



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, April 21, 2021

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Kern Medical Center employees for their vaccination services –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on March 17, 2021 –
APPROVE

CA

- 5) Proposed reappointment of Director Raji Brar to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2024 –
REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT

CA

- 6) Proposed Agreement with Acute Care Surgery Medical Group, Inc., an independent contractor, for professional medical and administrative services in the General Surgery Program from July 1, 2021 through June 30, 2025, in an amount not to exceed \$18,394,210 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Amendment No. 5 to Agreement 2016-030 with Valley Neurosurgery and Neurorestoration Center, A Medical Corporation, an independent contractor, for professional medical services in the Department of Surgery, for the period July 1, 2016 through June 30, 2021, extending the term for three years from July 1, 2021 through June 30, 2024, and increasing the maximum payable by \$6,058,080, from \$10,668,032 to \$16,726,112, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Agreement with Rab-Com, Limited, an independent contractor, for purchase of the Totguard Infant and Pediatric Security System, in an amount not to exceed \$340,779, effective April 21, 2021 –
MAKE FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE

CA

- 9) Proposed Service Estimate with Mizuho OSI, an independent contractor, containing nonstandard terms and conditions, for repair of the Mizuho ProFix table shroud, in an amount not to exceed \$15,000, effective April 21, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- 10) Kern County Hospital Authority financial report –
RECEIVE AND FILE
- 11) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE

CA

- 12) Claims and Lawsuits Filed as of March 31, 2021 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 13) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 14) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Shine Villanueva, an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101706 TSC –
- 15) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6)

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MAY 19, 2021 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.

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

- A) Charge of Discrimination in the matter of Maritza Perez, Equal Employment Opportunity Commission Charge No. 480-2021-01042
- B) Summons and Complaint in the matter of Huver Perez Arreola v. Kern Medical Hospital Authority, Kern County Superior Court Case No. BCV-21-100432
- C) Claim in the matter of Willie Divine Roberts
- D) Claim in the matter of Paula Torres
- E) Claim in the matter of Martin Alejandro Cruz
- F) Claim in the matter of Roberto Garcia



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, March 17, 2021

11:30 A.M.

BOARD RECONVENED

Directors present: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz

Directors absent: None

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

LYLE WOOD, ICU NURSE, DR. JENNIFER FRANKS, DR. MAGGIE JIANG, DR. MINERVA PINEDA, DR. TAIDE CHAVEZ-STURMAN, DR. TAMMY ISSA, DR. NIZLA SHOAR, DR. GOLI SHENASAN, ITWINDER SIVIA, DR. MARIAM BARSEGHYAN, SHADEE GIURGIUS, DR. NAKISA KIAI, DR. MICHAEL NTIM, TYLER TORRICO, DR. KHALID RAMAHI, DR. ATISH VANMALI, ARTUR SAAKYAN, DR. RYAN ROLESON, ELVA TSENG, SPENCER LEWIS, DR. TONI CROSS, TYLER WHEELER, DR. ANGELA TSENG, DR. ABDELHAMID DALIA, DR. BRETT COWAN, CAROL TANG, DR. BENJAMIN BOODAIE, AND DR. NANSE MENDOZA, HEARD REGARDING CIR/SEIU LOCAL 1957 LABOR NEGOTIATIONS; CHAIRMAN BIGLER REMARKED THAT SALARY SHOULD NOT BE ASSOCIATED WITH RESPECT AND THAT RESIDENTS AND FELLOWS ARE HIGHLY REGARDED BY MEMBERS OF THE BOARD AND MANAGEMENT

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 COMMENTED ON THE VIRTUAL FORMAT USED THIS YEAR FOR MATCHING RESIDENTS TO PHYSICIAN TRAINING PROGRAMS AND THAT EACH PROGRAM SPONSORED BY KERN MEDICAL CENTER MATCHED ITS ALLOTTED NUMBER OF RESIDENTS FOR THE UPCOMING 2021-2022 ACADEMIC YEAR

CHAIRMAN BIGLER REPORTED NATIONAL DOCTOR'S DAY IS MARCH 30, AND IN HONOR OF THEIR DEDICATION AND COMMITMENT EACH KERN MEDICAL CENTER PHYSICIAN WILL RECEIVE A CUSTOM-MADE HANGER FOR THEIR WHITE COAT

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Kern County Hospital Authority Board of Governors on its fifth anniversary –
MADE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meetings on February 17, 2021 –
APPROVED
Pelz-Alsop: 6 Ayes

CA

- 5) Proposed Agreement with Matthew M. Malerich, M.D., Incorporated, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 015-2021
Pelz-Alsop: 6 Ayes

CA

- 6) Proposed Agreement with Desert Hand and Plastic Surgery PC, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 016-2021
Pelz-Alsop: 6 Ayes

CA

- 7) Proposed Agreement with Ralph Garcia-Pacheco Suarez, M.D., a contract employee, for professional medical services in the Department of Medicine from June 1, 2021 through May 31, 2024, in an amount not to exceed \$1,560,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 017-2021
Pelz-Alsop: 6 Ayes

CA

- 8) Proposed Amendment No. 4 to Agreement 07616 with KSA Group Architects, LLP, an independent contractor, for engineering and architectural services for the period July 1, 2016 through June 30, 2021, extending the term for three years from July 1, 2021 through June 30, 2024, and increasing the maximum payable by \$100,000, from \$700,000 to \$800,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 018-2021
Pelz-Alsop: 6 Ayes

CA

- 9) Proposed retroactive Amendment No. 7 to Agreement 472-2009 with Morrison Management Specialists, Inc., dba Morrison Health Care, Inc., an independent contractor, for dietary and nutrition services for the period June 27, 2009 through June 26, 2023, increasing the maximum payable for the period June 27, 2018 through June 26, 2023 by \$7,776,693, from \$6,798,536 to \$14,575,299, effective December 1, 2020 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 019-2021
Pelz-Alsop: 6 Ayes

CA

- 10) Proposed Resolution reaffirming the commitment of the Board of Governors to patient safety at Kern Medical Center –
APPROVED; ADOPTED RESOLUTION 2021-004; DIRECTED STAFF TO IMPLEMENT SAFETY PLAN
Pelz-Alsop: 6 Ayes

CA

- 11) Proposed Services Agreement with Craneware plc, an independent contractor, containing non-standard terms and conditions, for re-templating of the Chargemaster and Physician Revenue Toolkit from March 17, 2021 through March 16, 2022, in an amount not exceed \$9,400 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 020-2021
Pelz-Alsop: 6 Ayes

CA

- 12) 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, 2021 through March 31, 2022, with option to finance the earthquake premium through IPFS Corporation of California in an amount not to exceed \$585,217 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN PREMIUM FINANCE AGREEMENT 021-2021 AND CERTIFICATE OF INCUMBENCY
Pelz-Alsop: 6 Ayes

- 13) Kern County Hospital Authority financial report – RECEIVED AND FILED
Brar-Pelz: 6 Ayes

- 14) Kern County Hospital Authority Chief Executive Officer report – RECEIVED AND FILED
McLaughlin-Berjis: 6 Ayes

CA

- 15) Claims and Lawsuits Filed as of February 28, 2021 – RECEIVED AND FILED
Pelz-Alsop: 6 Ayes

ADJOURNED TO CLOSED SESSION

Berjis-Brar

CLOSED SESSION

- 16) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 17) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Pelz-Alsop

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 16 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE (MOTION BY DIRECTOR ALSOP, SECOND BY DIRECTOR BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, AND VOLUNTARY RESIGNATION; NO OTHER REPORTABLE ACTION TAKEN

Item No. 17 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, APRIL 21, 2021 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 21, 2021

Subject: Proposed reappointment of Director Raji Brar to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2024

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

Summary:

Director Raji Brar was appointed to the Board of Governors for a term of three years, expiring June 30, 2021. Members may serve an unlimited number of terms if reappointed by the Kern County Board of Supervisors.

Director Brar, as required by the authority's Bylaws for Governance, has notified your Board Chairman in writing of her intent to seek reappointment to the Board of Governors. She is 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 reappointment of Director Brar for a three-year term expiring June 30, 2024.



April 21, 2021

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, 2021. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2024. 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 "Raji Brar".

Raji Brar



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

April 21, 2021

SUBJECT: Proposed Agreement with Acute Care Surgery Medical Group, Inc., an independent contractor

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Agreement with Acute Care Surgery Medical Group, Inc. ("Group"), for professional medical and administrative services in the General Surgery Department.

Kern Medical has had a current agreement in place with this Group since November 2018 for trauma and acute care surgery coverage. This proposed agreement is separate from the trauma and acute care surgery services agreement between Kern Medical and Group and will allow for the Group to provide support to Kern Medical to re-establish the general surgery residency.

Therefore, it is recommended that your Board approve the Agreement with Acute Care Surgery Medical Group, Inc., for medical and administrative services in the General Surgery Program from July 1, 2021 through June 30, 2025, in an amount not to exceed \$18,394,210, and authorize the Chairman to sign.

GENERAL SURGERY AND RESIDENCY PROGRAM DEVELOPMENT AND MANAGEMENT AGREEMENT

This General Surgery and Residency Program Development and Management Agreement (“Agreement”) is effective as of July 1, 2021, (the “Effective Date”), by and between **Kern County Hospital Authority** (“Authority”), and **Acute Care Surgery Medical Group, Inc.** (“Medical Group”).

RECITALS

A. Authority is a local unit of government, which owns and operates Kern Medical Center (“Hospital”), an acute care general hospital located in Bakersfield, California. Hospital desires to expand its general surgery program (the “General Surgery Program”) in order to increase the quality and availability of surgical services provided to patients in Hospital’s community. Hospital further desires to reestablish its general surgery residency program (the “Residency Program”) in order to provide quality graduate medical education to resident physicians at Hospital. References to the General Surgery Program in this Agreement shall, where appropriate, also refer to the Residency Program. References to Hospital in this Agreement shall, where appropriate, also refer to Authority.

B. Hospital is also in need of an experienced, qualified physician to serve as medical director for the General Surgery Program, to provide customary medical direction and certain administrative services to the General Surgery Program, and to act as a liaison between the General Surgery Program, the Medical Staff and other clinical and nonclinical departments within Hospital.

C. Medical Group is a professional corporation that develops and manages hospital general surgery programs and general surgery residency programs. Medical Group contracts with physicians (“Physician” or “Physicians”) who are duly licensed to practice medicine in the state of California, experienced in general surgery, and qualified to provide the clinical and administrative services required to successfully develop and manage hospital general surgery programs and general surgery residency programs. Medical Group is managed by Surgical Affiliates Management Group, Inc., (“Manager”) which as Manager, shall have access to Medical Group information as necessary for operational purposes on Medical Group’s behalf.

D. Hospital and Medical Group recognize the need for quality treatment, care, and services for Hospital’s general surgery patients, which can be realized through the development and management of both an organized and well-structured General Surgery Program and Residency Program.

E. Authority wishes to contract with Medical Group, and Medical Group wishes to contract with Authority, for provision of clinical and administrative services required to develop and manage the General Surgery Program and establish the Residency Program, upon the terms and conditions set forth herein.

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

AGREEMENT

SECTION 1. SUMMARY OF TERMS

- | | |
|--|--|
| <p>1.1 <u>Effective Date:</u> This Agreement shall become effective on July 1, 2021 (the “Effective Date”).</p> <p>1.3 <u>Compensation for General Surgery Program Services and Administrative Services:</u> See Section 5.1(a)(1).</p> <p>1.5 <u>Medical Group’s Address:</u>
2450 Del Paso Road, Suite 250
Sacramento, CA 95834</p> | <p>1.2 <u>Expiration Date:</u> This Agreement shall expire on June 30, 2025.</p> <p>1.4 <u>Medical Group’s Tax I.D. Number:</u>
26-1491885</p> <p>1.6 <u>Hospital’s Address:</u>
1700 Mount Vernon Avenue
Bakersfield, CA 93306</p> |
|--|--|

SECTION 2. MEDICAL GROUP’S SERVICES

2.1 General Surgery Program Services. Medical Group shall develop and manage Hospital’s General Surgery Program and reestablish Hospital’s Residency Program by providing the services described in **Exhibit 2.1** (“General Surgery Program Services”). General Surgery Program Services shall include, without limitation, the recruitment and provision of Physicians experienced in various general surgery subspecialties, as more specifically described in **Exhibit 2.1**.

2.2 Intentionally Omitted.

2.3 Advanced Practice Provider Services. Medical Group shall provide advanced practice provider support services (“APP Services”) in the General Surgery Program by physician assistants and/or nurse practitioners (collectively, “APPs”). Medical Group shall recruit qualified APPs and provide a maximum of seven thousand three hundred (7,300) hours of APP Services per calendar year (the equivalent of four and one-quarter [4.25] full time APPs) when fully staffed, and in the manner that most efficiently supports the provision of General Surgery Program Services as the parties shall mutually determine. References to “General Surgery Program Services” shall include APP Services, unless the context of the reference indicates otherwise. APPs shall provide services within the scope of their respective practices and pursuant to a “Physician Assistant Practice Agreement” or “Standardized Procedure for Nurse Practitioners,” as the case may be, and under the appropriate supervision of a Physician.

2.4 Medical Director Services.

(a) **Services.** Medical Group shall provide a Physician to serve as Medical Director of the General Surgery Program (“Medical Director”) subject to Hospital’s approval, which shall not be unreasonably withheld. Medical Director shall be responsible for carrying out Medical Group’s administrative responsibilities described in **Exhibit 2.4**, for the overall supervision of the General Surgery Program (including the Residency Program with assistance from the Residency Program Director, as defined below), to act as a liaison among the General Surgery Program, the Medical Staff and other clinical and nonclinical departments within Hospital, and to oversee Medical Group’s performance of this Agreement (collectively, “Administrative Services”). To the extent allowed by law, Medical Director shall be responsible to Hospital’s President and/or Chief Medical Officer (the “Administrator”) for the performance of Administrative Services under the Agreement. The Administrative Services provided under this Agreement shall not include any professional services to patients or any other services.

(b) **Coordination of Services.** Hospital and Medical Director shall coordinate their activities in connection with Medical Group’s provision of General Surgery Program Services. Medical Group shall cause Medical Director to inform Hospital of any extended periods (i.e., one week or more) during which Medical Director will be unavailable due to vacation, professional meetings, or other personal or professional commitments. During all periods of Medical Director’s unavailability for extended periods, Medical Group shall designate a substitute Physician member of Medical Group reasonably acceptable to Hospital to serve as medical director (“Substitute Medical Director”) to perform the Administrative Services required of Medical Director under this Agreement.

2.5 Residency Program Director. Medical Group shall provide a Physician to serve as Residency Program Director (“Residency Program Director”) subject to Hospital’s approval, which shall not be unreasonably withheld. Residency Program Director shall be responsible for carrying out Medical Group’s responsibilities with respect to reestablishing the Residency Program, as specifically described in **Exhibit 2.5**, for the overall supervision of the Residency Program, to act as a liaison among the Residency Program, the General Surgery Program, the Medical Staff and other clinical and nonclinical departments within Hospital, and to oversee Medical Group’s performance of the Residency Program obligations arising under this Agreement (collectively, “Residency Program Director Services”). To the extent allowed by law, Residency Program Director shall be responsible to Hospital’s Chair, Department of Surgery, Chief Medical Officer, and/or Designated Institutional Official (the “Administrator”) for the performance of Residency Program Director Services under the Agreement. The Residency Program Director Services provided under this Agreement shall not include any professional services to patients or any other services.

2.6 Professional Qualifications. Each Physician providing General Surgery Program Services, Administrative Services, or Residency Program Director Services shall at all times:

(a) Hold an unrestricted license to practice medicine in the state of California and be competent to provide the services required by this Agreement;

(b) Be permitted to prescribe medications and hold a valid Drug Enforcement Agency permit;

(c) Hold a certificate or evidence of eligibility for certification in the relevant specialty by the American Board of Surgery and/or the American Osteopathic Board of Surgery, or be so certified within three (3) years of eligibility;

(d) Be a member in good standing of Hospital's Medical Staff in accordance with Hospital's medical staff bylaws with applicable unrestricted clinical privileges in the specialty and be subject to all of the attendant responsibilities and conditions of such membership;

(e) Meet all position requirements as established by Medical Group and Hospital;

(f) Be eligible at all times to provide services to beneficiaries under the Medicare and Medicaid programs or any other federal healthcare reimbursement programs, qualify for and maintain status as a participating physician under Medicare and Medicaid, qualify for Medicare risk-based and cost-based managed care plans, and execute and maintain on file with the appropriate Medicare and Medicaid carriers a valid agreement to accept assignment for professional medical services to individual patients; and

(g) Not be in residency training, except as otherwise agreed upon in writing by the parties.

(h) In addition to the professional qualifications listed above, the Physician serving as Residency Program Director shall at all times (i) be board certified in General Surgery by the American Board of Surgery and/or the American Osteopathic Board of Surgery, and (ii) have a minimum of three (3) years' experience in an educational or administrative role at a teaching hospital, academic medical center, or similar facility.

2.7 Representations and Warranties. Medical Group represents and warrants to Hospital that:

(a) Neither Medical Group nor any Physician is bound by any agreement or arrangement which would preclude Medical Group from entering into this Agreement, or Medical Group or any Physician from fully performing the General Surgery Program Services, or any other services under this Agreement;

(b) No Physician's license to practice medicine in the state of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way for medical disciplinary cause or reason;

(c) No Physician's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction for medical disciplinary cause or reason;

(d) No Physician or any other employee of Medical Group has ever been convicted of an offense related to health care, or listed by the Medicare or Medicaid programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation;

(e) Medical Group has no information that would reasonably indicate that any Physician is not able to perform any of the services required under this Agreement; and

(f) Notwithstanding the foregoing representations and warranties made to Hospital in this Section 2.7, Medical Group may engage the services of a Physician who fails to meet all of the criteria contained herein, so long as (i) the Physician's record substantially complies with this Section 2.7, and (ii) so long as Hospital approves, in writing, of Medical Group's decision to engage the Physician.

2.8 Notice of Failure to Meet Professional Qualifications. Medical Group shall promptly notify Hospital if Medical Group becomes aware of any event causing or likely to cause a failure by any Physician to meet the requirements set forth in Section 2.6 (Professional Qualifications) and Section 2.7 (Representations and Warranties) hereof, and any of the following:

(a) Any investigation of any Physician or disciplinary proceeding against any Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(b) Any malpractice action against any Physician or other action against any Physician in connection with such Physician's administrative or professional services;

(c) Any investigation of any Physician or disciplinary action against any Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by such Physician; or

(d) Any other material breach of the terms of this Agreement.

2.9 Working Cooperatively with Others. Physicians shall at all times work cooperatively with others toward enhancing the quality of patient care. Physicians shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to Hospital or the workplace setting.

2.10 Compliance with Rules and Laws. Medical Group and Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Medical Group and Physicians shall also adhere to and comply with Hospital's utilization management, quality assurance, risk management, peer review and credentialing activities, programs, policies and

procedures. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon such Physician's professional medical judgment and will be made in the best interests of such Physician's patients.

2.11 Corporate Compliance Program. Medical Group and each Physician shall comply with Hospital's corporate compliance program. Medical Group and Physicians shall cooperate with any corporate compliance audits, reviews and investigations that relate to Medical Group or any Physician and/or any of the services provided by Medical Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to General Surgery Program Services provided by Medical Group or Physicians under this Agreement.

2.12 Quality Improvement and Risk Management. Medical Group and Physicians shall participate in the quality improvement, utilization review and risk management programs of Hospital, and shall cooperate with any related audits, reviews or investigations.

2.13 Use of Hospital Facilities. No part of Hospital's premises shall be used at any time by Medical Group or any Physician for purposes other than the provision of General Surgery Program Services pursuant to the terms of this Agreement, except as agreed to under a separate lease arrangement with Hospital or as appropriate by virtue of a Physician's membership on the Hospital Medical Staff and exercise of the Physician's clinical privileges.

2.14 Expenses. Neither Medical Group nor any Physician shall incur any financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Except as otherwise specifically provided in this Agreement, Hospital shall have no responsibility for the following: (a) Physician compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings; or (d) any compensation attributable to any employees, subcontractors, or back-up physicians engaged by Medical Group or a Physician.

2.15 Expert Witness Conflict of Interest. Neither Medical Group nor any Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or operated by, or affiliated with Hospital, or any employee of Hospital or such other hospital or health care facility if the claim relates to the acts or omissions of Hospital or such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Medical Group and/or any Physician from testifying as a factual witness in an action pursuant to a subpoena or other court order.

2.16 Anti-Referral Laws. Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Medical Group or any Physician and Hospital. This Agreement is not intended to influence Medical Group's or any Physician's judgment in choosing the medical

facility appropriate for the proper care and treatment of Hospital's patients, or restrict any Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

2.17 Non-Discrimination. Neither Medical Group nor any Physician will discriminate against any Hospital patient by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, ancestry, national or ethnic origin, political opinion, sex, disability, marital status, sexual orientation, citizenship, medical condition, insurance status, economic status, ability to pay for medical services or any other basis protected by law. Medical Group and Physicians will treat all patients, including those patients who have no insurance and are deemed by Hospital to be unable to pay for medical services provided.

2.18 Immigration Compliance. Medical Group shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide Hospital with a copy of such verification required in 8 USCA section 1324a. Medical Group agrees to indemnify, defend, and hold harmless Hospital, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Medical Group's failure to comply with this Section 2.18.

2.19 Cost Control. Medical Group shall monitor and facilitate controlling the expenses of the General Surgery Program in order to provide clinically appropriate, high quality, cost-effective service in the General Surgery Program.

2.20 EMTALA. Medical Group and Physicians shall at all times comply with the Emergency Medical Treatment and Active Labor Act ("EMTALA") and other state and federal laws and regulations governing the responsibility of Medical Group with respect to patients to whom emergency services are provided at Hospital.

SECTION 3. HOSPITAL FACILITIES AND SERVICES

3.1 Space. Hospital shall furnish for the use of Medical Group such space and facilities as may be deemed necessary by Hospital for the proper operation and conduct of the General Surgery Program (the "Premises"). Hospital shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Medical Group shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Medical Group nor Physicians shall use such space or equipment for other business or personal use.

3.2 Use Limitations on Space. The use of any part of the space occupied by the General Surgery Program for the general or private practice of medicine is prohibited. Medical Group shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Medical Group or any Physician of any portion of the Premises, and insofar as Medical Group or Physicians may use a portion of said Premises, Medical Group and Physicians do so as licensees only, and Authority and Hospital shall, at all times, have full and free access to the same.

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

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

3.5 Rest Area. Hospital shall provide access to rest areas in Hospital for Physicians' reasonable use in the proper delivery of General Surgery Program Services, which shall include access to Hospital's sleep room, shower/bath facilities, and computer access. Medical Group shall not use such rest area, or equipment therein, for any purpose other than performance of the services required by this Agreement.

3.6 Patient Information Utilization and Quality Data. Hospital shall provide to Medical Group, via an HL7 feed, information regarding patients treated by Physicians pursuant to this Agreement including medical records, patient demographic information, and patient billing information (the "Data") which is necessary for Medical Group to monitor the quality of its performance, monitor General Surgery Program patient outcomes, monitor hospital outcomes, and perform its obligations under this Agreement. The Data shall be provided in such a manner that Medical Group can distinguish between patients on each general surgery subspecialty service line., and Hospital shall designate personnel who shall be responsible for assisting Medical Group in the event the HL7 feed experiences technical difficulties.

3.7 Intentionally Omitted.

3.8 Performance Assessment. Hospital shall assess Medical Group's, Medical Director's, and Residency Program Director's performance annually, and from time to time as otherwise deemed appropriate or necessary.

3.9 Interpreters. Hospital shall provide the services of interpreters as required by law and as necessary for the effective operation of the General Surgery Program.

3.10 Transcription. Hospital shall provide dictation and transcription services and medical record access.

3.11 Responsibility for General Surgery Program. To the extent required by applicable laws and regulations, Hospital shall retain administrative responsibility for the services rendered to patients in the General Surgery Program.

3.12 Control Retained in Hospital. In compliance with title 22, California Code of Regulations, section 70713, Hospital will retain professional and administrative responsibility for services rendered under this Agreement. Medical Group shall apprise Hospital of

recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by Hospital for follow-up action and evaluation of performance.

SECTION 4. QUALITY GOALS AND PERFORMANCE REVIEW

4.1 General Surgery Program Goals. Hospital and Medical Group agree and understand the need for an organized and well-managed General Surgery Program. The goal of the parties is to demonstrably improve patient care, clinical quality and efficiency, patient satisfaction, patient safety, patient treatment identification, care coordination and care transition management through the General Surgery Program.

