



## AGENDA

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting  
Wednesday, May 18, 2022

11:30 A.M.

#### BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Norka Quillatupa, M.D., upon her receipt of the 2022 Outstanding Junior Clinician Educator of the Year Award from the American Geriatric Society –  
**MAKE PRESENTATION**
- 4) Presentation by the Chief Executive Officer recognizing the Oncology Service staff at Kern Medical Center for their contribution to community outreach –  
**MAKE PRESENTATION**

ITEMS FOR CONSIDERATION

CA

- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –  
**APPROVE; ADOPT RESOLUTION**

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on April 20, 2022 –  
**APPROVE**

CA

- 7) Proposed retroactive acceptance of donation from California Health Collaborative for travel and related expenses for one Kern Medical Center employee to attend the “2nd Annual Central Valley Lactation Conference” in Madera, California, on April 29, 2022 –  
**APPROVE; ADOPT RESOLUTION**

CA

- 8) Proposed Agreement with Najib Ussef, M.D, a contract employee, for professional medical services in the Department of Surgery from August 20, 2022 through August 19, 2025, in an amount not to exceed \$2,777,500, plus applicable benefits –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 9) Proposed retroactive Amendment No. 1 to Agreement 38519 for Personal/Professional Services with Tel-Tec Security System, Inc., an independent contractor, for badging and access control services, for the period May 9, 2019 through May 8, 2022, extending the term for three years from May 9, 2022 through May 8, 2025 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 4 to Agreement 2016-041 with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department, for the provision of correctional medicine services to in-custody inmates and juvenile wards, for the period July 1, 2016 through June 30, 2022, extending the term for one year from July 1, 2022 through June 30, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Injector Placement Agreement with Bracco Diagnostics, Inc., an independent contractor, containing nonstandard terms and conditions, for use of CT contrast injector equipment and software from May 18, 2022 through May 17, 2030, in an amount not to exceed \$8,100 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Equipment Usage Agreement with Gen-Probe Sales and Service, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of assay processing device and test kits from May 18, 2022 through May 17, 2027, in an amount not to exceed \$1,400,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Service Agreement with Healthfuse, LLC, an independent contractor, containing nonstandard terms and conditions, for revenue cycle performance management from June 1, 2022 through May 31, 2025, in an amount estimated not to exceed \$1,723,404 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Material Transfer Agreement with University of Arkansas, Fayetteville, an independent contractor, containing nonstandard terms and conditions, for the transfer of specimens for use in the development of Valley Fever diagnostics, effective May 18, 2022 and continuing through the length of the study –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN RELATED DOCUMENTS IN SUPPORT OF THE STUDY SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

- 15) Proposed Kern County Hospital Authority operating and capital budget for Fiscal Year 2022-2023 –  
APPROVE; REFER TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL
  - 16) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVE AND FILE
  - 17) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVE AND FILE
- CA
- 18) Claims and Lawsuits Filed as of April 30, 2022 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 19) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 20) CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Alizae Bagsby, a minor, by and through her guardian ad litem, Abigail Bagsby v. Kenneth Hutchins, P.A., an individual; Kern County Hospital Authority, a governmental entity; and DOES 1 through 10, inclusive, Kern County Superior Court Case No. BCV-20-102566 TSC –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JUNE 15, 2022 AT 11:30 A.M.

## **SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

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

### **AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)**

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

18) CLAIMS AND LAWSUITS FILED AS OF APRIL 30, 2021 –  
RECEIVE AND FILE

- A) Claim in the matter of Marie Anthony Ruffin
- B) Claim in the matter of Emelina Reyes
- C) Claim in the matter of Melissa D. Plant
- D) Claim in the matter of Ryan M. Reyes
- E) Summons and Complaint in the matter of Rontasia Patterson v. Kern Medical; Arturo Gomez, M.D.; and DOES 1-25, Kern County Superior Court Case No. BCV-22-199111
- F) Notice of Filing of Amended Discrimination Complaint in the matter of Maria Chavez v. Kern County Hospital Authority, et al., DFEH Case No. 202109-14859624; EEOC Case No. 37-A-2022-00748-C



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

May 18, 2022

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

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

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

**Discussion:**

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

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

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

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

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

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

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

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



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

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In the matter of:

Resolution No. 2022-\_\_\_\_

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

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 18th day of May, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

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

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

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

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

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

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

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

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

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

5. This Resolution shall take effect immediately upon its adoption and remain in effect until June 15, 2022.

6. This Board shall reevaluate the above findings on June 15, 2022, and every 30 days thereafter.

7. Resolution No. 2022-006, adopted by the Board of Governors on April 20, 2022, is hereby repealed and superseded by this Resolution.

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

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

Members, Board of Governors  
Chief Executive Officer  
Legal Services Department



## SUMMARY OF PROCEEDINGS

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting  
Wednesday, April 20, 2022

11:30 A.M.

#### BOARD RECONVENED

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

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

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

#### BOARD ACTION SHOWN IN CAPS

NOTE: DIRECTOR ALSOP JOINED THE MEETING AFTER THE VOTE ON THE CONSENT AGENDA AND FOLLOWING ITEM 3

#### PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. In addition, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**  
**NO ONE HEARD**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

**DIRECTOR BERJIS REPORTED ON THE UPCOMING RESIDENT RESEARCH FORUM ON THURSDAY, MAY 26, 2022 AT BAKERSFIELD COLLEGE EVENT CENTER; DIRECTOR BERJIS REPORTED ON THE UPCOMING RESIDENT AND FELLOW RECOGNITION DINNER ON THURSDAY, JUNE 2, 2022 AT THE IRON LILY**

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Kern Medical Center certified nurses–  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION
- 4) Presentation by the Chief Executive Officer recognizing Kern Medical Center employees who responded to the F Ward fire –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; CHAIRMAN BIGLER EXPRESSED HIS APPRECIATION TO STAFF

ITEMS FOR CONSIDERATION

CA

- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –  
APPROVED; ADOPTED RESOLUTION 2022-007  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on March 16, 2022 –  
APPROVED  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 7) Proposed reappointments of Directors Russell Bigler and Philip McLaughlin to the Kern County Hospital Authority Board of Governors, terms to expire June 30, 2025 –  
REFERRED TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENTS  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 8) Proposed retroactive Amendment No. 1 to Master Services Agreement 002-2019 with CIOX Health, LLC, an independent contractor, for the period January 16, 2019 through January 15, 2022, for medical record reproduction services, extending the term for two years from January 16, 2022 through January 15, 2024, and increasing the maximum payable by \$250,000, from \$225,000 to \$475,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 046-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 9) Proposed Master Terms and Conditions with BFLY Operations, Inc., an independent contractor, containing nonstandard terms and conditions, for portable ultrasound devices and software from April 20, 2022 through April 19, 2025, in an amount not to exceed \$206,786 plus applicable taxes –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 047-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 10) Proposed Sales Order OPT-0276640 with Cerner Corporation, an independent contractor, for 21st Century CURES Professional Services platform to access prescription databases, effective April 20, 2022, in an amount not to exceed \$94,600 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 048-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 11) Proposed Sales Order OPT-0302150 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of the Electronic Clinical Reporting Solution to comply with CURES reporting requirements, for a term of 60 months, effective April 20, 2022, in an amount not to exceed \$146,920 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 049-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 12) Proposed retroactive Amendment No. 6 to Agreement 317-2012 with Ross University School of Medicine, an independent contractor, for the period September 3, 2012 through September 2, 2022, to revise the termination date from September 2, 2022 to July 31, 2022, and waive fees for unfilled clerkship positions, effective February 16, 2022 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 050-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 13) Proposed retroactive Equipment Sale Agreement and Master Product Agreement with Siemens Healthcare Diagnostics, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of clinical laboratory chemistry testing equipment and reagents, for a term of five years, effective March 31, 2022, in an amount not to exceed \$640,000 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 051-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 14) Proposed retroactive Lease Agreement with First American Commercial Bancorp, Inc., an independent contractor, containing nonstandard terms and conditions, for financing of clinical laboratory chemistry testing equipment, for a term of five years, effective March 31, 2022, in an amount not to exceed \$186,000 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 052-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 15) Proposed Amendment No. 3 to Agreement 53119 with Rajinder P. Singh, M.D., an independent contractor, for professional medical services in the Department of Radiology, for the period October 7, 2019 through October 6, 2022, increasing the maximum payable by \$350,000, from \$750,000 to \$1,100,000, to cover the term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 053-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 16) Proposed Amendment No. 1 to Agreement 038-2020 with Katayoun Sabetian, M.D., Inc., an independent contractor, for professional medical services in the Department of Medicine, for the period September 1, 2020 through August 31, 2022, extending the term for two years from September 1, 2022 through August 31, 2024, adding a stipend for Medical Student Clerkship Director services, and increasing the maximum payable by \$660,000, from \$610,000 to \$1,270,000, to cover the cost of additional services and extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 054-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 17) Proposed retroactive Terms and Conditions of Service with TrueLearn, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of licenses for graduate medical education test preparation software, for a term of three years, effective March 31, 2022, in an amount not to exceed \$19,680 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 055-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

CA

- 18) Proposed retroactive Substitute Equipment Agreement with Olympus America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of an urology image processor, for a term of 60 days, effective April 14, 2022, in an amount not to exceed \$500 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 056-2022  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

- 19) Proposed Affiliation Agreement with Western University Health Sciences/College of Osteopathic Medicine of the Pacific, and independent contractor, for clinical training of third- and fourth-year medical students for a term of three years from August 1, 2022 through July 31, 2025 –  
DIRECTOR BERJIS HEARD REGARDING THE DECISION TO PARTNER WITH A US-BASED MEDICAL SCHOOL; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 057-2022  
**Berjis-McLaughlin: All Ayes**

- 20) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVED AND FILED  
**Pelz-McLaughlin: All Ayes**

- 21) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**Berjis-Pelz: All Ayes**

CA

- 22) Claims and Lawsuits Filed as of March 31, 2022 –  
RECEIVED AND FILED  
**Berjis-Pelz: 6 Ayes; 1 Absent – Alsop**

ADJOURNED TO CLOSED SESSION  
**Berjis-Pelz**

CLOSED SESSION

- 23) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 24) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 25) CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: William Coughran v. Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County Superior Court Case No. BCV-21-100662 – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION  
**Berjis-McLaughlin**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 23 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 PELZ, SECOND BY DIRECTOR KITCHEN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REQUEST FOR CHANGE IN STAFF STATUS, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 24 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

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



ADJOURNED TO WEDNESDAY, MAY 18, 2022 AT 11:30 A.M.  
**McLaughlin**

/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**

May 18, 2022

**Subject:** Proposed acceptance of donation of travel and related expenses from California Health Collaborative for the “2nd Annual Central Valley Lactation Conference”

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

The Authority’s conflict of interest policy prohibits employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment.

Kern Medical participates in perinatal programs sponsored by California Health Collaborative. Kern Medical has been selected by California Health Collaborative to receive the Recognition Award for Exemplary Implementation in lactation. California Health Collaborative has offered to donate to the Authority travel and related expenses (conference fee only) for one Authority employee to attend the California Health Collaborative “2nd Annual Central Valley Lactation Conference” in Madera, California, on April 29, 2022. This training session is necessary in connection with official Authority business.

Kern Medical recommends your Board adopt the attached proposed resolution to accept the travel donation from California Health Collaborative for travel and related expenses and authorize the Chief Executive Officer to designate one employee to attend this important conference.

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

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In the matter of:

Resolution No. 2021-\_\_\_\_

**ACCEPTANCE OF DONATION OF TRAVEL  
AND RELATED EXPENSES FROM CALIFORNIA  
HEALTH COLLABORATIVE FOR THE SECOND  
ANNUAL CENTRAL VALLEY LACTATION  
CONFERENCE**

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 15th day of September, 2021, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

(a) The conflict of interest policy for the Kern County Hospital Authority (“Authority”) prohibits Authority employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment; and

(b) Kern Medical Center participates in perinatal programs sponsored by California Health Collaborative; and

(c) Kern Medical Center has been selected by California Health Collaborative to receive the Recognition Award for Exemplary Implementation for lactation; and

(d) California Health Collaborative has offered to donate to the Authority travel and related expenses (conference fee only) for one Authority employee to attend the California Health Collaborative “2nd Annual Central Valley Lactation Conference” in Madera, California, on April 29, 2022; and

(e) The training session is necessary in connection with official Authority business; and

(f) The Authority desires to obtain the donation of travel and related expenses from California Health Collaborative to the Authority and will retain full control over the use of the donation; and

(g) There are no restrictions as to how the donation may be used.

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

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

2. This Board hereby accepts from California Health Collaborative the donation of travel and related expenses (conference fee only) for one Authority employee to travel to Madera, California, to attend the California Health Collaborative “2nd Annual Central Valley Lactation Conference” on April 29, 2022.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend the California Health Collaborative “2nd Annual Central Valley Lactation Conference” in Madera, California, on April 29, 2022.

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

Chief Financial Officer  
Legal Services Department  
Human Resources Department



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

May 18, 2022

**Subject:** Proposed Agreement with Najib Ussef, M.D., for professional medical services in the Department of Surgery

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve an agreement with Najib Ussef, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Ussef is a fellowship trained orthopedic sports medicine surgeon. His projected start date is August 20, 2022.

The proposed Agreement is for a term of three years from August 20, 2022 through August 19, 2025. Dr. Ussef will have a one-year guarantee of \$610,000 and will be eligible to earn more than the guarantee based strictly on his productivity. The maximum payable will not to exceed \$2,777,500, plus applicable benefits, over the three-year term of the Agreement.

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

Therefore, it is recommended that your Board approve the Agreement with Najib Ussef, M.D., for professional medical services in the Department of Surgery from August 20, 2022 through August 19, 2025, in an amount not to exceed \$2,777,500 over the three-year term, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Najib Ussef, M.D.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Najib Ussef, M.D. (“Physician”).

**I.  
RECITALS**

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

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

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

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of August 20, 2022 (the “Commencement Date”). At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician's license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person<sup>1</sup>; (vi) Physician is not currently the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; and (vii) Physician has, and shall maintain throughout the Term of this Agreement, an unrestricted license to practice medicine in the state of California and staff membership and privileges at KMC.

4. **Obligations of Physician.**

4.1 **Services.** Physician shall engage in the practice of medicine on a full-time basis, which is a minimum of eighty (80) hours per biweekly pay period, exclusively as an exempt employee of Authority. Physician shall render those services set forth in Exhibit "A," attached hereto and incorporated herein by this reference.

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

4.3 **Qualifications.**

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

4.3.2 **Board Certification.** Physician shall be board certified by the American Board of Orthopaedic Surgery in orthopedic surgery-general within twenty-four (24) months of the Commencement Date, and maintain such certification at all times during the Term of this Agreement.

4.3.3 **Medical Staff Status.** Physician shall at all times during the Term of this Agreement be a member in good standing of the KMC Medical Staff with "active" staff

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

status and hold all clinical privileges on the active Medical Staff appropriate to the discharge of his obligations under this Agreement.

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

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

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

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

4.7 Authorization to Release Information. Physician hereby authorizes Managed Care Organizations, government programs, hospitals and other third parties to release to KMC



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

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

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

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

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician's own account or as an employee, landlord, lender, trustee, associate, consultant, partner, agent, principal, contractor, owner, officer, director, investor, member or stockholder of any other person, or in any other capacity,

directly or indirectly, in whole or in part: (i) engage in any activities that are in competition with KMC, including the operation of any medical practice or offering of any medical services that are similar to services offered at the Practice Sites; (ii) solicit or encourage the resignation of any employee of Authority or KMC with whom Physician had a working relationship during Physician's employment with Authority; (iii) solicit or divert patients with whom Physician had personal contact during such employment; or (iv) influence or attempt to influence any payer, provider or other person or entity to cease, reduce or alter any business relationship with Authority or KMC relating to the Practice Sites.

## 5. **Compensation Package.**

5.1 **Annual Compensation – Commencement Date through August 19, 2023.** For the period from the Commencement Date through and including August 19, 2023 (the "Guarantee Period"), Physician shall be paid a guarantee salary for teaching and administrative services and payment for care of KMC patients as described below in this paragraph 5.1 ("Guarantee Salary").

5.1.1 **Compensation Methodology.** Authority shall pay Physician a Guarantee Salary in the amount of the greater of (i) \$610,000 (the "Minimum Amount") per year, or (ii) payment for the care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey Data") with more than one year in the specialty for all physicians section. This section is divided into four categories: 25th percentile, median, 75th percentile and 90th percentile. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit ("Worked RVU"). Physician shall be compensated for each Worked RVU at the rate of \$65.27 ("RVU Effort").

5.1.2 **Reconciliation of Guarantee Salary.** Within thirty (30) days after the end of each quarter during the Guarantee Period, KMC will calculate the RVU Effort for such immediately preceding quarter, taking into account the RVU Effort from the Commencement Date through the end of the subject quarter, and the RVU Effort generated from the Guarantee Period shall be determined (the "Actual Amount"). KMC will undertake a reconciliation of the RVU Effort, for services provided by Physician during the Guarantee Period, no later than the end of one hundred twenty (120) days from the conclusion of the Guarantee Period. If the prorated Minimum Amount is lower than the Actual Amount, then such difference shall be paid to Physician as Guarantee Salary within thirty (30) days after such calculation has been completed.

5.2 **Annual Compensation – August 20, 2023 through August 19, 2025.** For the period from August 20, 2023 through and including August 19, 2025, Physician shall be compensated with cash and other value as described below in this paragraph 5.2 ("Annual Salary").

5.2.1 **Compensation Methodology.** Authority shall pay Physician an Annual Salary comprised of the following: (i) a base salary for teaching and administrative

services based on the actual number of documented hours for assigned teaching and administrative duties multiplied by the current MGMA Survey Data academic compensation rate of pay per hour; and (ii) payment for care of KMC patients using the current MGMA Survey Data. Physician shall be compensated for each Worked RVU by multiplying the Worked RVU by the lowest conversion factor (25th percentile) for each KMC patient (“RVU Effort”).

**5.2.2 Salary Adjustment.** KMC shall establish an estimate (“Estimate”) of Physician’s RVU Effort using Physician’s RVU Effort for the immediately preceding twelve (12) month period annualized. The Estimate will be divided by the number of Authority payroll periods in a calendar year in order to calculate the amount of RVU Effort to be paid to Physician each payroll period (the “Paycheck Amount”). Within thirty (30) days after the end of each quarter, KMC will calculate the RVU Effort for such immediately preceding quarter, and adjust the payment for RVU Effort accordingly (the “Actual Amount”). If the Estimate is lower than the Actual Amount, then such difference shall be paid to Physician within thirty (30) days after such calculation has been completed, or as of the effective date of any termination of this Agreement, whichever occurs sooner. If the Estimate exceeds the Actual Amount, then Physician shall pay such difference to KMC: (i) in a lump sum within thirty (30) days after such calculation has been completed; or (ii) through a reduction in the Paycheck Amount during the next quarter; or (iii) in a lump sum as of the effective date of any termination of this Agreement, whichever occurs sooner. The Estimate shall be reestablished as of each Employment Year. **Physician hereby expressly grants to KMC the right to offset any amounts owed to KMC against any payment to be made to Physician by KMC pursuant to this paragraph if Physician fails to pay such excess to KMC.**

**5.2.3 Time Logs.** Physician shall, on a monthly basis on or before the fifth (5th) day of each calendar month during the period from August 20, 2023 through and including August 19, 2025, submit to KMC a written time log in the form attached hereto and incorporated herein by this reference as Exhibit “C,” detailing to KMC’s satisfaction the date, time, actual number of hours, and description of activities related to assigned teaching and administrative duties during the immediately preceding calendar month.

**5.2.4 Limitations on Compensation.** Authority shall exclude from payment for care of KMC patients any Worked RVU that is not reimbursed by Medicare or Medi-Cal, unless authorized in advance by KMC.

**5.2 Excess Call Coverage.** Authority shall pay Physician for excess call coverage as follows: (i) Physician shall be paid the greater of a fixed fee amount of \$2,500 or the Worked RVU per twenty-four (24) hour day for weekend<sup>2</sup> call coverage that exceeds one (1) weekend per month; and (ii) Physician shall be paid the greater of a fixed fee amount of \$2,500 or the Worked RVU per twenty-four (24) hour day for weekday<sup>3</sup> call coverage that exceeds one (1) in

<sup>2</sup> For purposes of weekend call coverage, a “weekend” is defined as Friday at 5:00 p.m. to Monday at 7:00 a.m. or, in the event of a holiday, Thursday at 5:00 p.m. to Monday at 7:00 a.m. or Friday at 5:00 p.m. to Tuesday at 7:00 a.m.

<sup>3</sup> For purposes of weekday call coverage, a “weekday” is defined as Monday through Thursday or, in the event of a holiday, Tuesday through Thursday.

four (4) weekdays. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

### 5.3 Starting Bonus.

5.3.1 Bonus. Physician shall receive a starting bonus in the amount of \$30,000, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the Commencement Date. Physician shall forfeit the starting bonus if he fails to report to work on the Commencement Date.

5.3.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before the first anniversary of this Agreement, Physician will repay to Authority an amount equal to \$30,000 multiplied by the fraction, the numerator of which is three hundred sixty-five (365) less the number of days during which Physician was employed by Authority, and the denominator of which is three hundred sixty-five (365). Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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

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

5.5 Fair Market Value Compensation. The compensation provided under section 5 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Physician under this Agreement.

### 5.6 Professional Fee Billing.

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

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

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,777,500 over the three (3) year Initial Term of this Agreement.

6. **Benefits Package.**

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

6.2 Health Care Coverage. Physician shall receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Physician is eligible for coverage the first day of the biweekly payroll period coincident with or next following the day he completes one (1) month of continuous service. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

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

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will

accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

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

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

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

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

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

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

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

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

6.15 Relocation Reimbursement. Authority shall reimburse Physician for actual relocation expenses (defined as the packing, moving and unpacking of household goods and vehicles) and travel expenses (defined as lodging, meals, mileage and incidental expenses) associated in moving to Bakersfield, California, in an amount not to exceed \$7,500, payable in

arrears, in accordance with Authority policy (no later than 90 days from the Commencement Date). Reimbursement of travel expenses will include per mile reimbursement for one (1) personal vehicle at the current privately owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, meals and incidental expenses for Physician only 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 Authority. Physician shall be deemed vested in reimbursement of relocation expenses in the amount of \$208.34 per month beginning on the last day of the month in which the relocation expenses are reimbursed to Physician. In the event Physician's employment is terminated by either party, with or without cause, then, on the effective date of such termination, Physician shall repay to Authority all amounts received in which Physician has not yet become vested.<sup>4</sup>

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

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

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

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

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

11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.

12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.

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<sup>4</sup> By way of example only, in the event Physician terminates his employment after twelve (12) months then Physician will be vested to the extent of \$2,500 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$5,000. **In the event Physician fails to pay such amount to Authority, Physician expressly grants to Authority the right to offset any amounts owed to Authority against any payments made to Physician by Authority.**

13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.

14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may terminate this Agreement immediately by giving written notice thereof.

15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court. All costs of any dispute resolution procedure shall be borne equally by the parties.

17. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than Practice Sites without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.



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

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

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

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

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

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

Notice to Physician:

Najib Ussef, M.D.  
778 North San Dimas Avenue  
San Dimas, California 91773

Notice to Authority:

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

25. **Relationship.** Authority and Physician recognize that Physician is rendering specialized, professional services. The parties recognize that each is possessed of legal knowledge and skill, and that this Agreement is fully understood by the parties, and is the result of bargaining between

the parties. Each party acknowledges their opportunity to fully and independently review and consider this Agreement and affirm complete understanding of the effect and operation of its terms prior to entering into the same.

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

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

28. **Termination.**

28.1 **Termination without Cause.** Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than one hundred twenty (120) days' prior written notice to the other party.

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's Medical Staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and

procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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

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

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

[Signatures follow on next page]

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

PHYSICIAN

By: \_\_\_\_\_  
Najib Ussef, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By: \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Scott Thygerson  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By: \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

**EXHIBIT “A”**  
**JOB DESCRIPTION**  
**Najib Ussef, M.D.**

**Position Description:** Reports to Chair, Department of Surgery and Chief, Division of Orthopedic Surgery; serves as full-time faculty member in the Department; provides no fewer than eighty (80) hours of service per biweekly pay period; works collaboratively with clinic and surgery staff as well as hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

**Essential Functions:**

1. Clinical Responsibilities and Assignments:
  - Provide service and improve efficiency for orthopedic clinic activities and surgical cases
  - Provide faculty service for acute trauma and fresh fracture call coverage; round and follow-up as appropriate on patients admitted to KMC
  - Provide orthopedic sports medicine services
  - Supervise orthopedic Physician Assistant activity and competence
  - Operating Room – minimum of three (3) full days per week
  - KMC, Stockdale Highway, Truxtun Avenue, Q Street, or other designated clinic sites – minimum of three (3) half-day clinics per week
  - Call coverage – one (1) day per week and one (1) weekend per month
  
2. Administrative Responsibilities:
  - Participate in clinical and administrative integration efforts across KMC as appropriate for orthopedic surgery ensuring proper program planning, resource allocation, analysis, communication and assessment
  - Gather data through best practices and collaborate with other members of the Department and Division to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
  - Support the Department Chair and Division Chief in developing monitoring tools to measure financial, access, quality, and satisfaction outcomes
  - Attend and actively participate in assigned Medical Staff and hospital committees
  - Participate in the preparation, monitoring, review, and performance of clinical activity in the Division
  - Participate in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Division
  - Provide didactic teaching and resident physician and medical student education as assigned and participate in setting goals and expectations for orthopedic surgery medical student rotations
  - Complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation

- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Work collaboratively with Department and Division leadership and KMC administration to develop an orthopedic sports medicine program to complement existing orthopedic services at KMC
- Follow and comply with the Medical Staff Bylaws, Rules, Regulations, and policies and Authority and KMC policies and procedures

**Employment Standards:**

One (1) year of post-residency experience in orthopedic surgery

AND

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

AND

Certification by the American Board of Orthopaedic Surgery in orthopedic surgery-general

**Knowledge of:** The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to orthopedic surgery; principles of effective supervision and program development.

[Intentionally left blank]

**EXHIBIT "B"**  
**AUTHORIZATION TO RELEASE INFORMATION**

**[Attached]**

**AUTHORIZATION TO RELEASE INFORMATION**

I, the undersigned physician, hereby authorize Kern Medical Center (“KMC”) and its duly authorized representatives to obtain information from time to time about my professional education, training, licensure, credentials competence, ethics and character from any source having such information. This information may include, without limitation, peer review information, DRG and RVU analyses, ancillary usage information and other utilization and quality related data.

I hereby release the Kern County Hospital Authority and KMC, its authorized representatives and any third parties from any liability for actions, recommendations, statements, reports, records or disclosures, including privileged and confidential information, involving me that are made, requested, taken or received by KMC or its authorized representatives to, from or by any third parties in good faith and relating to or arising from my professional conduct, character and capabilities.

I agree that this authorization to release information shall remain effective until termination of my employment by the Kern County Hospital Authority and KMC. A duplicate of this authorization may be relied upon to the same degree as the original by any third party providing information pursuant to this request.

---

Physician

---

Date



**EXHIBIT "C"**  
**TIME LOG FORM**

**[Attached]**

## TIME LOG FORM

\_\_\_\_\_  
 Physician Name \_\_\_\_\_  
 Signature / Date

\_\_\_\_\_  
 Department \_\_\_\_\_  
 Month / Year of Service \_\_\_\_\_  
 Total Hours / Month

Services Provided (please list specific activity performed) Date Hours

- |    |  |       |       |
|----|--|-------|-------|
| 1. | Medical Staff CME Activities                                   |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 2. | Hospital Staff Education and Training                          |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 3. | Clinical Supervision   |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 4. | Quality Improvement Activities (committees, case review, etc.) |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 5. | Administration Activities                                      |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 6. | Community Education  |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 7. | Medical Management Activities                                  |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 8. | Compliance Activities  |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
| 9. | Other Services   |       |       |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |
|    | _____  | _____ | _____ |



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

May 18, 2022

**Subject:** Proposed retroactive Amendment No. 1 to Agreement 38519 for Personal/Professional Services with Tel-Tec Security System, Inc.

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board retroactively approve Amendment No. 1 to the Personal/Professional Services Agreement with Tel-Tec Security System, Inc., which provides the licensed badging and access control system for Kern Medical facilities. This Amendment is for maintenance and upgrading of our badging and access controls systems.

The Personal/Professional Services Agreement term is from May 9, 2019 through May 8, 2022. The Amendment extends the term three years, from May 8, 2022 to May 8, 2025, at no extra cost.

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to the Personal/Professional Services Agreement with Tel-Tec Security System, Inc., effective May 9, 2022, extending the term 3 years from May 8, 2022 to May 8, 2025, at no extra cost, and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
(Kern County Hospital Authority–Tel-Tech Security System, Inc.)**

THIS AMENDMENT TO AGREEMENT, effective May 9, 2022, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Tel-Tec Security System, Inc. ("Consultant") with its principal place of business located at 5020 Lisa Maria Court, Bakersfield, California 93313.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement, effective May 9, 2019 (KCHA Agt. # 38519) ("Agreement"), for the period May 9, 2019 through May 8, 2022; and

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

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

- X **Term.** The Agreement shall be extended from May 8, 2022 to May 8, 2025, unless sooner terminated as provided for in the Agreement.
- X **Additional Terms Applicable to Construction/Engineering Agreements.** See **Exhibit E**, attached hereto and incorporated herein by this reference.

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

IN WITNESS WHEREOF, this Amendment No. 1 to the Agreement has been executed as of the date indicated below.

**KERN COUNTY HOSPITAL AUTHORITY**

By \_\_\_\_\_  
Russell Bigler, Chairman, Board of Governors  
"KCHA"

Date: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

Responsible KCHA Department

By \_\_\_\_\_  
Scott Thygerson, Chief Executive Officer

Date: \_\_\_\_\_

**TEL-TEC SECURITY SYSTEM, INC.**

By \_\_\_\_\_  
"Consultant"

Date: May 9, 2022

**APPROVED AS TO FORM:**

Legal Services Department

By Janni A.  
Hospital Counsel

Date: 5/10/22

**EXHIBIT E**  
**ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS**

The Kern County Hospital Authority (KCHA), a public agency that is a local unit of government, which owns and operates Kern Medical Center, is subject to a variety of statutes (e.g. codes) and regulations that now apply to you as a Consultant/Contractor of KCHA. This Exhibit E outlines some, but not necessarily all of the requirements that you may now be required to meet as a Consultant/Contractor of a public entity.

**I. COMPLIANCE WITH LABOR STANDARDS**

1. KCHA has determined that the work contemplated by this Agreement falls within the definitions of "Public Works" set forth in the California Labor Code. Contractor acknowledges that Contractor is fully aware of prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code ("Prevailing Wage Requirements") and Contractor agrees to comply with the provisions of that Article to the extent the Prevailing Wage Requirements are applicable to the work conducted under this Agreement. Contractor further agrees that to the extent applicable, Contractor shall require any subcontractor it contracts with to comply with the Prevailing Wage Requirements. Contractor also agrees to indemnify, defend (upon request of KCHA) and hold, its officers, agents and employees, harmless from all claims, costs, causes of action, attorney fees, damages or liability from the failure of Contractor or Contractor's subcontractors to comply with the Prevailing Wage Requirements.

The Department of Industrial Relations of the State of California has determined the general prevailing rate of wages for each craft, classification or type of workers needed in the execution of contracts under the jurisdiction of Kern County. The schedule of rates can be obtained from or are on file with the Engineering Department at Kern Medical Center, located at 1700 Mt. Vernon Avenue, Bakersfield, CA 93305 and is hereby incorporated herein by this reference.

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

Contractor and Subcontractors shall comply with the requirements of California Labor Code §§1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors, if applicable. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

**2. Certification of Approval**

California Labor Code §1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

**3. Fund Contributions**

Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

**4. Apprenticeship Standards**

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

**III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION**

**1. INSURANCE**

- A. In addition to the Insurance requirements in Exhibit C, Contractor, in order to protect the KCHA and its board members, officials, agents, officers, employees and volunteers against all claims and liability for death, injury, loss and damage as a result of

Contractor's actions in connection with the performance of Contractor's obligations, as required in the Contract Documents, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Contract Documents until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Exigis.

**1) Workers' Compensation and Employers Liability Insurance Requirement** -- In the event Contractor has employees who may perform any services pursuant to the Contract Documents, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

By signing the Agreement, Contractor makes the following certification, required by section 1861 of the Labor Code:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work pursuant to the Contract Documents.

2) If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from KCHA under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from KCHA, KCHA may retain out of sums due Contractor under the Contract Documents, an amount sufficient to cover such compensation, as fixed by the Workers' Compensation Insurance and Safety Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If KCHA is compelled to pay compensation, KCHA may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse KCHA.

3) Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

4) All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in the Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to KCHA within ten Days of KCHA's request.

## 2. INDEMNIFICATION

- A. In addition to the Indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
  - 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
  - 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.



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

May 18, 2022

**SUBJECT:** Proposed Amendment No. 4 to Agreement 2016-041 with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical is requesting that your Board approve proposed Amendment No. 4 to the Agreement with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department, for the provision of medical services to adult inmates and juvenile detainees at county owned and operated jail and detention facilities. The Authority, through Kern Medical, has provided these services since July 1, 2016. The Agreement is set to expire by its terms on June 30, 2022.

Kern Medical provides correctional medical services on behalf of the Kern County Sheriff's Department and the Kern County Probation Department, to meet the county's obligation to provide healthcare services under Titles 15 and 24 of the California Code of Regulations. The County reimburses the Authority for such services based on a mutually agreed upon annual budget. The proposed Amendment extends the term of the Agreement for one year from July 1, 2022 through June 30, 2023, unless the Board of Supervisors selects a replacement provider during that time frame.

Therefore, it is recommended that your Board approve Amendment No. 4, extending the term of the Agreement for one year from July 1, 2022 through June 30, 2023, and authorize the Chairman to sign.

**AMENDMENT NO. 4  
TO  
CORRECTIONAL MEDICINE AGREEMENT  
(County of Kern – Kern County Hospital Authority)**

This Amendment No. 4 to the Correctional Medicine Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, between County of Kern, a political subdivision of the state of California (“County”), on behalf of County Administrative Office (“CAO”), Kern County Sheriff’s Office and Kern County Probation Department (collectively “Responsible County Departments”), and Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”).

