitation of liability for the indemnification in the Business Associates Agreement. Efforts were made to negotiate all items that could not be approved as form to no avail.

Although Counsel is unable to approve as to form, Kern Medical recommends that your Board approve the proposed Master Terms and Conditions with BFLY Operations, Inc., effective April 20, 2022 through April 19, 2025, with a maximum payable of \$206,786 plus fees and taxes, and authorize the Chairman to sign.

MASTER TERMS AND CONDITIONS

This Master Terms and Conditions (“Agreement”) is made as of **April 20, 2022** (the “Effective Date”), by and between BFLY Operations, Inc., a Delaware Corporation (“Butterfly”), and **Kern County Hospital Authority**, a local unit of government, which owns and operates **Kern Medical Center, located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306** (“Client”) (each a “Party” and collectively “Parties”).

WHEREAS, Butterfly is a company that provides portable ultrasound imaging probes and a hosted software service for viewing, using and storing the ultrasound images and imaging studies for various medical diagnostic purposes, research and education; and

WHEREAS, Client is a physician or other licensed health care provider, medical practice, medical school or other authorized user; and

WHEREAS, Butterfly desires to sell ultrasound imaging probes and provide the associated services to Client and Client desires to purchase such ultrasound imaging probes and receive the associated services from Butterfly.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Scope of Services

1.1 Subscription Services. Subject to the terms of this Agreement and payment of the amounts set forth in the Budgetary Quotation (as defined herein), Butterfly will provide Client with access to a specified number of End Users, (as defined herein), to use the Butterfly Subscription Service. The Subscription Service shall mean the hosted, on demand Web-based provision of applications, application programming interfaces, and platform services provided by Butterfly, which is accessed from Client owned and/or controlled computer systems via the Internet, (“Butterfly Cloud”) and the associated mobile application, which is installed on Client or end user owned and/or controlled mobile devices (“Butterfly iQ App”). The Documentation means documentation describing the design, features, use of and functionality of the Subscription Service and Devices (defined below), including any other documentation provided by Butterfly to Client in connection with the Services. The Subscription Service together with Subscription Support Services and any Professional Services (defined below), are collectively, the “Services.” Only a Client that is fully paid up and its designated employees and agents (“End Users”) may access and use the Subscription Service. Client is permitted to terminate and re-designate individual employees and agents as authorized End Users, provided that the total number of End Users does not exceed the number specified in the Budgetary Quotation. Client and End Users are expressly prohibited from authorizing the sharing of login credentials, sharing login credentials with unauthorized individuals, or otherwise making the Subscription Service available to more than the number of End Users specified in the Budgetary Quotation. All use of the Subscription Service by End Users is subject to the restrictions set forth in Exhibit A (End User Agreement). Client shall be responsible for ensuring that End Users execute such End User Agreement prior to such End User receiving access to the Subscription Service and any Devices.

1.2 Devices. Devices means the portable ultrasound imaging probes, which are used by Client and End Users to conduct ultrasound imaging, as more fully described in Exhibit B (Device Description), and which are connected to Client’s or an End User’s smartphone in order to enable the use of the Subscription Service, which includes the ability to immediately view the ultrasound image and any other Client Data (as defined below) and upload such Client Data for viewing, use and storage. Only Client and its designated employees and agents (“End Users”) may access and use the Devices. The following are additional terms that apply to Devices:

1.2.1. Unless otherwise indicated in Exhibit B (Device Description), shipping terms are FOB shipping point.

1.2.2. Title and risk of loss to Devices passes to Client upon delivery to Client based on shipping point.

1.2.3. When feasible, Butterfly reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delivery dates are approximate.

1.2.4. Client shall not have any right to return Devices for a refund after delivery except for Devices shipped in error that are different from the Devices listed on Exhibit B (Device Description) or as otherwise specified in the Budgetary Quotation.

1.3 Subscription Support Services. Butterfly will provide to Client reasonable technical support, maintenance, and generally available updates. Client shall not contract with or otherwise allow a third party to provide assistance or support for the Subscription Services or Devices without the prior written consent of Butterfly.

1.4 Professional Services. From time to time, Client may engage Butterfly to provide certain professional services (“Professional Services”), such as for training, implementation or customization of the Subscription Service. Fees for Professional Services will be based on Butterfly’s then applicable Professional Services rates. Each such engagement of Professional Services will be described in a Statement of Work that must be accepted in writing by an authorized representative of each Party. In the event of a conflict between the terms provided in this Agreement and the terms of any Statement of Work, the terms of this Agreement will prevail, except that the terms of the Statement of Work shall prevail over conflicting terms of this Agreement (but only with respect to such applicable Statement of Work) where the Statement of Work explicitly identifies such conflicting terms and confirms the intent of the Parties to supersede or modify the conflicting term of this Agreement.

1.5 Changes to Subscription Service. Butterfly may modify or delete any features of the Subscription Service in any manner that: (a) does not have an adverse impact on the Subscription Service or (b) may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands. Butterfly shall notify Client as promptly as practicable in advance of such changes to the Subscription Service under clause (b) that have an adverse impact on the Subscription Service.

2. Fees and Payment

2.1 Fees. Client shall pay the amounts set forth in the Budgetary Quotation executed between the Parties and incorporated herein by reference, (the “Budgetary Quotation”) for the Devices and Subscription Service. No third party pass-through fees, direct fees, or any other transaction costs, are included; Client is solely responsible for payment of any such fees and costs. In the event of a conflict between the Budgetary Quotation and the terms of this Agreement, the Budgetary Quotation shall govern.

2.2 Invoices. All invoices will be issued with the frequency and terms as specified in the Budgetary Quotation. All payments shall be made in U.S. Dollars by bank wire or other form of transfer. Any payment not received from Client by the due date may result in suspension of Client’s ability to access the Services until payment is made. Client shall pay any applicable state, federal, or other sales and use taxes that may be associated with the purchase of the Devices and Services under this Agreement, and Butterfly may collect all applicable sales taxes. If Client claims tax-exempt status, Client will provide Butterfly with documentation of such status. If applicable, all reasonable and customary travel related expenses, such as airfare, hotel, transportation, and meals will be billed to Client for any on-site work performed under this Agreement and will be reimbursed pursuant to the U.S. GSA per diem rates.

2.3 Disputes. If Client has a good faith dispute regarding payment for a particular Device or Service, such dispute shall not entitle Client to withhold payment for any other Device or portion of Service. Client grants Butterfly a purchase money security interest in all Devices listed in Exhibit B (Device Description) until full payment is received, and Client agrees to perform all acts and execute all documents as may be necessary to perfect Butterfly's security interest.

2.4 Discount Disclosure. The dollar value of the discounts or other reductions in price pursuant to this Agreement, if any, and any other items and services not paid for by Client and received by Client under this Agreement are "discounts and other reductions in price" under Section 1128B(b)(3)(A) of the Social Security Act (42 U.S.C. § 1320-a-7b(b)(3)(A)), as amended. It is the intent of the parties to comply with the Anti-kickback Law Discount Safe Harbor (42 C.F.R. § 1001.952(h) as amended). The Discount Safe Harbor requires that certain discounts be reported and or passed on to Federal and State health care programs, such as Medicare and Medicaid. Client understands and agrees it must properly disclose the discounts or reductions in price, and reflect such discounts or reductions in price in the costs claimed or charges made, under any Federal or State health care program which provides cost or charge-based reimbursement to Client for the items and services covered by this Agreement. Client shall be solely responsible for determining whether the savings or discounts it receives must be reported or passed on to payors.

3. Data Privacy

3.1 Obligations. Client acknowledges and agrees that Butterfly does not require any specific data from Client or End User, that Client and End User controls the content of any Client Data (as defined below) that is inputted, transmitted, uploaded, transferred, submitted, disclosed, processed, collected, stored, replicated or in any other way accessed or used through the use of the Subscription Service, and that Butterfly has no obligation to monitor the content of any Client Data. Client shall be responsible for procuring any necessary consents and making any notifications under applicable Law with respect to the provision of the Client Data to Butterfly through the Subscription Service and the processing of such Client Data by Butterfly through the Subscription Services. Upon request of Butterfly, Client will provide Butterfly with documentation to support such consent.

3.2 Compliance with Law. Butterfly acknowledges that in the performance of the Subscription Service, Butterfly may have access to Client Data. Butterfly shall only use and disclose Client Data in accordance with applicable Law, including without limitation HIPAA as amended by the HITECH Act, and the terms of the Business Associate Agreement ("BAA") attached hereto as Exhibit C (Business Associate Agreement). Law means: (a) any national, state, local or other law or statute in any applicable jurisdiction; (b) any rule or regulation issued by a relevant regulatory agency; and (c) any written or authoritative interpretation by such relevant regulatory agency of any such law, statute, rule or regulation.

4. Ownership

4.1 Butterfly Property. Butterfly owns all right, title and interest in and to: (a) the Subscription Service and the technology, software, hardware, products, processes, algorithms, user interfaces, documentation, user manuals and know-how related to the Subscription Service; (b) any data and content generated through the use or execution of the Subscription Service to the extent such data or content does not include Protected Health Information ("PHI") as that term is defined in HIPAA; (c) any and all Butterfly Confidential Information (see Section 12); (d) Anonymized Data (as defined below); (e) the Devices, subject to Section 4.3 (Client Property), and the technology, software, hardware, products, processes, algorithms, user interfaces, documentation, user manuals and know-how related to the Devices; and (f) and any and all Intellectual Property Rights embodied in (a)-(e) (collectively the "Butterfly Property"). Intellectual Property Rights means patents, inventions, utility models, trademarks, service marks, trade and service names, copyrights, database rights and design rights (whether or not any of them are

Confidential

registered, and including applications for registration of any of them), rights in know-how, moral rights, trade secrets and rights of confidence and all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may exist anywhere in the world. Butterfly shall own any and all developments, inventions and work product created under any Professional Services, including but not limited to training materials, implementation guides and customizations of the Subscription Service. Butterfly shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services and Devices any suggestions, enhancement requests, recommendations or other feedback provided by Client and End Users relating to the Services and Devices. All rights not expressly granted to Client herein are expressly reserved by Butterfly.

4.2 Client Data. As between the Parties, the data, images, imaging studies and content that Client or an End User inputs, transmits, uploads, transfers, submits, discloses or otherwise provides to the Subscription Service will remain exclusive property of Client (collectively, the "Client Data"). Notwithstanding anything in this Agreement or in any Business Associate Agreement between the Parties to the contrary, and notwithstanding any termination or expiration of this Agreement, Client Data will not include Anonymized Data, which is defined as Client Data that has been fully and permanently de-identified in accordance with HIPAA.

4.3 Client Property. Following receipt of the Devices and payment of the Device fees and implementation fees, as applicable and as set forth in the Budgetary Quotation, Client owns all right, title and interest in and to the Devices. Subject to the aforementioned sentence, Client Data and Devices are, collectively, "Client Property."

5. **System Monitoring**. Butterfly expressly reserves the right to monitor any and all use of the Subscription Services, including certain performance characteristics of the Device. Butterfly may gather system data for the purpose of optimizing the Subscription Services. This information includes, but is not limited to, data regarding memory usage, connection speed and efficiency, as well as temperature, battery and other Device characteristics. Butterfly shall have no obligation to monitor the Client Data, but reserves the right to monitor the Subscription Services for purposes of verifying compliance with the terms of this Agreement.

6. **Client Responsibilities**

6.1 Medical Diagnosis and Treatment. Client acknowledges and agrees that all clinical and medical treatment and diagnostic decisions are the responsibility of Client and its professional healthcare providers.

6.2 Use for Clinical Diagnostic Purposes. Client acknowledges and agrees that it and its End Users will use the Devices and Services consistent with the Device labeling, the Butterfly Terms of Use and only for clinical diagnostic purposes in the diagnosis or treatment of a disease or condition, for teaching, research or other authorized purposes and not for any entertainment or amusement purposes.

6.3 Maintenance. Client is responsible for maintaining the Device in accordance with all written instructions and labeling, including cleaning and disinfecting the Device.

6.4 Client Equipment. Client is responsible for obtaining and properly maintaining any Client Equipment, defined as: (a) Client's computer hardware, software and network infrastructure used to access the Subscription Service; (b) the smartphones used to connect to the Device; (c) other data storage and viewing platforms and networks including but not limited to Client's internal systems (e.g., EMR and DICOM) for viewing and accessing ultrasound images and imaging studies; and (d) any ancillary services needed to connect to, access or otherwise use the Devices and Subscription Service. Client shall be responsible, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers

Confidential

be responsible, for any loss, damage or liability arising out of any Client Equipment, including any delays, inaccuracies, errors, malfunctions, security failures or other incident attributable to Client Equipment.

6.5 Restrictions on Use. Client shall not, and shall not allow or assist any End User or other entity to: (a) use the Device in a manner inconsistent with its labeling; (b) rent, lease, sublicense, assign, distribute, transfer, copy, reproduce, download, display, modify or timeshare or otherwise make the Butterfly Property or any portion thereof available to any third party other than End Users as contemplated by this Agreement; (c) use the Devices or Services to send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) modify, copy or create derivative works based on the Butterfly Property, provided that Client may print, annotate or export, Client Data contained in certain reporting/reviewing/viewing functions but only to the extent expressly permitted in the Documentation and only for purposes of providing medical care to the individual patient associated with such Client Data; (e) translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover any source code or underlying ideas of any Butterfly Property, or modify any Butterfly Property, except to the extent (but only to such extent) that applicable Law prohibits such restrictions; (f) access or use the Butterfly Property to develop or create competing products or services or copy any features or user interface of the Butterfly Property or otherwise use such Butterfly Property as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution; (g) attempt to repair the Butterfly Property; (h) disable any security devices or codes on the Butterfly Property; (i) alter, remove, or obscure any proprietary rights notices on the Butterfly Property or related Documentation; (j) create Internet "links" to or from the Subscription Service, or "frame" or "mirror" any content forming part of the Subscription Service except that Client may create links for sharing images and imaging studies consistent with the Documentation; and (k) use the Subscription Service, for purposes of benchmarking or other comparative analysis intended for publication without Butterfly's prior written consent.

6.6 Liability for Content. Client shall be responsible for, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Client Data, including any mistakes or inaccuracies contained in the Client Data, the use (or misuse or misappropriation) or subject matter of the Client Data, or Client Data while it resides in or is stored on Client Equipment. Client is solely responsible for uploading Client Data for storage in accordance with the Documentation and for any loss of Client Data resulting from Client's failure to so upload as further described in Section 6.9.

6.7 Security of Account. Client agrees to maintain all security regarding its and its End Users' account ID, password, and connectivity, including its computer networks. If Client's or its End Users' account ID or password are stolen, or otherwise compromised, Client is obligated to immediately change the password and inform Butterfly of the compromise. Client shall be responsible, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any compromise of Client's and its End Users' access credentials, Client Equipment and/or computer networks.

6.8 Location of Use. Client agrees and acknowledges that all use of the Subscription Service and Devices by it and its End Users will occur in the United States.

6.9 Client Data Not Uploaded to Subscription Service. Client agrees and acknowledges that the Client must be logged into the Subscription Service in order to use the Device. All Client Data generated through use of the Device may be transferred to the Subscription Service or Client's internal system/network for storage and subsequent use, provided that if Client or End User logs out of the Subscription Service without selecting an option to upload such Client Data for storage and subsequent use purposes, the Client Data will be deleted and will be unrecoverable through use of the Subscription Service.

6.10 Security Requirements. Client agrees and acknowledges that it will: (a) establish and maintain industry standard information, physical and administrative security protocols, including virus

Confidential

protection, for all Client Equipment; (b) establish and maintain backup and disaster recovery plans for any Client Data not uploaded to the Subscription Service; and (c) prevent unauthorized access to the Subscription Service and Devices and interception of transmission of Client Data from the Device to the smartphone.

7. **Hosted Security.** Butterfly maintains, and will continue to maintain throughout the Term of this Agreement, security measures to protect Client Data and prevent unauthorized access in accordance with applicable Law.

8. **Audit.** During the Term of this Agreement and for a period of one (1) year thereafter, Butterfly shall have the right (at its own expense, upon reasonable notice, and no more frequently than once per calendar year unless good cause exists) to conduct or have a third party auditor conduct an inspection of the compliance by Client (including any other persons or entities that are permitted to use or access the Services and Devices) of this Agreement. Client will, and shall cause its Affiliates, employees, subcontractors, agents, representatives and consultants, to cooperate in good faith with such audit activities. In the event that any such audit reveals an underpayment by the Client hereunder, and such underpayment is confirmed, Client shall promptly reimburse Butterfly for the amount of such underpayment. In the event an audit uncovers a breach of this Agreement, Client agrees to pay Butterfly the costs of such audit within ten (10) days of receipt of notice of the results of such audit and the costs therefor.

9. Representations and Warranties; Disclaimer of Warranties

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date that: (a) it has the full right, power and authority to enter into this Agreement, to perform its obligations hereunder and (b) this Agreement has been duly executed by it and is legally binding upon it, enforceable in accordance with its terms, and does not conflict with any agreement, instrument or understanding, oral or written, to which it is a Party or by which it may be bound, nor violate any material Law having jurisdiction over it.

9.2 Butterfly Representations and Warranties.

9.2.1. Butterfly warrants that the Subscription Service, when properly used for the purpose and in the manner specifically authorized by this Agreement and in accordance with the Documentation, will perform materially in accordance with the Documentation. The foregoing warranty shall be effective for so long as Client is a subscriber in good standing to the Subscription Service. The warranty in this Section 9.2.1 shall not apply to the Subscription Service to the extent that the Subscription Service has been modified by any party, other than Butterfly, unless authorized by Butterfly. Butterfly shall have no obligation to Client under the warranty, or otherwise, if: (a) the failure of the Subscription Service to meet the warranty or conform materially to the Documentation can be attributable to Client Equipment, unauthorized third party software or hardware or Client Data or (b) the failure of the Subscription Service to meet the warranty or conform substantially to the Documentation can be attributable to causes that are not the responsibility of Butterfly. Butterfly represents and warrants that any Professional Services will be performed by trained individuals in a professional and workperson-like manner.

9.2.2. Unless otherwise specified in the Budgetary Quotation, Butterfly warrants that for twelve (12) months from acceptance of the Device that: (a) the Device will be free from defects in title, material and workmanship under normal use and service and (b) the Device will perform substantially in accordance with the Documentation. Butterfly shall not have any obligation to Client hereunder if the warranty claim results from or arises out of: (i) the use of the Device in combination with any software, tools, hardware, equipment, supplies, accessories or any other materials or services not furnished by Butterfly or recommended in writing by Butterfly or using or combining the Device with any item or

Confidential

data that does not properly and unambiguously exchange data with the Device in accordance with the Documentation; (ii) the use of the Device in a manner or environment, or for any purpose, for which Butterfly did not design or license it, or in violation of Butterfly's recommendations or instructions on use; (iii) any alteration, modification or enhancement of the Device by Client or any third party not authorized or approved in writing by Butterfly; (iv) any defect or deficiency (including failure to conform to Documentation) that results, in whole or in part, from any improper storage or handling, failure to maintain the Device in the manner described in the Documentation, inadequate back-up or virus protection or any cause external to the Device or beyond Butterfly's reasonable control, including, but not limited to, power failure and failure to keep the Device clean and free of dust, sand and other particles or debris; or (v) any use or maintenance, or any extraordinary use, repair or service of the Device, by anyone other than Butterfly or its authorized representatives. In addition, this warranty does not cover the Device to the extent it is used in any country other than the country to which Butterfly ships the Device.

9.2.3. Client will promptly notify Butterfly of any Device defect subject to the warranty in 9.2.3 above and return the Device as set forth herein at Butterfly's expense. Client will follow the cleaning and disinfection procedures set forth in the Documentation and any other instructions from Butterfly regarding Device return, and will package the Device in order to protect it from damage during return shipping. Upon receipt, Butterfly will promptly evaluate the Device. If Butterfly confirms that the Device is defective and subject the warranty in 9.2.3, Butterfly will promptly replace the defective Device with either a new or refurbished Device. If Butterfly determines that the damage resulted from any of the causes set forth in 9.2.3 (i) – (v), Butterfly will so notify Client and Client will have the option of purchasing a replacement Device.

9.3 Exclusive Remedy. Butterfly's sole obligation and Client's sole remedy for breaches of the warranty in Section 9.2.1 and 9.2.3 is for Butterfly to use commercially reasonable efforts to provide services to correct the failure of the Subscription Service or Devices to operate in accordance with the Documentation. **THE FOREGOING REMEDY IS EXCLUSIVE, IS SUBJECT TO THE LIMITATIONS SET FORTH HEREIN AND SHALL BE CLIENT'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OF BREACH OF WARRANTY ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

9.4 Client Representations and Warranties. Client represents and warrants that it will, and will ensure that its End Users, use the Services and Devices only in accordance with all applicable Laws (including but not limited to HIPAA).

9.5 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, BUTTERFLY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS, OR NON-INFRINGEMENT. BUTTERFLY DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE SERVICES SHALL BE UNINTERRUPTED, ERROR-FREE, OR THAT THE SERVICES OR DEVICES WILL PROVIDE ANY SPECIFIC RESULTS FOR CLIENT, OR PROVIDE ANY RESULTS AT ALL. FURTHER, CLIENT ACKNOWLEDGES AND UNDERSTANDS THAT THE SERVICES MAY BE CONTINGENT ON THIRD PARTY PERFORMANCE AND BUTTERFLY CANNOT GUARANTEE AND IS NOT LIABLE FOR THE SAME. THE SERVICES AND DEVICES, AND DELIVERABLES, IF APPLICABLE, PROVIDED HEREUNDER ARE NOT INTENDED TO SUBSTITUTE FOR, OR TO REPLACE THE SKILL, KNOWLEDGE, AND EXPERIENCE OF CLIENT, END USER OR OTHER LICENSED PHYSICIANS OR OTHER CARE PROVIDERS. BUTTERFLY ASSUMES NO RESPONSIBILITY FOR PATIENT CARE AND IS NOT

Confidential

PROVIDING THE DEVICES OR ANY SERVICE HEREUNDER TO THE CLIENT AS A SUBSTITUTE OR REPLACEMENT FOR THE MEDICAL JUDGMENT OF THE CLIENT'S PHYSICIANS, END USERS OR OTHER CARE PROVIDERS. BUTTERFLY HAS NO, AND DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR, AND CLIENT RELEASES BUTTERFLY FROM, ANY CLAIMS ARISING FROM OR RELATED TO THE CONDUCT OF THE CLIENT'S BUSINESS OR FOR ACTS OR OMISSIONS OF CLIENT AND END USERS IN THE PROVISION OF PATIENT CARE, AND THAT ANY RELIANCE UPON THE BUTTERFLY PROPERTY OR SERVICES HEREUNDER SHALL NOT DIMINISH THE CLIENT'S RESPONSIBILITY FOR PATIENT CARE. Further, Butterfly does not and cannot control the performance of Internet or cellular services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the Internet or cellular service (or portions thereof). Although Butterfly will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Butterfly cannot guarantee that such events will not occur. BUTTERFLY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES WHICH ARE NOT BUTTERFLY'S SUBCONTRACTORS.

9.6 Warranties to Client Only. The warranties stated in this Section are made only to Client and Butterfly shall have no liability to any third party, including any End User, with respect to the Services or Devices as a result of the warranties contained herein.

10. Limitation of Liability

10.1 Liability Limitation. In no event shall either party or Butterfly's third party suppliers have liability arising out of or pertaining to this agreement to the other party or any other third party for any special, incidental, exemplary, consequential, punitive, or indirect damages of any kind based on any claim or legal theory, including but not limited to, damages for loss of data, lost opportunity, lost savings, lost profits, loss of use, business interruption or cost of substitute services or technology, even if informed of the possibility of any such damages in advance. Additionally, except for claims arising from gross negligence or willful misconduct, and/or either party's indemnification obligations as set forth in section 11, neither party's nor Butterfly's suppliers' or licensors' aggregate liability to the other party and any affiliates and their respective officers, directors, employees, and end users for any claims arising under this agreement or otherwise arising from the transactions contemplated herein and therein regardless of the form of action (including, but not limited to, actions for breach of contract, negligence, strict liability, rescission and breach of warranty) shall exceed the fees client paid in the twelve (12) months preceding the event giving rise to the claim. this limitation of liability shall apply to the maximum extent permitted by applicable LAWS AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY.

10.2 Transmission of Data. Butterfly is not responsible for loss or alteration of Client Data in transmission (including in transmission from the Device to the smartphone and from the smartphone to the Subscription Service or Client's internal system/network), due to improper transmission by Client or an End User, or failure by Client, an End User or any third party to act on any communication transmission to or by Client or an End User through the Subscription Service or through use of a Device. Butterfly is not responsible for any Client Data generated through use of the Device but not uploaded to the Subscription Service.

10.3 Liability of Client. The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g)

11. Indemnity

11.1 Butterfly's Indemnification Obligations. Butterfly shall defend, indemnify, and hold

Confidential

harmless Client and its Affiliates, and their respective directors, officers, and employees against any and all actions, claims or assertions brought against them by a third party ("Claims"), that the Subscription Service or Devices, a) when used within the scope of and in accordance with this Agreement and the Documentation, infringes a United States patent or copyright; b) any gross negligence or willful misconduct of Butterfly, and c) 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 Butterfly's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) breach of PHI, including but not limited to failure of Butterfly to comply with HIPAA or applicable state privacy or security law, and will pay resulting costs, damages, and attorney fees finally awarded. In the event that the Subscription Service and/or Device in the opinion of Butterfly, is likely to or does become the subject of a claim of infringement, Butterfly shall have the right at its sole option and expense to: (a) modify the Subscription Service and/or Device to be non-infringing provided that such modification does not fundamentally change the functionality of the Subscription Service and/or Device; (b) obtain for Client a license to continue using the Subscription Service and/or Device at no additional charge to Client; or (c) if neither (a) nor (b) are reasonably practicable, terminate the Agreement and refund to Client the pro rata portion of fees paid to Butterfly for such portion of the Subscription Service and/or Device thereof that cannot be utilized due to such infringement. IN NO EVENT WILL BUTTERFLY'S LIABILITY RELATED TO CLAIMS FOR BREACH OF PHI ARISING UNDER THIS AGREEMENT OR THE BAA EXCEED AN AGGREGATE AMOUNT OF \$500,000.00. THIS LIMITATION SHALL NOT APPLY TO BUTTERFLY'S LIABILITY TO ANY GOVERNMENT AGENCY WHICH BUTTERFLY MAY BE SUBJECT TO AS A RESULT OF ANY HIPAA OR APPLICABLE STATE OR OTHER FEDERAL LAW VIOLATION ATTRIBUTABLE TO BUTTERFLY.

11.2 Butterfly shall have no liability under this Section 11 for any such claim based upon: (a) any component of software provided by Client or any third party; (b) any modification by a party other than Butterfly, unless such modification was at the direction of Butterfly; (c) the combination, operation or use of the Subscription Service and/or Device with a software program(s) or data not part of Subscription Service and/or Device if the claim would have been avoided had such combination, operation or use not occurred; (d) the Subscription Service and/or Device being used in a manner not authorized by this Agreement; and (e) continued use of the Subscription Service and/or Device from the date of written notice wherein Butterfly informs Client that such continued use may lead to a claim. This Section 11.1 sets forth Butterfly's sole and exclusive obligation and liability, and Client's sole and exclusive remedy, for any infringement or misappropriation of intellectual property rights of any kind.

11.3 Client's Indemnification Obligations. Client shall indemnify and defend Butterfly and its Affiliates, licensors, and suppliers, and their respective directors, officers, shareholders, employees, contractors and agents from and against any and all Claims and all liabilities, awards, damages, settlements, fees, penalties, costs and expenses (including reasonable attorney's fees) owing to third parties (including for avoidance of doubt, government and regulatory agencies) in connection therewith (collectively, "Losses"), arising from: (a) any gross negligence or willful misconduct by Client; (b) any failure by Client to procure appropriate consents or authorizations, including from patients; (c) any failure to comply with the End User Agreement attached hereto; (d) breach of Section 6 (Client Responsibilities); (e) Client's and its End Users' use or misuse of the Services and/or Devices; (f) Client Data (whether properly or improperly obtained and/or transmitted); (g) Client Equipment, including, without limitation, any failure or malfunction caused by the smartphone connected to the Device; (h) Client's and/or its End Users' failure to comply with any applicable Law to which it may be subject in the use of the Services; (i) the consequences of Client's or End Users' utilization of the Services and/or Devices in respect of any third party; and (j) any allegation that the Client Property infringes the Intellectual Property Rights of a third party.

11.4 Indemnification Procedure. The Party having the benefit of the indemnification obligation under this Section 11 (the "Indemnitee") shall: (a) give the Party having the indemnification obligation (the "Indemnitor") prompt notice of any claim; (b) allow the Indemnitor to have sole control over the defense

Confidential

and settlement of the claim, provided, however, that the Indemnitee shall have the option, at its sole discretion, to participate in the defense of any such claim using attorneys selected by it, the costs and expenses of which shall be the responsibility of Indemnitee; and (c) provide all assistance reasonably requested by Indemnitor, at Indemnitor's expense, in the defense and settlement of the claim. The Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the Indemnitee's prior written consent (not to be unreasonably withheld or delayed) unless: (i) the judgment or proposed settlement involves only the payment of monetary damages by the Indemnitor, and does not impose injunctive or other equitable relief upon or otherwise adversely affect the Indemnitee; (ii) there are no additional Claims pending against the Indemnitee, and no adverse impact on existing Claims, as a result of the judgment or proposed settlement; and (iii) the Indemnitee will have no liability with respect to such judgment or proposed settlement and will not otherwise be materially and adversely affected by the terms of such settlement.

12. Confidentiality. "Confidential Information" means any confidential and proprietary information related to a Party's business belonging to one Party ("Discloser"), and disclosed to the other Party ("Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including information concerning research, development, design details and specifications (including beta versions of functionality), financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans, internal business processes, product designs, the terms and conditions of this Agreement (including pricing and other terms reflected in Exhibits hereto or other order forms), and any additional information that any End User or other third party has disclosed to Discloser in confidence and that Discloser is permitted to disclose to Recipient under the terms and conditions of this Agreement. Any information related to the Services, Devices or other Butterfly Property shall be deemed to be the Confidential Information of Butterfly, and any Client Data shall be deemed to be the Confidential Information of Client. Recipient shall only use Confidential Information of the Discloser for the purposes of this Agreement and shall keep such information in strict confidence. Recipient shall restrict disclosure of Confidential Information solely to its employees, attorneys, accountants, contractors and other representatives with a need to know, not disclose it to any third parties, except End Users as permitted hereunder, and use no less than reasonable care in its obligations. Except as expressly set forth elsewhere in this Agreement, all Confidential Information shall remain the property of the respective Discloser. Information will not be deemed "Confidential Information" if such information: (a) is generally available to the public (other than through breach of this Agreement); (b) is received from a third party lawfully empowered to disclose such information without being subject to an obligation of confidentiality; or (c) was rightfully in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient. Notwithstanding the above, the Recipient will not be in violation of this Section 12 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the Discloser with prompt written notice of such disclosure where reasonably possible in order to permit the Discloser to seek confidential treatment of such information. Butterfly is aware that Client 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.

13. Governing Law. This Agreement shall be governed by the laws of the state of California, without giving effect to any conflict of law principles. The Parties hereby waive any objection to the exclusive jurisdiction and venue of the state and federal courts in the state of California.

14. Term and Termination

14.1 Term. The Agreement shall commence on the Effective Date and shall continue in effect for the term specified in the Budgetary Quotation (the "Initial Term"). Following the Initial Term, the

Confidential

Agreement will automatically renew for subsequent terms of twelve (12) months, (each, a “Renewal Term”). Either Party may terminate this Agreement by giving written notice of non-renewal within sixty (60) days prior to the end of the Initial Term or Renewal Term as applicable.

14.2 Termination for Breach. This Agreement may be terminated by either Party for material breach if such breach has not been cured by the other Party within thirty (30) days’ receipt of written notice of such breach by such other Party. If the Agreement is terminated by Butterfly as a result of a material breach by Client, Client shall remain liable for the payment for the entire Subscription Service Fee, as applicable, for the then current Term, as the case may be, and any unpaid amounts still due and owing for Devices.

14.3 Suspension. Butterfly may suspend the provision of the Subscription Service to Client under this Agreement effective immediately upon notice if: (a) Client fails to pay any portion of the fees due under the Budgetary Quotation within thirty (30) days after receiving written notice from Butterfly that payment is past due; (b) if Client or an End User breaches Section 6 (Client Responsibilities); or (c) if Client’s or an End User’s use of the Subscription Service: (i) poses a security risk to the Services or any other third party or (ii) may adversely impact Butterfly’s systems, networks, any Butterfly Property or the data of any other Butterfly client. During any such suspension, or in the event that the Subscription Service is unavailable for any reason, Client is solely responsible for continuity of patient care, including, identifying alternate means of accessing diagnostic images, imaging studies and Patient Data.

14.4 Effects of Termination. All subscriptions extend for a mandatory minimum period of one (1) year. Users choosing to discontinue after this first year will maintain the ability to scan with the Butterfly iQ and access their existing studies in the cloud but will no longer be able to archive new studies. Upon expiration or termination of this Agreement under this Section 14, Butterfly shall immediately terminate Client and any End Users' ability to archive new studies. In accordance with the Business Associate Agreement executed between the parties, upon client's request, Butterfly will return or destroy using a non-recoverable method, Client Data, excluding Anonymized Data. Butterfly will be permitted to retain Client's Confidential Information if such retention is strictly necessary to meet Butterfly's legal compliance obligations, is done pursuant to Butterfly's records management program, and is limited to the minimum Client Confidential Information and minimum retention period needed to meet these obligations. Client shall immediately pay to Butterfly all amounts due and payable prior to the date of such expiration or termination and, except in the event of termination by Client due to breach by Butterfly, all unpaid Subscription Fees that would become due under the then-current Subscription period if such termination did not occur.

14.5 Survival. Sections 2 (Fees and Payment), 3 (Data Privacy), 4 (Ownership), 6.6 (Liability for Content), 6.7 (Security of Account), 8 (Audit), 9.3 (Exclusive Remedy), 9.5 (Disclaimer of Warranties), 9.6 (Warranties to Client Only), 10 (Limitation of Liability), 11 (Indemnity), 12 (Confidentiality), 13 (Governing Law), 14 (Term and Termination), 15.4 (Entire Agreement), 15.5 (Notices), 15.8 (Severability), 15.9 (Waiver; Modification), and 15.10 (Counterparts).

15. General

15.1 Independent Contractors. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership, franchise, or an agency relationship between the Parties.

15.2 Insurance. The Parties, at their own expense, shall procure and maintain policies of insurance required by Law and at such levels as are appropriate and customary for each industry, and the scope of activities and operations and a Party's obligations hereunder. Upon reasonable request, each Party shall furnish to the other a Certificate of Insurance evidencing such coverage. Client uses a third-party vendor to collect insurance information.