4.2 Service Excellence Commitment. Medical Group, along with Hospital, shall lead the General Surgery Program efforts to enhance patient satisfaction and achieve Hospital's service goals. Medical Group acknowledges that the dedication of all Physicians toward the achievement of this goal is a key indicator of success for Hospital and an essential element of this Agreement. Medical Group and Physicians shall participate fully and provide leadership in service excellence teams and other quality improvement and risk management efforts focused on surgery services.

4.3 Active Participation in Quality, Efficiency, and Care System Improvement Initiatives. Medical Group shall ensure the active participation of Medical Director, Residency Program Director, and Physicians (as appropriate) in Hospital care improvement initiatives, including initiatives that relate to (a) the implementation of the electronic medical record and computerized physician order entry, (b) MD/RN rounding, (c) transitions of care process improvements, (d) Physician role in disease management, (e) common training priorities and programs for Physicians and The Joint Commission compliance programs such as core measures, (f) setting priorities for improvement, establishing common best practices to develop and implement and adopting approaches to achieve higher consistency (less variation) in care provided to inpatients, (g) planning for common Physician training and development, (h) assuring the coordination of discharge planning needs with patients, patients' families and the case manager/discharge planner, (i) actively participating with Hospital's emergency physicians in coordinating and maintaining efficient patient flow in the Emergency Department and (j) paired leadership and coordination with Hospital management, with ongoing communication and coordination with Hospital's administrative team liaison; including joint planning, shared communications and prompt response regarding patient management.

4.4 Quarterly Performance Review. Hospital and Medical Group shall meet on a quarterly basis during the term of this Agreement to review the performance of the General Surgery Program. After the first six (6) months of the term, Hospital and Medical Group may meet more or less frequently if Authority's Chief Executive Officer deems such necessary. Such quarterly meetings shall include the appropriate representatives of Medical Group, the Medical Director, the Residency Program Director and Hospital assigned staff who may include an administrative liaison, Hospital patient care executive, Hospital director(s) of quality and case management, and Hospital's President as deemed appropriate by Hospital. Such quarterly meetings may be held via video or tele-conference. The performance items to be reviewed are those items more particularly described in **Exhibit 4.4** attached hereto.

SECTION 5. COMPENSATION AND BILLING

5.1 Compensation. As payment for the General Surgery Program Services, Administrative Services, and Residency Program Director Services provided pursuant to this Agreement, Hospital shall pay to Medical Group the following compensation:

(a) **Compensation for General Surgery Program Services, Administrative Services, and Residency Program Director Services.**

(1) In exchange for the performance of the General Surgery Program Services, Administrative Services, and Residency Program Director Services described in this Agreement, Hospital shall pay to Medical Group the following sums:

- ***Fifty-Eight Thousand Two Hundred Fifty-Eight Dollars (\$58,258.00)*** per month for each Physician full-time equivalent (“Physician FTE”) that provides General Surgery Program Services pursuant to this Agreement;
- ***Fifty-Eight Thousand Two Hundred Fifty-Eight Dollars (\$58,258.00)*** per month for the Residency Program Director; and
- ***Fifteen Thousand Nine Hundred Eighty-Four Dollars (\$15,984.00)*** per month for each APP full-time equivalent (“APP FTE”) that provides General Surgery Program Services pursuant to this Agreement.

For purposes of this Agreement, a Physician FTE shall be equal to 46 weeks of availability per year, and an APP FTE shall be equal to one thousand seven hundred seventeen (1,717) hours per year. Compensation for each Physician, APP, and the Residency Program Director shall commence on each provider’s first day providing services pursuant to this Agreement, and shall be subject to pro-ration for both partial months and partial FTEs. On each anniversary of the Effective Date, the Monthly Stipend shall be increased by Three Percent (3%) for the subsequent year.

(2) If Medical Group engages a Physician to provide General Surgery Program Services pursuant to this Agreement who was introduced to Medical Group by Hospital, then Medical Group shall credit Hospital the amount of Twenty-Two Thousand Dollars (\$22,000.00) per year for each such Physician. This amount shall be credited to Hospital by reducing the monthly amount payable to Medical Group for each such Physician by One Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833.33) per month for each month such Physician provides services on behalf of Medical Group pursuant to this Agreement. Physicians shall be considered to have been introduced to Medical Group by Hospital if Medical Group has not contacted the Physician about providing services at Hospital prior to Hospital’s provision of the Physician’s name and contact information to Medical Group.

(3) Neither Medical Group nor any Physician shall receive compensation for providing services to Hospital not contemplated in this Agreement, unless such services are the subject of a separate agreement between the parties.

(4) During the term of this Agreement, Medical Group shall record the actual number of days worked by Physicians on an invoice (“General Surgery Program Invoice”). On a monthly basis, Medical Group shall deliver to Hospital completed and signed copies of the General Surgery Program Invoice within fifteen (15) days after the end of each calendar month during the term of this Agreement. Each General Surgery Program Invoice shall contain, at a minimum, the names of Physicians who provided services and the dates each Physician provided services during the prior month. The compensation described in this Article 5 shall be due and payable upon Hospital’s receipt of the General Surgery Program Invoice.

(b) **Incentive Compensation.** Medical Group shall have the opportunity to earn additional compensation for achieving certain incentives (“Incentive Compensation”). For the first and second Contract Years (as defined below) of this Agreement, Hospital shall pay Medical Group the sum of Eleven Thousand Dollars (\$11,000.00) for each Physician FTE provided by Medical Group as of the final day of the applicable Contract Year. The Residency Program Director shall be considered as a Physician FTE for purposes of calculating Incentive Compensation during the first and second Contract Years, and total Incentive Compensation shall not exceed Fifty-Five Thousand Dollars (\$55,000.00) during any Contract Year. Prior to the second anniversary of the Effective Date, and prior to each subsequent Effective Date anniversary thereafter, the parties shall mutually determine the incentives that Medical Group must achieve in order to earn Incentive Compensation for the following Contract Year and amend this Agreement accordingly. If the parties are unable to agree upon the incentives that Medical Group must achieve, then the incentives in place at such time shall continue until the parties are able to agree on new incentives and amend this Agreement accordingly. A “Contract Year” shall mean the twelve (12) month periods commencing on the Effective Date, and each anniversary thereof. Medical Group shall send Hospital an invoice for Incentive Compensation earned within fifteen (15) days after the end of the month during which the Effective Date anniversary occurs, and Incentive Compensation shall be due and payable upon Hospital’s receipt of such invoice.

(c) **Meet and Confer.** In the ninety (90) day period prior to the first, and each subsequent, anniversary of the Effective Date of this Agreement, the parties shall meet and confer in good faith regarding the compensation paid, service provided, and other terms of this Agreement.

(d) **Implementation Fee.** Hospital shall pay to Medical Group a one-time implementation fee (the “Implementation Fee”) of One Hundred Thousand Dollars (\$100,000.00) for costs incurred by Medical Group in initiating the General Surgery Program. The Implementation Fee shall be due and payable within thirty (30) days after the Effective Date of this Agreement.

(e) **Timely Payment.** All compensation payable to Medical Group pursuant to this Section 5.1 shall be considered timely paid if received by Medical Group not later than forty-five (45) days after Hospital’s receipt of the General Surgery Program Invoice.

5.2 Travel and Expense Reimbursement. Medical Group shall be reimbursed for all pre-approved travel and related expenses, which approval will not be unreasonably withheld, incurred by Medical Director, Physicians, or Residency Program Director on behalf of Hospital, to attend professional meetings or to attend to such outside professional duties in the healthcare field as may be mutually agreed upon between Medical Group and Hospital, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) per year over the four-year term of this Agreement. Reimbursement of travel expenses will include the following: actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by Hospital. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within thirty (30) days of receipt and approval of each invoice by Hospital.

5.3 Fair Market Value Compensation. The compensation provided under Section 5.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Medical Group and the Physicians under this Agreement.

5.4 Billing for Professional Services.

(a) **Hospital Billing.** Hospital shall have the exclusive right to set, bill and collect for (i) the facility/technical component of hospital services delivered to all General Surgery Program patients, and (ii) the medical professional services rendered to General Surgery Program patients by Medical Group and Physicians. All professional fees generated by Medical Group and Physicians for services rendered to Hospital patients at Hospital or a Hospital location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of Hospital, whether received by Hospital or by Medical Group or Physicians and whether received during the term of this Agreement or anytime thereafter. Medical Group hereby reassigns to Hospital all payments for medical professional services performed by Physicians when providing Professional Services, including those provided to beneficiaries of the Medicare and the Medicaid Programs. Medical Group and Hospital agree to comply with all federal and state statutes and regulations regarding such reassignment (including, but not limited to, the completion and execution of form CMS-855R).

(b) **Billing Records.** Hospital shall allow Medical Group to examine, inspect or make copies of General Surgery Program patient billing records, at Medical Group's expense, if such access is necessary to comply with any laws, rules or regulations.

5.5 Disqualified Persons. The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health

care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice

5.6 Nondiscrimination Based on Payor Status. “Member” means a person who is enrolled with a third-party payor as a subscriber, beneficiary, employee or dependent, or a person who is enrolled with a payor under the Medicare Risk Program or Medicare+Choice Program Plan as a subscriber, beneficiary, employee or dependent, and who is eligible to receive professional services at Hospital. Medical Group shall not impose any limitations on the acceptance of Members for care or treatment unless such limitations are applied generally to all Members. Medical Group shall not improperly differentiate or discriminate against Members in the provision of professional services and shall render professional services to Members in the same manner and in accordance with the same standards, and within the same time availability, as offered to non-Members consistent with existing medical, ethical, or legal requirements for providing continuity of care to any patient. Medical Group and all Physicians and subcontractors under this Agreement, (if any), shall not request, demand, require or otherwise seek, directly or indirectly, the transfer of, or termination from any health care service plan of any Member based upon the Member's need for or utilization of professional services or in order to gain financially or otherwise from such termination.

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

5.8 Cooperation with Payor Medical Directors. Medical Director and Medical Group understand that payors may place certain obligations upon Hospital regarding the quality of care received by and utilization of professional services provided to Hospital patients and that payors, in certain instances, will have the right to oversee and review the

quality of care and utilization of professional services provided to Members. Medical Director and Physicians agree to notify Hospital within three (3) business days of receiving questions, complaints, or requests for assistance from payors contracted with Hospital regarding the quality of care provided to patients, or the utilization of professional services. Medical Director and Physicians shall also cooperate with Hospital and the medical directors of the various payors in the review of the quality of care and utilization of professional services provided to Members.

5.9 Medical Group's Compensation of Individual Physicians. Medical Group shall be solely responsible for developing and implementing its own system for compensating Physicians, whether employees or subcontractors of Medical Group; provided, however, that Medical Group represents, warrants and covenants that its compensation system shall at all times be structured in a manner that complies with all federal and state physician self-referral laws (including Section 1877 of the Social Security Act known as the Stark Law), anti-kickback and other applicable laws as they may apply to the direct and indirect relationships created under this Agreement among Hospital, Medical Group and individual Physicians. Without limiting the generality of the foregoing, Medical Group represents, warrants, and covenants that compensation paid to each Physician shall be fair market value compensation for the service provided by that Physician and shall not take into account the value or volume of referrals of "designated health services" (as defined under the Stark Law) or other business generated by the Physician for Hospital.

5.10 Maximum Payable. The maximum payable under this Agreement shall not exceed Eighteen Million Three Hundred Ninety-Four Thousand Two Hundred Ten Dollars (\$18,394,210.00) over the four-year term of this Agreement.

SECTION 6. TERM AND TERMINATION

6.1 Term. The term of this Agreement shall commence on the Effective Date and continue for a period of four (4) years unless terminated earlier pursuant to this section. This Agreement shall automatically renew for one (1) additional term of one (1) year, but only upon mutual written agreement of the parties, unless either party gives the other party written notice of its intention not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the initial four-year term.

6.2 Early Termination. This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Medical Group upon the occurrence of any of the following events:

(1) Medical Group's misrepresentation of any material fact referenced in Section 2.7 of this Agreement (Representations and Warranties);

(2) Failure of Medical Group to remove a Physician after requested by Hospital pursuant to Section 7 (Removal of a Physician);

(3) Medical Group's unauthorized disclosure of Patient Information or Hospital Information, as defined in Section 12 (Confidentiality);

(4) Loss or restriction of Hospital's license or accreditation, or destruction of Hospital or the portion(s) thereof dedicated to the operation of the General Surgery Program, such that Hospital is not able to continue the uninterrupted operation of the General Surgery Program;

(5) Either party becomes insolvent or declares bankruptcy;

(6) Closure of Hospital's surgery department or sale or closure of Hospital, so long as Hospital provides Medical Group with at least thirty (30) days' advanced notice of such sale or closure; or

(7) The dissolution or discontinuance of the operations of Medical Group.

(b) **Material Breach**. Subject to the immediate termination rights of Hospital set forth in Section 6.2(a) (Immediate Termination by Hospital), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for thirty (30) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure to provide the General Surgery Program Services described in Section 2.1 (General Surgery Program Services) or in **Exhibit 2.1**; (ii) failure to satisfy the requirements of Section 12 (Confidentiality); or (iii) any act or omission by Medical Group or any Physician that jeopardizes the quality of care provided to Hospital's patients.

(c) **Legal Jeopardy**. If either party obtains an opinion of outside legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medicaid programs, that party may provide written notice of termination of this Agreement, including a short statement of why this section has been determined applicable, to the other party. If the parties agree and enter into a joint defense agreement, the party that obtained the legal opinion shall agree to waive any attorney-client privilege with regard to the legal opinion and provide a copy of such opinion to the other party. Within fifteen (15) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within thirty (30) days of their meeting, this Agreement shall automatically terminate.

(d) **Non-appropriation**. Hospital reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Medical Group, except for services performed prior to the date of termination or any liability due to any default existing at the time this Section 6.2(d) is exercised. Medical

Group will be given thirty (30) days' prior written notice in the event that Hospital requires such an action.

(e) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon one hundred eighty (180) days' advance written notice to the other party.

6.3 Effect of Expiration or Termination.

(a) **Obligations.** Except as otherwise provided in this Section 6.3, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Notwithstanding the foregoing, each party understands and agrees that termination of this Agreement shall not release or discharge the parties from any obligation, debt or liability which shall have previously accrued and remains to be performed upon the date of termination.

(b) **Continuation of Patient Services.** Except for termination due to legal jeopardy, illegality or risk to patient welfare, Medical Group shall continue to be obligated under this Agreement, until the effective date of its termination, to continue to provide professional services to any patients in Hospital for whom a Physician has assumed responsibility in the course of providing General Surgery Program Services. In addition, if circumstances applicable to such a patient require the continuation of such services after the effective date of termination of this Agreement, Medical Group shall continue to provide professional services to such patient for a reasonable period in order to accomplish the orderly transfer of care to another physician.

(c) **Liability for Breach.** Termination of this Agreement by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 13 (Dispute Resolution) of this Agreement.

(d) **Vacating Premises and Removing Property.** Except as otherwise permitted for other similarly situated members of Hospital's Medical Staff, upon expiration or termination of this Agreement and upon the request of Hospital, Medical Group shall cause all Physicians to immediately vacate Hospital premises and remove all of their personal property. Any personal property that is not removed shall be removed by Hospital at Medical Group's expense.

(e) **Survival.** The provisions of Sections 2.11 (Corporate Compliance Program), 6 (Term and Termination), 9 (Medical Records), 10 (Access to Books and Records), 11 (Independent Contractor Relationship), 12 (Confidentiality), 13 (Dispute Resolution), 14 (Insurance and Indemnification), 15 (Non-Solicitation), 16 (Notices) and 17 (Miscellaneous Provisions) other than 17.11 (Litigation Cooperation) and 17.10 (Other Service Agreements) shall survive termination of this Agreement.

(f) **Medical Staff Privileges.**

(1) Termination of Physician/APP. If a Physician or APP is no longer eligible to provide General Surgery Program Services, Administrative Services, Residency Program Director Services, or APP Services, as the case may be, at Hospital pursuant to and as contemplated by this Agreement, the medical staff membership and clinical privileges of the Physician or APP shall automatically terminate concurrently with the loss of Physician's or APP's eligibility to provide such services. In such circumstances, Physician's or APP's medical staff membership and clinical privileges shall automatically terminate without the necessity of Hospital following the procedures set forth in the medical staff bylaws, and the Physician or APP shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws; provided, however, in the event any action or proposed action by Hospital results or would result, if taken, in a report to the Medical Board of California, Physician Assistant Board, Board of Registered Nursing or the National Practitioner Data Bank as an adverse professional review action against one or more Physicians or APPs, then Hospital shall comply with the procedural requirements set forth in the medical staff bylaws, including the provisions regarding the conduct of investigations, hearings and appeals. Nothing in this Agreement shall preclude any current or former Physician or APP from applying for medical staff membership or clinical privileges at Hospital, provided that neither the governing body nor the medical staff of Hospital shall have any obligation to grant such privileges. Except as provided herein, Physicians and APPs shall be entitled to all rights otherwise provided to members of the medical staff in the bylaws, rules, regulations or policies of the medical staff or Hospital.

(2) Termination of Contract. In the event of the termination or expiration of this Agreement, the medical staff membership and clinical privileges of all Physicians and APPs providing General Surgery Program Services, Administrative Services, Residency Program Director Services, or APP Services, as the case may be, pursuant to this Agreement shall automatically terminate concurrently with the termination or expiration of this Agreement. In such circumstances, the medical staff membership and clinical privileges of each Physician and APP shall terminate without the necessity of Hospital following the procedures set forth in the medical staff bylaws, and Physicians and APPs shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws.

(3) Election to Participate. Each Physician and APP shall execute an "Election to Participate," in the form set forth in **Exhibit 6.3(f)**, attached hereto, prior to the Physician or APP being approved by Hospital to provide services pursuant to this Agreement.

(g) **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, nor to negotiate a renewal or extension of, this Agreement, nor enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of Medical Group prior to the first anniversary of the Effective Date of this Agreement.

SECTION 7. REMOVAL OF A PHYSICIAN

7.1 Without Cause. All Physicians providing the General Surgery Program Service, Administrative Services, and Residency Program Director Services are subject to continuing approval by Hospital. However, Hospital acknowledges that in the normal course of events, Medical Group must have at least ninety (90) days prior notice to remove a Physician without cause from the coverage schedule. Accordingly, except as otherwise provided in Section 7.2 (Removal for Cause), Hospital agrees to give Medical Group not less than ninety (90) days' written notice before it will require removal of a Physician without cause.

7.2 Cause for Removal. Hospital may require the immediate cessation of services by any Physician or APP and/or require Medical Group to immediately remove from the coverage schedule under this Agreement any Physician or APP for cause upon written notice to Medical Group specifying the reasons therefore. Cause shall mean:

- (a) Failure of a Physician or APP to meet any of the requirements of Section 2.6 (Professional Qualifications);
- (b) The disability of a Physician or APP (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician or APP from carrying out one or more of the essential functions of Physician or APP's position, with or without reasonable accommodation, for a continuous period of ninety (90) days, or if otherwise an undue hardship on Hospital;
- (c) A Physician or APP becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty;
- (d) Any act or omission by a Physician or APP that appears to create the risk of imminent danger to the health of any individual pursuant to Medical Staff bylaws;
- (e) Failure of a Physician or APP to comply with Section 2.9 (Working Cooperatively with Others); or
- (f) Failure of a Physician or APP to abide by any of the terms and conditions of this Agreement applicable to Physicians or APPs, as the case may be.

SECTION 8. INTENTIONALLY OMITTED

SECTION 9. MEDICAL RECORDS

9.1 Medical Records and Reports. Medical Group shall cause Physicians and APPs to prepare complete, timely and accurate medical and other records with respect to the services and treatment provided by Physicians and APPs under this Agreement. All such medical and other records shall be prepared in accordance with Hospital and Medical Staff bylaws, rules, policies and procedures and in accordance with all applicable laws, and standards and

recommendations of The Joint Commission. Medical Group, Physicians, and APPs agree that all records and reports required by this Section 9.1 shall be the exclusive personal property of Hospital, with the exception of Medical Group's Intellectual Property (as defined in Section 9.4 below).

9.2 Patient Records. Any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the sole property of Hospital, provided that, Hospital shall allow Medical Group access to the medical records for purposes related to the provision of post-surgical follow-up care and to the registrar for purposes of Medical Group's clinical outcomes database which is a "limited data set" in compliance with all applicable rules and regulations. Both during and after the term of this Agreement, Medical Group shall be permitted to inspect and/or duplicate, at Medical Group's expense, any individual chart or record to the extent necessary to meet professional responsibilities to such patient(s), to assist in the defense of any malpractice or similar claim, to generate patient bills for professional services rendered, and/or for any other lawful purpose to which such chart or record may be pertinent; provided, however, that such inspection or duplication shall be conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Medical Group shall be solely responsible for maintaining patient confidentiality with respect to any information obtained by Medical Group pursuant to this Section 9.2.

9.3 Record Requirements. Each party agrees in connection with the subject matter of this Agreement to cooperate fully with the other party in order to assure that each party will be able to meet all requirements for record keeping associated with public or private third-party payment programs.

9.4 Intellectual Property Ownership and Assignment. Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Medical Director, Residency Program Director, or Medical Group, or to which Medical Director, Residency Program Director, or Medical Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Medical Director, Residency Program Director, or Medical Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Medical Director, Residency Program Director, nor Medical Group shall have any interest in such Intellectual Property. Accordingly, Medical Group, Medical Director, and Residency Program Director hereby assign to Hospital all of Medical Director's, Residency Program Director's, and/or Medical Group's right, title and interest in and to the Intellectual Property. The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Medical Director, Residency Program Director, or Medical Group during the course of this Agreement. Hospital hereby grants to Medical Group a non-exclusive, revocable (for any material breach of this Agreement), non-sublicensable license in order for Medical Group to make, use, reproduce, modify, distribute, publicly display and

publicly perform, for patient care, educational and marketing purposes only, certain Intellectual Property items that do not place Hospital or its affiliated organization(s) at a competitive disadvantage, or create any potential for disclosure of confidential or propriety information of Hospital in the course of Medical Group executing the rights granted to it under the license. Except as expressly set forth herein, no right, title or interest in or to any Intellectual Property is granted to Medical Group, Medical Director, and/or Residency Program Director by virtue of this Agreement, whether by implication, estoppel or otherwise.

SECTION 10. ACCESS TO BOOKS AND RECORDS

10.1 Access. Medical Group shall maintain and make available all necessary books, documents and records applicable to the services provided under this Agreement in order to assure that Hospital will be able to meet all requirements of the Medicare and Medicaid programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended.

(a) Until expiration of seven (7) years after furnishing services pursuant to this Agreement, Medical Group shall make available upon written request of the Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, this Agreement, books, documents, and records of Medical Group that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Medical Group carries out any of the duties of this Agreement by way of a subcontract with a value of \$10,000 or more over a 12-month period, such subcontract shall contain, and Medical Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

10.2 Limits. The availability of Medical Group’s books, documents, and records shall be available at all times subject to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

SECTION 11. INDEPENDENT CONTRACTOR RELATIONSHIP

In performing the services described in this Agreement, Physicians, APPs, and Medical Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physicians or APPs shall perform the services required under this Agreement, and Medical Group shall neither have nor exercise any control or direction over Hospital’s affairs. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Neither party shall have any claim against the other party arising under this Agreement or otherwise for workers’ compensation, severance pay, front pay, back pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Each party shall indemnify, defend and hold harmless the other party from and against any claim, liability or

expense related to its duties regarding any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by each party to its respective employees.

SECTION 12. CONFIDENTIALITY

12.1 Confidential Information. Each party recognizes and acknowledges that, by virtue of entering into this Agreement, each party and its representatives (specifically including Physicians and Manager in the case of Medical Group) may have access to certain information of the other party that is confidential and constitutes valuable, special and unique property of the other party. Each party agrees that neither such party nor its representatives will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the other party's express prior written consent, except pursuant to such party's duties hereunder, any confidential or proprietary information of the other party, including, but not limited to, information that concerns the other party's patients, costs, prices and treatment methods at any time used, developed or made by the other party, and that is not otherwise available to the public.

12.2 Terms of this Agreement. Except for disclosure to the parties' legal counsel, accountant or financial advisors, neither party will disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by the other party.

12.3 Patient Information. Medical Group will not disclose, and will ensure that the Physicians, APPs, and Manager will not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Medical Group will comply, and will ensure that Physicians, APPs, and Manager will comply, with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

12.4 Business Associate Agreement. By signing and/or acknowledging this Agreement, the parties and Medical Director hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"). The parties further agree to comply with and execute the Business Associate Agreement set forth in **Exhibit 12.4**, attached hereto.

SECTION 13. DISPUTE RESOLUTION

13.1 Meet and Confer. In the event of any dispute between Medical Group (including Physicians and/or APPs) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, Section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court.