**RECITALS**

(a) County and Authority have heretofore entered into a Correctional Medicine Agreement (Kern County Agt. #718-2016, dated June 22, 2016), Amendment No. 1 (Kern County Agt. #148-2019, dated March 26, 2019), Amendment No. 2 (Kern County Agt. #446-2020, dated July 14, 2020), and Amendment No. 3 (Kern County Agt. #553-2021, dated September 14, 2021) (the “Agreement”), for the period July 1, 2016 through June 30, 2022, whereby Authority through KMC provides health care services to adult inmates and juvenile wards under the responsibility of Responsible County Departments; and

(b) The Agreement relates solely to services provided by KMC at County-owned and -operated Adult Jail Facilities, which include Central Receiving Facility, Lerdo Pre-Trial Facility, Male Minimum Facility, Female Minimum Facility, and Maximum-Medium; and Juvenile Detention Facilities and Programs, which include Kern Crossroads Facility, Youth Detention Center and incorporated rehabilitative programs, and Camp Erwin Owen; and

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

(d) The Agreement is amended effective July 1, 2022;

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

1. Section 1, Term of Agreement and Records at Termination of Agreement, paragraph 1.1 shall be deleted in its entirety and replaced with the following:

“1.1 Term of Agreement. This Agreement shall be effective as of July 1, 2016, and remain in effect through June 30, 2023, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates and juvenile wards under the responsibility of Responsible County Departments.”

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



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

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

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

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 4 as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Ryan J. Alsop  
Chief Administrative Officer

By \_\_\_\_\_  
Scott Thygerson  
Chief Executive Officer

SHERIFF'S OFFICE

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Donny Youngblood  
Sheriff

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

PROBATION DEPARTMENT

By \_\_\_\_\_  
TR Merickel  
Chief Probation Officer

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

By \_\_\_\_\_  
Chief Deputy



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

May 18, 2022

**Subject:** Proposed Injector Placement Agreement with Bracco Diagnostics, Inc.

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve the Injector Placement Agreement with Bracco Diagnostics, Inc. for the Bracco SmartInjectCT Solution machine. This system injects the appropriate dose of contrast to patients receiving imaging procedures and is critical to providing services at the Kern Medical Q Street Imaging Center. This Agreement also provides subscription access to NEXO Smart Solutions application, which provides actionable insights for improved safety and efficiency with dose and data software.

The term of this Agreement is eight years, effective May 18, 2022, with a total maximum payable not to exceed \$8,100. Bracco Diagnostics, Inc. maintains ownership of the equipment, however at the end of the term, Kern Medical has the option to purchase the equipment at a price of \$500.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to a provision that requires the purchase of the equipment at the buy-out price indicated in the Agreement if terminated without cause prior to the termination date. Efforts were made to negotiate these nonstandard terms to no avail. The equipment and associated product provides a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Injector Placement Agreement with Bracco Diagnostics, Inc., effective May 18, 2022, with a maximum payable not to exceed \$8,100, for the eight-year term, and authorize the Chairman to sign.



LIFE FROM INSIDE

**Bracco Diagnostics Inc**  
 259 Prospect Plains Road  
 Building H  
 Monroe Township, NJ 08831

**Bracco Representative:**  
 DANI LINDHOLM  
 dani.lindholm@diag.bracco.com

**QUOTE**

**Quote ID:** 46226  
**Date:** 4/6/2022  
**Quote Expiration Date:** 05/16/2022

**Contact:** Suzanne Knight, (661) 326-2534, suzanne.knight@kernmedical.com

**Prepared For:**  
 KERN COUNTY HOSPITAL AUTHORITY  
 1700 MOUNT VERNON AVE  
 BAKERSFIELD, CA 93306-4018

**Ship To:** C0000045902  
 KERN COUNTY HOSPITAL AUTHORITY  
 1700 MOUNT VERNON AVE  
 BAKERSFIELD, CA 93306

**Injectors and Informatics**

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
017285	SmartInjectCT Solution (Empower CTA®+ Injector System) - Includes: Dual Barrel Injector, Touch Screen Remote Control w/ Desktop Mount, Power Supply 60' Comm and Power Cable, 16 ft USB Comm Cable, and injector, Pendant Switch.	\$32,826.00	1	\$22,084.00	\$22,084.00
017416	EMP ARTICULATING ARM PACKAGE	\$1,705.00	1	\$0.00	\$0.00
01741X	CEILING COLUMN PKGD	\$850.00	1	\$0.00	\$0.00
01741Y	EMPOWERCTA INJ MTG ARM, PKGD	\$1,411.00	1	\$0.00	\$0.00
650420	NEXO Project Deployment Service - Implementation and Installation of NEXO Contrast Management System for customer use. Includes the following: • Project Planning, Installation, Configuration User Training and go-live plan. Customer responsible for Server resources.	\$4,866.00	1	\$0.00	\$0.00
<b>Injectors and Informatics Sub-Total</b>					<b>\$22,084.00</b>

## Shipping

Item Name / Description	Qty	Unit Price	Extended Total
Shipping/ Freight Costs	1	\$350.00	\$350.00

## NEXO Monthly

SKU	Item Name / Description	List Price	Inj Qty	Unit Price	Monthly Total
650437	NEXO 36 Month Subscription Agreement Includes: Access to Smart Solution features (NEXO) on applicable devices. Standard software updates, remote service and support	\$800.00	1	\$225.00	\$225.00
<b>Monthly Subtotal</b>					<b>\$225.00</b>
<b>Agreement Grand Total</b>					<b>\$8,100.00</b>

## Accessories

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
017419	EMP CEILING MOUNTING PLATE	\$585.50	1	\$0.00	\$0.00
<b>Accessories Sub-Total</b>					<b>\$0.00</b>

## Applications and Installations

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
109810	CTA+ INSTALLATION	\$995.00	1	\$0.00	\$0.00
109820	CTA+ APPLICATIONS TRAINING	\$995.00	1	\$0.00	\$0.00
<b>Applications and Installations Sub-Total</b>					<b>\$0.00</b>

*Prices are subject to freight and handling charges and to all taxes, excises, or other charges levied by any government (national, state, or local) upon the sale consumption, or use of the products listed herein.*

**BILLING AGREEMENT** Acceptance of this Quote is Account's agreement to the NEXO Monthly Subscription as stated herein ('Billing Agreement') for the term indicated herein ('Term'). Under the Billing Agreement, the Extended Total for the NEXO Monthly Subscription, as shown above, will be invoiced to Account on a monthly basis upon completion of installation. In the event that Account does not meet its obligations under the Billing Agreement prior to or as of the completion of the Term, Account shall be required to pay, in full, the remaining outstanding balance due under the Billing Agreement, including all payments due during the entire Term, in accordance with Bracco's standard payment terms.

Please submit your purchase order and signed quote to:  
Contracts Administration  
c/o Bracco Diagnostics Inc  
259 Prospect Plains Road  
Building H  
Monroe Township, NJ 08831

Alternatively, you may also fax or email the information to (609) 514-2444 or  
[cadmin@diag.bracco.com](mailto:cadmin@diag.bracco.com)



LIFE FROM INSIDE

## TERMS AND CONDITIONS

For the protection of our customers and to avoid misunderstanding, Bracco Diagnostics(Bracco) respectfully requests careful reading of the following:

**1. USE OF PRODUCTS** Therapeutic and dosage suggestions contained in Bracco's literature are based on the best available clinical evidence and experience. They are, however, general in character and Bracco disclaims the adequacy or accuracy of such information.

The indications or contraindications of any Bracco products, as well as any modifications to the suggested dose or frequency of dosage to meet specific conditions, are questions that should be decided by a competent physician as part of a proper diagnostic work-up.

Bracco cannot control the conditions or circumstances under which Bracco products may be administered and assumes no responsibility for the administration of the products.

**2. PRICE** Prices and quotations are submitted without offer and are subject to change without notice. Prices are subject to all taxes, excises, or other charges levied by any government (national, state, or local) upon the sale, consumption, or use of the products listed herein. Account shall bear the cost of any sales, use, excise or similar tax applicable to the purchase of the product under this Quotation, unless Account shall have previously provided Bracco with a tax exemption certificate to the applicable taxing authorities. Prices are subject to freight and handling charges.

**3. PAYMENT TERMS** Net thirty (30) days.

All payment terms are subject to change at any time on prior written notice by Bracco. After forty-five (45) days from the date of an undisputed invoice, Bracco shall have the right to collect interest on past due amounts at the lesser of (i) one and one-half percent (1½%) per month, or (ii) the maximum interest rate legally permitted under California law.

**4. CONSUMABLES ORDERS** All orders are subject to acceptance by Bracco, which acceptance shall be only by letter or performance. Accepted orders will be shipped from the appropriate branch distribution center to expedite service. Orders sent to remittance address or physical distribution centers will be delayed. Unless otherwise agreed in writing by Bracco, no term or conditions contained in any Account purchase order or confirmation thereof shall apply to the sale of any product, except those identifying the particular product(s) ordered, quantity, and limited shipping/billing instructions. All orders are subject to prior credit approval as a condition of acceptance.

Bracco reserves the right to discontinue and withdraw from the marketplace any product, product size, or packaging at any time without further obligation on the part of Bracco.

**5. DISTRIBUTION** Capital Equipment and parts will ship from Acist Medical Systems in Eden Prairie, MN.

Bracco has one main distribution facility for consumable products, located in Southaven, MS.

**6. SHIPMENT** Shipping terms: FOB Origin

Title and risk of loss or damage passes to the Account upon pick-up and acceptance by the carrier. Unless otherwise agreed to specifically by Bracco in writing, delivery dates specified in this Quotation or in any other confirmation of any other Account purchase order shall be deemed to be estimated only. Account shall not be relieved of its obligation to purchase all of the products stated in its purchase order due to Bracco's failure to meet any desired or requested delivery date.

**7. TRANSPORTATION - Consumables** Expedited delivery is available upon request by Account. Account must place its order via phone or fax with customer service to ensure proper delivery of shipments. Expedited deliveries will be assessed a transportation fee. For direct orders Account will be assessed standard ground shipping fees with a \$15.00 minimum charge.

**8. CORRESPONDENCE** All correspondence should be addressed to Bracco Diagnostics Inc., Attention Customer Service, at 259 Prospect Plains Road, Building H, Suite 100, Monroe Township, New Jersey 08831, or P.O. Box 5225, Princeton, NJ, 08543-5225, or sent by e-mail to [bracco.otc@diag.bracco.com](mailto:bracco.otc@diag.bracco.com)

**9. LABELS, CARTONS AND EMPTY CONTAINERS** Loose labels, empty cartons or containers cannot be supplied for any reason whatsoever.

**10. INSURANCE** Bracco maintains commercial general liability (including products/completed operations) liability insurance underwritten by various insurance companies, which, in Bracco's determination, will adequately respond to losses. Bracco will provide confirmation of such insurance setting forth its standard conditions on an individual basis upon specific request in writing.

**11. WARRANTIES AND DISCLAIMER** Unless otherwise specifically agreed in writing by Bracco, all products sold by Bracco are sold with the manufacturer's standard warranty included. Bracco itself makes no representations, warranties or guarantees concerning any of the products and the Account agrees to rely solely on the respective product's manufacturer for all warranty questions and issues. Additionally, Bracco cannot control the conditions or circumstances under which the product may be used and Bracco specifically disclaims any responsibility or liability for the suitability of any product for any particular medical treatment or for any medical complications resulting from the use any product that is not defective.

Account agrees and acknowledges that ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED FROM THIS QUOTATION OR ANY SALE PURSUANT HERETO.

Bracco specifically disclaims and Account waives any claim against Bracco for liability of any type for any damages (whether special, direct or indirect, consequential, incidental or otherwise), including, without limitation, expenditures, or loss of profits or projected profits. Notwithstanding anything to the contrary, Bracco's limitations of liability shall not apply to, affect, or limit: (i) any of Bracco's duties to indemnify Account in accordance with this Quotation and/or (ii) any third party claims.

**12. EXTENDED WARRANTY AND SERVICE CONTRACTS** If this Quotation includes extended warranties and/or service contracts, Account acknowledges and agrees that the Quotation is provided as a convenience to Account on behalf of ACIST, the provider of such extended warranties and/or service contracts. To purchase such extended warranties or such service contracts, or for more information regarding same, please call ACIST at 888-670-7701.

**13. "OWN USE" REQUIREMENT** Account hereby certifies that all products purchased by Account or by any other authorized purchaser under this Quotation will be for the respective purchaser's "own use" as required by the Non Profit Institutions Act [15 U.S.C. sec. 13(c)], and as further defined in the U.S. Supreme Court decision



in *Abbott Labs v. Portland Retail Druggists Association*, 421 US 1 (1976). Account and any other authorized purchaser shall not directly or indirectly resell any products purchased from Bracco to any third-parties.

**14. REPORTING REQUIREMENTS** In the event Account purchases any Bracco product at a discounted price, Account hereby agrees that it shall properly disclose and account for the total value of discounts and rebates received under this Quotation in connection with costs claimed or charges made to federal health care programs in accordance with all applicable federal and state laws and regulations, including, but not limited to, the provisions of 42 USC Section 1320a-7b(b)(3)(A) and 42 CFR Section 1001.952(h), and shall provide accurate information regarding the net cost of products purchased from Bracco in response to any inquiry from federal or state agencies. Bracco agrees to assist Account by providing any information necessary for Account to properly calculate and disclose cost of Bracco products, net of all discounts and rebates received, upon request by Account.

**15. CHOICE OF LAW** Intentionally omitted.

**16. FORCE MAJEURE** Bracco shall be excused, without penalty, and shall not be liable for damages or default for any failure to supply product to Account due to circumstances beyond Bracco's control, such as strike, fire, unavoidable accidents, riot, war, terrorism, insurrection, epidemic, pandemic, viral or communicable disease outbreak, quarantines, lack of or inability to obtain fuel, power, components or materials, disruption of supply chains, disruption of transportation systems, disruption of labor force, national emergency, act, order, or requirement of any governmental authority, acts of God or other causes beyond its control.

#### **17. RETURN GOODS POLICY**

a) Returned products require prior authorization from Bracco Diagnostics. Authorizations can be obtained by contacting the Bracco Customer Service Team at 1-877 -BRACCO9 (1-877-272-2269).

b) Returns will only be authorized for product purchased directly from Bracco. Bracco product purchased from wholesalers must be returned to the wholesaler based on the wholesaler's policy.

c) Temperature control forms must be completed by the customer to be eligible for credit when required based on storage requirements of the product. This document, which verifies the appropriate storage conditions of product while at the customer facility, will be provided by Bracco and must be returned promptly.

d) Returns will be authorized for shipping errors, picking errors, products damaged in transit, transportation errors, and Customer Service order entry errors. Such authorized returns will receive credit based on the final invoice price when product is returned in saleable form (excluding product damaged in transit) within 15 days from the original delivery date.

e) All other authorized returns for non-Bracco errors will receive credit based on the final invoice price, less a 30% restocking fee, when product is returned in saleable form within 15 days from the original delivery date.

f) Bracco will issue credit for authorized returned goods within 30 days of receipt. No deduction can be taken at any time without Bracco's prior written approval.

g) Product returned after 15 days from the original delivery date will not be eligible for credit.

h) Upon receipt of a return by the customer, products will be promptly evaluated and the customer will be notified of product eligibility or ineligibility for credit. Bracco reserves the right to destroy all returned products, whether or

not they are found to be eligible for credit. All Bracco products are returned with the understanding that they are subject to final review and evaluation by Bracco, and will be processed in accordance with the most recent return goods policy in effect at the time the return is received.

i) The cost of shipping product to the Bracco warehouse will be paid for by Bracco for Authorized returns through the use of call tags. Sales Representatives are not authorized to pick up merchandise. No reimbursement shall be paid to the customer for any failure to receive the appropriate call tags.

j) Any returned product that was not maintained under appropriate storage conditions will not be eligible for credit.

k) Credit will not be issued for any product sold with the specific understanding that such product is non-returnable, sterile products, or special order products, unless the error is on the part of Bracco.

l) Bracco will not issue credit for expired products.

m) No product may be returned by, and no credit shall be issued to, any third party return processor.

n) Bracco reserves the right to determine the eligibility of products to qualify for credit when returned.

o) Bracco will reserve the right to amend this policy by notification to the customer.

**18. BRACCO CODE OF ETHICS** Account acknowledges that Bracco Diagnostics Inc. and its parent companies, the Bracco Group and Bracco Imaging S.p.A., have adopted a code of ethics (the "Bracco Code of Ethics"), a copy of which is available at <http://www.braccoimaging.com/ethics>. The parties agree that the Bracco Code of Ethics constitutes an integral and essential part of this Quotation. By signing this Quotation, Account undertakes to abide by and comply with the provisions of the Bracco Code of Ethics, as well as with any applicable law and regulation, in any transaction performed in connection with this Quotation. Any breach of the above covenants will be grounds for termination of this Quotation, or the taking of such corrective action as Bracco deems appropriate. If requested by Bracco, Account shall permit Bracco's duly authorized delegates to have access to any relevant information as may be necessary to determine the correctness of any conduct made under this Quotation, provided that Bracco shall ensure the confidentiality of any such information received from Account and safeguard the trade secrets incorporated therein in accordance with any applicable law.

**19. FACSIMILE/PDF EXCHANGE; ELECTRONIC SIGNATURE** The exchange of copies of this Quotation and of signature pages by facsimile transmission, electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original appearance of the document, or by a combination of such means, shall constitute effective execution and delivery of this Quotation and may be used in lieu of an original Quotation for all purposes. Account may execute this Quotation by electronic means and Bracco recognizes and accepts the use of electronic signatures by Account in connection with the execution hereof and both parties agree that such electronic signatures shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law.

**20. INDEMNIFICATION** Bracco will defend, indemnify and hold Account harmless against any and all third party liability, loss, damages, costs or expenses (collectively "Damages") that Account may hereafter incur, as a result of (A) any injury, illness or death of any person which is caused by any Bracco products furnished hereunder, to the extent that such injury, illness or death resulted from failure of any such product to meet specifications, or (B) infringement directly resulting from products furnished hereunder, of any patent, copyright, trademark, trade secret or any other proprietary right of any third party. Bracco's liability under subsection (A) above is limited to the extent such injury, illness or death was caused by the failure of Account to use, administer or operate the Bracco product in accordance with the applicable product package insert or instructions for use. In the event of a claim arising under subsection (B) above, Bracco may, at its sole discretion, (i) modify the particular product to make it non-infringing, (ii) obtain a license to allow the continued use of the product, or (iii) terminate this Quotation, and take possession of and refund all fees paid for the infringing products or pay fair market value, but no more than the price paid by Account for the infringing product, if any.

QUOTE AND TERMS AND CONDITIONS ARE HEREBY  
APPROVED BY:

*Russell Bigler*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Signature*

*Chairman, Board of Governors*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
\_\_\_\_\_  
Legal Services Department



LIFE FROM INSIDE

## CONDITIONS OF USE

### 1. DEFINITIONS

As used in these Conditions of Use, the terms below shall have the following meaning:

- a) "Bracco" shall mean the manufacturer of the Product Bracco Injeneering S.A., with its registered office at Avenue de Sévelin, 46, 1004 Lausanne, Switzerland, enrolled with the Company Registrar CH-550.1.037.293-9.
- b) "Distributor" shall mean the company which may be part of Bracco Imaging Group (hereinafter Affiliate) or a third party that has the right to sell the Product in the country of the User.
- c) "User" shall mean an individual, company, corporation or association, trust or other entity that, upon acceptance of the Commercial Offer, of which these conditions of use are an integral part, and following the payment of the agreed price, will acquire the non-exclusive and non-transferable right to use the Product and the Documentation.
- d) "Commercial Offer" shall mean the document that summarizes the specific conditions (price, payment terms, etc.) for the licence of the Product.
- e) "Conditions of Use" shall mean these conditions that regulate the use of the Product and the Documentation and that, attached to the Commercial Offer, constitute an integral and substantial part of it.
- f) "Parties" shall mean jointly Bracco and the User.
- g) "Confidential Information" shall mean all existing and future information, including but not limited to the Product, Documentation, Product training and instruction manuals, data, reports, programs, methods, tapes, recorded notes, computer-generated data, tests, studies and other written documents, computer programs, proprietary trade secrets and know-how, Software, Intellectual Property Rights and any and all other information embodied in a tangible form relating to and disclosed to the User in connection with these Conditions of Use, including but not limited to those related to the Product.
- h) "Documentation" shall mean all manuals, instructions, user documentation, training documentation and other related materials pertaining to the Product which are supplied to the User in connection with the Product.
- i) "Intellectual Property Rights" shall mean collectively, all of the following intellectual property rights of Bracco, whether or not filed, perfected, registered, issued or recorded and whether now or hereafter existing including, but not limited to, all: (i) patents, patent applications, and patent rights, including any and all continuations, divisions, reissues, re-examinations, or extensions thereof; (ii) rights associated with works of authorship, including but not limited to copyrights, copyright applications and copyright registrations, moral rights, trademarks, trademark applications, service marks, trade dress and mask works; (iii) rights relating to the protection of trade secrets, know-how and other confidential information including, but not limited to, rights in industrial property and all associated information and confidential or proprietary information; (iv) industrial design rights; (v) utility models, inventions, and/or discoveries; (vi) know-how or other data or information, software, databases and all embodiments or fixations thereof; (vii) licenses, Documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the items set forth in the preceding clause and (viii) any rights analogous to those set forth in the preceding clauses and any other proprietary rights relating to intangible property.
- j) "Product" or "NEXO" shall mean the medical device both the client and server Software application components part of the solution. The client-Software application component shall be run on each compatible injector system remote console connected to the Ethernet network of the User, whereas the server-Software application components, NEXO services and NEXO web services shall be run on a server provided by the User.
- k) "Software" shall mean computer programs and systems, whether embodied in software, firmware or otherwise, including, software compilations, software, software implementations of algorithms, software tool sets, compilers, and software models and methodologies. with the relevant technical and personal contact data.

### 2. GRANT OF RIGHTS

2.1 Following the formal acceptance by the User of the Commercial Offer, Distributor shall provide the Product to the User and the User shall be authorized to use the Product in accordance with the Documentation and under the terms and conditions provided by the Commercial Offer and these Conditions of Use.

The Product and the rights connected to the same granted to the User are non-transferable and non-exclusive.

2.2 The Product may be used on the hardware of the User on which the installation was performed by Bracco or by a company entrusted by Bracco in its sole discretion (hereinafter, "Designee"). In the event the User shall determine to replace all or part of the hardware on which the Product is installed resulting in the need to reinstall the Product, the User shall give written prior notice to Bracco and the new installation and/or reinstallation shall occur only with the intervention of Bracco or Designee, subject to the provisions of Article 3.3 below.

### 3. DELIVERY, ASSISTANCE AND MAINTENANCE

3.1 This Product shall be installed at the User's premises only by Bracco or its Designee. The installation shall be made upon prior agreement between the User and Bracco or its Designee. At the time of installation the User shall make available the server hardware equipment to Bracco or its Designee, in compliance with the minimum hardware requirements listed in Annex 1. At the end of the installation the User shall sign the installation report.

3.2 The Documentation shall be delivered to the User by Distributor or its Designee, together with the Product.

3.3 For the term of these Conditions of Use (as described in Article 9.1), the User shall be entitled to the following assistance and remote maintenance provided by Distributor or its Designee and/or by Bracco or its service provider:

- (i) telephone support via the number and on the working days and during the hours communicated by Distributor to the User. Alternatively, the User may address inquiries to the email address indicated by the Distributor and an answer will be provided as promptly as reasonably possible;

and

(ii) supplying of patch, bug-fixes, or minor releases of the Products issued by Bracco. In this case, the installation will be carried out remotely. In the event of technical assistance and maintenance required by User remotely or at the premises of the User, including pursuant to the provisions of Article 2.2, the User shall allow access to their computer systems and/or telecommunications services to the extent that it is necessary to allow the activities themselves. Certain technical assistance activities may require access to the personal data and protected health information related to patients gathered and/or processed through the Product, with the sole purpose to perform the necessary technical service on the Product.

If the activities mentioned above would require the presence of Distributor or its Designee and/or Bracco or its service provider at the premises of the User, these shall be charged to User upon prior quotation and acceptance thereof by the User.

3.4 Any flaw, defect, problem, critical issue or other event giving rise to the need for an intervention and not based on fact and/or fault of Distributor or Bracco (by way of example and not limited to: any operation performed by the User on Software and/or on hardware that hosts the same Software, and/or intervention performed by third parties and/or faults and/or defects of the equipment, tools and/or IT systems and/or network connection of the User and/or any third party) may be subject to intervention only upon prior quotation and acceptance thereof by the User.

#### 4. COPIES

To the maximum extent permitted by law, neither the Product nor the Documentation shall be copied in whole or in part by the User without prior written authorization of Bracco.

#### 5. USE OF THE PRODUCT

5.1 The User shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Product or output generated by the Product, and shall not reproduce and include same on each copy of the Product.

5.2 To the maximum extent permitted by law, the User shall not modify, reverse engineer, disassemble, or decompile the Product, or any portion thereof.

5.3 The Product and Documentation are the sole property of Bracco which has the exclusive right to market, sell and distribute such Product together with the Documentation and to grant all rights connected to such Product and Documentation. The User shall not have any right, title, or interest in or to any such Product or copies thereof, including the relevant Intellectual Property Rights, except as provided in these Conditions of Use, and further shall secure and protect the Product and Documentation consistent with the maintenance of Bracco's Intellectual Property Rights therein.

5.4 The Documentation contains important information on operating safety and handling of the Product as well as information on service and support. The User shall read the instructions carefully before using the Product. NEXO is intended to be used by authorized personnel only and the User is responsible for the selection of authorized users. Only qualified medical practitioners are authorized to use the Product.

5.5 To the maximum extent permitted by law, Distributor and Bracco assume no liability for problems attributable to unauthorized modifications, additions or deletions to the Product or server hardware or unauthorized installation of third party software.

5.6 Distributor and Bracco are not responsible for safety, reliability and performance of the Product, if:

- the Product is not operated in compliance with the Documentation; or
- the Product is operated outside of its operating conditions or specifications; or
- the Product is operated outside the specified operating environment.

5.7 The User agrees to use the Product only in relation to its internal activity and not under any circumstances nor by any means make it available to third parties. This Product thus cannot be used in favour of, or in any manner for the benefit of persons of any kind and nature other than the User itself. By way of example and without limitation, the Product shall not be used directly and/or indirectly, or even used in favour of parent companies of the User and or subsidiaries of the User and/or for the benefit of persons of any kind and nature connected to the User and/or related to the User and/or with which the User has entered into agreements of any kind and nature.

#### 6. CONFIDENTIALITY.

6.1 The User hereby acknowledges and agrees that the Product and Documentation constitute and contain valuable proprietary products and trade secrets of Bracco, embodying substantial creative efforts and Confidential Information, ideas, and expressions. Accordingly, the User agrees to treat (and take precautions to ensure that its employees treat) the Product and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.

6.2 The User agrees to keep confidential all Confidential Information disclosed to it by Bracco in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the User shall not have any such obligation with respect to Confidential Information as can be established by competent proof to: (a) have been known publicly; (b) have been known generally in the industry before communication by Bracco to the User or (c) have become known publicly, without fault on the part of the User, subsequent to disclosure by Bracco.

6.3 The User acknowledges that the unauthorized use, transfer or disclosure of the Product and Documentation or copies thereof will (i) substantially diminish the value to Bracco of the trade secrets and other proprietary interests that are the subject of these Conditions of Use; (ii) render Bracco's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If the User breaches any of its obligations with respect to the use or the disclosure of the Confidential Information relevant to the Product or Documentation, Bracco shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

6.4 User's obligations under this Article 6 will survive the termination of these Conditions of Use for whatever reason.

6.5 Bracco acknowledges that User is a government entity and is subject to the California Public Records Act, Cal. Govt. Code §6250 et seq., the Brown Act, Cal. Govt. Code §54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered proprietary and confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

#### 7. WARRANTIES; LIMITATION OF LIABILITIES

7.1 Bracco warrants and represents that Bracco has the right to enter into these Conditions of Use.

7.2 Bracco further represents and warrants that to the best of its present knowledge: (i) the Product, as delivered to the User under these Conditions of Use, is original and no portion of such Software, nor the use or distribution of copies thereof, violates, infringes, misappropriates copyright, trade secret or other proprietary right of any third party; and (ii) to the extent third party software is utilized or incorporated in the Product, Bracco has the right to utilize or incorporate said third party software in the Product and to grant to the User the rights contemplated by and granted under these Conditions of Use.

7.3 Bracco represents and warrants that the Product, when properly installed, will perform substantially as described in current Documentation for such Product. It is expressly understood that the sole activities of assistance and maintenance under these Conditions of Use are those in

Article 3.3 (i) and (ii). Any other type of activity not included in the aforementioned points, that is deemed necessary for resolution of a Product issue, shall be subject to a separate additional commercial offer accepted by the User.

7.4 Bracco represents and warrants that the Product provided to the User under these Conditions of Use will not contain any "back door", "time bomb", "worm", "drop dead device", "virus" (as these terms are commonly used in the computer software field), or other software routines designed to permit unauthorized access, to disable or erase software, hardware, or data, or to perform any other similar type of function.

7.5 The User is the sole owner of computer programs and/or products (in particular, only the database) which the User itself must have (i.e. MS SQL database, Browsers etc.), in order to use the Product; therefore, the User is responsible for the legitimacy of their purchase and for the proper contracts with the relevant right holders. In addition, the User is the sole owner of personal data and protected health information gathered and/or processed by the Product assuming any liability as per Article 7.10 below.

7.6 The User further represents and warrants to the best of its present knowledge that: (i) such User's products necessary to use the Product are original and no portion of such products, or their use, violates, infringes, or misappropriates copyright, trade secret or other proprietary rights of any third party; and (ii) to the extent third party software is utilized or incorporated in User's products necessary to use the Product, the User has the right to use or incorporate said third party software in the User's products.

7.7 Notwithstanding the warranty provisions set forth in Articles 7.2, 7.3, and 7.4 above, all the obligations of Bracco with respect to such warranties shall be contingent on User's use of the Product in accordance with these Conditions of Use and the instructions provided in the Documentation, as such instructions may be amended, supplemented, or modified by Bracco from time to time. Bracco shall have no warranty obligations with respect to any failures of the Product which are the result of accident, abuse, misapplication, power surge or electromagnetic field and/or violation of User's warranties provided by Articles 7.5 and 7.6.

7.8 Bracco does not represent or warrant that all errors in the Product and Documentation will be corrected. THE WARRANTIES STATED IN THIS ARTICLE 7 ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY BRACCO. THERE ARE NO OTHER WARRANTIES RESPECTING THE PRODUCT AND DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF BRACCO HAS BEEN INFORMED OF SUCH PURPOSE.

7.9 To the maximum extent permitted by law, the User acknowledges that Bracco does not assume the risk of User's direct, indirect, consequential or incidental damages (including, without limitation, lost profits, business interruption, or lost information) which may arise in connection with User's use of the Product and Documentation. Accordingly, the User agrees that Bracco shall not be responsible to the User for any loss-of-profit, direct, indirect, incidental, special, or consequential damages arising out of the use of the Product or Documentation. To the maximum extent permitted by law, any provision herein to the contrary notwithstanding, the maximum liability of Bracco to any legal or natural person or entity whatsoever arising out of or in connection with the use or other employment of any Product delivered to the User hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid by the User for the Product, the use, or other employment of which gives rise to the liability. To the maximum extent permitted by law, the essential purpose of this provision is to limit the potential liability of Bracco arising out of these Conditions of Use. The limitations set forth in this Article 7 are integral to the amount of consideration paid for the Product and Documentation and any services rendered hereunder.

7.10 The User represents and warrants that all personal data and protected health information gathered through the Product are collected and processed by the User lawfully, and that such personal data and protected health information shall not be transferred to Bracco and Distributor under any circumstances whatsoever. In relation to such personal data and protected health information gathered and/or processed through the Product, the User solely assumes all liability in connection with the compliance with legislation regarding the handling of personal data and protected health information from time to time in force, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009, and regulations promulgated thereunder. Bracco makes no representation as to the sufficiency (legal or otherwise) of any security measures of the Product.

#### 8. INDEMNIFICATION

8.1 Bracco shall indemnify, hold harmless and defend the User against any action brought against the User to the extent that such action is based on a claim that the unmodified Product, when used in accordance with these Conditions of Use and the relevant Documentation, infringes a third party copyright and Bracco shall pay all reasonable costs, settlements and damages finally awarded; provided, that the User:

- (i) promptly notifies Bracco in writing of any claim; and
- (ii) gives Bracco sole control of the defense and settlement thereof; and
- (iii) provides all reasonable assistance in connection therewith.

8.2 If the Product is finally adjudged to so infringe, or in Bracco's opinion is likely to become the subject of such a claim, Bracco shall, at its option, either:

- (i) procure for the User the right to continue using the Product; or
- (ii) modify or replace the Product to make it non-infringing; or
- (iii) refund the price paid, less reasonable depreciation, upon uninstall of the Product by Bracco.

8.3 Bracco shall have no liability regarding any claim arising out of:

- (i) use of other than a current, unaltered release of the Product unless the infringing portion is also in the then current, unaltered release; or
- (ii) any modification or derivation of the Product not specifically authorized in writing by Bracco or use of third party software.

8.4 The foregoing states the entire liability of Bracco and the exclusive remedy for the User relating to infringement or claims of infringement of any copyright or other proprietary right regarding the Product.

8.5 Except for the foregoing infringement claims, the User shall indemnify and hold harmless Bracco, its officers and employees, and Distributors from and against any and all claims, demands, or causes of action whatsoever, including without limitation those arising on account of User's modification or enhancement of the Product or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the rights granted hereunder by Bracco.

#### 9. TERM AND TERMINATION

9.1 These Conditions of Use shall be effective as of the date of the User's signature and shall remain in force for one (1) year or any longer period specifically detailed in the Commercial Offer. At the aforementioned expiration date, these Conditions of Use shall automatically be renewed for one (1) year with regard to each and any subsequent Commercial Offer accepted by the User from time to time.

9.2 In the event that the User defaults or breaches any of the provisions of these Conditions of Use, Bracco and/or Distributor shall have the right to terminate these Conditions of Use upon thirty (30) calendar days prior written notice to the User; provided, however, that if the User, within the thirty (30) day period referred to, cures the said default or breach, the Conditions of Use shall continue in full force and effect.