15.3 Assignment. This Agreement may not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

15.4 Entire Agreement. This Agreement as executed by the Parties constitutes the complete and exclusive agreement and understanding between the Parties and terminates and supersedes any prior agreement or understanding relating to the subject matter hereof between Butterfly and Client. None of the provisions of this Agreement can be waived or modified except in a writing signed by both Parties. There are no representations, discussions, proposals, promises, agreements, warranties, covenants or undertakings, whether oral or written, other than those contained herein.

15.5 Notices. Notices must be in writing; delivered: (a) personally; (b) by certified mail return receipt requested; (c) by facsimile transmission with a confirming copy sent the same day by first class mail; or (d) by a nationally recognized overnight courier service; and addressed to the addresses set forth below. Each notice shall be deemed given upon receipt of such notice by the other Party. All notices shall be sent to the Parties at the following addresses:

To Business Associate:

Confidential

Butterfly Network, Inc.
11 Madison Square North, 7th Floor
New York, NY 10010

To Client:

Kern Medical Center
1700 Mt. Vernon Avenue
Bakersfield, CA 93306

15.6 Force Majeure. Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, or any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delays in transportation or communications, internet or telecommunications failures, cyberattacks or any act or failure to act by the other Party, its employees, agents or contractors. The Parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a substantial delay in the performance of this Agreement.

15.7 Publicity. Butterfly may issue one (1) press release within thirty (30) days of the Effective Date of this Agreement announcing the existence of this Agreement and generally describing the terms hereof or as otherwise mutually agreed by the Parties. During the Term of this Agreement, Butterfly may use Client's name and logo on the Butterfly web site and in Butterfly's collateral marketing materials, provided that Client has approved in writing the form of any such use, such approval not to be unreasonably withheld.

15.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under Applicable Laws, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as closely as possible to that under the provision rendered unenforceable. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

Confidential

15.9 Waiver; Modification. If a Party waives any term or provision or the other Party's breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by the Party against whom such waiver is asserted. No waiver by a Party of a breach of this Agreement by the other Party shall constitute a waiver of any other or subsequent breach by such other Party. This Agreement may be modified only if authorized representatives of both Parties consent in writing.

15.10 Counterparts. This Agreement may be executed in counterparts.

BFLY Operations, Inc.

Kern County Hospital Authority

By: 

By:

Name: Stacey Pugh

Name: Russell Bigler

Title: chief commercial officer

Title: Chairman, Board of Governors

Date: 4/8/2022

Date: April 20, 2022

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department

Exhibit A**End User License Agreement**

The Butterfly Network, Inc. platform (Butterfly iQ) is a cloud-based ultrasound image acquisition and sharing platform for patient care, research, education or other authorized use. The examination and associated patient information that you will store, send, and/or receive through Butterfly iQ will be transferred and stored in accordance with HIPAA standards. By clicking the accept button, you acknowledge and agree to the following:

- You have the authority and the right to use the login credentials that you are using, and to access, use, transmit, and share the imaging examination and protected health information (PHI) of the associated patients.
- You will not share your login credentials or otherwise permit unauthorized individuals to access Butterfly iQ.
- You are a licensed physician in good standing or otherwise qualified to use Butterfly iQ.
- You have obtained any required consents, authorizations, or other permissions necessary to share the image and associated patient information and have otherwise taken steps to ensure that the transmission complies with applicable law.
- You are not purporting to be anyone other than yourself (or a person for whom you have legal authority to act).
- You are adhering to all international, national and/or state laws/regulations that govern the exam and associated PHI.
- You will only use Butterfly iQ in accordance with the Terms of Use and the Device labeling.
- You are sharing this imaging examination and associated PHI for purposes of research, education or continuity of care and not for any illegal or malicious purpose.
- You will only transfer Protected Health Information (PHI) from the Butterfly Cloud using an encrypted connection.
- Butterfly Network, Inc. is not the intended recipient of any imaging examination, rather, Butterfly Network, Inc., provides a platform for the storage and transfer of imaging examinations from one health care provider to another.
- Butterfly Network, Inc., is not a healthcare provider and is not responsible for the medical care or treatment of any patient.
- Butterfly Network, Inc., will not be responsible for the content, results, diagnoses (or lack thereof) in the data provided and/or transmitted and will not review, verify, or provide any opinion or consultation regarding same.

Exhibit B

Device Description

Butterfly iQ is a general-purpose diagnostic ultrasound imaging system for use by a qualified and trained healthcare professional enabling diagnostic imaging and measurement of anatomical structures and fluid.

Butterfly iQ is indicated for use by qualified and trained healthcare professionals to enable diagnostic ultrasound imaging and measurement of anatomical structures and fluids of adult and pediatric patients for clinical applications, including the following:

- Peripheral Vessel (including carotid and arterial studies)
- Procedural Guidance
- Small Organs (including thyroid)
- Cardiac
- Abdominal
- Urology
- Fetal/Obstetric
- Gynecological
- Musculoskeletal (conventional)
- Musculoskeletal (superficial)

The product can be used in a variety of settings such as clinics, hospitals, and clinical point of care centers for M-mode, B-mode, and Color Doppler functions.

Exhibit C

Business Associate Addendum

This Business Associate Agreement (“**BAA**”) is made part of the Master Terms and Conditions (the “**Underlying Agreement**”) and is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and BFLY Operations, Inc. (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of the date of the Underlying Agreement (the “**Effective Date**”).

RECITALS

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

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

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

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

AGREEMENT

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

ARTICLE I DEFINITIONS

- 1.1 “**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).
- 1.2 “**Breach Notification Rule**” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.
- 1.3 “**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).
- 1.4 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).
- 1.5 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).
- 1.6 “**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a)

Confidential

relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

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

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

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

1.10 **“SubContractor”** shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

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

1.12 **“Use”** or **“Uses”** mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.13 **“Workforce”** shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives,

maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

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

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than ten (10) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

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

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

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within thirty (30) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

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

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

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

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

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

**ARTICLE III
OBLIGATIONS OF COVERED ENTITY**

3.1 Covered Entity's Obligations.

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

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

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

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

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

**ARTICLE IV
TERM AND TERMINATION**

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

4.2 Termination of Underlying Agreement.

4.2.1 A breach by either Party of any provision of this BAA, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Either Party may terminate the Underlying Agreement, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

4.3.1 Notify the defaulting Party of the breach in writing, and provide an opportunity for the defaulting Party to cure the breach or end the violation within fifteen(15) business days of such notification; provided that if the defaulting Party fails to cure the breach or end the violation within such time period to the

satisfaction of the non-breaching Party, the non-breaching Party may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

**ARTICLE V
MISCELLANEOUS**

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

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

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

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

5.5 Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate and subject to the terms of this Agreement. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity.

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, cyber liability insurance coverage on an aggregate amount of \$5,000,000.. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request not to exceed once per calendar year unless changes are made by Business Associate to coverage.

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

5.8 Indemnification. The provisions of the Underlying Agreement shall govern the parties' respective indemnification obligations.

5.9 Legal Actions. Promptly, but no later than ten (10) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than ten (10) calendar days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

5.11 Requests from Secretary. Promptly, but no later than ten (10) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Butterfly Network, Inc.
11 Madison Square North, 7th Floor
New York, NY 10010
Attn: Legal Department

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

Confidential

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

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

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

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

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

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

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

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



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

April 20, 2022

Subject: Proposed Sales Order (OPT-0276640) with Cerner Corporation for 21st Century CURES Professional Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Sales Order (OPT-0276640) with Cerner Corporation for Cerner 21st Century CURES Professional Services. Kern Medical needs to comply with the CMS/ONC 2015 CEHRT CURES mandate and the 21st Century CURES platform satisfies the CMS/ONC 2015 CEHRT CURES mandate by introducing new functionality to the Cerner Millennium electronic health record. With the proposed Sales Order, Cerner commits to the design, build and validation (as necessary) of the solution to ensure that Kern Medical is compliant with the mandate.

Cerner Corporation’s professional fees are a one-time payment of \$94,600, as outlined below.

Solution Description	One Time Fee	Monthly Fee	Term	Total
Professional Services	94,600			
				\$94,600

Therefore, it is recommended that your Board approve the Cerner Corporation Sales Order (OPT-0276640) for the 21st Century CARES Professional Services in the amount of \$94,600, effective April 20, 2022, and authorize the Chairman to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on **April 20, 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: **Katie Batliner**
+1 816 201 7141
katie.batliner@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)

Authorized signatory:  _____

Russell Bigler
(printed name)

Teresa Waller

Title: **Chairman, Board of Governors**

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

Cerner Confidential Information
© Cerner Corporation. All rights reserved.



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-000072718
January 31, 2022



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
PROFESSIONAL SERVICES		
Fixed Fee	94,600.00	--
TOTALS:	94,600.00	0.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until May 01, 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

ONE-TIME FEES			
Description	Payment Number	Percent (%) Of Total Due	Payment Due
Professional Services: Fixed Fee	1	50%	On the Effective Date
	2	50%	90 days following the Effective Date

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

FIXED FEE					
Service Project Detail	Manufacturer Part No.	Solution	One-Time Fees	Third-Party Component(s)	Pass-Through Code
<i>Standard Services</i>					
2015 CEHRT Cures Upd	SVC-10007710	2015 CEHRT Cures Update Implementation	74,800	--	--
2015 CEHRT Cures UpdCI	SVC-10007710	2015 CEHRT Cures Update Implementation	19,800	--	--
TOTALS:			94,600	--	--



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 2022

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.



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.

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 based on the underlying Agreement.

Fixed Fee Implementation. For fixed fee implementations, the scope of the implementation is based on the specific assumptions set forth herein and in the scope of work for the solutions being implemented (the “Solution Detail Scope”). Each party (or its designee) will fulfill project responsibilities assigned to such party in this Scope and in the Solution Detail Scope(s). This Scope and the Solution Detail Scope(s) describes the solutions to be implemented, duration of the implementation, and the Services to be performed. Any changes to assumptions, tasks, duration, services or resources may result in additional fees, and will only become effective upon written approval by both parties.

SOLUTION DETAIL SCOPE

PROFESSIONAL SERVICES

2015 CEHRT CURES UPDATE IMPLEMENTATION (SVC-10007710)

Cerner Tasks/Activities	<ul style="list-style-type: none"> • Design, build, and validate (as applicable) the 2015 CEHRT Cures Update Modifications for Certified EHR Technology in <i>Cerner Millennium</i> as specified by the Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) for the 21st Century Cures Act. This 2015 CEHRT Cures Update Implementation includes: <ul style="list-style-type: none"> ◦ Patient application programming interface (API) – Validate completion of new ontology
--------------------------------	--



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 2022



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

2015 CEHRT CURES UPDATE IMPLEMENTATION

(SVC-10007710)

- mappings required (the *HL7 FHIR* standard R4 API)
- Patient API – Configure Clinical Reporting templates and dependencies for Diagnostic Reports and Document Reference resources, including:
 - Pathology
 - Cardiology
 - Microbiology
 - Radiology
 - Documents
- Patient API – Implement *HL7 FHIR* vital signs standards, including:
 - Configure vitals charting view
 - Configure vitals component
 - Add component to applicable Nursing Workflow *MPages*
- Patient API – Update Event Set Hierarchy to include new required vital signs charting concepts and coordinate associated ontology mappings
- Patient API – Implement new modernized vital signs workflow *MPages* component required for *HL7 FHIR* vital signs standards
- Patient API – Configure provenance default organization
- Patient API – Validate/configure CareTeam workflow *MPages* component
- Patient API – Validate/configure HealthConcerns and Goals workflow *MPages* components
- C-CDA – Configure and validate C-CDA templates with new United States Core Data for Interoperability (USCDI) data elements, including:
 - Allergies and intolerances – Substance (medication); substance (drug class); reaction
 - If using new Allergies web component, disable freetext allergy reactions
 - Clinical notes - Consultation Note; Discharge Summary Note; History and Physical; Imaging Narrative; Laboratory Report Narrative; Pathology Report Narrative; Procedure Note; Progress Note
 - CareTeam
 - Patient demographics - Middle Name; Previous Name; Suffix; Current Address; Previous Address; Phone Number; Phone Number Type; E-mail Address
 - Provenance - Author Organization ; Author Time Stamp
 - Vital signs - BMI Percentile (2 - 20 years); Weight-for-length Percentile (Birth - 36 Months); Head Occipital-frontal Circumference (Birth - 36 Months)
 - Unique Device Identifier
- C-CDA – Validate *CDA* Viewer updates for new section viewing
- Provide a Cerner regulatory resource to ensure coordination across all projects and workgroups
- Provide direction in domain and code planning necessary for upgrade handoff and projects related to CEHRT
- Facilitate design decision-making by providing education on new product capabilities
- Complete package review to ensure latest technology is installed
- Provide domain and code strategy
- Provide Functional Reporting Review and Updates for Promoting Interoperability
- Host weekly or biweekly status calls
- Create project plan and drive completion of key milestones



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 2022



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

2015 CEHRT CURES UPDATE IMPLEMENTATION (SVC-10007710)	
	<ul style="list-style-type: none"> • Provide education for general troubleshooting, workflow changes, and validation • Provide best-practice design recommendations, configuration updates, validation, and workflow education • Commit resources to serve in the following capacities to perform the tasks set forth below: <ul style="list-style-type: none"> ◦ Regulatory Consultant - Facilitate all project meetings; create and manage project plan, status reporting, and milestones; provide rule expertise on 21st Century Cures Act; manage logistics for all events; serve as escalation resource for all project issues; and provide education documentation to support Client with new capabilities. ◦ Integration Architect - Provide expertise to ensure understanding and adoption of new CEHRT capabilities; provide best practice design recommendations, configuration updates, validation and workflow education; conduct workflow analysis to define design; conduct workflow demonstrations; provide guidance to support Client during localization period; assist Client with developing test scripts for implemented 2015 CEHRT Cures Updates; support issue resolution and Change Request (CR) tracking; provide Functional Reporting Review and Updates for Promoting Interoperability; and deliver recommendations to workflow impact. ◦ Consultant(s) - Own Cerner build unless otherwise noted; and assist Integration Architect with workflow demonstrations as needed.
Client Tasks/Activities	<ul style="list-style-type: none"> • Complete testing of functionality in 1 non-production environment • Complete testing of functionality in 1 production environment • Assist in completing design decisions for implementation projects • Identify and secure necessary resources • Attend weekly or biweekly status calls • Designate and commit appropriate resources to serve in the following capacities to fulfill the responsibilities set forth below and in accordance with the project timeline: <ul style="list-style-type: none"> ◦ Project Manager - Work with Regulatory Consultant to coordinate events; align Client resources to agreed-upon event dates; serve as initial Client-escalation contact; and ensure completion of Client responsibilities in accordance with the project plan. ◦ Informaticist/Solution Analyst - Attend and contribute to recurring calls, design, and validation sessions; develop workflow test scripts and conduct testing; and validate configuration changes related to Client solution expertise. ◦ Subject Matter Experts/Users - Attend workflow demonstrations and follow-up sessions for decision making; validate design and build during integration testing milestone; participate in training of new tools and workflows; provide User support during conversion; and participate in pre- and post-engagement satisfaction surveys (if applicable).
Project Phases	<ul style="list-style-type: none"> • Phase 0: Internal Project Kick-Off and Alignment • Phase 1: Client Kick-Off and Project Planning • Phase 2: Education and Design Sign-Off • Phase 3: Build in Non-Production • Phase 4: Validation and Testing <ul style="list-style-type: none"> ◦ Review Adoption Readiness Prior to Production Build • Phase 6: Implementation Go-Live in Production • Phase 7: Validation and Testing



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 2022



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

2015 CEHRT CURES UPDATE IMPLEMENTATION (SVC-10007710)	
	<ul style="list-style-type: none"> Phase 8: Adoption and Monitoring Phase 9: Disengagement Checkpoint and Ongoing Support
Project Assumptions	<ul style="list-style-type: none"> Additional required solutions and licenses as required by ONC, and CMS are not included. Client must already have 2015 CEHRT implemented. This Scope does not include API Bulk Licensing. Client must be live on <i>Cerner Millennium</i> version 2018.09 (or later) prior to engaging the Cerner consulting team. Estimated 2015 CEHRT Cures Update Implementation duration is 3 months. Modifications to the assumptions or items presented in this Scope will constitute a change in professional services fees. Either Cerner or Client may designate a new representative by written notice to the other. Cerner shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services. <ul style="list-style-type: none"> Client must determine, based on its standard operating procedures, accrediting body standards, governing regulatory bodies, patient population, employees, and tools, how best to validate all aspects of the system. Client acknowledges and agrees that it will (i) provide the test plans, (ii) perform or supervise the testing activities, (iii) provide additional training and information to end users regarding the changes made, and (iv) approve the content and completion of the testing activities. Cerner accepts no responsibility or liability for any claims, actions, losses, or damages incurred by Client or any third party arising from or out of Client failure to adequately test and/or validate the changes requested hereunder.
Trademarks	<ul style="list-style-type: none"> <i>HL7, FHIR, and CDA</i> are the registered trademarks of <i>Health Level Seven International</i>, and their use of these trademarks does not constitute endorsement by <i>HL7</i>.



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 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-0276640
Invoice Date: Effective Date
Due Date: Effective Date

Remit: Via FedEx:
Cerner Corporation
Attn: Accounts Receivable, 5th Floor
2800 Rock Creek 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: \$47,300

Sales tax, if applicable, will be invoiced separately.

Description	Total Amount	Percent Payable	Net Amount
Professional Services: Fixed Fee	\$94,600	50%	\$47,300
GRAND TOTAL:			\$47,300



Kern County Hospital Authority
OPT-0276640_Q-119869.1_LA-0000072718
January 31, 2022



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

April 20, 2022

Subject: Proposed Sales Order (OPT-0302150) with Cerner Corporation for the purchase of the Electronic Clinical Reporting Solution and Professional Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Sales Order (OPT-0302150) with Cerner Corporation for the Electronic Clinical Reporting (eCR) Solution and Professional Services. Kern Medical needs to comply with CMS/ONC 2015 CEHRT CURES mandate and the eCR platform satisfies the CMS/ONC 2015 CEHRT CURES mandate by introducing new functionality to the Cerner Millennium electronic health record. With the proposed sales order, Cerner commits to the design, build and validation (as necessary) of the solution to ensure that Kern Medical is compliant with this mandate.

Cerner Corporation’s professional fees for this sixty (60) month engagement is \$146,920, as outlined below.

- Year 1 maximum payable - \$37,384**
- Year 2 maximum payable - \$27,384**
- Year 3 maximum payable - \$27,384**
- Year 4 maximum payable - \$27,384**
- Year 5 maximum payable - \$27,384**

Solution Description	One Time Fee	Monthly Fee	Term	Total
Professional Services	10,000			
Shared Computing Services		2282	60 mos.	136,920
Total				\$146,920

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel including a self-renewing term.

Even with this non-standard term, the need for this product to comply with the mandate outweighs the issue of a never-ending agreement. Therefore, it is recommended that your Board approve the Cerner Corporation Sales Order for the Electronic Clinical Reporting Solution and Professional Services with a not-to-exceed amount of \$146,920, for a term of sixty (60) months, and authorize the Chairman to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on April 20, 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: Katherine Guetterman
(816) 201-2322
katherine.guetterman@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”).

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.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By
Legal Services Department



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021

Cerner Confidential Information
© Cerner Corporation. All rights reserved.



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SOLUTIONS		
Shared Computing Services	10,000.00	2,282.00
TOTALS:	10,000.00	2,282.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until April 30, 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

ONE-TIME FEES			
Description	Payment Number	Percent (%) Of Total Due	Payment Due
Shared Computing Services	1	100%	On the Effective Date

MONTHLY RECURRING FEES		
Description	Percent (%) Of Total Due	Payment Due
Shared Computing 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 1% 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.



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021



CERNER SALES ORDER

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.

SOLUTIONS

SHARED COMPUTING 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
ECR-00001	Electronic Case Reporting	Providers	355	60	1-60	--	2,282	SD101245_01	--	--	--	--
ECR-00001_SETUP	Electronic Case Reporting Implementation	Production Environments	1	--	--	10,000	--	--	--	--	--	--
TOTAL:						10,000	2,282	--	--	--	--	--

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. 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
Providers	The total number of health professionals legally allowed to write prescriptions - physicians (M.D., D.O.), physicians' assistants, or other advanced practitioners.
Production Environments	A single Cerner environment onto which Cerner Licensed Software is loaded.



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021



CERNER SALES ORDER

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.

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.

ADDITIONAL TERMS AND PROVISIONS

SHARED COMPUTING SERVICES

Client Responsibilities. Client agrees to comply with all applicable laws, rules, and regulations as they relate to its use of the Services and its provision of the Services to Users ("Laws"), including, but not limited to, HIPAA, state medical privacy and security laws, and state and federal laws applicable to sensitive categories of medical information, such as mental health, alcohol and drug abuse, genetic, and AIDS/HIV information. Client or its Users must obtain all appropriate and necessary authorizations and consents to access, use, and disclose any personally identifiable information in compliance with applicable Laws (including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the Telephone Consumer Protection Act) and the Agreement. Client must have security and privacy policies and procedures in place that govern its Users' ability to access information on or through the Services and to prevent unauthorized access, use, and disclosure of personally identifiable information including, but not limited to, protected health information.

Medical Record. The Services do not constitute a medical record. Client and its Users are responsible for ensuring that the information sent through the Services is incorporated into the applicable patient's medical record as necessary. Client acknowledges that the health information exchanged through the Services may not include the individual's full and complete medical or encounter record or history. Cerner may leverage a public cloud infrastructure to provide the Services.

Access to Data. Cerner may use and disclose the Data as necessary to perform, analyze and improve the Services, to the extent permitted by law. Cerner may use and disclose performance and usage data for any purpose permitted by law so long as the data does not contain protected health information as defined under HIPAA or Client-specific identifiable information. Data means data that is collected, stored, processed or generated through Client's use of the Services.

Right to Aggregate. Cerner may use or disclose protected health information, as defined by 45 C.F.R. 160.103, to provide data aggregation services as permitted by 45 C.F.R. 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law.

De-identify and Use Rights. Cerner may de-identify protected health information in accordance with the standards set forth in 45 C.F.R. 164.514(b) and may use or disclose such data unless prohibited by applicable law.

Information Management Tools. Client acknowledges and agrees that the Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021

SHARED COMPUTING SERVICES

agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Services. Client further acknowledges and agrees that the Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.



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.

SOLUTION DETAIL SCOPE

SHARED COMPUTING SERVICES

ELECTRONIC CASE REPORTING IMPLEMENTATION (ECR-00001_SETUP)	
Cerner Tasks/Activities	<ul style="list-style-type: none"> • Provide required resources <ul style="list-style-type: none"> ○ Project manager • Facilitate project meetings with Client as needed • Facilitate testing in 1 non-production domain • Configure cloud-based shared services for Client domain(s) • Provide support for the duration of the project
Client Tasks/Activities	<ul style="list-style-type: none"> • Provide required resources <ul style="list-style-type: none"> ○ Project manager ○ Information technology (IT) analyst ○ Clinical resource • Participate in project meetings • Prepare 1 non-production domain (Client must choose the same non-production domain where prerequisites are completed) with Cerner's assistance, including the provision of technical services, as described in the Implementation Workplan
Deliverables	<ul style="list-style-type: none"> • The shared cloud services and Electronic Case Reporting (eCR) application are configured to work with Client domains.
Project Assumptions	<ul style="list-style-type: none"> • This Scope assumes the following prerequisites are met: <ul style="list-style-type: none"> ○ Minimum <i>Cerner Millennium</i> code version is met at the time of implementation. ○ Data Rights Agreement - CommonWell/CareQuality agreements are in place. ○ Client-hosted sites have Cloud Appliance. ○ Client is live in production and selected non-production domain with Cerner Direct and <i>Cerner Ignite APIs</i>. • If connectivity in an additional non-production domain is needed, additional fees will apply.



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021



EXECUTION INVOICE

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

Invoice No: EXEC CSO No. LA-OPT-0302150
Invoice Date: Effective Date
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: \$37,384

Sales tax, if applicable, will be invoiced separately.

Description	Total Amount	Percent Payable	Net Amount
Shared Computing Services Monthly Fees - Year 1	\$27,384	100%	\$27,384
Shared Computing Services One-Time Fees	\$10,000	100%	\$10,000
GRAND TOTAL:			\$37,384



Kern County Hospital Authority
OPT-0302150_Q-103309.1_LA-0000061743
November 3, 2021



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

April 20, 2022

Subject: Proposed retroactive Amendment No. 6 to the Affiliation Agreement (County Agt.# 317-2012) with Ross University School of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 6 to the Affiliation Agreement with Ross University School of Medicine to adjust the termination of the Agreement from the original termination date of September 2, 2022 to July 31, 2022. This will allow all current medical students to end their clinical rotations and start new rotations with the new academic year, which begins on August 1, 2022. The August 1, 2022 academic year will coincide with having two new cohorts of students start a newly developed robust educational and clinical experience curriculum throughout the academic year. Kern Medical will have a decrease in reimbursement and has agreed to waive fees for unfilled scheduled rotations for the remaining term of this agreement (Annual Fiscal Impact FY2021-2022: -\$173,880), but both Ross University School of Medicine and Kern Medical are dedicated and committed to the excellence of the medical education in training future clinicians and this is evident in both parties actively negotiating a new affiliation agreement to more accurately define the future of medical education at Kern Medical.

Previous Agreements	Purpose of Amendment
Original Agreement, dated May 29, 2012	Outlined the affiliation relationship between the parties in regards to the education of medical students
Amendment No. 1, dated September 1, 2015	Amended travel expense requirements and reimbursement
Amendment No. 2, dated October 24, 2016	Amended clinical rotations and associated fees and funding of the Student Union by Ross
Amendment No. 3, dated July 1, 2017	Amended to add a section on outlining the student’s learning environment
Amendment No. 4, dated September 1, 2017	Amended to add a Ross employed Administrative Support person
Amendment No. 5, dated July 30, 2018	Amended to adjust Clinical Rotation Fees and the fees associated with the Administrative Support Person

Therefore, it is recommended that your Board approve the proposed retroactive Amendment No. 6 to the Affiliation Agreement with Ross University School of Medicine to adjust the termination date of the agreement, effective February 16, 2022, and authorize the Chairman to sign.

**AMENDMENT NO. 6
TO
AFFILIATION AGREEMENT
(KERN COUNTY HOSPITAL AUTHORITY – ROSS UNIVERSITY SCHOOL OF MEDICINE)**

This Amendment No. 6 (the “Amendment”) is entered into as of February 16, 2022 (“the Effective Date”) by and between Kern County Hospital Authority (“KCHA” or the “Hospital”) and Ross University School of Medicine (“RUSM”).

WHEREAS, KCHA and RUSM are parties to an Affiliation Agreement dated May 29, 2012, an Amendment No. 1 dated September 1, 2015, an Assignment of Agreement dated April 26, 2016, an Amendment No. 2 dated October 24, 2016, an Amendment No. 3 dated July 1, 2017, an Amendment No.4, dated September 1, 2017, and an Amendment No. 5, dated June 30, 2018 (the Affiliation Agreement as amended referred to herein as the “Agreement”);

WHEREAS, both parties agree to waive fees for unfilled scheduled rotations for the remaining term of this agreement expiring on July 31, 2022 and to amend certain terms and conditions of the Agreement as hereinafter set forth to implement this change.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. As of the Effective Date, the Agreement is hereby amended or modified as follows:
 - a. Section 4.1, Core and Elective Clinical Rotation Fees, shall be deleted and replaced with the following:

“4.1 Core and Elective Rotation Fees — In consideration for Hospital’s performance of its obligations under this Agreement, including its allocation of the core clinical rotations pursuant to Section 3.1 (d), RUSM shall pay to Hospital, for each of the core rotations in Section 3.1 (d) allocated to and filled by RUSM, six-hundred thirty dollars (\$630.00) USD per week, per RUSM student for the remaining term of this Agreement. Beginning March 21, 2022, RUSM shall have no obligation to pay Hospital for any unfilled or unused core or elective rotations. Surgery core clinical rotation fees shall not be guaranteed and RUSM shall pay to Hospital six-hundred thirty dollars (\$630.00) USD per week per RUSM student for the surgery rotation weeks used.

RUSM shall not be charged by the Hospital for unfilled core or elective rotation spots for the remaining term of this Agreement as of the Effective Date of this Amendment No. 6.

Elective clinical rotations shall not be guaranteed and RUSM shall pay to Hospital an amount equal to five-hundred dollars (\$500.00 USD) per week per RUSM student for rotations weeks used, with said amounts to be paid to the remaining quarterly payment schedule ending on July 31, 2022.

The first 2022 RUSM Fiscal Year (FY) quarterly payment shall be for a minimum of four-hundred eight thousand two-hundred forty (\$408,240.00) USD, covering the rotations between August 23, 2021 to November 12, 2021 (payment number 39) and shall be for the

Hospital's commitment of a minimum of 54 core students, which does not include a commitment for surgery cores. The aforementioned payment covers core students from both RUSM and American University of the Caribbean School of Medicine (AUC). In addition, the first quarterly payment will add \$630.00 per week per AUC/RUSM student for every scheduled used and unused surgery core rotation during this quarter. The first quarterly payment shall be paid on or around March 1, 2022.

The second quarterly RUSM FY 2022 payment, covering the rotations between November 15, 2021 to February 04, 2022, shall be paid on or around June 1, 2022. RUSM shall pay Hospital for every scheduled core rotation used and unused at the rate of \$630.00 per AUC/RUSM student per week.

The third quarterly RUSM FY 2022 invoice (covering clinical rotations under the student commitment for 54 cores for AUC/RUSM students from February 7, 2022 to the remaining term of this Agreement) shall include charges to RUSM for unfilled rotations from February 7, 2022 to March 18, 2022. RUSM shall not be invoiced for unfilled scheduled rotations beginning from March 21, 2022 to the remaining term of this Agreement.

Students scheduled to start for the first quarter of RUSM's Fiscal Year 2023, beginning on July 25, 2022, shall be charged at \$450.00 USD per week, per AUC/RUSM student for each Hospital core and elective clerkship rotation scheduled and used by Institution.

2. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Agreement will mean and be a reference to the Agreement as amended by this Amendment.

3. Miscellaneous.

(a) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

(b) The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party (and performance thereunder), have been duly authorized by all necessary action on the part of such Party.

(c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

(d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this

Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.


(e) Except as expressly provided in this Amendment, all of the terms and conditions contained in the Agreement shall remain in full force and effect.

(f) Each Party shall pay its own costs and expenses in connection with this Amendment

(SIGNATURES CONTINUE ON PAGE 4 of 4)

IN WITNESS WHEREOF, this Amendment has been entered into as of the Effective Date.

SCHOOL: ROSS UNIVERSITY SCHOOL OF MEDICINE

Signature:  Heidi Chumley
0F3850B32420493...

Date: 4/12/2022 | 8:24:36 AM CDT
By: Heidi Chumley, MD, MBA
Title: Dean
Address: 2300 SW 145th Avenue, Miramar, FL 33027

HOSPITAL: KERN COUNTY HOSPITAL AUTHORITY

Signature: _____


Date: April 20, 2022
By: Russell Bigler
Title: Chairman, Board of Governors
Address: 1700 Mt. Vernon Ave., Bakersfield, CA 93306

HOSPITAL: KERN MEDICAL CENTER

Signature: _____

Date: _____
By: Scott Thygeron
Title: Chief Executive Officer
Address: 1700 Mt. Vernon Ave., Bakersfield CA 93306

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



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

April 20, 2022

SUBJECT: Proposed retroactive Equipment Sale Agreement and Master Product Agreement with Siemens Healthcare Diagnostics Inc.

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the Equipment Sale Agreement and Master Product Agreement (collectively, the "Agreement") with Siemens Healthcare Diagnostics Inc. for the purchase of the Atellica Solution Immunoassay and Clinical Chemistry Analyzer, and its associated reagents, required for utilization within Kern Medical's clinical laboratory. This equipment will increase Kern Medical's capacity for chemistry testing which is crucial to a new initiative undertaken in partnership with Kern County Public Health to increase HIV and STI testing.

The term of the Agreement is five years, effective March 31, 2022, with a total maximum payable not to exceed \$640,000. The Agreement is being brought to your Board for retroactive approval as Kern Medical was able to obtain additional discounts by executing the Agreement on or before March 31, 2022, which includes a reagent credit of \$54,702.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the inability to terminate without cause. Efforts were made to negotiate these nonstandard terms to no avail. The equipment and associated products provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board retroactively approve the Equipment Sale Agreement and Master Product Agreement with Siemens Healthcare Diagnostics Inc., effective March 31, 2022, with a maximum payable not to exceed \$640,000, for the five-year term, and authorize the Chief Executive Officer to sign.



EQUIPMENT SALE (Purchase) AGREEMENT

Legal Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Federal ID #:	_____
Customer Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Ship to Customer #:	_____
Address:	<u>1700 MOUNT VERNON AVE</u>	Sold to Customer #:	<u>7265</u>
City, State, Zip:	<u>BAKERSFIELD, CA, 93306</u>	Payment Terms:	<u>Net 30 days from date of invoice</u>
Phone:	_____		
Effective Date:	_____		
Subgroup:	<u>QUORUM PURCHASING ADVANTAGE</u>		

This Equipment Sale Agreement, by and between Siemens Healthcare Diagnostics Inc. ("Siemens" or "Vendor") and the party identified under "Legal Name" (or "Customer Name" if no "Legal Name") in the heading above ("Customer" or "Purchaser"), is effective as of the date of the last signature of the parties contained herein ("Effective Date"). This Equipment Sale Agreement is entered into in connection with that certain Purchasing Agreement dated May 1, 2011 by and between HealthTrust Purchasing Group, L.P. ("HealthTrust") and Vendor (HPG-1109, as amended, the "Purchasing Agreement"). The terms and provisions of the Purchasing Agreement are incorporated into this Equipment Sale Agreement by this reference, and this Equipment Sale Agreement is subject to and governed by the terms and provisions of the Purchasing Agreement.

Purchaser agrees to purchase and Siemens agrees to sell the equipment listed below ("Equipment") at the price(s) listed below

QTY	Part #	Description of Equipment	Price	Extended Price
		ADVIA Chemistry Product Line:		
2	11127431	ADVIA XPT EXTENSION CORD	Included	Included
		Atellica CH Product Line:		
5	10950625	Atellica Seismic Anchor 2 Set Kit	Included	Included
		Atellica IM Product Line:		
1	11066001	Atellica IM 1300 Analyzer	\$120,000.00	\$120,000.00
		Atellica Solution Components Product Line:		
1	11069001	Atellica Sample Handler Prime	\$35,000.00	\$35,000.00
2	11348908	UPS 208V 3KVA	Included	Included
2	11348909	EXTENDED BATTERY FOR UPS 208V 3KVA	Included	Included
2	11348947	SEISMIC MOUNTING KIT FOR UPS 3KVA	Included	Included
1	11480807	2 IN BARCODE PRINTER AND RIBBON KIT	Included	Included
		IT Product Line:		
1	10318091	Client User Interface SW License	\$29,522.21	\$29,522.21
1	11274691	Atellica Connectivity Manager - ACC	\$1,000.00	\$1,000.00
1	11273715	POWER SUPPLY UNINTERRUPTIBLE	\$0.01	\$0.01

Total:	\$185,522.22
Shipping & Handling:	Included
Total Price:	\$185,522.22

Information about service and training associated with the Equipment purchased hereunder is either contained herein or is set forth on the Attachment A to the Supplement to Master Products Agreement entered into between the parties, if applicable. This Equipment Sale Agreement is subject to the Terms and Conditions attached hereto and made a part hereof and the Purchasing Agreement.