13.2 Attorneys' Fees and Costs. The cost of any dispute resolution shall be shared equally by Hospital and Medical Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any legal action, except as ordered by the temporary judge as part of his/her damages award pursuant to an applicable fee-shifting statute.

13.3 Venue. Venue for any dispute resolution shall be the County of Kern.

SECTION 14. INSURANCE AND INDEMNIFICATION

14.1 Business Insurance. With respect to performance of work under this Agreement, Medical Group shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in **Exhibit 14.1**, attached hereto.

14.2 Indemnification Related to Professional Services and Administrative Services. Authority shall assume liability for, indemnify, defend, and hold Medical Group harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Medical Group or for which Medical Group becomes liable, arising out of or related to professional services or Administrative Services rendered by Medical Group (or which a third party alleges should have been rendered by Medical Group) pursuant to this Agreement. "Medical Group" as used in this Section 8.1 shall include Medical Group and its Physicians, APPs, Medical Director, Residency Program Director, and Manager. Authority's obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Medical Group rendered on behalf of Authority and Hospital; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than Hospital without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify or hold Medical Group harmless for any act or omission of Medical Group, which act or omission constitutes an intentional or willful tort, including but not limited to harassment, sexual battery, and intentional infliction of emotional distress, acts that do not arise from or were not directly related to Medical Group's performance of an official duty under this Agreement, or any conduct or misconduct that is found to be criminal.

14.3 Indemnification Not Related to Professional Services or Administrative Services. Each party (the “Indemnifying Party”) agrees to defend, indemnify, and hold harmless the other party (the “Indemnified Party”) and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys’ fees) or claims for injury or damages arising out of the performance of this Agreement (except for claims related to Medical Group’s provision of professional services pursuant to Section 14.2 of this Agreement), but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

14.4 Indemnification Related to PHI. Each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys’ fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party, or any of its officers, directors, agents, subcontractors or employees, of its obligations under the Agreement with respect to PHI. The foregoing sentence shall not apply to (i) any Civil Monetary Penalties (or any other claims, costs, losses, damages, liabilities, fines or penalties which are derivative of a Civil Monetary Penalty) levied by the Office of the Inspector General, the Department of Health and Human Services, or any other agency or governing body possessing the power to levy such penalties, nor to (ii) any claims, costs, losses, damages, liabilities, fines or penalties levied by the state of California for violations of state law.

SECTION 15. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (iii) directly or indirectly, induce or attempt to induce any person who is under contract with the non-soliciting party to terminate his or her contract with such non-soliciting party. In the event either party breaches this Section 15, the breaching party agrees to pay to the non-breaching party as liquidated damages, which the parties agree is not a penalty, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00) per instance of breach. The parties agree that the true damages incurred by the non-breaching party in the event of a breach of this Section 15 are difficult to estimate, and that the liquidated damages sum provided for herein (i) fairly represents the market cost of recruiting, relocating, and replacing the employee/agent, and for the non-breaching party to provide a *locum tenens* in the interim, and (ii) is reasonably proportionate to the non-breaching party’s expected damages from such breach. Notwithstanding the foregoing, this Section 15 shall not apply to any Medical Group Physician who is a member of Hospital’s medical staff prior to the Effective Date of this Agreement, or who was introduced to Medical Group by Hospital.

SECTION 16. NOTICES

All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W-9 tax form to Hospital. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection.

If to Authority: Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer

With a copy to: Kern County Hospital Authority
4520 California Avenue, Suite 100
Bakersfield, CA 93309
Attn: Legal Services Department

If to Medical Group: Acute Care Surgery Medical Group, Inc.
2450 Del Paso Road, Suite 250
Sacramento, CA 95834
Attn: Lynette A. Scherer, M.D.

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Recitals, Exhibits, and Appendices. The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

17.2 Ambiguities. This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

17.3 No Waiver. No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

17.4 Severability. Except as provided in Section 6.2(c) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the term and termination provisions of this Agreement.

17.5 Assignability and Subcontracting. The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party.

17.6 Use of Name. Medical Group shall not use the name of Hospital or any affiliated entity of Hospital, or any of their trademarks, service marks, or trade names for any purpose without the prior written consent of Hospital.

17.7 No Third Party Rights. Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

17.8 Governing Law. This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the state of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

17.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

17.10 Other Service Agreements. Hospital will maintain a database that shall include copies of all other agreements under which Medical Group, any Medical Group physician (or any immediate family member of Medical Group physician), provides services to Hospital.

17.11 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any claims, litigation, audits, proceedings or disputes relating to this Agreement or the services (“Disputes”), other than proceedings or disputes between the parties to this Agreement. Medical Group shall ensure that Physicians and APPs cooperate with Hospital’s legal, risk management, and other relevant departments, and with any outside counsel retained by Hospital, in connection with the administration of any Disputes. Such cooperation shall include, without limitation, speaking to Hospital representatives and providing information about Disputes, providing testimony in court or alternative dispute resolution forums, and following the legal advice of Hospital counsel.

17.12 Excess Payment. Subject to defenses based on waiver, estoppel, accord and satisfaction, laches, statute of limitations or any similar doctrine, if either party discovers that Hospital has made a payment or payments to Medical Group in deficit or in excess of the amount(s) due and payable under this Agreement (the “Erroneous Payment”), the party shall promptly notify the other party (“Notice of Error”). The Notice of Error shall be specific enough to fairly notify the other party of the nature of the error. The parties shall work diligently to calculate the error, and shall mutually agree on the amount of the Erroneous Payment (“Payment Amount”), if any. If the Payment Amount is an underpayment, Hospital shall pay to Medical

Group the Payment Amount within not more than ninety (90) days following the Notice of Error. If the Payment Amount is an overpayment, Hospital may offset the Payment Amount from future payments owed to Medical Group under this Agreement or any successor agreement pertaining to the same subject matter as this Agreement. In the event that there are no future payments owed under this Agreement or a successor agreement, or that future payments are not sufficient to cover the Payment Amount, Hospital may seek repayment of the Payment Amount or the remaining Payment Amount from Medical Group and Medical Group shall repay within ninety (90) days following the Notice of Error.

17.13 No Referrals/Non-Exclusivity. Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party. Medical Group understands and agrees that Hospital will utilize the services of Medical Group pursuant to the terms of this Agreement on a non-exclusive basis. Medical Group further agrees that Hospital shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

17.14 Tax Reporting. To ensure proper tax reporting of the compensation paid under this Agreement, Medical Group shall complete, execute and deliver to Hospital an IRS Form W-9, and any analogous California state forms (if requested by Hospital) which sets forth the correct taxpayer identification number for Medical Group. To the extent required by law, Hospital shall report all payments to Medical Group on IRS Form 1099 and its state law counterpart.

17.15 Counterparts. This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

17.16 Execution. By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

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

17.18 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation

17.19 Conflict of Interest. Medical Group covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Medical Group further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof. Manager and Medical

Director shall complete and file a “Statement of Economic Interest” with Hospital if required by Hospital’s Conflict of Interest Code.

17.20 Liability of Authority. The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

AUTHORITY:

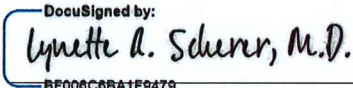
Kern County Hospital Authority

By: _____
Name: Russell E. Bigler
Title: Chairman, Board of Governors

Date: _____

MEDICAL GROUP:

Acute Care Surgery Medical Group, Inc.

By:  _____
Name: Lynette A. Scherer, M.D.
Title: President and CEO


Date: 4/14/2021

APPROVED AS TO CONTENT:

By: _____
Name: Russell V. Judd
Title: Chief Executive Officer

Date: _____

**APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT**

By:  _____
Name: Karen S. Barnes
Title: Vice President & General Counsel

Date: 04/14/2021

EXHIBIT 2.1

GENERAL SURGERY PROGRAM SERVICES

Medical Group shall develop and manage a General Surgery Program at Hospital that will drive and support community engagement, and that will provide the subspecialty services necessary to attract and maintain a wide breadth of patients that will ultimately allow for the reestablishment of the Residency Program.

1. **Determine the Scope of the General Surgery Program.** Beginning on the Effective Date, Medical Group shall review the General Surgery Program's activities and ensure that inclusion of the Subspecialty Service Lines (as defined below) is sufficient to (i) provide the necessary patient care services to Hospital's community, and to (ii) meet the Accreditation Council for Graduate Medical Education's ("ACGME") requirement that accredited surgery programs be conducted in institutions that routinely care for patients with a broad spectrum of surgical diseases and conditions. The parties currently anticipate the Subspecialty Service Lines will be colorectal surgery, minimally invasive surgery, surgical oncology (including breast), and vascular surgery; provided, however, that different Subspecialty Service Lines may be provided depending upon the results of Medical Group's review of the current General Surgery Program.

2. **Physician Recruitment and Management of Subspecialty Service Lines.** Upon completion of Medical Group's review of the General Surgery Program, Medical Group shall begin recruitment of 1.0 Physician FTEs in each of the Subspecialty Service Lines except where Hospital may already have such general surgeon or subspecialty surgeon employed. The Physicians shall (i) provide general and subspecialty support in their respective Subspecialty Service Lines, (ii) provide forty-six (46) weeks per year of clinic support, (iii) perform all necessary elective operations for the service line, and, in conjunction with the trauma and acute care surgery service lines already established by Medical Group at Hospital, (iv) provide call coverage in the Subspecialty Service Lines on a 24 hours per day, 7 days per week, 365 days per year basis. Medical Group anticipates that the first Physician will begin providing services approximately six (6) months after the Effective Date, and that one Physician FTE in each Subspecialty Service Line shall be in place twelve (12) months after the Effective Date.

3. **Residency Program Director Recruitment.** After Medical Group's review of the General Surgery Program has concluded, Medical Group shall begin recruitment of the Residency Program Director. Medical Group anticipates the Residency Program Director will be in place approximately twelve (12) months after the Effective Date. The duties of the Residency Program Director are specifically described in **Exhibit 2.5** to this Agreement.

4. **Reestablish Surgical Residency Program.** Medical Group shall ensure the Residency Program meets the requirements found in the ACGME publication "Program Requirements for Graduate Medical Education in General Surgery," published July 1, 2020 (the "ACGME Requirements") that relate to education and service. Medical Group shall also assist Hospital to meet the ACGME Requirements that relate to facility/sponsoring institution expectations. In accordance with ACGME Requirements and Association of Program Directors in Surgery ("APDS") standards, Medical Group shall design a curriculum including skills lab

training, didactic sessions, core competency training, SCORE participation, and Fundamentals of Laparoscopic Surgery, as well as all additional necessary clinical training. Medical Group shall apply for ACGME reaccreditation at a time to be determined by Medical Group and Hospital; the parties currently anticipate such application for reaccreditation to be submitted approximately twenty-four (24) months after the Effective Date of this Agreement.

EXHIBIT 2.4

ADMINISTRATIVE SERVICES

Medical Director shall be responsible to perform the Administrative Services for the Hospital's Department of Surgery set forth below:

1. **License and Accreditation.** Medical Director shall provide such medical professional guidance and supervision as directed by Hospital in an effort to obtain and maintain the General Surgery Program's license and accreditation.
2. **Policies and Procedures.** Medical Director shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the General Surgery Program. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies and procedures shall be approved in the appropriate hospital committees or governing bodies.
3. **Scheduling.** Medical Director shall develop a system for assuring Physician and APP coverage of the General Surgery Program. Physicians and APPs scheduled to provide this coverage must:
 - Be members in good standing of Hospital's Medical Staff, with full privileges to provide necessary patient care services;
 - Comply with Hospital's nondiscrimination policies, and be eligible to and agree to treat Medicare and Medicaid patients; and
 - Provide services in accordance with Hospital's standards of quality and efficiency and in accordance with all applicable Medical Staff and Hospital bylaws, rules, regulations, and policies.
4. **Personnel.** Medical Director shall advise Hospital in the identification, recruiting, evaluation, and retention of key Hospital personnel working in the General Surgery Program.
5. **Supervision.** Medical Director shall provide clinical supervision of technical personnel in the General Surgery Program.
6. **Training and Education.** Medical Director shall train or arrange for the training of General Surgery Program personnel, and if requested by Hospital, shall participate in the development of such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and Medical Director.

7. **Planning.** Upon request of Hospital, Medical Director shall participate in Hospital's planning process as it relates to the operation of the General Surgery Program.
8. **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, Medical Director shall develop and implement appropriate quality assurance activities for the General Surgery Program. In addition, Medical Director shall monitor quality of services, and shall recommend steps necessary to remedy deficiencies therein. These activities shall be conducted through Hospital's Medical Staff committee structure. Nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.
9. **Equipment.** Medical Director shall advise Hospital on the selection, maintenance, and repair of equipment for the General Surgery Program, and advise Hospital on the need for maintenance or repair of equipment within the General Surgery Program.
10. **Reimbursement.** Medical Director shall cooperate with Hospital, at Hospital's request, in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the General Surgery Program.
11. **Committees.** Medical Director shall participate on Hospital and Medical Staff committees, including but not limited to Peer Review Committee, Medical Executive Committee, and Surgical Unit Staff Meetings at the request of the Administrator or the Medical Staff.
12. **Marketing.** At Hospital's request, Medical Director shall assist in developing and implementing Hospital's marketing plan as it relates to the General Surgery Program. Medical Director shall maintain the confidentiality of such marketing plan.
13. **Miscellaneous.** Medical Director shall perform the following additional miscellaneous duties and activities:
 - a. **Medical Administration:**
 - Medical Director shall participate at Hospital's request in assuring regulatory compliance of the General Surgery Program.
 - Medical Director shall assist Hospital in resource utilization analysis and rigorous management of operating costs necessary to cover the Department of Surgery.
 - Meet regularly and upon request with Hospital leadership to review service performance and care delivery as appropriate.
 - b. **General Surgery Program Oversight:**
 - Medical Director shall schedule, coordinate and supervise the provision of medical services within the General Surgery Program.

- Medical Director shall participate in appropriate performance improvement activities and benchmark measures with respect to the General Surgery Program.
- Medical Director shall assume primary clinical responsibility for physician related performance improvement activities and initiatives as appropriate.
- Medical Director shall assist with Medical Group and Hospital medical staff and Emergency Department staff regarding the efficiency and effectiveness of the General Surgery Program for specific outcomes and indicators.
- Medical Director shall assist in the development of protocols and policies of the General Surgery Program as needed.

c. Physician Relations:

- Medical Director shall be a member of the medical staff.
- Medical Director shall, with input from Hospital leadership, be responsible for team building with the Hospital-based medical staff.
- Medical Director shall, with input from Hospital leadership, be responsible for developing an ongoing communications process to Hospital medical staff, including maintaining high levels of morale/satisfaction and actively promoting service changes that affect physicians.
- Medical Director shall work collaboratively with Hospital leadership in recruiting, physician hiring, contracting, and evaluating physician performance. Medical Director, along with Hospital leadership, shall oversee the effectiveness of new physician orientation programs relating to the General Surgery Program.
- Medical Director shall have shared accountability with the Chief Nursing Officer, Clinical Director of Emergency Services and Clinical Director of Surgical Services for accessibility for services to referring physicians via marketing and availability of services.

d. Community Outreach

- Medical Director shall actively promote surgery services to member and medical staff communities through MEC reports, attendance at other department meetings as dictated by administrative directive.
- Medical Director shall participate with Community Relations in the development of outreach and communications programs for the community at large at the request of Hospital.
- Medical Director shall direct and/or participate in outreach education programs for facilities that refer surgery patients to Hospital and participate in education programs to the community.

e. Educational Activities:

- Medical Director may assist in identifying continuing education needs to ensure ongoing quality of care.
- Upon mutual agreement by the parties, Medical Director shall attend CME courses and instruct Hospital staff and Physicians on new knowledge as needed.

14. **Other Responsibilities.** Medical Director shall perform such other responsibilities as reasonably necessary for the proper operation of the General Surgery Program.

EXHIBIT 2.5

RESIDENCY PROGRAM DIRECTOR SERVICES

The Residency Program Director Services shall:

1. Be accountable to Medical Group and Hospital for the success of the Residency Program;
2. Be board certified in general surgery and possess a minimum of three (3) years educational and/or administrative experience at a teaching hospital, academic medical center, or similar facility;
3. Maintain a work schedule consisting of approximately fifty percent (50%) “protected” non-clinical time and fifty percent (50%) clinical time (but in no event shall the Residency Program Director fail to satisfy the ACGME minimum protected time requirements);
4. Be a role model for professionalism to resident physicians and other physicians working in the General Surgery Program;
5. Develop and oversee the Residency Program, and ensure that it meets all guidelines set forth in the ACGME Requirements (and any updated version of the ACGME Requirements such document that may be promulgated in the future);
6. Ensure the Residency Program meets the expectation of education over service;
7. Work with Hospital to ensure all ACGME facility expectations are met;
8. Work in a cohesive and seamless fashion to ensure all institutional obligations of reporting through the Designated Institutional Official (as the term is defined by the ACGME Requirements) are fulfilled;
9. With approval from Hospital, which shall not be unreasonably withheld, have the authority to approve, add, or remove program faculty members for participation in the Residency Program at both the Hospital and any off-site rotations;
10. Have the authority to determine the appropriate curricula and learning opportunities, and have the authority to add or remove residents to/from these experiences as necessary to ensure ACGME standards are met; and
11. Possess the skill set to ensure residents are met with respect and represented without fear or retaliation or intimidation.
12. Perform other duties that may be required to ensure the Residency Program’s success.

EXHIBIT 4.4

QUARTERLY PERFORMANCE REVIEW CRITERIA

Care Management of Inpatient Stay. Participating as part of a multi-disciplinary team, Medical Group will provide physician leadership to implementation of the inpatient plan of care. This includes:

- Maintaining a patient-centered and service-oriented approach;
- Communicating with patients and families regarding care preferences, the overall plan of care, discharge plans (and date) and the role of the Physician in the process; including explanation of how multiple Physicians provide continuous coverage for patient care;
- Assuring accurate and effective hand-offs between the different Physicians caring for the same patient;
- Coordinating with case management on care transitions and discharge planning, including daily meetings to coordinate patient care and implement plan of care;
- Encouraging consistency, quality, service and teamwork among hospital staff members, such as nurses and ancillary staff (e.g., multidisciplinary rounding, huddles, etc.);
- Assisting and/or reinforcing patient education concerning the disease/disease process, symptoms/symptom management, medications and overall self-efficacy;
- Providing consistency in inpatient care, including use of clinical care pathways and other standardized procedures and processes; and
- Acting cooperatively, cost-consciously, efficiently and providing high-quality care.

Care Coordination and Transitions of Care Management. Participating as part of a multi-disciplinary team, Medical Group shall provide physician leadership in assuring care coordination and care transitions for the patient including:

- Communications with the patient's PCP upon admission and discharge, with Physician making reasonable efforts to communicate directly with PCP;
- Verify and document that next level of care provider has received all relevant medical documentation prior to the patient's discharge. This includes (as may be applicable):
 - Reconciled list of medications
 - Patient education provided
 - Advanced care plan documents (including POLST)
 - All consult summaries, and
 - Discharge summary
- Assuring that education and information are provided to the patient about the following subjects, while the patient is in the hospital, so that the patient is properly prepared for post-hospitalization:
 - **R** – “Red flags” and symptom management (patient awareness/ability)
 - **E** – Education on disease and disease process (interactive/coaching)
 - **A** – Appointments; follow-up with PCP, tests and procedures (as may be applicable)
 - **D** – Drugs and medication reconciliation/management, and
 - **Y** – Your (the patient's) wishes being known; advance care planning/POLST

Discharge from Hospital. Participating as part of a multi-disciplinary team, Medical Group shall provide physician leadership in assuring an effective, patient-centered hospital discharge. This includes:

- Reviewing discharge plan and discussing patient expectations for next level of care;
- Reinforcing key elements of the plan, such as reason and importance of follow-up appointments, “red flags” and symptom management, medication management/reconciliation, and advance care panning;
- Assuring the patient has written discharge instructions; and
- Assuring that the patient receives a follow-up call within a reasonable time of discharge to verify transition to next level of care, reinforce follow-up appointments and assure they have been able to access any needed prescribed medications, and undertake reasonable efforts to communicate directly with patient and/or family.

Meeting Participation. Physicians shall participate in ongoing utilization management and quality/service/risk management activities as facilitated by analysis of reports. Physicians will also participate in Hospital medical staff department and committee meetings as requested.

Quality and Care Systems Improvement. Physicians shall assist in developing and implementing care guidelines and other quality tools, including protocols to expedite care and provide care more efficiently.

EXHIBIT 6.3(f)

ELECTION TO PARTICIPATE

[See attached]

ELECTION TO PARTICIPATE

I, the undersigned Physician/APP (**circle one**), am a member of the Medical Staff of Kern Medical Center (“Hospital”), and am an employee/independent contractor/member/shareholder (**circle all that apply**) of Acute Care Surgery Medical Group, Inc., a California professional medical corporation organized under the laws of the state of California (“Medical Group”). I further state that I am board certified/eligible for board certification (**circle one if applicable**) in _____ by the American Board of _____.

I hereby acknowledge that I have read the provisions of the General Surgery and Residency Program Development and Management Agreement between the Kern County Hospital Authority, which owns and operates Hospital, and Medical Group (the “Agreement”) that affect my professional obligations, prohibited conduct, and medical staff membership, and hereby elect to participate in the rendering of General Surgery Program Services/APP Services/Administrative Services/Residency Program Director Services (**circle one**) pursuant to the Agreement and agree to abide by the provisions of the Agreement. I have been specifically advised and agree that my medical staff membership and clinical privileges at Hospital, including access to and use of Hospital facilities, equipment, personnel, and resources necessary to exercise such privileges, shall automatically terminate concurrently with loss of my eligibility to provide General Surgery Program Services/APP Services/Administrative Services/Residency Program Director Services (**circle one**) pursuant to and as contemplated by the Agreement, without the necessity of Hospital or its medical staff following the procedures set forth in the medical staff bylaws, and, in such circumstances, I shall have no right to exercise or assert any procedural rights based on or set forth in the medical staff bylaws. I have also been advised and agree that in the event Medical Group ceases to provide General Surgery Program Services/APP Services/Administrative Services/Residency Program Director Services (**circle one**) to Hospital pursuant to the Agreement for any reason whatsoever, my medical staff membership and clinical privileges, including access to and use of Hospital facilities, equipment, personnel, and resources necessary to exercise such privileges, shall terminate concurrently with the cessation of such services without the necessity of Hospital or its medical staff following the procedures set forth in the medical staff bylaws. In such circumstances, I further acknowledge and agree that I shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws.

DATED this _____ day of _____, 20__

By: _____
(Signature of Physician/APP)

Print Name: _____, M.D./D.O./PA/NP (**circle one**)

(Address of Physician/APP)

EXHIBIT 14.1
BUSINESS INSURANCE

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

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

3. Automobile Liability Insurance:

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

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

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

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

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

7. Documentation:

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

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

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

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

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

**EXHIBIT 12.4
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Acute Care Surgery Medical Group, Inc. (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of July 1, 2021 (the “**Effective Date**”).

RECITALS

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

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

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

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

AGREEMENT

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

**ARTICLE I
DEFINITIONS**

1.1 “**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 “**Breach Notification Rule**” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 “**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.4 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

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

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section

2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

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

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

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

2.5 Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors

substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

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

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

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

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

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

PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

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

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business 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 five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Acute Care Surgery Medical Group, Inc.
2450 Del Paso Road, Suite 250
Sacramento, CA 95834
Attn: Lynette A. Scherer, M.D.

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on behalf of Kern Medical Center

BUSINESS ASSOCIATE:

Acute Care Surgery Medical Group, Inc.

Title: Chairman, Board of Governors

Date: _____

Title: President and Chief Executive Officer

Date: _____



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

April 21, 2021

SUBJECT: Proposed Amendment No. 5 to Agreement 2016-030 with Valley Neurosurgery and Neurorestoration Center, A Medical Corporation

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Amendment No. 5 with Valley Neurosurgery and Neurorestoration Center (“Valley Neurosurgery”), for professional medical services in the Department of Surgery. Kern Medical has contracted with Valley Neurosurgery to provide neurosurgical services since June 22, 2016.

Valley Neurosurgery consists of five neurosurgeons that are USC faculty. Valley Neurosurgery physicians provide considerable skill and expertise not readily available in the community. The physicians provide daily coverage for neurological surgery services, neurosurgery clinic and call coverage as well as clinical mentoring to and evaluation of residents and medical students.