Termination due to a material breach of Articles 2.1 and 2.2 (Grant of Rights), 3.1, 3.2, 3.3 (Delivery, Assistance and Maintenance); 4 (Copies), 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 (Use of the Product), or 6.1, 6.2, 6.3, 6.4 (Confidentiality) shall be effective upon notice to the defaulting Party.

9.3 In case of termination of these Conditions of Use for User's default or breach, the User shall cease and desist any and all uses of the

Product and Documentation. Upon Bracco written request, the User shall allow Bracco and its service provider or Distributor and its Designee to access the hardware on which the Product is installed for the purpose of its removal within thirty (30) calendar days from termination of the Conditions of Use.

10. GOVERNING LAW AND JURISDICTION. Intentionally omitted.

11. SEVERABILITY.

If any provision of these Conditions of Use shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

12. MISCELLANEOUS.

12.1 These Conditions of Use contain the entire understanding and agreement between the Parties respecting the subject matter hereof. These Conditions of Use may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each Party's duly authorized representative. All captions and headings in these Conditions of Use are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either Party of any default or breach hereunder shall not constitute a waiver of any provision of these Conditions of Use or of any subsequent default or breach of the same or a different kind.

12.2 With reference to the end user's personal contact data submitted by the User to the Distributor, the User warrants to have informed -on behalf of Distributor and Bracco- the data subject that his/her personal data will be processed -also by electronic means- lawfully and fairly by Distributor and Bracco as data controllers in order to perform the obligations under these Conditions of Use and comply with any applicable laws and regulations.

The User, represented by its legal representative or by a duly authorized attorney, signs hereunder by way of complete acceptance of these Conditions of Use.

User:

Print name: Russell Bigler

Title: Chairman, Board of Governors

Stamped and signed by the USER

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department

Annex 1  
to the Conditions of Use  
Server Hardware & Software Requirements

**Server Specifications for VM Or Physical**

- Windows Server 2016 (Any Edition)
- Virtual or Physical
- Separate data partition of 80GB for application and data
- Min 8GB RAM
- SecureLink VPN for remote access to support

**Antivirus Exceptions:**

Following need to be excluded from real-time scan but can stay in scheduled scan routine.

- All SQL Folders
- IIS Folders
- Program Files (x86)\Bracco Injeenering

**Firewall Exclusions:**

- TCP 4445, 3315, 8770-8790
- UDP 40040
- TCP 80





LIFE FROM INSIDE

**Bracco Diagnostics Inc**  
 259 Prospect Plains Road  
 Building H  
 Monroe Township, NJ 08831

**Bracco Representative:**  
 DANI LINDHOLM  
 dani.lindholm@diag.bracco.com

**QUOTE SUMMARY**

**Quote ID:** 46226  
**Date:** 4/6/2022  
**Quote Expiration Date:** 05/16/2022

**Contact:** Suzanne Knight, (661) 326-2534, suzanne.knight@kernmedical.com

**Prepared For:**  
 KERN COUNTY HOSPITAL AUTHORITY  
 1700 MOUNT VERNON AVE  
 BAKERSFIELD, CA 93306-4018

**Injectors and Informatics**

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
017285	SmartInjectCT Solution (Empower CTA®+ Injector System) - Includes: Dual Barrel Injector, Touch Screen Remote Control w/ Desktop Mount, Power Supply 60' Comm and Power Cable, 16 ft USB Comm Cable, and injector, Pendant Switch.	\$32,826.00	1	\$22,084.00	\$22,084.00
017416	EMP ARTICULATING ARM PACKAGE	\$1,705.00	1	\$0.00	\$0.00
01741X	CEILING COLUMN PKGD	\$850.00	1	\$0.00	\$0.00
01741Y	EMPOWERCTA INJ MTG ARM, PKGD	\$1,411.00	1	\$0.00	\$0.00
650420	NEXO Project Deployment Service - Implementation and Installation of NEXO Contrast Management System for customer use. Includes the following: • Project Planning, Installation, Configuration User Training and go-live plan. Customer responsible for Server resources.	\$4,866.00	1	\$0.00	\$0.00
<b>Injectors and Informatics Sub-Total</b>					<b>\$22,084.00</b>



## Shipping

Item Name / Description	Qty	Unit Price	Extended Total
Shipping/ Freight Costs	1	\$350.00	\$350.00

## NEXO Monthly

SKU	Item Name / Description	List Price	Inj Qty	Unit Price	Monthly Total
650437	NEXO 36 Month Subscription Agreement Includes: Access to Smart Solution features (NEXO) on applicable devices. Standard software updates, remote service and support	\$800.00	1	\$225.00	\$225.00
<b>Monthly Subtotal</b>					<b>\$225.00</b>
<b>Agreement Grand Total</b>					<b>\$8,100.00</b>

## Accessories

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
017419	EMP CEILING MOUNTING PLATE	\$585.50	1	\$0.00	\$0.00
<b>Accessories Sub-Total</b>					<b>\$0.00</b>

## Applications and Installations

SKU	Item Name / Description	List Price	Qty	Unit Price	Extended Total
109810	CTA+ INSTALLATION	\$995.00	1	\$0.00	\$0.00
109820	CTA+ APPLICATIONS TRAINING	\$995.00	1	\$0.00	\$0.00
<b>Applications and Installations Sub-Total</b>					<b>\$0.00</b>

**Grand Total: \$30,534.00**

*Prices are subject to freight and handling charges and to all taxes, excises, or other charges levied by any government (national, state, or local) upon the sale consumption, or use of the products listed herein.*

**BILLING AGREEMENT** Acceptance of this Quote is Account's agreement to the NEXO Monthly Subscription as stated herein ('Billing Agreement') for the term indicated herein ('Term'). Under the Billing Agreement, the Extended Total for the NEXO Monthly Subscription, as shown above, will be invoiced to Account on a monthly basis upon completion of installation. In the event that Account does not meet its obligations under the Billing Agreement prior to or as of the completion of the Term, Account shall be required to pay, in full, the remaining outstanding balance due under the

Billing Agreement, including all payments due during the entire Term, in accordance with Bracco's standard payment terms.

Please submit your purchase order and signed quote to:

Contracts Administration  
c/o Bracco Diagnostics Inc  
259 Prospect Plains Road  
Building H  
Monroe Township, NJ 08831

Alternatively, you may also fax or email the information to (609) 514-2444 or [cadmin@diag.bracco.com](mailto:cadmin@diag.bracco.com)



LIFE FROM INSIDE

**Bracco Diagnostics Inc.**  
259 Prospect Plains Road  
Building H  
Monroe Township, NJ 08831

## INJECTOR PLACEMENT AGREEMENT

Agreement No: 2254272

This Injector Placement Agreement (the 'Agreement'), dated May 18, 2022, is between Bracco Diagnostics Inc. ('Bracco') and KERN COUNTY HOSPITAL AUTHORITY located at 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 ('Account').

This Agreement shall have an initial term of five (5) years (the 'Initial Term'), commencing on the first day of the month in which the first Equipment (as defined below) is installed, as such installation date is confirmed in writing by the parties on the installation acceptance document (the 'Effective Date'). For the Term of this Agreement, Bracco grants to Account, and Account accepts, a nontransferable right to use the power injector equipment listed on Exhibit A (the 'Equipment'). Account shall use the Equipment with the appropriate x-ray contrast media/magnetic resonance imaging (MRI) contrast media products (the 'Contrast Media Products') and injector disposable products and transfer sets (the 'Consumables') purchased from Bracco, in accordance with the fifth paragraph of this Agreement, to provide health care services to Account's patients. Account agrees that the Equipment shall remain at all times in the location(s) set forth in Exhibit A, which location(s) shall be under Account's ownership or control. Account shall not move the Equipment from such location(s) without Bracco's prior written consent. In the event that such location(s) shall no longer be owned by or under the control of Account, then Account must notify Bracco in writing within sixty (60) days of such change.

Pricing for any Contrast Media Products and transfer sets to be purchased by Account from Bracco shall be as set forth in HPG's GPO contract for Contrast Media Products ("Contrast Media GPO Agreement"). Pricing for any Consumables (other than transfer sets) to be purchased by Account from Bracco shall be as set forth in an independent bid. Should the Term of this Agreement extend beyond any time period for which pricing has been established for the Contrast Media Products and/or the Consumables through agreements between Bracco and Account, including an independent bid by Account, or between Bracco and Account's group purchasing organization, including the Contrast Media GPO Agreement, then – no less than thirty (30) days prior to the end of such time period – Bracco and Account shall mutually agree to an agreement containing pricing for the Contrast Media Products and/or Consumables to be in effect over the next agreed upon time period. In the event the parties are unable to agree on such an agreement, this Agreement will terminate at the end of the time period for which mutually agreeable pricing for the Contrast Media Products and/or Consumables has been established.

Account shall purchase the accessories, user training and related applications and installation for the Equipment and the deployment of the NEXO® Contrast Management System (if applicable) (the 'Accessories') set forth in Exhibit C at the prices stated therein (the Contrast Media Products, Consumables and Accessories being referred to herein collectively as the 'Products'). Account will be

Quote 46226

invoiced for the Accessories at the time of Equipment shipment, for payment in accordance with the payment terms set forth in the Consumables GPO Agreement or Bracco's Terms and Conditions attached hereto, as applicable.

Subject to Account meeting its obligations set forth in this Agreement and in any other agreement between Bracco and Account, Account shall have the right to use the Equipment on a royalty-free basis. Title and ownership shall remain with Bracco. Bracco shall waive any and all royalties for the use of the Equipment beginning on the Effective Date through the entire Term upon the express condition that Account purchases from Bracco no less than ninety percent (90%) of its requirements, measured by volume, of the Contrast Media Products and one hundred percent (100%) of its requirements of the Consumables. Initial compliance with the purchase commitment for Contrast Media Products shall be measured at the end of the first twelve (12) months of the Term ('Conversion Period'). Compliance with the purchase commitment for Consumables shall be required as of the Effective Date.

For each twelve (12) month period during the Term (each such period referred to herein as a 'Contract Year'), the parties acknowledge and agree that the applicable royalties waived under this Agreement shall be equal to thirty percent (30%) of the purchase price of the Equipment, as set forth in Exhibit A. In the event there exists a need to calculate royalties on a partial year basis, it shall be done on a pro-rated basis by multiplying the annual royalty by a fraction. The number of days in the partial Contract Year shall become the numerator and the number three hundred sixty-five (365) shall become the denominator.

Except for the Conversion Period for Contrast Media Products, in the event that Account fails to make the required minimum purchases of the Contrast Media Products and Consumables as measured for any Contract Year during the Term, then Account shall be required to pay a royalty to Bracco, as set forth above, for that Contract Year. If, at any time, Bracco has reason to believe, based on Account's purchasing history, that Account has not made the required minimum purchases during any particular Contract Year, then Bracco shall notify Account. Account shall then have thirty (30) days to document, to Bracco's reasonable satisfaction, that it has met the purchase requirement for the Contract Year in question. If Account fails to document its meeting the purchase requirement to Bracco's reasonable satisfaction, then Bracco shall invoice Account for the applicable royalties owed to Bracco. Account shall pay the full amount within thirty (30) days of the invoice date.

The parties acknowledge and agree that Bracco's waiver of royalties under the terms of this Agreement constitutes an additional discount on the sale of the Products. Account shall properly disclose and account for the total value of discounts received under this Agreement, and in any other agreement between Bracco and Account, in connection with costs claimed or charges made to federal health care programs in accordance with all applicable federal and state laws and regulations, including, but not limited to, the provisions of 42 USC Section 1320a-7b(b)(3)(A) and 42 CFR Section 1001.952(h)(1). Account shall provide accurate information regarding its net payment for Products purchased from Bracco in response to any inquiry from federal or state agencies. Bracco agrees to assist Account by providing any information necessary for Account to properly calculate and disclose its cost and payment for Bracco Products, net of all discounts received, upon request by Account.

If the services provided by Account using the Equipment and Products require the reporting of costs on a cost report, then Account shall claim the benefit of the discount in the fiscal year in which the discount is earned or the following year. It shall fully and accurately report the discount in the applicable cost report. If the services are reflected in a cost report, or based on charges through the submission of a fee for service claim, Account shall provide information documenting the discount upon request of the Secretary of the U.S. Department of Health and Human Services or by the appropriate state agency.

For any period during the Term in which Bracco reasonably determines, based on actual and anticipated

supply availability, it is unable to supply Account with an adequate amount of Contrast Media Products (meaning Bracco fails to supply Account, in a timely manner, with Contrast Media Products ordered in the ordinary course of business, resulting in Account's failure to meet the minimum purchase requirement described above (the 'Failure to Supply Period')), as reasonably communicated to Account, then Bracco shall waive any and all royalties which would otherwise be payable by Account during such Failure to Supply Period due to noncompliance with the purchase requirement for Contrast Media Products. To the extent a Failure to Supply Period results in Account's total purchases from Bracco (including all Contrast Media Products, Consumables, Accessories and any royalty revenue) during any one (1) year period equaling less than Bracco's cost to provide such Products and Equipment, then either the parties shall agree to modify this Agreement to provide for a reasonable fair market royalty fee for the use of the Equipment, or Bracco shall have the right to terminate this Agreement by providing Account with reasonable written notice to allow Account to obtain substitute equipment.

Bracco shall retain title to the Equipment at all times. Account shall cooperate in all reasonable measures to evidence Bracco's ownership of the Equipment. Account shall not take any action that could interfere in any manner with Bracco's ownership interest in the Equipment.

Account shall be responsible for transportation, delivery, and service expenses. Account shall also be responsible for, and assume the risk of, loss or theft of, or damage to, the Equipment. While the Equipment is in Account's possession, Account shall perform routine service and maintenance and use the Equipment only in the manner for which it is intended and in full compliance with the instructions and warnings set forth in the applicable Operator's Manual(s).

The Equipment shall be covered by the manufacturer's standard warranty for each such product. Account also agrees to maintain an extended warranty and service contract with the manufacturer of the Equipment and/or its designee during the entire time period the Equipment is in Account's possession following the expiration of the manufacturer's standard warranty. The annual cost of the extended warranty and service contract will be paid by Account as stated on Exhibit B. Account acknowledges and agrees that the manufacturer and/or its designee, and not Bracco, is the responsible party for service and warranty matters. The manufacturer and/or its designee shall invoice Account directly for all extended warranty and service contracts required under this Agreement.

In addition, for Equipment that is the SmartInjectCT Solution (Empower CTA®+ Injector System and NEXO® Contrast Management System) and/or SmartInjectMR Solution (Empower MR®+ Injector System and NEXO® Contrast Management System), Account acknowledges that the deployment of the NEXO Contrast Management System is included in the Accessories shown on Exhibit C and payable at the time of Equipment shipment. Account and Bracco shall develop a mutually agreeable written plan for implementing the subscription services for the NEXO Contrast Management System ('NEXO Implementation Plan'), which implementation must begin within six (6) months of the date of Equipment shipment, i.e. the date of deployment of the NEXO Contrast Management System. Account agrees to purchase the subscription services for the NEXO Contrast Management System from Bracco as stated on Exhibit B, such charges to begin upon the date of commencement of implementation of the subscription services for the NEXO Contrast Management System as provided under the NEXO Implementation Plan; provided, however, that in the event implementation of the subscription services for the NEXO Contrast Management System has not occurred within six (6) months of the date of Equipment shipment, i.e. the date of deployment of the NEXO Contrast Management System, then Bracco may, in its sole discretion, begin charging Account for such subscription services (unless the delay in implementation of the subscription services or in finalizing the NEXO Implementation Plan is caused solely by Bracco, in which case charges for the subscription services shall be suspended until the cause of such delay is resolved). Bracco shall invoice Account directly for all subscription services required under this Agreement. The annual fees for the first year of subscription services will be prorated

for any partial period based on the actual date of completed implementation of the subscription services and the end of the Contract Year.

At the end of the Term, Account may purchase the Equipment at the buy-out price set forth on page [4] of this Agreement (which is based on a percentage of the purchase price of the Equipment, as set forth in Exhibit A or at a fixed dollar amount). If Account elects not to purchase the Equipment, Account shall return it to Bracco, at Account's sole expense, in reasonable working condition, and with no greater than ordinary wear and tear. If Account returns the Equipment to Bracco in poor condition, then Account will be billed for an amount equal to 25% to 50% of the Equipment's purchase price (see Exhibit A), depending on the severity of the poor condition. Account should contact Bracco to arrange for the return of the Equipment.

In the event that the Equipment is lost or stolen, Account shall have ninety (90) days to locate the Equipment and regain possession consistent with the terms of this Agreement. If this is not accomplished successfully within the ninety (90) days, then Account will be billed an amount equal to the lesser of either: (i) the full amount of all royalties remaining due under this Agreement plus the end of Term buy-out price, as set forth below (which is based on a percentage of the purchase price of the Equipment, as set forth in Exhibit A or at a fixed dollar amount) or (ii) one-hundred percent (100%) of the purchase price set forth in Exhibit A. No credit will be issued for the Equipment returned after this period.

In the event that Account wants to terminate this Agreement prior to the expiration of the Term, Account must provide at least 180 days prior written notice to Bracco of its intent to terminate this Agreement. In such a case, Account shall be required to purchase the Equipment at the buy-out price indicated in the chart below. The buy-out price shall be calculated as a percentage of the purchase price of each of the Equipment based on the age of each of the Equipment commencing from the date of its respective installation, with such percentage decreasing each year through the seventh year, and thereafter shall be at a fixed dollar amount. In addition, Account must pay any and all accrued royalties due and owing with respect to the Equipment as of the date of termination for prior non-compliant periods during the Term; provided, however, that the aggregate amount that Account shall be required to pay as the sum of the buy-out price and the accrued royalties shall in no event exceed the purchase price of the Equipment as set forth on Exhibit A. Monies previously paid by Account for any extended warranty and service contract, Accessories and Consumables will not be credited to Account upon termination of this Agreement. Upon payment of all amounts owed to Bracco hereunder, title to the Equipment shall be transferred to Account and this Agreement shall be terminated.

	<b>Year Following Date of Installation of each Equipment</b>							
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8+
Buy-Out Price (as a % of purchase price of Equipment, except as indicated)	90%	70%	50%	40%	30%	20%	10%	\$500

In the event that either party fails to perform or otherwise defaults on a material part of this Agreement, then the other party shall have the right to notify the defaulting party of such event. If within thirty (30) days after receiving such notice of default, the party so notified fails to correct such default, then the aggrieved party may terminate this Agreement on thirty (30) days' notice and all Equipment shall be

returned to Bracco immediately upon such termination; provided, however, that in the case where Bracco is the aggrieved party, Bracco may, in its sole discretion, either (A) demand, and Account shall provide for, the immediate return of the Equipment upon such termination, or (B) issue an invoice, and Account shall pay upon such termination, an amount equal to the lesser of either: (i) the full amount of all royalties remaining due under this Agreement plus the end of Term buy-out price, as set forth above (which is based on a percentage of the purchase price of the Equipment, as set forth in Exhibit A or at a fixed dollar amount) or (ii) one-hundred percent (100%) of the purchase price set forth in Exhibit A. Such termination and above-stated remedies shall not affect any other legal rights the aggrieved party may have under the law.

Bracco shall be excused, without penalty, and shall not be liable for damages or default for any failure to supply the Equipment to Account as contemplated by this Agreement due to circumstances beyond Bracco's control, such as strike, fire, unavoidable accidents, riot, war, terrorism, insurrection, epidemic, pandemic, viral or communicable disease outbreak, quarantines, lack of or inability to obtain fuel, power, components or materials, disruption of supply chains, disruption of transportation systems, disruption of labor force, national emergency, act, order, or requirement of any governmental authority, acts of God or other causes beyond its control.

Account acknowledges that Bracco Diagnostics Inc. and its parent companies, the Bracco Group and Bracco Imaging S.p.A., have adopted a code of ethics (the "Bracco Code of Ethics"), a copy of which is available at <http://www.braccoimaging.com/ethics>. The parties agree that the Bracco Code of Ethics constitutes an integral and essential part of this Agreement. By signing this Agreement, Account undertakes to abide by and comply with the provisions of the Bracco Code of Ethics, as well as with any applicable law and regulation, in any transaction performed in connection with this Agreement. Any breach of the above covenants will be grounds for termination of this Agreement, or the taking of such corrective action as Bracco deems appropriate. If requested by Bracco, Account shall permit Bracco's duly authorized delegates to have access to any relevant information as may be necessary to determine the correctness of any conduct made under this Agreement, provided that Bracco shall ensure the confidentiality of any such information received from Account and safeguard the trade secrets incorporated therein in accordance with any applicable law.

Neither this Agreement nor any right or interest hereunder may be assigned or sublicensed by Account. This Agreement contains all of the agreements between the parties with regard to the subject matter hereof. No waiver or modification of this Agreement will be valid unless made in writing and signed by both parties.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission, electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original appearance of the document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement and may be used in lieu of an original Agreement for all purposes. Each party may execute this Agreement by electronic means and recognizes and accepts the use of electronic signatures by the other party in connection with the execution hereof and agrees that such electronic signatures shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law. This provision shall also apply to the execution of any subsequent written amendment to this Agreement.

[Signature Page is Next]



IN WITNESS WHEREOF, Account and Bracco have executed this Agreement as of the Effective Date stated above.

Bracco Diagnostics Inc.

Account:

By: Dani Lindholm

By: \_\_\_\_\_

Name: Dani Lindholm

Name: Russell Bigler

Title: Sr. Account Manager

Title: Chairman, Board of Governors

Notice Addresses:

Bracco Diagnostics Inc.

KERN COUNTY HOSPITAL AUTHORITY

259 Prospect Plains Road, Building H

1700 MOUNT VERNON AVE

Monroe Township, NJ 08831

BAKERSFIELD, CA 93306-4018

Attn: Legal Department

Attn: \_\_\_\_\_

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department

**BRACCO DIAGNOSTICS INC.**

**KERN COUNTY HOSPITAL AUTHORITY  
1700 MOUNT VERNON AVE  
BAKERSFIELD, CA 93306**

**EXHIBIT A**

<b>Customer</b>	<b>List No.</b>	<b>Product Description</b>	<b>Qty</b>	<b>Unit Price</b>	<b>Extended Total</b>
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	017285	SmartInjectCT Solution (Empower CTA@+ Injector System) - Includes: Dual Barrel Injector, Touch Screen Remote Control w/ Desktop Mount, Power Supply 60' Comm and Power Cable, 16 ft USB Comm Cable, and injector, Pendant Switch.	1	\$22,084.00	\$22,084.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	017416	EMP ARTICULATING ARM PACKAGE	1	\$0.00	\$0.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	01741X	CEILING COLUMN PKGD	1	\$0.00	\$0.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	01741Y	EMPOWERCTA INJ MTG ARM, PKGD	1	\$0.00	\$0.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	650420	NEXO Project Deployment Service - Implementation and Installation of NEXO Contrast Management System for customer use. Includes the following: • Project Planning, Installation, Configuration User Training and go-live plan. Customer responsible for Server resources.	1	\$0.00	\$0.00

BRACCO DIAGNOSTICS INC.

KERN COUNTY HOSPITAL AUTHORITY  
1700 MOUNT VERNON AVE  
BAKERSFIELD, CA 93306

EXHIBIT B

Customer	List No.	Product Description	Qty	Unit Price	Extended Total	Agreement Total
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	650437	NEXO 36 Month Subscription Agreement Includes: Access to Smart Solution features (NEXO) on applicable devices. Standard software updates, remote service and support	1	\$225.00	\$225.00	\$8,100.00

BRACCO DIAGNOSTICS INC.

KERN COUNTY HOSPITAL AUTHORITY  
1700 MOUNT VERNON AVE  
BAKERSFIELD, CA 93306

EXHIBIT C

Customer	List No.	Product Description	Qty	Unit Price	Extended Total
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	017419	EMP CEILING MOUNTING PLATE	1	\$0.00	\$0.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	109810	CTA+ INSTALLATION	1	\$0.00	\$0.00
C0000045902 KERN COUNTY HOSPITAL AUTHORITY BAKERSFIELD, CA 93306	109820	EMPOWERCTA+ APPLICATIONS TRAINING	1	\$0.00	\$0.00



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

May 18, 2022

**Subject:** Proposed Equipment Usage Agreement with Gen-Probe Sales and Service, Inc. (“Hologic”)

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve the Equipment Usage Agreement with Hologic to provide for the use of the Panther Instrument System, an assay processing device for laboratory testing of sexually transmitted diseases.

The term of the Agreement is five years, effective May 18, 2022 through May 17, 2027. Hologic maintains ownership of the equipment and at the end of the term the equipment will be returned to Hologic, if not renewed. In exchange for the use of the equipment, Kern Medical commits to the purchase of 5,000 test assays per year, with a total price commitment of \$1,400,000.

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

Therefore, it is recommended that your Board approve the proposed Equipment Usage Agreement with Gen-Probe Sales and Service, Inc. (“Hologic”), effective May 18, 2022, with a total price commitment of \$1,400,000, for the five-year term, and authorize the Chairman to sign.



**Equipment Usage Attachment**

<b>Customer Name ("CUSTOMER")</b>	<b>Customer Number</b>	<b>Purchase Order Number</b>
KERN COUNTY HOSPITAL AUTHORITY	106519	
<b>Contact Name</b>	<b>Contact Phone Number</b>	<b>Contact Email</b>
Adonica Vickers	(661) 326-2468	Adonica Vickers@kernmedical.com
<b>Bill To Address</b>	<b>Ship To Address</b>	<b>Hologic Representative</b>
KERN COUNTY HOSPITAL AUTHORITY PO BOX 3519 BAKERSFIELD, CA US 93385	KERN COUNTY HOSPITAL AUTHORITY 1700 MT VERNON ST BAKERSFIELD, CA US 93305	Analisa Woodward 559-360-0782 analisa.woodward@hologic.com
<b>TERM: 60 MONTHS</b>		

This Equipment Usage Attachment ("Attachment") by and between Gen-Probe Sales and Service, Inc. ("Hologic"), and Customer (as defined above) (collectively, the "Parties") is effective as of the date of full execution by the Parties (the "Effective Date") and is executed in connection with that certain Sale Agreement dated \_\_\_\_\_ between Customer and Hologic, Inc., together with its subsidiaries and affiliates ("Sale Agreement") (this Attachment and the Sale Agreement are collectively referred to herein as the "Agreement"). To the extent not modified by this Attachment, the terms and conditions of the Sale Agreement are incorporated herein in full as if fully stated herein. Any capitalized terms contained in the Sale Agreement and not defined herein shall take the meaning as defined in the Sale Agreement.

**General Terms:**

- Equipment:** In consideration of the Purchase Commitment, Hologic will provide Customer with the use of the Equipment ("Equipment") specified below for the Term, which shall include on-site installation and training by Hologic authorized personnel. Hologic will retain title to the Equipment during the Term and may file a standard Uniform Commercial Code ("UCC") Form 1 to perfect its interest in the Equipment. Customer will notify Hologic immediately if any attachment, encumbrance, lien or security interest is filed or claimed and will indemnify Hologic for any loss or damage, including reasonable attorneys' fees. Customer shall remain responsible for the normal care and maintenance of the Equipment. Should Customer be in Material Breach, Hologic may immediately require Customer to arrange the return of any Hologic-owned Equipment to Hologic.
- Location and Care of Equipment; Labels.** Customer will not make any changes to the Equipment. Customer will use the same standard of care to protect the Equipment from loss and damage as it uses to protect its own equipment. Customer will use the Equipment only at the Customer address noted in this Attachment and shall not move or otherwise relocate the Equipment without Hologic's prior written consent. If Customer requires the Equipment to be relocated, Customer agrees to contact Hologic's service department to make arrangements for Hologic authorized personnel to relocate the Equipment and Customer shall pay for all costs associated with such relocation. Customer will not remove any labels, tags, symbols or serial numbers that may be affixed to any items of Equipment unless removal is required or approved by Hologic in writing.
- Order Management.** Customer shall place all orders concerning this Attachment directly with Hologic, at 250 Campus Drive, Marlborough, MA 01752. **Orders may be placed by: Phone at 800-442-9892, Fax at 800-409-7591 or at [CustomerSupport@hologic.com](mailto:CustomerSupport@hologic.com).**
- Modifications.** The Sale Agreement shall continue in full force and effect in accordance with its terms as stated therein, but, to the extent expressly modified by this Attachment, the provisions of this Attachment shall supersede those of the Sale Agreement with respect to this Attachment only.
- Term Completion.** At the end of the Term, Customer agrees to arrange the return of any Hologic-owned Equipment promptly to Hologic.

**Program Terms:**

1. **Term.** The initial term of this Attachment shall begin on the Effective Date and terminate upon completion of the "Term of Agreement" period designated above ("Initial Term"). Following the Initial Term, if Customer has complied with all of the terms of the Agreement, including, but not limited to, paying all monies due and owed to Hologic, and is not in material breach hereof, the Parties may agree to extend this Agreement (each a "Renewal Term") which shall be documented by written amendment between the Parties. For clarification purposes, the Agreement shall expire if the Parties do not agree to extend. Hereinafter, the Initial Term and all Renewal Terms shall be collectively referred to as the "Term".
2. **Panther Service.**
  - a. **SERVICES INCLUDED.** During the Term, the following service will be provided:
    - i. Labor, necessary replacement parts (excluding disposables which include, but are not limited to, tips, MTU's, TTU's, waste bags, and bench covers), and Hologic travel expenses.
    - ii. Preventative maintenance by Hologic service technician according to operator's or user's manual, (Monday through Friday only).
    - iii. Equipment repair for reasons other than those listed below under Services Excluded.
    - iv. Access to Hologic Technical Support telephone support, Monday through Friday, 5:00 AM to 5:00 PM Pacific Standard Time (excluding Hologic holidays).
    - v. Telephone Number for all Technical Support: 888-484-4747
    - vi. Factory authorized updates or modifications, including parts.
  - b. **Service Representative Dispatch and PRO360° REMOTE DIAGNOSTICS**
    - i. Representative on site within 24 hours (Monday – Friday) if PRO360° Remote Diagnostics Management is installed.
    - ii. Representative on site within 48 hours (Monday – Friday) if PRO360° Remote Diagnostics is not installed. Service response times are predicated upon the Equipment operator being willing and able to transfer Equipment log files to Hologic when instructed by Hologic Technical Support using the protocol described in the Equipment Operator's Manual.
  - c. **SERVICES EXCLUDED.** The services excluded under the Standard Service option are the following:
    - i. Any repair required because of causes other than use of the Equipment pursuant to the operator's or user's manual. Such causes include, but are not limited to: misuse, abuse, improper use, casualty loss, neglect, reprogramming error, malfunction or failure of environmental control Equipment, electrical Equipment malfunction or failure, repair maintenance, modification, relocation, or reinstallation by other than Hologic authorized personnel, installation of commercial or non-Equipment software, use of any other tips on the Equipment other than TECAN Tips, or acts of God, fire, flood, earthquake, or other natural causes.
    - ii. Routine tasks, other than those performed by Hologic during preventative maintenance visits, covered in the operator's or user's manual, such as cleaning and maintenance.
    - iii. Supply items (including, but not limited to, those items listed in the package insert or manual as "materials required but not provided," TECAN Tips, bleach, squirt bottles, paper towels, and other such items that are needed for general use but not specifically by the Equipment) and consumable items.
    - iv. Relocation of Equipment.
    - v. Note: Labor and materials charges for all of the excluded services will be billed at rates prevailing at the time of service.
  - d. **CUSTOMER OBLIGATIONS.** Prior to any shipment of repair parts or visit by Hologic service representative, Customer must perform all pertinent diagnostic programs, tests, simple/ basic troubleshooting and provide an accurate description of the failure/error.
  - e. **REPLACED OR REMOVED PARTS.** All parts replaced or removed under this Agreement become the property of Hologic.
3. **Training:** Hologic will provide training for two (2) operators, at Hologic's training facility to include roundtrip airfare, ground transportation, hotel accommodations and meals.
4. TECAN tips (catalog # 10612513) are the only tips that Hologic has validated for use on the Equipment. Hologic does not support the use of non-TECAN tips on the Equipment as stated in the Equipment Operator's Manual and pursuant to the terms of the warranty for the Equipment. TECAN tips (catalog #10612513) can be directly ordered from TECAN U.S. at 800-352-5128.
5. **Purchase Commitment.** The Customer agrees to pay to Hologic the total price per kit as indicated during the Term. Customer agrees to purchase enough kits or boxes (as applicable) to run the number of tests listed under the annual purchase commitment ("Purchase Commitment"), each year for the duration of the Agreement. The Parties agree that the Purchase Commitment represents the minimum quantity to be purchased by Customer on

an annual basis. All purchases made in a given annual period shall apply to the purchase commitment for that annual period only and shall not be applied to any future Contract Year. Each twelve (12) month period beginning on the Effective Date is a "Contract Year." If Customer does not order and pay for the quantity listed for each Product ("Estimated Yearly Quantity") within any 12 month period ("Minimum Purchase Obligation"), then Hologic may require Customer to pay, at the end of the 12 month period, the difference between the Minimum Purchase Obligation and the amount actually paid by Customer during that period for the Product ("Minimum Purchase Obligation Payment"). Customer must make this Minimum Purchase Obligation Payment within 30 days of the date of Hologic's invoice. Also, Hologic may increase pricing by up to 5% for the rest of the Term for any Product for which Customer does not meet the Minimum Purchase Obligation. Hologic's use of the remedies in this section does not preclude it from pursuing remedies stated elsewhere in the Agreement.