If Customer is returning on-site equipment in conjunction with this Equipment Sale Agreement ("Returned Equipment"), such equipment shall be identified by instrument type(s) and serial number(s) in the table below. Customer represents that there are no liens or encumbrances on the Returned Equipment. Customer agrees to deliver the Returned Equipment to Siemens within sixty (60) days after the installation of the Equipment purchased hereunder. In the event any item(s) of Returned Equipment is/are omitted from the table below, Customer makes the same representations and agreements regarding such omitted Returned Equipment.

QTY	Description of Returned Equipment

EQUIPMENT SALE AGREEMENT TERMS AND CONDITIONS

1. Complete Agreement. This Equipment Sale Agreement, including these Terms and Conditions (collectively, "this Agreement"), along with the Purchasing Agreement constitute the entire agreement between Customer and Siemens relating to the sale of the Equipment by Siemens to Customer. Siemens' acceptance of Customer's purchase order is made on the condition that this Equipment Sale Agreement and the Purchasing Agreement shall govern the sale of Equipment by Siemens to Customer. No addition to, modification of, or waiver of any provision of this Equipment Sale Agreement shall be binding upon either party unless made in writing and signed by authorized representatives of both parties. To authorize shipment of the Equipment, please attach a signed copy of this Agreement to your purchase order.

2. Shipping, Delivery, Acceptance and Title. Shipping will be FOB Destination. Siemens will meet the delivery dates quoted or acknowledged on the order. If Siemens anticipates that it will not be able to deliver any Equipment ordered by Customer by the date stated in the order, Siemens will immediately notify the Customer and work with the Customer to resolve such delivery issues to Customer's reasonable satisfaction. Siemens shall be responsible for paying additional costs for any expedited shipment of Equipment required to meet the delivery and agreed upon delivery obligations. If Siemens and Customer are unable to reach resolution regarding delivery failures, Customer shall have the right to either cancel the order in whole or part, in addition to any other rights of Customer arising under this Equipment Sale Agreement and the Purchasing Agreement. Title and risk of loss will pass to Customer upon delivery. Formal "Acceptance" of the Equipment shall occur prior to the time of such Equipment being used to produce a test result that may be used in connection with a patient's diagnosis but in no case more than sixty (60) days from date of delivery. Additional remedies available to Customer for delivery failures are contained in the Purchasing Agreement.

3. Installation. Customer will be responsible for the cost of preparing Customer's facility for the Equipment. This may include making structural changes or installing separate electrical circuits, dedicated phone lines and/or network connections or special plumbing, air conditioning or humidity controls. Once Customer has prepared the facility and notified Siemens that the facility is ready for Equipment installation, Siemens will install the Equipment at no extra cost and will provide Customer with applicable operating manuals.

4. Inspection. Equipment shall be subject to inspection and approval within five (5) business days after the completion of the Installation. If the Equipment does not comply with Customer's purchase order, or is damaged in shipment, it may be rejected by Customer. Customer may hold any Product rejected for reasons described herein pending Vendor's instructions, which Vendor shall provide within ten (10) business days of notification from Customer. Based on Vendor's instruction, if such Products are to be returned to Vendor's premises, Vendor will cover the expense, F.O.B. Origin, Freight Collect.

5. Training. The training slots provided with Equipment shall remain available for two years from the date of the Equipment delivery.

6. Warranty and Limitation of Liability. Reference is made to the Purchasing Agreement.

7. Indemnification. Reference is made to the Purchasing Agreement.

8. Payment; Taxes. Payment is due as set forth on the first page of this Equipment Sale Agreement. Customer is responsible for and will pay all sales and use taxes assessed on the sale of the Equipment (collectively, "Taxes"). If Siemens is billed directly by the taxing authority for such Taxes, Siemens shall initially pay such Taxes and subsequently re-bill Customer. If Customer pays such Taxes directly, then copies of the receipted tax bills or other evidence of payment shall be provided to Siemens upon request.

In the event that Customer is exempt from certain Taxes pursuant to a tax exemption certificate (the "Exempt Taxes"), and provided that (i)

Customer maintains a valid tax exemption certificate throughout the term of this Agreement; (ii) Customer provides Siemens with a copy of such certificate; and (iii) such tax exemption is allowable and transferable to Siemens, then Siemens will not pay the Exempt Taxes and will not seek reimbursement from Customer for the Exempt Taxes. In the event that any Taxes are outside the scope of the tax exemption certificate, Customer will remain responsible for such taxes. Reference is also made to the Purchasing Agreement.

9. Confidentiality. Customer agrees not to disclose the prices or the terms and conditions of Customer's purchases under this Equipment Sale Agreement to any person except as required by law or otherwise.

10. Export. This Equipment Sale Agreement applies only to domestic installation of the Equipment. Customer shall not export or reexport any Equipment or products, or any system incorporating said Equipment or products, outside of the United States (including U.S. territories) unless Customer (i) first obtains all required licenses from the United States Department of Commerce or any other agencies or departments of the United States government that may be required, and (ii) complies with all applicable laws and regulations.

11. Technical Assistance. The warranty set forth herein and/or in the Purchasing Agreement shall not be enlarged, diminished or affected by, and no obligation or liability shall arise from, Siemens' rendering of technical advice, assistance, or service in connection with Customer's selection, purchase, or use of the goods furnished hereunder. Customer is not relying on Siemens' skill or judgment to select suitable goods.

12. Certified Integrated System. The Equipment is designed and certified by regulatory authorities as an integrated instrument/reagent/consumable system. Use of unapproved parts or consumables with the Equipment will void any and all warranties and all obligations of Siemens under any warranty or service contract Customer may have with Siemens provided the cause of any such warranty or service contract claim is due to the use of any such unapproved parts or consumables.

13. Software. Unless otherwise provided in the Purchasing Agreement, the following terms apply:

For Equipment containing software, no title, right or interest in the software is transferred to Customer except as expressly provided herein. The software component of the Equipment is licensed to Customer only for its own use of the Equipment. The software may not be disclosed or distributed in whole or in part to third parties or duplicated in any form or medium except as necessary for program execution or archival storage. Further, Customer shall have no right to modify, sublicense, disassemble, decompile, or otherwise reverse-engineer the software.

Notwithstanding the above terms, any open source software contained in the software component of the Equipment is licensed under the license terms applicable to that software. Where required by the specific license terms, Siemens will make the source code for such open source software available upon request from Customer in accordance with the terms of the relevant open source license. Notices and licensing information regarding such open source software is provided in the documentation associated with the Equipment, whether resident in the Equipment itself or in other form.

14. Disclosure of Discounts. Customer acknowledges that discounts, rebates, credits, goods or services provided by Vendor at no additional cost, coupons or other things of value which Customer may receive from Siemens under this Agreement or any Supplement may constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7b(b)(3)(A) ("Discounts"). Customer further acknowledges that the cost of Customer's use of the Equipment listed in a Supplement is included in the pricing under such Supplement. Customer agrees to file all appropriate reports and to properly disclose and reflect all Discounts in any report filed



in connection with state or federal cost reimbursement programs. Upon reasonable request, Vendor shall provide Customer information to support Purchaser's reports of Discounts and Vendor will refrain from activity that impedes Customer from meeting its obligations to report such Discounts.

15. Assignment. This Agreement is not assignable or transferable by either party, in whole or in part, except with the written consent of either party which will not be unreasonably withheld.

16. Equipment Maintenance and Service. Service is recommended and available through Siemens but is optional in conjunction with Customer's purchase of Equipment under this Equipment Sale Agreement. If so, such Service (as defined below) will be identified herein or the Attachment A to the Supplement to Master Products Agreement and the following shall apply:

(a) Equipment Maintenance. Customer is responsible for performing all maintenance requirements described in the operating manuals provided by the manufacturer and to keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Additionally, Customer shall (i) not relocate or make alterations to the Equipment without the prior written consent of Vendor, (ii) use the Equipment solely for Customer's business purposes and own use, and (iii) provide reasonable access to Vendor and its agents to inspect the Equipment.

(b) Equipment Service. In addition to the operator maintenance responsibilities identified in the operating manual, the Equipment also requires periodic servicing, including preventative maintenance visits ("Service"). Service through Siemens is optional under this Equipment Sale Agreement. If Customer elects to have Service provided by Siemens, Service will be specified on a Supplement, Siemens will provide Service in accordance with the type of service and for the period of time (the "Service Period") that is specified on a Supplement. Such Service shall provide all labor and parts (excluding consumables, electrodes and certain other parts) as are necessary to keep the Equipment in good working order. Service does not cover: (i) failure due to accident, neglect, or operation not set forth in the operating manuals; (ii) Customer's failure to properly maintain the Equipment in accordance with the applicable operating manuals; (iii) use of unauthorized reagents or disposables that may result in damage to or abnormal wear of the Equipment's internal components; or (iv) damage resulting from operating in environmental conditions outside those specified by the applicable operating manuals. For any time when Siemens is not responsible for providing Service, Customer will be responsible for all Service, and for any damage resulting from such Service. Customer is required to pay for the cost of any repairs to the Equipment caused by Customer's negligence, abuse or alteration of the Equipment. Siemens is not required to add any design engineering or performance change or development into the Equipment after it is delivered to Customer.

17. Miscellaneous. This Agreement along with the Purchasing Agreement contain all the terms and conditions with respect to the sale and purchase of the Equipment named herein and no modification of this Equipment Sale Agreement shall be of any force unless such modification is reduced to writing and signed by an authorized representative of each party.

Delivery dates and other contractual obligations of Siemens may change due to the effects of the Covid-19 epidemic or other epidemic, including delays and disruptions in the supply chain, manufacturing, or execution as well orders by authorities and prioritization of (new and existing) orders of customers which are essential for the public healthcare. The magnitude of such changes cannot be predicted and might be substantial because it depends on the development of the Covid-19 epidemic or other epidemic.

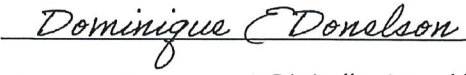
By signing this Agreement, Customer and Siemens hereby acknowledge they are authorized to sign this Agreement.

CUSTOMER – HealthTrust Member Facility:

By: 
(Authorized Signature Authority for Facility)
Name (print): Scott Thygerson
Title: Chief Executive Officer
Date: March 31, 2022

By: _____
(Facility Department Director)
Name (print): _____
Title: _____
Date: _____

Siemens Healthcare Diagnostics Inc.:

By: 
Name (print): Donelson Digitally signed by Donelson Dominique
Title: Dominique Date: 2022.03.31
Date: 15:15:33 -04'00'
Address: 511 Benedict Ave, Tarrytown, NY 10591

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



Document 1

Addendum No. 1
HealthTrust Purchasing Group
Purchasing Agreement
Product Line: Chemistry

Addendum No. 1
TO THE EQUIPMENT SALE AGREEMENT

Legal Name: KERN COUNTY HOSPITAL AUTHORITY Federal ID#:
Customer Name: KERN COUNTY HOSPITAL AUTHORITY Ship to Customer #:
Address: 1700 MOUNT VERNON AVE Sold to Customer #: 7265
City, State, Zip: BAKERSFIELD, CA 93306
Organization: QUORUM HEALTH CORPORATION
Effective Date:

This ADDENDUM to the terms and conditions of the Equipment Sale Agreement (the "Agreement") dated is between KERN COUNTY HOSPITAL AUTHORITY ("Customer") and Siemens Healthcare Diagnostics Inc. ("Siemens"). Upon the parties signing this Addendum, the additional/modified terms listed below will apply.

- 1. Number 5 of the ESA, Training, is hereby deleted in its entirety.
2. Number 9 of the ESA, Confidentiality, is hereby deleted and replaced with the following: Customer and its employees will maintain the confidentiality of any oral or written information disclosed by Siemens, including: (i) the terms of this Agreement (including, but not limited to, pricing); (ii) information designated as confidential; and (iii) information that should reasonably be expected to be treated as confidential by the recipient whether or not such information is designated as confidential.
3. The following language is hereby added to the ESA: The Siemens Project Manager ("PM") will present to Customer for signature a deliverable review document confirming the contract summary and committed dates agreed by the parties for Equipment Delivery and Go-Live after site readiness evaluation.
4. The following language is hereby added to the ESA: GUARDIAN PROGRAM. In order to provide the services under the Guardian Program, Customer shall provide Siemens with both on-site and remote access to the Equipment.



Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

CUSTOMER-HealthTrust Member Facility:

By: _____	By: _____
(Authorized Signature Authority for Facility)	(Facility Department Director)
Name (print): <u>Scott Thygerson</u>	Name (print): _____
Title: <u>Chief Executive Officer</u>	Title: _____
Date: <u>March 31, 2022</u>	Date: _____

Siemens Healthcare Diagnostics Inc.:

By: <u>Dominique Donelson</u>	
(Name (print): <u>Donelson</u>)	Digitally signed by _____
Title: _____	Donelson Dominique
Date: _____	Date: 2022.03.31 15:16:05
<u>Dominique</u>	-04'00'

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By Jamie [Signature]
Legal Services Department

**MASTER PRODUCTS AGREEMENT
FOR CONSUMABLES, REAGENTS, SUPPLIES, AND / OR SERVICE**

Legal Name: KERN COUNTY HOSPITAL AUTHORITY
 Customer Name: KERN COUNTY HOSPITAL AUTHORITY
 Address: 1700 MOUNT VERNON AVE
 City, State, Zip: BAKERSFIELD, CA, 93306
 Phone: _____
 Effective Date: _____
 Subgroup: QUORUM PURCHASING ADVANTAGE

Federal ID #: _____
 Ship to Customer #: _____
 Sold to Customer #: 7265

This Master Products Agreement ("Agreement") by and between Siemens Healthcare Diagnostics Inc. ("Siemens" or "Vendor"), and the party identified under "Legal Name" (or "Customer Name" if no "Legal Name") in the heading above ("Customer" or "Purchaser") is effective as of the date of the last signature of the parties contained herein ("Supplement Effective Date"). This Agreement (and any Supplement hereto), is entered into in connection with that certain Purchasing Agreement dated May 1, 2011 by and between HealthTrust Purchasing Group, L.P. ("HealthTrust") and Vendor (HPG-1109, as amended, the "Purchasing Agreement"). The terms and provisions of the Purchasing Agreement are incorporated into this Agreement by this reference, and this Agreement is subject to and governed by the terms and provisions of the Purchasing Agreement

responsible for paying additional costs for any expedited shipment of Products required to meet the delivery and agreed upon delivery obligations. If Siemens and Customer are unable to reach resolution regarding delivery failures, Customer shall have the right to either cancel the order in whole or part, in addition to any other rights of Customer arising under this Agreement and/or the Purchasing Agreement. Additional remedies available to Customer for delivery failures are contained in the Purchasing Agreement.

1) PURPOSE. The purpose of this Agreement is to provide general terms and conditions under which Siemens and Customer will enter into one or more individual Agreement supplements (each a "Supplement") for the purchase of reagents (or panels), consumables and supplies ("Products") for use with equipment acquired separately ("Equipment"). Equipment is not included within the scope of this Agreement, except as set forth in Section 9 (Equipment Maintenance and Service). Each Supplement shall incorporate the terms and conditions of this Agreement as well as additional terms and conditions relevant to the business transaction between the parties, including the term of the Supplement ("Supplement Term") which in no event shall extend beyond the term of this Agreement. Any Supplement designated as Document 2A is subject to and governed by the terms and provisions of this Agreement.

5) INSPECTION. All Products shall be subject to inspection and approval by Customer within five (5) business days of receipt. Any Products which do not comply with Customer's purchase order, including quantities and delivery time or which are damaged in shipment may be rejected by Customer. Customer may hold any Product rejected for reasons described herein pending Vendor's instructions, which Vendor shall provide within ten (10) business days of notification from Customer of its rejection of Product. Based on Vendor's instruction, if such Products are to be returned to Vendor's premise, Vendor will cover the expense, F.O.B. Origin, Freight Collect

2) TERM OF AGREEMENT. This Agreement shall commence on the Effective Date and shall remain in effect for shall remain in effect for sixty (60) months or unless earlier terminated by either party with at least thirty (30) days prior written notice to the other party, provided that termination of this Agreement is not permitted while any Supplement is in effect.

6) WARRANTY AND LIMITATION OF LIABILITY.
Reference is made to the Purchasing Agreement.

3) SHIPPING. Product shipments will be FOB Destination. Shipping charges are not included in the Product price and will be "prepaid" by Siemens and added to the invoice as a separate line item that is identified as a "shipping" charge. The Shipping and Handling Program provides no charge routine shipping for orders that are: 1) electronic (online or standing orders; i.e. GHX or Siemens) and; 2) above the dollar threshold by product line [chemistry \$5,000, hemostasis \$1,000, blood gas \$1,500, urinalysis \$1,250; or \$6,000 across all product categories]. When either 1 or 2 are not met, there will be a flat \$35 charge; for a maximum of \$70 when neither requirement is met.

7) TAXES. Customer is responsible for and will pay all sales and use taxes assessed on the sale of the Products under a Supplement (collectively, "Taxes"). If Siemens is billed directly by the taxing authority for such Taxes, Siemens shall initially pay such Taxes and subsequently re-bill Customer. If Customer pays such Taxes directly, then copies of the receipted tax bills or other evidence of payment shall be provided to Siemens upon request.

In the event that Customer is exempt from certain Taxes pursuant to a tax exemption certificate (the "Exempt Taxes"), and provided that (i) Customer maintains a valid tax exemption certificate throughout the term of this Agreement; (ii) Customer provides Siemens with a copy of such certificate; and (iii) such tax exemption is allowable and transferable to Siemens, then Siemens will not pay the Exempt Taxes and will not seek reimbursement from Customer for the Exempt Taxes. In the event that any Taxes are outside the scope of the tax exemption certificate, Customer will remain responsible for such Taxes.

Reference is also made to the Purchasing Agreement.

4) DELIVERY PERFORMANCE. Siemens will deliver Product within seven (7) days from receipt of order or the date stated in the order. If Siemens anticipates that it will not be able to deliver any Product order by Customer within seven (7) days from receipt of order or the date stated in the order, Siemens will immediately notify the Customer and work with the Customer to resolve such delivery issues to Customer's reasonable satisfaction. Such resolution may include acceptance of alternative delivery dates or provision of an acceptable substitute from Siemens at the same or lower pricing as the unavailable Product. Siemens shall be

8) PAYMENT. All invoices are due and payable within thirty (30) days of the date of invoice.

9) PRICING. Pricing is firm for the term of this Agreement.

10) EQUIPMENT MAINTENANCE AND SERVICE. Service is recommended and available through Siemens but is optional in conjunction with Customer's purchase of Equipment for the purchased Products under a Supplement for use on the Equipment. If so, such



Service (as defined below) will be identified on an Attachment A to a Supplement and the following shall apply:

(a) Equipment Maintenance. Customer is responsible for performing all maintenance requirements described in the operating manuals provided by the manufacturer and to keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Additionally, Customer shall (i) not relocate or make alterations to the Equipment without the prior written consent of Lessor and/or Vendor, (ii) use the Equipment solely for Customer's business purposes and own use, and (iii) provide reasonable access to Lessor and/or Vendor and its agents to inspect the Equipment.

(b) Equipment Service. In addition to the operator maintenance responsibilities identified in the operating manual, the Equipment also requires periodic servicing, including preventative maintenance visits ("Service"). If Service is specified on a Supplement and/or the Attachment A, Siemens will provide Service in accordance with the type of service and for the period of time (the "Service Period") that is specified on the Supplement. Such Service shall provide all labor and parts (excluding consumables, electrodes and certain other parts) as are necessary to keep the Equipment in good working order. Service does not cover: (i) failure due to accident, neglect, or operation not set forth in the operating manuals; (ii) Customer's failure to properly maintain the Equipment in accordance with the applicable operating manuals; (iii) use of unauthorized reagents or disposables that may result in damage to or abnormal wear of the Equipment's internal components; or (iv) damage resulting from operating in environmental conditions outside those specified by the applicable operating manuals. For any time when Siemens is not responsible for providing Service, Customer will be responsible for all Service, and for any damage resulting from such Service. Customer is required to pay for the cost of any repairs to the Equipment caused by Customer's negligence, abuse or alteration of the Equipment. Siemens is not required to add any design, engineering, or performance change or development into the Equipment after it is delivered to Customer.

11) INDEMNIFICATION Reference is made to the Purchasing Agreement.

12) ASSIGNMENT. Either party may not assign either this Agreement, or any Supplement, or any right or obligation arising out of this Agreement or any Supplement, without the express written consent of the other party, and such consent shall not be unreasonably withheld.

13) DISCLOSURE OF DISCOUNTS. Customer acknowledges that discounts, rebates, credits, goods or services provided by Vendor at no additional cost, coupons or other things of value which Customer may receive from Siemens under this Agreement or any Supplement may constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7b(b)(3)(A) ("Discounts"). Customer agrees to file all appropriate reports and to properly disclose and reflect all Discounts in any report filed in connection with state or federal cost reimbursement programs. Upon reasonable request, Vendor shall provide Customer information to support Purchaser's reports of Discounts and Vendor will refrain from activity that impedes Customer from meeting its obligations to report such Discounts.

14) ENTIRE AGREEMENT; AMENDMENTS. This Agreement, including each Supplement and the Purchasing Agreement sets forth the entire agreement between the parties relating to the subject matter herein and there are no understandings, agreements, or representations expressed or implied not stated herein. Any term or condition contained in a Customer purchase order relating to Products supplied under a Supplement shall be null and void. If any conflict arises between the terms herein and the terms of any Supplement and/or the Purchasing Agreement, the terms of the Purchasing Agreement shall take priority. Any changes to this Agreement and any Supplement shall have no legal effect without the prior written approval of HealthTrust.

15) MISCELLANEOUS. (a) Customer agrees not to disclose the prices or the terms and conditions of Customer's purchases under this Agreement to any person except as required by law.

(b) Customer and Siemens will send any required notices to the other party by registered or certified mail or by recognized overnight courier service. All notices will be sent to the applicable party at the address set forth herein. A party may designate an alternate address for notices by giving written notice thereof in accordance with the provisions of this Section.

Delivery dates and other contractual obligations of Siemens may change due to the effects of the Covid-19 epidemic or other epidemic, including delays and disruptions in the supply chain, manufacturing, or execution as well orders by authorities and prioritization of (new and existing) orders of customers which are essential for the public healthcare. The magnitude of such changes cannot be predicted and might be substantial because it depends on the development of the Covid-19 epidemic or other epidemic.



IN WITNESS HEREOF, each party has caused its duly authorized representative to execute this Agreement as of the Effective Date.

Customer – HealthTrust Member Facility:

Siemens Healthcare Diagnostics Inc.:

By: [Signature]
(Authorized Signature Authority)
Name (print): Scott Thygerson
Title: Chief Executive Officer
Date: March 31, 2022

By: Dominique E Donelson
Name (print): Donelson Digitally signed by Donelson Dominique
Title: Dominique Date: 2022.03.31 15:16:31 -04'00'
Address: 511 Benedict Ave, Tarrytown, NY 10591

By: _____
(Facility Department Director)
Name (print): _____
Title: _____
Date: _____

Notices submitted by Customer shall be remitted to Siemens at:

Siemens Healthcare Diagnostics, Inc.
511 Benedict Ave.
Tarrytown, NY 10591

Att: Legal Department

Notices submitted by Siemens shall be remitted to Customer at:

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

REVIEWED ONLY
NOT APPROVED AS TO FORM

By [Signature]
Legal Services Department



**SUPPLEMENT TO MASTER PRODUCTS AGREEMENT
FOR CONSUMABLES, REAGENTS, SUPPLIES AND/OR SERVICE
COST-PER-RESULT OR COST-PER-TEST PROGRAM**

Legal Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Federal ID #:	_____
Customer Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Ship to Customer #:	_____
Address:	<u>1700 MOUNT VERNON AVE</u>	Sold to Customer #:	<u>7265</u>
City, State, Zip:	<u>BAKERSFIELD, CA, 93306</u>	Supplement Term:	<u>Net 30 days from date of invoice</u>
Phone:	_____		
Effective Date:	_____		
Subgroup:	<u>QUORUM PURCHASING ADVANTAGE</u>		

THIS SUPPLEMENT ("Supplement") to the Master Products Agreement for Consumables, Reagents, Supplies, and/or Service (Document 2) (the "Agreement") dated _____ is by and between Siemens Healthcare Diagnostics Inc. ("Siemens" or "Vendor") and the party identified under "Legal Name" (or "Customer Name" if no "Legal Name") in the heading above ("Customer" or "Purchaser") and incorporates the terms and conditions of the Agreement. Capitalized but undefined terms will have the meanings ascribed to them in the Agreement. Attachment A and all terms included therein are incorporated by reference into this Supplement. For all purposes hereof, this Supplement is effective as of the date of the last signature of the parties contained herein ("Supplement Effective Date").

- 1) **PRODUCTS.** Customer is eligible to purchase Products listed on Attachment A at the prices specified on Attachment A.
- 2) **TERM.** Customer agrees to purchase Products from Siemens throughout the Supplement Term. The Supplement Term is (60) months beginning thirty (30) days after the Supplement Effective Date, but in no event beyond the expiration or earlier termination of the Agreement.
- 3) **ORDERING, INVOICING AND PRICING TERMS.** When Customer chooses Cost Per Test ("CPT") or Cost Per Result ("CPR") pricing, the Products are ordered on an as needed basis and invoiced upon shipment of Products. The pricing under this Supplement applies to Products under the Agreement. The pricing and other terms stated in this Supplement supersedes any previous price arrangements Customer may have with Siemens or any Group Purchasing Agreements, other than HealthTrust Purchasing Group. In the event Customer is a party to the Group Standardization Agreement, those terms would also apply.
- 4) **TRAINING.** If applicable, Siemens will provide Equipment training at the location and for the number of people specified on Attachment A. The training slots shall remain available for two (2) years from the date of Equipment delivery.
- 5) **TERMINATION FOR CAUSE.** If either party violates any of the terms of the Supplement, Siemens or Customer shall provide the other party with written notice to the address stated on the Agreement. The party receiving such notice shall have 30 (thirty) days to cure. If the party does not cure, Siemens or Customer may in its discretion and without further liability, terminate the applicable Supplement.
- 6) **AMOUNT ALLOCABLE TO SERVICE.** If Customer has chosen to include Service with their Products, the prices for the Products contained in this Supplement incorporate the cost of Service. Customer acknowledges Siemens has provided it the opportunity to separately purchase Service for its stated cost which is available to Customer. If Customer chooses to participate in combining Service, the Commitment Amount includes an amount allocable to the Service of \$0.00 per month.
- 7) **COMPLIANCE.** On a periodic basis, but no more frequently than annually, Siemens may review whether Customer has made sufficient purchases to meet the Commitment Amount associated with the period under review. Review Period shall be any consecutive twelve (12) month period commencing with the start date of the Supplement Effective Date. If Customer's purchases for the Review Period are insufficient to satisfy the Commitment Amount, then such deficit will be considered a "Shortfall". In the event of a Shortfall, Siemens shall meet and discuss the results of their findings with Customer and allow Customer to respond within seven (7) days. Both parties agree that in order for Siemens to be compensated for the Shortfall, one or more of the following remedies may be used: a) adjust the volumes to reflect accurate, current purchasing trend b) adjust the Product pricing to reflect the amount owed for service and/or other surcharged items; c) invoice Customer for at least the amount of the Shortfall that is attributable to the service and/or other surcharged items, until such time that the Shortfall has been satisfied.



IN WITNESS HEREOF, each party has caused its duly authorized representative to execute this Agreement as of the Effective Date.

Sales Representative (Print Name) Quote CPQ-540727-4

Customer – HealthTrust Member Facility:

By: 

(Authorized Signature Authority by Facility)

By: _____

(Facility Department Director)

Name (print): Scott Thygerson

Name (print): _____

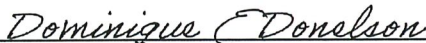
Title: Chief Executive Officer

Title: _____

Date: March 31, 2022

Date: _____

Siemens Healthcare Diagnostics Inc.:

By: 

Name (print): Donelson Digitally signed by Donelson Dominique

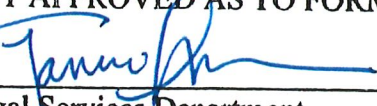
Title: _____ Date: 2022.03.31

Date: Dominique 15:16:58 -04'00'

Address: 511 Benedict Ave, Tarrytown, NY 10591

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By: 

Legal Services Department



Document
2A
CHEMIST
RY
Addendum
No. 1 HealthTrust Purchasing
Group Purchasing Agreement No.
HPG- 1109
Product Line: Chemistry

**Addendum No. 1
TO THE
SUPPLEMENT
TO MASTER PRODUCTS AGREEMENT
FOR COST-PER-RESULT OR COST-PER
TEST**

Legal Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Federal ID#:	_____
Customer Name:	<u>KERN COUNTY HOSPITAL AUTHORITY</u>	Ship to Customer #:	_____
Address:	<u>1700 MOUNT VERNON AVE</u>	Sold to Customer #:	<u>7265</u>
City, State, Zip	<u>BAKERSFIELD, CA 93306</u>		_____
Organization:	<u>QUORUM HEALTH CORPORATION</u>		_____

This ADDENDUM to the terms and conditions of the SUPPLEMENT ("Supplement") to Master Products Agreement (the "Agreement") dated _____ is between Kern County Hospital Authority ("Customer") and Siemens Healthcare Diagnostics Inc. ("Siemens"). Upon the parties signing this Addendum, the additional/modified terms listed below will apply.

- 1. TRAINING.** Section 4 of the Supplement is hereby deleted in its entirety and replaced with the following: **"4) TRAINING.** Siemens will provide training in accordance with the Attachment A. The training will remain available for the initial Supplement Term."
2. Subject to the Disclosure of Discounts Section herein, so long as this agreement is signed prior to March 30, 2022, Siemens shall reimburse Customer via a reagent credit of up to forty thousand dollars (\$40,000) for the actual reasonable expenditures made by Customer for enhancing and reconstructing its laboratory as necessary for the sole purpose of accommodating the Equipment at its premises (the "Reagent Credit"). The Reagent Credit shall be earned within thirty (30) days after receipt by Siemens of accurate and complete invoices from third party constructions contractors, reflecting such actual and reasonable costs and Siemens will provide Customer with a statement indicating the Reagent Credit. If Customer fails to provide such invoices to Siemens within six (6) months days of the Supplement Effective date, and such failure is not caused solely by Siemens, then the Reagent Credit may, at Siemens option, be null and void. Siemens shall notify Customer if it exercises such option. Furthermore, if this Supplement is terminated prior to the end of the Supplement Term, Customer agrees to repay Siemens the Reagent Credit, within ten (10) days of such termination.

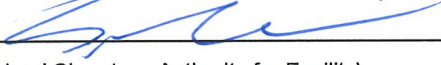
The following additional provisions are incorporated herein;

- 3. CONFIDENTIALITY.** Customer and its employees will maintain the confidentiality of any oral or written information disclosed by Siemens, including: (i) the terms of this Agreement (including, but not limited to, pricing); (ii) information designated as confidential; and (iii) information that should reasonably be expected to be treated as confidential by the recipient whether or not such information is designated as confidential. Except as necessary to carry out this Agreement, confidential information will not be disclosed by Customer or its employees to any third party or used by Customer or its employees without the prior written consent of Siemens. Siemens may in the performance of its services hereunder collect data from Customer associated with installation, validation, and servicing of the Equipment ("Customer Data"). The Customer Data may include data that is considered Protected Health Information as that term is defined in 45 CFR § 160.103 and used in the Health Insurance Portability and Accountability Act ("HIPAA"). Siemens 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.


4. **GUARDIAN PROGRAM.** In order to provide the services under the Guardian Program, Customer shall provide Siemens with both on-site and remote access to the Equipment. The remote access shall be provided through the Customer's network as is reasonably necessary for Siemens to provide warranty services under this Supplement. Remote access will be established through a broadbandinternet-based connection to either a Customer-owned or Siemens-provided secure end-point. The method of connection will be a Peer-to-Peer VPN IPsec tunnel (non-client based) with specific inbound and outbound port requirements.
5. The Siemens Project Manager ("PM") will present to Customer for signature a deliverable review document confirming the contract summary and committed dates agreed by the parties for Equipment Delivery and Go-Live after site readiness evaluation. The Siemens PM must be notified via email at least 15 days in advance of any date change requests and must acknowledge such extension as requested by the Customer. The PM will review the request with the Customer and come to a collaborative decision on a new date based on PM discretion. Any changes on the committed date for Equipment Delivery or Go-Live caused by the Customer may result in the Customer incurring additional charges, including but not limited to storage, insurance, Siemens' labor and administrative fees.

Except as expressly modified hereby, all other terms and conditions of the Supplement shall remain in full force and effect.

CUSTOMER-HealthTrust Member Facility:

By: <u></u>	By: _____
(Authorized Signature Authority for Facility)	(Facility Department Director)
Name (print): <u>Scott Thygerson</u>	Name (print): _____
Title: <u>Chief Executive Officer</u>	Title: _____
Date: <u>March 31, 2022</u>	Date: _____

Siemens Healthcare Diagnostics Inc.:

By: <u></u>	_____
(Name (print): <u>Donelson</u>)	Digitally signed by _____
Title: <u>Dominique</u>	Donelson Dominique
Date: _____	Date: <u>2022.03.31</u>
	15:17:25 -04'00'

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department



Attachment A

Quote #: CPQ-540727-4
Approved: 03/29/2022

Legal Name:	KERN COUNTY HOSPITAL AUTHORITY	Purchasing Group:	HEALTHTRUST PURCHASING GROUP
Customer Name:	KERN COUNTY HOSPITAL AUTHORITY	Sold to #:	7265
Product Line:	Multiple		

Total annual minimum Commitment Amount: \$452,218.23

(Remainder of page intentionally left blank.)