Therefore, it is recommended that your Board approve Amendment No. 5 to Agreement 2016-030 with Valley Neurosurgery and Neurorestoration Center, in the Department of Surgery from July 1, 2016 through June 30, 2021, extending the term for three years from July 1, 2021 through June 30, 2024, increasing the maximum payable by \$6,058,080, from \$10,668,032 to \$16,726,112, to cover the extended term of this agreement, and authorize the Chairman to sign.

**AMENDMENT NO. 5
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Valley Neurosurgery)**

This Amendment No. 5 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Valley Neurosurgery and Neurorestoration Center, A Medical Corporation, a California professional medical corporation (“Contractor”), with its principal place of business located at 309 Grand Avenue, South Pasadena, California 91030.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #2016-030, dated June 22, 2016), Amendment No. 1 (Agt. #2017-048, dated July 19, 2017), Amendment No. 2 (Agt. #072-2017, dated October 18, 2017), Amendment No. 3 (Agt. #44819, dated October 8, 2019), and Amendment No. 4 (Agt. #005-2020, dated February 12, 2020) (collectively, the “Agreement”), for the period July 1, 2016 through June 30, 2021, whereby Contractor provides professional medical services in the Department of Surgery at KMC and teaching services to resident physicians employed by Authority; and

(b) The Initial Term of the Agreement ends June 30, 2021; and

(c) Pursuant to Section 1 of the Agreement, the Agreement shall renew automatically for successive three (3) year periods (each, a “Renewal Term”); and

(d) The Renewal Term shall commence as of July 1, 2021, and shall end June 30, 2024, unless earlier terminated pursuant to other provisions of the Agreement as stated therein; and

(e) It is the intent of the parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Contractor; and

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

(g) The Agreement is amended effective July 1, 2021;

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

1. Section 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 will not exceed \$6,058,080 over the period of the Renewal Term from July 1, 2021 through June 30, 2024.”

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

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


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

5. Except as provided herein, all other terms, conditions and covenants of the Agreement 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. 5 as of the day and year first written above.

VALLEY NEUROSURGERY AND
NEURORESTORATION CENTER,
A MEDICAL CORPORATION

By 
Joseph Chen, M.D.
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kem County Hospital Authority

Amend5.Valley Neurosurgery.030421



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

April 21, 2021

Subject: Proposed Agreement with Rab-Com, Limited, for purchase of the Totguard Infant and Pediatric Security System

Recommended Action: Make finding the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines; Approve; Authorize the Chairman to sign; Authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price

Summary:

Kern Medical requests your Board approve the proposed Agreement with Rab-Com, Limited, for purchase of the Totguard infant and pediatric security system design, equipment, installation, and monitoring tags. The Totguard system actively monitors and instantly notifies clinical staff of any alerts and alarms triggered by the Totguard tag such as a patient leaving a secured unit without authorization or the tag being removed from a patient. New regulatory requirements stipulate that pediatric and infant inpatient units have open access that allows exiting an area for fire and emergency evacuation. The current security system also does not accommodate individual patient tracking.

Funding for this project comes from the Grant Agreement with California Health Facilities Financing Authority under the Children's Hospital Bond Act of 2018 (Propositions 4) approved by your Board on November 18, 2020. The Grant was awarded in anticipation of funding projects for the Kern Medical 'Every Kid' program that will include updating and renovating both the inpatient and outpatient pediatric clinical areas.

The Agreement is effective as of April 21, 2021. However, no work will begin without written authorization from Kern Medical. The maximum payable under the Agreement will not exceed \$340,779.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement, authorize the Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price.

**KERN COUNTY HOSPITAL AUTHORITY
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
SCHEDULE TO MASTER TERMS AND CONDITIONS: PPSA**

THIS SCHEDULE shall be effective on: April 21, 2021 ("Effective Date") and shall terminate no later than Project Completion.

Kern County Hospital Authority Department: Facilities ("Responsible KCHA Department")
Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.

Service Provider: Rab-Com, Limited ("Consultant") Located at: 25613 Dollar Street, Suite 1, Hayward, California 94544

Consultant is (select one): Sole Proprietorship
 Incorporated in the State of California.
 Other (specify) _____.

Consultant shall provide those services described in Exhibit "A" which is attached hereto and incorporated herein by this reference.

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$340,778.06 which includes (select all that apply)

fees per the rate schedule attached hereto as Exhibit "A" and all reimbursable travel expenses
 fees at the hourly rate of \$ _____.
 other (specify) _____.

(Select one of the following two)

KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the following KCHA per diems: Lodging, \$221.00 per night plus tax; breakfast, \$13.00; lunch, \$15.00; dinner, \$26.00; economy rental car; and mileage, if by private automobile, at \$.54 per mile; and by common carrier at actual fare charged for economy or coach class.

Consultant shall be required to have the following Insurance coverages, as described in the Master Terms and Conditions, in the minimum amounts indicated: (select all that apply)

Workers' Compensation: As required by California Labor Code Section 3700
 Commercial General Liability (\$1,000,000/Occurrence & \$2,000,000/Aggregate) or other amounts _____ & _____
 Automobile Liability (\$1,000,000/Occurrence) or other amounts _____ & _____
 Professional Liability (\$1,000,000/Occurrence & \$2,000,000/Aggregate) or other amounts _____ & _____

Note: If a lesser amount is shown, the Responsible KCHA Department must obtain the prior written approval of KCHA's Risk Manager.

Should any conflicts arise between this Schedule and the Master Terms and Conditions attached hereto and incorporated herein by this reference, the Schedule shall control.

IN WITNESS WHEREOF, each party has signed this Schedule upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

KERN COUNTY HOSPITAL AUTHORITY

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

Date: _____

RAB-COM, LIMITED

By Stephen Wyszomirski
Name: Stephen Wyszomirski Title: VP
Digitally signed by Stephen Wyszomirski
DN: cn=US, e=Stephenw@rcicom.com, o=Rab-Com Limited,
c=CA-Stephen Wyszomirski
Reason: I am approving this document
Contact Info: Vice President
Date: 2021.03.18 11:49:24-0700

"Consultant"
Date: 3-18-2021

APPROVED AS TO CONTENT:

Responsible KCHA Department

By _____
Russell V. Judd, Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

Legal Services Department

By Jamie Mason
Hospital Counsel, Kern County Hospital Authority

Date: 3-18-2021

KERN COUNTY HOSPITAL AUTHORITY
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
MASTER TERMS AND CONDITIONS
PPSA-STANDARD

THIS AGREEMENT ("Agreement") is entered into on the Effective Date shown on the attached Schedule, by and between the **KERN COUNTY HOSPITAL AUTHORITY**, a local unit of government, which owns and operates Kern Medical Center, as represented by the Chief Executive Officer ("KCHA"), with its principal location at 1700 Mount Vernon Avenue, Bakersfield, CA 93306, and **CONSULTANT** identified on the Schedule ("**Consultant**"). KCHA and Consultant are individually referred to as a "**Party**" and collectively as the "**Parties.**"

RECITALS

A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in **Exhibit A**.

C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.

D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

AGREEMENT

1. Services to be Rendered. Consultant shall provide the services and products described in **Exhibit A** ("**Services**").

2. Compensation to Consultant. KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.

3. Reimbursement Policy and Billing Requirements. All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.

4. Term. This term of this Agreement ("**Term**") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.

5. Assignment. Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.

6. Audit, Inspection and Retention of Records. Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.

7. Authority to Bind KCHA. It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.

8. Indemnification.

a. General. Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("**KCHA Indemnified Parties**") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

house and outside counsel, expert fees, costs of staff time, and investigation costs) ("**Claims**") which arise out of or relate to any act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("**Consultant Representatives**"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation Claim arising from or relating to any Services.

b. **Immigration Reform and Control Act.** Consultant acknowledges that Consultant and Consultant Representatives are aware of and understand the Immigration Reform and Control Act ("**IRCA**"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Consultant Representatives are and shall remain in compliance with the IRCA. In addition, Consultant shall defend, indemnify and hold harmless KCHA and KCHA Indemnified Parties from any Claims which arise out of or relate to any allegations that Consultant and Consultant Representatives are not authorized to work in the United States and/or any other allegations based upon alleged IRCA violations committed by Consultant or Consultant Representatives.

c. **Infringement Claim.** If any Claim is asserted or action or proceeding brought against KCHA or KCHA Indemnified Parties which alleges that all or any part of the Services in the form supplied by Consultant or KCHA's use, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, KCHA shall give Consultant prompt written notice. Consultant shall defend any Claim with counsel of Consultant's choice and at Consultant's sole cost and shall indemnify KCHA for any costs, including attorney's fees and damages actually incurred by KCHA, including steps KCHA may take to avoid entry of any default judgment or other waiver of KCHA's rights. KCHA shall cooperate fully with and may monitor Consultant in the defense of any claim, action or proceeding and shall make employees available as Consultant may reasonably request with regard to the defense, subject to reimbursement by Consultant of all costs incurred by KCHA's cooperation in the defense.

d. **Remedy of Infringement Claim.** If the Services are, in Consultant's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the Services, Consultant shall within 90 days:

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;
2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing KCHA's ability to use the Services as intended;
3. **Procure Rights.** Promptly procure the right of KCHA to continue using the Services; or
4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and KCHA is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to KCHA all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by KCHA if the court does not so direct.

e. **Modification of Services.** This indemnification does not extend to modifications or additions to the Services made by KCHA or any third party without the prior written consent of Consultant, or to any unauthorized use of the Services by KCHA.

f. **Survival of Indemnification Obligations.** Upon completion of this Agreement, the provisions of this **Section 8** shall survive.

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

10. **Consultant Representations.** Consultant makes the following representations, which the Parties agree are material to and form a part of the inducement for this Agreement:

- a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and
- b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and
- c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

11. Ownership of Documents. All reports, documents and other items generated or gathered in the course of providing the Services are and shall remain the property of KCHA, and shall be returned to KCHA upon full completion of the Services or termination of this Agreement, whichever first occurs.

12. Rights to Contracted Products.

a. Belong to KCHA. For no additional fee or charge, products developed, prepared, generated or gathered by Consultant or Consultant's Representatives under this Agreement, shall be considered creative works for hire and shall be delivered to and become the exclusive property of KCHA and may be used by KCHA in any way it may deem appropriate. Consultant shall have no rights in the products, except the right to use the products for the exclusive purpose of providing the Services, and Consultant shall not copy or disclose to any third party any product, except as is expressly set forth in this Agreement or by separate written agreement between the Parties. These provisions do not apply to Consultant's original licensed software or administrative communications and records, which shall remain the exclusive property of Consultant,

b. Use by KCHA. The ideas, concepts, know-how, and techniques developed during the course of this Agreement may be used by KCHA in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any Applicable Law.

c. No Publication. Consultant or Consultant's Representatives shall not publish or disseminate information gained through participation in this Agreement without the specific prior review and written consent by KCHA.

d. Delivery to KCHA. Upon termination or expiration of this Agreement, Consultant shall immediately deliver to KCHA all KCHA-owned programs and documentation developed under this Agreement. In addition, Consultant grants to KCHA a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for KCHA purposes, any Consultant-owned program, including system software, utilized by Consultant in performance of the Services.

e. Survival of Covenants. Upon completion of this Agreement, the provisions of this **Section 12** shall survive.

13. Termination. The CEO may at his or her election, without cause, terminate this Agreement by written notice ("**Notice of Termination**"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Consultant or the CEO, Consultant shall submit to the Responsible KCHA Department all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this **Section 13**, KCHA shall pay Consultant for all satisfactory Services rendered by Consultant prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Schedule.

14. Choice of Law/Venue. The Parties agree that the provisions of this Agreement shall be construed under the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

15. Compliance with Applicable Law. Consultant shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("**Applicable Law**"), each of which is made a part of this Agreement.

16. Confidentiality. Consultant shall not, without the prior written consent of the CEO, communicate confidential information, designated in writing or identified in this Agreement as confidential, to any third party and shall protect confidential information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information, unless disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this **Section 16** shall continue to survive.

17. Conflict of Interest. Consultant has read and is aware of the provisions of Government Code Section 1090 et seq. and Section 87100 et seq. relating to conflict of interest of public officers and employees. Consultant acknowledges that it is unaware of any financial or economic interest of any public officer or employee of KCHA relating to this Agreement. If it is further understood and agreed that if a financial interest does exist at the inception of this Agreement, KCHA may immediately terminate this Agreement by giving written notice. Consultant shall comply with the requirements of Government Code Section 1090 et seq. and 87100 et seq. during the Term.

18. Disqualified Persons. Consultant represents and warrants that no person providing goods and/or services under the terms of this Agreement (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory,

administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Consultant agrees that if any individuals providing goods and/or services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Consultant shall immediately notify KCHA and such individual shall be immediately removed by Consultant from any functions, provided, however, that if Consultant is directly involved in the Enforcement Action, any agreement between KCHA and Consultant shall terminate immediately.

19. Enforcement of Remedies. No right or remedy conferred on or reserved to a Party is exclusive of any other right or remedy under law, equity or statute, but each shall be cumulative of every other right or remedy now or in the future existing under law, equity or statute, and may be enforced concurrently or from time to time.

20. Health Insurance Portability and Accountability Act-HITECH. Where applicable, Consultant agrees to (i) implement appropriate safeguards and maintain individually identifiable patient health information ("Protected Health Information" or "PHI", including electronic PHI) as required by HIPAA; (ii) use and disclose only the minimum necessary PHI; (iii) use and disclose PHI only as permitted under HIPAA for legal, management and administrative purposes in connection with treatment, payment and healthcare operations or as required by law; (iv) require third parties to whom it may disclose PHI to agree in writing to similar restrictions and to comply with HIPAA; (v) track disclosures of PHI as required under HIPAA, to include the nature of the information disclosed, the date of the disclosure, to whom the information was disclosed, address of the recipient, if known, and the purpose of the disclosure and provide KCHA with an accounting of such disclosures promptly upon request; (vi) promptly notify KCHA of disclosures of PHI in violation of HIPAA and this Agreement and take steps to mitigate, to the extent practicable, deleterious effects of improper use of PHI; (vii) promptly make PHI available to KCHA and patients upon request; and (viii) permit patients to request amendment to or correction of PHI, amend and/or correct PHI as appropriate when so requested, notify KCHA of requests for correction and amendments to PHI by patients and incorporate into PHI amendments and/or corrections made to PHI by KCHA as directed by KCHA. Consultant acknowledges that PHI received from KCHA shall remain KCHA's property and that within ten (10) business days of KCHA's request or upon termination of this Agreement, said PHI shall be returned to KCHA or be destroyed, if KCHA so directs. If such return or destruction is infeasible, Consultant shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Agreement shall survive with respect to such PHI. If appropriate Consultant agrees to execute a business associate agreement with KCHA to supplement this Agreement, if requested.

21. Liability of KCHA. The liabilities or obligations of KCHA, with respect to its activities pursuant to this Agreement, shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

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

23. Non-collusion Covenant. Consultant represents and agrees that (i) it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA and (ii) it has received from KCHA no incentive or special payments and no considerations not related to the provision of the Services.

24. Non-discrimination. Neither Consultant, nor any Consultant Representative, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by Applicable Law, either directly, indirectly or through contractual or other arrangements.

25. Non-waiver. No covenant or condition of this Agreement can be waived except by the written consent of KCHA. Forbearance or indulgence by KCHA shall not constitute a waiver of the covenant or condition to be performed by Consultant. KCHA shall be entitled to invoke any remedy available to KCHA under this Agreement or by Applicable Law despite the forbearance or indulgence.

26. Notices. All notices under this Agreement shall be provided to the KCHA CEO at the address indicated in the opening section of this Agreement and to the Consultant and Responsible KCHA Department at the addresses shown on the Schedule. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices under this Agreement by leaving the notice with the receptionist or other person of like capacity employed in Consultant's office, or the CEO.

27. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

28. **Counterparts.** This Agreement 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 document.

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

30. **Regulatory Compliance.** In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Consultant shall apprise Kern Medical of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by Kern Medical for follow-up action and evaluation of performance.

31. **Access to Books and Records.** Until the expiration of four years after the expiration or termination of this Agreement, Kern Medical and Consultant shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Consultant provided under this Agreement.

32. **Severability.** If any term or provision of this Agreement is determined by a court to be in conflict with any Applicable Law, or otherwise be unenforceable or ineffectual, the validity of the remaining terms or provisions shall be deemed severable and shall not be affected, provided that the remaining terms or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into on the Effective Date.

33. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

34. **Sole Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

35. **Time of Essence.** Time is expressly declared to be of the essence of this Agreement and of each provision, and each provision is declared to be a material, necessary and essential part of this Agreement.

36. **No Third Party Beneficiaries.** The Parties understand and agree that the enforcement of these terms and conditions and all rights of action relating to enforcement, shall be strictly reserved to KCHA and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of KCHA and Consultant that any person or entity, other than KCHA or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

37. **Gender/Plural.** References to feminine, masculine or neutral include the other, and references to the singular or plural include the other.

38. **Recitals.** Each of the recitals is incorporated in this Agreement, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

39. **Exhibits.** All exhibits attached to this Agreement are incorporated into this Agreement by reference.
Exhibit A: Services & Fees
Exhibit B: Intentionally Omitted
Exhibit C: Insurance

**EXHIBIT A
SERVICES**

EXHIBIT A-1

IRS FORM W-9

**EXHIBIT B
FEE SCHEDULE**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“Covered Entity”) and Rab-Com, Limited (“Business Associate”) (each a “Party” and collectively the “Parties”), effective as of April 21, 2021 (the “Effective Date”).

RECITALS

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

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

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

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

AGREEMENT

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

ARTICLE I DEFINITIONS

1.1 “Breach” shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 “Breach Notification Rule” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 “Designated Record Set” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.4 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

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

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-

permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

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

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

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

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

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide

such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

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

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

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

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

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

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

**ARTICLE III
OBLIGATIONS OF COVERED ENTITY**

3.1 Covered Entity's Obligations.

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

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

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

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

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

**ARTICLE IV
TERM AND TERMINATION**

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

5.9 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory

or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business 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 five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Rab-Com, Limited
25613 Dollar Street, Suite 1
Hayward, California 94544
Attn: Stephen Wyszomirski

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on behalf of Kern Medical Center

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Rab-Com, Limited

Stephen Wyszomirski

Title: VP

Date: 3-18-2021

Digitally signed by Stephen Wyszomirski
DN: C=US, E=Stephenw@rdcom.com, O=Rab-Com Limited, CN=Stephen Wyszomirski
Reason: I am approving this document
Contact Info: Vice President
Date: 2021.03.18 11:57:14-07'00

APPROVED AS TO FORM

Jamie Mason

KCHA Hospital Counsel



25613 Dollar Street, Suite 1
Hayward, California 94544
510.537.8601

CA Lic. 566993
NV Lic. 55414
www.rclcom.com

Kern Medical
1700 Mount Vernon Ave
Bakersfield, CA 93306

Re: Totguard Infant Security Proposal – Revised 12/22/2020

Thank you for requesting a proposal for a TotGuard Infant Security System by GuardRFID from RCL Communications. The information below and on the quote(s) has been based on the attached floor plan developed in conjunction with Kern Medical Center to provide coverage for movement tracking, perimeter control, and tag detection for the Labor and Delivery, Nursery, Post Partum, Peds, and NICU areas as shown on the plans. This proposal has been revised based on additional information obtained during the facility site visit conducted on 11/17/20 and subsequent conference calls.

Quote 8296 (attached) represents our bid to supply and install the above system to the drawings provided. Tag Reader Receivers (TR2) will be placed throughout the facility to provide tag locating and tracking. Tag Reader Controller (TRC) packages will be placed at perimeter doors with local sounders to provide perimeter protection, and stand alone Tag Exciters (TE) will be installed at select locations to provide directionality of travel information and to create protected zones. RCL will supply and install Category 6E Plenum Cabling for devices back to a central IDF and terminate to customer provided PoE switches in customer supplied equipment racks. RCL to program field devices with IP information provided by customer and install software and integrations onto customer provided server (physical or VM, must include copy of MS SQL on deployment). RCL to program and deploy software to 7 client PC's provided by facility and connect to server via facility LAN. Quote includes system commissioning and staff training. Rab-Com Limited is also supplying one complementary Guard Mobile Application License.

Additional labor has been added to provide for the installation of cabling in a fire rated hard lid ceiling for the Labor & Delivery area, installation of firestopped backboxes in the rated ceiling for the TR2 Devices, and installation of boxes and conduit in rated walls for the installation of the Tag Exciters. Firestop pads and fire rated materials have been included for the installation in the hard lid and smoke corridor. Quote includes prevailing wage and non-prevailing wage labor with the following breakdown budgeted for this project:



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Hayward, California 94544
510.537.8601

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www.rclcom.com

- Installation - \$104,900.00
 - o Installation of conduit & backboxes (wage scale: \$15,600.00)
 - o Running, termination and testing of cables (wage scale: \$52,000.00)
 - o Physical installation of devices (wage scale: \$32,500.00)
 - o Training (non-wage scale: \$4,800.00)
- Professional Services - \$50,860.00
 - o Programming of devices & specialty integrations (non-wage scale: \$5,760.00)
 - o Project management (non-wage scale: \$9,600.00)
 - o Project drawings (non-wage scale: \$4,000.00)
 - o Per Diem (\$31,500.00)

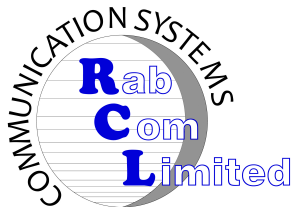
Customer to provide new access hatch at locations shown on prints for installation of TRC devices. Per customer, facility standard of Systimax by Commscope does not apply to this project and RCL is excluding all compliance with this standard. RCL will provide patch panels for RCL provided cabling, and patch cabling from panel to customer provided network PoE switch.

Line pricing for tags and bands is below. Once quantities have been determined, a formal proposal can be provided.

- 1) 61-10007 UT-1BLF Umbilical tag, 12 mo battery - \$79 each
- 2) 61-10000 TT-1BLF TotTag, 12 mo battery - \$79 each
 - a. Bands in 6, 8, and 10 inch, narrow and regular width - \$225 per 100
- 3) 61-10010 PPT-2BLF Pediatric Tag w/ cut band tech, 12 mo battery - \$79 each
 - a. Bands and clinchers - \$350 per 100
- 4) 61-10300 MT-125E Mother Tag (requires Mother/baby matching lic) - \$149 each
 - a. Bands for Mother Tag - \$83 per 100

Thank you again for your interest in working with Rab-Com Limited.

Kevin King
Sales Manager
Rab-Com Limited



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 Hayward, CA 94544
 www.rclcom.com
 510-537-8601

CA Lic. 566993
 NV Lic. 55414

PROPOSAL

Quote No. 0000008296
 Quote Date: 11/03/2020
 Valid Until: 02/01/2021

Customer Name: KERN MEDICAL

Job Site Name:

Customer Address: 1700 MOUNT VERNON AVE
 BAKERSFIELD, CA 93306

Job Site Address:

Description: TOTGUARD INSTALLATION

<u>Item No</u>	<u>Description</u>	<u>Qty</u>	<u>Sales Price</u>	<u>Extended Price</u>
512HD	T-BAR HANGER	61.00	6.87	419.07
61-20002	TAG READER CONTROLLER	16.00	1,432.20	22,915.20
61-20016	TR2-E GEN 2 TAG READER REC'ER	46.00	1,051.40	48,364.40
61-23000	BANK STYLE ELEVATOR PACKAGE	2.00	2,753.80	5,507.60
61-30000	EXCITER FOR CHECKPOINT	24.00	1,337.00	32,088.00
61-92010	ISOLATION RELAY	1.00	134.40	134.40
61-92011	GUARD PASSIVE IR SENSOR	11.00	215.60	2,371.60
62-10000	TOTGUARD STANDALONE SFTWR	1.00	7,939.40	7,939.40
62-30003	ALLGUARD CLIENT SOFTWARE -	7.00	1,797.60	12,583.20
62-50011	LDAP INTERFACE: ONE SITE LIC	1.00	1,360.80	1,360.80
62-50016	HL7 ADT INTERFACE: ONE SITE	1.00	2,725.80	2,725.80
62-50030	I/O MODULE INTERFACE:	1.00	268.80	268.80
63-50002	GUARD RFID SOFTWARE UPDATE	1.00	10,757.60	10,757.60
72C17	5SQ TO 4-11/16 MUDRING	61.00	4.10	249.80
82181T-1234-1	5-SQUARE METAL BOX	61.00	22.50	1,372.50
EBE63	STI FIRESTOP PAD, 7.5 X 7.5	80.00	8.07	645.60
LP4812	12VDC POE SPLITTER	106.00	59.32	6,287.71
N6EPBL1BX	23-4P UTP-CMP SOL BC CAT6E BLU	32.00	324.63	10,388.22
RCLCBL	RCL STOCK CABLE	1.00	600.00	600.00
RCLMISC	RCL MISC INSTALLATION MATERIAL	1.00	5,000.00	5,000.00

Equipment Subtotal: 171,979.70

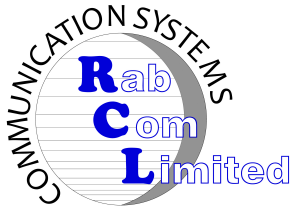
(Sales Tax Rate (if applicable)) 7.250%) 10,480.04

Installation: 104,900.00

Professional Services: 50,860.00

Freight 2,000.00

Total: 340,219.74



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510-537-8601

CA Lic. 566993
NV Lic. 55414

PROPOSAL

Quote No. 0000008296
Quote Date: 11/03/2020
Valid Until: 02/01/2021

Customer Name: KERN MEDICAL

Job Site Name:

Customer Address: 1700 MOUNT VERNON AVE
BAKERSFIELD, CA 93306

Job Site Address:

Description: TOTGUARD INSTALLATION

Scope of Work:

PLEASE SEE ATTACHED STATEMENT OF WORK FOR THIS PROJECT

WARRANTY: Ninety (90) Warranty on Labor & Manufacturer's Warranty on Equipment

Quote Prepared by RCL Representative: Kevin King

*Terms: 10% invoiced upon receipt of order; balance progress billed upon receipt by customer
Cancelled orders are subject to a 20% restocking charge and applicable service charges*

Customer Signature: _____ Date: _____ Customer PO #: _____

EXHIBIT C INSURANCE

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.