- Commitment Period: Annually
- Number of Committed Tests: 5,000
- Price Per Test: \$13.75

**CT/NG**

Product #	Description	Quantity of Tests per Kit/Box	Price per Kit/Box
303094	APTIMA COMBO 2, 250-TEST KIT, PANTHER	250	\$3,437.50
302923	APTIMA COMBO 2, 100-TEST KIT, PANTHER	100	\$1,375.00

- Commitment Period: Annually
- Number of Committed Tests: 5,000

**Collection Devices**

Product #	Description	Quantity of Tests per Kit/Box	Price per Kit/Box
301040	KIT,APTIMA CMB2URINE SPEC COLL	50	\$65.00
301041	KIT, UNISEX SPEC COLL, APTIMA	50	\$65.00
PRD-03546	BOX OF SPECIMEN COLLECTION KITS, MULTITEST SWAB (IVD)(50 PK)	50	\$65.00
301154C	KIT, APTIMA LPT-IVD SALES BOM	100	\$120.00
105575	APTIMA URINE COLLECTION TUBES	100	\$120.00

**Aptima SARS-CoV-2**

Product Number	Description	Price per Kit/Box
PRD-06419	SARS-COV-2 ASSAY, APTIMA, 250-TEST, EUA, CE IVD	\$8,250.00

**Accessories/Non-Committed Supplies**

Product Number	Description	Price per Kit/Box
PRD-06420	SARS-COV-2 ASSAY CONTROLS, APTIMA, EUA, CE IVD	\$230.00
PRD-04339	SPECIMEN LYSIS, FUSION, CE IVD	\$125.00
PRD-04423	SPECIMEN TRANSPORT MEDIUM	\$100.00
MTL-02093	500/PK , PIPETTE, TRANS, DISPO, 5ML	\$40.00
105668	APTIMA PENETRABLE CAPS	\$100.00
301110	APTIMA CNTRLS KIT (1 TRAY) IVD	\$0.00
303085	ADVANCED CLEANING SOLUTION	\$0.00
CL0040	SPARE CAPS, TCR/SEL RGT (CL0038) DIAGNOSTICS	\$0.00



CL0041	SPARE CAPS, AMP/PROBE RECONSTITUTION SOLUTIONS (CL0045) DIAGNOSTICS	\$0.00
501616	SPARE CAPS, 30ML TUBE (501213) DIAGNOSTICS	\$0.00
303096	RUN KIT, PANTHER	\$0.00
501604	SPARE CAPS, PP, 60ML, TCR APTIMA 2X50	\$125.00
PRD-06660	HOLOGIC SPECIMEN LYSIS TUBE, SOLID CAP (1200 TUBES PER CARTON)	\$1,500.00
PRD-06657	SPECIMEN TRANSPORT MEDIUM, CE IVD 120 ML	\$150.00

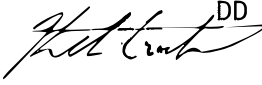
**Equipment**

Product #	Description	Unit Value	Unit Price	Serial Number	Quantity to Ship
303095	PANTHER INSTRUMENT SYSTEM, DX	\$175,000.00	Included	2090001754	0

**Additional Terms:**

- U.S. Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) to authorize the use of Aptima SARS CoV-2 assay on the Panther System by authorized laboratories for the detection of nucleic acid from Aptima SARS-CoV-2 virus only and not for any other viruses or pathogens. The Panther SARS CoV-2 assay is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner. The Panther SARS CoV-2 assay has not been FDA cleared or approved. The Customer acknowledges and agrees that the Panther SARS CoV-2 assay is only available for sale and use while the EUA is in effect. Hologic reserves the right to discontinue the Panther SARS CoV-2 assay product at any time.
- Termination of Prior Agreement.** The Parties agree and acknowledge that the Equipment Usage Program Attachment between the County of Kern on behalf of Kern Medical Center and Gen-Probe Sales and Service, Inc. dated 4/5/2016 ("Prior Agreement") shall be terminated upon the Effective Date of this Attachment.
- Termination.** Customer or Hologic may terminate this Supply Attachment if there is a Material Breach (defined below) of the Agreement by the other party as long as the other party is given written notice which identifies the breach and the breach is not corrected for thirty (30) days. "Material Breach" means the failure of Customer or Hologic to fully comply with the Agreement. If Hologic terminates this Supply Attachment because of Customer's Material Breach or if Customer terminates this Supply Attachment for any reason except for a Material Breach by Hologic, Hologic reserves the right and sole discretion to require Customer to purchase the difference between the Purchase Commitment and the amount of Product actually purchased by the Customer during the Initial Term (the "Supplemental Purchase"). Customer must make the Supplemental Purchase within thirty (30) days of Hologic's notice to Customer of the Supplemental Purchase requirement. Customer's rights and remedies for a breach of any warranty listed in Section 8 of the Sale Agreement is limited to the rights and remedies described in Section 9 of the Sale Agreement.

**Accepted and agreed to:**

<b>Customer (by its authorized representative)</b>		<b>Gen-Probe Sales and Service, Inc. (by its authorized representative)</b>	
Russell Bigler, Chairman, Board of Governors		 Date: 2022.04.21 13:07:47 -04'00'	Keith Ganter    Senior VP, Commercial Dx Solutions
<b>Name</b>	<b>Title</b>		
<b>Signature</b>	<b>Date</b>	<b>Signature</b>	<b>Date</b>

*The offer contained in this Agreement is null and void if this Agreement is not executed by Customer (and returned to Hologic) on or before 7/10/2022 ("Offer Expiration Date"), or accepted by Hologic as indicated by Hologic's signature above.*

PLEASE FAX OR EMAIL COMPLETED AND SIGNED AGREEMENT TO  
[nationalcontracts@hologic.com](mailto:nationalcontracts@hologic.com)  
OR (844) 749-3816

## Hologic Sales Terms and Conditions

These Hologic Sales Terms and Conditions ("Sale Agreement") apply to the sale or use of Hologic equipment ("Equipment") and Hologic supplies ("Supplies") (Equipment, Supplies, and any included Software, as defined in Section 14, collectively referred to as "Product" or "Products") between Hologic, Inc. (together with its subsidiaries and affiliates, "Hologic"), and KERN COUNTY HOSPITAL AUTHORITY "(Customer)". Hologic and Customer may hereinafter be referred to individually as a "Party" and collectively as the "Parties." The Parties, intending to be legally bound, agree as follows:

- 1. Agreement.** These terms and conditions ("Terms"), together with the applicable Hologic quote(s) or other attachments or other purchasing program documents executed by the Parties, constitute the entire agreement between the Parties (the "Agreement") with respect to the Products. This Agreement supersedes all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in this Agreement. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify this Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. Customer acknowledges that there are no warranties or representations which have been made by Hologic or any of its agents other than those expressly contained herein. If any action in law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the Party may be entitled. No provision of this Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced. Headings and captions in this Agreement are for convenience only, and in no way affect its interpretation.
- 2. Prices.** Prices, fees and charges for Products and services (including maintenance during the Warranty Period, installation, and applications training, as applicable, "Service(s)") are payable in United States (U.S.) Dollars only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate to Hologic before shipment of Products. Unless price protection is explicitly agreed to by Hologic in writing, Hologic reserves the right to increase prices on thirty (30) days written notice to Customer.
- 3. Payment.** Customer shall pay invoices net thirty (30) days from the invoice date. Hologic may charge monthly interest at the maximum rate permitted by law on all amounts not paid by the invoice due date until all such amounts are paid in full. Hologic retains a purchase money security interest in all Equipment sold to Customer to secure payment of the total purchase price thereof; Customer hereby grants Hologic the right to file a copy of this Agreement, with any appropriate authorities, to evidence its security interest; and Customer shall execute and deliver documents as Hologic requests. Hologic is not obligated to deliver any Product or perform any Service when Customer's payment is past due.
- 4. Product Shipment and Risk of Loss.** All Products shall be shipped F.O.B. Origin, regardless of any provisions for payment of freight, insurance, the form of shipping documents, or selection of carrier by Hologic. F.O.B. Origin means title and risk of loss to the Products passes to the Customer at the shipping dock of Hologic or Hologic's supplier or authorized agent. Customer is responsible for shipping charges. Hologic is responsible for the cost of insurance paid to cover any losses from Hologic's shipment point to Customer's receipt. Hologic shall assist Customer in processing any loss claims and Customer shall be paid directly by Hologic's insurer.
- 5. Delivery.** Hologic shall use good faith efforts to ship Products on the dates and in the quantities listed in Customer's purchase orders but all delivery dates are estimates and not binding on Hologic. Hologic may make shipments of Product(s) as available and each shipment shall be separately invoiced. All Products shall be adequately packed for shipment in Hologic-standard containers, marked for shipment to the address listed in this Agreement. Orders received from Customer are not binding on Hologic until accepted by Hologic.
- 6. Installation and Acceptance.** Product orders are subject to written acceptance by Hologic, receipt of specified deposits, as applicable, and continuing credit approval. Orders may be canceled by written notice to Hologic prior to shipment. If applicable, Hologic shall install all Equipment that requires installation at the agreed upon location. Installation of Medical Equipment is complete, and acceptance occurs upon Hologic's demonstration that the Medical Equipment meets Hologic's then-current specifications ("Installation"). Installation is subject to Customer cooperating in preparing and maintaining the site in compliance with Hologic specifications, including, but not limited to, applicable regulations including all electrical and other connections and all environmental conditions. If Customer fails to accept shipment of Products ordered by Customer or contemplated by the Agreement, Customer shall be responsible for Hologic's reasonable insurance, handling and storage charges. If Hologic decides not to store Customer ordered Products refused by Customer, it is hereby authorized to arrange shipment and storage in a bonded warehouse at Customer's sole risk and expense.

**7. Delay of Performance.** The Parties' obligations herein are subject to force majeure, including, but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages, delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, acts of God or other contingencies or acts not within the sole control of Hologic. Hologic reserves the right during any shortage period to (a) make Products available to Customer as it sees fit without any Hologic liability to Customer; and (b) make substitutions and modifications in the specification of any Products, provided such substitutions or modifications do not materially affect the performance of Products.

**8. Warranties.** Except as otherwise expressly stated in this Agreement: (i) Equipment manufactured by Hologic is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, or if Installation is required, from the date of Installation ("Warranty Period"); (ii) replacement parts and remanufactured items are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer; (iii) consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages; (iv) licensed Software is warranted to operate in accordance with published specifications; (v) Services are warranted to be supplied in a workman-like manner; (vi) non-Hologic manufactured Equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Hologic's customers, to the extent permitted by the manufacturer of such non-Hologic manufactured Equipment. Hologic does not warrant that use of Products shall be uninterrupted or error-free, or that Products shall operate with third-party products not authorized or validated by Hologic. For Hologic's cart-based ultrasound medical imaging Products, Customer shall provide Hologic with full and free access to the Products, including but not limited to establishing and maintaining connectivity to the Products via VPN IPsec Tunneling (non-client) Peer-to-Peer connection, modem line, internet connection, broadband internet connection or other secure remote access reasonably required by Hologic, network cabling, and communication equipment as is reasonably necessary for Hologic to provide warranty service, including remote diagnostics, monitoring and repair services.

**9. Warranty Claims and Remedies.** In the event of any warranty claim, Hologic shall replace with new or remanufactured items any Medical Equipment, part, component, or consumable supply that is in breach of warranty, and shall use reasonable efforts to promptly fix or provide a workaround for any Software defect or bug which prevents operation in substantial conformity with functional specifications. Alternatively, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Medical Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action against Hologic thereafter. These remedies shall comprise Hologic's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. HOLOGIC'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO IS NOT AN AFFILIATE OF CUSTOMER. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Hologic authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; (c) stored, maintained, or operated in any manner inconsistent with applicable Hologic specifications or instructions, including Customer's refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or "as-is" basis.

**10. LIMIT OF LIABILITY.** EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, HOLOGIC IS NOT LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED PURSUANT TO THIS AGREEMENT, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES

IN WRITING. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, HOLOGIC IS NOT LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE OR CHARGE THEREFOR RECEIVED BY HOLOGIC.

**11. Insurance.** During the term of this Agreement, Hologic shall maintain in effect the following insurance with respect to Customer's location (i) worker's compensation insurance covering any and all of its employees, agents or representatives who provide services to Customer, in amounts and coverage complying with the requirements of the applicable state; (ii) general liability insurance covering the acts or omissions of Hologic and its employees, agents or representatives, and any and all Equipment and other personal property of Hologic; and (iii) product liability insurance. At Customer's request, Hologic shall provide a certificate of insurance to Customer.

**12. Governmental Authorizations.** Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including, but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange permit, or the like ("Licenses"), even if applied for by Hologic on Customer's behalf. If any authorization is delayed, denied, revoked, restricted or not renewed, Hologic is not liable, and Customer is not relieved of its obligations. Customer represents and agrees that it shall handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not trans-ship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Hologic except as U.S. laws and regulations expressly permit.

**13. Intellectual Property Indemnity.** Hologic shall defend, indemnify, and hold harmless Customer against any third-party claim that Customer's use of Products infringes a valid U.S. patent, copyright, or trademark, provided that: (a) Products are used as approved by Hologic and have not been altered other than by Hologic or its authorized service personnel; (b) Customer promptly notifies Hologic of such claim; (c) Hologic has sole control of the defense, settlement, or compromise thereof and Customer is solely responsible for attorneys' fees and costs it incurs independently of Hologic's representation; and (d) Customer cooperates with Hologic and furnishes all aid, information, and assistance necessary or useful to defend such claim. If a final injunction is obtained against the Customer's use of any Product, or if in the opinion of Hologic the Product is likely to become the subject of a successful claim, Hologic may, at its option and in its sole discretion: (i) obtain for Customer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) if neither (i) or (ii) are reasonably available, accept return of such Products held by Customer, grant a credit therefor as depreciated on a five (5) year straight-line basis, and terminate this Agreement without any further obligation or liability. The remedy selected by Hologic is Customer's exclusive remedy for any damage, cost, or expense resulting from any court order or settlement enjoining Customer's use of the Product.

**14. Software License.** The term "Software" includes all Hologic (and third-party) computer software, firmware and associated documentation, whether in printed or machine-readable form, supplied by reason of this Agreement or for use in connection with Equipment or Services. To the extent the Product includes Software, Customer is granted a non-exclusive, non-transferable, royalty-free license to use Software solely on the Equipment on which it is first installed or as designated in this Agreement, in connection with the Equipment in the normal course of Customer's business, and for no other purpose or business. No license is provided under this Agreement to use Software for multi-site quality control or data review purposes or for source code of any type. Software, at all times, remains the sole property of Hologic. Software is agreed to contain, and shall be treated as, confidential information. Customer shall maintain all copyright, proprietary, and other notices on the Software, and shall not de-compile, disassemble, or reverse engineer the Software. The Parties agree that all information needed for interoperability is available from Hologic in accordance with applicable government directives. From time to time, Hologic may develop new versions or updates for this software. Customer shall allow Hologic access to the Equipment to implement any new versions or updates to the software. If Customer transfers Equipment to a third-party, Customer may assign the right to use Software on the Equipment; provided that, the third-party agrees in writing with Hologic to be bound by and to permit Hologic to enforce the provisions of this section. Customer has no other right to use, sell, assign, transfer, copy, or sublicense Software. As identified in the applicable software product specifications, some third-party software vendors (including Microsoft Corporation) provide different warranties and require different or additional terms applicable to software which they supply; such warranties and terms supersede this Agreement and Customer agrees to abide by such terms with respect to such third-party software. The Microsoft End User License is located on the applicable installation CD-ROM (file name is EULA.txt). In addition to all other rights and remedies Hologic may have at law or in equity, Hologic may immediately terminate any Software license agreement if Customer defaults on any portion of this section.

**15. Confidential Information.** Both Parties agree to hold in strict confidence the terms of this Agreement and all information provided to the other in connection with the performance of their respective obligations under this Agreement, including, without limitation, financial and pricing information, except to the extent that disclosure is required

by applicable law. Notwithstanding the above, the terms and conditions of this Agreement must not be disclosed to any third-party without the prior written consent of the other Party, except either Party may disclose the terms and conditions of this Agreement to its employees, professional advisors, agents or independent contractors who require knowledge of the terms and conditions of this Agreement, so long as such individuals are subject to applicable non-disclosure agreements. Hologic is aware that Customer is a government entity and is subject to the California Public Records Act, *Cal. Govt. Code §6250 et seq.*, the Brown Act, *Cal. Govt. Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

**16. Product Performance Data.** Operational and performance data that is stored, recorded, made available, processed, created, derived, generated and collected from the Hologic manufactured or licensed Products ("Performance Data") is exclusively owned by Hologic and Hologic has all right, title and interest in and to any and all Performance Data. Performance Data does not include PHI (defined in Section 19).

**17. Use Restrictions.** Products are only intended for the uses listed in the applicable operator's manual or instructions for use and are subject to the specifications and requirements set forth therein. Customer assumes all risks associated with non-listed uses of Products and/or use of Products which is inconsistent with the specifications and requirements applicable to such Products, and Customer hereby indemnifies and holds Hologic harmless from any claim associated with any such uses. Customer is not licensed to, and agrees not to: (a) resell any Product, unless otherwise authorized by Hologic in writing; (b) transfer, or distribute any Product, directly or indirectly, to any third party for any purpose or use, except as otherwise approved by Hologic in writing; (c) use or allow anyone to dilute any Product; or (d) reverse engineer, disassemble, or conduct unauthorized analysis of any Product and/or its method of use.

**18. Compliance with Laws.** Hologic and Customer shall comply with all federal and state laws that govern the enforceability and performance of this Agreement.

**19. HIPAA Compliance.** To the extent HIPAA (as defined below) applies, both Parties shall comply with the applicable provisions of the privacy regulations within the Health Insurance Portability and Accountability Act of 1996, as enacted in 45 C.F.R. parts 160, 162, and 164 and as codified at 42 U.S.C. § 1320d, as amended from time to time ("HIPAA"). Hologic agrees that if it directly or indirectly gains access to Protected Health Information ("PHI") during any interaction with Customer it shall keep the PHI confidential pursuant to the terms of this Agreement.

**20. Federal and State Reporting/Disclosure Laws.** Customer acknowledges and agrees that federal and state reporting laws, including, but not limited to, the Federal Physician Payments Sunshine Act, may require Hologic to disclose certain aspects of this arrangement. Unless otherwise noted in this Agreement, the cost of any Product training provided by Hologic is included in the purchase price of the Product where applicable.

**21. Fraud and Abuse.** Hologic hereby certifies that it is not currently a listed vendor in the: (a) Federal General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Presidential Executive Orders 12549 and 12689 "Debarment and Suspension"; and (b) Office of the Inspector General of the Department of Health and Human Services' "List of Excluded Individuals/Entities." Any discounted pricing terms offered under this Agreement may be a "discount or other reduction in price" under the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). Customer shall take all actions necessary to comply with the Anti-Kickback Statute discount safe harbor regulations, 42 C.F.R. § 1001.952(h), including but not limited to, (i) maintaining accurate records reflecting the pricing terms of items and Services purchased under the Agreement; (ii) fully and accurately reporting any discount received under the Agreement if applicable; and (iii) making available information provided to Customer by Hologic concerning cost reports and other filings with the government, including but not limited to, the Secretary of the U.S. Department of Health and Human Services or other state agencies.

**22. Access to Books and Records.** Until the expiration of four (4) years after the furnishing of Services under this Agreement, Hologic shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents and records of Hologic as are necessary to certify the nature and extent of the costs hereunder. If Hologic carries out any of its duties under this Agreement through a subcontract, for the value or cost of \$10,000 or more over a 12-month period, with a related organization, such contract must contain a clause placing the same duty on the subcontractor as the agreement places on Hologic. This section survives the termination of this Agreement according to its terms. If the law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount set forth herein shall be amended accordingly. Notwithstanding the presence of this clause in this Agreement, this clause only applies if the actual dollar amount paid during any 12-month period equals or exceeds the government threshold amount.

**23. Default.** In addition to any default events specified elsewhere in this Agreement, the occurrence of any of the following events constitutes a default ("Default") by either applicable Party: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; or (b) failure to materially perform any covenant or condition of this Agreement. In the event of Default by Customer hereunder, all indebtedness of Customer may, at the option of

Hologic and without demand or notice of any kind, immediately become due and payable, and in addition to all other remedies, Hologic may (i) require Customer to return any Hologic-owned Equipment and/or (ii) immediately terminate this Agreement. The non-Defaulting Party is entitled to recover from the Defaulting Party any and all expenses and damages that the non-Defaulting Party sustains by reason of Default including, but not limited to, reasonable attorneys' fees, and in the case of Hologic, all expenses of repossession, removal, storage and disposition of the Equipment. The remedies and rights specified herein are cumulative and not exclusive. The exercise or the non-exercise of any right or remedy does not limit or prejudice the non-defaulting Party as to that right or remedy or as to any other rights or remedies provided by applicable law.

**24. Bankruptcy.** Except as may be prohibited by applicable bankruptcy laws, a Party to this Agreement may elect to cancel any unfulfilled obligations if any of the following situations arise: (a) the other Party becomes insolvent or is unable to pay debts as they become due; (b) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (c) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.

**25. Waiver and Severability.** If either Party fails to perform obligations under this Agreement, such nonperformance does not affect the other Party's right to enforce performance at any time. Waiver of any remedy or material breach of any subject matter contained in this Agreement is not a waiver unless agreed to by the Parties in writing. Each provision of this Agreement is separate and independent of one another, and the unenforceability of any provision shall not affect the enforceability of any other provision. If any provision is held to be excessively broad or unenforceable, such provision shall be modified accordingly so that it is enforceable to the fullest extent possible by law.

**26. Assignment.** Subject to the limitations provided in Section 14, Customer shall not assign this Agreement without the prior written consent of Hologic, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the rights and obligations herein shall be binding upon the successors and assigns of Customer.

**27. Notices.** Any notification required under this Agreement is deemed to have been given either one (1) day after being given to an express overnight carrier with a reliable system for tracking delivery; or when sent by a confirmed facsimile with another copy sent by any other means specified in this paragraph; or three (3) business days after having been mailed postage prepaid by United States registered or certified mail. Any required notices to Customer shall be delivered to the address set forth in the applicable Hologic quote or other purchasing program document, and to Hologic at the addresses listed below. Either Party may change its mailing address by notice as provided by this section.

Hologic, Inc.  
250 Campus Drive  
Marlborough, MA 01752  
Attn: Contracts Department  
Fax: 866-523-8691

With a copy to: Hologic, Inc.  
250 Campus Drive  
Marlborough, MA 01752  
Attn: Legal Department  
Fax: 508-263-2959

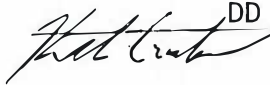
**28. Governing Law.** Upon execution, this Agreement is considered to be a California contract, entered into in California, and shall be governed and viewed under the laws of the State of California without reference to its conflict of laws provisions. The Parties specifically agree that any action relating to the relationship between the Parties, this Agreement, Products, or Services provided, purchased or licensed hereunder, shall be brought and tried in the Courts of California. Customer hereby waives all objections to and consents to the jurisdiction of the California Courts.

**29. Equal Employment Opportunity Policy.** Hologic is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**30. Counterparts and Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which is deemed an original but all of which together constitutes one and the same agreement. The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement shall be considered signed when the signature of a Party is delivered by facsimile transmission or delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail (email). Such facsimile or scanned signature must be treated in all respects as having the same effect as an original signature.

**31. Miscellaneous.** See applicable Hologic quote, attachment or purchasing program for additional terms and conditions, which supplement and/or supersede this Agreement, as applicable and may include, but are not limited to: **Term, Termination, and Right of Returns or Cancellation.**

Accepted and agreed to:

Customer (by its authorized representative)		Hologic, Inc. (by its authorized representative)	
Russell Bigler	Chairman, Board of Governors	 DD Date: 2022.04.21 13:08:53 -04'00'	
Name	Title		
Signature	Date		Signature

PLEASE EMAIL OR FAX COMPLETED AND SIGNED AGREEMENT TO  
[nationalcontracts@hologic.com](mailto:nationalcontracts@hologic.com)  
 OR (844) 749-3816

REVIEWED ONLY  
 NOT APPROVED AS TO FORM

By Jamie Mason  
 Legal Services Department





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

May 18, 2022

**Subject:** Proposed Services Agreement for Professional Services with Healthfuse, LLC

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve the proposed Services Agreement with Healthfuse, LLC, a revenue cycle vendor performance management company, to assist Kern Medical with optimizing its revenue cycle vendor performance (resulting in increased collections), reporting & analytics, contract negotiations, and vendor invoice reconciliation services. These services were not in place prior to the transfer of ownership of Kern Medical to the Kern County Hospital Authority ("KCHA"). However, KCHA can now improve its fiduciary responsibilities by adopting standards of performance accountability for current and future revenue cycle vendors and garnering ongoing public support through preliminary net cost savings estimates based upon cash factor improvements with current vendors, cash factor improvements with new initiatives, cost savings through vendor negotiations, and cost savings with invoice recoveries.

The monthly fixed service fee is \$18,500, with an initial term of thirty-six (36) months or \$222,000 per year (excluding bonus). Healthfuse, LLC would be eligible to receive a gainshare bonus of 30% on Net Yield for exceeding projections in the identified categories. The projected total net return of this services agreement is \$3,700,000.

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel including but not limited to the inability to terminate without cause during the initial three (3) year term, the automatic renewal of one (1) year terms, and interest on late payment. Efforts were made to negotiate these term that cannot be approved as to form to no avail.

Although Counsel is unable to approve as to form, Kern Medical still recommends that your Board approve the proposed Services Agreement with Healthfuse, LLC, for professional services in the Departments of Patient Accounting and Collections, for a term of three (3) years effective June 1, 2022 through May 31, 2025, in an amount not to exceed \$1,723,404, and authorize the Chairman to sign.



324 E. Wisconsin Ave. Suite 1300  
Milwaukee, WI, 53202  
[info@Healthfuse.com](mailto:info@Healthfuse.com)

Main Line:  
(414) 988-1130

April 1, 2022

Andrew Cantu  
CFO  
Kern Medical  
1830 Flower Street  
Bakersfield, CA 93305

**Re: Services Agreement Between Kern County Hospital Authority and Healthfuse**

Dear Andrew,

This letter will serve as an agreement (“Agreement”) between Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (“CLIENT”) and Healthfuse, LLC (“HEALTHFUSE”).

**Definitions**

The following terms when used in this Agreement have the meanings set forth below:

- A. **“Net Yield”** is defined as the dollar value of the increase or decrease in cost savings or collections improvement of the project to date achievement level versus the Baseline, and will be achieved when one or all of the below Net Yield Strategies occur:
- **“Cash Factor Improvement”** is defined as the dollar value of the increase or decrease in cash collections, of the project to date achievement level versus the baseline performance. It applies to those Vendors that provide collection outsourcing services to CLIENT, where such Vendors are compensated (as a percentage or fixed-fee) of cash collected. Cash Factor Improvement is calculated as a net liquidation percentage, as follows: (gross outsourcer collections less outsourcer fees) divided by a defined average period of outsourcer placements. CLIENT and HEALTHFUSE agree to the Cash Factor Improvement (CFI) calculation methodologies memorialized in **Exhibit B** and confirmed in **Addendum B**.
  - **“Safeguard Initiatives”** is defined as those strategies and tactics, previously not adopted by CLIENT, that HEALTHFUSE recommends, that result in increased cash collections. Those qualifying Safeguard Initiatives are listed in **Addendum C**. CLIENT and HEALTHFUSE agree to the Safeguard Initiative (SI) calculation methodologies memorialized in **Exhibit B** and confirmed in **Addendum C**.
  - **“Invoice Recoveries”** is defined as those Vendor fees that are billed in error to the CLIENT, and are disputed and recovered by HEALTHFUSE, through short-paying the Vendor invoice or recovering fees previously paid to the Vendor. CLIENT and HEALTHFUSE agree to the Invoice Recovery (IR) calculation methodologies memorialized in **Exhibit B**.
  - **“Contract Savings”** are defined as the decrease in fees CLIENT pays to Vendor as a result of HEALTHFUSE renegotiating the Vendor contract on CLIENT’S behalf. Contract Savings secured by CLIENT, as a result of HEALTHFUSE’s preliminary assessment or as part of the CLIENT-HEALTHFUSE partnership evaluation process, will count towards Net Yield and will be subject to

HEALTHFUSE gainshare fees. CLIENT and HEALTHFUSE agree to the Contract Savings (CS) calculation methodologies memorialized in **Exhibit B**.

- **“Baseline:”** the previous 12-month cost and collections performance levels, as defined in **Addendum B**. For Collections Vendors, which would contribute to Cash Factor Improvement, baseline period placement data may include data prior to the baseline period and will be defined in **Addendum B**.
- B. **“Statement of Value”** is defined as the reporting mechanism HEALTHFUSE will use to both memorialize Baseline Performance, as defined in **Addendum B**, as well as track Net Yield throughout the term of this Agreement. CLIENT agrees that the Statement of Value, and calculations within, will serve as an extension of this Agreement.
- C. **“Reserve Balance”** is defined as any debit (positive balance) or credit (negative balance) to HEALTHFUSE's fees balance, according to the HEALTHFUSE Invoice Methodology detailed in **Exhibit B**. On a month-to-month basis, Cash Factor Improvement may fluctuate, resulting in a situation where HEALTHFUSE has earned fees that have not been invoiced or where HEALTHFUSE has previously invoiced fees that exceed fees earned according to the Fee Schedule in **Exhibit A**. The Reserve Balance is a tracking mechanism that ensures that HEALTHFUSE's fees do not exceed the Fee Schedule in **Exhibit A** during any given Term. The Reserve Balance will be tracked monthly in the Statement of Value. In the event the Reserve Balance is a debit, the balance reflects fees due to HEALTHFUSE when invoiced. In the event the Reserve Balance is a credit, the balance reflects credits due to CLIENT. In the event of a credit, HEALTHFUSE cannot invoice gainshare fees to CLIENT until the Reserve Balance is above zero (0) dollars. At the end of each Term, the Reserve Balance will be resolved in full, through payment in full if a debit. If a credit exists at the end of the Initial Term or any Renewal Term, a refund in full will be issued, unless CLIENT and HEALTHFUSE mutually agree in writing to an alternative resolution.
- D. **“Vendors”** are defined as those bolt-on technologies (“Tech”), collection outsourcers (“Collections”), and other providers of services or technologies (“Other”), that support CLIENT’s revenue cycle operations, as memorialized in **Addendum A**.
- E. **“Payer”** is defined as a distinct Financial Class, such as Self-Pay, Managed Care Insurance, Commercial Insurance, Medicare, Medicaid, Worker’s Compensation, or other insurance plans.
- F. **“Stakeholder”** is defined as the CLIENT revenue cycle leader(s) responsible for supporting this Agreement, including the Chief Financial Officer and Vice President Revenue Cycle, or equivalent.

## 1.0 SCOPE OF SERVICES

- 1.1 HEALTHFUSE will provide analytics, research, and advisory support to manage CLIENT’s Vendors, and work to improve Vendor performance, resulting in Net Yield.
- 1.2 HEALTHFUSE will start with an assessment of current Vendors and associated processes. HEALTHFUSE will provide a Vendor improvement plan and will prioritize services and efforts based on Net Yield impact, with services being first applied to those Vendors, or Vendor-related strategies, where greatest Net Yield is projected by HEALTHFUSE.

## 2.0 COMMENCEMENT

The start date of this Agreement will be on this 1<sup>st</sup> day of June, 2022.

## 3.0 INITIAL TERM

The initial term will be thirty-six (36) months from the Commencement date, as defined herein.

## 4.0 FEE FOR SERVICE

- 4.1 CLIENT shall pay HEALTHFUSE according to the Fee Schedule in **Exhibit A**.
- 4.2 HEALTHFUSE will invoice CLIENT monthly for travel expenses in accordance with U.S. General Services Administration per diem incurred by HEALTHFUSE, associated with services provided at the CLIENT's location and approved by CLIENT prior to incurrence.
- 4.3 HEALTHFUSE will invoice CLIENT monthly for fees and travel expenses due to HEALTHFUSE. CLIENT agrees to pay HEALTHFUSE within thirty (30) days of receipt of invoice. A finance charge of 1.5% per month (18% per year) or the highest rate allowable by law, whichever is lower, will be applied to all invoices paid after ninety (90) days from date of receipt of invoice.
- 4.4 HEALTHFUSE will provide monthly Statements of Value, to support the monthly invoices, that delineate the Net Yield balance and associated gainshare fees, as applicable, for each New Yield strategy, as detailed in **Exhibit A**. Statements of Value will document the Net Yield balance month over month, payments made on Net Yield achieved, and the Reserve Balance. Calculations, adjustments, baseline amendments, and performance outcomes, within the Statement of Value, will act as an extension of this Agreement. If the Net Yield balance for a particular Net Yield Strategy is zero or less than zero, the associated gainshare fees invoiced by HEALTHFUSE will be zero.

## 5.0 CLIENT RESPONSIBILITIES

- 5.1 Complete and sign **Addendum A** upon execution of this Agreement.
- 5.2 Complete **Exhibit C** upon execution of this Agreement.
- 5.3 Within ten (10) days of execution of this Agreement, submit a letter of agency to each Vendor defined in **Addendum A**, thereby introducing them to HEALTHFUSE and notifying them of the scope of this Agreement. An example of a Letter of Agency is provided in **Exhibit D**.
- 5.4 Within ten (10) business days of submission from HEALTHFUSE, accept **Addendum B**, or provide a written explanation as to why the baseline is inaccurate. In the event that written explanation is not submitted within ten (10) business days of submission from HEALTHFUSE, **Addendum B** shall be considered accepted by CLIENT.

- 5.5 Within ten (10) business days of submission from HEALTHFUSE, accept **Addendum C**, or provide a written rejection of those Safeguard Initiatives that CLIENT chooses not to implement. CLIENT will make a good faith attempt to accept one (1) Safeguard Initiative each year.
- 5.6 Within fifteen (15) days of execution of this Agreement, provide Vendor contracts to HEALTHFUSE.
- 5.7 Within forty-five (45) days of execution of this Agreement, provide HEALTHFUSE Vendor account inventory and transaction files in an electronic format, similar to the existing files sent directly to CLIENT's Vendors. HEALTHFUSE's standard inventory file format is provided in **Exhibit E** and transaction file format is provided in **Exhibit F**.
- 5.8 Within forty-five (45) days of execution of this Agreement, provide HEALTHFUSE with a suitable method for remote, electronic, view-only access to CLIENT's operational system(s) that are applicable to the services of this Agreement, including, without limitation, patient accounting, patient access, billing, collections, document imaging, with such method of access to be consistent with current industry standards (e.g., Internet VPN) relating to similar application services. CLIENT will provide HEALTHFUSE personnel with the minimum training and orientation as may be needed for HEALTHFUSE personnel to effectively navigate the applicable systems.
- 5.9 In the event Vendor(s) do not provide required information to HEALTHFUSE within thirty (30) days of request from HEALTHFUSE, CLIENT will support HEALTHFUSE's follow-up efforts, including communicating directly with Vendors to collect required information. Required information includes remote Vendor system access, historical and current Vendor invoices, historical and current Vendor performance information, and other related information required for HEALTHFUSE to perform the services associated with this Agreement. In the event a Vendor refuses to provide required information, HEALTHFUSE and CLIENT will mutually agree to either: (1) remove the Vendor from **Addendum A** and **Addendum B**, removing the Vendor from scope, or (2) adjust services to be provided associated with the applicable Vendor, which may result in CLIENT paying HEALTHFUSE an additional fee not to exceed one thousand seven hundred dollars (\$1,700) per month per applicable Vendor.
- 5.10 Provide requested Vendor data to HEALTHFUSE, in the event Vendor is unable to provide requested data to HEALTHFUSE directly. This includes complete executed Vendor agreements, historical and current Vendor invoices, and historical and current Vendor performance information.
- 5.11 Provide notice, to those applicable parties within CLIENT organization, of the scope of this Agreement.
- 5.12 Provide HEALTHFUSE with letters of agency and other written correspondence sent to Vendors authorizing HEALTHFUSE to act on CLIENT's behalf, as it relates to the services of this Agreement.
- 5.13 Use commercially reasonable efforts to avoid making or implementing any Vendor process or revenue cycle sourcing decision without first notifying and collaborating with HEALTHFUSE.
- 5.14 As part of the implementation process, CLIENT and HEALTHFUSE will agree to an invoice certification approach that HEALTHFUSE will follow, which will include either a Concurrent or Retrospective invoice certification process.