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
Customer Name: KERN COUNTY HOSPITAL AUTHORITY
Product Line: ADVIA Chemistry

Purchasing Group: HEALTHTRUST
PURCHASING GROUP
Sold to #: 7265

Equipment Information - ADVIA Chemistry
ADVIA XPT EXTENSION CORD

Part #	Onsite	Quantity	Comments
11127431	N	2	



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
Customer Name: KERN COUNTY HOSPITAL AUTHORITY
Product Line: Atellica CH

Purchasing Group: HEALTHTRUST
PURCHASING GROUP
Sold to #: 7265

Equipment Information - Atellica CH

Atellica Seismic Anchor 2 Set Kit

Part #
10950625

Onsite
N

Quantity
5

Comments



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
 Customer Name: KERN COUNTY HOSPITAL AUTHORITY
 Product Line: Atellica IM

Purchasing Group: HEALTHTRUST PURCHASING GROUP
 Sold to #: 7265

Equipment Information - Atellica IM

Part #	Onsite	Quantity	Comments
Atellica IM 1300 Analyzer 11066001	N	1	

Service

Service Level	Quantity	Start Year	# of Years	Comments
Extended Service ATELLICA IM1300 2-7YR GUARDIAN PRGM	1	1	2	Included
Warranty Service ATELLICA IM1300 PLUS WARRANTY	1	1	2	Included

Financial Adjustments - Atellica IM

Allowance(s):

Atellica IM - Siemens will issue Customer an LIS reagent credit up to \$10,000.00 per instrument for up to 1 instruments upon receipt of the paid interface invoice(s). Customer must, where applicable, fully and accurately report any price reduction (including partial subsidization of an LIS) in the applicable cost reporting mechanism or claim for payment filed with the U.S. Department of Health and Human Services (DHHS) or a state agency and must provide, upon request of the Secretary of the DHHS or state agency, the information contained in this Supplement. Invoice must be received within two years of the Supplement Effective Date.

Reagent Credit:

Atellica IM - Siemens will issue a reagent credit of \$4,502.00 for year 1.
 Siemens will issue a reagent credit of \$200.00 for a Star UPS Rack.

Products: Reagents Pricing - Atellica IM

Reagent	Part #	Test/Kit	Total Tests / Yr	Cost/Test	Total Kits/Yr	Cost/Kit	Total Annual
Vitamin D 25-OH - Atellica IM - RGT - 100 Tests	10995719	100	7,900	\$5.28	79	\$528.01	\$41,712.79
Anemia							
Fol - Atellica IM - RGT - 140 Tests	10995572	140	5,320	\$0.98	38	\$137.38	\$5,220.44
Cancer							
CEA - Atellica IM - RGT - 100 Tests	10995523	100	5,700	\$2.53	57	\$252.65	\$14,401.05
PSA - Atellica IM - RGT - 100 Tests	10995662	100	4,000	\$2.09	40	\$208.79	\$8,351.60
Cancer Total Annual			9,700				\$22,752.65
Cardiac							
BNP - Atellica IM - RGT - 100 Tests	10995471	100	6,700	\$9.85	67	\$985.02	\$65,996.34
Diabetes							
Insulin - Atellica IM - RGT - 100 Tests	10995628	100	3,100	\$1.47	31	\$147.00	\$4,557.00
Fertility							
FSH - Atellica IM - RGT - 190 Tests	10995580	190	4,370	\$1.00	23	\$190.42	\$4,379.66
LH - Atellica IM - RGT - 110 Tests	10995635	110	3,520	\$1.00	32	\$110.24	\$3,527.68
Prolactin - Atellica IM - RGT - 50 Tests	10995656	50	4,000	\$1.00	80	\$50.11	\$4,008.80
Fertility Total Annual			11,890				\$11,916.14
Hep/Aids							
CHIV (US) - Atellica IM - RGT - 100 Tests	10995459	100	13,400	\$4.58	134	\$458.01	\$61,373.34
HAV IgM Ab (aHAVM) - Atellica IM - RGT - 100 Tests	10995444	100	5,700	\$4.78	57	\$478.01	\$27,246.57
Hep/Aids Total Annual			19,100				\$88,619.91
Infectious Disease							



Products: Reagents Pricing - Atellica IM

Reagent	Part #	Test/Kit	Total Tests / Yr	Cost/Test	Total Kits/Yr	Cost/Kit	Total Annual
HBcT - Atellica IM - RGT - 200 Tests	10995597	200	6,600	\$3.33	33	\$666.01	\$21,978.33
Rubella IgG - Atellica IM - RGT - 100 Tests	10995670	100	4,700	\$1.18	47	\$118.00	\$5,546.00
Syphilis - Atellica IM - RGT - 200 Tests	10995675	200	24,200	\$2.11	121	\$422.01	\$51,063.21
Infectious Disease Total Annual			35,500				\$78,587.54
Inflammatory							
Procalcitonin (BRAHMS) - Atellica IM - RGT - 100 T	11202699	100	5,700	\$17.81	57	\$1,781.04	\$101,519.28
Thyroid							
FT4 - Atellica IM - RGT - 50 Tests	10995589	50	13,550	\$0.86	271	\$42.80	\$11,598.80
PTH - Atellica IM - RGT - 190 Tests	10995621	190	4,940	\$1.73	26	\$328.71	\$8,546.46
TSH3-UL - Atellica IM - RGT - 110 Tests	10995703	110	3,190	\$0.82	29	\$90.72	\$2,630.88
Thyroid Total Annual			21,680				\$22,776.14
other Immuno Assays							
Cortisol - Atellica IM - RGT - 50 Tests	10995538	50	10,700	\$0.80	214	\$40.00	\$8,560.00

Products: Supplies - Atellica IM

	Part #	Annual # of Kits	Total Annual
APW1 2PK - Atellica IM - CONS - 2 x 25 ml	10995458	59	Included
Acid - Atellica IM - CONS 2 x 1500 ml	11417929	21	Included
Acid / Base - Atellica IM - CONS - 2 x 1500 ml	11098500	41	Included
BNP CAL 2PK - Atellica IM - CAL - 2 x 2 x 2 mL	10995473	5	Included
BNP QC KIT - Atellica IM - CTL - 3 x 3 x 2 ml	10995475	8	Included
Base - Atellica IM - CONS 2 x 1500 ml	11417930	21	Included
CAL A 2PK - Atellica IM - CAL - 2 x 2 x 5 mL	10995500	7	Included
CAL B 2PK - Atellica IM - CAL - 2 x 2 x 5 mL	10995503	7	Included
CAL D 2PK - Atellica IM - CAL - 2 x 2 x 2 mL	10995509	7	Included
CAL E 2PK - Atellica IM - CAL - 2 x 2 x 2 mL	10995512	14	Included
CAL Q 2PK - Atellica IM - CAL - 2 x 2 x 2 mL	10995517	7	Included
CEA DIL 2PK - Atellica IM - CONS - 2 x 5 mL	10995525	7	Included
CHIV QC KIT - Atellica IM - CTL - 5 x 14 mL	10995528	4	Included
Cleaner - Atellica IM - CONS - 2 x 1.5L	11098502	63	Included
Fol DIL 2PK - Atellica IM - CONS - 2 x 10 mL	10995574	7	Included
Fol DTT/REL KIT - Atellica IM - CONS - 600 Tests	10995576	28	Included
HBcT QC KIT - Atellica IM - CTL - 2 x 2 x 7 ml	10995598	2	Included
Humidity Pack - AIM - CONS - 5pack	11313505	4	Included
Insulin CAL 2PK - Atellica IM - CAL - 2 x 2 x 1 mL	10995629	7	Included
Insulin DIL 2PK - Atellica IM - CONS - 2 x 10 mL	10995630	7	Included
Multi-Diluent 1 2PK - Atellica IM - CONS - 2 x 25 mL	10995637	7	Included
Multi-Diluent 13 2PK - Atellica IM - CONS - 2 x 10 mL	10995643	7	Included
Multi-Diluent 2 2PK - Atellica IM - CONS - 2 x 10 ml	10995644	58	Included
Multi-Diluent 3 2PK - Atellica IM - CONS - 2 x 5 mL	10995645	7	Included
PCT (Brahms) QC KIT - Atellica IM - CTL - 2 x 2 x 2 ml	11202700	11	Included
PTH QC KIT - Atellica IM - CTL - 3 x 2 x 1 ml	10995626	9	Included
PW3 KIT - Atellica IM - CONS - 1 x 50 ml	10995666	4	Included
Rub G QC KIT - Atellica IM - CTL - 3 x 2 x 2,7 ml	10995671	3	Included
Syph QC KIT - Atellica IM - CTL - 2 x 2 x 7 ml	10995676	4	Included
VitD DIL 2PK - Atellica IM - CONS - 2 x 25 mL	10995721	7	Included
VitD QC KIT - Atellica IM - CTL - 2 x 3 x 2 ml	10995724	5	Included
Wash 1 - Atellica IM - CONS - 1 x 3000 ml	11098501	230	Included
aHAVM QC KIT - Atellica IM - CTL - 2 x 2 x 7 ml	10995445	2	Included



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
 Customer Name: KERN COUNTY HOSPITAL AUTHORITY
 Product Line: Atellica Solution Components

Purchasing Group: HEALTHTRUST
 PURCHASING GROUP
 Sold to #: 7265

Equipment Information - Atellica Solution

<u>Components</u>	Part #	Onsite	Quantity	Comments
Atellica Sample Handler Prime	11069001	N	1	
UPS 208V 3KVA	11348908	N	2	
EXTENDED BATTERY FOR UPS 208V 3KVA	11348909	N	2	
SEISMIC MOUNTING KIT FOR UPS 3KVA	11348947	N	2	
2 IN BARCODE PRINTER AND RIBBON KIT	11480807	N	1	

<u>Service</u>	Service Level	Quantity	Start Year	# of Years	Comments
Extended Service	APELLICA SH 2-7YR GUARDIAN PRGM	1	1	2	Included
Warranty Service	APELLICA SMPL HANDLER PLUS WARRANTY	1	1	2	Included
Warranty Service	Atellica Solution UPS & EBM Service Warranty	1	1	2	Included
Warranty Service	Atellica Solution UPS & EBM Service Warranty	1	1	2	Included

<u>Training</u>	Total Training	Training Site	Air Paid By	Comments
Included Atellica Sol Educ GROW SH CH IM 3KeyOp 3Adv 9GenOp	1	Siemens	Siemens	Included

Products: Supplies - Atellica Solution

<u>Components</u>	Part #	Annual # of Kits	Total Annual
LABEL BARCODE 2INX1IN ROLL	11481335	1	Included
Tube Top Sample Cup 1ml - Atellica Solution Components - CONS - 1000 cups/bag	11069061	1	Included



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
Customer Name: KERN COUNTY HOSPITAL AUTHORITY
Product Line: Centaur

Purchasing Group: HEALTHTRUST
PURCHASING GROUP
Sold to #: 7265

Products: Supplies - Centaur

	Part #	Annual # of Kits	Total Annual
Cuvettes - CENTAUR - CONS - 3000 Pieces	10309546	60	Included
Sample Tips - CENTAUR - CONS - 6480 Pieces	10309547	25	Included



Legal Name: KERN COUNTY HOSPITAL AUTHORITY
 Customer Name: KERN COUNTY HOSPITAL AUTHORITY
 Product Line: IT

Purchasing Group: HEALTHTRUST PURCHASING GROUP
 Sold to #: 7265

<u>Equipment Information - IT</u>	Part #	Onsite	Quantity	Comments
ADM SW v1.2 INSTALL KIT	11314239	Y	1	
Client User Interface SW License	10318091	N	1	
Atellica Connectivity Manager - ACC	11274691	N	1	
POWER SUPPLY UNINTERRUPTIBLE	11273715	N	1	


<u>Service</u>	Service Level	Quantity	Start Year	# of Years	Comments
Warranty Service	ADVIA CENTRALINK PLUS WARRANTY	1	1	1	Included

<u>Training</u>	Total Training	Training Site	Air Paid By	Comments
CentraLink_ClassTraining	1	Siemens	Siemens	Included

Prices for Reagents and Supplies not listed above will be according to the tier pricing in effect at the time of shipment.


Prices for Reagents and Supplies not yet commercially available will be determined at the time of introduction and are not covered by this Agreement.

Customer – HealthTrust Member Facility:

By:  By: _____
 (Authorized Signature Authority by Facility) (Facility Department Director)

Name (print): Scott Thygerson Name (print): _____
 Title: Chief Executive Officer Title: _____
 Date: March 31, 2022 Date: _____

Siemens Healthcare Diagnostics Inc.:

By: 
 Name (print): Donelson Digitally signed by Donelson
 Title: Dominique
 Date: Dominique Date: 2022.03.31
 15:17:53 -04'00'
 Address: 511 Benedict Ave, Tarrytown, NY 10591

By signing this document, signor certifies that no modifications or additions have been made to the Agreement or any Supplements or Amendments thereto. Any such modifications or additions will be void.

REVIEWED ONLY
 NOT APPROVED AS TO FORM

By: 
 Legal Services Department



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

April 20, 2022

SUBJECT: Proposed retroactive Lease Agreement with First American Commercial Bancorp, Inc.

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the Lease Agreement with First American Commercial Bancorp, Inc. for the financing of the Atellica Solution Immunoassay and Clinical Chemistry Analyzer for utilization within Kern Medical's clinical laboratory. This equipment will increase Kern Medical's capacity for chemistry testing which is crucial to a new initiative undertaken in partnership with Kern County Public to increase HIV and STI testing.

This program is funded through a grant, however in order to comply with the grant requirements for funding, a lease of the equipment was required. This Lease Agreement is being brought to your Board for retroactive approval as Kern Medical was able to obtain additional discounts by executing the agreement for the purchase of the equipment on or before March 31, 2022.

The term of the Lease Agreement is five years, effective March 31, 2022, with a total maximum payable not to exceed \$186,000.

The Lease Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) the inability to terminate without cause; and (2) a requirement that Kern Medical indemnify First American Commercial Bancorp, Inc. for losses caused by, or defects in, the equipment. Efforts were made to negotiate these nonstandard terms to no avail. The equipment 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 Lease Agreement, despite the nonstandard terms.

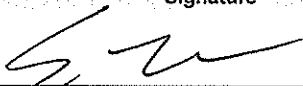
Therefore, it is recommended that your Board retroactively approve the Lease Agreement with First American Commercial Bancorp, Inc., effective March 31, 2022, with a maximum payable not to exceed \$186,000 for the five-year term, and authorize the Chief Executive Officer to sign.



CERTIFICATE OF INCUMBENCY AND AUTHORITY (Corporation or LLC)

I, the undersigned certifying representative ("Certifying Representative") of KERN COUNTY HOSPITAL AUTHORITY ("Company"), do hereby certify that:

1. I, the Certifying Representative, am the duly elected, appointed and/or qualified and acting representative of the Company and have the title set forth below my signature (usually Secretary or Assistant Secretary of Company), and that I have access to the organizational records of the Company.
2. Set forth below is the name and true signature or electronic authentication of an individual (the "Authorized Representative") that I know to be the duly elected (or appointed), qualified and acting officer, manager, member or representative of the Company, with the title set forth opposite his or her respective name.
3. The Authorized Representative has the requisite power and authority pursuant to the Company's organizational documents to bind the Company to, and sign on behalf of the Company, any and all agreements, including, but not limited to, leases, loans, finance agreements, guaranties, mortgages and/or collateral pledges (each an "Authorized Transaction"), with FIRST AMERICAN COMMERCIAL BANCORP, INC. ("First American") and the written signature or electronic authentication opposite the Authorized Representative's name is such Authorized Representative's genuine signature or electronic authentication, as applicable. Until First American receives notice in writing of any change or limitation of the authority of the Authorized Representative of this Company designated in this Certificate, First American is authorized to rely upon the authority and power of such designated Authorized Representative to bind the Company in connection with Authorized Transactions as set forth in this Certificate.
4. All previous acts of, and all documents and papers heretofore executed and delivered by, any Authorized Representative in connection with any Authorized Transaction are ratified, confirmed and approved as the act or acts of the Company.

Title	Legal Name of Authorized Representative	Signature
Chief Executive Officer	Scott Thygerson	

To help the government fight the funding of terrorism and money laundering, federal law requires all financial institutions to obtain, verify, and record information that identifies each client. Federal Know Your Client (KYC) requirements and First American policy may require identification of each Authorized Representative for an account. To identify the Authorized Representative, we may ask for the legal name, address, date of birth, driver's license, passport and other relevant identifying documentation or information of the Authorized Representative(s).

IN WITNESS WHEREOF, the undersigned Certifying Representative has executed this Certificate as of March 30, 2022.

Title	Name	Certifying Representative's Signature

**** When preparing this Certificate, please note: (1) The Certifying Representative cannot also be an Authorized Representative for purposes of this Certificate; and (2) the Certifying Representative confirms that a separate person, each Authorized Representative, is authorized to execute binding agreements on behalf of Company with First American.**



ADDITIONAL CUSTOMER INFORMATION

To: FIRST AMERICAN COMMERCIAL BANCORP, INC. and/or its assigns ("First American")
 From: KERN COUNTY HOSPITAL AUTHORITY ("Customer")

Property Insurance Information:

Insurance Company: Prism	Agent's Name: Blaine Trunnell
Agent's Telephone #: 415-403-1476	Agent's E-mail: btrunnell@alliant.com

FIRST AMERICAN COMMERCIAL BANCORP, INC. and/or its assigns shall be named as lenders loss payee under casualty coverage.

Liability Insurance Information:

If the same as the property insurance information above, please check here

Insurance Company: Professional Security Insurance Company	Agent's Name: Blaine Trunnell
Agent's Telephone #: 415-403-1476	Agent's E-mail: btrunnell@alliant.com

FIRST AMERICAN COMMERCIAL BANCORP, INC. and its assigns shall be named as an additional insured under liability coverage.

Accounts Payable Information: INVOICES WILL BE E-MAILED TO THE CONTACT(S) BELOW:

Contact Name: Han Nguyen	Contact Name:
Telephone: 661-862-4133	Telephone:
E-mail Address: han.nguyen@kernmedical.com	E-mail Address: accountspayable@kernmedical.com

Automatic Payment Authorization (ACH):

Bank Name: PNC Bank	Account Name: Kern County Hospital Authority
Account Number: 1069955977	ABA (Routing) #: 043000096
Bank Address: PNC Financial Services Group, 300 Fifth Street, Pittsburgh, PA 15222	

Reference: Applicable First American Agreement Number: 20220340-SF01

Customer hereby authorizes First American to initiate debit entries in the bank account identified above for all of the amounts now or hereafter due and owing under any lease, loan, installment payment, usage and/or other financing agreement by and between Customer and First American, now existing or hereafter arising (collectively, the "Finance Contract"), and in case of a default, the full amount due under the Finance Contract. Customer represents and warrants to First American that the above account is a commercial account established in connection with Customer's business and not for personal, family, or household purposes. Customer remains responsible for making payments to First American if the funds are not available or cannot be automatically debited from Customer's bank account. **THIS AUTHORIZATION WILL REMAIN IN FULL FORCE AND EFFECT UNTIL CUSTOMER PROVIDES NOT LESS THAN TWENTY (20) DAYS PRIOR WRITTEN NOTICE OF ITS TERMINATION TO FIRST AMERICAN.**

Authorized By Customer: KERN COUNTY HOSPITAL AUTHORITY
By:
Name: Scott Thygerson
Title: Chief Executive Officer

LEASE AGREEMENT

FIRST AMERICAN COMMERCIAL BANCORP, INC. 211 High Point Drive • Victor, NY • 14564				LEASE AGREEMENT NO.: 20220340-SF01	
Lessee: KERN COUNTY HOSPITAL AUTHORITY			Tax ID #: 47-5618278		
Street: 1700 Mount Vernon Avenue	City: Bakersfield	State: CA	County: Kern	Postal Code: 93306	

General Equipment Description (see Exhibit A): Siemens Atellica IM 1300 Analyzer including Related Parts and Accessories					
Equipment Location: KERN COUNTY HOSPITAL AUTHORITY		Address: 1700 Mount Vernon Avenue		City: Bakersfield	State: Zip: CA 93306

Base Lease Term	Purchase Option	Monthly Rental Payment
60 Months	() Fair Market Value (X) \$1.00 () See attached End of Lease Addendum	\$3,472.00, plus applicable taxes
Non-refundable Advance Lease Payment \$3,472.00, plus applicable taxes	**The Non-refundable Advance Lease Payment is due and payable upon Lessee's execution of this Lease and will be applied on the Acceptance Date to the last Lease Payment, with any balance applied to the remaining Lease Payments in inverse order, starting with the last Lease Payment.	Tax-exempt number (if applicable, please attach certificate): # _____

TERMS AND CONDITIONS

Throughout this agreement the words "Lessor," "We," "Our," and "Us" refer to FIRST AMERICAN COMMERCIAL BANCORP, INC. The words "You" and "Your" refer to the Lessee indicated above. You agree to lease the Equipment described above or in a schedule attached hereto ("Equipment") and agree to the terms and conditions of this Lease Agreement ("Lease").

1. **LEASE PAYMENTS AND TERM:** You agree to pay us the Lease Payments in advance of each month (or other payment period) during the Term. We may adjust the Lease Payments upward or downward by no more than 15% if the invoiced costs of the Equipment are different than the estimated amount we used to calculate the Lease Payments shown above. Your obligation to pay the Lease Payments and all other obligations herein are absolute, unconditional and non-cancellable and are not subject to any cancellation, termination, abatement, set-off, defense or counterclaim for any reason whatsoever. The Lease shall be binding and enforceable on you upon your execution thereof. The term of the Lease shall commence on the date you accept the Equipment ("Acceptance Date"). The first Lease Payment shall be due on the first of the month following the Acceptance Date ("Base Term Commencement Date"), as set forth in our invoice and the remaining Lease Payments will be due on the same day of each subsequent period until paid in full. The Base Term Commencement Date shall be the start of the Base Term of the Lease as set forth above. In addition, we will charge you a prorated portion of one Lease Payment for the period from the Acceptance Date until the day preceding the Base Term Commencement Date ("Interim Rent"). Interim Rent shall be due and payable as invoiced.
2. **DELIVERY, INSTALLATION AND ACCEPTANCE:** You are responsible for arranging delivery and installation of the Equipment. Unless you notify us otherwise in writing within 10 days of installation, you unconditionally accept the Equipment. We may require you to provide us a signed delivery and acceptance certificate. You authorize us to fill in the Acceptance Date, due dates, serial numbers, vehicle identification numbers and other information which becomes available to us during the term of the Lease.
3. **EQUIPMENT LOCATION USE AND REPAIR:** You will maintain and use the Equipment only at the location shown above. You agree that the Equipment cannot be moved from that location without our advance written approval. You are responsible for maintaining the Equipment in good repair, condition, and in proper working order, except for normal wear and tear.
4. **INDEMNIFICATION:** As between you and us, you are responsible for and agree to indemnify, defend and hold us harmless from and against any losses, damages, penalties, claims, suits, including attorneys' fees and expenses, and actions, whether based on a theory of strict liability or otherwise caused by or related to the ordering, manufacture, installation, ownership, use, lease, possession, delivery or return of the Equipment or any defects in the Equipment or any Stored Data.

5. **LEASE EXPIRATION AND RENEWAL:** Unless you notify us in writing at least 90 days prior to the expiration of the Base Term, or any renewal term, of your intention to return the Equipment to us or to exercise the purchase option (other than a \$1.00 purchase option, if applicable) indicated above, this Lease will automatically renew for successive 90 day periods at the same monthly Lease Payment amount until you either exercise the purchase option or provide us with the required notice and return the Equipment to us in the required condition. If you exercise a purchase option we will convey all of our right, title and interest in such Equipment to you on an AS-IS WHERE IS basis without representation or warranty. If the Fair Market Value Purchase Option has been selected, we will use our reasonable judgment to determine the Equipment's in use and in place fair market value. If you elect to return the Equipment to us, it must be returned in the condition required by Section 3 to the location that we designate within 90 days of your providing notice of return. When returned, all data and other information stored on media storage devices ("Stored Data") shall have been securely overwritten and destroyed beyond recovery using wiping techniques (such process being referred to as "Data Erasure"). If Data Erasure is not technically feasible, you may remove and destroy the applicable media devices, and in such event the media devices shall be deemed to have suffered a casualty and shall be subject to the provisions of Section 8 hereof. If you do not perform the Data Erasure, you shall so notify us, and we, may, but shall not be obligated, to arrange for the Data Erasure to be performed at your sole risk and expense. **WE MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO DATA ERASURE.** Your obligation to pay rent will continue until the Equipment is returned to our designated return location in the required condition. You are responsible for all expenses incurred in returning the Equipment to us and agree to pay us a Restocking Fee equal to one additional Lease Payment if the Equipment is returned for any reason.
6. **LATE FEES:** If any amount payable to us is not paid within five (5) days of when due, you agree to pay us a late charge equal to the greater of: (a) 7% of the amount which is late, or (b) the maximum legal amount. Amounts which are not paid within 30 days of when due shall accrue interest at 1.5% per month (or such lesser rate as is the maximum rate allowable under applicable law) from such 30th day until paid in full.
7. **NO WARRANTY:** The Equipment is being leased to you "as is". You acknowledge that we do not manufacture the Equipment and that you have selected the Equipment and the supplier based on your own judgment. **WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE EQUIPMENT. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. WE ARE NOT LIABLE FOR ANY LOSS OR INJURY TO YOU OR TO ANY THIRD PERSON OR PROPERTY, INCLUDING DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL AND SPECIAL DAMAGES CAUSED BY THE USE, OWNERSHIP, LEASE OR POSSESSION OF THE EQUIPMENT.** You agree to continue making Lease Payments to us, regardless of any claims

you may have against the manufacturer or supplier. We transfer to you for the term of this Lease any warranties made by the manufacturer or the supplier. No representation or warranty by the manufacturer or supplier is binding on us nor shall breach of such warranty relieve you of your obligation to us as provided herein.

8. INSURANCE RISK OF LOSS: From the time the Equipment is ordered until it is returned in the required condition or purchased by you ("Risk Period"), you are responsible for all risk of loss or damage to the Equipment. During the Risk Period, you will procure and maintain at your expense, property insurance for the full replacement value of the Equipment, and commercial liability insurance in an amount acceptable to us, covering any personal injury, death or third-party property damage arising out of or relating to the use or operation of the Equipment. You will provide us evidence of such insurance when requested, naming us as loss payee and as an additional insured, with a lender's loss payable endorsement. If you fail to timely provide proof of such insurance, we have the option, but not the obligation, to secure insurance from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium(s) which may be higher than the premium(s) you would pay if you obtained the required insurance, and which may result in a profit to us. If no Default has occurred and remains uncured at the time of loss, any insurance proceeds received will be applied, at our option, to repair or replace the Equipment, or to pay us the balance of your obligations hereunder.

9. OWNERSHIP, TAXES AND UCC'S: We are the owner of the Equipment and hold title to the Equipment (excluding items of Equipment which are licensed software and products). You will pay, when due, all taxes, fines and penalties relating to the purchase, use, leasing and/or ownership of the Equipment under this Lease. The Lease Payments and Purchase Option amounts shown above do not include any applicable taxes. We will include any applicable taxes and fees in our invoice to you. You agree to pay the tax and fees in addition to your Lease Payments. For administrative purposes, unless otherwise directed by us in writing, you will list Lessee as the owner of the Equipment for property tax purposes and file and pay when due any and all property taxes relating to the Equipment directly to the taxing authority and if requested provide us with evidence of such compliance. If we pay any taxes, fees or penalties on your behalf, you will pay us on demand the amount we have paid on your behalf plus an administrative fee. You authorize us to sign and record Uniform Commercial Code ("UCC") financing statements and other documents we deem necessary to confirm our interest in the Equipment. As a precaution in case this transaction is deemed to be a lease intended for security, you grant us a first priority security interest in the Equipment (including any and all replacements, substitutions, additions, attachments and proceeds).

10. DEFAULT: If: (i) you or any guarantor do not pay the monthly Lease Payment or any other amount payable to us within ten (10) days of its due date, or (ii) breach any of the terms or conditions of this Lease, any guaranty or any license relating to the Equipment, or (iii) you or any guarantor becomes the subject of an insolvency proceeding, undergoes a change of control, ceases to exist or suffers a material adverse change in your financial condition or operations, then you will be in default of this Lease and any other agreement you may have entered into with us or any of our affiliates. If you default, we may require you to do any combination of the following: (a) immediately pay all amounts then due, plus the present value of the remaining Lease Payments, Interim Rent

and residual value of the Equipment, as determined by us, discounted at 2% per annum; (b) promptly return all of the Equipment; (c) allow us to peaceably repossess the Equipment and cause any Stored Data on the Equipment to be removed by Data Erasure at Customer's expense; or (d) use any and all remedies available to us under the Uniform Commercial Code or any other applicable law. You agree to pay the cost of all remedies and our reasonable attorneys' fees and costs associated with any action we may take in the event of your default. You agree that any delay or failure to enforce our rights under this Lease does not prevent us from enforcing any such rights at a later time. All of our rights and indemnities will survive the termination of this Lease.

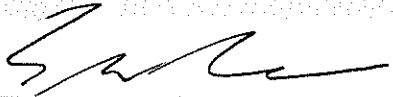
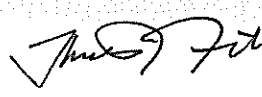
11. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS LEASE. We may sell, assign or transfer this Lease or our rights in the Equipment without notice to you. If we sell, assign or transfer this Lease, our assignee will have the same rights and benefits we have now, but the assignee will not assume any obligation we may have to you hereunder (we retain any such obligations). Your obligation to pay all Lease Payments and other amounts becoming due hereunder to such assignee shall be absolute, unconditional, not subject to any claim, defense or setoff that you may now or hereafter have against us.

12. ARTICLE 2A RIGHTS AND REMEDIES: You agree that this Lease is a "finance lease" as that term is defined in Article 2A of the UCC. You hereby agree to waive any and all rights and remedies granted to you by sections 2A-508 through 2A-522 of the UCC. By signing this Lease, you agree that either (a) you have reviewed, approved, and received, a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you may have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights.

13. CHOICE OF LAW: THIS LEASE WILL BE GOVERNED BY, ENFORCED IN AND INTERPRETED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS. YOU CONSENT TO JURISDICTION IN THE STATE OR FEDERAL COURTS IN COOK COUNTY ILLINOIS. YOU AND WE EACH EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

14. ENTIRE AGREEMENT: This Lease constitutes the entire agreement between the parties concerning the subject matter hereof and incorporates all representations made in connection therewith. The terms hereof may not be terminated, amended, supplemented or modified orally, but only in writing signed by you and us. A photocopy, printed electronic image or facsimile of this Lease and/or any related document that includes copies of the signatures of the parties hereto shall be legally admissible under the "best evidence" or other similar rule of evidence and shall be treated as an original document and proof of the agreement between the parties.

15. CREDIT INFORMATION. Upon our request, you agree to provide us with your annual and interim financial statements and/or tax returns. You authorize us or any of our affiliates to obtain credit bureau reports, and make other credit inquiries that we determine are necessary. On your written request, we will inform you whether we have requested a consumer credit report and the name and address of any consumer credit reporting agency that furnished a report. You acknowledge that without further notice we may use or request additional credit bureau reports to update our information so long as your obligations to us are outstanding.

Accepted By Lessee: KERN COUNTY HOSPITAL AUTHORITY		Accepted By: FIRST AMERICAN COMMERCIAL BANCORP, INC.	
By: 		By: 	
Name: Scott Thygerson		Name: Thomas Flint	
Title: Chief Executive Officer	Date: March 30, 2022	Title: Senior Vice President	Date: March 31, 2022



FISCAL FUNDING ADDENDUM To Lease Agreement No. 20220340-SF01

This Fiscal Funding Addendum ("Addendum") is issued pursuant to and incorporating the terms of Lease Agreement No. 20220340-SF01, dated March 31, 2022 (the "Lease") by and between KERN COUNTY HOSPITAL AUTHORITY ("Lessee") and FIRST AMERICAN COMMERCIAL BANCORP, INC. ("Lessor"). Capitalized terms used in this Addendum without definition shall have the meanings set forth in the Lease, unless the context hereof otherwise specifically requires. This Addendum is to be construed as supplemental to, and part of, the Lease. In the event of any inconsistency between the Lease and this Addendum, the terms and provisions of this Addendum shall prevail. Notwithstanding the terms and conditions contained in the Lease, and to the limited extent hereof, the parties agree as follows:

1. **Lease Term.** The term of this Lease will begin on the date that Lessee signs a Delivery and Acceptance Certificate and will continue for the Lease Term specified in this Lease, unless otherwise terminated as set forth in Section 3 below.

2. **Funding Intent.** Lessee reasonably believes that funds can be obtained sufficient to make all Rental Payments and other payments during the Lease Term. Lessee covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Rental Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. If Lessee's governing body chooses not to appropriate funds for such Rental Payments, Lessee agrees that its governing body will evidence such non-appropriation by omitting funds for such payments due during the applicable fiscal period from the budget that it adopts. Lessee and Lessor agree that Lessee's obligation to make Rental Payments under the Lease will be Lessee's current expense and will not be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. Nothing contained in the Lease will be interpreted as a pledge of Lessee's general tax revenues, funds or moneys.


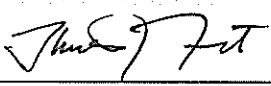
3. **Non-appropriation of Funds.** Provided no Event of Default has occurred and remains uncured, if: (a) sufficient funds are not appropriated and budgeted and are otherwise not available to Lessee's governing body in any fiscal period for the Rental Payments; and (b) Lessee has exhausted all funds legally available for such payments due under the Lease (a "Non-appropriation Event"), then Lessee will give Lessor not less than sixty (60) days prior written notice ("Termination Notice") and the Lease will terminate as of the last day of Lessee's fiscal period for which funds for Rental Payments are available ("Termination Date"). Such termination is without any expense or penalty, except for the portions of the Rental Payments and those expenses associated with the return of the Equipment in accordance with the Lease for which funds have been budgeted or appropriated or are otherwise legally available. Lessee shall (i) on or before the Termination Date, return the Equipment in accordance with the return requirements set forth in the Lease, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Lessor, upon request by Lessor, an opinion of Lessee's counsel (addressed to Lessor) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Lessor all sums payable to Lessor under the Lease up to and including the Termination Date. Lessee acknowledges and agrees that, in the event of the termination of the Lease and the return of the Equipment as provided for herein, Lessee shall have no interest whatsoever in the Equipment or proceeds thereof and Lessor shall be entitled to retain for its own account the proceeds resulting from any disposition or re-leasing of the Equipment along with any advance rentals, security deposits or other sums previously paid by Lessee pursuant to the terms of the Lease.

4. **Authority and Authorization.** Lessee represents and agrees that: (a) Lessee is a provincial or a political subdivision or agency of a province; (b) the entering into and performance of the Lease is authorized under the provincial laws and Constitution applicable to Lessee and does not violate or contradict any judgment, law, order, or regulation, or cause any default under any agreement to which Lessee is party; (c) Lessee has complied with all bidding requirements and, where necessary, has properly presented the Lease for approval and adoption as a valid obligation on Lessee's part; and (d) Lessee has sufficient appropriated funds or other moneys available to pay all amounts due under the Lease for Lessee's current fiscal period. Upon Lessor's request, Lessee agrees to provide Lessor with an opinion of counsel as to clauses (a) through (d) above, an incumbency certificate, and other documents that Lessor may request, with all such documents being in a form satisfactory to Lessor.