- (g) The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “F” definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between KCHA and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

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

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

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

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

7. Documentation:

- (a) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
- (b) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (c) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (d) Consultant shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.

- (e) Upon written request, certified copies of required insurance policies must be provided to KCHA within 30 days.
8. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
9. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
10. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

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

April 21, 2021

Subject: Proposed Service Estimate with Mizuho OSI for the repair of the Mizuho OR Table, containing nonstandard terms and conditions

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Service Estimate with Mizuho OSI for the repair of a shroud damaged from the Column Slider to the Base Cover of the Mizuho ProFix table, which is used for orthopedic and neurosurgery surgical cases. When in use, the shroud must be intact to prevent fluid entry into the mechanical components of the table base, which could lead to table damage. A damaged shroud also creates infection control risks. The Mizuho ProFix is a specialty table that is costly to replace but is critical for patient care. The estimated cost for the repair will not exceed \$15,000, which includes the actual cost of \$14,085 plus incidental expenses.

Counsel is unable to approve the agreement due to the absence of standard terms including lack of indemnification, proof of insurance, and the Authority's statutory limitation of liability. Efforts were made to negotiate with the vendor but to no avail.

Therefore, Kern Medical recommends that your Board approve the Service Estimate with Mizuho OSI, containing nonstandard terms and conditions, for the repair of a Mizuho ProFix table, effective April 21, 2021, in an amount not to exceed \$15,000, and authorize the Chairman to sign.



Service Estimate

Service Report #: WO-00062767
For Service On: 6850 58

Date of Report: 12/18/2020

FOR SERVICE AT:	CONTACT INFO:
KERN MEDICAL CENTER 1700 Mount Vernon Avenue BAKERSFIELD, California, 93306	George Edge KERN MEDICAL 1700 Mount Vernon Avenue BAKERSFIELD, California, 93306 (661) 326-2580 george.edge@kernmedical.com

PROBLEM DESCRIPTION
6850 58, shroud damaged from Column Slider to Base Cover.

PARTS

Part Number	Part Description	Estimated Qty	Estimated Price Per Unit	Total Estimated Price
6800-127	COLUMN SLIDER COVER	1	\$3,699.00	\$3,699.00
6800-129	COLUMN SKIRT, FLOATING	1	\$729.00	\$729.00
6800-267	COLUMN SKIRT FIXED, LEFT	1	\$896.00	\$896.00
6800-268	COLUMN SKIRT FIXED, RIGHT	1	\$896.00	\$896.00
6800-130	BASE COVER, MID SECTION	1	\$2,285.00	\$2,285.00
AAAT037AAC	#10-32 UNF X .37 BTNHD SKT SCREW S.S.	20	\$2.24	\$44.80
AAAH018BAC	#4-40 UNC X .18 FLTHD SKT SCR, SST	10	\$2.24	\$22.40
AAAH031BAC	#4-40 UNC X .31 FLAT HD SKT SCREW S.S.	15	\$2.24	\$33.60
6850-112	WELDMENT, BRACKET, JACK CRANK HANDLE	1	\$722.00	\$722.00
AABB150BAC	3/8-16 UNC X 1.5 FLTHD SKT SCR, SST	2	\$2.17	\$4.34
Subtotal				\$9,332.14

LABOR

Activity	Estimat Qty	Estimated	Total Estimated
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Activity	Estimated Qty	Estimated Price Per Unit	Estimated Total Price
REPAIR LABOR PER HOUR	8	\$297.00	\$2,376.00
Subtotal			\$2,376.00

TRAVEL

Description	Estimated Qty	Estimated Price Per Unit	Total Estimated Price
TRAVEL ROUND TRIP	8	\$297.00	\$2,376.00
Subtotal			\$2,376.00

EXPENSES

Description	Estimated Qty	Estimated Price Per Unit	Total Estimated Price
Subtotal			\$0.00

Service Total: \$14,084.14

Please note: This is only a **quote**. Your facility will be charged for the actual parts, travel, and labor consumed.

Please email a hard copy Purchase Order to service@mizuhosi.com. Upon receiving the purchase order we will order parts or dispatch a technician to your facility.

Any additional parts, labor, or travel required to repair the table will be added to your invoice. If a return visit is required to repair any additional discrepancies a new quote will be required with an additional purchase order.

Estimate valid for 30 days. Shipping charges may be applicable.

**Customer
Signature:**

Name of Signer: Russell Bigler
Title of Signer: Chairman, Board of Governors

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



Time and Material Service

Upon receipt of Customer's purchase order for Time and Material Service, Mizuho OSI will furnish service as ordered, subject to the following terms and conditions which shall govern this order.

1. **Service.** Mizuho OSI Service refers to remedial (repair) service on Mizuho OSI Products. The service offered is identified as Time and Material Service.
2. **Purchase Orders.** Purchase orders for authorized service must list the specifics of the service being purchased, i.e. equipment and options to be serviced, serial number, site of installation, and invoice address. Mizuho OSI acknowledgement of the customer's purchase order shall not be deemed acceptance of any additional or different terms thereon.
3. **Time and Materials Labor.** Customer will be charged actual travel and labor for service provided with a minimum charge of 4.5 hours. Mizuho OSI will bill at 15 min increments at published prices in effect at the time such services are actually performed. Labor is computed from the job start time to job stop time as indicated on the service report. If the service is performed outside of 8:00am to 5:00pm Monday through Friday, local time, the customer will be charged at the prices listed below or as listed on the purchase order. Travel. Travel will be charged for each on-site call at the rates listed below or on Purchase Quote for such services performed portal to portal.

			Labor Rate
Mon	-	Fri	Standard
8am - 5pm			
Mon	-	Fri	Time and Half
5pm - 8am			
Weekends and Holidays			Double Time

4. **Invoicing.** Invoices for services performed will be sent to the customer location requesting such services. Invoicing shall be against a purchase order or credit card. All prices shown on the invoice are exclusive of state and local, use, sales, and similar taxes. Such taxes, when applicable, will appear as separate items on a Mizuho OSI invoice and shall be paid by the customer unless valid exemption certificate is furnished to Mizuho OSI for the state of use at the time purchase order is issued.
5. **Payments.** The customer agrees to pay all charges and taxes as shown on the invoice within thirty (30) days of invoice date. Payment shall be sent to the address listed on the invoice.
6. **Replacement parts.** In the maintenance and/or service of any product, all replacement parts, may be new or refurbished. All defective parts and assemblies become the property of Mizuho OSI. Mizuho OSI as its option, may request the return of these parts.
7. **Warranty.** Mizuho OSI warrants that repair service purchased from Mizuho OSI will be performed in a workmanlike manner and that all parts installed in the course of such service will be free from defects in materials and workmanship for a period of (90) ninety days from the date of service. If any service or replacement part proves defective within the (90) day warranty period, Mizuho OSI will correct the defective work and replace the defective part without charge for parts and labor, provided that customer notify Mizuho OSI of the defect prior to the expiration of the (90) day warranty period and make mutually agreeable arrangements for the performance of service. Mizuho OSI will provide corrective service at the location where the original service was performed and at standard business hours and local time.

Mizuho OSI shall not be obligated under this warranty to:

- Repair damage resulting from attempts by personnel other than Mizuho OSI representatives to install, repair, or service the product unless directed by Mizuho OSI representatives;
- Repair any damage, malfunction, or degradation of performance resulting from improper use.
- Provide any application software support or service involving application hardware;

- Perform user maintenance or cleaning or to repair damage, malfunction, or degradation of performance resulting from failure to perform user maintenance and cleaning as prescribed in published product materials;
- Repair damage, malfunction, or degradation of performance resulting from use of the product in an environment not meeting the operating specifications set forth in the user manual.
- Repair any accessories.
- Service any product that has reached its end of life (EOL).

THIS WARRANTY IS GIVEN BY MIZUHO OSI WITH RESPECT TO ITS REPAIR SERVICE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. MIZUHO OSI'S RESPONSIBILITY TO REPLACE DEFECTIVE PARTS AND CORRECT ITS WORK IS THE SOLE AND EXCLUSIVE REMEDY PROVIDED TO THE CUSTOMER FOR BREACH OF THIS WARRANTY.



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

April 21, 2021

Subject: Kern County Hospital Authority Financial Report – February - 2021

Recommended Action: Receive and File

Summary:

COVID-19 Impact on Kern Medical Operations

The COVID-19 pandemic has impacted Kern Medical's key performance indicators as follows:

- Average Daily Census of 142 for February is 1 less than the February budget of 143 and 4 less than the 146 average over the last three months
- Admissions of 730 for February are 72 less than the February budget of 802 and are 103 less than the 833 average over the last three months
- Total Surgeries of 354 for February are 102 less than the February budget of 456 and 77 less than the 431 average over the last three months
- Clinic Visits of 19,674 for February are 6,716 more than the February budget of 12,958 and 5,728 more than the 13,946 average over the last three months due to the large volume of COVID-19 vaccinations provided during February

Kern Medical has maintained the staffing levels necessary to adequately provide coverage for a surge in pandemic activity if necessary. In addition, Kern Medical is participating in all emergency funding programs available at the county, state, and federal levels to offset lost revenue and increased expenses that may be realized due to the COVID-19 issue.

The following items have budget variances for the month of February 2021:

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. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Gross patient revenue has increased 10% year-to-date compared to prior year.

Indigent Funding Revenue:

Indigent funding has an unfavorable budget variance for the month of February due to a conservative approach of recognizing indigent funding revenue. During each month of fiscal year 2021 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 of Public Hospital Redesign and Incentives in Medi-Cal (PRIME), the Global Payment Program (GPP), and the Whole Person Care Program (WPC). Kern Medical will also recognize 100% of the projected revenue for the Enhanced Payment Program (EPP) and the Quality Incentive Program (QIP).

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

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

On a year-to-date basis there is a favorable budget variance for indigent funding because of the receipt and recognition of \$3.570 million from the Low-Income Health Plan (LIHP). Settlements were reached for prior years' LIHP activity that were not previously accrued for on Kern Medical's balance sheet.

Other Operating Revenue:

Other operating revenue has a favorable budget variance for February due to the receipt of \$2,024,402 in settlement funds from Beazley Insurance for a cyber-attack insurance claim.

Other Non-Operating Revenue:

Other non-operating revenue has a favorable budget variance for the month of February. The variance is due to the receipt of \$342,666 in funds from the County of Kern in support of the COVID-19 units set up at the County Fairgrounds to treat homeless COVID-19 patients. The funds received in February were for the period of October 2020 through January 2021. On a year-to-date basis, COVID-19 related funding is budgeted evenly throughout FY 2021 as other non-operating revenue; however, COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Salaries Expense:

On a month-to-date and year-to-date basis, salaries are over budget due in large part to higher than average expenses for aides and attendants and for physicians. Aides and attendant's salaries have increased 14% over prior year and physician salaries have increased 7% over prior year. There has also been an increase in FTEs in the Behavioral Health unit for additional sitters needed for an increase in behavioral health patients.

Benefits Expense:

Benefits expense is over budget for February due to higher than average costs for paid time off (PTO), unemployment insurance, retirement, and pension obligations. These line items also drive the unfavorable year-to-date budget variance. However, these items account for a smaller percentage of total gross salaries this year than they did in prior year.

Medical Fees:

Medical fees were over budget for the month, primarily due to higher than average fees paid to Total Renal for dialysis related services. On a year-to-date basis, medical fees are over budget due in part to Total Renal expenses and due to true-up entries to account for under accruals for expenses in prior months.

Other Professional Fees:

Other professional fees are slightly over budget for February due to an accrual for the physician pension plan audit expenses. On a year-to-date basis, there is a favorable budget variance because of the reversal of an expense accrual for Allscripts services. The Information Systems department determined that the expense was over accrued in prior months. In addition, Kern Medical received credits from Change Healthcare for overpayments made to the vendor in prior months.

Supplies Expense:

Supplies expense is near budget for the month primarily because of lower than expected pharmaceutical expense. In addition, current month's operating room supply expense is lower due to a 25% decrease in surgery activity during the past two months compared to the year-to-date trend as a result of orders from the State of California limiting cases at critical times during the pandemic. The favorable year-to-date variance is also due to lower than expected pharmaceutical expense this year.

Purchased Services:

Purchased services expenses are under budget for February due to a reduction in the accrual for Health Advocates financial counselor's expenses. On a year-to-date basis, purchased services are under budget because of lower than average expenses for out-of-network contracted patient care services provided by other healthcare facilities.

Other Expenses:

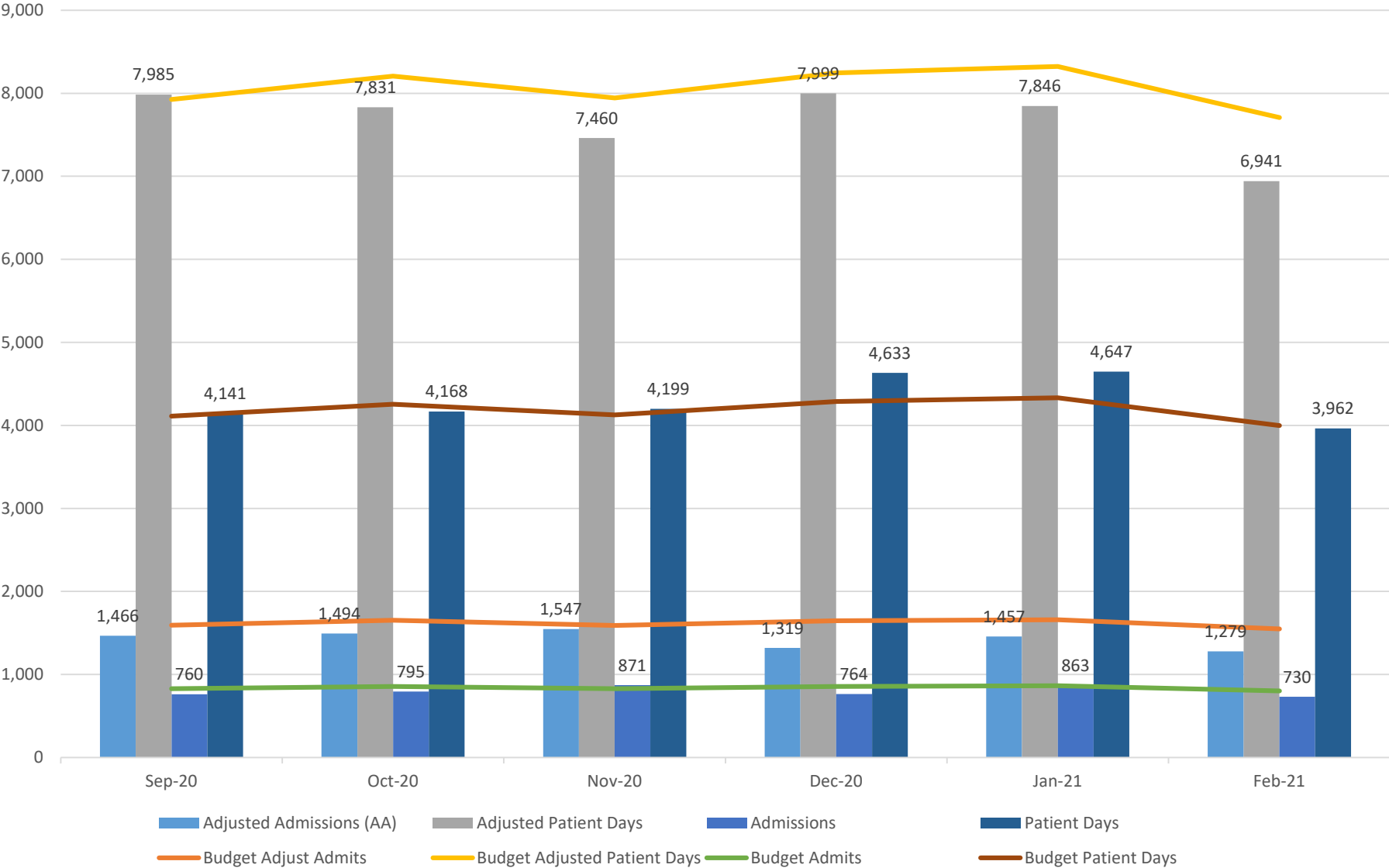
Kern Medical operated at the budgeted dollar amount for other expenses for the month of February. Higher than average repairs and maintenance expenses and high utility expenses during the early months of the fiscal year are the reasons for the unfavorable year-to-date budget variance for this line item.



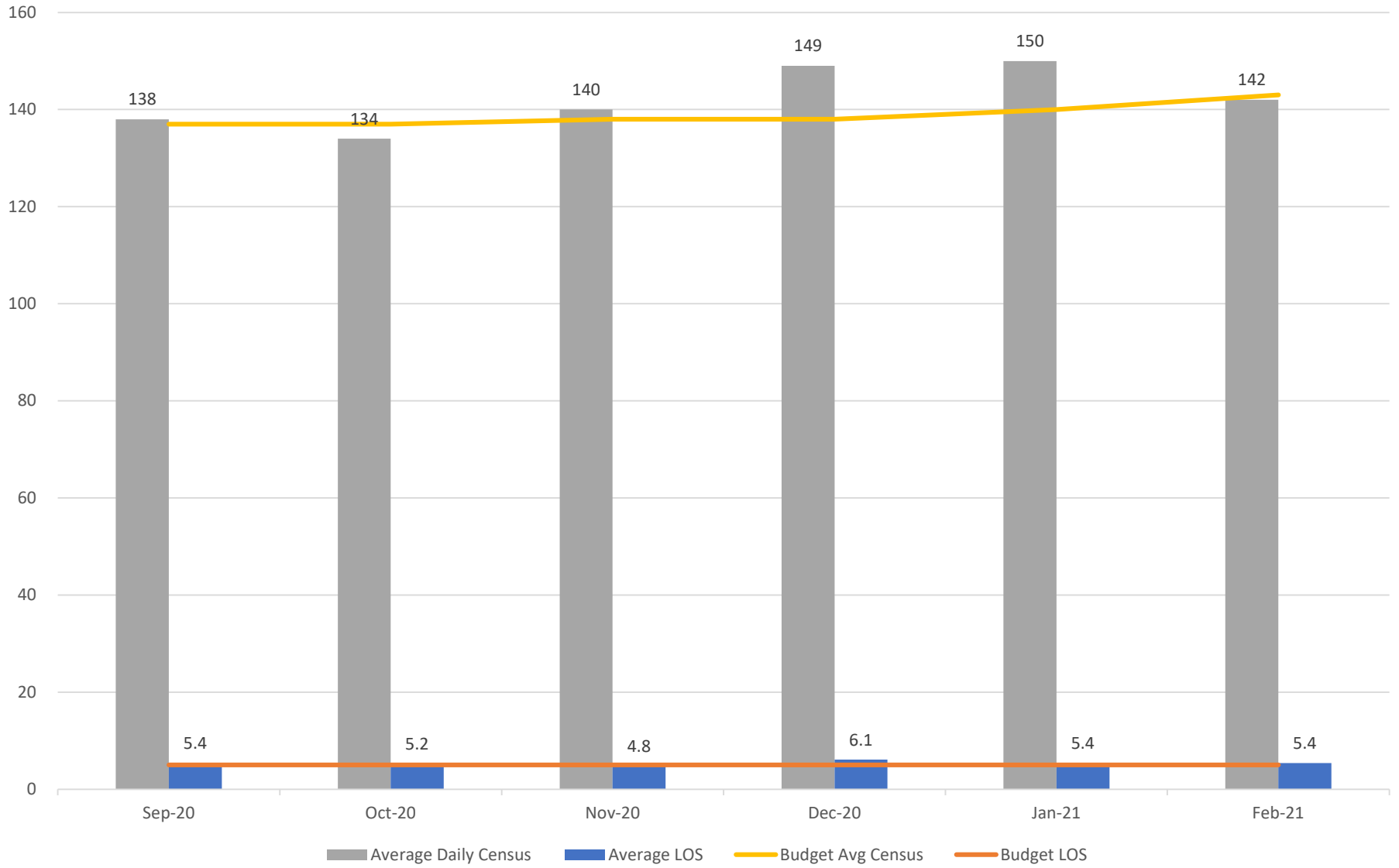
**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – FEBRUARY 2021**