- *If Concurrent:* CLIENT will deliver HEALTHFUSE all Vendor invoices before payments are payment and will pay Vendor invoice(s), directly to Vendors, after HEALTHFUSE has certified the Vendor invoice(s).
  - *If Retrospective:* CLIENT will pay Vendor invoice(s), directly to Vendors, before HEALTHFUSE has certified the Vendor invoice(s). After the Vendor invoice(s) are paid by CLIENT, HEALTHFUSE will complete the invoice certification process and will credit any disputes or recoveries on future Vendor invoice(s).
- 5.15 Approve language and documentation, to be used as addenda to Vendor agreements, that requires CLIENT's Vendors to: (1) define and commit to service level agreements (e.g., those activities and frequency of those activities that should be performed on outsourced accounts) and (2) define a resolution period for invoice disputes (e.g., that Vendor will respond to and confirm or resolve invoice disputes within thirty (30) days of receipt from HEALTHFUSE or CLIENT).
- 5.16 CLIENT will engage in joint governance and oversight of CLIENT's Vendors.
- 5.17 CLIENT will make good-faith efforts to approve and support Vendor contract negotiation efforts, as prescribed and facilitated by HEALTHFUSE. Before Vendor contract negotiation efforts, HEALTHFUSE will develop a negotiation plan and acquire CLIENT's approval prior to interacting with the Vendor. Once the plan is approved, CLIENT will support the plan and generally abide with best practice negotiation process and principles, which HEALTHFUSE will share with CLIENT prior to any negotiation. The most important negotiation principle to follow is "standing united." CLIENT and HEALTHFUSE agree to follow the negotiation plan, and as adjustments are required, CLIENT and HEALTHFUSE will discuss those adjustments privately first, and then present those adjustment to the Vendor afterwards.
- 5.18 CLIENT will assign a Stakeholder, or group of Stakeholders, to receive HEALTHFUSE recommendations and authorize decisions associated with the scope of services and Vendor performance improvement initiatives. CLIENT will notify HEALTHFUSE of decisions within thirty (30) days of the date HEALTHFUSE presents recommendations, or within a reasonable timeframe as mutually agreeable in good faith. CLIENT will promptly notify HEALTHFUSE of changes to CLIENT Stakeholder, as they change from time-to-time.
- 5.19 In the event of any CLIENT revenue cycle leadership changes, and in particular, changes to the CLIENT Stakeholders supporting this Agreement, including the Chief Financial Officer and Vice President Revenue Cycle or equivalent, CLIENT will notify HEALTHFUSE promptly of the change. The replacement Stakeholder(s) will meet with HEALTHFUSE within thirty (30) days of their employment start date, for a review of project scope, and make good faith efforts to substantially understand the nature of this Agreement within sixty (60) days of their employment start date, as to not substantially delay Vendor performance improvement decisions that impact Net Yield. In the event CLIENT replaces any Stakeholder supporting this Agreement during the final year of the then current term – either the Initial Term or any Renewal Term, the term of this Agreement shall extend for a period of time to ensure HEALTHFUSE is able to operate the program for a consecutive twelve (12) month period with the replacement Stakeholder(s).

## 6.0 HEALTHFUSE RESPONSIBILITIES

- 6.1 Complete and deliver to CLIENT a Vendor improvement plan and **Addendum B** and **Addendum C** after the assessment process. The Vendor improvement plan (referred to operationally as the Letter of Commitment), referenced in Section 1.2 will constitute **Addendum C** when submitted to CLIENT.
- 6.2 Provide CLIENT with monthly Statement of Value reports for each month after **Addendum B** is accepted per Section 5.4 of this Agreement. The first Statement of Value will include an estimated pro-forma and monthly fee projection for CLIENT's budget planning purposes.
- 6.3 Build and operate CLIENT's revenue cycle vendor management program. HEALTHFUSE will determine the technical and administrative activities required, as well as the frequency of the technical and administrative activities required to positively impact Net Yield, which include:
  - Process auditing
  - Inventory reconciliation
  - Invoice certification
  - Contract management and negotiation
  - Sourcing support
  - Coaching and remediation
  - Strategy and implementation
- 6.4 In the event that a Vendor is replaced, or a new Vendor added, HEALTHFUSE will obtain consensus and approval from CLIENT before executing the replacement or addition. HEALTHFUSE will memorialize this change in scope via email or contract signatory.

## 7.0 BASELINE DETERMINATION & VENDOR INCLUSION IN NET YIELD CALCULATION

- 7.1 By the conclusion of the assessment, HEALTHFUSE will document baseline Vendor cost and collections and Net Yield calculations in the Statement of Value. HEALTHFUSE will also document the baseline Vendor cost and collections in **Addendum B**.
- 7.2 At HEALTHFUSE's sole discretion, a Vendor's baseline information may not be provided in **Addendum B**, therefore excluding that Vendor from the Net Yield calculation, in the event that it is improbable for HEALTHFUSE to impact Vendor performance, due to market, regulatory, or other changes outside of HEALTHFUSE's control.
- 7.3 In the event that a Vendor cannot be managed by HEALTHFUSE for any reason, HEALTHFUSE shall notify the CLIENT of the reason and that Vendor shall be considered removed from **Addendum A** and **Addendum B**, even if the CLIENT does not sign either Addendum, so long as HEALTHFUSE provides written notification to CLIENT.
- 7.4 HEALTHFUSE will track Net Yield and associated fees on a Vendor level or Payer level, in the event multiple Vendors directly impact performance on the same Financial Class (e.g., early-out self-pay and bad debt collections will be combined as both directly contribute to collections within the Self-Pay Financial Class).



- 7.5 In the event that any part or the entirety of the baseline is found to be inaccurate during the term of this Agreement, even after both HEALTHFUSE and CLIENT accepted **Addendum B**, HEALTHFUSE will notify CLIENT that the baseline is inaccurate, and will provide a new corrected baseline. HEALTHFUSE will deliver a corrected Statement of Value and **Addendum B** for CLIENT's acceptance per Sections 5.4 and 6.2 of this Agreement.

## 8.0 RENEWAL AND CANCELLATION

- 8.1 At the end of each term, this Agreement will automatically renew for a subsequent one-year term (each one a "Renewal Term"). If 90 days prior to the end of the Initial Term, CLIENT does not notify HEALTHFUSE in writing an intention to not renew, this Agreement shall renew automatically.
- 8.2 CLIENT or HEALTHFUSE may cancel this Agreement during the initial term, for performance reasons, after the first twelve months, upon ninety (90) days written notice, in the event that Net Yield is less than two hundred thousand dollars (\$200,000).
- 8.3 During any Renewal Term, CLIENT or HEALTHFUSE may cancel this Agreement, for any or no reason, upon ninety (90) days advance written notice prior to the end of the then current term. If ninety (90) days advance written notice is not submitted, this Agreement will renew for a subsequent one-year term.

## 9.0 INDEMNIFICATION

- 9.1 Each party ("Indemnitor") shall each indemnify, defend and hold the other party ("Indemnitee") harmless from all third party claims, damages, demands, liabilities, costs and expenses (including reasonable attorneys' fees and costs), arising by reason of any claim against the Indemnitee, which claim is related to the services, materials and resources provided by HEALTHFUSE under this Agreement, including, without limitation, any claim for personal injury or property damage, including the property of the parties, by any agent, employee, customer or business visitor of the Indemnitor.
- 9.2 The foregoing indemnity is expressly conditioned upon the Indemnitee giving the Indemnitor: (a) prompt written notice of any such claims; however, failure or delay to so notify the Indemnitor shall not relieve the Indemnitor from any liability hereunder so long as the failure or delay shall not have prejudiced the defense of such claim; (b) reasonable assistance in defending the claim; and (c) sole authority to defend or settle such claim, with prior notice to Indemnitee.
- 9.3 HEALTHFUSE will not assume and should not be exposed to the business and operational risks associated with the business of CLIENT or any customer or patient of CLIENT.
- 9.4 The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. *California Health and Safety Code Section 101853(g)*

## 10.0 INDEPENDENT CONTRACTOR

HEALTHFUSE and all HEALTHFUSE representatives are performing services and duties under this Agreement as independent contractors and not as employees, agents, partners of, or joint ventures with CLIENT. CLIENT does not retain responsibility for the performance of HEALTHFUSE and HEALTHFUSE representatives as and to the extent required by law and the accreditation standards applicable to CLIENT. Such responsibility, however, is limited to establishing the goals and objectives for service and requiring services to be rendered in a competent, efficient, and satisfactory manner in accordance with applicable standards and legal requirements. HEALTHFUSE shall be responsible for determining the manner in which services are provided and ensuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement. In the event that a determination is made for any reason than an independent contractor relationship does not exist between CLIENT and HEALTHFUSE, CLIENT may terminate this Agreement immediately upon notice to HEALTHFUSE.

## 11.0 NON-SOLICITATION

- 11.1 HEALTHFUSE and CLIENT, during the time that HEALTHFUSE provides services to CLIENT and for a period of twelve (12) months thereafter, will not knowingly employ or contract with, directly or indirectly, any current employee of the other party without the express written consent of the other party.
- 11.2 While this Agreement is in effect and thereafter, CLIENT shall not use any training materials, policies, procedures, or forms prepared and/or used by HEALTHFUSE to perform the services for CLIENT without the express written consent of HEALTHFUSE.
- 11.3 The restrictions regarding employments, contracting, disclosure of terms of Agreement and use of HEALTHFUSE material shall also apply to any entity that is related to CLIENT.

## 12.0 DISPUTES AND ARBITRATION

- 12.1 Any discrepancies or disputes with invoiced items shall be documented in writing by CLIENT citing the specific nature of the dispute and submitted to HEALTHFUSE within thirty (30) days of invoice receipt. Any failure to file such dispute in writing shall constitute CLIENT's acceptance of the invoice due.
- 12.2 Any claim directly or indirectly to this Agreement ("Dispute") will be resolved solely in accordance with the terms of this section. The parties may submit the Dispute to non-binding mediation. If complete agreement cannot be reached within ninety (90) days after submission to mediation, any remaining issues shall be resolved by arbitration under the Commercial Rules of Arbitration of the Judicial Arbitration and Mediation Services. The arbitrator(s) shall have the power to make orders and rulings to regulate discovery. The arbitrator(s) shall not have the power to award special, incidental, consequential, punitive, exemplary damages.
- 12.3 Except as may be required by law, neither party nor the arbitrator(s) may disclose the existence or results of any arbitration without the prior written consent of both parties.

### **13.0 CONFIDENTIAL INFORMATION**

- 13.1 The Confidential Information of a party is the intellectual property of such party, and is protected by law, and such party's Confidential Information is, and remains, such party's sole and exclusive property, and such party would be irreparably damaged if such Confidential Information were disclosed or otherwise used without its prior authorization.
- 13.2 With respect to the Confidential Information of the other party, each party hereby acknowledges and agrees that: (a) it will maintain such Confidential Information in the strictest confidence and will use the Confidential Information only for the performance of its obligations under this Agreement; and (b) other than as expressly provided in the Agreement, it shall have no right to copy or reproduce such Confidential Information, in whole or in part, electronically or otherwise, without the owner's express prior written permission.
- 13.3 A party may disclose Confidential Information of the other party as specifically required by the legal process, after such party has given the other party a reasonable amount of time to take action to protect such information prior to such disclosure.
- 13.4 HEALTHFUSE is aware that CLIENT is a government entity and is subject to the California Public Records Act, *Cal. Govt. Code §6250 et seq.*, the Brown Act, *Cal. Govt. Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.
- 13.5 Any breach of this Section by one party will result in immediate and irreparable injury to the non-breaching party, and such non-breaching party shall be entitled to take whatever action may be necessary, at law or in equity, to preserve the trade secret, confidential, and proprietary nature of its Confidential Information.

### **14.0 CO-MARKETING**

- 14.1 CLIENT and HEALTHFUSE may agree to promote each other and each other's products and services. Any such co-marketing terms and conditions will be agreed to in writing.
- 14.2 As HEALTHFUSE achieves and maintains reasonably desired performance, associated with this Agreement, HEALTHFUSE and CLIENT may develop a joint case study or present the results of the services through various media, including webinars and speaking engagements.

### **15.0 ENTIRE AGREEMENT; AMENDMENTS**

- 15.1 The provisions of this Agreement shall override any and all contrary or conflicting provisions contained in all past and present agreements. Unless otherwise provided herein, this Agreement may be modified, amended, or waived only by a written instrument executed by both parties hereto.
- 15.2 This Agreement shall apply to the successors and assigns of both parties.

15.3 This Agreement sets forth all of the terms of the relationship between the parties. If any part of this Agreement is held to be invalid or unenforceable, such part will be treated as severable, and the remaining parts of the Agreement shall continue to be valid and enforceable.

**16.0 GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California.

Healthfuse, LLC and Kern County Hospital Authority hereby enter into this Agreement:

**KERN COUNTY HOSPITAL AUTHORITY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Russell Bigler

Title: Chairman, Board of Governors

**HEALTHFUSE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Nicholas J Fricano

Title: CEO

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By [Signature]  
**Legal Services Department**



**ADDENDUM B – VENDOR PERFORMANCE & COST BASELINE**  
 (To be Accepted by CLIENT within 10 business days of receipt from HEALTHFUSE)

Date Submitted by HEALTHFUSE: \_\_\_\_\_

Vendor Legal Name	Vendor Type (Collections, Tech, Other)	Gross Placements	Net Collections	Vendor Fees	Net Collections	Cash Factor	Baseline Period	Calculation Methodology Notes	Applicable Value Lever(s)			
									CFI	SI	IR	CS
(Example) ABC Collection Services	Collections	\$1,000	\$150	\$18	\$132	13%	1/1/18 through 12/31/18	For CFI: Rolling previous 12 month average	Yes	No	Yes	Yes
										No		
										No		
										No		
										No		
										No		
										No		
										No		
										No		
										No		

**Addendum B** is the summary of Vendor cost and collections performance during the baseline period, which may include account placement data from prior to the baseline period for Collections Vendors. The detail supporting this Addendum can be found in the Statement of Value (SOV), which is provided to CLIENT with this **Addendum B**. The SOV provides supporting calculation methodologies, consistent with the **Definitions** section of the Agreement and similar to the calculation methodologies provided in **Exhibit B**, and acts as an extension of this **Addendum B** and Services Agreement.



**ADDENDUM C – SAFEGUARD INITIATIVES**  
(To be Accepted by CLIENT within 10 business days of receipt from HEALTHFUSE)

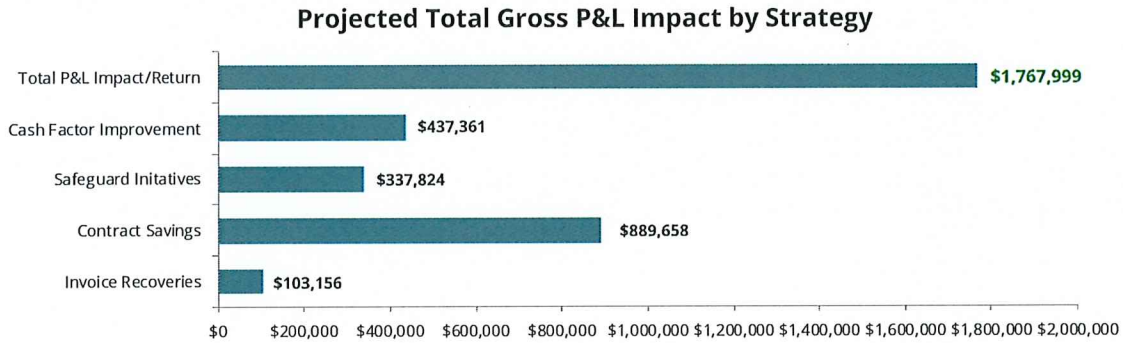
Date Submitted by HEALTHFUSE: \_\_\_\_\_

Safeguard Initiative	Top Industry Vendors	Baseline Period	Baseline Notes

**EXHIBIT A – FEE SCHEDULE**

**Monthly Management Fee and Gainshare Bonus:** CLIENT shall pay HEALTHFUSE a monthly management fee of eighteen thousand five hundred dollars (\$18,500). In addition to the monthly management fee, CLIENT shall pay HEALTHFUSE a gainshare bonus on Net Yield above the projected total P&L impacted identified to CLIENT via the HEALTHFUSE Preliminary Vendor Assessment, detailed in the graph below. The gainshare bonus shall be paid according to the following schedule, as achieved and only above the projections:

- Cash Factor Improvement, as achieved above projections: 30%
- Safeguard Initiatives, as achieved above projections: 30%
- Invoice Recoveries, as achieved above projections: 30%
- Contract Savings, as achieved above projections: 30%



**Annual Fee Escalator (for Monthly Management Fees only): 4.8%.**



## EXHIBIT B – CALCULATION METHODOLOGIES

### B.1 Cash Factor Improvement (CFI).

HEALTHFUSE Invoice Methodology for CFI: to account for seasonality and cyclicity of collections performance, HEALTHFUSE will invoice approximately 75% of gainshare fees, as earned and as applicable according to **Exhibit A**, as to avoid a credit balance (situation whereby HEALTHFUSE over-invoices CLIENT). Reserve balances will be balanced and paid at the end of each Term.

Note - the data below is an example only, and not representative of CLIENT's actual collection data. It is provided in this exhibit as an example of how the calculation of cash factor improvement works. Additionally, the length of months used for the rolling placement average may vary by vendor type, but is commonly 4 months, 6 months, or 12 months. The specific time frame is outlined in ADDENDUM B with the baseline data.

Step 1: Calculate Baseline Net Liquidation	Baseline	Month 1	Month 2	Month 3	Month 4
First: Determine vendor median hold times, this will be the number of months for the denominator below. In this example, we will use 4 month rolling placement average. Numerator: Baseline Gross Collections minus Baseline Vendor Fees = \$30,000 - \$6,000 = \$24,000 Denominator: Rolling placement average (\$800,000 / 4 months = \$200,000 average) Baseline Net Liquidation: \$24,000 / \$200,000 = 12.00%	Baseline Placements	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
	Baseline Gross Collections	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
	Baseline Vendor Fees = 20%	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
	Baseline Net Collections	\$ 24,000	\$ 24,000	\$ 24,000	\$ 24,000
	Baseline Net Net Collection Rate	12%	12%	12%	12.00%

Step 2: Calculate Current Month Net Collection Rate	Year 1	Month 1	Month 2	Month 3	Month 4
Numerator: Curr Month Gross Collections - Curr Month Vendor Fees = \$60,000 - \$12,000 = \$48,000 Denominator: Rolling placement average of Current Month (\$665,000 / 4 months = \$166,250) Current Month Net Liquidation: \$48,000 / \$166,250 = 28.87% average)	Yr1 Placements	\$ 100,000	\$ 150,000	\$ 175,000	\$ 240,000
	Yr1 Gross Collections	\$ 50,000	\$ 45,000	\$ 40,000	\$ 60,000
	Yr1 Vendor Fees = 20%	\$ 10,000	\$ 9,000	\$ 8,000	\$ 12,000
	Yr1 Net Collections	\$ 40,000	\$ 36,000	\$ 32,000	\$ 48,000
	Yr 1 Net Collection Rate	40%	29%	23%	28.87%

Step 3: Calculate the Collections Improvement	Calculated Collections Improvement	Month 1	Month 2	Month 3	Month 4
We can see that the net collection rate in year 1 (28.87%) is higher than the parallel month in the baseline (12.00%), but what is the dollar improvement? We calculate this by comparing actual net collections this month with what net collections would have been if the baseline net collection rate had continued.  Collections Improvement = Current Period Net Collections minus (Baseline Period Net Collection Rate times Current Period Rolling Placement Average)  Collections Improvement = \$48,000 (cell E12) - (12% * \$166,250 placement average) = \$48,000 - \$19,950 = \$28,050	NetCollection Rate Improvement	28%	17%	11%	16.87%
	Collection Improvement	\$ 28,000	\$ 21,000	\$ 15,000	\$ 28,050

### B.2: Safeguard Initiatives (SI)

HEALTHFUSE Invoice Methodology for SI: HEALTHFUSE will invoice 100% of gainshare fees, as earned and as applicable according to **Exhibit A**.

Note - the data below is an example only, and not representative of CLIENT's actual collection data. It is provided in this exhibit as an example of how the calculation of safeguard initiatives works.

Step 1: Calculate Baseline Performance	Baseline	Month 1	Month 2	Month 3	Month 4
Some safeguard initiatives may have been performed previously by internal hospital employees. The first step is defining the baseline performance for the initiative. Net Collections = Gross Collections - Baseline Expense = \$0 - \$0 = \$0	Baseline Gross Collections	\$ -	\$ -	\$ -	\$ -
	Baseline Expense	\$ -	\$ -	\$ -	\$ -
	Baseline Net Collections	\$ -	\$ -	\$ -	\$ -

Step 2: Calculate Current Month Net Collections	Year 1	Month 1	Month 2	Month 3	Month 4
Perform same calculation for each month in the project year. For example:  Month 4 Net Collections = Month 4 Gross Collections - Month 4 Vendor Fees = \$60,000 - \$12,000 = \$48,000	Yr1 Gross Collections	\$ 50,000	\$ 45,000	\$ 40,000	\$ 60,000
	Yr1 Vendor Fees = 20%	\$ 10,000	\$ 9,000	\$ 8,000	\$ 12,000
	Yr1 Net Collections	\$ 40,000	\$ 36,000	\$ 32,000	\$ 48,000

Step 3: Calculate the Collections Improvement	Calculated Collections Improvement	Month 1	Month 2	Month 3	Month 4
Compare the net collections from the current month to the parallel month in the baseline period.  Month 4 Collection Improvement = Month 4 Net Collections in Yr 1 - Month 4 Net Collections in Baseline = \$48,000 (H15) - \$0 (H9) = \$48,000	Collection Improvement	\$ 40,000	\$ 36,000	\$ 32,000	\$ 48,000

### B.3: Invoice Recoveries (IR)

**HEALTHFUSE Invoice Methodology for IR:** HEALTHFUSE will invoice 100% of gainshare fees, as earned and as applicable according to **Exhibit A**.

Note - the data below is an example only, and not representative of CLIENT's actual collection data. It is provided in this exhibit as an example of how the calculation of invoice recoveries works.

Step 1: Review Initial Fees Assessed by Vendor	Original Fees	Acct 123	Acct 234	Acct 345	Total
Review the initial fees assessed by the vendor. Where there are inconsistencies with the contract, Healthfuse will identify and work with the vendor to obtain a corrected invoice or credit from fees paid in prior month. In the example to the right, the effective fee rate applied by the vendor is 20%.	Gross Collections	\$ 100	\$ 200	\$ 300	\$ 600
	Vendor Fee Applied	\$ 20	\$ 40	\$ 60	\$ 120
	Effective Fee Rate	20%	20%	20%	20%

Step 2: Review Corrected Fees Certified by Healthfuse	Corrected Fees	Acct 123	Acct 234	Acct 345	Total
Review the corrected amount. In this example, the vendor applied a 20% fee when contractually it should have been 10%.	Gross Collections	\$ 100	\$ 200	\$ 300	\$ 600
	Corrected Fee	\$ 10	\$ 20	\$ 30	\$ 60
	Effective Fee Rate	10%	10%	10%	10%

Step 3: Calculate Invoice Recoveries	Invoice Recoveries	Acct 123	Acct 234	Acct 345	Total
Once the vendor either submits a corrected invoice or a credit for fees assessed in error, calculate the invoice recoveries by comparing the initial fees assessed to the corrected fees.  Invoice Recoveries = Initial Fee - Corrected Fee = \$120 - \$60 = \$60	Initial Fee	\$ 20	\$ 40	\$ 60	\$ 120
	Corrected Fee	\$ 10	\$ 20	\$ 30	\$ 60
	Invoice Recoveries	\$ 10	\$ 20	\$ 30	\$ 60

### B.4: Contract Savings (CS)

**HEALTHFUSE Invoice Methodology for CS:** HEALTHFUSE will invoice 100% of gainshare fees, as earned and as applicable according to **Exhibit A**.

Note - the data below is an example only, and not representative of CLIENT's actual collection data. It is provided in this exhibit as an example of how the calculation of cost savings works.

Step 1: Review Current Fees Assessed by Vendor	Current Fees	Month 1	Month 2	Month 3	Total
Review the current fees assessed by the vendor after a rate reduction has been secured.	Gross Collections	\$ 100	\$ 200	\$ 300	\$ 600
	Vendor Fee Applied	\$ 20	\$ 40	\$ 60	\$ 120
	Effective Fee Rate	20%	20%	20%	20%

Step 2: Calculate Pre-Negotiated Fees	Original Fees	Month 1	Month 2	Month 3	Total
Calculate what fees would have been each month had the rate not been negotiated to a lower amount.  Original Fees = Gross Collections This Month * Pre-Negotiated Rate	Gross Collections	\$ 100	\$ 200	\$ 300	\$ 600
	Original Rate (30%)	30%	30%	30%	30%
	Pre-Negotiated Fees	\$ 30	\$ 60	\$ 90	\$ 180

Step 3: Calculate Contract Savings	Invoice Recoveries	Month 1	Month 2	Month 3	Total
To calculate contract savings, compare what fees would have been each month with current collectoins if the fee had not been negotiated to what they are after the negotiations.  Cost Savings = Pre-Negotiated Fees - Vendor Fee Applied = \$180 - \$120 = \$60	Pre-Negotiated Fees	\$ 30	\$ 60	\$ 90	\$ 180
	Vendor Fee Applied	\$ 20	\$ 40	\$ 60	\$ 120
	Cost Savings	\$ 10	\$ 20	\$ 30	\$ 60

### EXHIBIT C – IMPLEMENTATION PLANNING FORM

**General Information**

	Legal Name	Address	Net Patient Revenue				
Health System Legal Name							
	Name	Address	Net Patient Revenue	Bed Size	Pt Accting System	Included in CBO?	Brief Explanation
In-Scope Hospital 1							
In-Scope Hospital 2							
In-Scope Hospital 3							
In-Scope Hospital 4							
In-Scope Hospital 5							
In-Scope Physician Office 1							
In-Scope Physician Office 2							
In-Scope Physician Office 3							
In-Scope Physician Office 4							
In-Scope Physician Office 5							

**Key Contacts**

	Full Name	Email	Office Phone	Mobile Phone	Address	Is Contact Primary?
Chief Financial Officer						
Vice President, Revenue Cycle						
Director, Patient Access						
Director, Health Information Management						
Director, Care Coordination						
Director, Patient Financial Services						
Contracting/Legal						
Vendor Liaison						
IT Resource (re: reconciliation and transaction files)						
IT Resource (patient accounting system access forms)						

**Current-State Vendor Management**

	Place "x" if Yes	Place "x" if No	Brief Explanation	
Process auditing				
Inventory reconciliation				
Invoice certification				
Vendor performance reporting				
Regular vendor performance meetings				
	Place "x" if Rev Cycle	Place "x" if Sup. Chain	Other (Who)	Brief Explanation
Who manages sourcing?				
Who negotiates vendor contracts?				
Who manages vendor contracts?				

**EXHIBIT D – LETTER OF AGENCY**

SENT VIA EMAIL

RE: Introduction and Letter of Agency

Dear [INSERT NAME],

I hope this email finds you well. Please consider this email formal notice that [ABC HOSPITAL] has engaged Healthfuse to help us build and operate our Vendor Management Office (VMO). As part of the program, Healthfuse will have informational and reporting requests of [VENDOR NAME].

I have cc'd Healthfuse's representatives on our project on this email. [HEALTHFUSE NAMES], will be your key contacts. They will be in touch soon to schedule a time to discuss [VENDOR NAME]'s services with [ABC HOSPITAL].

[VENDOR NAME] is authorized to share data and information with Healthfuse. Your timely assistance throughout this process is much appreciated.

To help expedite the process, please send the following to Healthfuse:

- Executed contract, including any/all amendments. Due: [TODAY + 2 DAYS]
- Most recent 24 months of gross placements. Due: [TODAY + 5 DAYS]
- Most recent 24 months of gross collections. Due: [TODAY + 5 DAYS]
- Most recent 24 months of electronic detailed invoices. Due: [TODAY + 5 DAYS]
- Inventory file based on Healthfuse reporting spec. Due: [TODAY + 10 DAYS]
- Activity/Notes file based on Healthfuse reporting spec. (Due: [TODAY + 15 DAYS])

Thank you for your support and assistance. Should any questions arise, please let me know.

Sincerely,

[HOSPITAL CONTACT]

**EXHIBIT E – STANDARD INVENTORY FILE FORMAT (COLLECTION OUTSOURCERS)**

This exhibit outlines the data fields and transmission schedule of an 'inventory' file to be used for purposes of account audits and inventory reconciliations with each collection outsourcer's assignments. The file is to contain a complete snapshot of all outsourced hospital and/or physician practice accounts with an open balance. Excel or CSV format, or a format that can be easily parsed out in Excel is preferred.

**File data fields:**

**\*\* Attributes in *Italics* are crucial data elements**, remaining attributes to be added if easily exportable

Field	Attribute	Description
1	<i>Account Number</i>	Unique account identifier used in the hospital and/or physician practice information system
2	Guarantor Number	Unique patient identifier used in the hospital and/or physician practice information system
3	Patient Name	Patient's first and last name that is associated with the account number
4	Date of Service	Service date for the account number Format: mm/dd/yyyy
5	<i>Agency Identifier</i>	Agency code or other attribute used to identify placement to an outsourcer within the patient accounting system
6	<i>Agency Assignment Date</i>	Date of initial placement to agency Format: mm/dd/yyyy
7	Last Pay Date	Date of last payment Format: mm/dd/yyyy
8	Billed Status	Current account billing status -- including but not limited to the following examples: <ul style="list-style-type: none"> <li>• Billed</li> <li>• Open/Pending</li> <li>• Closed</li> </ul>
9	<i>Current Balance</i>	Current account balance (Total AR) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
10	Primary Insurance	Name of primary insurance carrier
11	Secondary Insurance	Name of secondary insurance carrier
12	Facility	Name of facility for main hospital
13	Current Self-Pay Balance	Current account balance (Total Self-Pay) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
14	Current Insurance Balance	Current account balance (Total Insurance) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
15	Discharge Date	Discharge date for the account number (if an Outpatient this date will be the same as the Date of Service) Format: mm/dd/yyyy
16	First Patient Billed Date	Date first statement was sent to patient Format: mm/dd/yyyy
17	First Insurance Billed Date	Date first claim was billed to insurance Format: mm/dd/yyyy

18	Type of Account	Current account type -- including but not limited to the following examples: <ul style="list-style-type: none"> <li>• Inpatient</li> <li>• Outpatient</li> <li>• Emergency Department</li> <li>• Observation</li> </ul>
19	Primary Financial Class	Primary Financial Class of account
20	Current Financial Class	Current Financial Class of account

**Data field notes:**

- If agency codes are not easily recognizable, please provide agency code dictionary

**File naming convention:**

*mmddy\_hospital\_Facility\_Inv*

<i>mmddy</i>	=	Date the file was generated
<i>hospital</i>	=	Hospital name (abbreviation is preferred)
<i>Facility</i>	=	Facility Name (abbreviation is preferred)

**Transmission schedule:**

A new file is to be uploaded to the Healthfuse secure FTP site on the first business day of a new month and around the 15<sup>th</sup> of each month. It should contain all accounts with an outsourced vendor as of the day of the report. It is recommended that the upload process be automated, if possible.

**EXHIBIT E – STANDARD TRANSACTION FILE FORMAT**

This document outlines the data fields and transmission schedule of a transaction file, to be used for purposes of vendor invoice comparisons. The file is to contain a complete snapshot of all transactions that could be applied to each vendor in a hospital and/or physician capacity. Excel or CSV format is preferred. If providing in Excel, please do not rename the sheet.

**File data fields:**

\*\* *Attributes in Italics are crucial data elements*, remaining attributes to be added if easily exportable

Field	Attribute	Description
1	<i>Account Number</i>	Unique account identifier used in the hospital and/or physician practice information system
2	Guarantor Number	Unique patient identifier used in the hospital and/or physician practice information system
3	Patient Name	Patient's first and last name that is associated with the account number
4	Date of Service	Service date for the account number Format: mm/dd/yyyy
5	<i>Agency Identifier</i>	Agency code or other attribute used to identify placement to an outsourcer within the patient accounting system
6	<i>Agency Assignment Date</i>	Date of initial placement to agency Format: mm/dd/yyyy
7	Last Pay Date	Date of last payment Format: mm/dd/yyyy
8	Billed Status	Current account billing status -- including but not limited to the following examples: <ul style="list-style-type: none"> <li>• Billed</li> <li>• Open/Pending</li> <li>• Closed</li> </ul>
9	<i>Current Balance</i>	Current account balance (Total AR) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
10	Primary Insurance	Name of primary insurance carrier
11	Secondary Insurance	Name of secondary insurance carrier
12	Facility	Name of facility for main hospital
13	Current Self-Pay Balance	Current account balance (Total Self-Pay) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
14	Current Insurance Balance	Current account balance (Total Insurance) as reflected in patient accounting system Format: Up to 12 Char + "." + 2 Char (ex. 2000.16)
15	Discharge Date	Discharge date for the account number (if an Outpatient this date will be the same as the Date of Service) Format: mm/dd/yyyy
16	First Patient Billed Date	Date first statement was sent to patient Format: mm/dd/yyyy
17	First Insurance Billed Date	Date first claim was billed to insurance Format: mm/dd/yyyy



18	Type of Account	Current account type -- including but not limited to the following examples: <ul style="list-style-type: none"> <li>• Inpatient</li> <li>• Outpatient</li> <li>• Emergency Department</li> <li>• Observation</li> </ul>
19	Primary Financial Class	Primary Financial Class of account
20	Current Financial Class	Current Financial Class of account

**Data field notes:**

- If agency codes are not easily recognizable, please provide agency code dictionary

**File naming convention:**

***mmddyy\_hospital\_Facility\_Inv***

<i>mmddyy</i>	=	Date the file was generated
<i>hospital</i>	=	Hospital name (abbreviation is preferred)
<i>Facility</i>	=	Facility Name (abbreviation is preferred)

**Transmission schedule:**

A new file is to be uploaded to the Healthfuse secure FTP site on the first business day of a new month and around the 15<sup>th</sup> of each month. It should contain all accounts with an outsourced vendor as of the day of the report. It is recommended that the upload process be automated, if possible.