5. **Government Use.** Lessee represents and covenants that the use of the Equipment is essential for Lessee's proper, efficient and economic operation, Lessee will be the only entity to use the Equipment during the term of the Lease and Lessee will use the Equipment only for governmental purposes. Upon Lessor's request, Lessee will provide Lessor with an essential use letter in a form satisfactory to Lessor.

Except as specifically modified by this Addendum, all terms and conditions contained in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto, by their authorized signatories, have executed this Addendum at the date set forth below their respective signatures.

Accepted By Lessee: KERN COUNTY HOSPITAL AUTHORITY		Accepted By Lessor: FIRST AMERICAN COMMERCIAL BANCORP, INC.	
By: 		By: 	
Name: Scott Thygeson		Name: Thomas Flint	
Title: Chief Executive Officer	Date: March 30, 2022	Title: Senior Vice President	Date: March 31, 2022



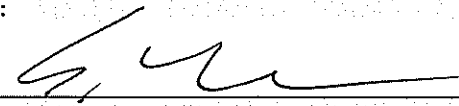
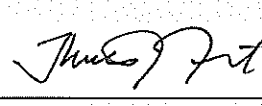
LEASE AGREEMENT ADDENDUM

This Addendum is supplemental to and made a part of the Lease Agreement No. 20220340-SF01 dated March 31, 2022 (the "Lease") by and between KERN COUNTY HOSPITAL AUTHORITY ("Lessee") and FIRST AMERICAN COMMERCIAL BANCORP, INC. ("Lessor").

Capitalized terms used in this Addendum without definition shall have the meanings set forth in the Lease, unless the context hereof otherwise specifically requires. This Addendum is to be construed as supplemental to, and part of, the Lease. In the event of any inconsistency between the Lease and this Addendum, the terms and provisions of this Addendum shall prevail. Notwithstanding the terms and conditions contained in the Lease, and to the limited extent hereof, the parties agree as follows:

1. **SECTION 1: LEASE PAYMENTS AND TERM.**
 The second sentence of Section 1 is hereby deleted: ~~"We may adjust the Lease Payments upward or downward by no more than 15% if the invoiced costs of the Equipment are different than the estimated amount we used to calculate the Lease Payments shown above."~~
2. **SECTION 5: LEASE EXPIRATION AND RENEWAL**
 Section 5 is hereby amended as follows: ~~"Unless you notify us in writing at least 90 days prior to the expiration of the Base Term, or any renewal term, of your intention to return the Equipment to us or to exercise the purchase option (other than a \$1.00 purchase option, if applicable) indicated above, this Lease will automatically renew for successive 90-day periods at the same monthly Lease Payment amount until you either exercise the purchase option or provide us with the required notice and return the Equipment to us in the required condition-~~ If you exercise a purchase option we will convey all of our right, title and interest in such Equipment to you on an AS-IS WHERE IS basis without representation or warranty. If the Fair Market Value Purchase Option has been selected, we will use our reasonable judgment to determine the Equipment's in use and in place fair market value. If you elect to return the Equipment to us, it must be returned in the condition required by Section 3 to the location that we designate within 90 days of your providing notice of return. When returned, all data and other information stored on media storage devices ("**Stored Data**") shall have been securely overwritten and destroyed beyond recovery using wiping techniques (such process being referred to as "**Data Erasure**"). If Data Erasure is not technically feasible, you may remove and destroy the applicable media devices, and in such event the media devices shall be deemed to have suffered a casualty and shall be subject to the provisions of Section 8 hereof. If you do not perform the Data Erasure, you shall so notify us, and we, may, but shall not be obligated, to arrange for the Data Erasure to be performed at your sole risk and expense. **WE MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO DATA ERASURE.** Your obligation to pay rent will continue until the Equipment is returned to our designated return location in the required condition. You are responsible for all expenses incurred in returning the Equipment to us and agree to pay us a Restocking Fee equal to one additional Lease Payment if the Equipment is returned for any reason."
3. **SECTION 6: LATE FEES**
 Section 6 is hereby amended as follows: ~~"If any amount payable to us is not paid within five (5) days of when due, you agree to pay us a late charge equal to the greater of: (a) 7% of the amount which is late, or (b) the maximum legal amount. Amounts which are not paid within 30 days of when due shall accrue interest at 1.5% per month (or such lesser rate as is the maximum rate allowable under applicable law) from such 30th day until paid in full. Any amount payable to Lessor not paid within five (5) days of when due shall accrue interest at 1.5% per month (or such lesser rate as is the maximum rate allowable under the applicable law) from such 5th day until paid in full."~~
4. **SECTION 13: CHOICE OF LAW**
 Section 13 is hereby amended as follows: **"THIS LEASE WILL BE GOVERNED BY, ENFORCED IN AND INTERPRETED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS/CALIFORNIA. YOU CONSENT TO JURISDICTION IN THE STATE OR FEDERAL COURTS IN COOK COUNTY/ILLINOIS CALIFORNIA. YOU AND WE EACH EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY."**

IN WITNESS WHEREOF the parties hereto, by their authorized signatories, have executed this Addendum at the date set forth below their respective signatures.

Accepted By Lessee: KERN COUNTY HOSPITAL AUTHORITY	Accepted By Lessor: FIRST AMERICAN COMMERCIAL BANCORP, INC.
By: 	By: 
Name: Scott Thygerson	Name: Thomas Flint
Title: Chief Executive Officer	Title: Senior Vice President
Date: March 30, 2022	Date: March 31, 2022



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

April 20, 2022

SUBJECT: Proposed Amendment No. 3 to Agreement 53119 with Rajinder P. Singh, M.D., an independent contractor, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 3 to the Agreement with Rajinder P. Singh, M.D., for professional medical services in the Department of Radiology. Dr. Singh provides radiology reading services on an as-needed basis in the Department.

Dr. Singh has provided radiology services at Kern Medical as an independent contractor since 2013. Kern Medical continues to require the services of Dr. Singh to provide scheduled and as-needed coverage in the Department. Due to staffing needs within the Department, Dr. Singh has increased the number of shifts worked and as such, we are requesting your Board's approval to increase the maximum payable under the Agreement by \$350,000, from \$750,000 to \$1,100,000, to cover the three-year term of the Agreement.

Therefore, it is recommended that your Board approve the proposed Amendment No. 3 with Rajinder P. Singh, M.D., for professional medical services in the Department of Radiology, in an amount not to exceed \$1,100,000, and authorize the Chairman to sign.

**AMENDMENT NO. 3
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Rajinder P. Singh, M.D.)**

This Amendment No. 3 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 Rajinder P. Singh, M.D., a sole proprietor (“Contractor”), whose principal place of business is located at P.O. Box 25021, Fresno, California 93729-5021.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #53119, dated November 6, 2019), Amendment No. 1 (Agt. #56320, dated October 21, 2020), and Amendment No. 2 (Agt. #55221, dated November 30, 2021) (“Agreement”), for the period October 7, 2019 through October 6, 2022, for 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 April 20, 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 4, Payment for Services, paragraph 4.2, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$1,100,000 over the three-year term of this Agreement.”

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 taken together shall constitute one and the same instrument.

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

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 3 as of the day and year first written above.

CONTRACTOR

By _____
Rajinder P. Singh, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Chief Executive Officer

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

Amend3.Singh.040722



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

April 20, 2022

Subject: Proposed Amendment No. 1 to Agreement 038-2020 for Professional Services with Katayoun Sabetian, M.D., Inc.

Recommended Action: Approve, Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 1 to the Agreement for Professional Services with Katayoun Sabetian, M.D., Inc., for professional medical services in the Department of Medicine. Dr. Sabetian is board certified in neurology by the American Board of Psychiatry and Neurology. She has provided services at Kern Medical since 1997 and is a valued member of the core faculty.

In addition to her clinical duties, which include services as Medical Director of the Stroke Program, Dr. Sabetian assists in the training of resident physicians and medical students. The proposed Amendment extends the term of the Agreement for an additional two years from September 1, 2022 through August 31, 2024, and includes the addition of a Clerkship Director stipend of \$100 per hour not to exceed 16 hours per month. The maximum payable under the Agreement increases by \$660,000, from \$610,000 to \$1,270,000, to cover the extended term and the addition of the Clerkship Director stipend.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 038-2020 for Professional Services with Katayoun Sabetian, M.D., Inc., for professional medical services in the Department of Medicine, extending the term for two years from September 1, 2022 through August 31, 2024, in an amount not to exceed \$1,270,000, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Katayoun Sabetian, M.D., Inc.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Katayoun Sabetian, M.D., Inc., a California professional medical corporation (“Contractor”), with its principal place of business located at 2323 16th Street, Suite 206, Bakersfield, California 93301.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #038-2020, dated August 19, 2020) (“Agreement”), for the period September 1, 2020 through August 31, 2022, for professional medical services in the Department of Medicine at KMC; and

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

(c) The Agreement is amended effective April 20, 2022;

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

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

“1. **Term.** This Agreement shall be effective and the term shall commence as of September 1, 2020 (the “Effective Date”), and shall end August 31, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4, Payment for Services, paragraph 4.1, Compensation, subparagraph 4.1.5, Clerkship Director Stipend, shall be made part of the Agreement as follows:

“4.1.5 Clerkship Director Stipend. Authority shall pay Contractor an hourly rate of \$100 per hour not to exceed sixteen (16) hours per month for services as Medical Student Clerkship Director for neurology services.”

3. Section 4, Payment for Services, paragraph 4.5, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.5 Maximum Payable. The maximum payable under this Agreement shall not exceed \$1,270,000 over the four (4) year term of this Agreement.”

4. Section 36, Termination, shall be deleted in its entirety and replaced with the following:

“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."

5. Exhibit "A," Description of Services, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit "A," Description of Services, attached hereto and incorporated herein by this reference.

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

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


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

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

[Signatures follow on next page]

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

KATAYOUN SABETIAN, M.D., INC.

By 

Katayoun Sabetian, M.D.
Its President

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.Sabetian.040622

**AMENDMENT NO. 1
TO
EXHIBIT "A"
DESCRIPTION OF SERVICES
Katayoun Sabetian, M.D., Inc.**

Position Summary:

1. Reports to Chair, Department of Medicine.
2. Serves as Medical Director of the stroke program.
3. Serves as a provider of neurology services.
4. Serves as Medical Student Clerkship Director for neurology services.

Clinical Responsibilities:

1. Provide neurology clinic coverage, rounds and consultations (excluding two Thursdays per month when Contractor is available for phone consultations only).
2. Provide interpretation of adult electroencephalograms, nerve conduction studies and electromyograms.
3. Provide supervision of residents, medical students and mid-level practitioners.
4. Provide electronic or telephonic consultation on an as-needed basis for problem cases.

Teaching Responsibilities:

1. Provide bedside teaching of residents and medical students.
2. Provide didactic lectures three times per year, one hour each lecture, on clinic day.

Medical Director Responsibilities:

1. Work collaboratively with the stroke program Coordinator and other medical and clinical staff to maintain disease-specific accreditation as a primary stroke center through The Joint Commission.
2. Provide leadership and clinical oversight of the stroke program.
3. Provide leadership and support for the education and training of the medical and clinical staff involved in stroke care.
4. Provide leadership and support in the development of written care protocols and obtain approval of such protocols through appropriate KMC medical staff committees.
5. Provide oversight to coordinate performance improvement activities.
6. Lead and participate in multidisciplinary stroke committee meetings.
7. Participate in and support KMC academic programs that relate to stroke program teaching and research.
8. Participate in a leadership role at KMC and in the community.
9. Work to ensure excellent care through chart review, direct observation, and data analysis.

Medical Student Clerkship Director Responsibilities:

1. Coordinate activities in conjunction with the Department of Medicine Medical Student Clerkship Director and Designated Institutional Official.
2. Prepare and maintain syllabi/curricula including clerkship instructional materials, key contacts of faculty, residents, and coordinators, and rotation and call schedules.
3. Conduct faculty, resident, and medical student development.
4. Ensure an educational environment conducive to student experience, which includes, without limitation the following: student understanding of responsibilities and clerkship objectives; duty hour policy; meaningful and supervised patient care that meets criteria for patients' conditions and numbers; monitoring students' use of Patient Log; providing for direct observation of at least one History and Physical by a faculty member; providing ongoing faculty and resident feedback to students about clinical service; and appropriately advocating for students.
5. Ensure didactic lectures and case sessions for students occur; review and observe lectures for quality and consistency, including student evaluations.
6. Complete formative micro assessments of student performance when requested by the medical students.
7. Provide mid-clerkship formative evaluations of student performance.
8. Complete summative evaluations of student performance within 30 days of the conclusion of each clerkship.
9. Participate in faculty development as offered by KMC and David Geffen School of Medicine at UCLA.

[Intentionally left blank]



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

April 20, 2022

Subject: Proposed Terms and Conditions of Service with TrueLearn, LLC for the purchase of licenses to basic test preparation software to prepare residents and fellows for their PRITE and Board exams

Recommended Action: Approve; Authorize Chairman to Sign

Summary:

Kern Medical requests your Board approve the Proposed Terms and Conditions of Service with TrueLearn, LLC for the purchase of licenses to basic test preparation software to prepare residents and fellows for their PRITE and Board exams. The agreement is for a term of three years, with a total not to exceed of \$19,680.

TrueLearn, LLC provides residents and fellows with a question bank to prepare them for their annual In-Service Exams, in addition to their Board exam upon completion of their program. This subscription is for a term of three years, which allowed for a discount in price.

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel due to the absence of termination without cause language.

Even with this non-standard term, this subscription is very low risk and is needed for our education programs, therefore, it is recommended that your Board approve the proposed Terms and Conditions of Service with TrueLearn, LLC with a not-to-exceed amount of \$19,680, for a term of three (3) years, and authorize the Chairman to sign.

TRUELEARN, LLC
TERMS AND CONDITIONS OF SERVICE
3 YEAR SUBSCRIPTION

1. **ACCEPTANCE.** Until rescinded or modified in writing by TrueLearn, LLC this writing shall govern and control the provision to or for the benefit of any party receiving this writing ("Buyer") by TrueLearn, LLC and/or its subsidiaries ("TrueLearn") of test preparation and related services (collectively, the "Services") through TrueLearn's website at www.truelearn.com or any other website address from time to time used by TrueLearn to deliver Services (collectively with www.truelearn.com, the "Site") or by any other means of delivery. If this writing differs in any way from the terms and conditions of an order, proposed agreement, acceptance or other writing delivered by Buyer to TrueLearn or if this writing is construed as an acceptance or as a confirmation acting as an acceptance of any such writing, then TrueLearn's acceptance is **EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING** and this writing shall be deemed notice of objection to such terms and conditions of Buyer. To the extent this writing is construed as an offer or part of an offer, acceptance is **EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS** and Buyer's acceptance of or payment for any Services shall manifest Buyer's assent to these Terms and Conditions.
2. **GRANT OF LICENSE.** TrueLearn grants the number of licenses (the "User Licenses") indicated in any invoice, proposal, confirmation or other writing (in any case, the "Proposal") from TrueLearn to Buyer to individuals ("Student Users") enrolled at and designated by the Buyer, giving each Student User (and no other individual) access to the basic test preparation services (or such other level of services as expressly stated in the Proposal) generally offered by TrueLearn to similar student users as described from time to time on the Site or otherwise provided in writing to Buyer by TrueLearn. To the extent there is a conflict between these Terms and Conditions and the express provisions of a Proposal, the express provisions of the Proposal shall control. In addition to the User Licenses, at no extra charge, TrueLearn grants a reasonable number of employees or independent contractors of and designated by Buyer licenses ("Administrative Licenses") to the scores of Buyer's Student Users and to the analytic and preparation tools TrueLearn generally provides in the ordinary course of its business to administrators of its institutional customers purchasing a similar number of licenses. The Services subject to User Licenses and Administrative Licenses (collectively, "Licenses") shall include improvements to those Services made generally available by TrueLearn to licensees of the Services under licenses substantially similar to the User Licenses. The Licenses are, in addition to these Terms and Conditions, subject to the Terms of Use ("Standard Terms") and Privacy Policy (the "Privacy Policy") that are available on the Site, as the Standard Terms and Privacy Policy may be from time to time amended or supplemented. All Licenses are non-exclusive, non-assignable and non-transferable and subject to non-material changes made from time to time by TrueLearn generally in providing the Services to licensees of the Services.
3. **FEES AND PAYMENTS.** Except as otherwise provided in the Proposal, fees ("Fees") for the Services are payable 30 days after invoicing. To the extent any Fees are variable and determined on a per user basis during a designated period of time, those Fees will be determined based on the maximum number of users at any time during the period of time. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Buyer shall be responsible for payment of all such taxes, levies, or duties. Unless otherwise indicated in the Proposal, all fees and charges specified are nonrefundable. TrueLearn may terminate rights to the Services and all Licenses in the event of a payment default or other material breach by the Buyer, by written notice, effective in 30 days, unless Buyer party first cures such breach. Breaches of the Standard Terms by Student Users will not be deemed to be breaches by Buyer but, at the option of TrueLearn, may be a basis for terminating license rights of those Student Users and/or for pursuit by TrueLearn of any other rights it has at law or equity against such Student Users.
4. **SUBSCRIPTIONS.** TrueLearn will invoice Buyer for the Fees in one (1) installment. Buyer agrees to purchase the licenses specified in **Exhibit A**, at the rate specified in **Exhibit A**. Any licenses or subscriptions not included in Exhibit A, including but not limited to customized quiz creation, are subject to additional fees and/or addendums to contract.
5. **MATERIALS, SOFTWARE AND INTELLECTUAL PROPERTY.** TrueLearn retains all right, title, and interest in and to the Services and Site, including without limitation all software used to provide the Services, all logos and trademarks reproduced through the Services or on the Site and any text, audio, commentary, or other materials ("Materials") provided by TrueLearn in rendering the Services, and this Agreement does not grant Buyer any intellectual property rights in or to the Services or any of its components or to the Site except the limited and temporary right to use them as necessary for Buyer's use of the Services as provided in the Proposal.
6. **WARRANTIES AND REMEDIES.** THE SERVICE IS PROVIDED "AS IS" AND AS AVAILABLE, AND TRUELEARN MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR REGARDING RESULTS OR PERFORMANCE THAT WILL BE ACHIEVED BY USERS OR AS A RESULT OF USE OF ANY OR ALL OF THE SERVICES. TrueLearn does not warrant that the Site or Services will perform or be without error or interruption.
7. **LIMITATIONS OF LIABILITY.** IN NO EVENT: (a) WILL TRUELEARN'S LIABILITY ARISING OUT OF OR RELATED TO ITS AGREEMENT WITH BUYER EXCEED THE FEES DUE AND PAID BY BUYER UNDER THE TERMS OF THAT AGREEMENT FOR A PERIOD OF ONE YEAR (OR IF PAID FOR LESS THAN A YEAR, ANNUALIZED AS IF PAID FOR ONE YEAR); OR (b) WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, TRUELEARN'S LIMITATIONS OF LIABILITY SHALL NOT APPLY, AFFECT, OR LIMIT AND OF TRUELEARN'S DUTIES TO ANY THIRD PARTY CLAIMS. The liabilities or obligations of Buyer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Buyer and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g)
8. **DATA.** Buyer and Student Users shall receive such reports and other analytics as provided by TrueLearn in the ordinary course in connection with each License or as otherwise provided in the Proposal. Except for such reports and other analytics, neither Buyer nor its users shall have any right to any data or other information collected by TrueLearn during the course of performing the Services, all of which shall remain the property of TrueLearn, with TrueLearn having full rights to such data and to use such data in any way, including the full right to analyze and assess it, alone or together with other data; provided that in no event shall TrueLearn disclose to any party other than to Buyer or to TrueLearn's employees and independent contractors as required to provide the Services (a) any non-aggregated information about Buyer's Student Users (except that each Student User shall be entitled to that Student User's information) or (b) other than to or as directed by Buyer or its affiliates, any information or analysis that with specificity is identified as belonging or relating to Buyer or Buyer's Administrative or Student Users. Any analytics, reports or other information provided to Buyer by TrueLearn or its affiliates from the Site or otherwise will be used for Buyer's internal purposes only and will not be redistributed or resold or reused for any purpose without TrueLearn's prior written permission.
9. **FORCE MAJEURE.** Except for the Buyer's payment obligations, the performance of either party under this Agreement may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to causes beyond its reasonable control (including, without limitations, acts of God, acts of civil or military authority including government priorities, new legislation or regulatory requirements, strikes or other labor disturbances, fires, floods, epidemics, wars or riots).
10. **NON-WAIVER.** The terms and conditions contained herein may not be modified, altered or waived either orally, by usage of trade, course of performance or course of dealing. Any change or deviation herefrom shall be by a writing signed by the party to be bound.
11. **JURISDICTION.** All disputes shall be resolved in a court of competent jurisdiction in Kern County, California. Buyer hereby consents to the jurisdiction of the State and Federal Courts sitting in California.

12. **APPLICABLE LAW.** All questions arising hereunder or in connection with a quotation or any order subject hereto shall be interpreted and resolved in accordance with the laws of the State of California without regard to its conflict of law provisions and excluding the United Nations Convention on the International Sale of goods.

EXHIBIT A: SUMMARY OF LICENSES AND FEES FOR 3 YEAR SUBSCRIPTION

4000522298-UCLA-Kern Medical Center Program-Psychiatry

INVOICE –

Year One					
Invoice Date - 3/31/2022					
Invoice Total: \$6,170.00					
# of Licenses	Product	Rate per License	Total Cost	Subscription Start Date	Subscription End Date
6	Psychiatry PRITE-PGY1	\$169.00	\$1,014.00	7/1/2022	6/30/2023
6	Psychiatry PRITE-PGY2	\$169.00	\$1,014.00	7/1/2022	6/30/2023
9	Psychiatry PRITE-PGY3	\$169.00	\$1,521.00	7/1/2022	6/30/2023
9	Psychiatry PRITE-PGY4	\$169.00	\$1,521.00	7/1/2022	6/30/2023
9	ABPN Psychiatry Certification-PGY4	\$89.00	\$801.00	4/1/2023	9/30/2023
1	Setup Fee - Psychiatry	\$299.00	\$299.00	7/1/2022	6/30/2023

All submitted headcounts are considered final, but supplemental headcount additions after initial numbers have been submitted to TrueLearn are subject to a \$25 processing fee for each instance each year.

INVOICE –

Year Two					
Invoice Date - 3/31/2023					
Invoice Total: \$6,515.00					
# of Licenses	Product	Rate per License	Total Cost	Subscription Start Date	Subscription End Date
6	Psychiatry PRITE-PGY1	\$179.00	\$1,074.00	7/1/2023	6/30/2024
6	Psychiatry PRITE-PGY2	\$179.00	\$1,074.00	7/1/2023	6/30/2024
9	Psychiatry PRITE-PGY3	\$179.00	\$1,611.00	7/1/2023	6/30/2024

9	Psychiatry PRITE-PGY4	\$179.00	\$1,611.00	7/1/2023	6/30/2024
9	ABPN Psychiatry Certification-PGY4	\$94.00	\$846.00	4/1/2024	9/30/2024
1	Setup Fee - Psychiatry	\$299.00	\$299.00	7/1/2023	6/30/2024

All submitted headcounts are considered final, but supplemental headcount additions after initial numbers have been submitted to TrueLearn are subject to a \$25 processing fee for each instance each year.

INVOICE –

Year Three					
Invoice Date - 3/31/2024					
Invoice Total: \$6,860.00					
# of Licenses	Product	Rate per License	Total Cost	Subscription Start Date	Subscription End Date
6	Psychiatry PRITE-PGY1	\$189.00	\$1,134.00	7/1/2024	6/30/2025
6	Psychiatry PRITE-PGY2	\$189.00	\$1,134.00	7/1/2024	6/30/2025
9	Psychiatry PRITE-PGY3	\$189.00	\$1,701.00	7/1/2024	6/30/2025
9	Psychiatry PRITE-PGY4	\$189.00	\$1,701.00	7/1/2024	6/30/2025
9	ABPN Psychiatry Certification-PGY4	\$99.00	\$891.00	4/1/2025	9/30/2025
1	Setup Fee - Psychiatry	\$299.00	\$299.00	7/1/2024	6/30/2025

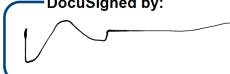
All submitted headcounts are considered final, but supplemental headcount additions after initial numbers have been submitted to TrueLearn are subject to a \$25 processing fee for each instance each year.

An invoice will be delivered by March 31st prior to the start of new subscriptions.

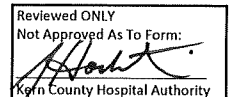
IN WITNESS THEREOF, the parties hereby indicate their acceptance of the terms stated herein by the signatures of their authorized representatives.

CONTRACTOR
TrueLearn LLC

Customer Name
Kern County Hospital Authority-Kern Medical Center - Psychiatry

DocuSigned by:

 By: Kate Campbell
 Title: Chief Sales Officer
 Date: 4/14/2022

By: _____
 Title: Chairman, Board of Governors
 Date: April 20, 2022





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

April 20, 2022

Subject: Proposed retroactive Substitute Equipment Agreement with Olympus America, Inc.

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the Substitute Equipment Agreement with Olympus America, Inc. for loan of a urology image processor, given the current image processor is out of use for repair. The image processor is a very crucial piece of equipment for use during urology surgeries, and if not available, these surgeries would be delayed.

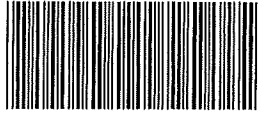
The term of the Substitute Equipment Agreement is sixty days, effective April 14, 2022, with a total maximum payable not to exceed \$500.

The Substitute Equipment Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) the inability to terminate without cause; and (2) no indemnification provision by Olympus America, Inc. Efforts were made to negotiate these nonstandard terms to no avail. The image processor 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 Substitute Equipment Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board retroactively approve the Substitute Equipment Agreement with Olympus America, Inc., effective April 14, 2022, with a maximum payable not to exceed \$500 for the sixty day term, and authorize the Chief Executive Officer to sign.



Olympus America Inc.
National Service Center
2400 Ringwood Avenue
San Jose, CA 95131
TEL (800) 537-5739
FAX (800) 858-7560

Order # 22049702

Please refer to this number on all correspondence, or other communications.

Service Return Authorization

Customer Information	Olympus Sales Representative
Customer: KERN COUNTY HOSPITAL AUTHORITY Attention: SONIA GIL Address: 1700 MT VERNON AVE BAKERSFIELD,CA ,93306-4018 E-Mail: SONIA.GIL@KERNMEDICAL.COM Phone: 661-326-2000 Fax: 0000000000	Name: 'Steven Braun' Home Page: www.olympusamerica.com E-Mail: STEVEN.BRAUN@OLYMPUS.COM Phone: 4848964549 Fax: (800) 965-5403

Customer Repair Information	
Effective: Model: OTV-S190 Comment:	Cust PO: Serial No: 7589936

Date:04/11/2022

Thank you for choosing Olympus as your service provider.

In compliance with OSHA blood-borne pathogen regulations and other applicable federal, state and local regulations medical equipment that comes into contact with potentially infectious material must be decontaminated (cleaned, and then disinfected or sterilized, as appropriate) before being sent to Olympus. Please ensure that the accompanying medical equipment has been cleaned and then disinfected or sterilized prior to shipment.

To expedite the repair of your item: Model OTV-S190, Serial # 7589936, please include a copy of the attached 'Equipment Service Request Form' to your packing list, reference Return Authorization (RA) number 22049702 on your shipping label, and ship your item to be repaired to:

Repair Facility Address: **Olympus Endoscopy Service Group**
National Service Center
2400 Ringwood Ave.
San Jose, CA 95131

In an effort to provide our customers with timely loaner equipment, we have implemented a new loaner agreement. This agreement is intended to improve loaner availability.

Please read the terms and conditions of the new Blanket Loaner Equipment Agreement form carefully. We ask that you provide a valid Blanket Purchase Order number and fax this form toll free to (800) 858-7560. This blanket agreement will save you the time of approving and faxing each individual loaner request. Your cooperation and understanding of the terms of this agreement is necessary to support our ability to provide better service.

An Olympus representative will call you to discuss your repair options once your equipment is evaluated. Please don't hesitate to contact Olympus toll free at (800) 537-5739 with any questions or comments.

Sincerely,

Melanie Pepin
Customer Service Representative

Ask us about the Full Service Contract featuring free On-site Loaner Program

NEW SERVICE AVAILABLE!
Request Repairs, Track Your Orders, and More at the Olympus Service Portal at
<http://www.olympusamerica.com/serviceportal>
To register your facility, please call 1-800-537-5739

SUBSTITUTE EQUIPMENT AGREEMENT

1. Substitute Equipment Program. Following Olympus America Inc.'s ("Olympus") issuance of a Return Material Authorization (RMA), and if requested by Customer and available, Olympus will provide Customer, in Olympus's sole discretion, either (i) a temporary loaner unit (the "Loaner Unit"), to be utilized at Customer's location while the repairable equipment to be serviced (the "Non-Functioning Equipment") is being serviced, or (ii) replacement equipment through the Advanced Replace® Program (the "Replacement Equipment") (Replacement Equipment and Loaner Units are collectively referred to as the "Substitute Equipment"). It is Customer's obligation to promptly approve or reject the written repair cost estimate. If Customer rejects the written repair cost estimate or fails to promptly respond to Olympus, Olympus will return Customer's Non-Functioning Equipment and Customer agrees to promptly return the Substitute Equipment. Upon receipt of Customer's approval of the written repair cost estimate, Olympus will promptly repair and return ship the Non-Functioning Equipment to Customer.

2. Term; Termination. This Agreement will become effective upon Customer's execution of this Agreement and will remain in effect unless an expiration date is identified herein. Olympus shall have the right to terminate this Agreement without cause at any time upon written notice to Customer.

3. Loaner Access Fee. If Non-Functioning Equipment is covered by an eligible service agreement, Loaner Units will be provided at no additional cost. For Shared Risk/Reward Agreements or eligible agreements with a Coverage Cap (as defined in such agreement), Loaner Unit will be provided at no additional charge unless the customer's Coverage Cap is exceeded. If the Non-Functioning Equipment is not covered by an eligible service agreement with Olympus, Customer agrees to pay an access fee of \$250, \$500, or \$750 for the Loaner Unit, which will be applied to Customer's repair estimate and invoice. The access fee is specific to the Loaner Unit model requested by Customer. To confirm the model specific access fee, contact Customer Solutions at 1-800-848-9024, Option 3. Access fees are subject to change and the most current fees can be found on the Olympus website at <https://medical.olymposamerica.com/customer-resources/customer-information/>

4. Fees for Failure to Comply with Substitute Equipment Program.

The Loaner Units are subject to availability and may be like-kind to maintain consistency with Customer's Non-Functioning Equipment. Customer's utilization of Loaner Unit in certain circumstances represents a transfer of value and in those cases, Olympus shall invoice additional loaner fees, and Customer agrees to such fees for the use of the Loaner Unit.

(a) Non-Functioning Equipment Sent to Olympus. If Olympus does not receive the Loaner Unit back to Olympus within thirty (30) days from the date Olympus shipped the serviced equipment back to Customer, then Olympus will invoice Customer, and Customer agrees to pay, a Loaner Late Return Fee, in accordance with the following chart:

Total Days After Shipment of Serviced Equipment to Customer	Loaner Late Return Fee
Loaner Unit received within 31 - 60	\$1000
Loaner Unit not received within 60	Full Replacement Value*

*If the Customer does not ship the Loaner Unit back to Olympus within sixty (60) days from the date Olympus shipped the serviced equipment back to Customer, then Olympus will invoice Customer, and Customer agrees to pay, the full replacement value of the Loaner Unit, and Olympus will transfer title of the Loaner Unit to Customer on an "AS IS, WHERE IS" basis, without recourse to or warranty of Olympus.

(b) Non-Functioning Equipment Not Sent to Olympus. If Olympus does not receive the Non-Functioning Equipment associated with the applicable RMA within thirty (30) days from the date the RMA was issued, Olympus will close the RMA. If a Loaner Unit was shipped to Customer in association with such RMA, then Olympus will invoice Customer, and Customer agrees to pay, a Loaner Fee - No Repair Received for use of the Loaner Unit in accordance with the following chart:

Total Days Since Loaner Unit was Shipped to Customer (calculated upon return of Loaner Unit)	Loaner Fee - No Repair Received
Loaner Unit received within 30	\$1500
Loaner Unit received within 31 - 60	\$3000
Loaner Unit not received within 60	Full Replacement Value*

* If Olympus does not receive the Loaner Unit within sixty (60) days from the date the Loaner Unit was shipped to Customer, then Olympus will invoice Customer, and Customer agrees to pay, the full replacement cost of the Loaner Unit. Upon payment of the full replacement cost of the Loaner Unit, Olympus will transfer title to the Loaner Unit to Customer on an "AS IS, WHERE IS" basis, without recourse to or warranty of Olympus.

5. Replacement Equipment. The Replacement Equipment will be like-kind to maintain consistency with Customer's Non-Functioning Equipment. Once Olympus receives Customer's Non-Functioning Equipment, title to the Replacement Equipment will transfer to Customer on an "AS IS, WHERE IS" basis, without recourse to or warranty of Olympus, except in the case where the original manufacturer's warranty on the Non-Functioning Equipment remains in effect, in which case such original manufacturer's warranty will continue to apply to the Replacement Equipment for such warranty's initial stated duration. Likewise, when Olympus receives Customer's Non-Functioning Equipment, title to the Non-Functioning Equipment will transfer to Olympus on an "AS IS, WHERE IS" basis, without recourse to or warranty of Customer. Customer shall ship the Non-Functioning Equipment to Olympus within thirty (30) days from the date Olympus ships the Replacement Equipment to Customer. If Customer fails to send the Non-Functioning Equipment to Olympus within the above stated time frame, then Olympus will invoice Customer, and Customer agrees to pay, the full replacement cost of the Replacement Equipment. Upon payment, Olympus will transfer title of the Replacement Equipment to Customer.

6. Misuse of Substitute Equipment Program. In addition to the above obligations, Customer acknowledges that (i) Customer will be responsible for service, repair or replacement costs required due to any Customer damage to, or loss of, the Loaner Units, other than normal wear and tear, as reasonably determined by Olympus, and (ii) unless title is transferred to Customer under the terms of this Agreement, the Loaner Unit remains the exclusive property of Olympus and Customer shall return it to Olympus as required under this Agreement, as applicable, or immediately upon Olympus' request. Olympus reserves the right to refuse to provide Customer with Substitute Equipment if Olympus reasonably believes, in its sole and absolute discretion, that Customer is abusing the intent of the Substitute Equipment Program.