APRIL 2021

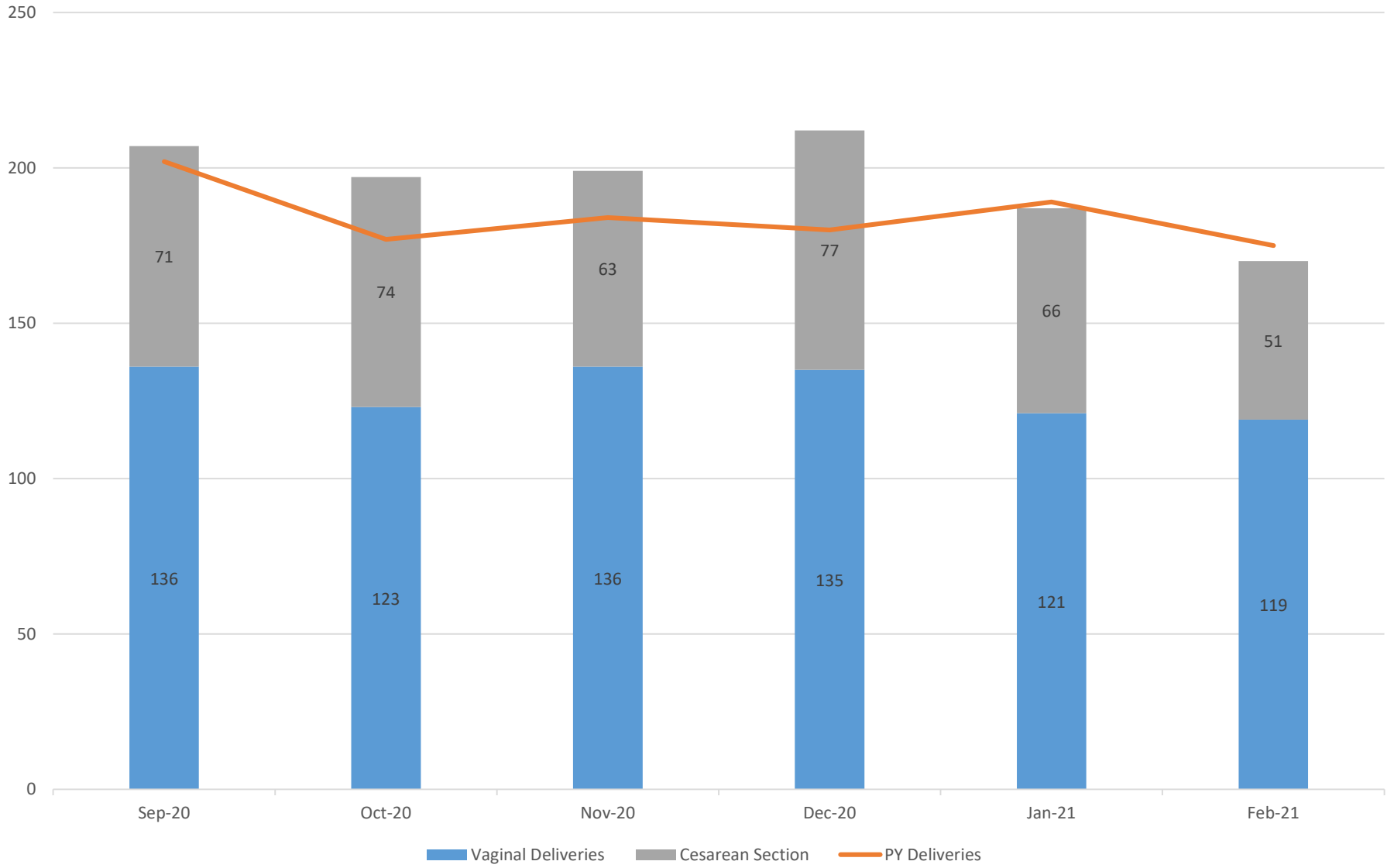
Hospital Volumes



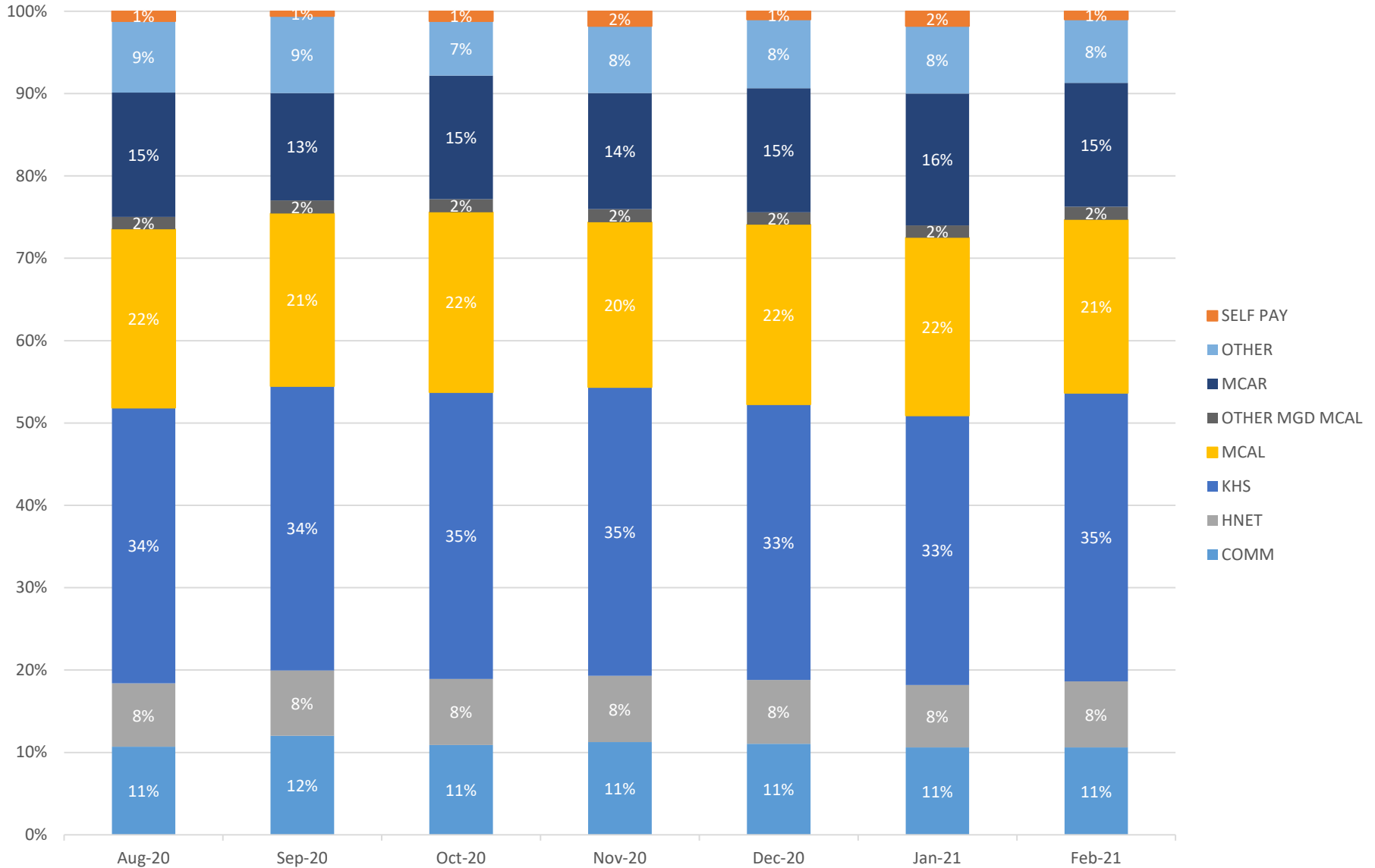
Census & ALOS



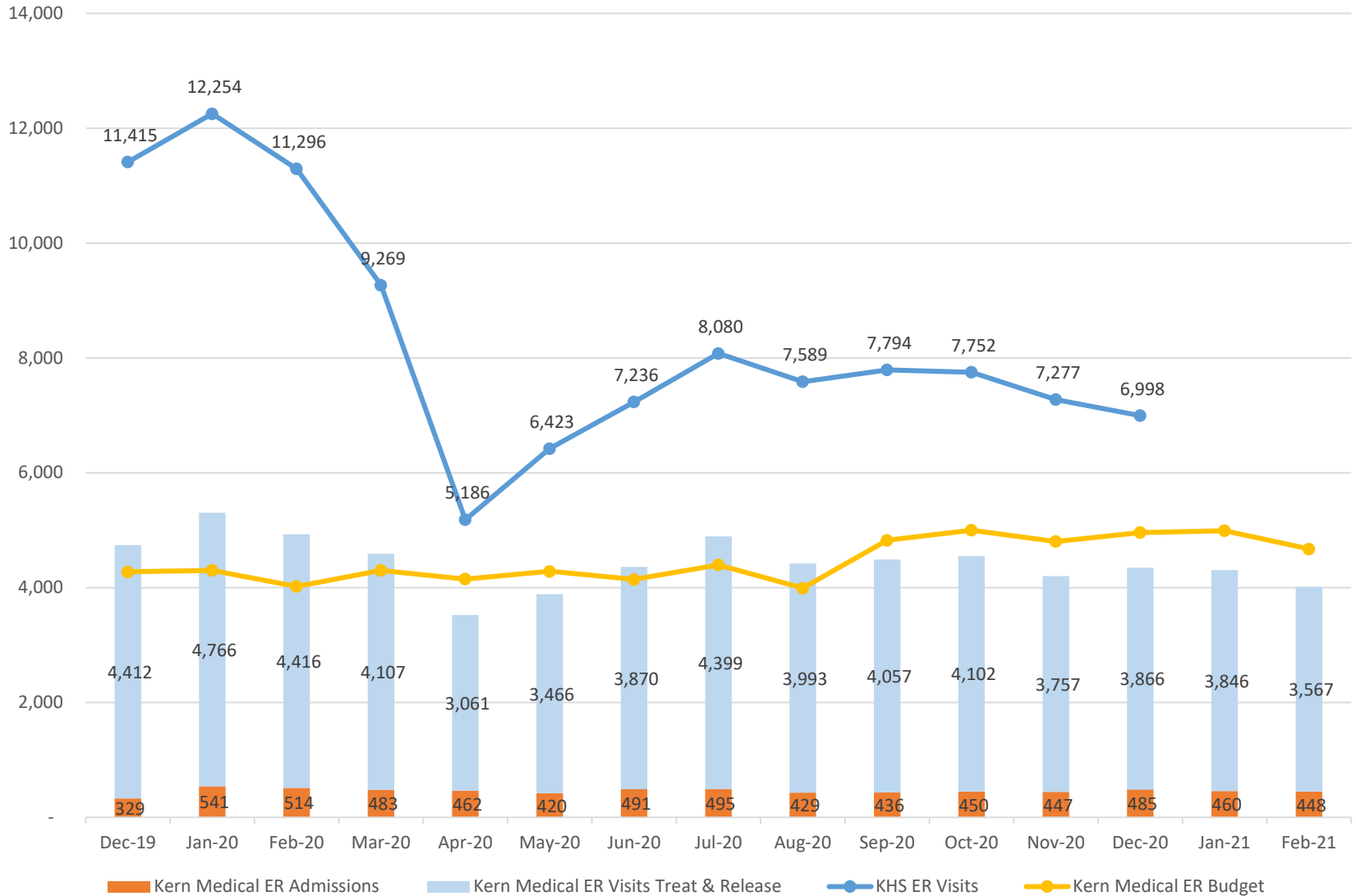
Deliveries



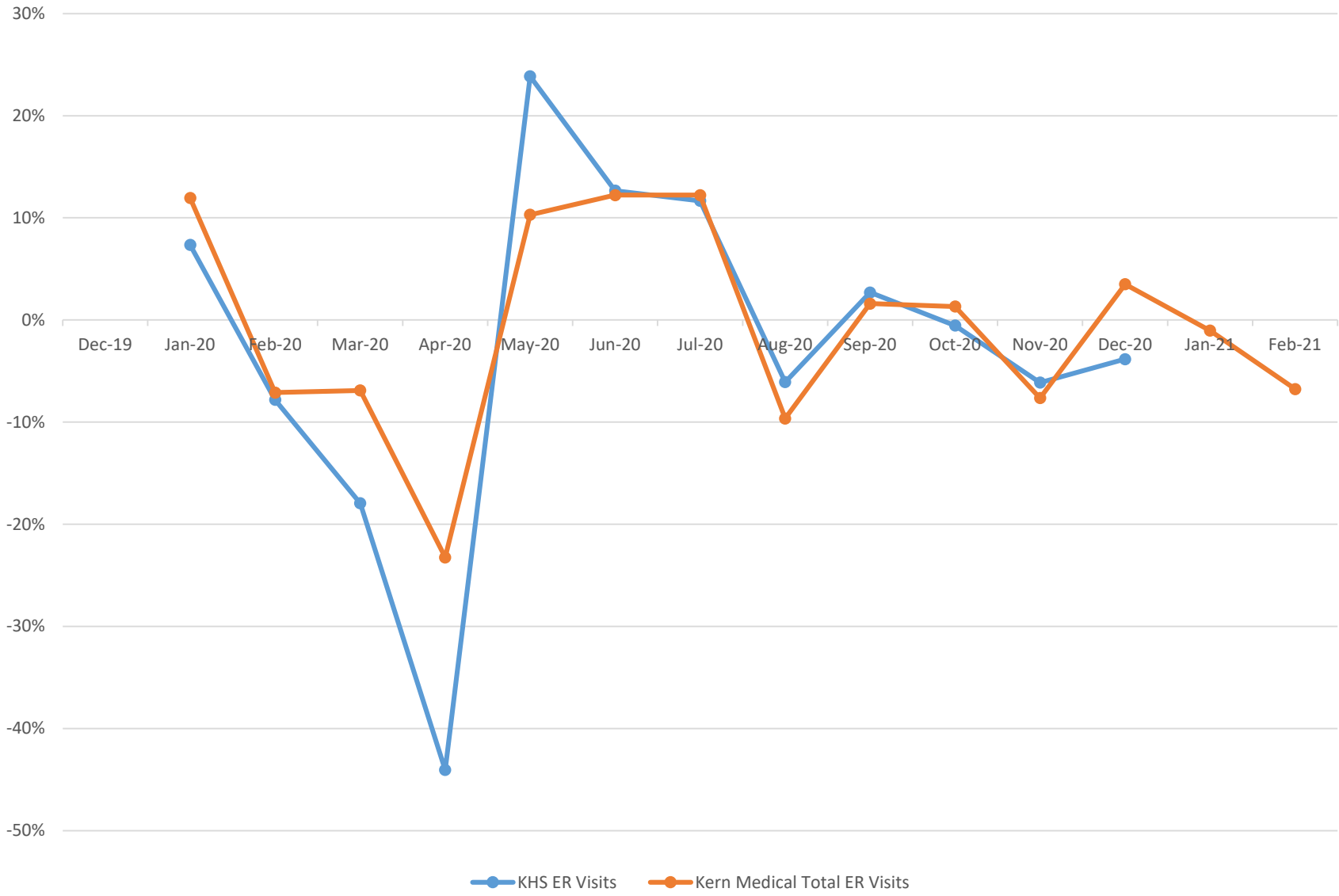
PAYER MIX



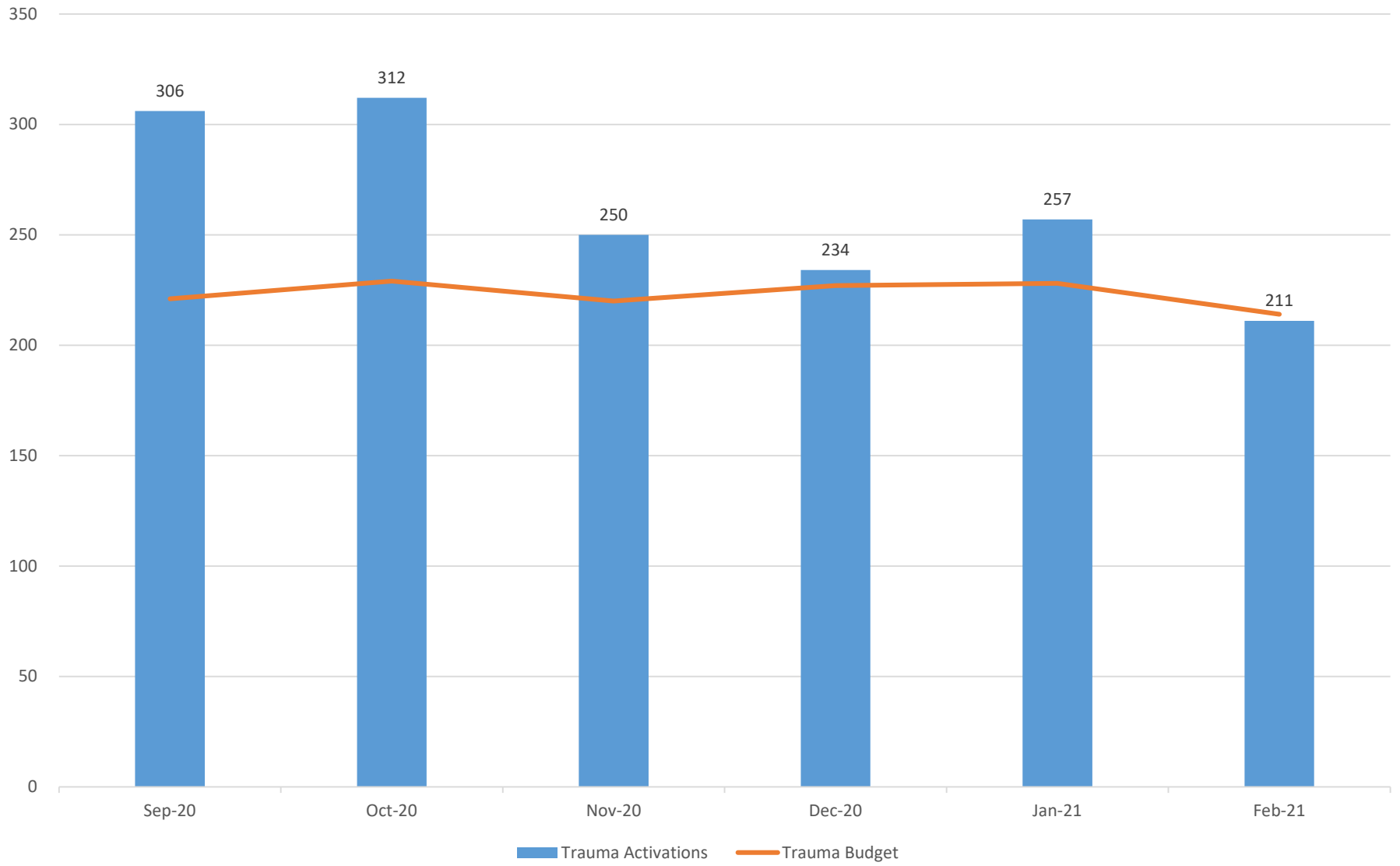
Kern Health Systems Total ER Visit Volume and Kern Medical ER Visits and Admissions



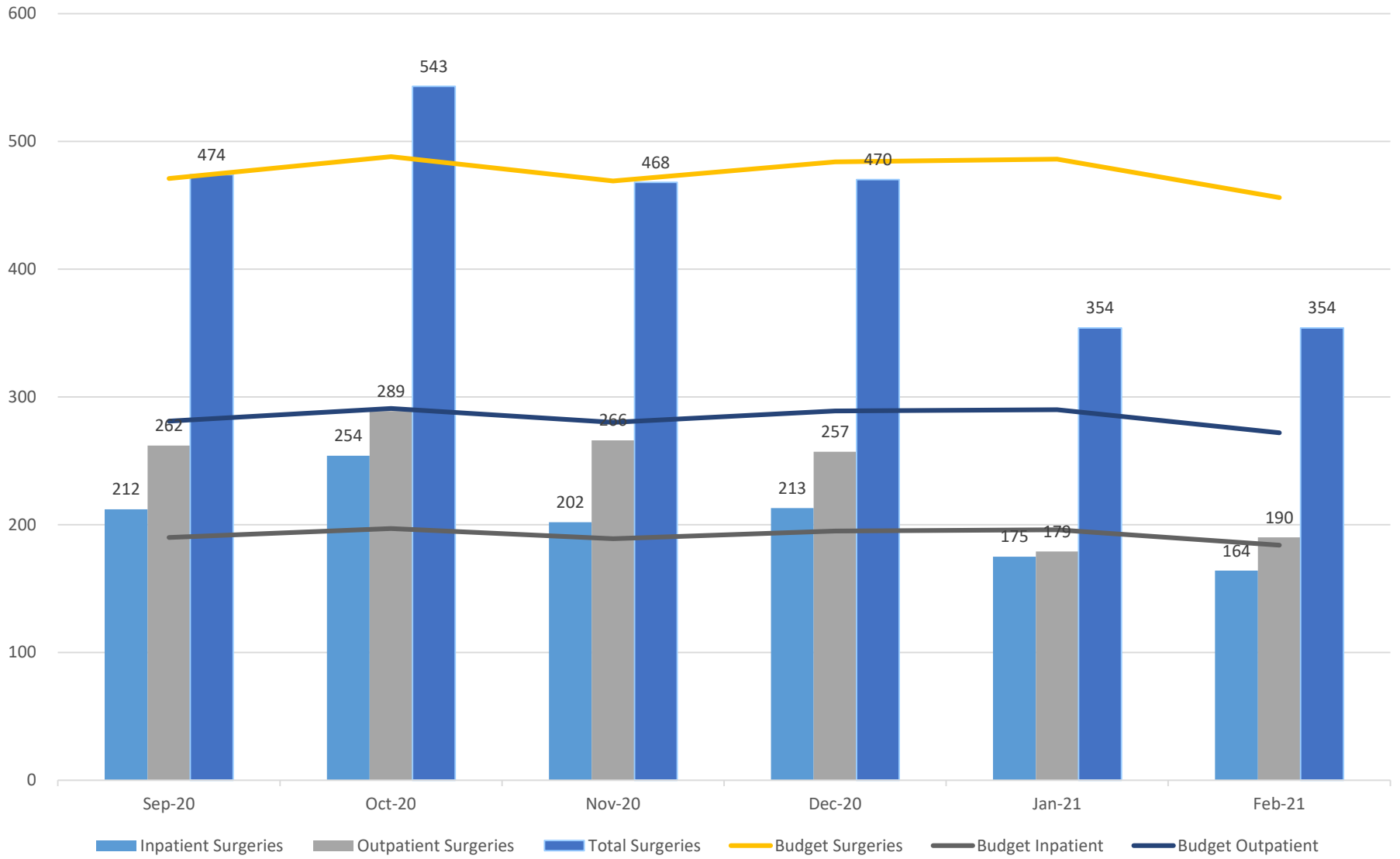
Percent Change ER Visits - Kern Health Systems and Kern Medical