## 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 VENDOR (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of April 27, 2022 (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 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:

Healthfuse  
324 E. Wisconsin Avenue, Ste 1300  
Milwaukee, WI 53202  
Attn: President

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:**

Healthfuse

  
\_\_\_\_\_  
Title: President & COO

Date: 04/27/2022

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority

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

May 18, 2022

**Subject:** Proposed Material Transfer Agreement with the University of Arkansas, Fayetteville

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

The Kern Medical Center Foundation, on behalf of Kern Medical, is requesting your Board approve the proposed Material Transfer Agreement with the University of Arkansas, Fayetteville to allow for the transfer of Valley Fever Specimens to allow further development of Valley Fever diagnostics.

This study aims to determine the sensitivity and specificity of the Chemonex LLC Coccidioides test using de-identified remnant serum and urine samples from individuals with and without coccidioidomycosis. The following items highlight the impact of the funding.

- The soil-dwelling fungi *Coccidioides immitis* and *C. posadasii* are found in arid conditions throughout the southwestern United States, Central, and South America and cause coccidioidomycosis (“CM”), also known as Valley fever. From 1998 to 2018 the reported incidence of CM rose a dramatic 587% with current estimates at ~150,000 infections per year. While many new antifungals have been developed for treatment of CM, month-long diagnostic delays are a major obstacle to effective treatment decision making. CM diagnosis currently relies on a combination of non-specific symptoms, radiographic findings and laboratory results from imperfect tests. While CM is a fungal infection, symptoms often mimic those of other illnesses from the common cold to tuberculosis and cancer.
- Currently approved CM diagnostics are limited by poor sensitivity and a lack of transparency regarding proprietary antibody (Ab) and antigen (Ag) test reagents, which is in turn limiting diagnostic innovation and test performance improvement. There are four commercially available CM Ab tests and one Ag test currently on the market for testing peripheral blood. All have excellent specificity (~99%), but the sensitivity is very poor (64% for Ab tests and 51% for the only Ag test).
- Chemonex, LLC has developed a new CM test which can detect Galactomannan antigen (GM) in clinical, veterinary, environmental or laboratory samples that has not been independently evaluated. This project will evaluate the Chemonex test using de-identified remnant serum and urine samples from individuals with and without CM.

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel including but not limited, to the lack of indemnification.

Although Counsel is unable to approve as to form, it is recommended that your Board approve the proposed Materials Transfer Agreement to allow for the transfer of Valley Fever Patient Specimens, authorize the Chief Executive Officer to approve additional documents in support of the transfer of human specimens in this agreement, and authorize the Chairman to sign.

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

## MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (the "Agreement") as of May 18, 2022, (the "Effective Date") between the Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas, Fayetteville, an Arkansas public university and state instrumentality ("U of A") located at 1125 W. Maple Street, 316 Administration Building, Fayetteville, AR 72701 and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("KCHA"), together with and without distinction between them, the "Parties."

This Agreement sets forth terms and conditions under which both Parties are willing to transfer and to receive the "Material" (also alternatively referenced herein as the "Materials") expressly described in Exhibit A for the purpose of conducting those certain tests, evaluations, and analyses expressly set forth in Exhibit B (hereinafter, the "Study").

In consideration of the foregoing premises and the mutual covenants set forth below, U of A and KCHA agree to the following:

### 1. Use of Material by Parties

- a. KCHA agrees to provide U of A with quantities of the Materials as set forth on Exhibit A or otherwise needed to reasonably conduct the Study.
- b. The Materials will be received by the U of A solely for the Study.
- c. U of A will use the Materials in compliance with all applicable laws and governmental regulations, only for the Study and for no other purpose.
- d. U of A shall not sell, transfer, license, disclose, or otherwise provide access to the Materials to any person or entity except those employees who require access to the Materials for conducting the Study.
- e. The Study shall be conducted at U of A's facility as indicated in Study.
- f. The Materials shall not be used in research that would subject either Party or any or all of the Materials to consulting or licensing obligations to any third party unless and until prior written permission is mutually agreed upon by both Parties.

### 2. Proprietary Rights.

- a. *Proprietary rights.* U of A acknowledges and agrees that (i) it shall acquire no right, title, or interest of any kind whatsoever with respect to any patents, copyrights, trademarks, trade secrets, methods, inventions, applications or other proprietary rights of KCHA as a result of U of A's performance under this Agreement or otherwise and (ii) KCHA is, and shall remain at all times, the sole owner of the Material, as well as the know-how, proprietary rights and any and all of KCHA's Confidential Information (defined below).
- b. *Results.* The Parties agree that all of the results, data and analyses resulting from the use of the Materials in the Study shall be the shared Proprietary and Confidential Information of KCHA and U of A.

3. **Confidentiality.** Both Parties agree to hold in confidence any and all information provided by the other under this Agreement whether or not marked as "confidential" when provided ("Confidential Information") and shall not disclose the same to any third party without the prior written consent of the other party unless required to do so by Court Order or by law, in which case the Party involved

shall (i) notify the other in writing at least seven (7) days prior to making such disclosure to allow to assert whatever exclusions or exemptions may be available to it under such law or regulation; and (ii) undertake best efforts to minimize the effect of any such disclosure. Both Parties agree, and all personnel involved in the Study agree, not to use any Confidential Information other than for the purposes of this Agreement without the prior written consent of the other Party. U of A is aware that KCHA is a government entity and is subject to the California Public Records Act, *Cal.Govt.Code §6250 et seq.*, the Brown Act, *Cal.Govt.Code §54950 et seq.*, and other laws pertaining to government entities. KCHA is aware that U of A is a public entity that is subject to the Arkansas Freedom of Information Act, *Ark. Code Ann. § 25-19-101 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

The above obligation shall not apply to CONFIDENTIAL INFORMATION which:

- a. At the time of disclosure is in the public domain or thereafter becomes part of the public domain through no fault of the party receiving such information;
- b. The party receiving can conclusively establish such information was in its possession prior to the time of disclosure as evidenced by written records;
- c. Is independently made available to the party receiving such information by a third party who is not thereby in violation of a confidential relationship with the other party; or
- d. Receiving Party can conclusively establish such information was independently developed by or on its behalf without use of the proprietary information of the other party as proven by written records.

Unless otherwise expressly agreed in writing, the obligation of Confidentiality contained in this paragraph shall endure for a period of five (5) years from the Effective Date of this Agreement.

4. **Study Modifications.** After the Effective Date of this Agreement the evaluation and assessment described in the Study may be amended or modified only by a written amendment to this Agreement signed by both U of A and KCHA.
5. **Study Completion.** Upon completion of the Study U of A shall provide in writing a complete and detailed account/report of activities, including but not limited to experimental details, results, and interpretation of results. In the case of early termination of this Agreement, U of A shall, if requested by KCHA, promptly return or destroy any Material and/or Confidential Information.
6. **Technology Rights.** Both Parties represent that all investigators are employees of the respective Parties and all other personnel who will participate in the Study are employees or agents of said Parties and are obligated to assign to Parties all inventions made in the course of their employment, either by written agreement or by the terms of employment.
7. **Indemnification.** Under Arkansas law the U of A may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages. However, with respect to loss, expense, damage, liability, claims or demands either at law or in equity, for actual or alleged personal injury, including death, and property damage, including intellectual property right infringement arising from the work performed under this Agreement by the U of A and its employees or agents, the

U of A agrees with KCHA that: (a) it will cooperate with KCHA in the defense of any action or claim brought against KCHA seeking the foregoing damages or relief; (b) it will in good faith cooperate with KCHA should KCHA present any claims of the foregoing nature against U of A to the Claims Commission of the State of Arkansas; (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, the U of A reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

- 8. Recipient Employees.** U of A shall ensure that all employees and agents abide by all relevant obligations set forth in this Agreement, including, but not limited to, those on confidentiality and ownership of results, and shall cause such employees to execute written acknowledgements to such effect.
- 9. Term.** The study shall commence on the Effective Date and shall run until the of the completion of the Study and/or by written notice of termination given by Party to be effective 30 days upon receipt by the other Party.
- 10. Independent Contractors.** The parties shall perform their obligations under this Agreement as independent contractors and nothing contained in this Agreement shall be construed to be inconsistent with such relationship or status. This Agreement shall not constitute, create or in any way be interpreted as a joint venture or partnership of any kind.
- 11. Miscellaneous.**
  - a. No Waiver.** Any delay in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under this Agreement, excepting only as to any express written and signed waiver as to a particular matter for a particular period of time.
  - b. Severability.** Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions thereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provisions with a valid and enforceable one such that objectives contemplated by them when entering this Agreement may be realized.
  - c. Choice of Law.** Intentionally Omitted
  - d. Entire Agreement.** This Agreement contains the entire agreement between U of A and KCHA and may be changed only by an instrument in writing executed by all Parties.
  - e. Headings.** The inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation hereof.
  - f. Assignability.** This Agreement may not be assigned or transferred without the prior written consent of both Parties.

- g. **Counterparts.** This Agreement may be executed in counterpart and by facsimile signature or other form of electronic transmission, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.
- h. **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. California Health and Safety Code Section 101853(g)

IN WITNESS WHEREOF, U of A and KCHA have caused this instrument to be executed in duplicate by their respective duly authorized officers.

**U of A**

**Kern County Hospital Authority**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Russell Bigler

Title: \_\_\_\_\_

Title: Chairman, Board of Governors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department



## **EXHIBIT A**

### **Material**

Up to 100 samples of a minimum of 600 uL of serum, urine, and/or saliva samples.

Preferential order as follows

1. Acute coccidioidomycosis
2. Chronic coccidioidomycosis
3. Disseminated coccidioidomycosis

All specimens will be de-identified and no PHI will be transmitted.

**EXHIBIT B**  
**Study Plan**

U of A will utilize its Coccidioidosis GM EIA (Chemonex, LLC) to profile de-identified Valley Fever patient samples.

Data generated will be used as preliminary studies in US National Institutes of Health grant applications.



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

May 18, 2022

**Subject:** Proposed Kern County Hospital Authority Operating and Capital Budgets for Fiscal Year 2022-2023

**Recommended Action:** Approve; Refer to Kern County Board of Supervisors for Approval

**Summary:**

**COVID-19 Ramifications:**

The onset of the COVID-19 virus in early calendar year 2020, and its official designation as a pandemic, has continued to create unprecedented uncertainty for health care providers both locally and on a worldwide basis. Information about the virus changes rapidly. This makes it difficult to determine the effects that the pandemic will have on key performance indicators for the hospital and clinics including patient volumes, revenues, expenses and the staffing levels needed. The recommended budgets for operations and capital below are based on the best available information at this time. The Kern County Hospital Authority, which owns and operates Kern Medical Center (and referred to herein as “Kern Medical”) will closely monitor COVID-19 activity and will adjust operations as necessary throughout FY 2022-23 to ensure that adequate supplies and staffing levels are maintained to provide quality and safe patient care.

**Summary of FY 2022-23 Recommended Budgets**

Kern Medical budgeted \$493.0 million total revenue from all sources and \$491.8 million in expenses with EBIDA of \$13.8 million and net income of \$1.2 million. Kern Medical is also planning on \$13.7 million in capital expenditures with the funds provided by operations and grants.

**Net Revenues**

Kern Medical budgeted \$493.0 million for total revenue for FY 2022-23. Budgeted operating revenue includes \$260.5 million from patient revenue net of contractual adjustments and bad debt from services to Medicare, Medi-Cal, private pay patients, and commercial insurance. Total revenue also includes \$169.2 million in net state and federal funding and \$3.4 million in county funding to reimburse Kern Medical for providing services for indigent patients. Other operating revenue includes cafeteria sales, reimbursement from medical education, and services provided by Kern Medical to various county departments. The budget also includes reimbursement of \$32.3 million from the county for Kern Medical to provide inpatient and outpatient services for adult inmates and juvenile detainees.

**State and Federal Funding Program Changes**

Kern Medical will continue to participate in various other indigent funding programs including the Global Payment Program (GPP), the Quality Incentive Program (QIP), and the Enhanced Payment Program (EPP). The five-year Medi-Cal 1115 waiver programs that were scheduled to end in 2020 were extended through fiscal year 2021 due to the COVID-19 pandemic. As the previous waiver ended the process to reorganize the programs started during FY 2021-22 with the State’s announcement of the Medi-Cal 1115 waiver renewal. The Whole Person Care (WPC) program has ended but a similar program titled Enhanced Care Management and

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

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Community Supports (ECM) will replace it for FY 2022-23 as part of the State's CalAIM initiative. The largest program in the prior waiver, the Public Hospital Redesign and Incentive in Medi-Cal (PRIME) program, was reorganized as part of the QIP pay-for-performance program. It is anticipated that the overall total funding amounts for all of these supplemental programs should be about the same as prior year. For FY 2022-23 Kern Medical has budgeted \$39.8 million for GPP and \$15.4 million for the ECM program. QIP is a quality incentive-based program that ties payments to designated performance metrics in primary care, specialty care, inpatient care, and resource utilization. The EPP program is based on overall utilization of contracted services with Medi-Cal managed care plans. In FY 2019-20 these two programs replaced the SPD-IGT and MCE to Cost program funding streams. For FY 2022-23 net QIP revenue is estimated at \$54.5 million and net EPP revenue is estimated at \$21.7 million. To reiterate, even under normal circumstances the estimates for all indigent funding streams are subject to change at the discretion of the State. The uncertainty in the current health care environment due to the COVID-19 pandemic increases the likelihood of changes in these estimates.

The FY 2022-23 budget includes approximately \$150 million in Intergovernmental Transfers (IGTs) paid to the state that will be used to draw down federal funding. The IGT amounts represent the non-federal share of the indigent programs. Matching contributions to the State, as well as the return of the initial IGT investments, are reported in the budget under other charges and intergovernmental revenue, respectively.

As part of Kern Medical's priorities to both develop an integrated delivery system and meet certain regulatory requirements in primary care as a public hospital, Kern Medical will continue to pursue alternative payment models in FY 2022-23.

### **Operating and Other Expenses**

Budgeted operating expenses total \$491.8 million for FY 2022-23. Staffing cost accounts for \$327.0 million, which is Kern Medical's largest expense. The remaining \$164.8 million in operating expenses are comprised primarily of medical supplies, contracted physician fees, purchased medical services, external provider care services, insurance, utilities, and equipment rental and maintenance. Other expenses include recruiting, outreach, and legal expenses. The following specified annual obligations and amounts are included in the operating and other expenses: \$510,000 US Bank lease for copy machines and printers and Pension Obligation Bonds that total 6.0% of payroll (which does not include the \$381.2 million net pension liability).

### **Staffing and Authorized Positions**

The proposed budget provides funding for all authorized positions. Although all recommended positions are funded for FY 2022-23, it is important to note that Kern Medical budgets for staffing based on patient census and full-time equivalents (FTEs), not authorized positions. Mandated staff-to-patient ratios and the appropriate allocation of FTEs drive staffing costs, as is customary in the hospital industry.

Kern Medical has 2,686 authorized positions for FY 2022-23. At this point in time, 2,007 of these positions have been filled and 679 are vacant. We anticipate a 10% vacancy rate due to staff turnover and recruiting issues.

### **Planned Capital Expenditures**

Kern Medical is budgeting \$13.7 million in capital expenditures for FY 2022-23 funded by operations and grants. Of the \$13.7 million, \$3.0 million is for the replacement or upgrade of existing operating equipment. It is anticipated that \$1.0 million will be used to upgrade and modernize IT systems and infrastructure. The hospital remains committed to significant capital investment to address deficiencies in the buildings and patient care areas with \$9.7 million budgeted for major capital and construction projects to address areas of immediate concern.

### **Summary of Changes in Net Position**

Kern Medical is projected to have a net position of negative \$97.7million as of June 30, 2022. This negative amount is due to the long-term liabilities primarily related to pension obligations incurred prior to the formation of the Kern County Hospital Authority. These liabilities reduce the net position by \$445.4 million. Adjusting for the effect of these liabilities leaves a budgetary net position of \$347.7 million. With a budgeted \$493.0 million in revenues from all sources and total expenses of \$491.8 million along with \$13.7 million in capital expenditures, the planned change in net position is a decrease of \$12.5 million with an estimated budgetary balance of \$335.2 million.

### **Pandemic-related Services**

Kern Medical, along with many other health care organizations in our community and across the nation, drastically pivoted these past two years to confront the pandemic and meet the needs of society. Many of these services were collaboratively carried out with government agencies and other providers. At the heart of our organization's efforts were heroic individuals tirelessly laboring to provide care, source supplies and medications, find alternative COVID-19 care locations, and stand-up community testing and vaccination sites. Kern Medical also treated the unseen impacts of COVID-19 on society. As the area's only trauma center and hospital with an inpatient behavioral health unit, our organization saw an onslaught of trauma that started almost at the outset of the Governor's quarantine order in March 2020 and averaged nearly 60 additional trauma cases each month above the budgeted monthly 235 patients from violence, suicide, and motor vehicle accidents. The number and acuity of behavioral health patients also significantly increased. Kern Medical will continue its focus to treat and be prepared for COVID-19. This includes the continuing operations of a community testing site as well as both fixed site and mobile vaccine clinics.

Kern Medical has a vital role and mission to serve our community as the area's only teaching hospital, trauma center, and designated public hospital while continuing to expand and strengthen relationships with local health plans and community providers. Through these efforts, Kern Medical seeks to demonstrate its value, experience, and outcomes.



**KERN COUNTY HOSPITAL AUTHORITY  
Operating and Capital Budget  
Fiscal Year 2022-2023**

# KERN MEDICAL

## Hospital Operations Indicator Report

### Revenue

Volume	Actual 2020	Actual 2021	Project 2022	Budget 2023	Financial Overview	Actual 2020	Actual 2021	Project 2022	Budget 2023
Admits - Acute	9,213	9,763	14,644	11,923	<b>EBIDA</b>	<b>67,153</b>	<b>63,037</b>	<b>41,174</b>	<b>13,770</b>
Patient Days - Acute	47,427	52,825	63,145	53,655	<b>EBIDA - SCRUBBED</b>	<b>13,685</b>	<b>12,925</b>	<b>24,139</b>	
LOS - Acute	5.1	5.4	4.3	4.5					
Adjusted Admissions	17,646	17,647	25,171	20,925	NOI	56,205	51,323	28,857	<b>1,172</b>
		<i>Change in Adj. Admissions:</i>		<i>-16.9%</i>	NOI - SCRUBBED	965	1,081	11,821	
Births	2,241	2,321	2,221	2,276	Operating Margin % - SCRUBBED	0.1%	0.1%	1.0%	0.10%
Surgeries - Inpatient	2,283	2,614	2,752	2,594	EBIDA Margin % - SCRUBBED	1.5%	1.2%	2.1%	1.2%
Surgeries - Outpatient	3,121	3,119	3,003	3,048	Debt Coverage Ratio	6.08	7.67	10.42	4.80
ER Visits	49,655	54,725	57,954	56,322	Gross Revenue per APD	10,009	11,089	10,602	12,293
Outpatient Visits	149,568	203,069	205,276	186,974	Outpatient Revenue %	47.8%	44.7%	41.8%	43.0%
Reimbursement	Actual 2020	Actual 2021	Project 2022	Budget 2023	Payor Mix	Actual 2020	Actual 2021	Project 2022	Budget 2023
Net Patient Rev	218,307	251,739	277,674	260,448	COMM FFS/HMO/PPO	13.2%	13.3%	11.5%	11.5%
Indigent Funding	209,156	192,122	178,074	169,202	MEDI-CAL	19.2%	24.0%	18.7%	18.7%
County Contribution	3,423	3,423	3,423	3,428	MEDI-CAL HMO - KERN HEALTH SYSTEMS	34.1%	37.7%	39.4%	39.4%
Correctional Medicine	33,589	30,896	31,400	32,342	MEDI-CAL HMO - HEALTH NET	7.9%	8.7%	9.1%	9.1%
Capitation Revenue	(899)	5,052	-	-	MEDI-CAL HMO - OTHER	1.6%	1.7%	1.8%	1.8%
Other Operating Revenue	15,291	24,731	28,377	26,927	MEDICARE	10.5%	8.8%	11.3%	11.3%
Net Rev	478,865	507,963	518,947	492,347	MEDICARE HMO	3.0%	3.9%	6.0%	6.0%
Net Patient Rev Yield	24.0%	23.8%	24.1%	22.5%	OTHER GOVERNMENT	8.7%	0.4%	0.8%	0.8%
Net Patient Rev Per AA	12,371	14,265	11,032	12,447	SELF-PAY	2.0%	1.4%	1.5%	1.5%
		<i>Change In Net Revenue per AA:</i>		<i>12.8%</i>					

# KERN MEDICAL

## Hospital Operations Indicator Report

### Expenses

Labor*	Actual 2020	Actual 2021	Project 2022	Budget 2023	Supplies	Actual 2020	Actual 2021	Project 2022	Budget 2023
Labor Costs including Benefits	254,246	275,265	277,673	289,340	Supply Costs	61,206	69,039	71,457	69,164
Productive FTE's (Excl. Contract Labor)	1,637	1,697	1,667	1,670	Supplies as a % of Net Pt Rev	12.8%	13.6%	13.8%	14.0%
Non-Productive FTE's	233	252	280	280	Supplies per AA	3,469	3,912	2,839	3,305
Contract Labor % of Total Prod	7.8%	6.8%	9.7%	8.5%	<i>Change in Supply Cost per AA:</i>				<i>16.4%</i>
Overtime % of Prod HRs (Excl CL)	3.6%	3.6%	4.2%	3.1%	Pharmaceutical Cost per AA	1,658	1,701	1,022	1,123
Total FTE's per AOB	7.54	7.45	6.55	7.56					
Labor Cost per FTE (Inc Benefits)	135,898	141,245	142,557	148,369					
		<i>Change in Labor Cost per FTE:</i>		<i>4.1%</i>					
Lbr Cost (Inc Ben) % of Total Exp	61.4%	61.4%	56.9%	60.4%					
Pur Ser & Other Expenses	Actual 2020	Actual 2021	Project 2022	Budget 2023	Other Key Statistics	Actual 2020	Actual 2021	Project 2022	Budget 2023
Medical Fees	20,450	20,783	21,055	21,606	Adjusted patient Days	90,839	95,486	108,536	94,164
Other Professional Fees	17,484	17,333	18,631	18,564	Adjusted Occupied Beds	248.2	261.6	297.4	258.0
Purchased Services	23,436	23,271	23,470	23,403	Gross Days in AR, Excl Cap	118	110	72	65
Other Expenses	17,809	20,907	19,706	19,412					
Depreciation and Amortization	8,281	10,114	11,305	11,583					
Capital Expenses	Budget 2023								
Funded through operations									
Routine Equipment	3,000								
Information Technology	1,000								
Projects	5,400								
Funded through grants									
Projects	4,300								



Kern County Hospital Authority  
Budget for Fiscal Year 2023  
Exhibit A - Projected Income Statement

	<b>ACTUAL</b> <b>FY22 JUL - MAR</b>	<b>PROJECTED</b> <b>YEAR END FY22</b>	<b>BUDGET</b> <b>FY23</b>
<b>Total Gross Charges</b>	\$ 883,946,920	\$ 1,154,653,078	\$ 1,157,545,911
<b>Total Patient Revenue Deductions</b>	(676,598,493)	(876,979,077)	(897,098,081)
<b>Net Patient Revenue</b>	207,348,427	277,674,001	260,447,830
<b>Indigent Funding</b>			
Correctional Medicine	23,109,136	31,400,004	32,342,004
County Indigent Funding	2,567,213	3,422,532	3,427,699
State and Federal Indigent Funding	129,896,116	178,073,514	169,202,486
<b>Total Indigent Funding</b>	155,572,466	212,896,050	204,972,189
<b>Other Operating Revenue</b>	21,567,543	28,376,643	26,927,075
<b>Total Operating Revenue</b>	384,488,435	518,946,695	492,347,094
<b>Expenses</b>			
Salaries	146,161,468	194,704,145	202,884,480
Benefits	62,283,786	82,969,276	86,455,162
Registry Nurses	42,193,450	56,206,603	37,671,364
Medical Fees	15,806,001	21,055,440	21,605,987
Purchased Services	17,618,434	23,469,811	23,402,767
Supplies	53,641,576	71,456,844	69,163,582
Other Professional Fees	13,985,746	18,630,647	18,563,825
Other Expenses	14,793,177	19,706,239	19,411,908
<b>Operating Expenses</b>	366,483,637	488,199,005	479,159,075
<b>Gain/(Loss) From Operations</b>	18,004,798	30,747,689	13,188,019
Depreciation and Amortization	(8,409,402)	(11,305,167)	(11,583,059)
Interest Expense	(759,882)	(1,012,252)	(1,014,929)
Non-Operating Revenue	6,393,375	10,426,465	582,252
<b>Total Non-Operating Revenue/(Expense)</b>	(2,775,910)	(1,890,954)	(12,015,735)
<b>Earnings Before Interest Depreciation and Amortization</b>	\$ 24,398,173	\$ 41,174,154	\$ 13,770,271
<b>Net Income/(Loss)</b>	\$ 15,228,889	\$ 28,856,736	\$ 1,172,284

Kern County Hospital Authority  
 Budget for Fiscal Year 2023  
 Exhibit B - Projected Change in Net Position

**Projected Year end Retained Earnings for FY22-23**

Estimated Ending Fund Balance Available as of June 30		\$ (97,723,748)
<b>Long Term Accounts</b>		
22500271	LONG TERM L-POB 2003	7,750,889
22500273	LONG TERM L-POB 2008	5,392,893
22700000	NET PENSION LIABILITY	381,152,811
22701000	DEFERRED INFLOW-PENSIONS	30,132,624
22750271	LT INTEREST L-POB 2003	5,707,331
22760000	OTHER POST EMPLOYMENT BENEFITS	1,653,757
22761000	ACCRUED COMP ABSENCES LT	3,830,085
22762000	WORKERS COMP PAYABLE LT	4,903,284
22763000	PROFESSIONAL LIABILITY LT	4,916,056
		4,916,056
<b>Budgetary Retained Earnings</b>		<b>\$ 347,715,982</b>

**BUDGET FY 22-23**

Estimated Budgetary Retained Earnings Balance		347,715,982
<u>Sources and uses</u>		
Total FY 22-23 Estimated Revenues		492,929,347
Total FY 22-23 Estimated Expenses		(491,757,063)
Total FY 22-23 Estimated Capital Expenditures		(13,700,000)
Total Estimated Change in Net Position		(12,527,716)
<b>Estimated Ending Balance</b>		<b>\$ 335,188,266</b>

Kern County Hospital Authority  
Budget for Fiscal Year 2023  
Exhibit C - Summary of Capital Expenditures

**Uses of Capital**

<u>Operating Equipment</u>	<u>IT Capital Projects</u>	<u>Capital Building and Construction</u>	<u>Total</u>
\$ 3,000,000	\$ 1,000,000	\$ 9,700,000	\$ 13,700,000

**Sources of Capital**

<u>Operations &amp; Grant Revenue</u>
\$ 13,700,000

Kern County Hospital Authority  
Budget for Fiscal Year 2023  
Exhibit D - Position Summary

<u>Division</u>	<u>Authoriz ed</u>	<u>Filled</u>	<u>Vacant</u>	<u>Total</u>
Kern Medical	2,686	2,007	679	2,686



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

May 18, 2022

**Subject:** Kern County Hospital Authority – March 2022

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Average Daily Census of 165 for March is 25 more than the March budget of 140 and 13 less than the 178 average over the last three months
- Admissions of 1,664 for March are 824 more than the March budget of 840 and 167 more than the 1,497 average over the last three months
- Total Surgeries of 504 for March are 16 more than the March budget of 488 and 32 more than the 472 average over the last three months
- Clinic Visits of 17,577 for March are 2,307 more than the March budget of 15,270 and 1,445 more than the 16,132 average over the last three months. The total includes 665 COVID-19 vaccination visits
- The March EBIDA and operating gain were driven by the recognition of prior year revenue as described below

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

**Patient Revenue:**

Gross patient revenue has a favorable budget variance for March and on a year-to-date basis mainly because of strong average daily census levels due to the pandemic. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Year-to-date gross patient revenue has increased 13% compared to prior year.

**Indigent Funding Revenue:**

Indigent funding has a favorable budget variance for the month and year-to-date due to the recognition of program revenues that pertain to prior fiscal years that were received and recognized in March. Kern Medical did not have receivables accrued for these items. The items recognized in March consist of \$4.7 million for the Enhanced Payment Program (EPP), \$3.5 million for the Physician State Plan Amendment (MD SPA) program, and \$929 thousand for the AB 915 Outpatient Disproportionate Share Hospital (DSH) program.

**Other Operating Revenue:**

Other operating revenue has a favorable budget variance for March primarily because of the receipt of a \$1.5 million insurance settlement for business interruption caused by a June 2019 cyber-attack incident. On a year-to-date basis, the favorable budget variance is mainly due to the receipt of funds from the County of Kern for the operation of COVID-19 testing facilities and COVID-19 mobile vaccination units. This revenue is offset by Kern Medical's costs to provide these services for the County of Kern.

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

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**Other Non-Operating Revenue:**

Other non-operating revenue has a favorable budget variance for the month and on a year-to-date basis because of the recognition of a \$2 million per month program true up for the fiscal year, which will continue through May 2022.

**Nurse Registry Expense:**

Nurse registry expense is over budget for the month and on a year-to-date basis because of higher than average registry usage in the hospital due to high pandemic-related census levels and significant registry cost increases. Year-to-date registry expenses were over \$42 million compared to a planned budget of \$14 million. Federal American Rescue Plan Act (ARPA) funding has been used to offset a portion but does not resolve the entire expense variance.

**Medical Fees:**

On a month-to-date and on a year-to-date basis, medical fees are under budget because several physicians either no longer provide services for Kern Medical, or they have provided relatively less services during the past few months than budgeted for in FY 2022.

**Other Professional Fees:**

Other professional fees are over budget for the month because of IT contract labor. IT contract labor was previously capitalized as part of construction-in-progress (CIP) projects that were recently completed. IT contract labor will transition to new CIP projects. On a year-to-date basis, other professional fees are over budget in part because of IT contract labor and also because there have been contract labor positions added to accommodate high census levels.

**Supplies Expense:**

Supplies expense is over budget for the month and on a year-to-date basis due in part to monthly Cerner software expenses that were part of an IT construction-in-progress project in prior year. These software costs were not budgeted for as supplies expenses in FY 2022. On a year-to-date basis, the continued operation of the outpatient pharmacy during the first half of the year is primarily responsible for the unfavorable budget variance.

**Purchased Services:**

Purchased services are over budget for the month due to higher than average costs for lab work provided by Quest Diagnostics, an under accrual in prior month for out-of-network services provided by Adventist Health, and an under accrual in prior month for ambulance fees. On a year-to-date basis, purchased services are over budget due in large part to COVID-19 mobile clinic expenses that are reported on this line item. The mobile clinic expenses are offset by reimbursement received from the County of Kern and reported as other operating revenue.

**Other Expenses:**

Other expenses are over budget for the month due to additional infusion pumps rented from Med One Equipment Rental. On a year-to-date basis, other expenses are over budget because of higher than average repairs and maintenance expenses, the rental of an air conditioning and heating unit from Hertz Equipment Rental Company (HERC) for the MRI, the cost of additional hospital beds rented from Hill-Rom to accommodate high patient census levels, and because of higher than average utility costs.

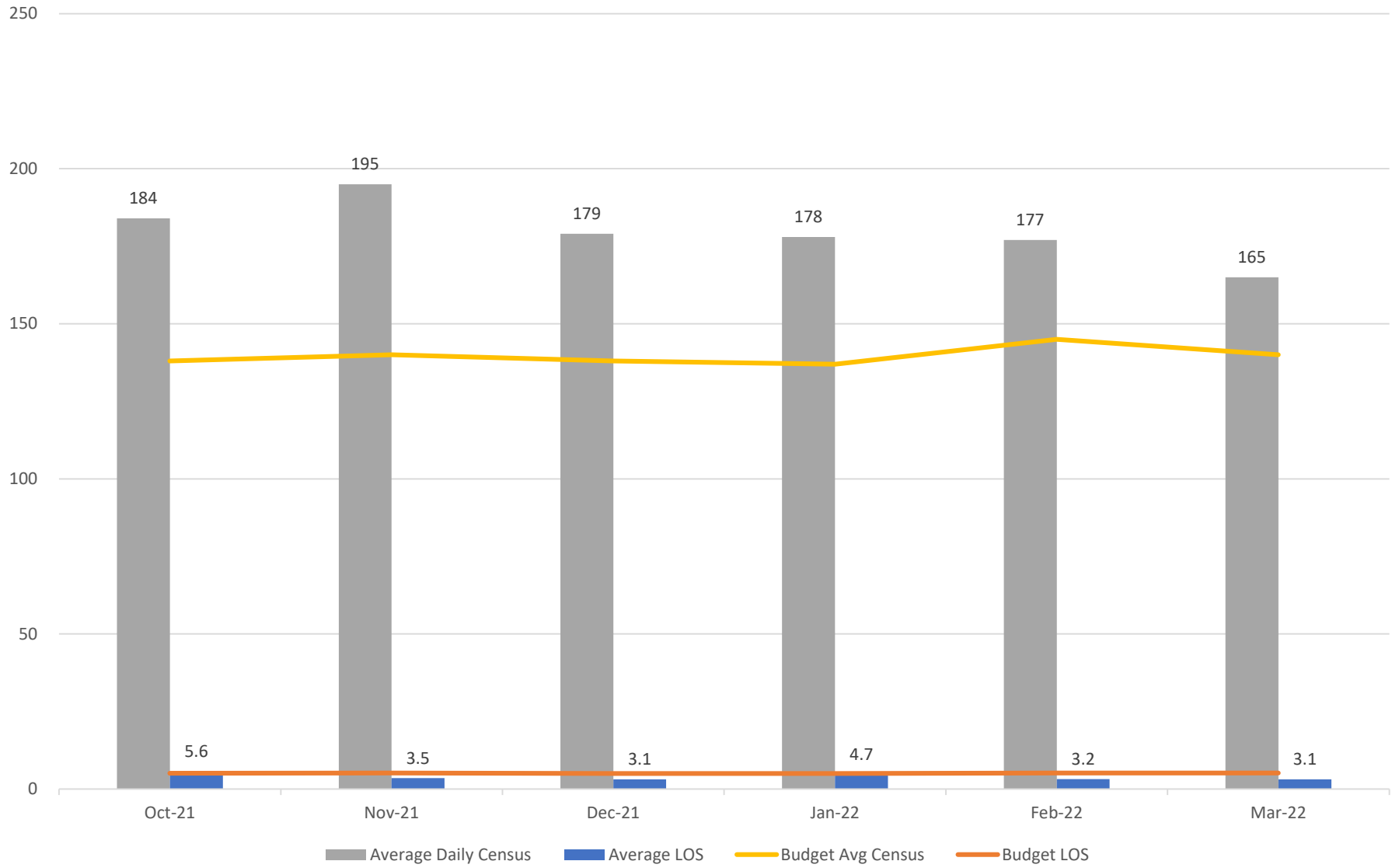
**Depreciation and Amortization Expense:**

Depreciation expense is over budget for the month and year-to-date because of construction-in-progress (CIP) projects that were put into service and have now started depreciating each month.