7. Customer Obligations. In addition to the above obligations, Customer acknowledges that (i) the Loaner Units are only for human use, and will be operated in accordance with applicable operating manuals by properly licensed physicians performing procedures on Customer's behalf, (ii) Customer will follow operating, reprocessing, cleaning, and maintenance procedures, as applicable, for the Non-Functioning Equipment and Substitute Equipment as described in Olympus' instruction manuals and in accordance with all applicable federal, state, and local laws, including reprocessing and adequately packaging Non-Functioning Equipment and Substitute Equipment that come into contact with potentially infectious material before sending it to Olympus, and (iii) Customer shall remove all Protected Health Information ("PHI"), as defined in the Health Insurance Portability and Accountability Act ("HIPAA"), from the Non-Functioning Equipment and/or Substitute Equipment before sending it to Olympus for service or otherwise. If assistance is needed to remove PHI, then Customer should contact the Technical Assistance Center at 1-800-848-9024, Option 1.

8. Limited Warranty and Limitation of Liability. Substitute Equipment will meet Olympus quality standards. OLYMPUS MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO THE MERCHANTABILITY OF THE SUBSTITUTE EQUIPMENT OR THE SUBSTITUTE EQUIPMENT'S FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL OLYMPUS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

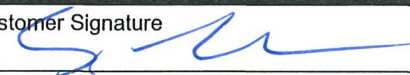


Olympus America Inc.
National Service Center
2400 Ringwood Avenue
San Jose, CA 95131
TEL (800) 537-5739
FAX (800) 858-7560

Order # 22049702

Please refer to this number on all correspondence, or other communications.

Blanket Purchase Order For Loaner Usage Fees		
Customer Name KERN COUNTY HOSPITAL AUTHORITY	Phone # 661-326-2000	Fax # 0000000000
Customer Street Address 1700 MT VERNON AVE ATTN ACCOUNTS PAYABLE	City, State & Zip BAKERSFIELD,CA 93306-4018	
Customer Email SONIA.GIL@KERNMEDICAL.COM	Ship-To: 20008641	
Blanket PO Number, if applicable to your facility	Expiration Date (if applicable)	

Agreed And Accepted By	
Authorized Customer Signature 	Date April 14, 2022
Print Name Scott Thygerson	Title Chief Executive Officer

Please return executed Agreement to:
Olympus America Inc. Attn: Melanie Pepin 2400 Ringwood Avenue San Jose, CA 95131-1700 Fax: (800) 858-7560

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

April 20, 2022

Subject: Proposed Affiliation Agreement Western University of Health Sciences/College of Osteopathic Medicine of the Pacific

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Affiliation Agreement with Western University of Health Sciences/College of Osteopathic Medicine of the Pacific (“Western”), for clinical training third- and fourth-year medical students at Kern Medical.

Western is an independent nonprofit health professions university, conferring degrees in biomedical sciences, dental medicine, health sciences, medical sciences, nursing, optometry, osteopathic medicine, pharmacy, physical therapy, physician assistant studies, podiatric medicine and veterinary medicine. For over 40 years, Western has prepared health care professionals for long-term career success with a mission to produce, in a humanistic tradition, health care professionals and biomedical knowledge that will enhance and extend the quality of life in all communities. The medical school recruits students with not only high academic performance, but also emotional intelligence, resilience, self-awareness, and a commitment to serve underserved communities. The goal of this proposed affiliation is to form a pipeline from recruitment to residency. Both parties share a common goal: to build something sustainable and innovative and exemplify life-long learning, leadership, integrity, and clinical excellence.

The term of the Agreement is three years from August 1, 2022 through July 31, 2025. During that time Kern Medical will provide faculty and staff to develop and implement the clinical experience, including core and elective clerkships, for Western’s third- and fourth-year medical students. In exchange for these services, Western will compensate Kern Medical as follows:

- Academic Year 2022-2023 (August 1, 2022 – June 30, 2023) stipend:
 - \$1,204,150
- Academic Years 2023-2024 and 2024-2025 (July 1, 2023 – June 30, 2024 and July 1, 2024 – June 30, 2025) stipend:
 - \$1,254,150
- Third-year rotations – \$504,000
- Fourth-year rotations – \$438,750

This compensation is guaranteed whether regardless of whether the spots are filled.

In addition to the stipends above, the Western will pay the following fees per academic year:

- Standard Institutional Fee: \$75,000
- Simulation Lab Fee: \$50,000 year one; \$100,000 years two and three
- Clerkship Director Fees: \$86,400
- Clinical Coordinator Fee: \$50,000

Therefore, it is recommended that your Board approve the Affiliation Agreement with Western University of Health Sciences/College of Osteopathic Medicine of the Pacific for a term of three (3) years from August 1, 2022 through July 31, 2025, and authorize the Chairman to sign.

**AFFILIATION AGREEMENT
BETWEEN
Western University of Health Sciences/College of Osteopathic Medicine of the Pacific
AND
Kern County Hospital Authority**

THIS AGREEMENT is entered into by and between Western University of Health Sciences/College of Osteopathic Medicine of the Pacific, hereinafter referred to as "WesternU/COMP," and Kern County Hospital Authority, hereinafter referred to as the "Authority", a local unit of government, which owns and operates Kern Medical Center, hereinafter referred to as the "Facility."

WHEREAS, WesternU/COMP has a curriculum to educate Doctor of Osteopathic Medicine students; and

WHEREAS, clinical experience is a required and integral component of the Osteopathic curriculum and professional preparation; and

WHEREAS, WesternU/COMP desires the cooperation of the Facility and its staff in the development and implementation of the clinical experience for its students; and

WHEREAS, the Facility recognizes its professional responsibility to participate in the education and professional preparation of Osteopathic students;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, WesternU/COMP and the Facility enter into this Agreement on the terms and conditions set forth below.

WesternU/COMP agrees to:

1. Appoint a faculty member as the Assistant Dean for Clinical Rotations to administer WesternU/COMP's responsibilities related to the clinical education program.
2. Assume responsibility for assuring compliance with the Evaluative Criteria for Accreditation of Education Programs for the Preparation of Doctors of Osteopathy established by the Committee on Colleges, Bureau of Professional Education of the American Osteopathic Association.
3. Refer to the Facility only those students who have satisfactorily completed the prerequisite didactic portion of the curriculum.
4. Establish and maintain ongoing communication with the Clinical Education Coordinator (CEC) of the Facility on items pertinent to Osteopathic Education. On-site visits will be arranged when appropriate and/or upon request by the Facility.
5. Inform the students of the Facility's requirements for acceptance and direct the students to comply with the existing policies, procedures, rules and regulations of the Facility.
6. Require all students to show proof of health insurance coverage at the time of registration at WesternU.
7. Provide students with accident insurance coverage that will cover up to \$25,000 for injuries or accidents sustained by any of its students (subject to applicable limitations and exclusions contained in the statement of insurance) while participating in a supervised clinical education program in the United States.
8. Require all students to show proof of onboarding requirements as listed in the attached Attachment A.
9. Maintain professional liability coverage in full force and effect for students during their clinical experience in the Facility in the amount of \$1,000,000 per occurrence/\$3,000,000 aggregate.
10. WesternU/COMP agrees to indemnify the Facility, its officers, directors, employees, and authorized agents against any and all liability and expenses that may be imposed by law against the Facility, its officers, directors, employees, and authorized agents as a result of the negligent

or wrongful acts or omissions of the students while they are in their clinical education experience at the Facility and its affiliated sites.

11. Prohibit the publication by the students, faculty or staff members of any material relative to their clinical education experience that has not been reviewed by the Facility and WesternU/COMP, in order to ensure that infringement of a patient's rights to privacy is avoided. Any article written by a student that has been based on information acquired through his/her clinical education experience must clearly reflect that WesternU/COMP or the Facility does not endorse the article, even where a review has been made prior to publication. This is accomplished by requiring the following disclaimer to appear with each such article written: "The opinion and conclusions presented herein are those of the author and do not necessarily represent the views of WesternU/COMP or the Facility."
12. Require all students to undergo and clear a criminal background search through a qualified third-party vendor.
13. Provide all students with a copy of the Facility's existing rules, regulations, policies, and procedures with which the student is expected to comply. Provide HIPAA training to meet the Facility's annual training requirements.

The Facility agrees to:

1. Establish and maintain ongoing communication with WesternU/COMP's Office of Medical Education on items pertinent to Osteopathic education. On-site visits will be arranged when appropriate and/or upon request by the Facility.
2. Require a student to render only those services that are within the student's educational preparation and qualifications, and that are related to the objectives of the clinical education program. Provide the type and amount of supervision in proportion to the student's level of competence.
3. Make access to emergency health care available to the student in case of accident or illness while at the Facility with the Facility not being responsible for any costs involved.
4. Advise WesternU/COMP of any changes in its personnel, operation, or policies which may affect the clinical experience.
5. Permit, upon reasonable request, the inspection of the clinical facilities, the services available for the clinical experience, student records, and other such items pertaining to the clinical education program by WesternU/COMP and/or agencies charged with the responsibility for accreditation of the program.
6. Provide students with a copy of the Facility's existing rules, regulations, policies, and procedures with which the students are expected to comply.
7. Make available the physical facilities and equipment necessary to conduct the clinical experience and, whenever possible, the use of library facilities, reference materials, reasonable study and storage space, and any other specialized learning materials.
8. Evaluate the performance of the students on a regular basis using the evaluation form supplied by WesternU/COMP. The completed final evaluation shall be forwarded to WesternU/COMP within ten (10) working days following the conclusion of each student's clinical experience.
9. Advise WesternU/COMP of any serious deficiency noted in the ability of a student to progress toward achievement of the stated objectives of the clinical experience. In the case of any such deficiency, the student, the Assistant Dean for Clinical Rotations, and Clinical Preceptor/Clinical Education Coordinator shall have the mutual responsibility to devise a plan by which the student may be assisted to achieve the stated objectives.
10. Comply with all federal, state, and local laws and ordinances concerning the confidentiality of student records and concerning human subject research, if students participate in such a research program.

11. Maintain professional liability coverage in full force and effect for the Facility, its officers, employees and authorized agents, while students are at the facility in the amount of \$1,000,000 per occurrence/\$3,000,000 aggregate.
12. The Authority agrees to indemnify WesternU/COMP, its students, officers, employees, and authorized agents against any and all liability and expenses that may be imposed by law against WesternU/COMP, its students, officers, employees, and authorized agents, as a result of the negligent or wrongful acts or omissions of the Facility, its officers, employees and authorized agents.

Rights/Responsibilities of the Student

WesternU/COMP will notify each student that he or she is required to:

1. Provide prior to the commencement of the clinical experience such information as may be required by the Facility for the clinical education and guidance of the student, together with the student's authorization for release of such information as permitted by law.
2. Abide by existing rules, regulations, policies, and procedures of the Facility and WesternU/COMP.
3. Observe and respect all patient's rights, confidences, and dignity.
4. Notify WesternU/COMP and the Facility immediately whenever absence from the Facility becomes necessary.
5. Provide evidence of current health insurance coverage as may be requested by WesternU/COMP and/or the Facility.
6. Dress in appropriate clinical attire as established by WesternU/COMP, and to secure transportation and living accommodations as necessary, to participate in the clinical experience.

WesternU/COMP and the Facility mutually agree to:

1. Pursue the educational objectives for the clinical experience, devise methods for their attainment, and continually evaluate the effectiveness of the clinical experience in meeting the objectives.
2. The parties acknowledge that WesternU/COMP is subject to Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act, and the related regulations to each. Accordingly, the Facility will cooperate with WesternU/COMP in the fulfillment of its obligations under these laws and the Facility will reasonably cooperate with WesternU/COMP to ensure that the educational opportunities offered to WesternU/COMP students at the Facility are conducted in accordance with such requirements. Further, each party agrees that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, sex, national origin, disability, and other categories considered protected classes under law. For the purpose of this Agreement, distinctions on the grounds of protected class include, but are not limited to the following: denying a student any available service or benefit of a facility; providing any service or benefit to a student which is different or is provided in a different manner or at a different time from that provided to other students under this Agreement; subjecting a student to segregation or separate treatment in any matter related to receipt of any advantage or privilege accorded to others receiving any service or benefits; treating a student or potential student differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership or any other requirement or condition which individuals must meet in order to be provided any service or benefit.

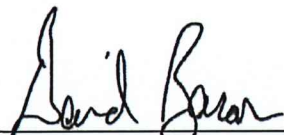
3. Acknowledge that the students of WesternU/COMP are fulfilling specific requirements for clinical experience as part of a degree or certificate requirement, and therefore, the students of WesternU/COMP are not to be considered employees of either WesternU/COMP or the Authority or the Facility, regardless of the nature or extent of the acts performed by them, for purposes of Workers' Compensation, employee benefit programs, or any other purpose.
4. Withdraw from the clinical education program any student whose performance is unsatisfactory, whose performance presents a threat to patients or others, whose personal characteristics prevent desirable relationships within the Facility, or whose health status is a detriment to the student's successful completion of the clinical education program. The Facility shall have the right to recommend that WesternU/COMP make a withdrawal, provided such a request is in writing and includes a statement of the reason why the Facility recommends that the student be withdrawn. WesternU/COMP may withdraw a student from the clinical program at any time, upon written notice to the Facility.
5. Determine the number of students able to participate in the Facility's clinical education program, and the period of time for each student's clinical experience. The planned schedule of student assignment will be made at least one (1) month prior to the commencement of the student's clinical experience, and may be altered by mutual agreement with due consideration given to both parties.

Terms of Agreement

1. This Agreement shall commence on the signature date by the Facility and shall remain effective for a term of three (3) years upon execution by both parties. This Agreement will be automatically renewed at the term end after appropriate review by both parties, unless otherwise indicated in writing by one of the parties at least ninety (90) days' prior to the end of the term.
2. It is understood and agreed that the parties to this Agreement may revise or modify this Agreement by written amendment when both parties agree to such amendment.
3. If either party wishes to terminate this Agreement prior to the end of its normal term, ninety (90) days' prior written notice shall be given to the other party. However, any such termination by the Facility shall not be effective as to any student who was participating in program until such student has completed the clinical experience.
4. This Agreement shall be subject to and governed by the laws of the State of California.
5. Other considerations or additional considerations:

FOR WESTERNU/COMP:

Western University of Health Sciences/
College of Osteopathic Medicine of the Pacific
309 E. 2nd Street
Pomona, CA 91766



David Baron, DO, MEd
Senior Vice President and Provost

04/15/22

Date

FOR THE FACILITY:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306

Russell Bigler
Chairman, Board of Governors

Date

Scott Thygerson
Chief Executive Officer

Date

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT



Vice President & General Counsel
Kern County Hospital Authority

Attachment A

Kern Medical - Current Onboarding Compliance	
Compliance Item	Detail
Background Check	All searches must be completed 30 days prior to start of assignment.
County Background Check	Felony & Misdemeanor background history for all counties where employee lived and worked for the previous 7 years.
National Criminal Search	
National Sex Offender (NSO) search	Can be obtained through Background check or free online search: https://www.nsopw.gov/
OIG	Can be obtained through Background check or free online search: https://exclusions.oig.hhs.gov
SAM	Can be obtained through Background check or free online search: https://www.sam.gov
Social Security Trace	This search produces all address history for the last 7 years and all the names (including aliases and variations) associated with the social security number
Drug Screen	A standard panel (minimum) drug screen is required within thirty (30) days prior to start date of assignment with Client. Test results must be prepared by a licensed laboratory. Results must be negative for all of the following: Amphetamine, Barbiturates, Opiates, Benzodiazepines, Cannabinoids, Cocaine metabolites, Phencyclidine (PCP), Methadone, Oxycodone, Propoxyphene, Methaqualone
Employee Health Documents	
Physical/ Statement of Fitness Within 1 year	Must be completed within one year prior to start of assignment and annually thereafter. The physical must include a statement by the physician that the student is physically capable of completing the duties assigned and latex allergy assessment has been completed.
TB Compliance	If no history of Positive, follow "Negative TB". If history of Positive TB, follow "Positive TB" instructions:
Negative TB Within 30 days	Either of the following will meet the TB requirement: 1) 1st step negative TB Skin Test (TST) completed within 30 days prior to start and 2nd Negative TB skin test (TST) completed no sooner than 3 weeks after the 1st TB skin test and annually thereafter. *Results must include measurement of induration, date and time of placement and reading. Measurements of ≥ 10 mm will follow TB positive process. 2) Negative Interferon-gamma Release Assay (IGRA [Quantiferon or T spot]) completed within 30 days prior to start and annually thereafter. If IGRA is positive follow TB positive process.
Positive TB No time limit on proof X-Ray within 90 days	No new student (with proof of positive PPD or IGRA history) will be cleared for assignment until a chest x-ray is performed and verified as negative/normal (free of active TB disease). Documentation of negative/normal chest x-ray that has been done at another facility within 3 months will be accepted but must include employee's name, date of birth, name and address of provider performing the chest x-ray. Additionally, a TB symptom questionnaire is required to be completed within 30 days after start date and annually thereafter.
Mask Fit Within 1 year	Required prior to the start of assignment and annually thereafter. Must include medical clearance for fit testing, size & make/model of N95 mask tested. Must be completed within 1 year of assignment.
Hepatitis B Titer- Quantitative No time limit	Laboratory evidence of immunity required in the form of a Hepatitis B surface antibody, quantitative. Total anti-HBs are also acceptable. If non-immune (≤ 10) proof of vaccination series or declination is required.
MMR Titer - Quantitative - No time limit	Laboratory evidence of immunity required for Measles (Rubeola), Mumps and Rubella. If non-immune, proof of vaccination series or declination required
Varicella Titer – Quantitative - No time limit	Laboratory evidence of immunity required. If non-immune, proof of vaccination series or declination required.
Latex Allergy Questionnaire	* If student has a known latex sensitivity, physician who performs student's exam must include an assessment of the level of sensitivity and a recommended plan for accommodation.
Hepatitis C Antibody Test – Within 3 months of start	Hepatitis C (HCV) antibody test completed within the last 3 months of start date.
COVID-19 Vaccine	Proof of current fully vaccinated COVID-19 status, including any booster, or qualifying exemption. Vaccination proof must include name, DOB, Lot#, Manufacturer, Provider/agency administering, and date of vaccination (s).
Only Required when Onboarding November 1st-April 30th Flu Vaccination/Declination	During the flu season, proof of the current seasonal flu vaccination status is required prior to the start of the assignment. Any one of the following will meet the proof requirement: a) Written proof of vaccination with the current seasonal flu vaccine. Proof can be any immunization record that includes: vaccination name or abbreviation, date vaccine administered and name (written or stamped) of the clinic, office or doctor administering the vaccine; OR b) Signed declination (using OSHA mandated wording) for those who decline the offered vaccine.

Addendum to Affiliation Agreement

BETWEEN

Western University of Health Sciences/College of Osteopathic Medicine of the Pacific

AND

Kern County Hospital Authority

This Addendum is made to the Affiliation Agreement between Western University of Health Sciences/College of Osteopathic Medicine of the Pacific (WesternU/COMP) and Kern County Hospital Authority ("Authority"), a local unit of government, which owns and operates Kern Medical Center (the "Facility") entered into as of _____, to collaborate in the training of WesternU/COMP students.

WesternU/COMP will compensate the Facility per the following fee schedule:

Academic Year 2022-2023 (August 01, 2022 – June 30, 2023)

WesternU/COMP will provide a stipend (per complete experience) for the education of its fourth-year osteopathic medical students at WesternU/COMP's approved rate of \$375.00 per week, and determined based upon the number of weeks completed for that rotation at the Facility. For every fourth-year student that completes twelve (12) or more weeks, WesternU/COMP will provide an additional \$500 professional mentoring fee. Upon receipt of completed student evaluations, the stipend for completed clerkships will be paid quarterly to the Authority upon verification of its invoice.

The Facility will provide thirty-two (32) tracks to WesternU/COMP's third-year osteopathic medical students, for a period of forty-two (42) weeks each. In return, WesternU/COMP will provide a stipend of \$375.00 per week per third-year student, paid quarterly to the Authority upon verification of their invoice. Compensation for the thirty-two (32) tracks will be guaranteed even in the event that all spots are not filled.

In addition to the stipends above, WesternU/COMP will provide the Authority with the following fees per academic year:

1. Standard Institutional Fee: \$75,000
2. Simulation Lab Fee: \$50,000
3. Clerkship Director Fees: \$86,400
4. Clinical Coordinator Fee: \$50,000

Academic Years 2023-2024 and 2024-2025
(July 01, 2023 – June 30, 2024 and July 01, 2024 – June 30, 2025)

WesternU/COMP will provide a stipend (per complete experience) for the education of its fourth-year osteopathic medical students at WesternU/COMP's approved rate of \$375.00 per week, and determined based upon the number of weeks completed for that rotation at the Facility. For every fourth-year student

that completes twelve (12) or more weeks, WesternU/COMP will provide an additional \$500 professional mentoring fee. Upon receipt of completed student evaluations, stipend for completed clerkships will be paid quarterly to the Authority upon verification of its invoice.

The Facility will provide thirty-two (32) tracks to WesternU/COMP's third-year osteopathic medical students, for a period of forty-two (42) weeks each. In return, WesternU/COMP will provide a stipend of \$375.00 per week per third-year student, paid quarterly to the Authority upon verification of its invoice. Compensation for the thirty-two (32) tracks will be guaranteed even in the event that all spots are not filled.

In addition to the stipends above, WesternU/COMP will provide the Authority with the following fees per academic year:

1. Standard Institutional Fee: \$75,000
2. Simulation Lab Fee: \$100,000
3. Clerkship Director Fees: \$86,400
4. Clinical Coordinator Fee: \$50,000

WesternU/COMP will support Kern Medical Center Undergraduate and Graduate Medical Education in the following ways:

1. Designate Kern Medical Center as the exclusive teaching hospital in Kern County for clerkships for WesternU/COMP Osteopathic Medical Students.
2. Partner with the Clinical Coordinator to maximize communication, scheduling, evaluations, and clerkship operations.
3. Provide customized faculty development for Kern Medical Center adjunct faculty.
4. Create a two-week Osteopathic and Manipulative Medicine core rotation in partnership with Kern Medical Center to include Kern Medical Center orientation content and WesternU/COMP hands on osteopathic training.

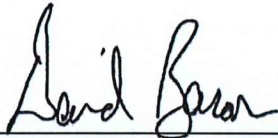
Additionally, in partnership with the Authority, WesternU/COMP will build a physician pipeline program through the following steps:

1. Exploring linkage program opportunities with undergraduate institutions in the San Joaquin Valley.
2. Providing recruitment programs to undergraduates in the San Joaquin Valley with the goal of increasing physician applicants to Kern Medical Center clerkships and residency programs.
3. Guaranteeing a minimum of 50 applicants to the Kern Medical Center 3rd year clerkship program starting in Academic Year 2023-2024.
4. Partnering with Kern Medical Center Foundation on advancement initiatives.

Any changes to this Addendum shall only be made upon mutual consent and written agreement of the parties.

FOR WESTERNU/COMP:

Western University of Health Sciences/
College of Osteopathic Medicine of the Pacific
309 E. 2nd Street
Pomona, CA 91766



David Baron, DO, MEd
Senior Vice President and Provost

04/15/22

Date

FOR THE FACILITY:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306

Russell Bigler
Chairman, Board of Governors

Date

Scott Thygerson
Chief Executive Officer

Date

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT



Vice President & General Counsel
Kern County Hospital Authority



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

April 20, 2022

Subject: Kern County Hospital Authority Financial Report – February 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Average Daily Census of 177 for February is 32 more than the February budget of 145 and 7 less than the 184 average over the last three months
- Admissions of 1,529 for February are 742 more than the February budget of 787 and 20 less than the 1,549 average over the last three months
- Total Surgeries of 438 for February are 6 more than the February budget of 432 and 54 less than the 492 average over the last three months
- Clinic Visits of 16,230 for February are 1,930 more than the February budget of 14,300 and 153 less than the 16,383 average over the last three months. The total includes 1,608 COVID-19 vaccination visits

The following items have budget variances for the month of February 2022:

Patient Revenue:

Gross patient revenue has a favorable budget variance for February 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 15% 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 February 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, Kern Medical received \$559,000 of reimbursement from the Medi-Cal Activities Administration (MAA). MAA is a county-based program that reimburses Kern Medical for patient financial counseling services provided for patients. This includes work to qualify patients for Medi-Cal coverage. Kern Medical also received Proposition 56 funding in February that was in excess of the monthly average received for 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 \$35 million compared to a planned budget of \$13 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 February, Kern Medical operated slightly over budget for medical fees mainly because of higher than average fees paid to the Acute Care Surgery Medical Group. 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 there have been contract labor positions added to accommodate high census levels.

Supplies Expense:

Supplies expense is over budget for the month and on a year-to-date basis due to 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. On a year-to-date basis, the continued operation of the outpatient pharmacy during the first half of the year is primarily responsible for the unfavorable budget variance.

Purchased Services:

Purchased services are over budget for the month due to an under accrual in prior month for out-of-network services provided by Adventist Health, and due to an under accrual in prior month for HIM medical record coding 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 slightly under budget for the month mainly because of lower than average utility costs. On a year-to-date basis, other expenses are over budget because of higher than average repairs and maintenance expenses, the rental of an air conditioning and heating unit from Hertz Equipment Rental Company (HERC) for the MRI, the cost of additional hospital beds rented from Hill-Rom to accommodate high patient census levels, and because of higher than average utility costs.

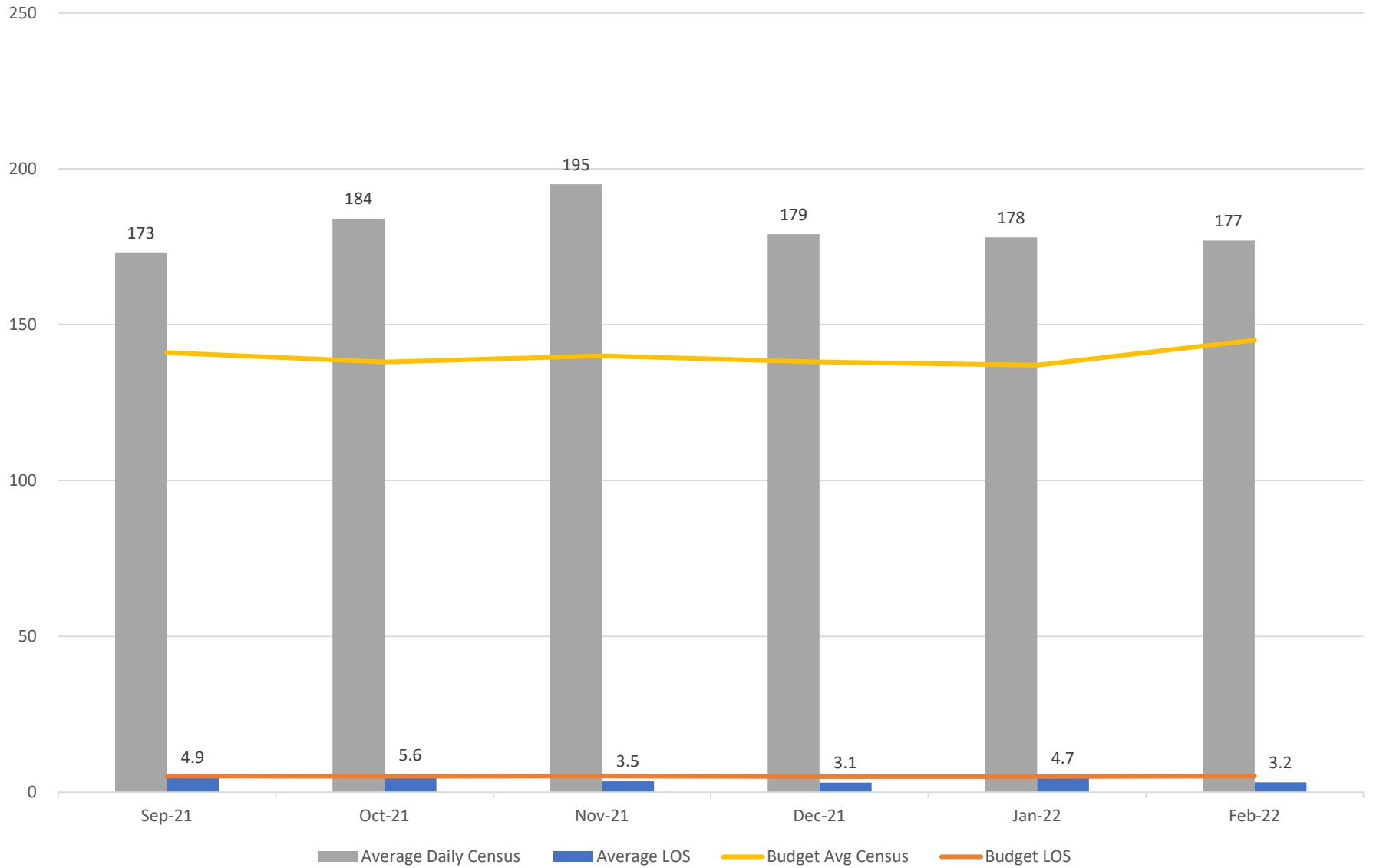
Depreciation and Amortization Expense:

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.