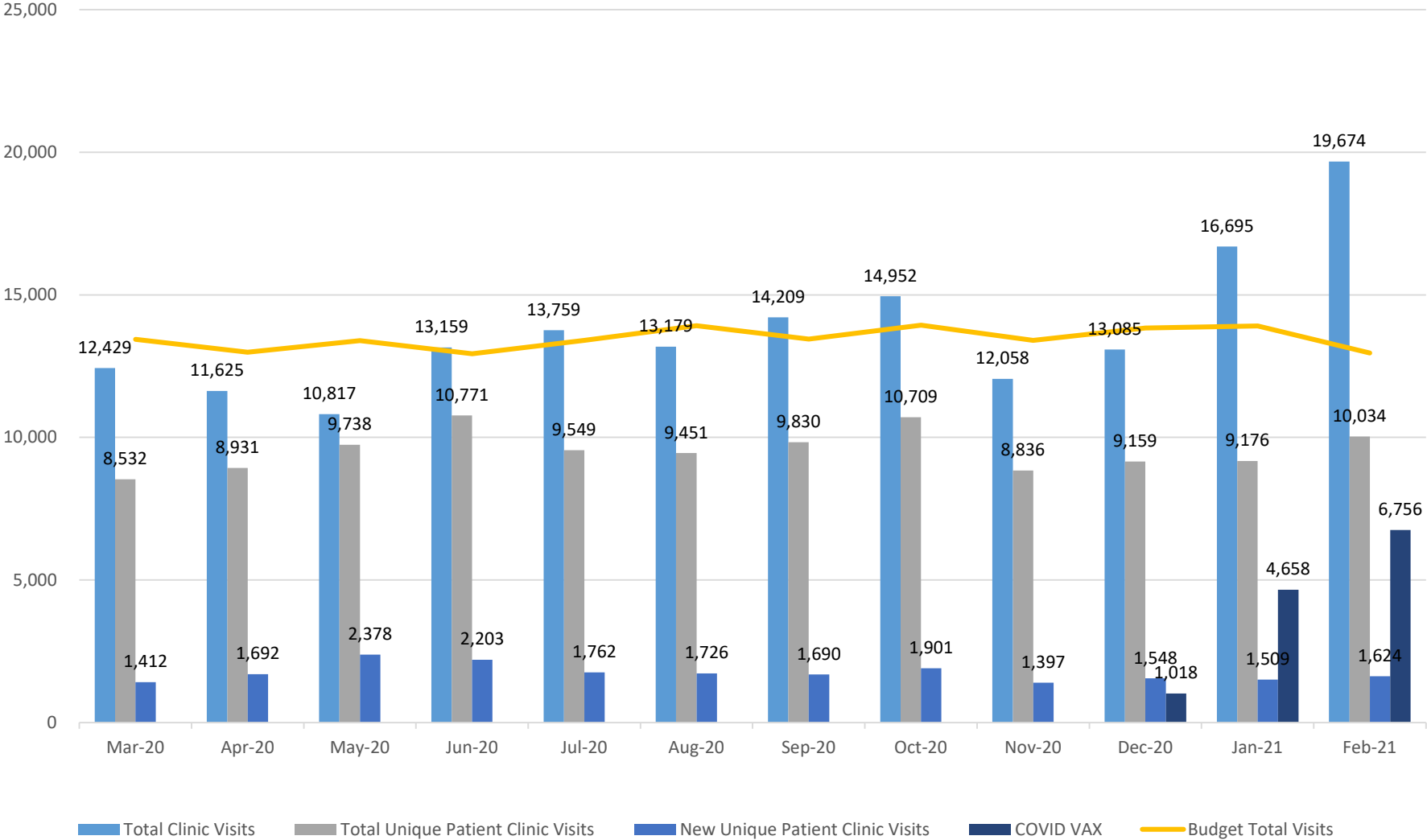
Trauma Activations



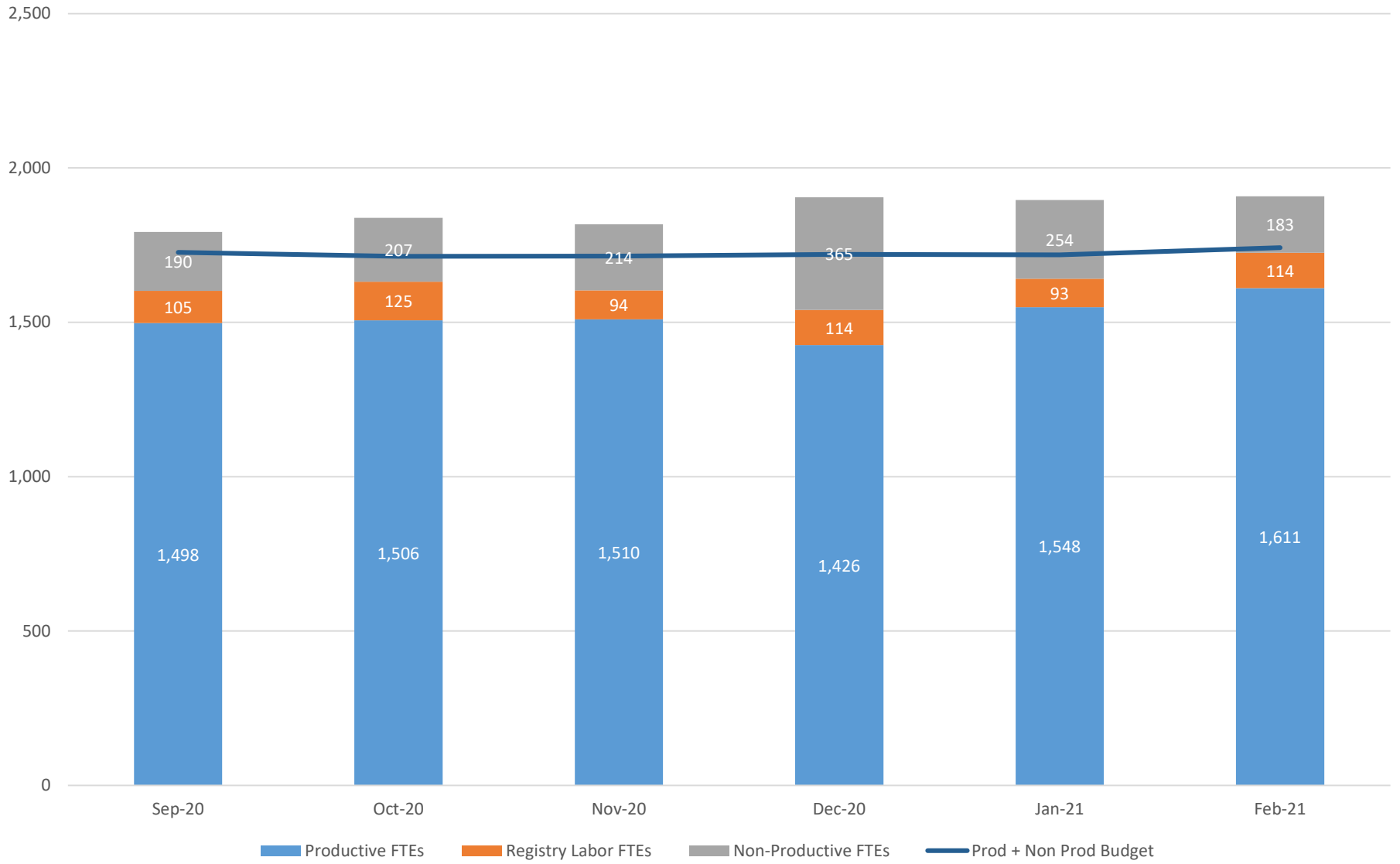
Surgical Volume



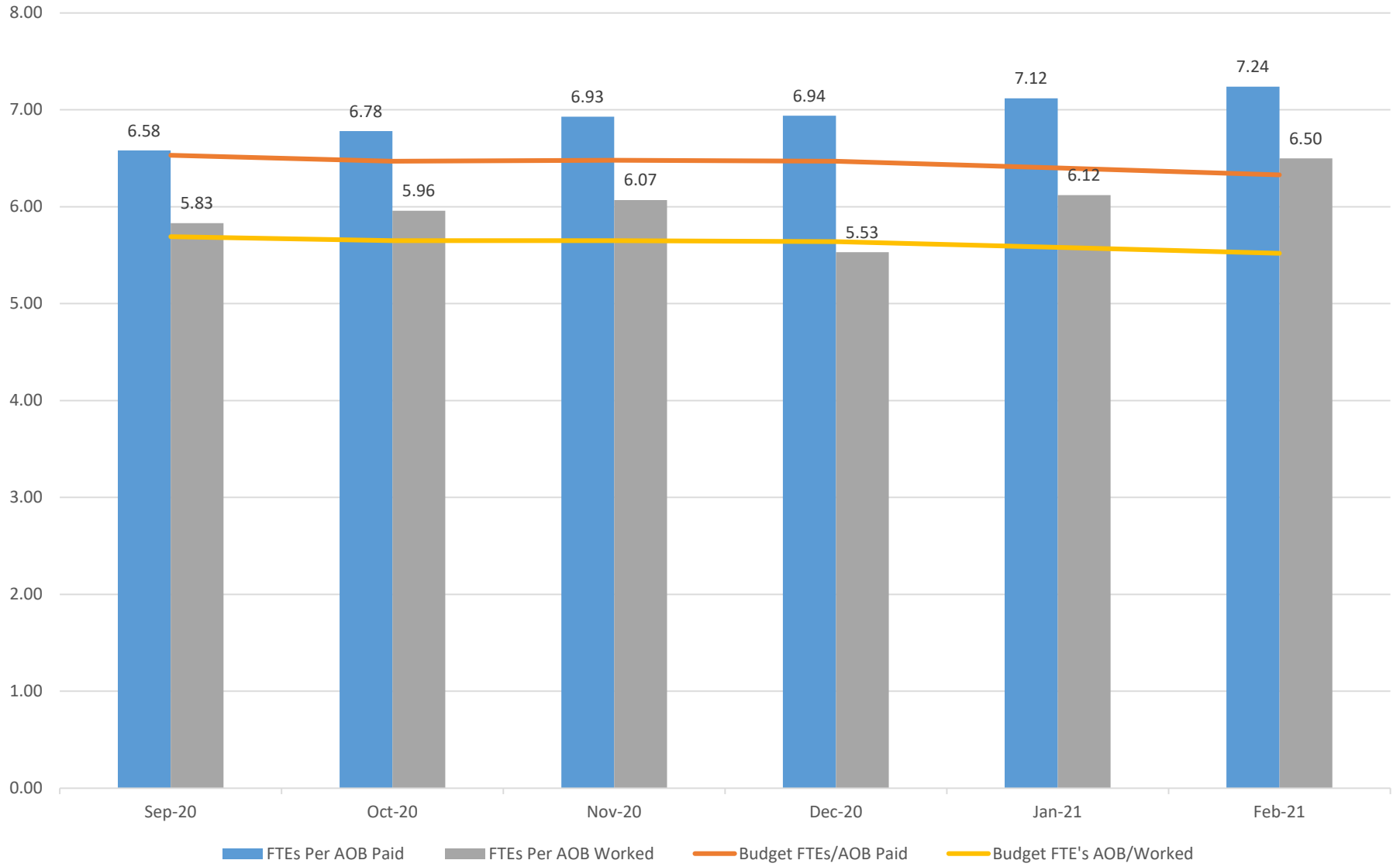
Clinic Visits



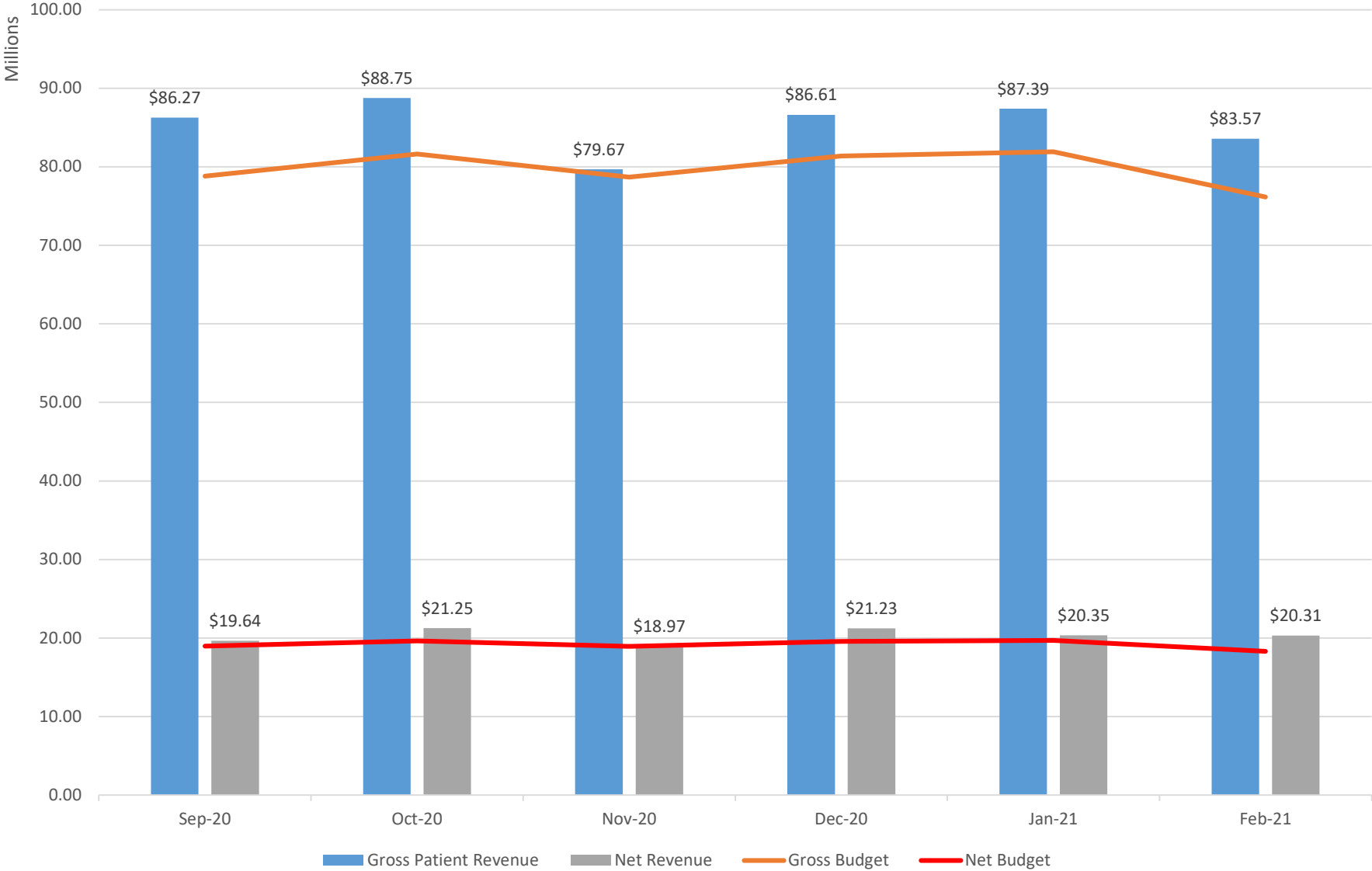
Productivity



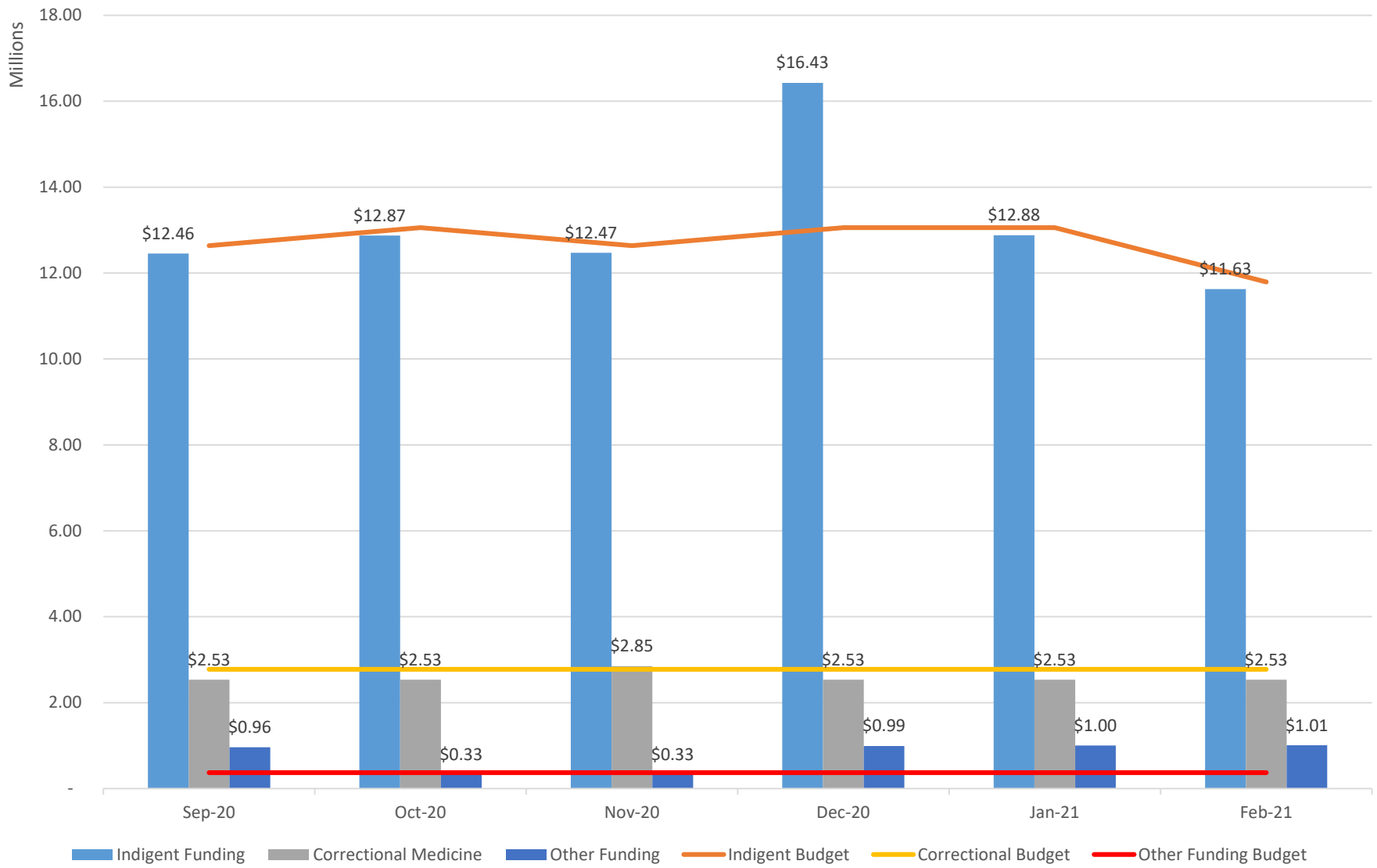
Labor Metrics



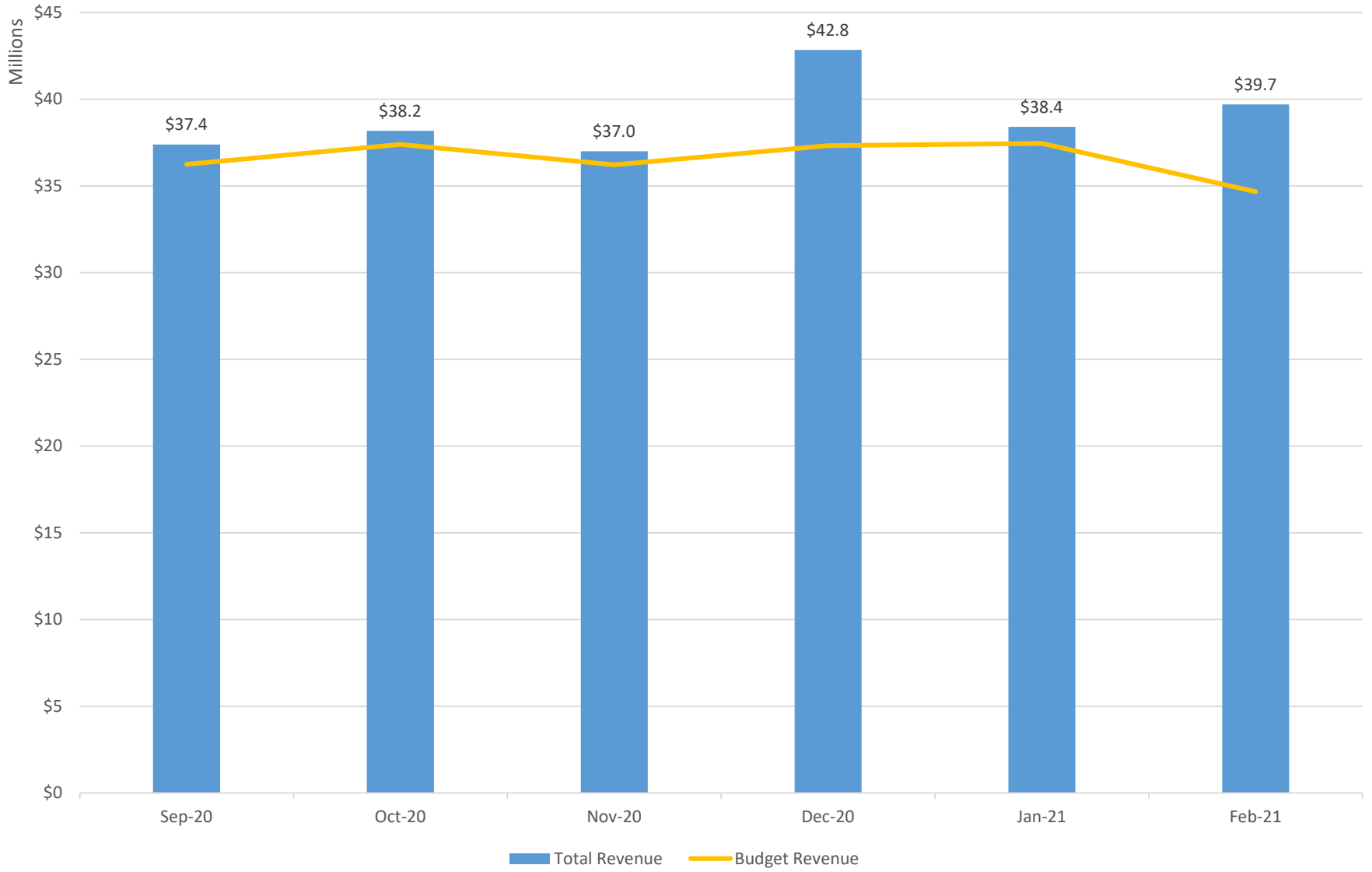
Patient Revenue



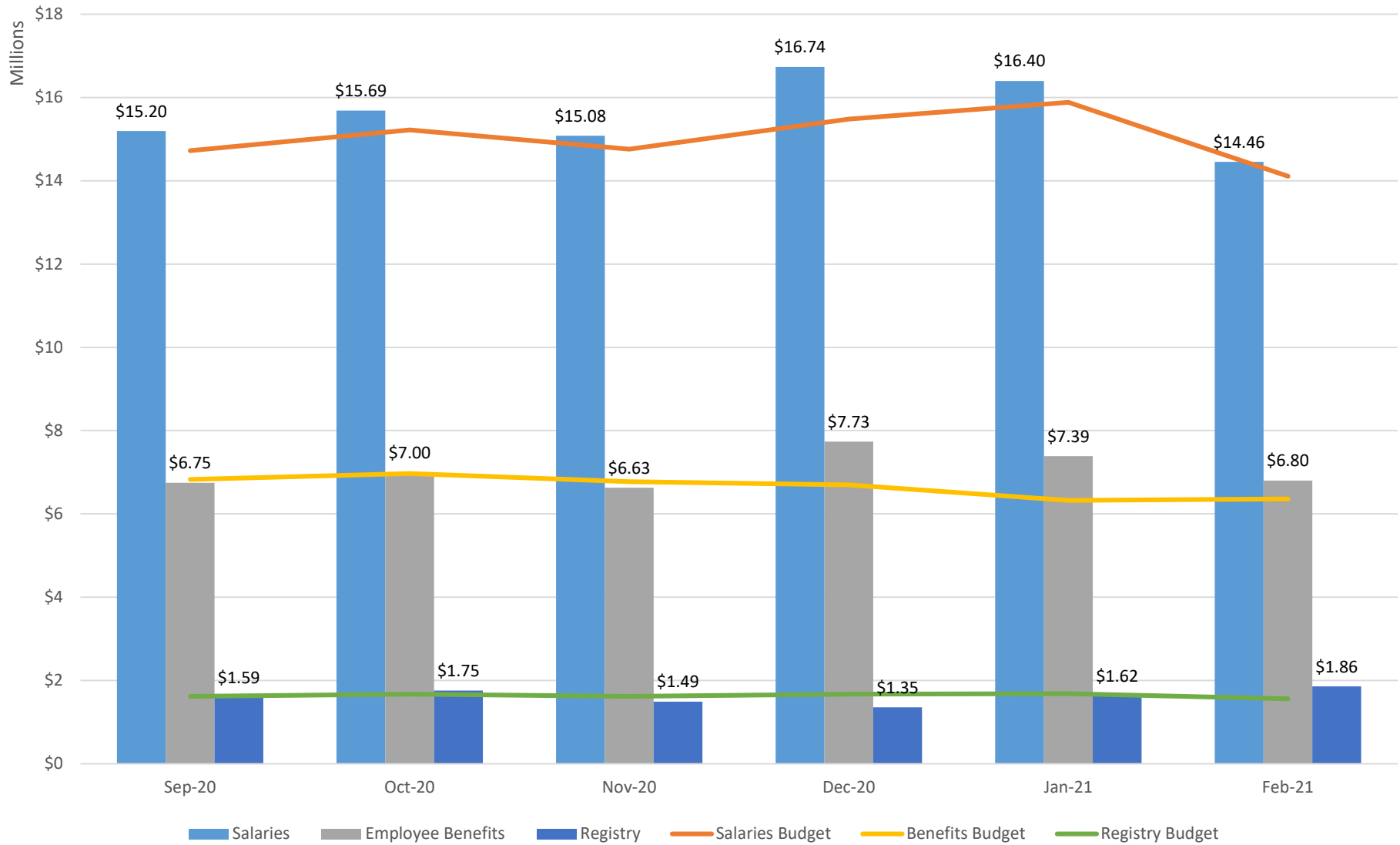
Indigent & Correctional Revenue



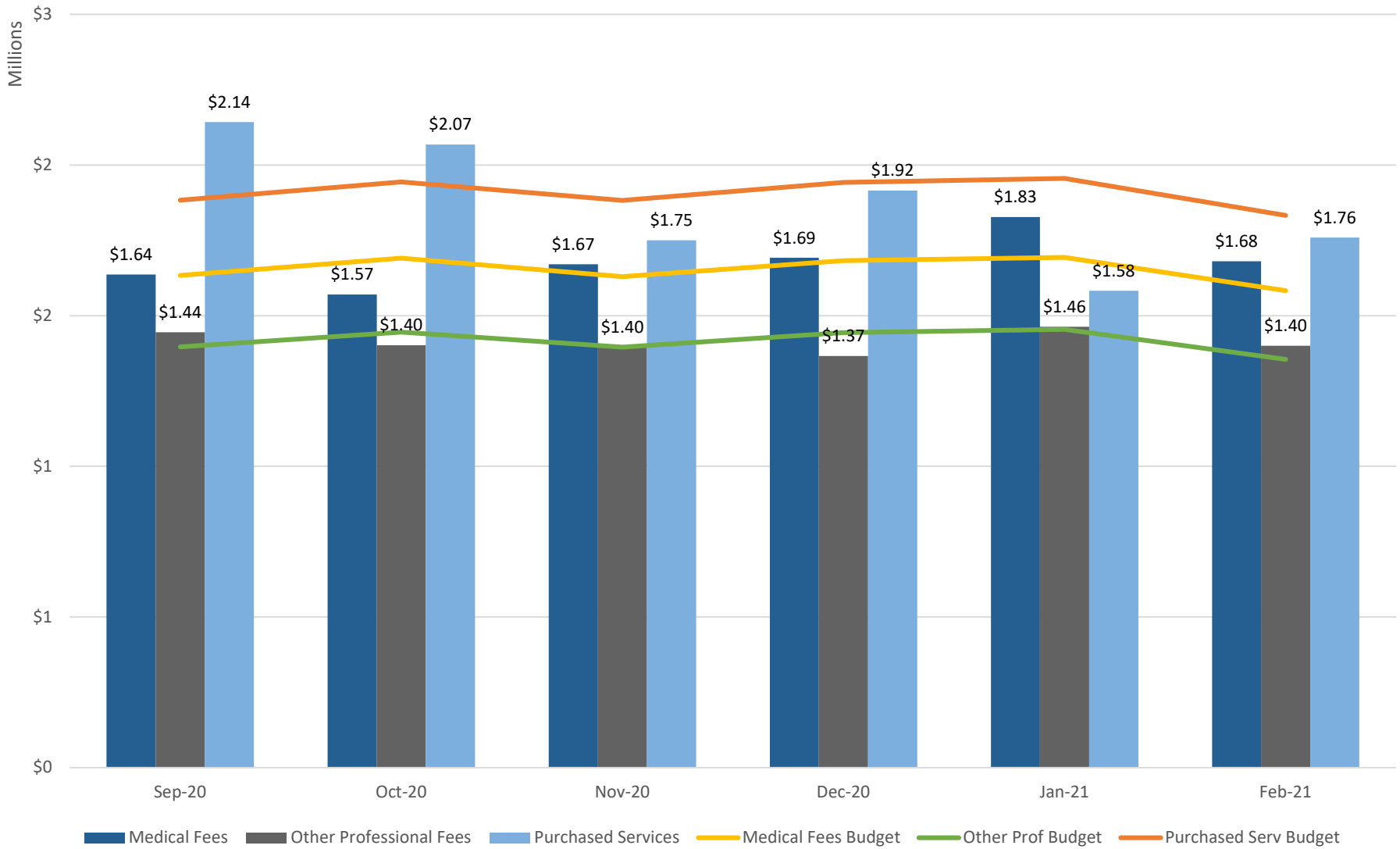
Total Revenue



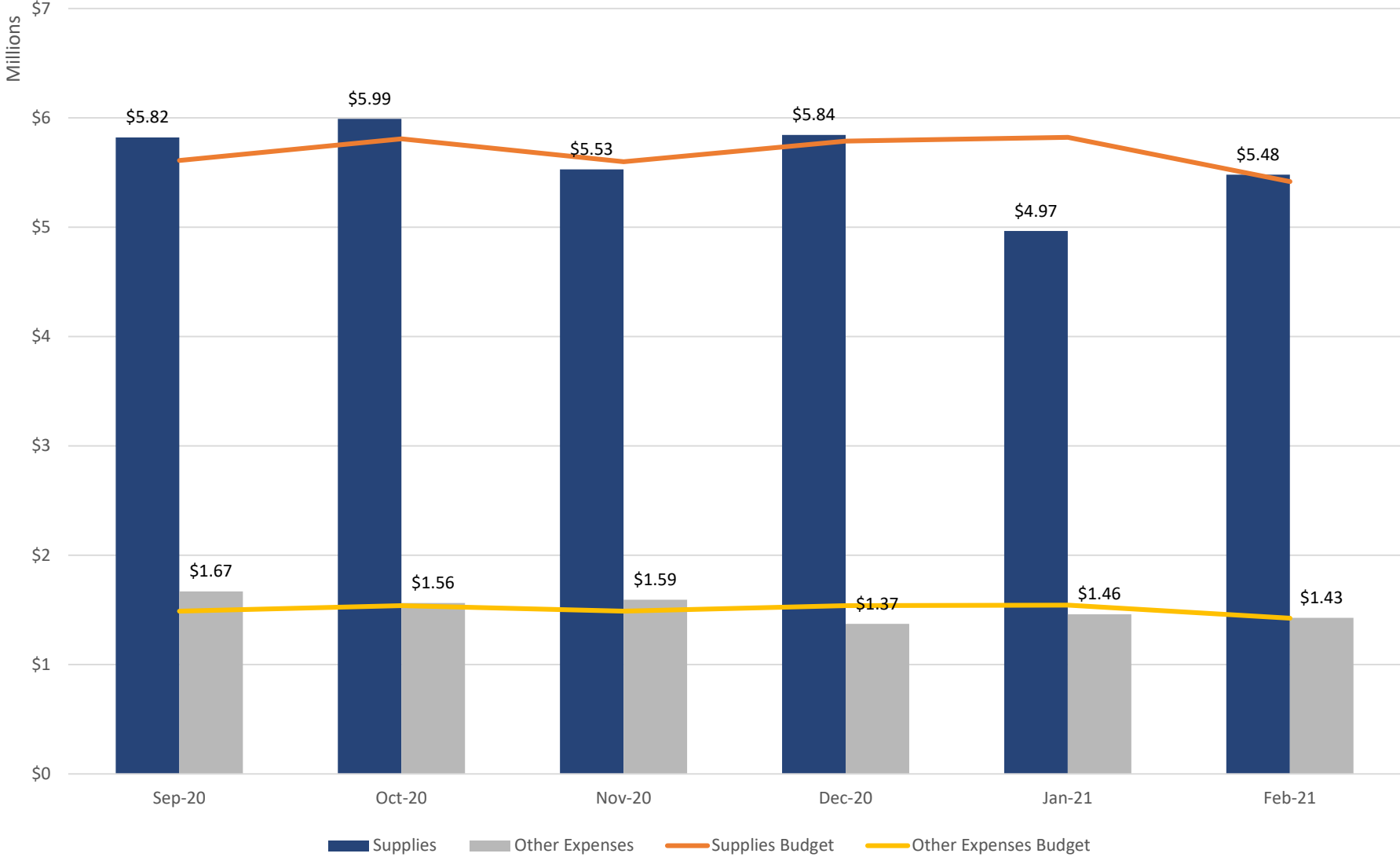
Salaries & Benefits



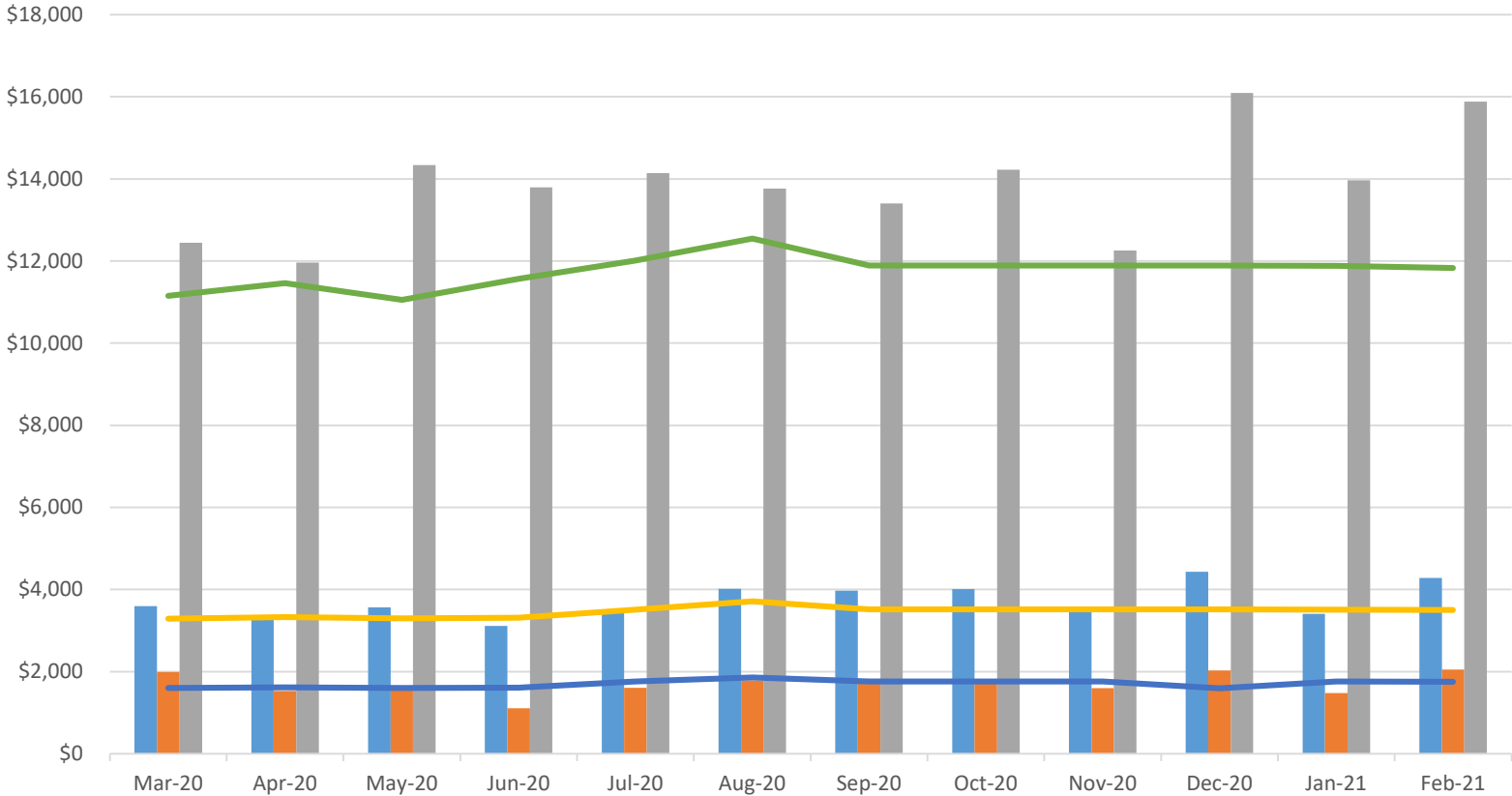
Purchased Services, Medical, & Other Prof Fees



Supplies & Other Expenses

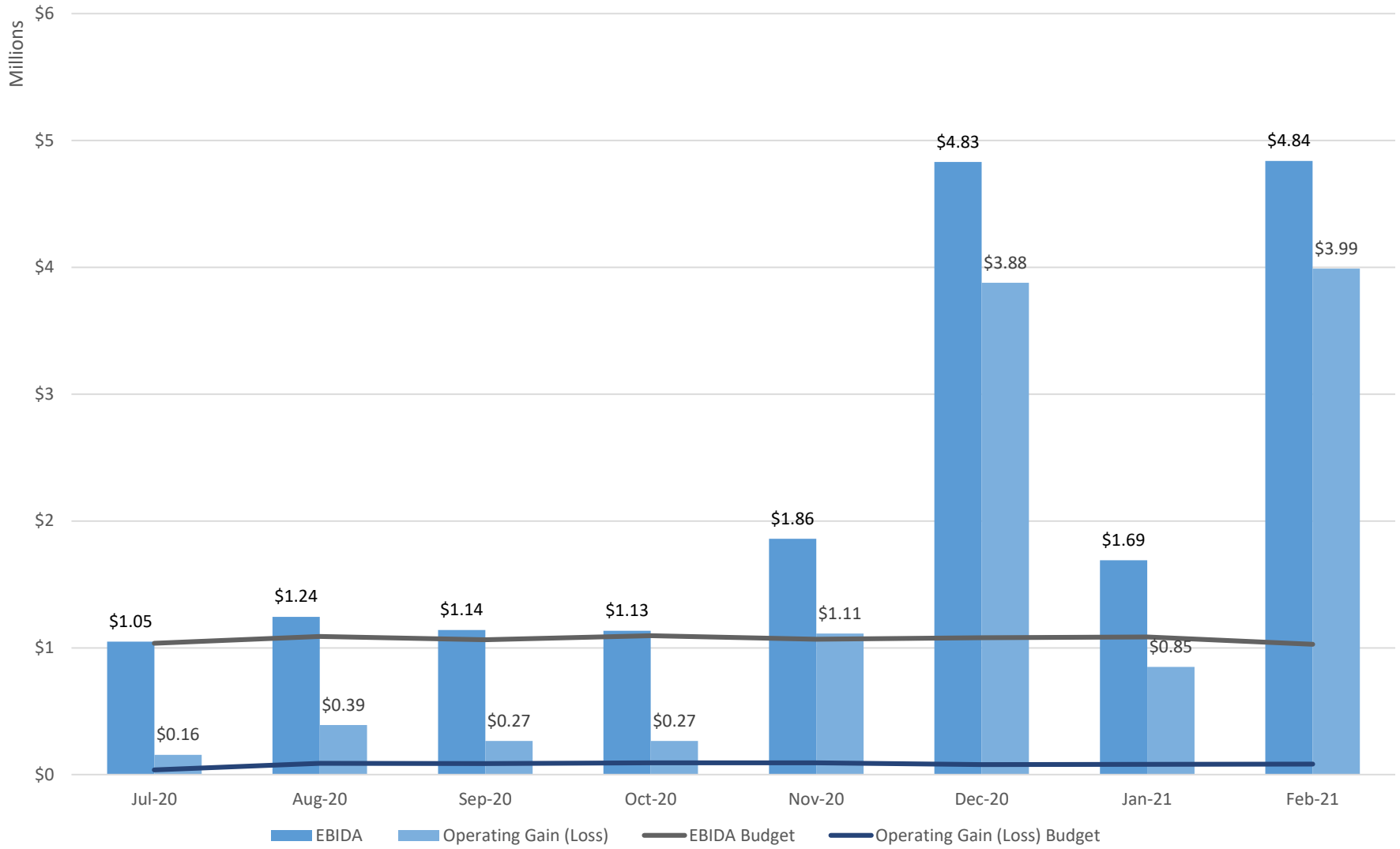


Operating Metrics

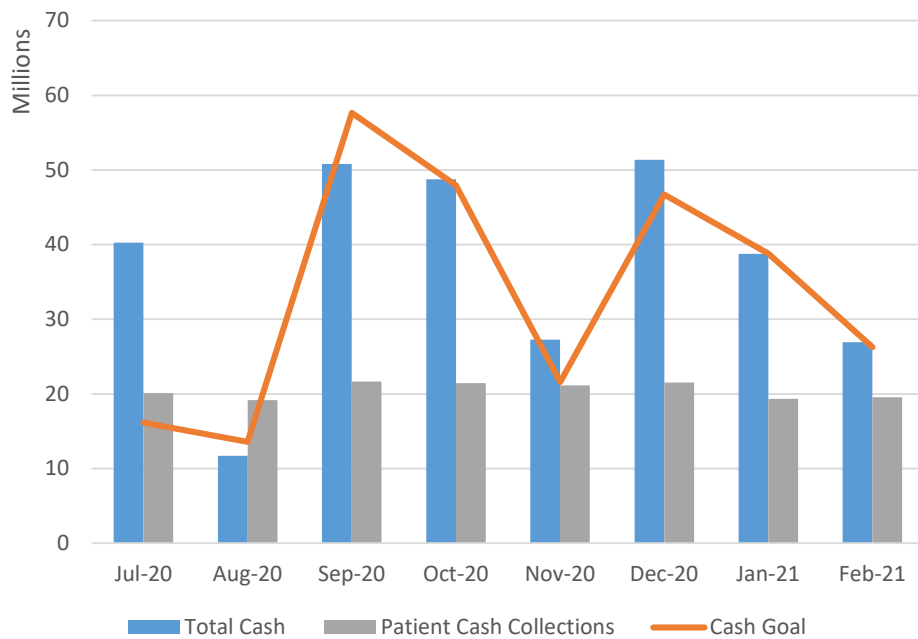


	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21
Supply Expense per AA	\$3,592	\$3,365	\$3,568	\$3,114	\$3,436	\$4,014	\$3,973	\$4,011	\$3,574	\$4,431	\$3,408	\$4,285
Pharm Cost per AA	\$1,989	\$1,530	\$1,658	\$1,110	\$1,604	\$1,787	\$1,823	\$1,735	\$1,597	\$2,028	\$1,481	\$2,050
Net Revenue Per AA	\$12,444	\$11,963	\$14,333	\$13,794	\$14,139	\$13,765	\$13,403	\$14,225	\$12,256	\$16,093	\$13,968	\$15,879
Budget Supp/AA	\$3,293	\$3,330	\$3,298	\$3,314	\$3,513	\$3,711	\$3,520	\$3,517	\$3,519	\$3,516	\$3,511	\$3,501
Budget Pharm/AA	\$1,603	\$1,615	\$1,605	\$1,612	\$1,760	\$1,859	\$1,763	\$1,762	\$1,762	\$1,596	\$1,759	\$1,755
Budget Net Rev/AA	\$11,153	\$11,464	\$11,052	\$11,568	\$12,011	\$12,543	\$11,892	\$11,891	\$11,893	\$11,893	\$11,882	\$11,833

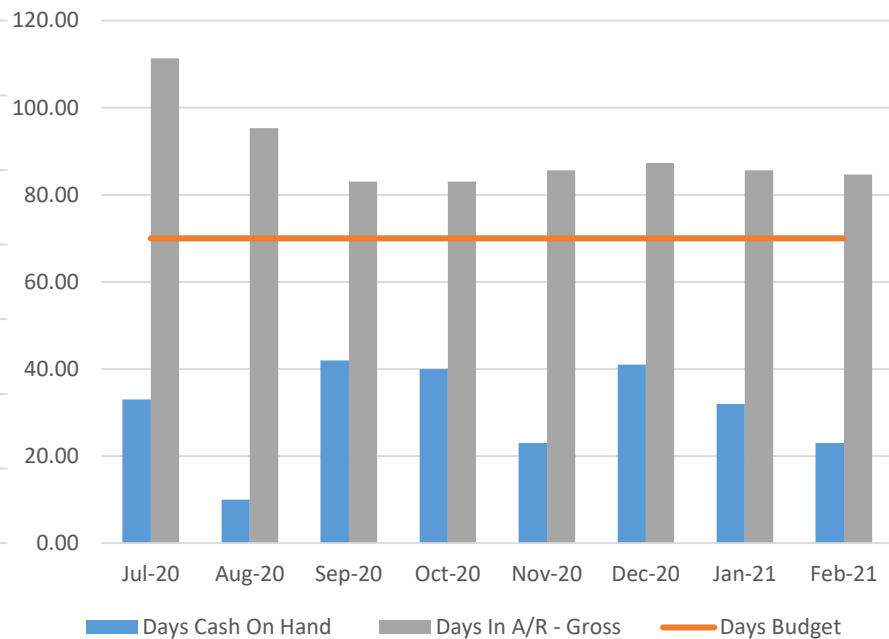
EBIDA 2021 FYTD



Cash 2021 FYTD



AR Days 2021 FYTD



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
February 28, 2021

	DECEMBER	JANUARY	FEBRUARY	BUDGET FEBRUARY	VARIANCE POS (NEG)	PY FEBRUARY
Gross Patient Revenue	\$ 86,608,737	\$ 87,386,015	\$ 83,568,624	\$ 76,152,039	10%	\$ 75,328,913
Contractual Deductions	(65,381,838)	(67,032,899)	(63,260,471)	(57,841,745)	9%	(58,035,996)
Net Revenue	21,226,899	20,353,116	20,308,153	18,310,295	10.9%	17,292,917
Indigent Funding	16,428,115	12,876,248	11,625,831	11,792,337	(1%)	12,612,972
Correctional Medicine	2,531,665	2,531,665	2,531,665	2,777,068	(9%)	2,594,088
County Contribution	285,211	285,211	285,211	285,211	0%	285,211
Incentive Funding	707,727	716,247	721,607	83,333	766%	212,040
Net Patient Revenue	41,179,616	36,762,487	35,472,467	33,248,244	6.7%	32,997,228
Other Operating Revenue	1,646,558	1,623,962	3,874,237	1,146,038	238%	1,235,653
Other Non-Operating Revenue	16,001	12,372	357,257	271,919	31%	3,025
Total Revenue	42,842,176	38,398,821	39,703,962	34,666,201	15%	34,784,049
Expenses						
Salaries	16,736,777	16,401,152	14,457,034	14,108,489	2%	14,026,440
Employee Benefits	7,734,603	7,387,764	6,803,427	6,360,764	7%	6,630,925
Registry	1,352,040	1,621,967	1,856,567	1,555,165	19%	1,422,161
Medical Fees	1,691,974	1,827,050	1,680,371	1,583,176	6%	1,746,897
Other Professional Fees	1,365,864	1,462,804	1,399,991	1,355,213	3.3%	1,229,802
Supplies	5,844,300	4,965,542	5,480,749	5,417,400	1%	4,965,445
Purchased Services	1,915,140	1,582,805	1,759,294	1,832,378	(4%)	1,968,367
Other Expenses	1,371,316	1,459,893	1,428,590	1,424,717	0%	1,457,730
Operating Expenses	38,012,013	36,708,977	34,866,023	33,637,302	4%	33,447,767
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 4,830,163	\$ 1,689,844	\$ 4,837,939	\$ 1,028,899	370%	\$ 1,336,282
EBIDA Margin	11%	4%	12%	3%	311%	4%
Interest	224,105	124,986	122,903	211,042	(42%)	221,226
Depreciation	471,695	458,972	469,548	489,718	(4%)	488,502
Amortization	256,257	256,257	256,257	244,079	5%	255,683
Total Expenses	38,964,071	37,549,193	35,714,731	34,582,141	3%	34,413,179
Operating Gain (Loss)	\$ 3,878,104	\$ 849,628	\$ 3,989,230	\$ 84,061	4,646%	\$ 370,869
Operating Margin	9.1%	2.2%	10.0%	0.24%	4,044%	1.07%

KERN MEDICAL
Year-to-Date: Revenue & Expense
February 28, 2021

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 684,582,510	\$ 641,288,761	7%	\$ 622,475,682	10%