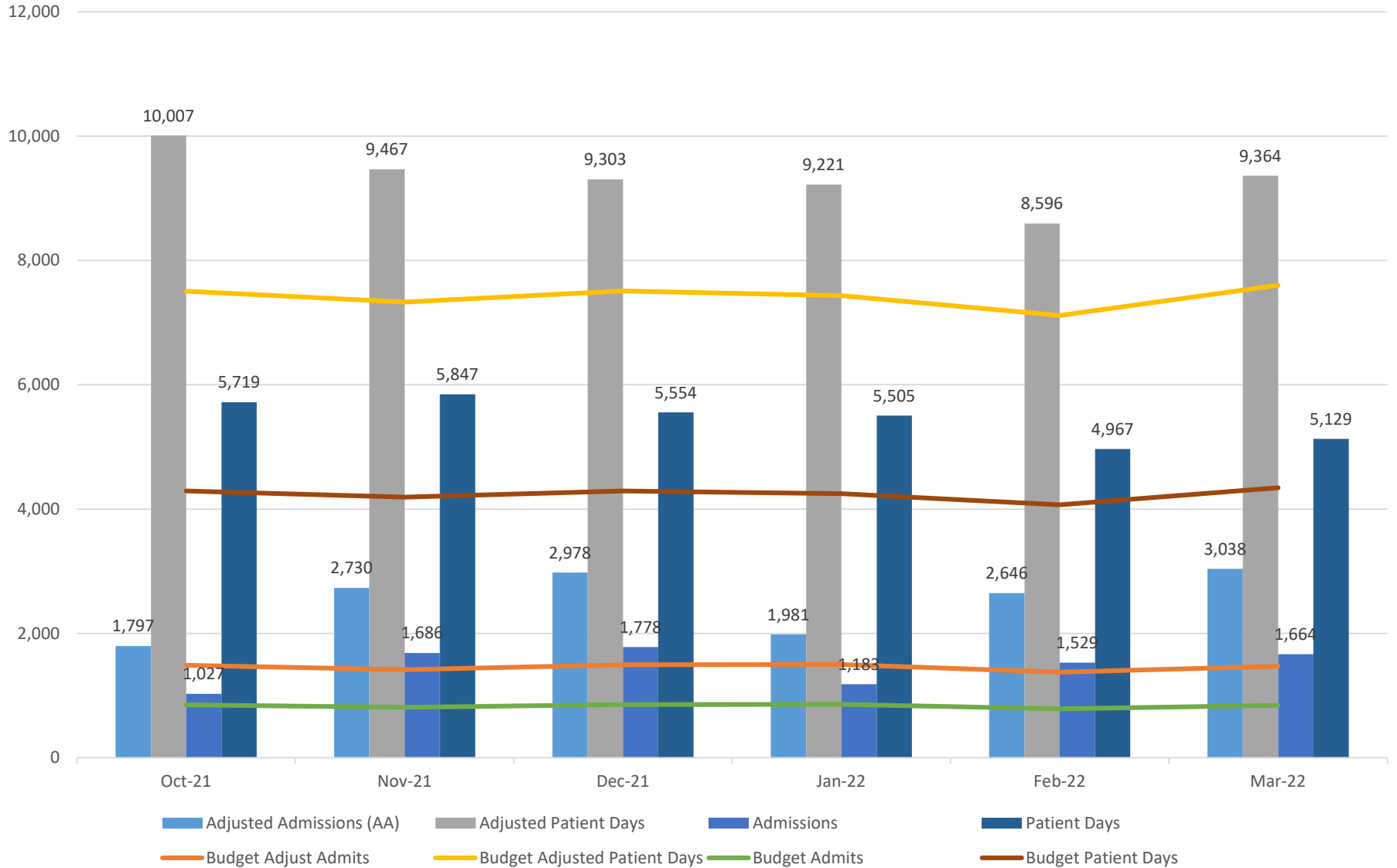
**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – MARCH 2022**