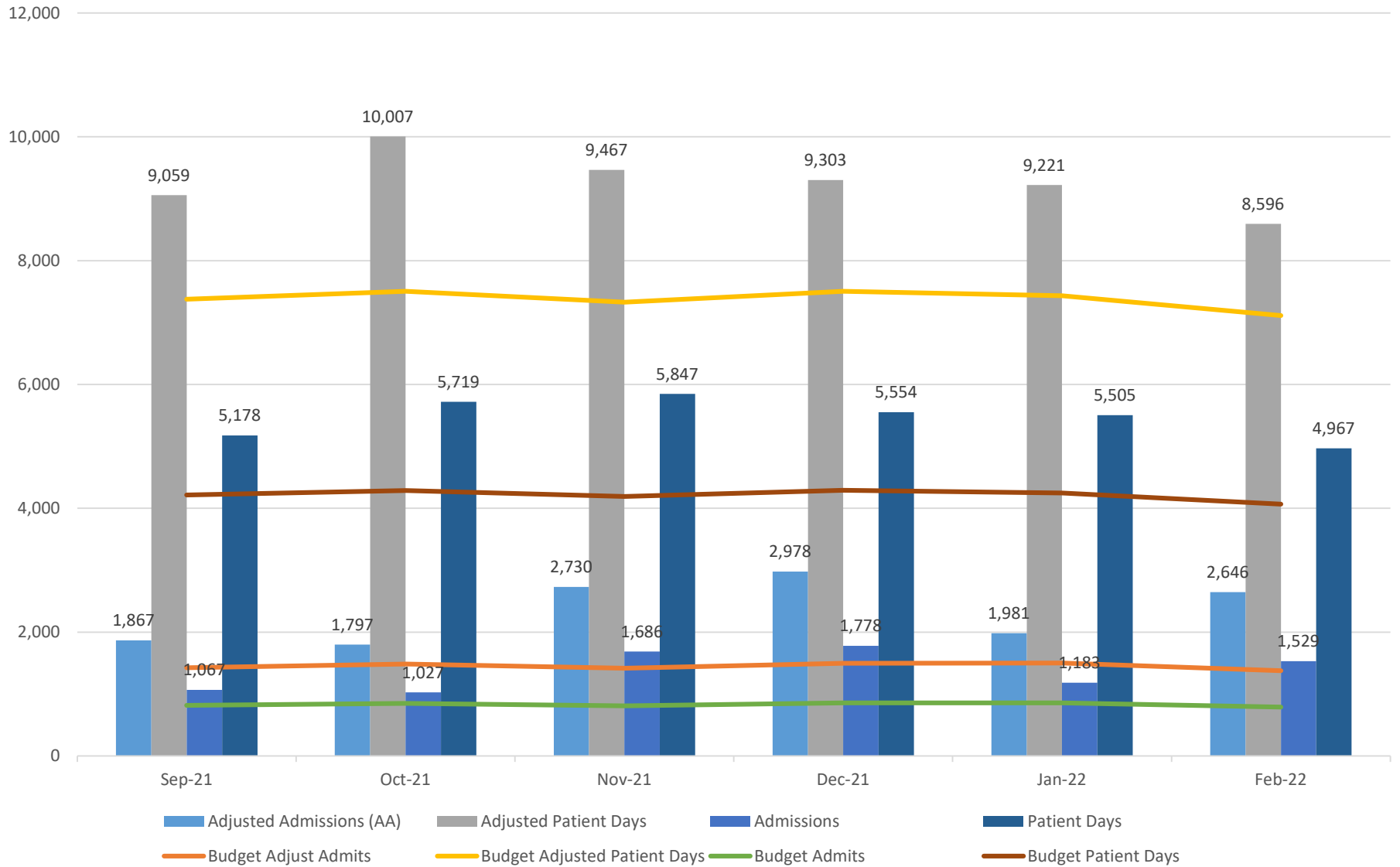


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – FEBRUARY 2022**

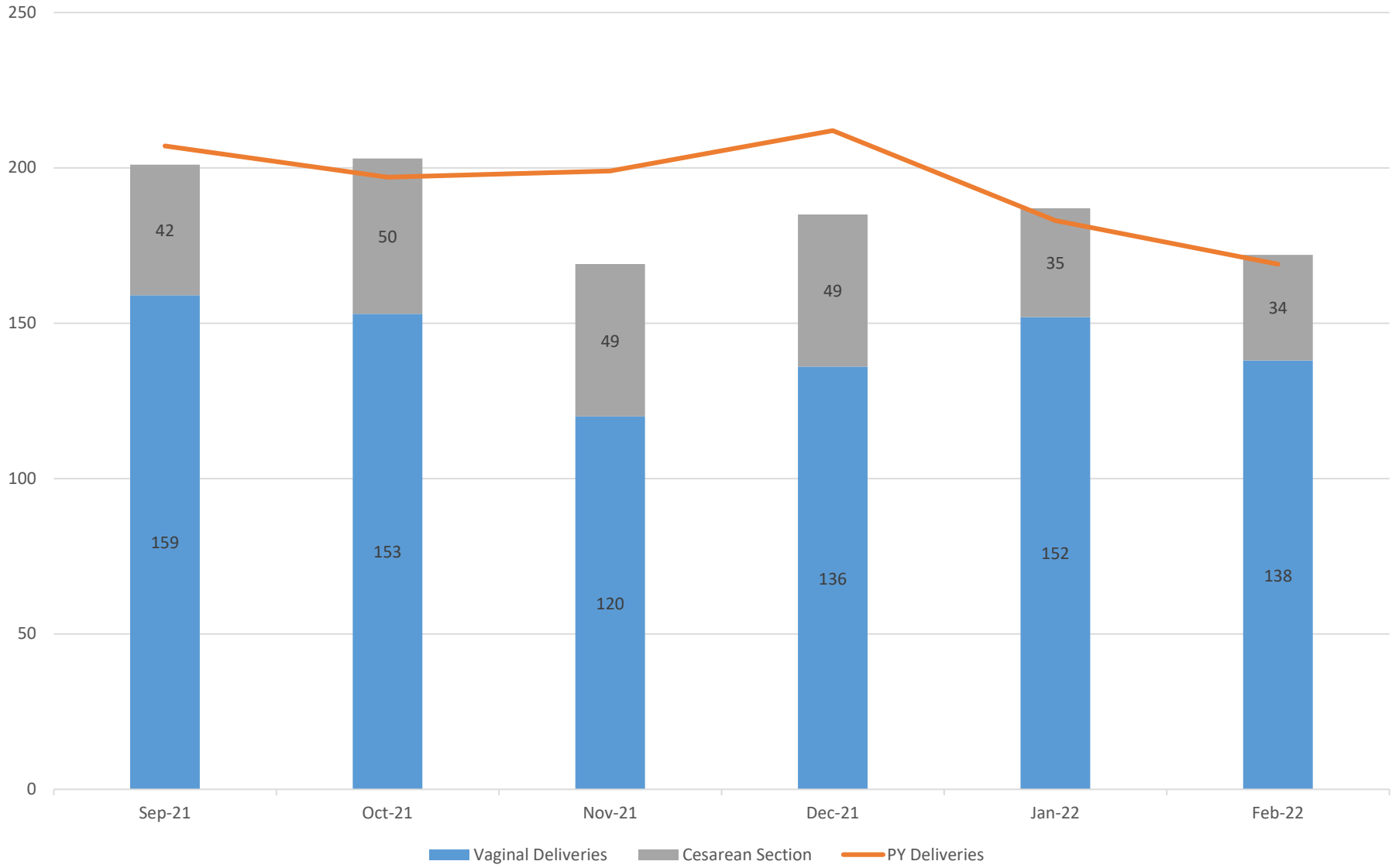
Census & ALOS



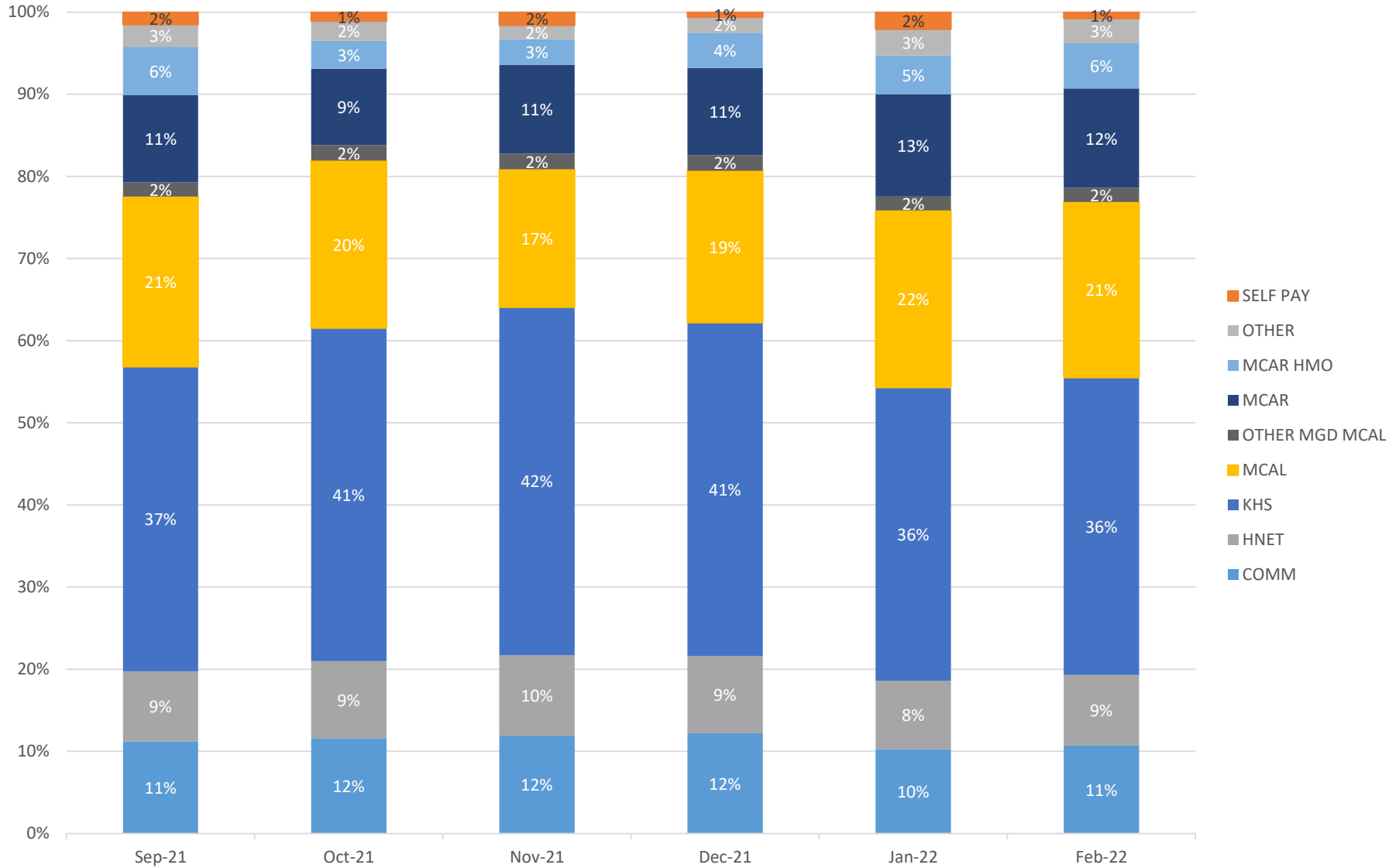
Hospital Volumes



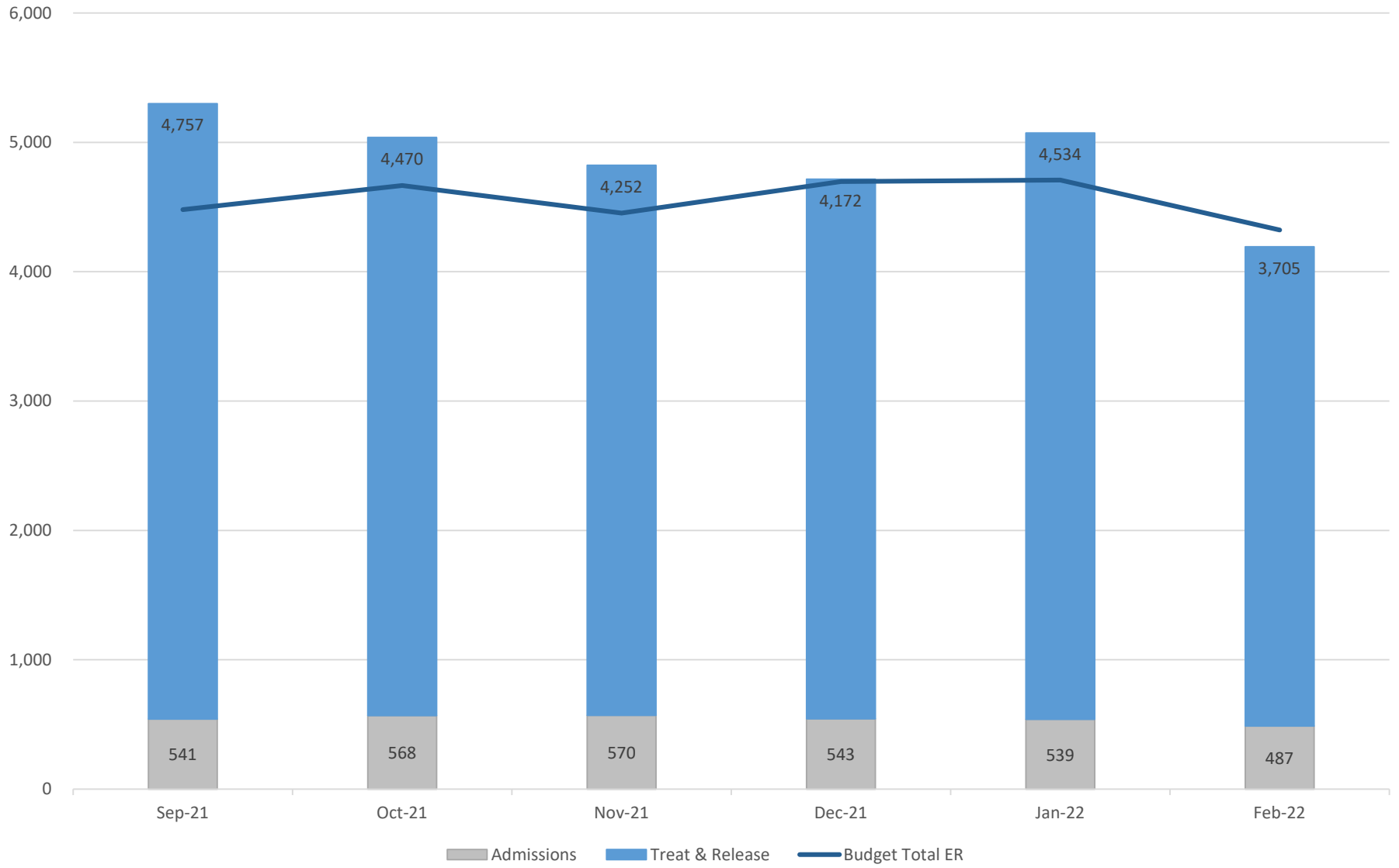
Deliveries



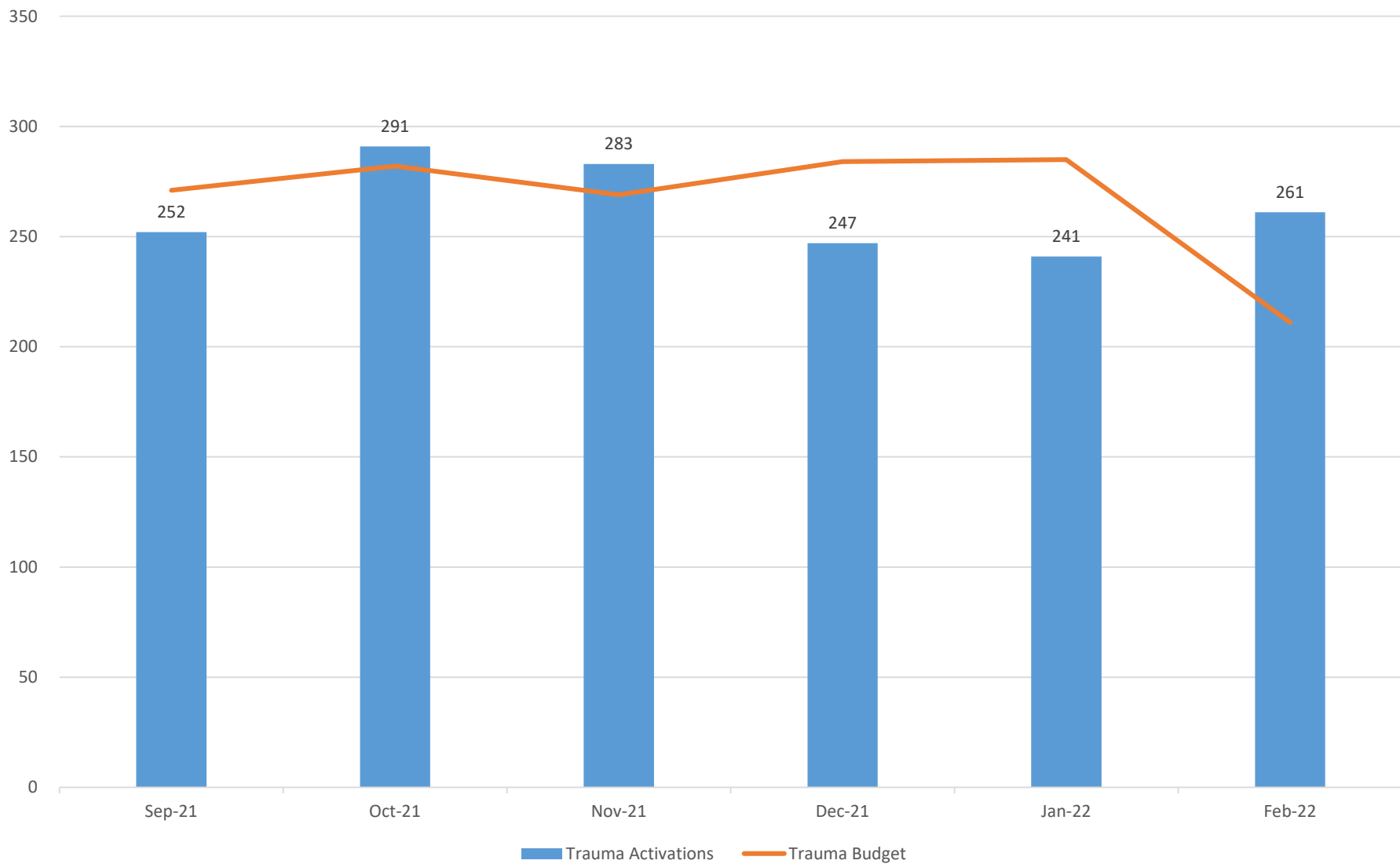
PAYER MIX



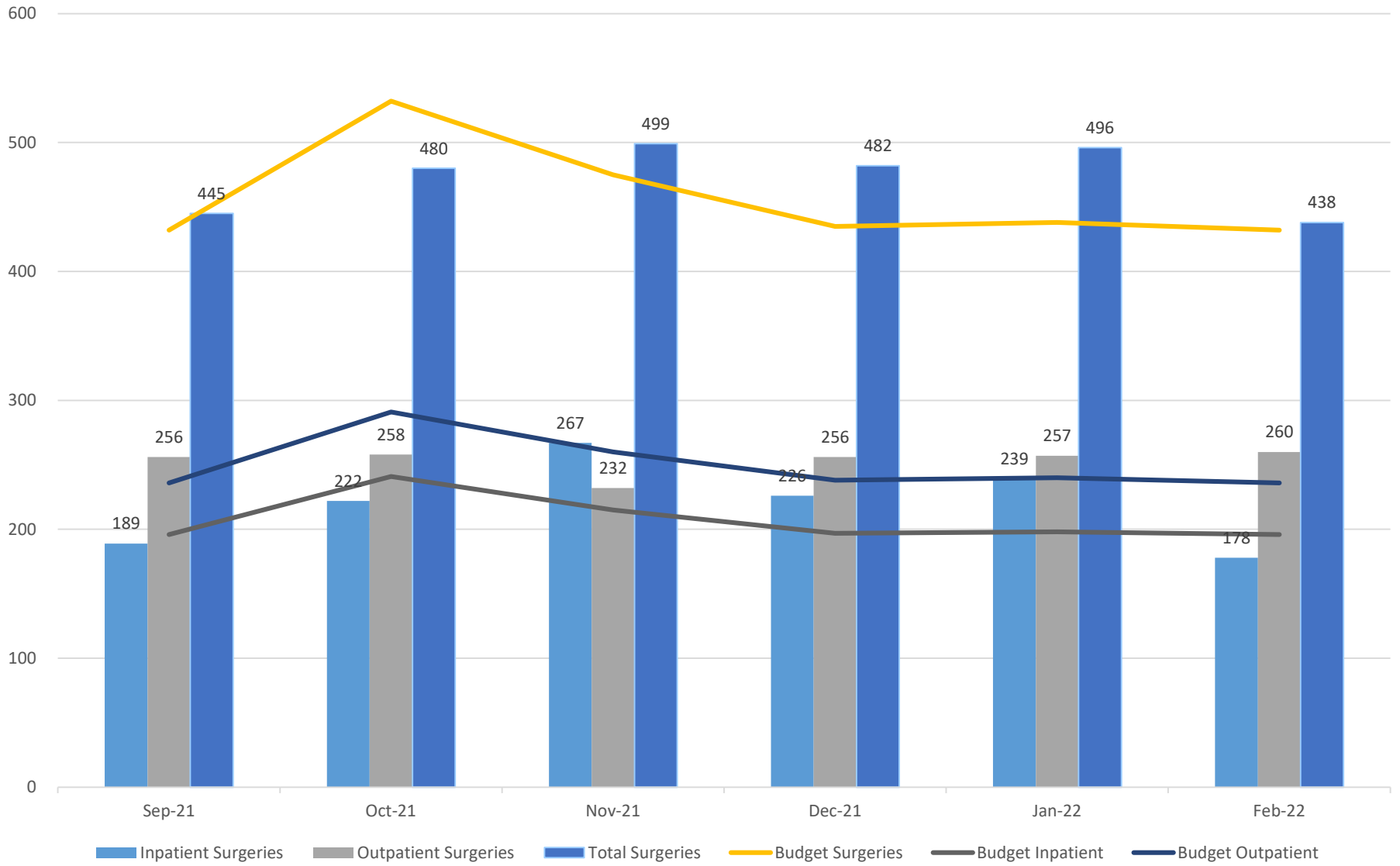
Emergency Room Volume



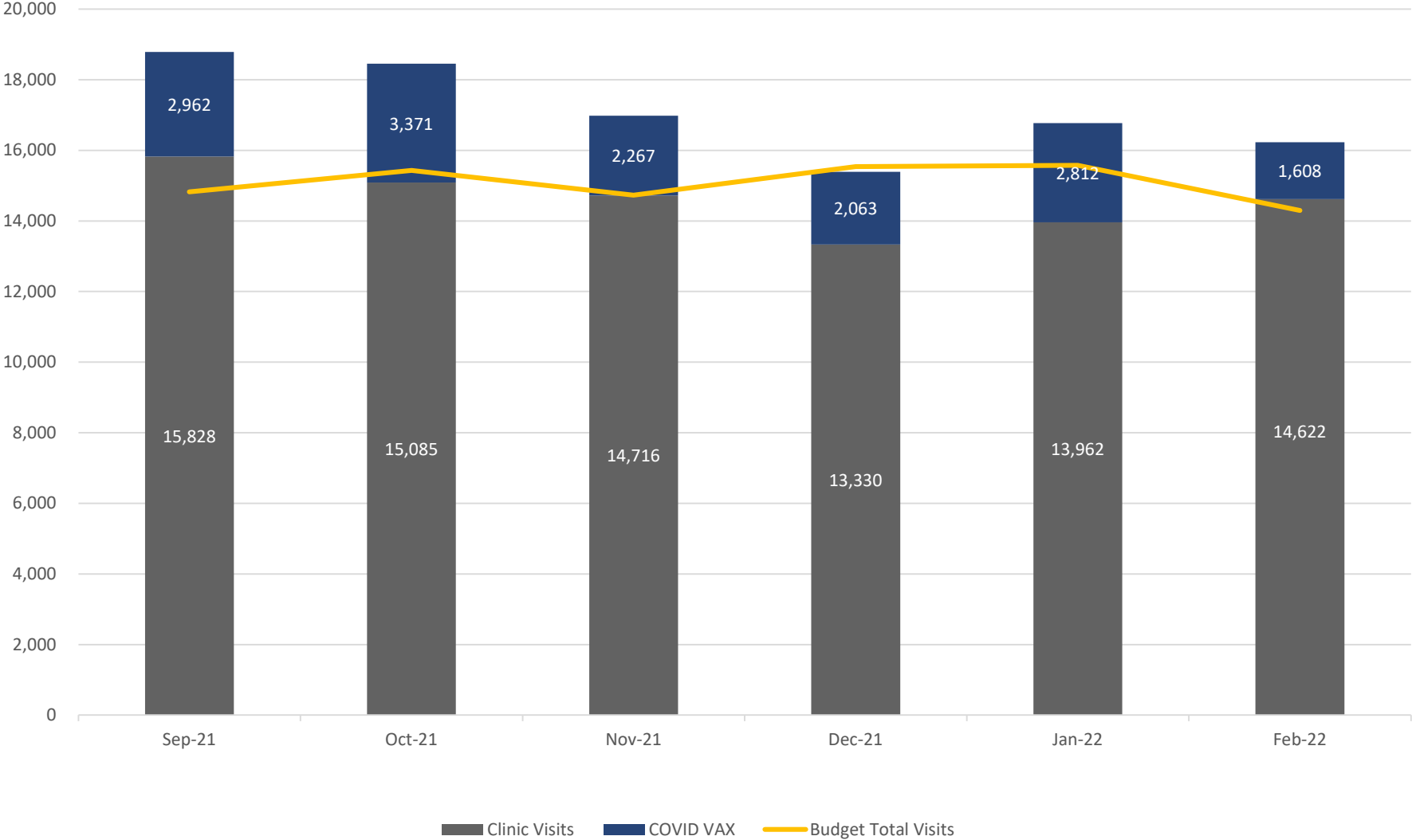
Trauma Activations



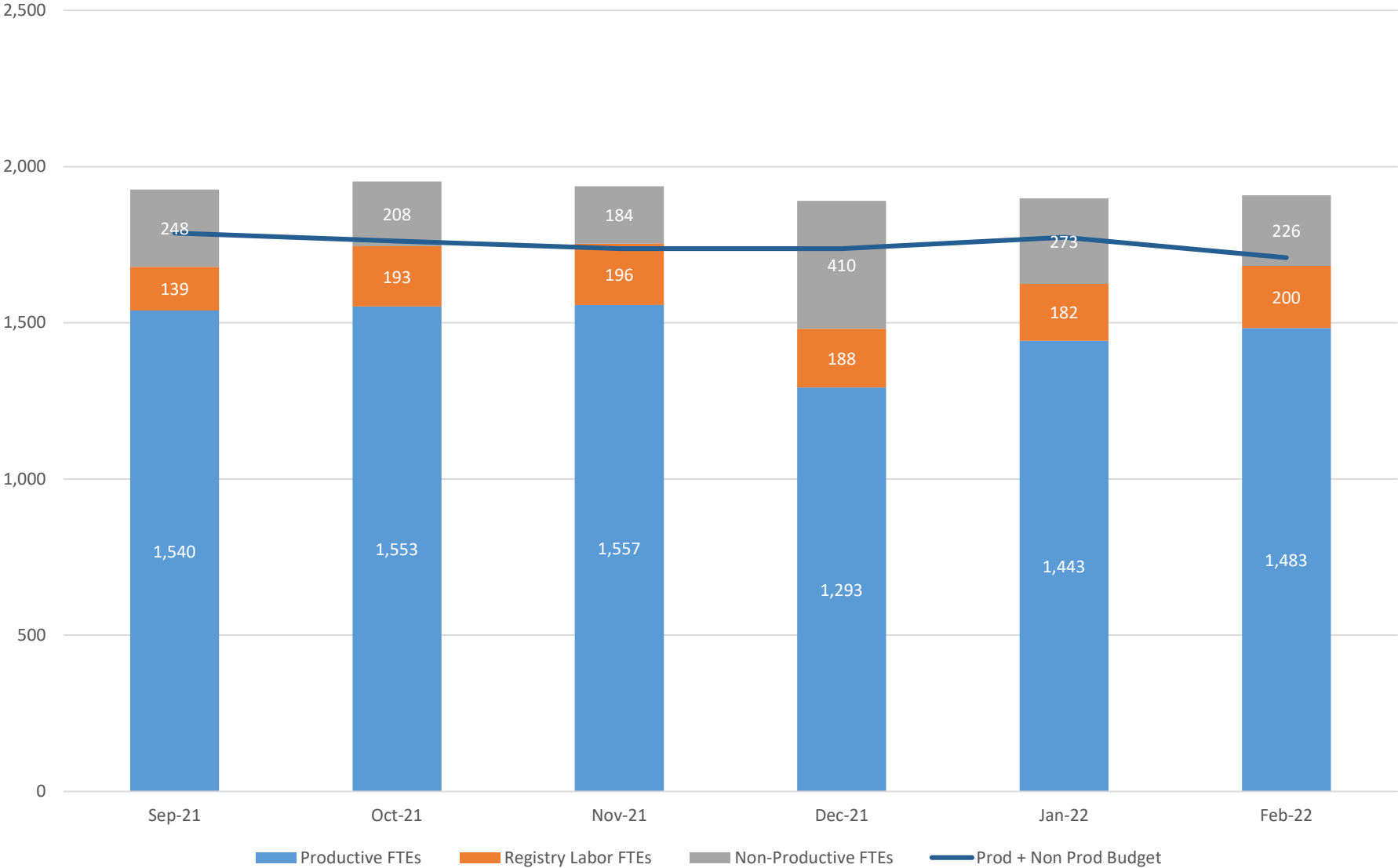
Surgical Volume



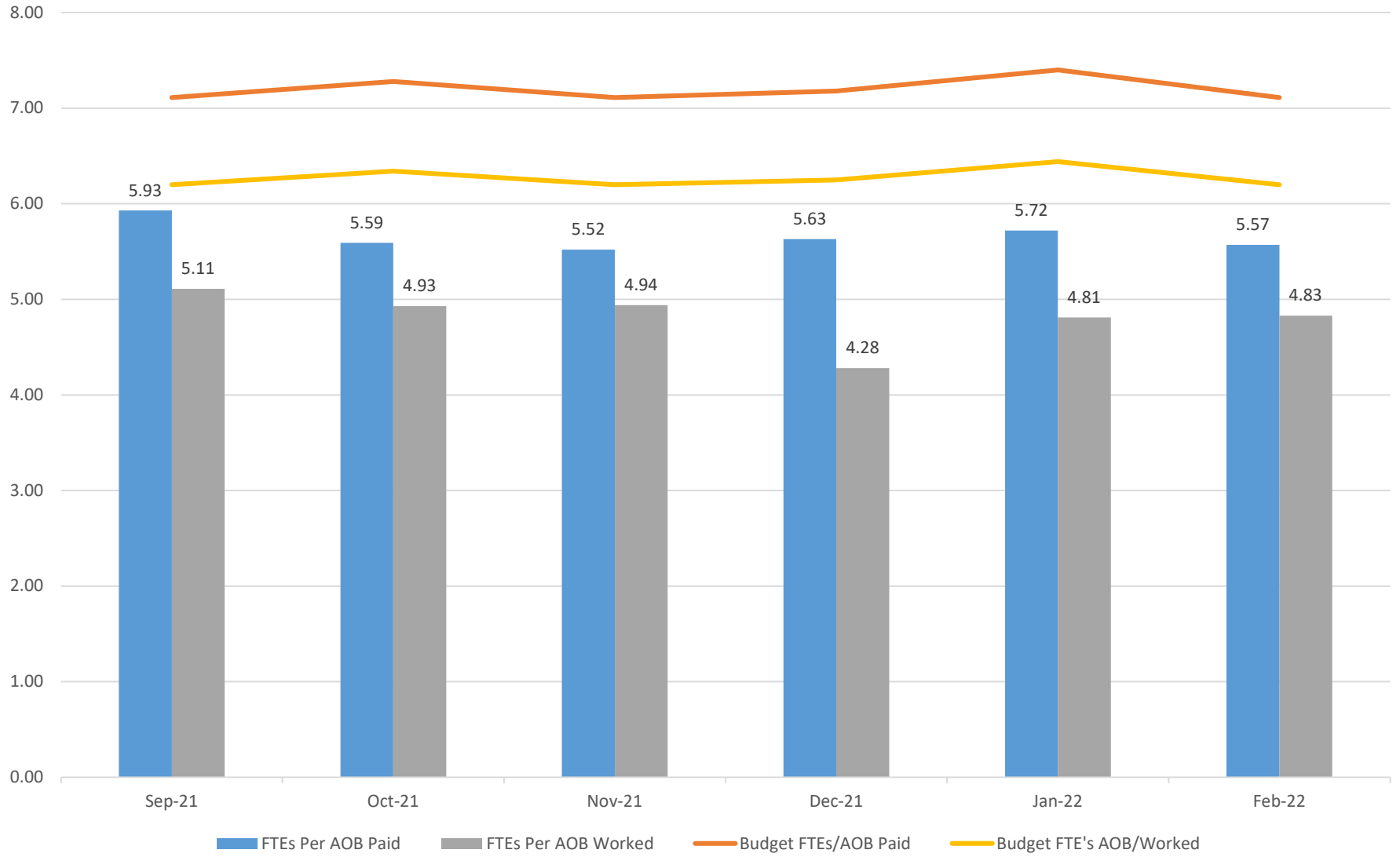
Clinic Visits



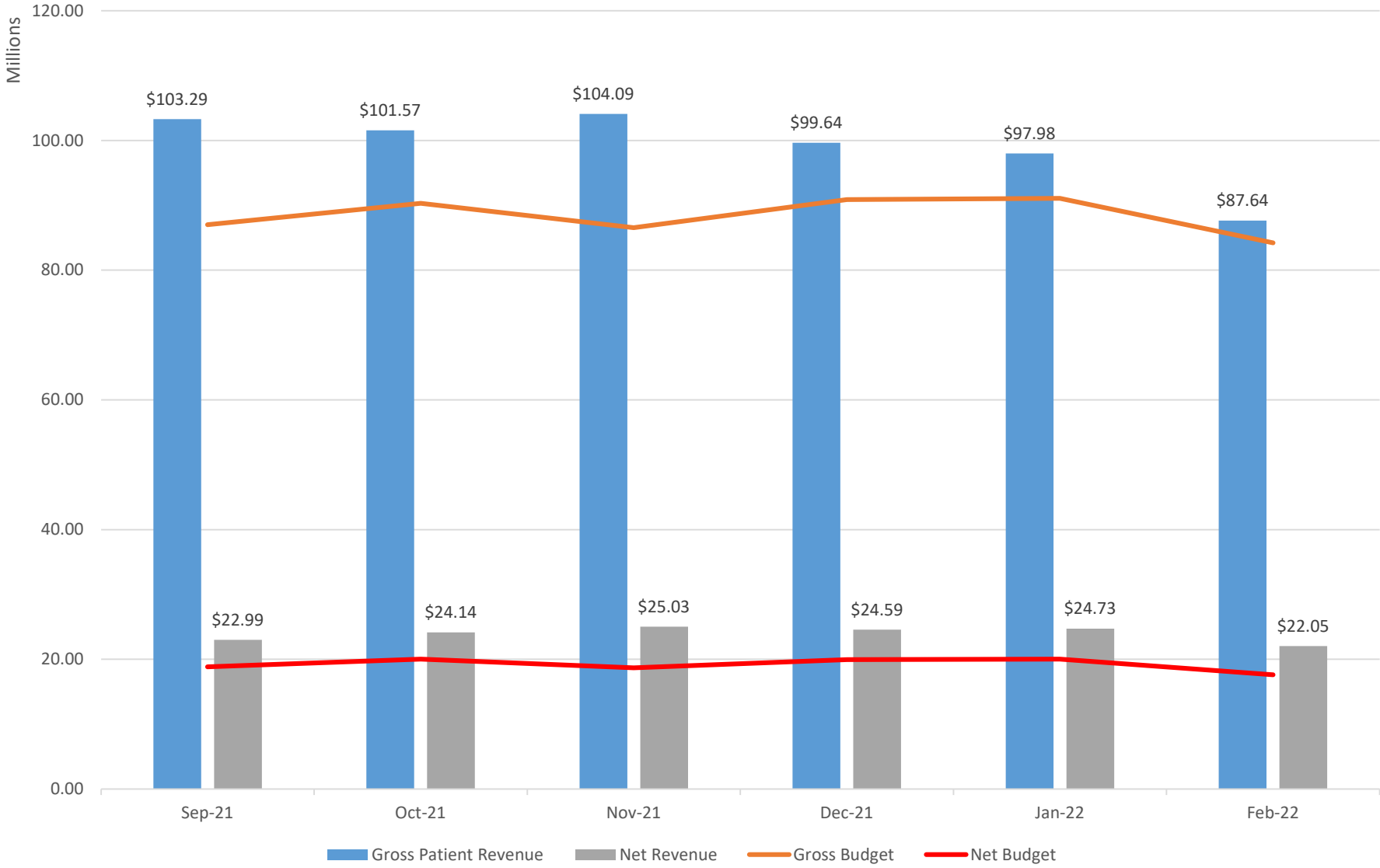
Productivity



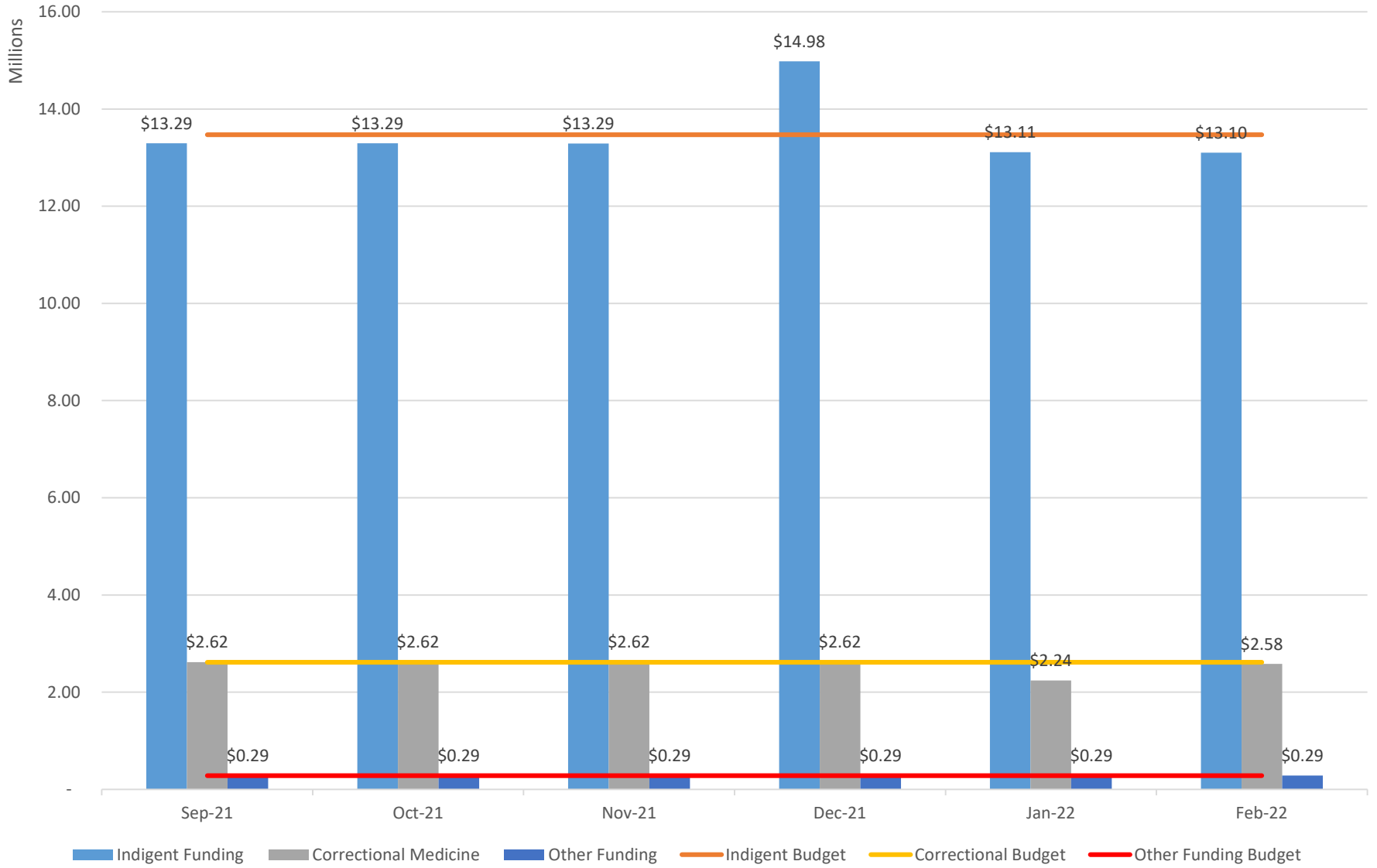
Labor Metrics



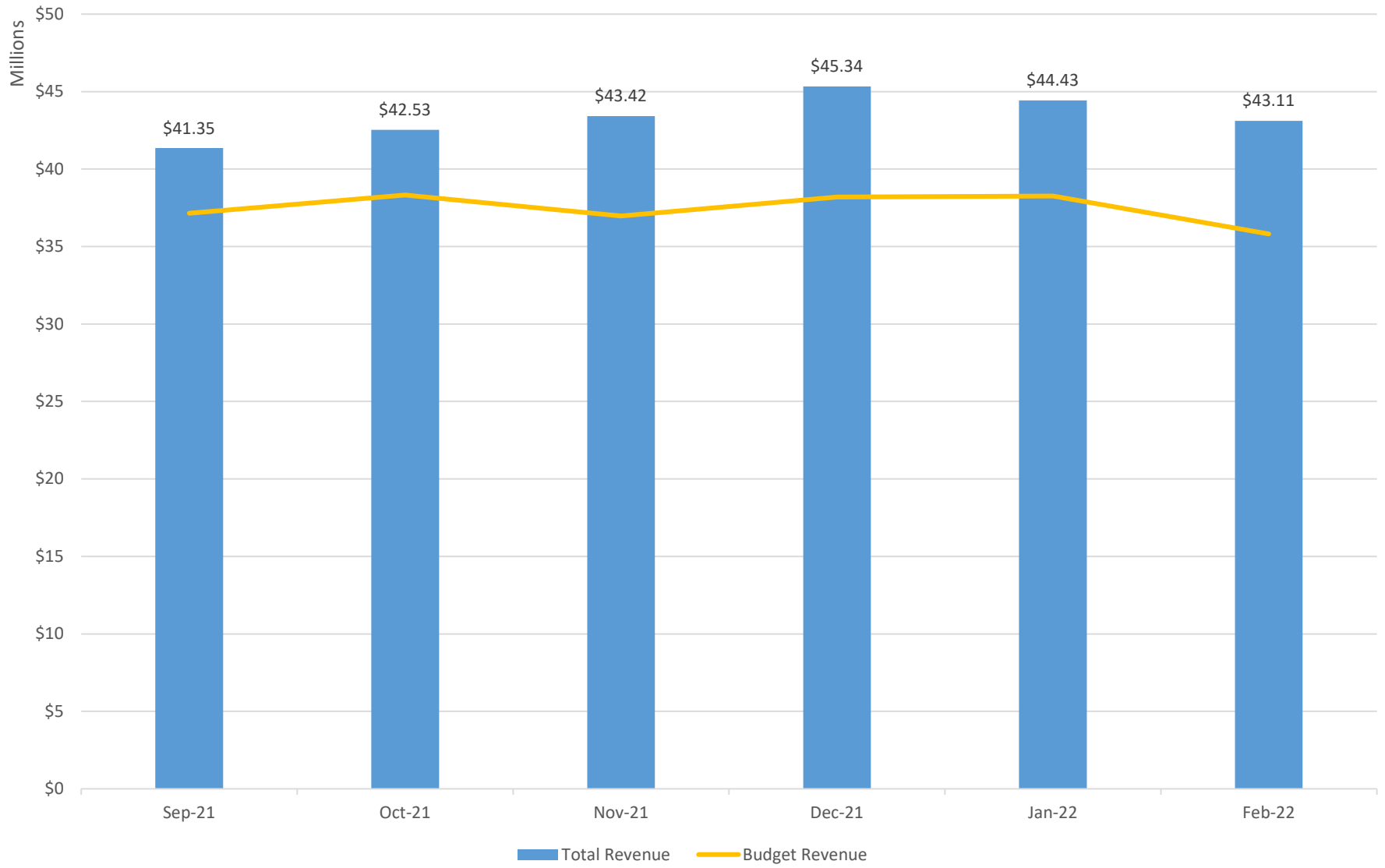
Patient Revenue



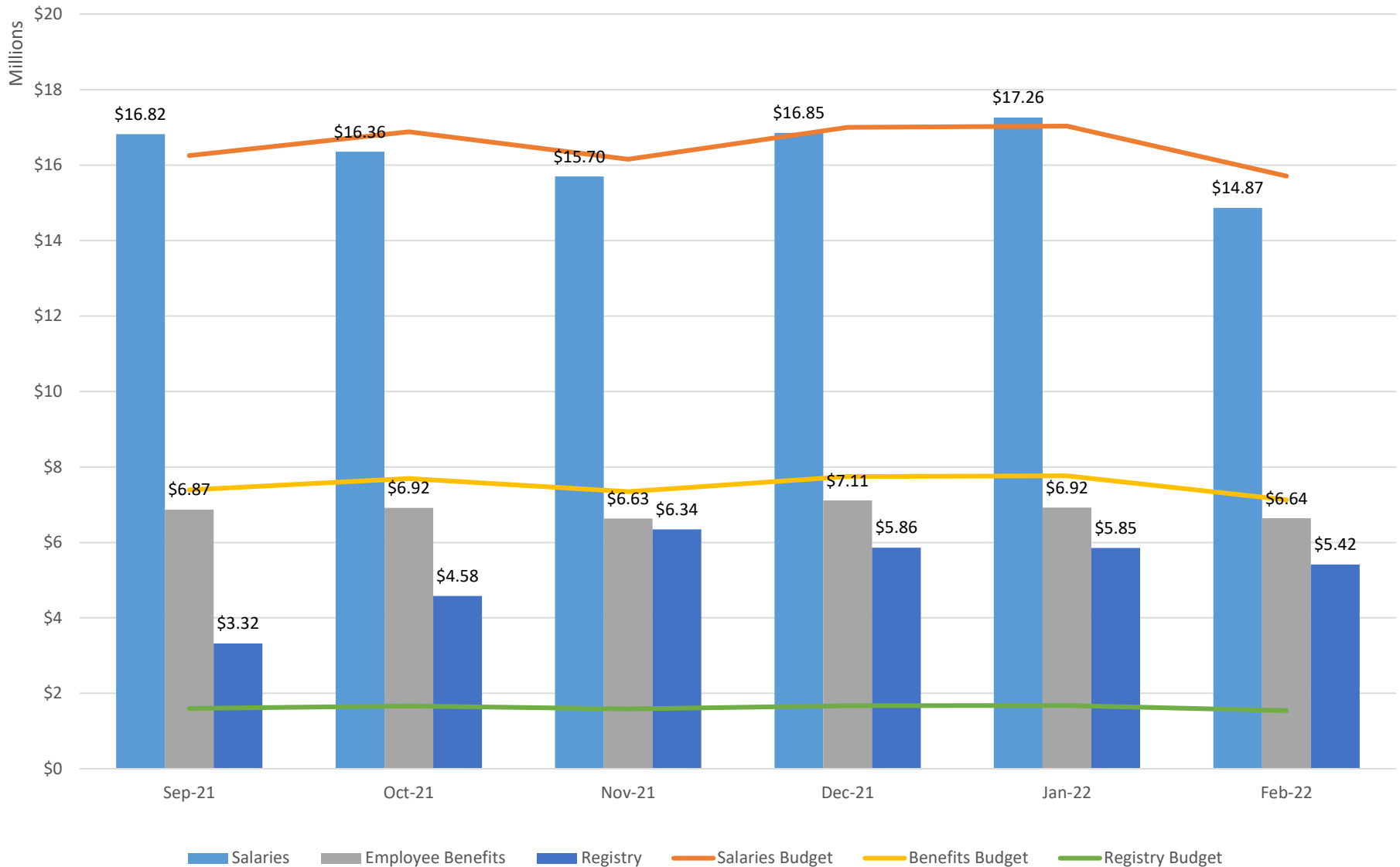
Indigent & Correctional Revenue



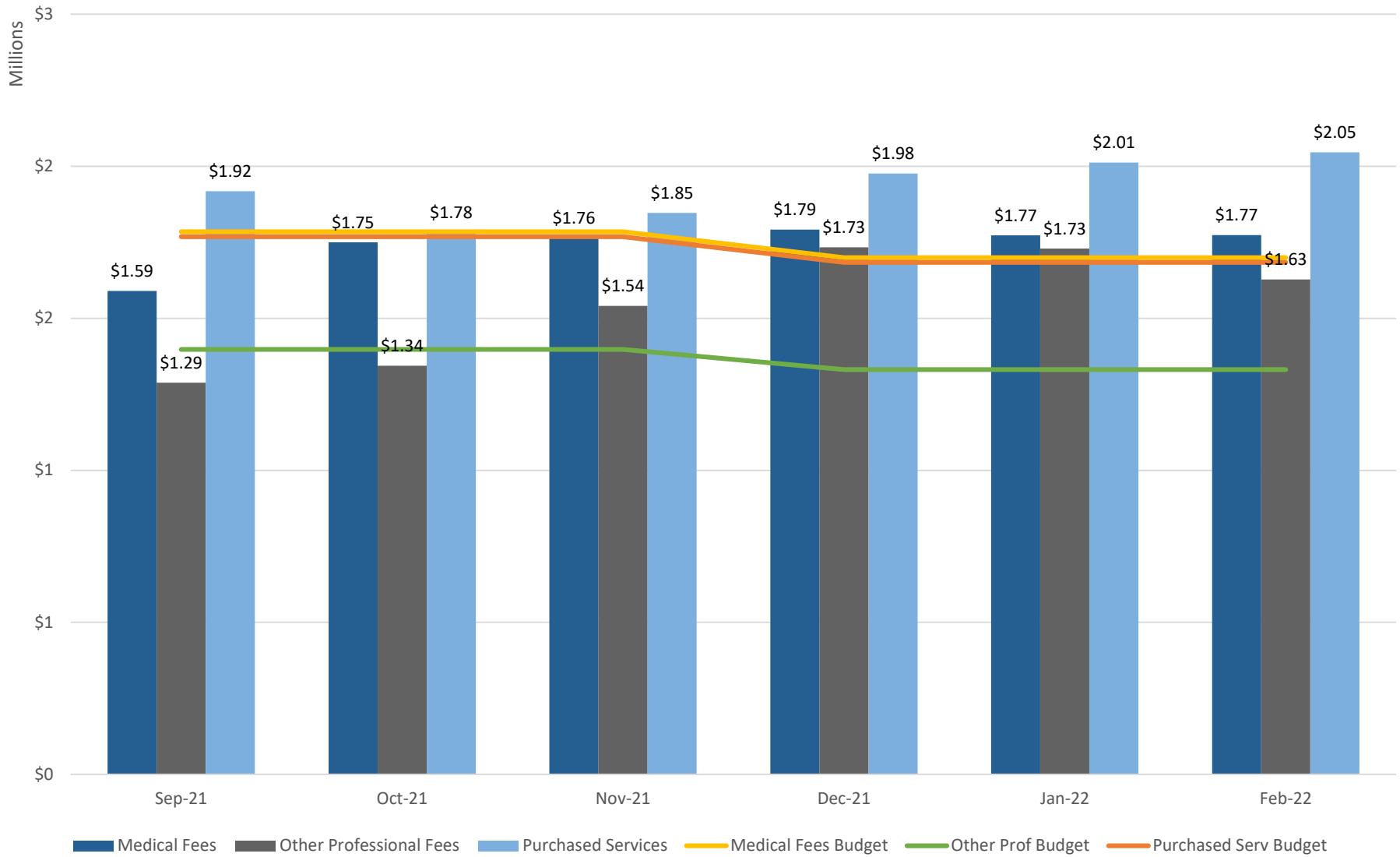
Total Revenue



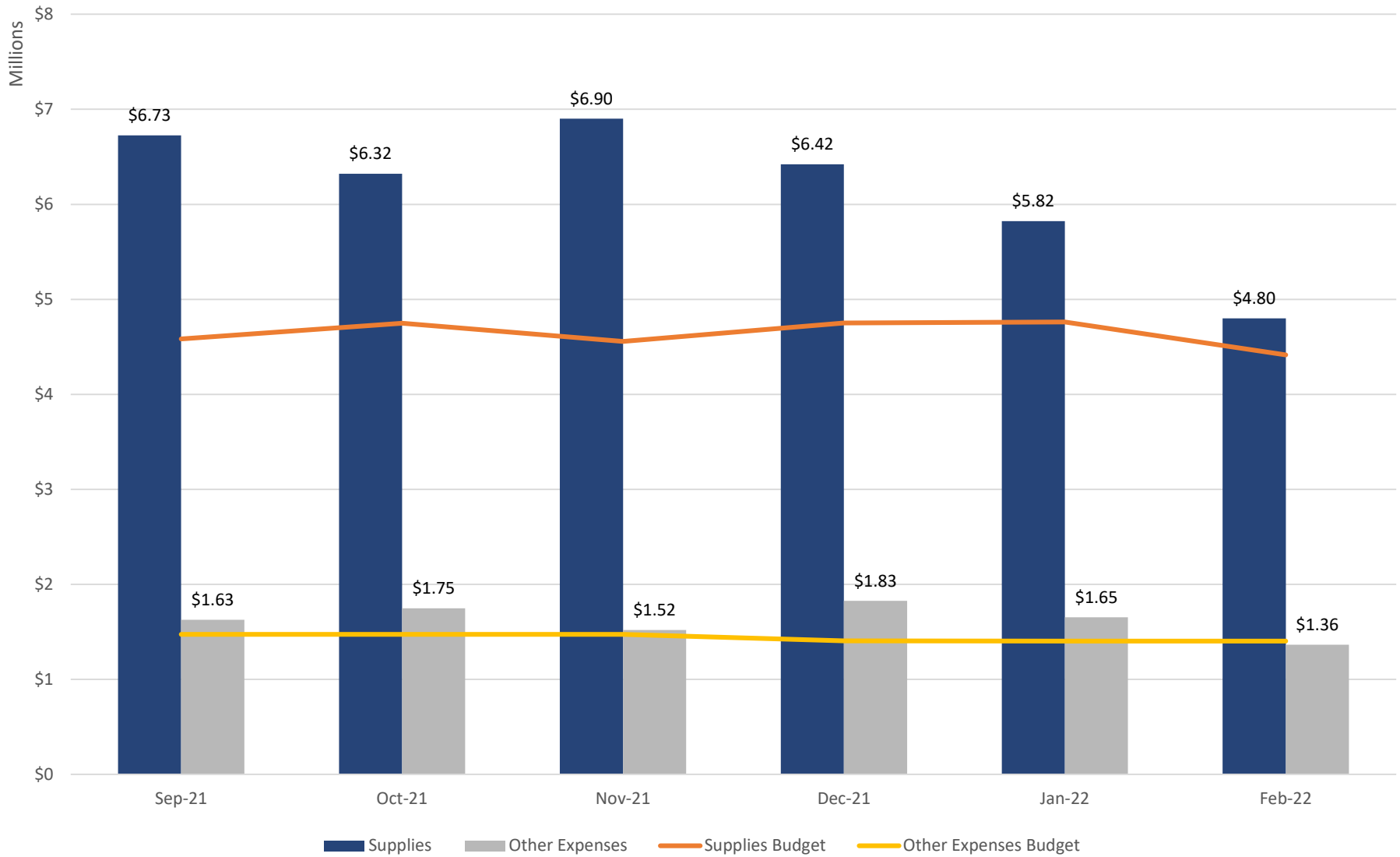
Expenses



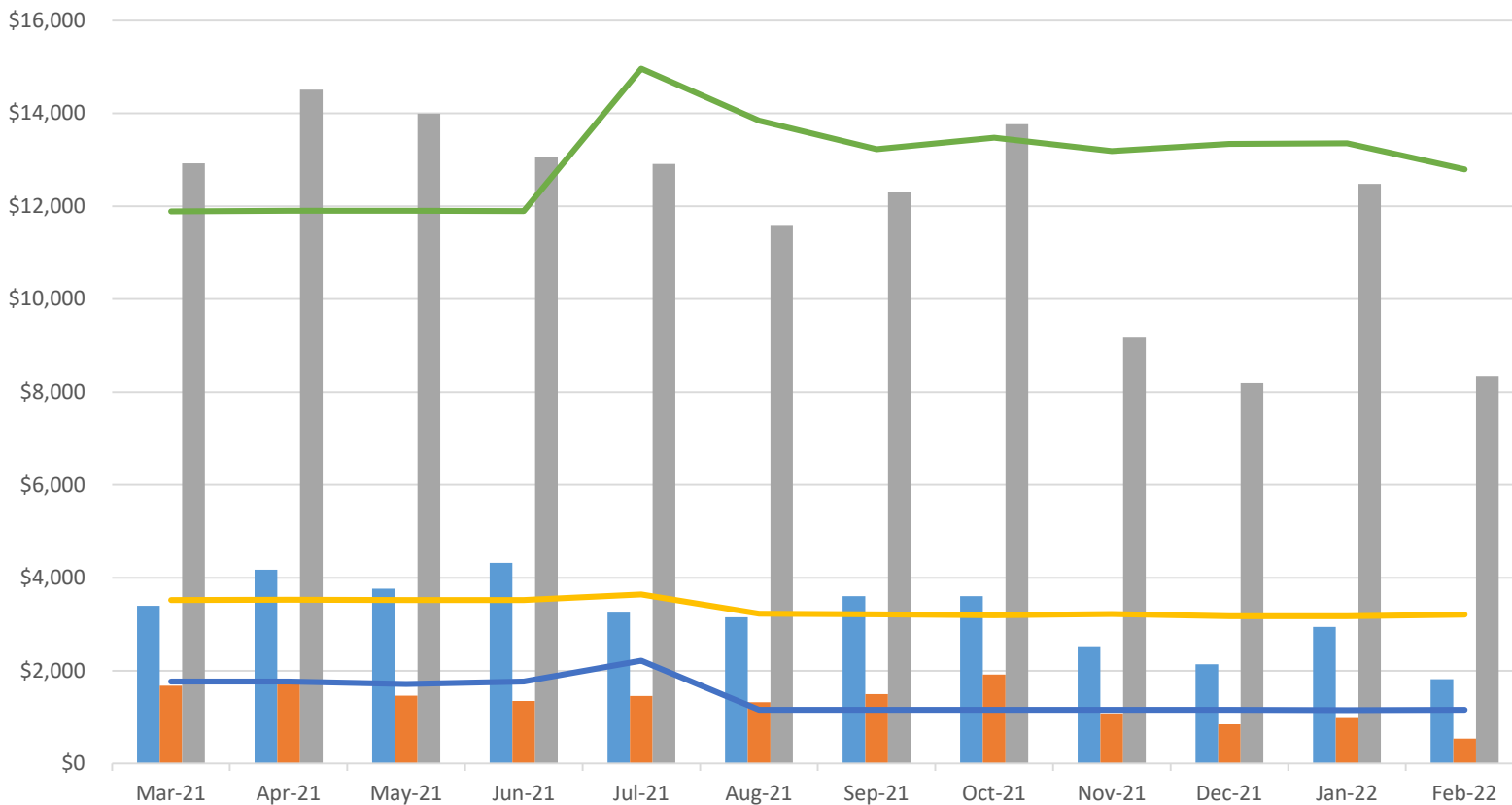
Expenses



Expenses

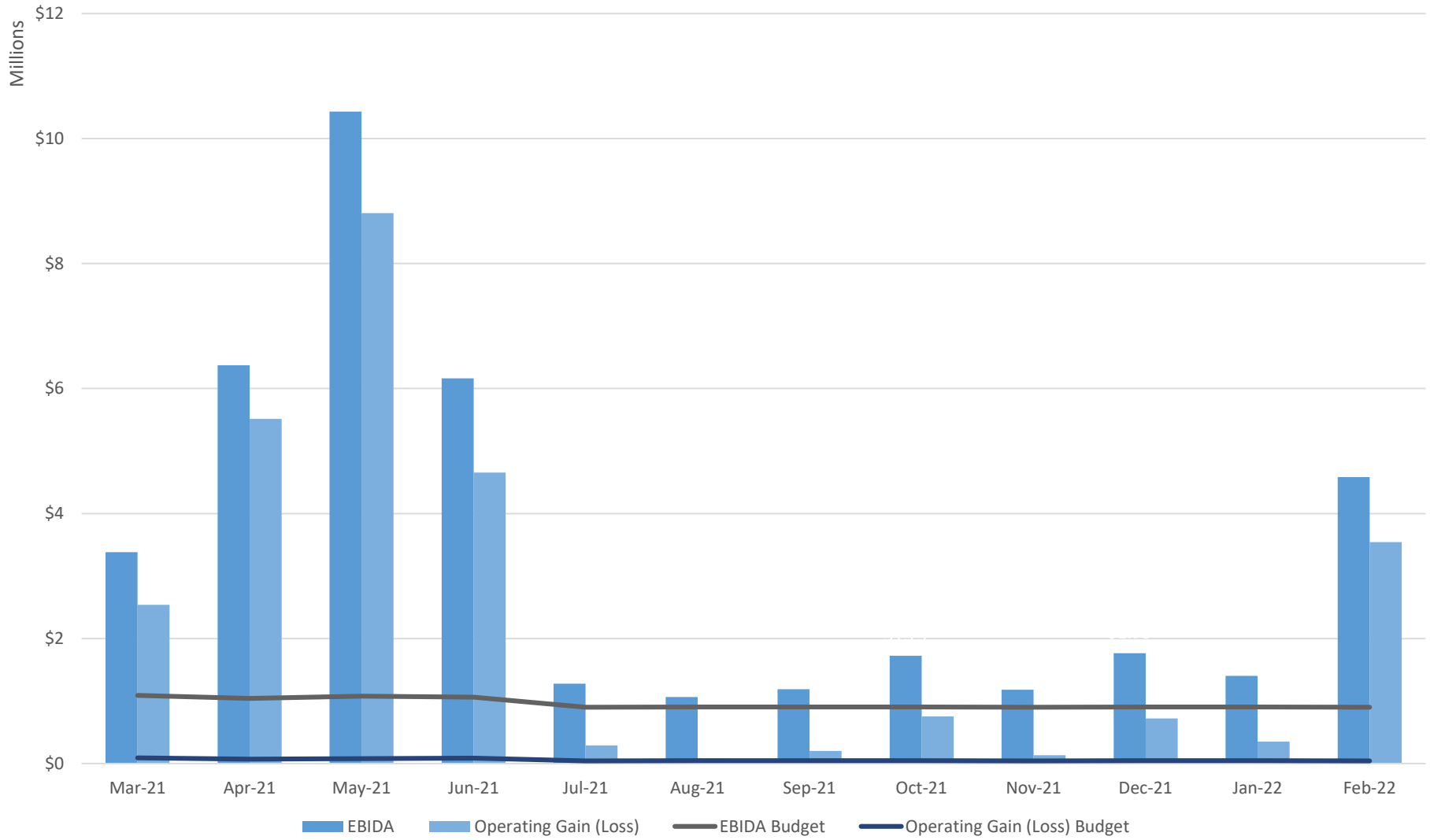


Operating Metrics

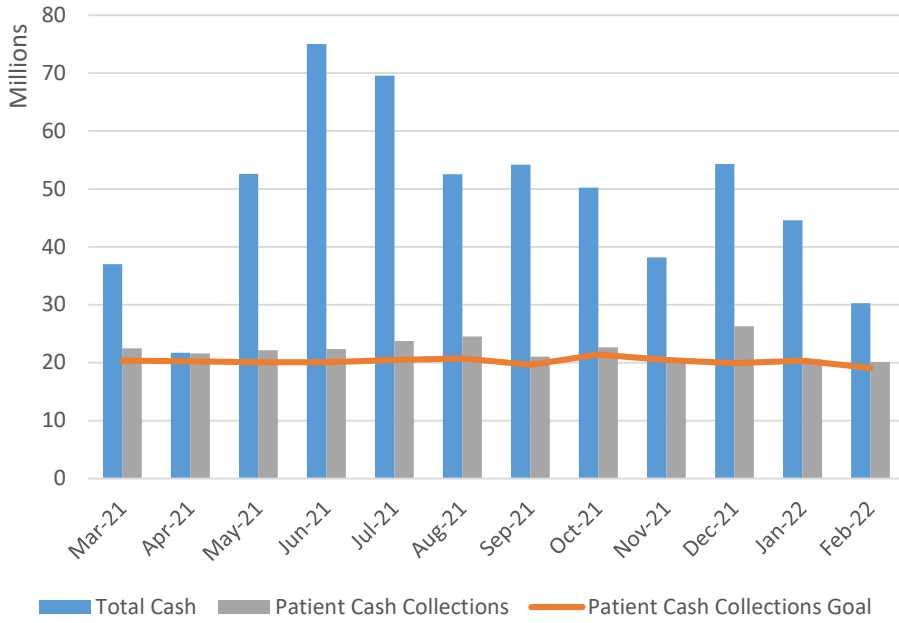


	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22
Supply Expense per AA	\$3,396	\$4,176	\$3,765	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528	\$2,141	\$2,938	\$1,813
Pharm Cost per AA	\$1,678	\$1,809	\$1,458	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081	\$846	\$982	\$538
Net Revenue Per AA	\$12,922	\$14,513	\$13,999	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170	\$8,196	\$12,479	\$8,333
Budget Supp/AA	\$3,518	\$3,526	\$3,522	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217	\$3,175	\$3,174	\$3,208
Budget Pharm/AA	\$1,763	\$1,767	\$1,714	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156	\$1,153	\$1,153	\$1,154
Budget Net Rev/AA	\$11,892	\$11,902	\$11,900	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187	\$13,344	\$13,359	\$12,793

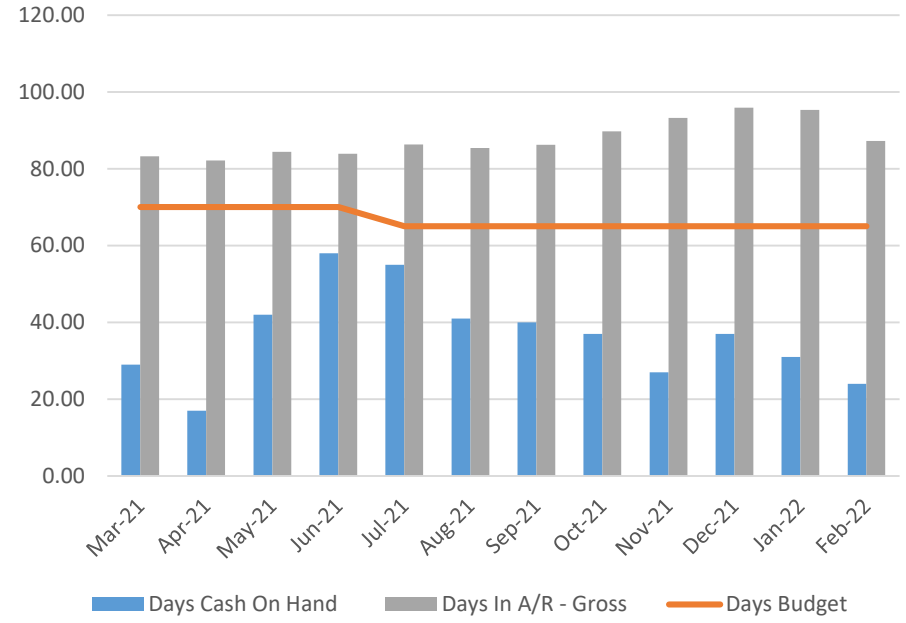
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
February 28, 2022

	DECEMBER	JANUARY	FEBRUARY	BUDGET FEBRUARY	VARIANCE POS (NEG)	PY FEBRUARY
Gross Patient Revenue	\$ 99,644,301	\$ 97,984,263	\$ 87,636,700	\$ 84,220,616	4%	\$ 83,568,624
Contractual Deductions	(75,056,605)	(73,256,917)	(65,586,135)	(66,610,508)	(2%)	(59,576,995)
Net Revenue	24,587,696	24,727,346	22,050,565	17,610,107	25%	23,991,629
Indigent Funding	14,979,851	13,111,881	13,102,123	13,468,684	(3%)	31,143,995
Correctional Medicine	2,616,667	2,242,175	2,583,481	2,616,667	(1%)	2,531,665
County Contribution	285,211	285,526	285,211	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	721,607
Net Patient Revenue	42,469,425	40,366,928	38,021,379	33,978,352	19%	58,674,107
Gain/(Loss) on Health-Related Entity	0	0	0	0	0%	0
Other Operating Revenue	2,861,169	2,057,914	2,788,999	1,575,338	77%	4,901,085
Other Non-Operating Revenue	6,574	2,004,765	2,302,336	256,429	798%	(888,562)
Total Revenue	45,337,169	44,429,606	43,112,715	35,810,119	20%	62,686,630
Expenses						
Salaries	16,852,720	17,262,049	14,865,291	15,708,556	(5%)	14,457,034
Employee Benefits	7,108,983	6,921,972	6,636,609	7,129,760	(7%)	8,860,099
Registry	5,861,624	5,854,184	5,415,401	1,539,210	252%	1,856,567
Medical Fees	1,791,931	1,772,682	1,773,518	1,699,575	4%	1,680,371
Other Professional Fees	1,733,253	1,729,246	1,627,625	1,331,140	22%	1,399,991
Supplies	6,421,341	5,822,112	4,798,682	4,415,856	9%	5,480,749
Purchased Services	1,976,158	2,012,686	2,046,220	1,684,113	22%	1,759,294
Other Expenses	1,827,048	1,653,957	1,364,961	1,403,579	(3%)	3,457,132
Operating Expenses	43,573,058	43,028,888	38,528,307	34,911,789	10%	38,951,238
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,764,111	\$ 1,400,718	\$ 4,584,408	\$ 898,330	410%	\$ 23,735,392
EBIDA Margin	4%	3%	11%	3%	324%	38%
Interest	84,746	84,468	84,051	138,079	(39%)	122,903
Depreciation	661,883	671,551	661,829	466,931	42%	469,548
Amortization	296,755	295,228	295,228	254,168	16%	256,257
Total Expenses	44,616,442	44,080,135	39,569,414	35,770,967	11%	39,799,946
Operating Gain (Loss)	\$ 720,727	\$ 349,471	\$ 3,543,300	\$ 39,152	8,950%	\$ 22,886,683