Contractual Deductions	(523,207,692)	(487,029,174)	7%	(468,855,756)	12%
Net Revenue	161,374,818	154,259,587	5%	153,619,926	
Indigent Funding	104,470,861	102,340,642	2%	98,481,026	6%
Correctional Medicine	20,568,501	22,216,544	(7%)	23,480,370	(12.4%)
County Contribution	2,281,726	2,281,687	0%	2,281,687	0.0%
Incentive Funding	4,201,433	666,667	530%	1,696,320	148%
Net Patient Revenue	292,897,340	281,765,127	4%	279,559,329	5%
Other Operating Revenue	14,037,627	9,944,897	41%	9,985,806	41%
Other Non-Operating Revenue	2,643,617	2,220,328	19%	76,239	3,368%
Total Revenue	309,578,584	293,930,352	5%	289,621,375	7%
Expenses					
Salaries	125,237,078	120,679,486	4%	116,982,761	7%
Employee Benefits	57,055,398	53,758,590	6%	53,642,470	6%
Registry	12,942,555	13,139,061	(1%)	13,254,596	(2.4%)
Medical Fees	13,718,839	13,283,060	3%	13,581,729	1%
Other Professional Fees	11,061,615	11,370,203	(3%)	11,652,360	(5%)
Supplies	44,184,501	45,629,675	(3%)	42,946,916	2.9%
Purchased Services	14,947,857	15,312,792	(2%)	15,601,200	(4%)
Other Expenses	12,642,865	12,095,468	5%	12,124,924	4%
Operating Expenses	291,790,707	285,268,334	2%	279,786,957	4%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 17,787,877	\$ 8,662,018	105%	\$ 9,834,418	81%
EBIDA Margin	6%	3%	95%	3%	69%
Interest	1,076,365	1,831,543	(41%)	1,839,079	(41%)
Depreciation	3,753,131	4,018,979	(7%)	3,962,186	(5%)
Amortization	2,050,060	2,049,406	0.0%	1,337,398	53%
Total Expenses	298,670,263	293,168,262	2%	286,925,620	4%
Operating Gain (Loss)	\$ 10,908,322	\$ 762,091	1331%	\$ 2,695,755	305%
Operating Margin	4%	0.3%	1259%	1%	279%

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2021	FEBRUARY 2020
ASSETS:		
<i>Total Cash</i>	26,936,063	7,685,749
Patient Receivables Subtotal	247,319,327	279,620,418
Contractual Subtotal	(202,171,234)	(217,027,121)
<i>Net Patient Receivable</i>	45,148,093	62,593,297
Total Indigent Receivable	148,300,098	125,156,025
Total Other Receivable	10,524,812	8,117,906
Total Prepaid Expenses	3,748,280	3,891,047
Total Inventory	6,036,310	5,590,772
<i>Total Current Assets</i>	240,693,655	213,034,796
Deferred Outflows of Resources	87,863,462	85,573,671
Investments Deposited with Trustee	0	931,830
Total Land, Equipment, Buildings and Intangib	196,280,372	194,149,524
Total Construction in Progress	23,878,855	13,146,682
<i>Total Property, Plant & Equipment</i>	220,159,227	207,296,206
Total Accumulated Depr & Amortization	(121,484,624)	(112,714,782)
<i>Net Property, Plant, and Equipment</i>	98,674,603	94,581,424
<i>Total Long Term Assets</i>	87,863,462	86,505,500
<i>Total Assets</i>	427,231,720	394,121,721

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2021	FEBRUARY 2020
LIABILITIES & EQUITY:		
Total Accounts Payable	8,934,017	25,397,652
Total Accrued Compensation	35,490,374	28,028,363
Total Due Government Agencies	37,903,484	39,839,387
Total Other Accrued Liabilities	42,996,800	61,686,230
<i>Total Current Liabilities</i>	125,324,675	154,951,632
Unfunded Pension Liability	322,103,797	307,234,709
Other Long-Term Liabilities	96,456,658	113,006,704
<i>Total Long-Term Liabilities</i>	418,560,455	420,241,413
<i>Total Liabilities</i>	543,885,130	575,193,045
<hr/>		
Fund Balance	36,714,022	36,714,021
Retained Earnings	(153,367,432)	(217,785,346)
<i>Total Fund Balance</i>	(116,653,410)	(181,071,324)
<hr/>		
<i>Total Liabilities and Fund Balance</i>	427,231,720	394,121,721



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

April 21, 2021

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 21, 2021, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 X Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on April 21, 2021, 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 - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Shine Villanueva, an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101706 TSC –

**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 21, 2021, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6)