Operating Margin	1.6%	0.8%	8.2%	0.11%	7,417%	36.51%

KERN MEDICAL
Year-to-Date: Revenue & Expense
February 28, 2022

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 786,339,672	\$ 708,549,382	11%	\$ 684,582,510	15%
Contractual Deductions	(600,266,327)	(553,829,819)	8%	(519,524,216)	16%
Net Revenue	186,073,344	154,719,563	20%	165,058,293	
Indigent Funding	107,658,193	107,749,476	(0%)	123,989,025	(13%)
Correctional Medicine	20,525,655	20,933,333	(2%)	20,568,501	(0.2%)
County Contribution	2,282,002	2,263,149	1%	2,281,726	0.012%
Incentive Funding	0	0	0%	4,201,433	(100%)
Net Patient Revenue	316,539,195	285,665,522	11%	316,098,979	0%
Gain/(Loss) on Health-Related Entity	0	0	0%	0	0%
Other Operating Revenue	17,926,793	12,999,677	38%	15,064,475	19%
Other Non-Operating Revenue	4,382,144	2,225,434	97%	1,397,798	214%
Total Revenue	338,848,132	300,890,633	13%	332,561,252	2%
Expenses					
Salaries	130,247,926	132,394,952	(2%)	125,237,078	4%
Employee Benefits	55,502,122	60,262,594	(8%)	59,112,070	(6%)
Registry	35,919,346	13,009,802	176%	12,942,555	178%
Medical Fees	14,006,445	14,106,472	(1%)	13,718,839	2%
Other Professional Fees	12,365,305	10,932,864	13%	11,061,615	12%
Supplies	48,118,406	37,228,446	29%	44,184,501	9%
Purchased Services	15,533,899	14,123,852	10%	14,947,857	3.92%
Other Expenses	12,973,809	11,617,680	12%	14,671,408	(12%)
Operating Expenses	324,667,258	293,676,660	11%	295,875,922	10%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 14,180,874	\$ 7,213,972	97%	\$ 36,685,330	(61%)
EBIDA Margin	4%	2%	75%	11%	(62%)
Interest	675,692	1,104,635	(39%)	1,076,365	(37%)
Depreciation	5,363,651	3,735,445	44%	3,753,131	43%
Amortization	2,080,496	2,033,347	2.3%	2,050,060	1%
Total Expenses	332,787,098	300,550,088	11%	302,755,478	10%
Operating Gain (Loss)	\$ 6,061,035	\$ 340,545	1680%	\$ 29,805,775	(80%)
Operating Margin	2%	0.1%	1480%	9%	(80%)

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2022	FEBRUARY 2021
ASSETS:		
<i>Total Cash</i>	\$ 30,261,902	\$ 26,936,063
Patient Receivables Subtotal	311,759,644	247,319,327
Contractual Subtotal	(258,975,620)	(202,171,234)
<i>Net Patient Receivable</i>	52,784,023	45,148,093
Total Indigent Receivable	176,217,178	148,300,098
Total Other Receivable	7,749,194	10,524,812
Total Prepaid Expenses	5,535,100	3,748,280
Total Inventory	4,139,485	6,036,310
<i>Total Current Assets</i>	276,686,883	240,693,655
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	223,151,678	196,280,372
Total Construction in Progress	3,703,830	23,878,855
<i>Total Property, Plant & Equipment</i>	226,855,508	220,159,227
Total Accumulated Depr & Amortization	(132,826,957)	(121,484,624)
<i>Net Property, Plant, and Equipment</i>	94,028,551	98,674,603
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 498,006,289	\$ 427,231,720

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2022	FEBRUARY 2021
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 21,249,297	\$ 8,934,017
Total Accrued Compensation	31,455,336	35,490,374
Total Due Government Agencies	16,025,989	37,903,484
Total Other Accrued Liabilities	54,013,517	42,996,800
<i>Total Current Liabilities</i>	122,744,139	125,324,675
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	64,286,919	96,456,658
<i>Total Long-Term Liabilities</i>	445,439,730	418,560,455
<i>Total Liabilities</i>	568,183,869	543,885,130
Fund Balance	36,714,022	36,714,022
Retained Earnings	(106,891,602)	(153,367,432)
<i>Total Fund Balance</i>	(70,177,580)	(116,653,410)
<i>Total Liabilities and Fund Balance</i>	\$ 498,006,289	\$ 427,231,720



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

April 20, 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 April 20, 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**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on April 20, 2022, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6)

**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 April 20, 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: William Coughran v.
Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County
Superior Court Case No. BCV-21-100662 –