# Census & ALOS

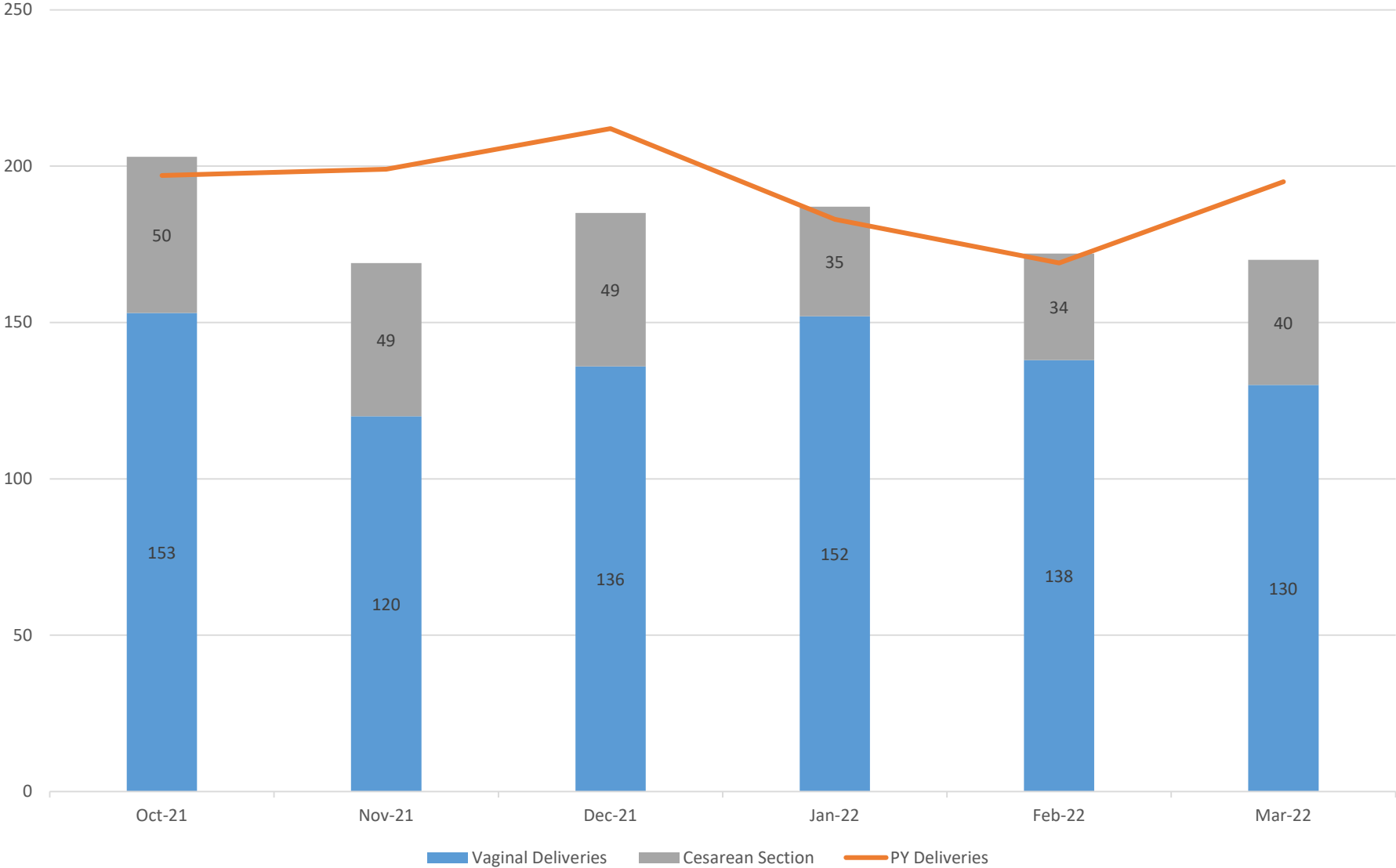




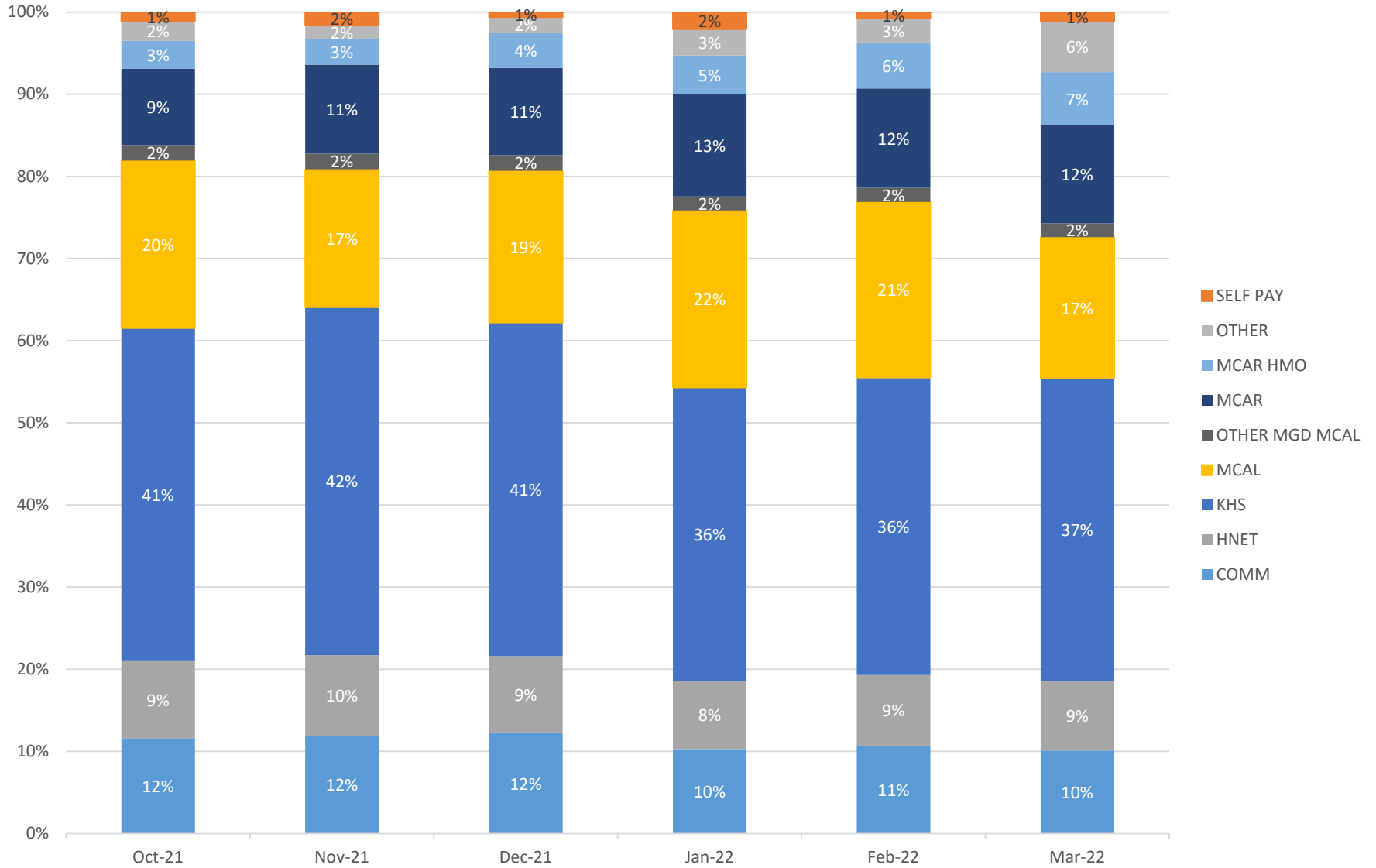
# Hospital Volumes



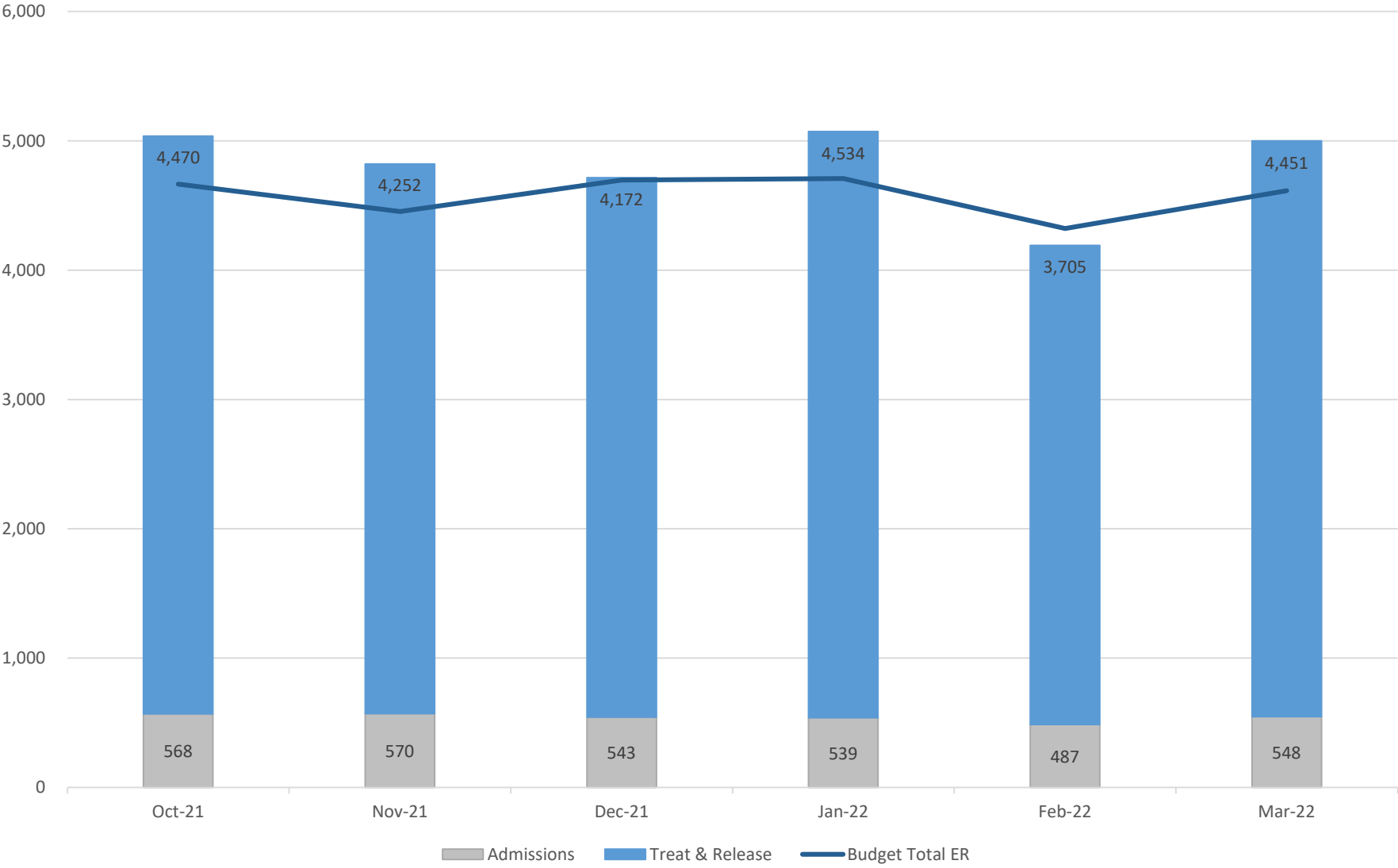
# Deliveries



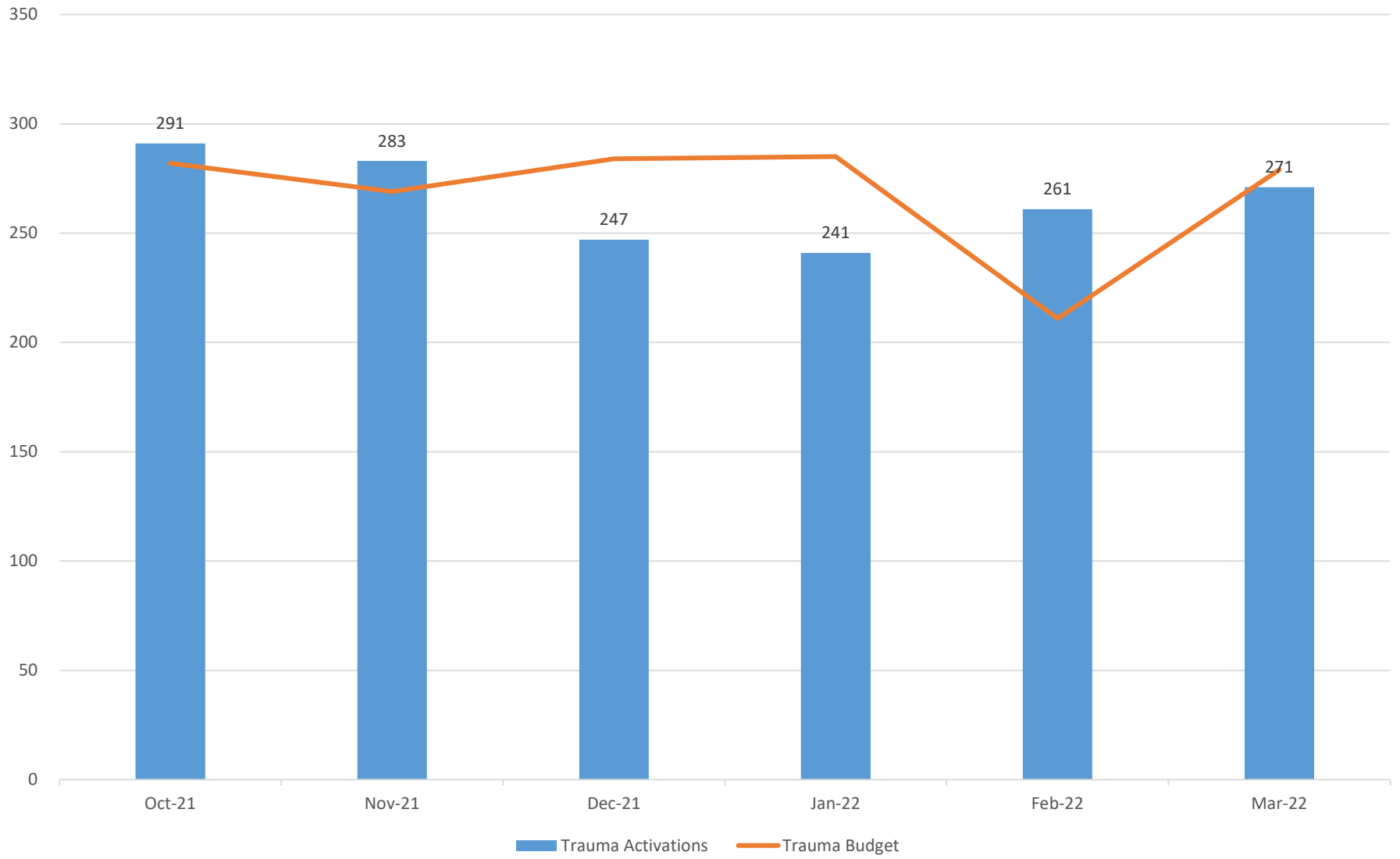
## PAYER MIX



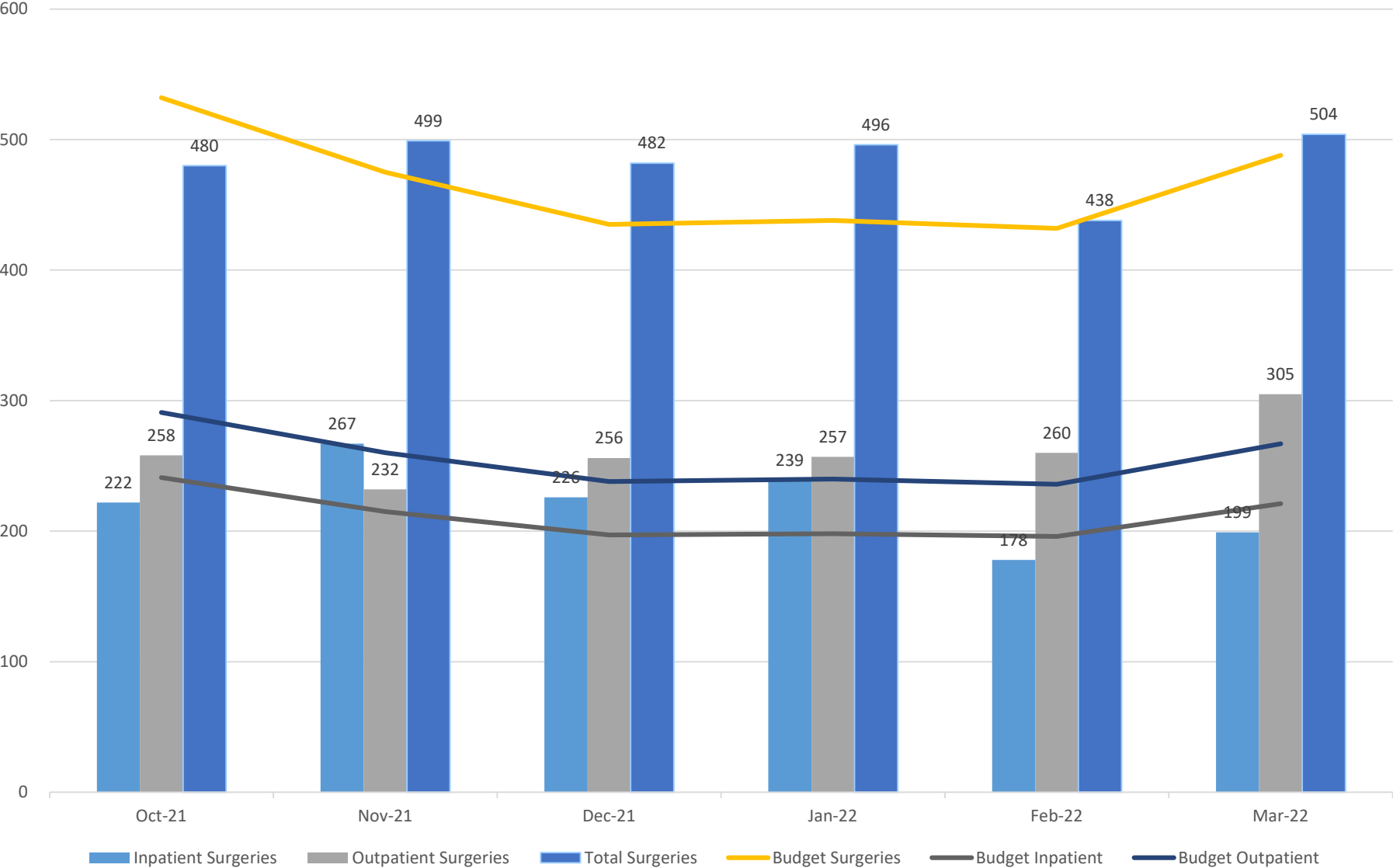
# Emergency Room Volume



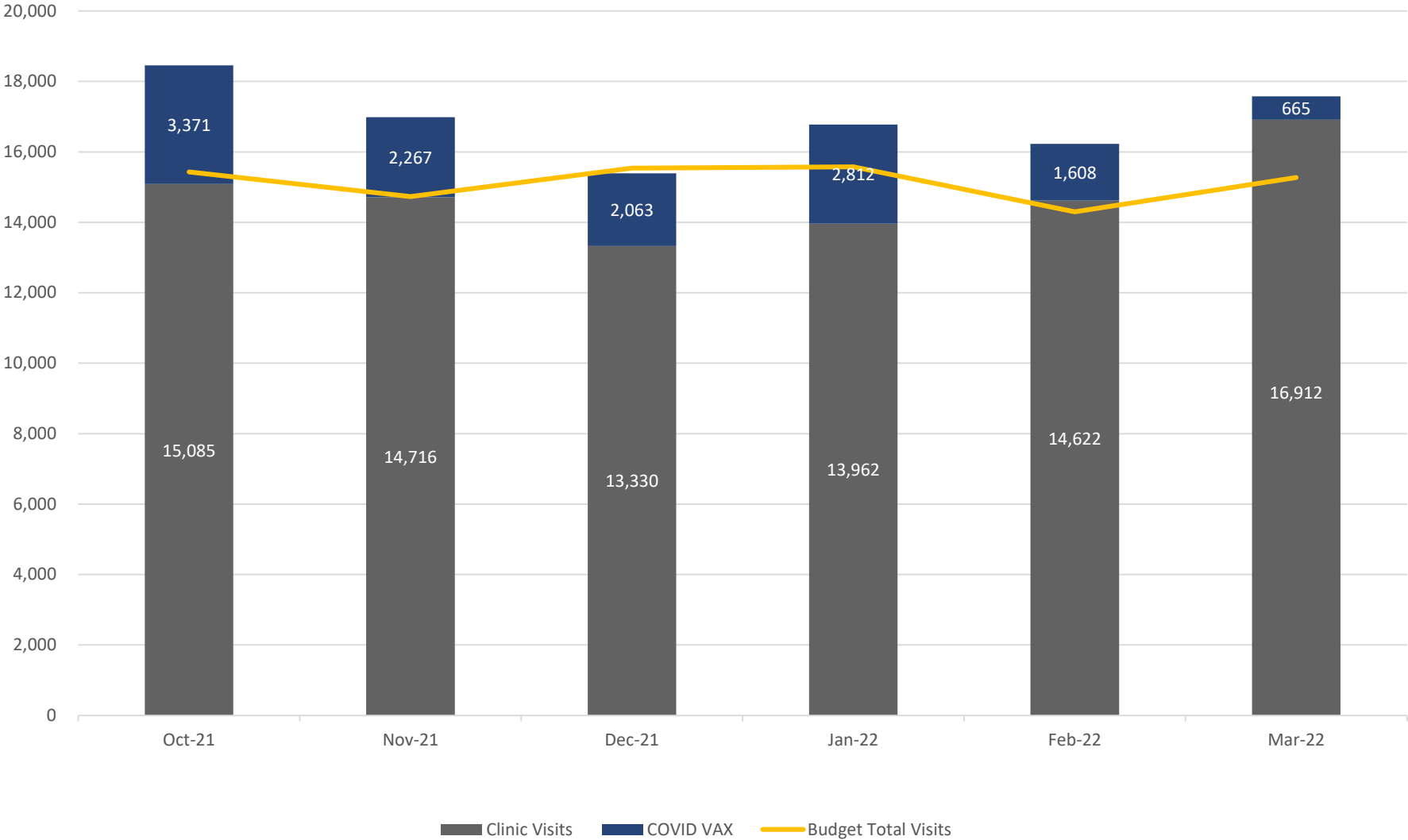
# Trauma Activations



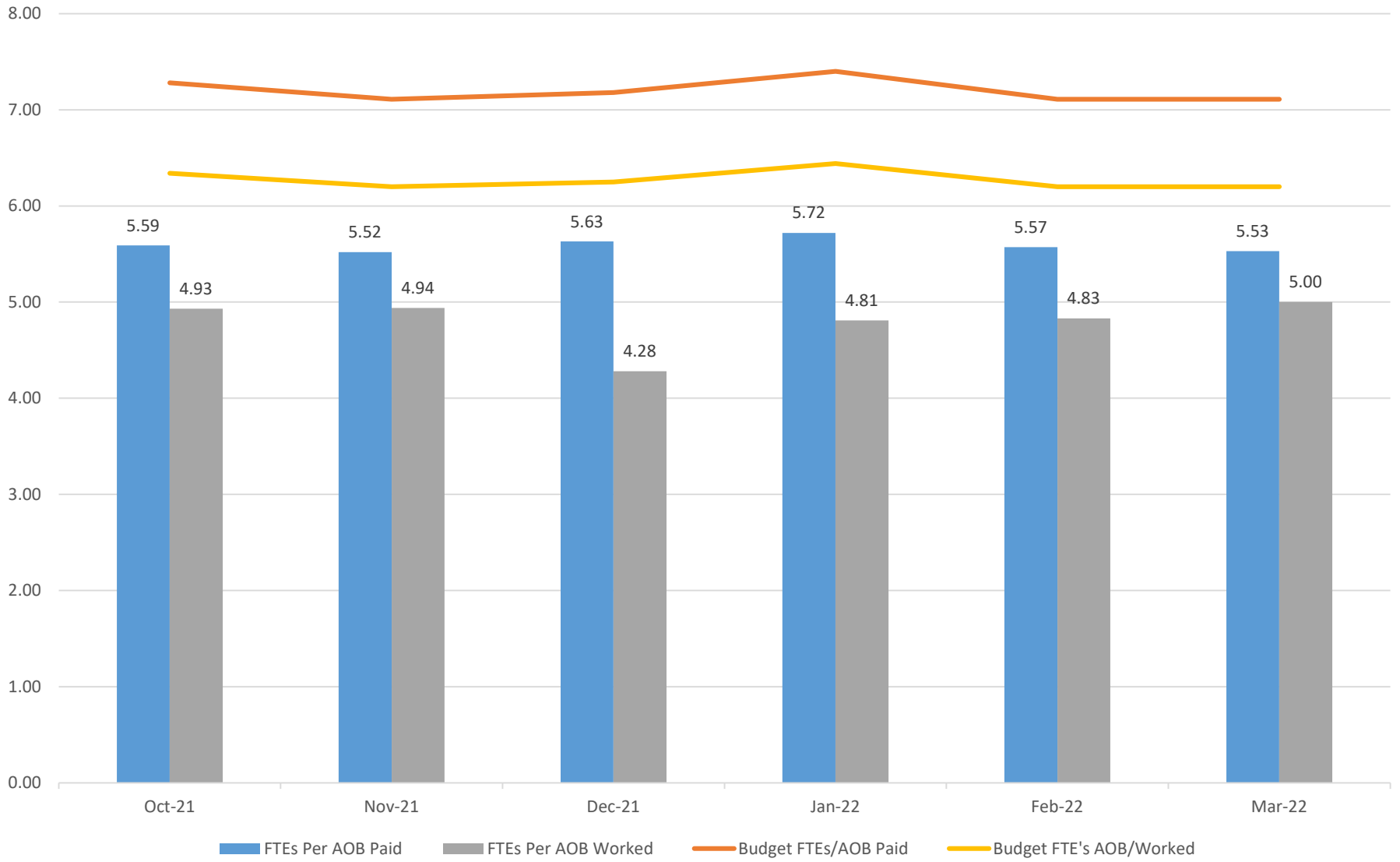
# Surgical Volume



# Clinic Visits

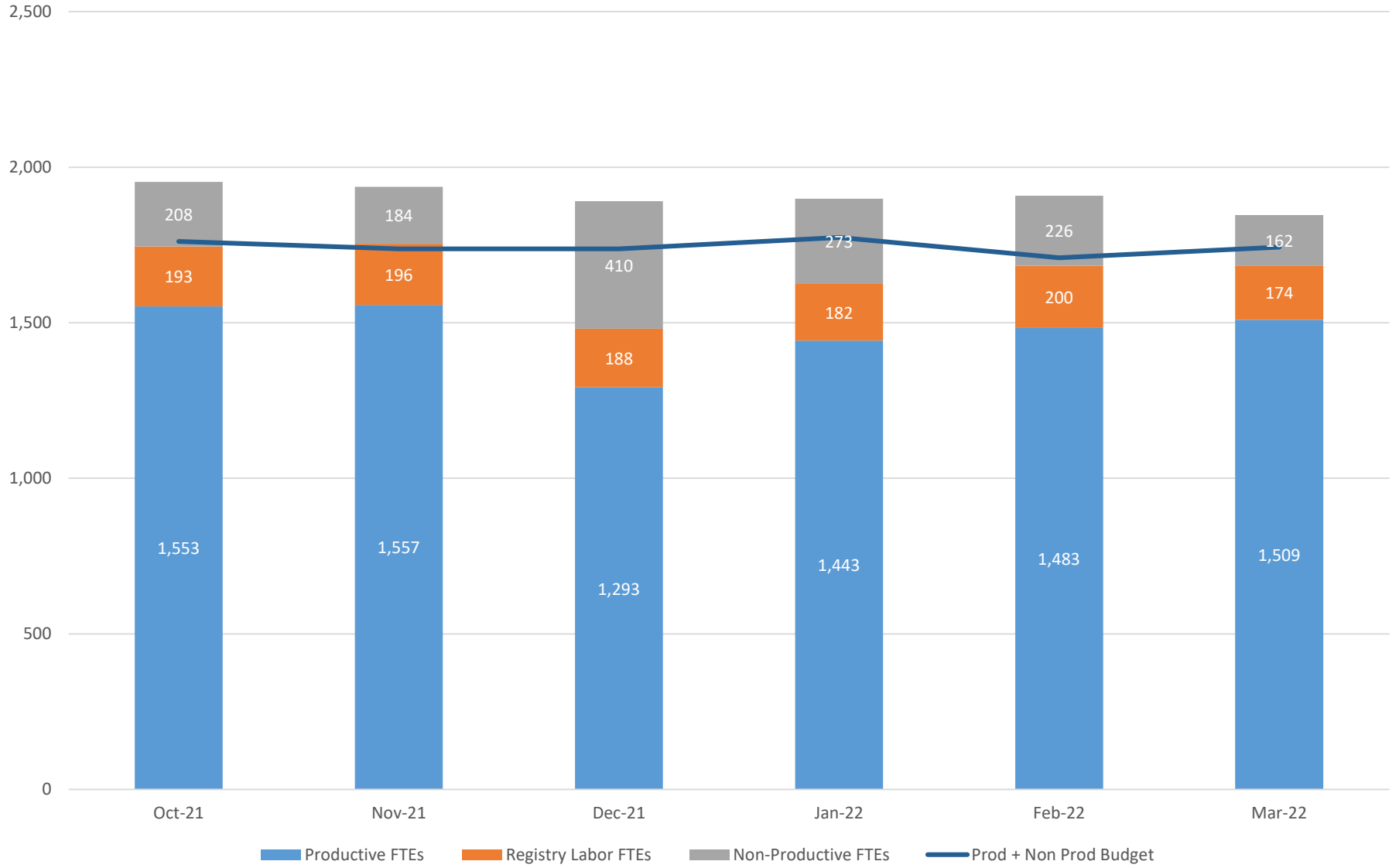


# Labor Metrics

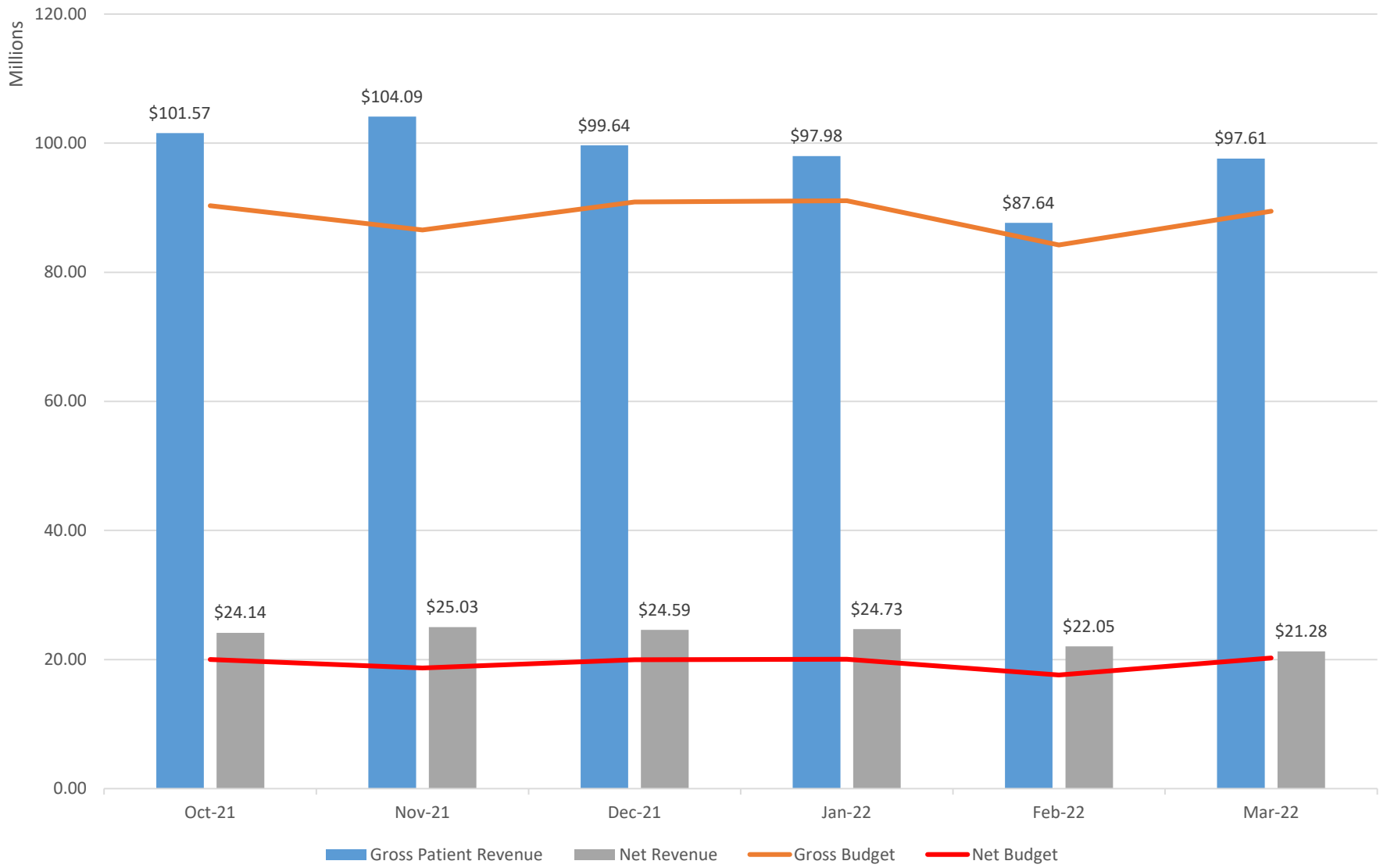




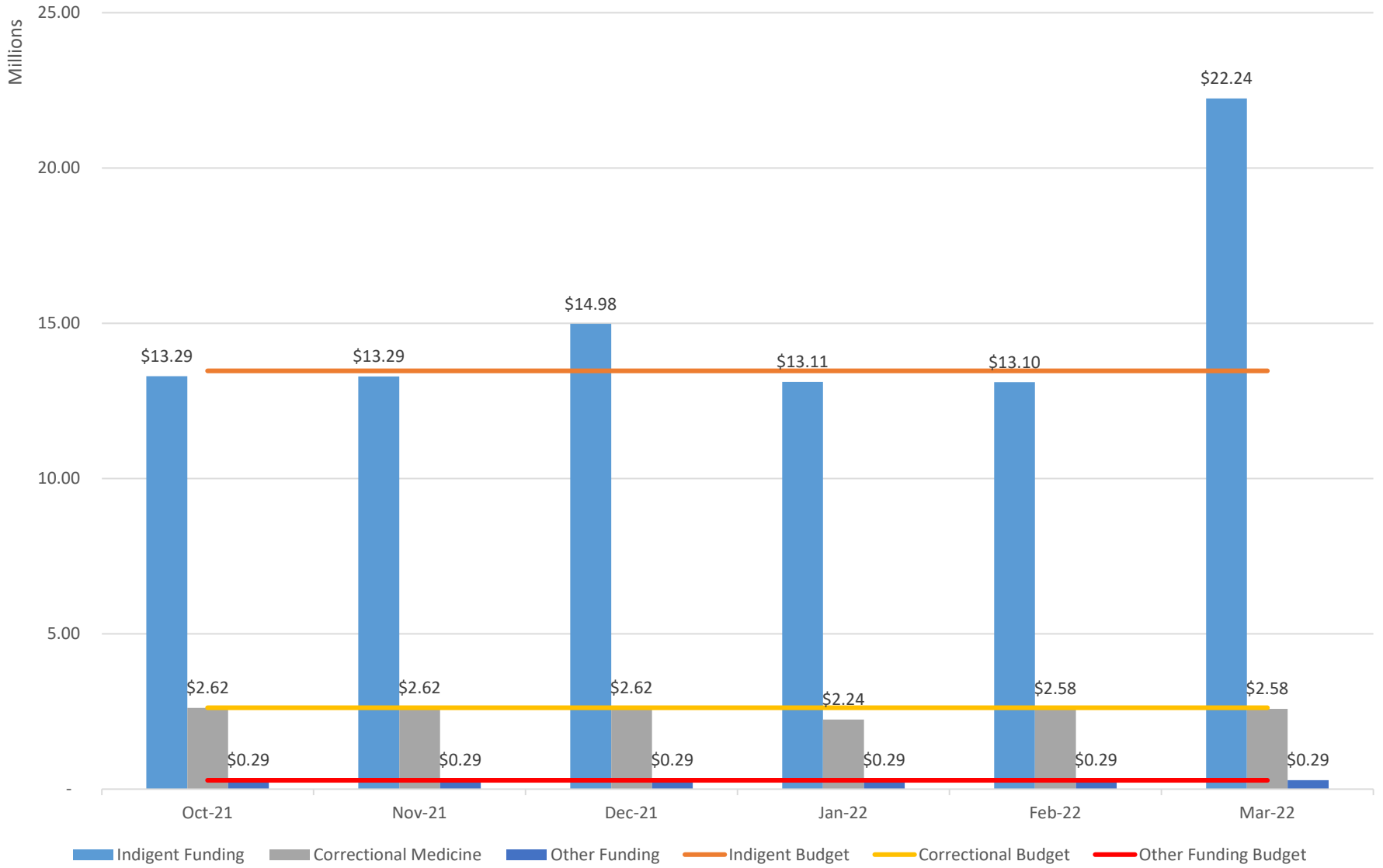
# Productivity



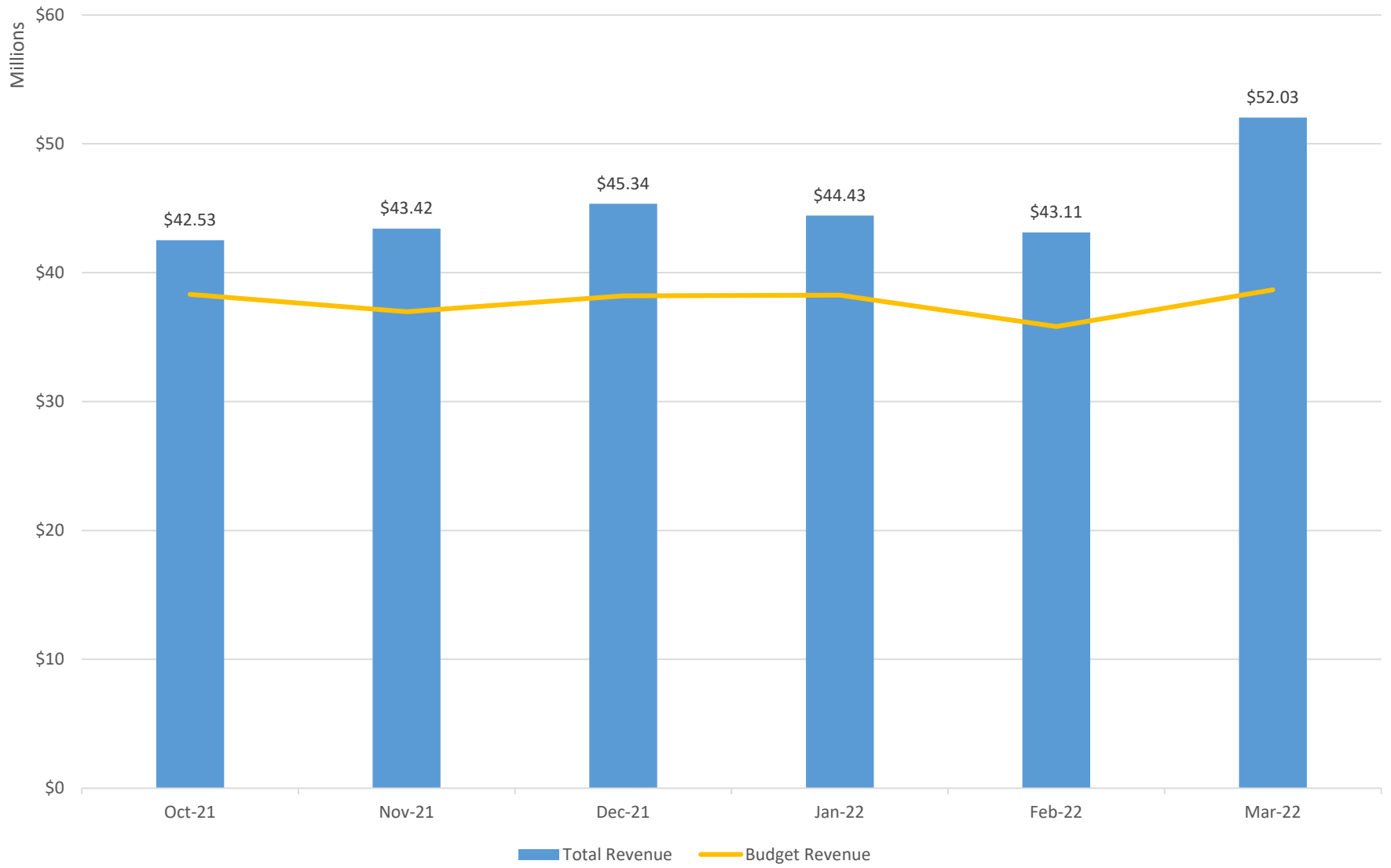
# Patient Revenue



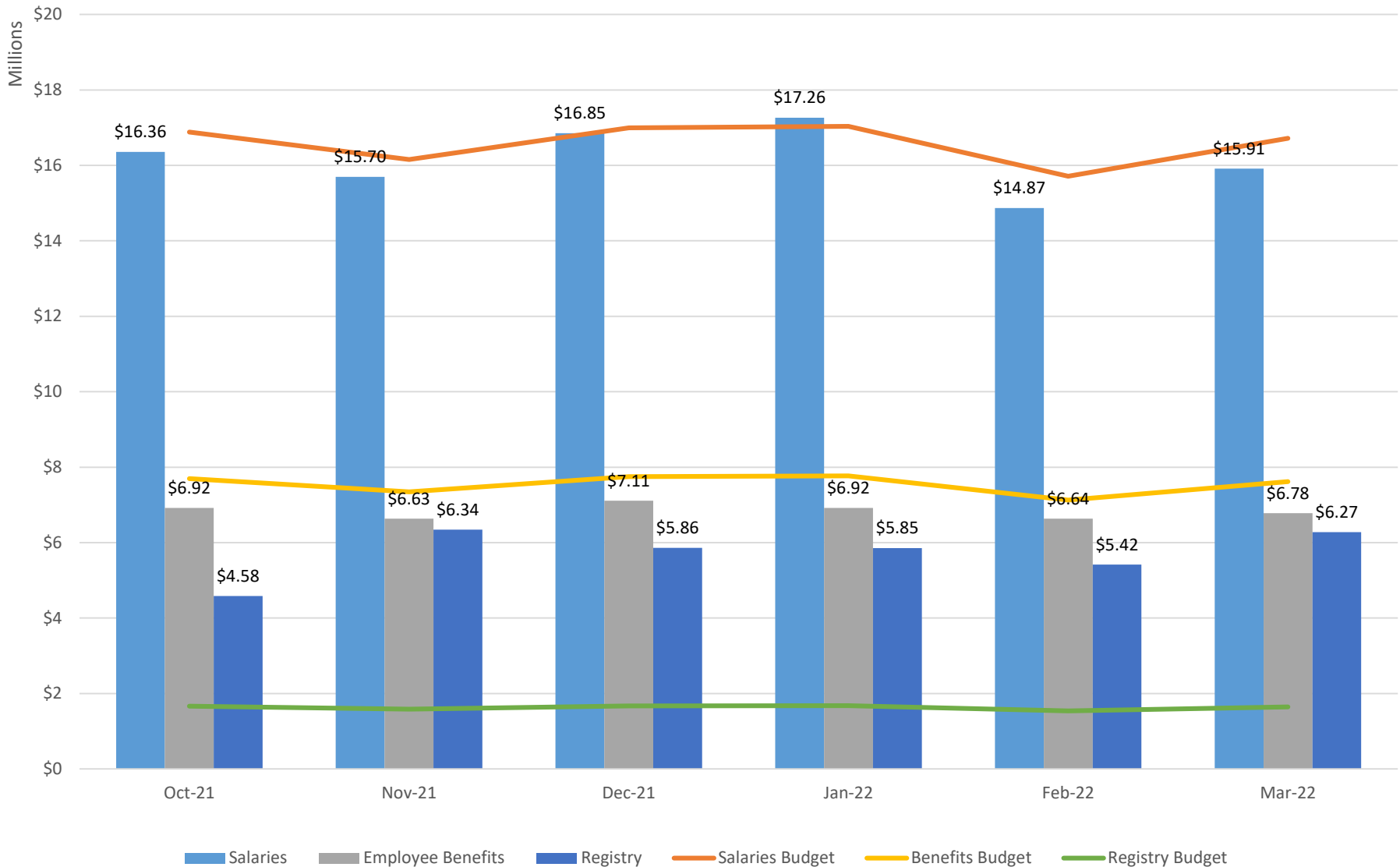
## Indigent & Correctional Revenue



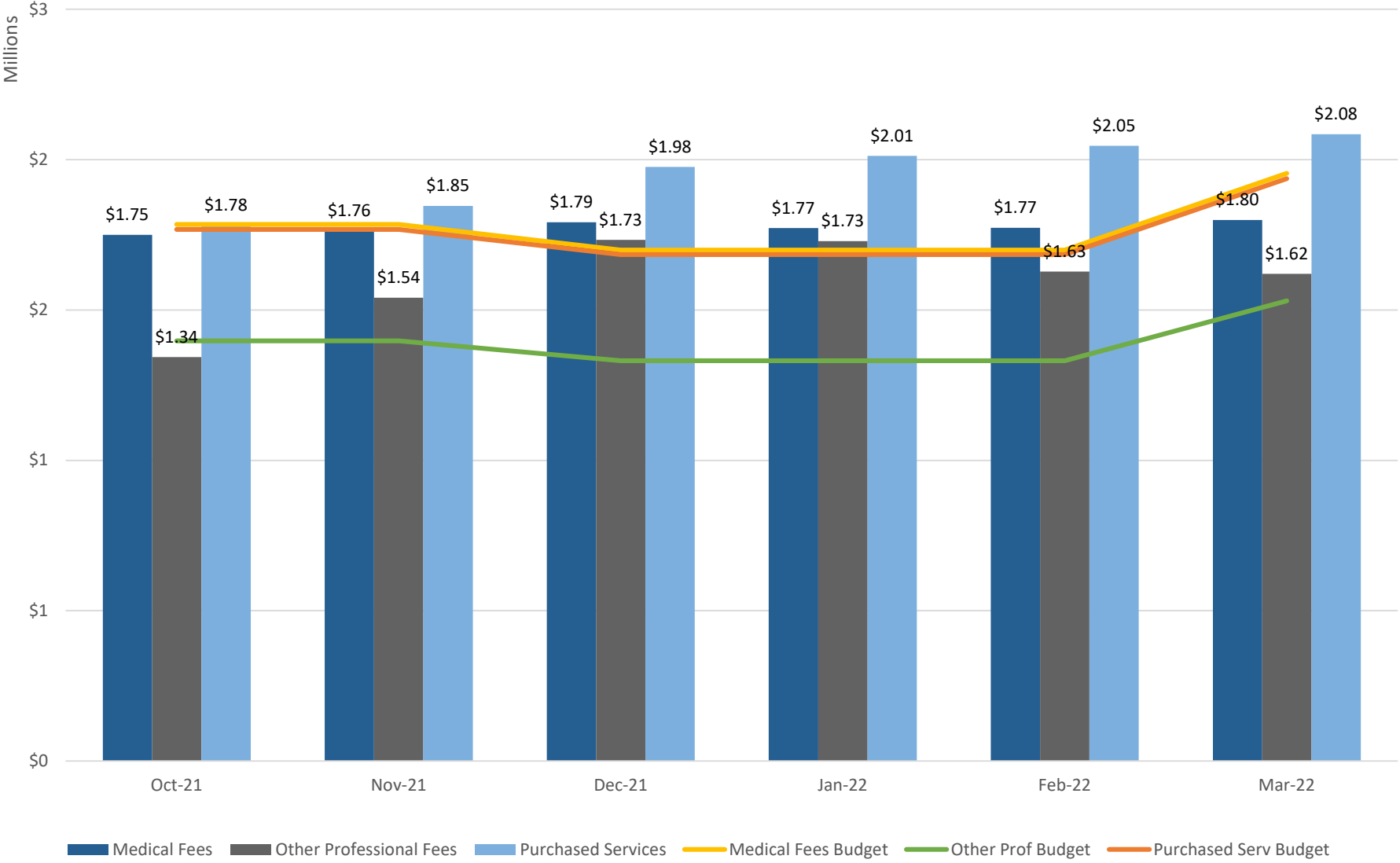
## Total Revenue



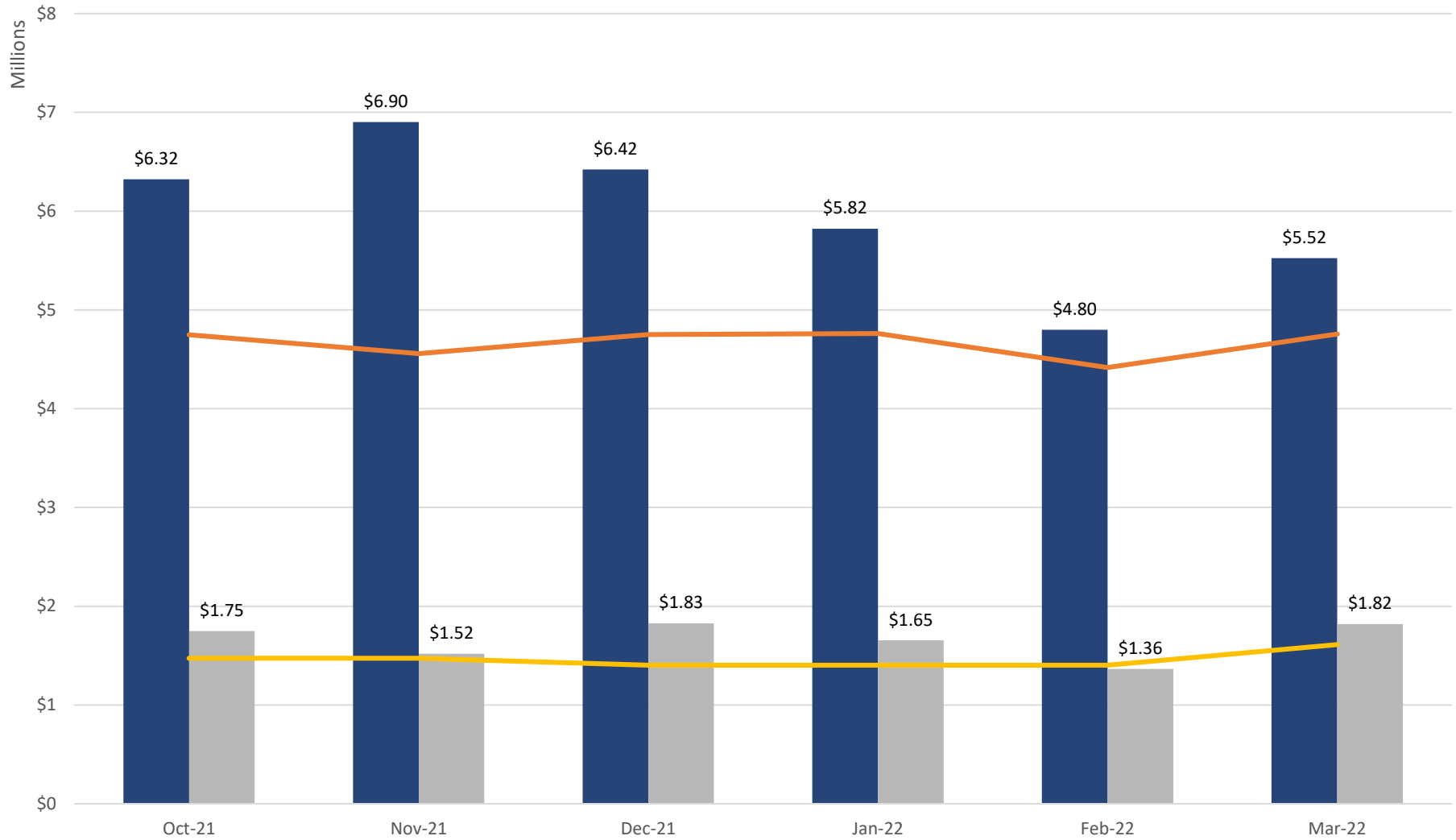
## Expenses



# Expenses

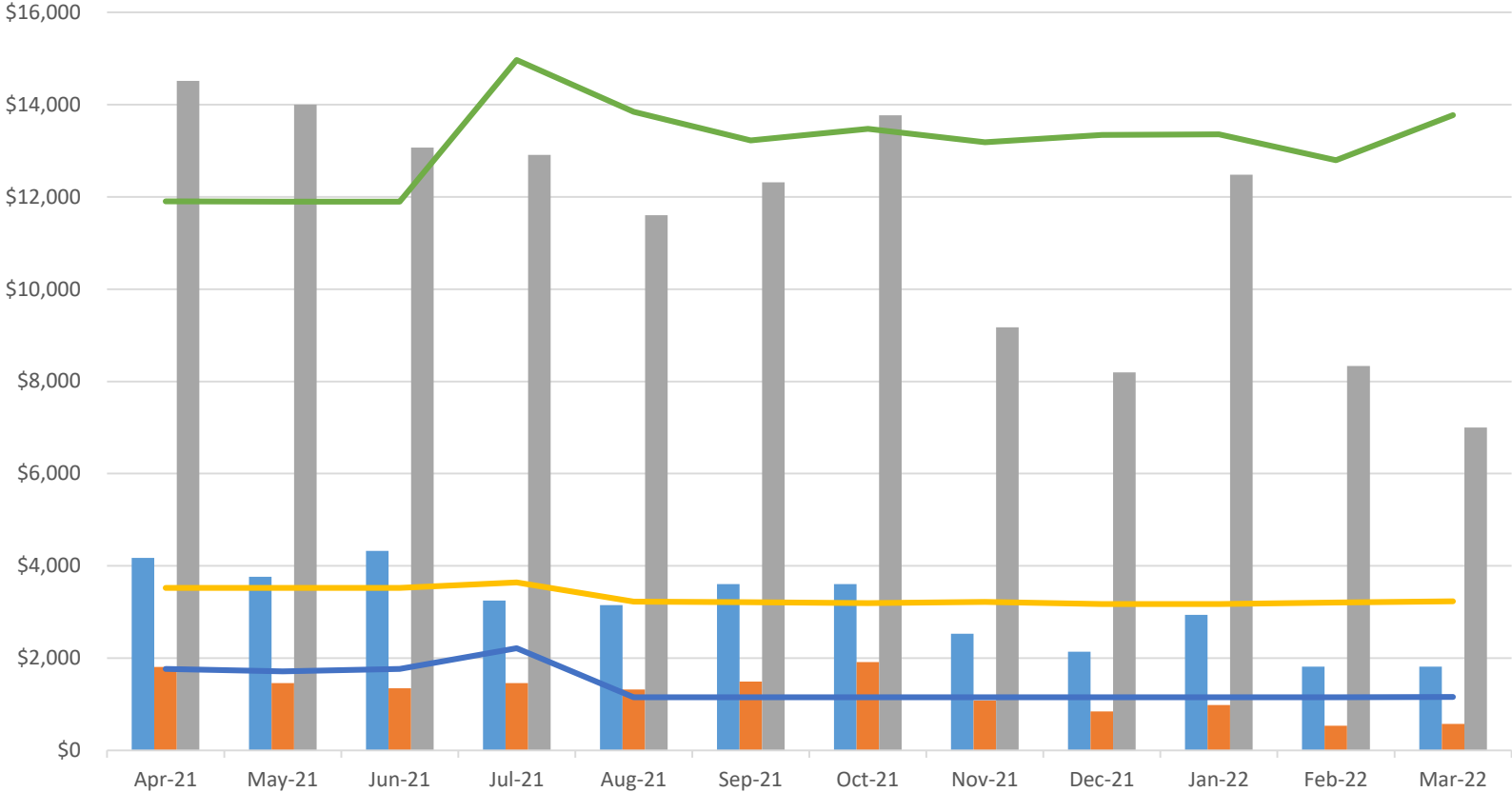


# Expenses



■ Supplies   ■ Other Expenses   — Supplies Budget   — Other Expenses Budget

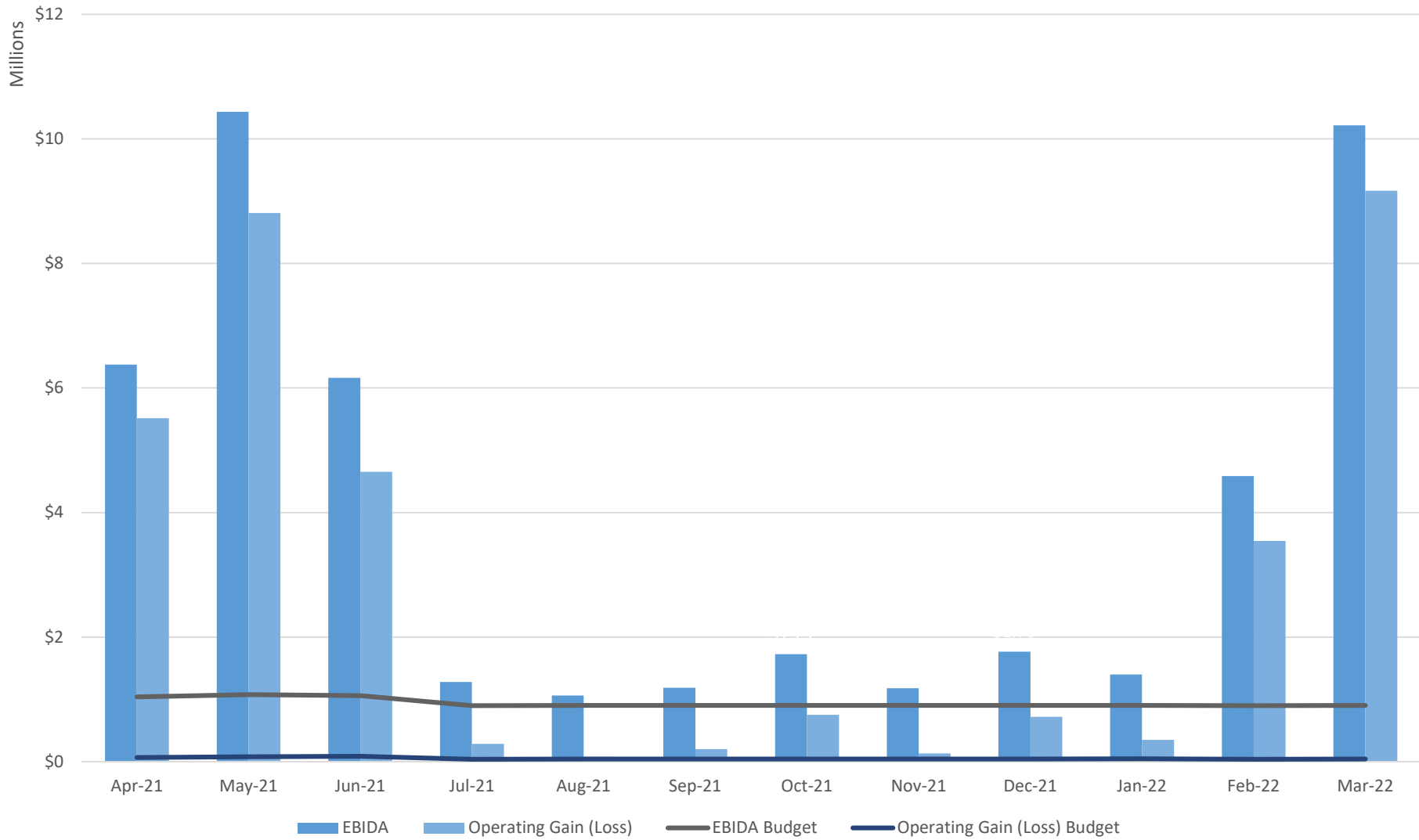
# Operating Metrics



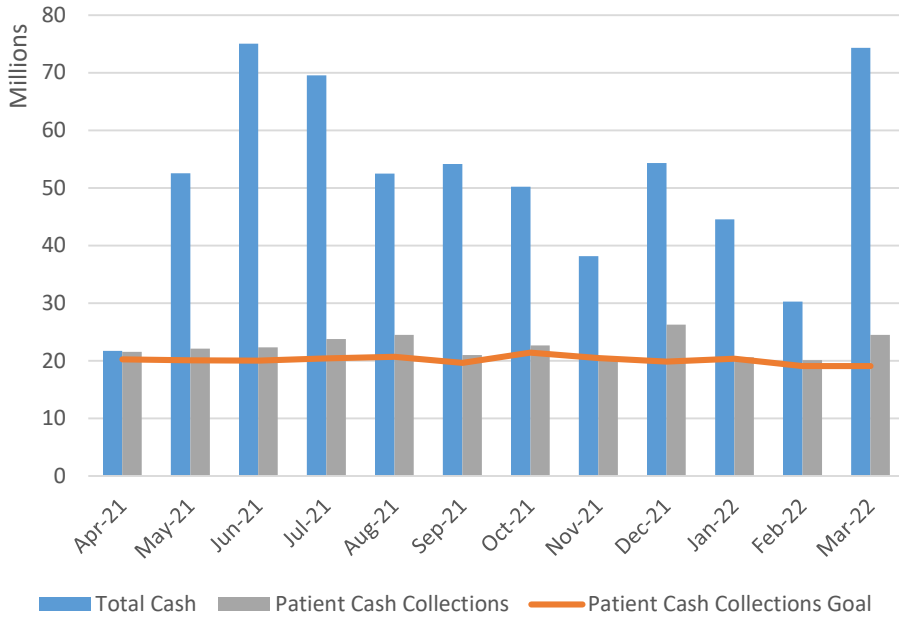
	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22
Supply Expense per AA	\$4,176	\$3,765	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528	\$2,141	\$2,938	\$1,813	\$1,818
Pharm Cost per AA	\$1,809	\$1,458	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081	\$846	\$982	\$538	\$575
Net Revenue Per AA	\$14,513	\$13,999	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170	\$8,196	\$12,479	\$8,333	\$7,003
Budget Supp/AA	\$3,526	\$3,522	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217	\$3,175	\$3,174	\$3,208	\$3,236
Budget Pharm/AA	\$1,767	\$1,714	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156	\$1,153	\$1,153	\$1,154	\$1,156
Budget Net Rev/AA	\$11,902	\$11,900	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187	\$13,344	\$13,359	\$12,793	\$13,771



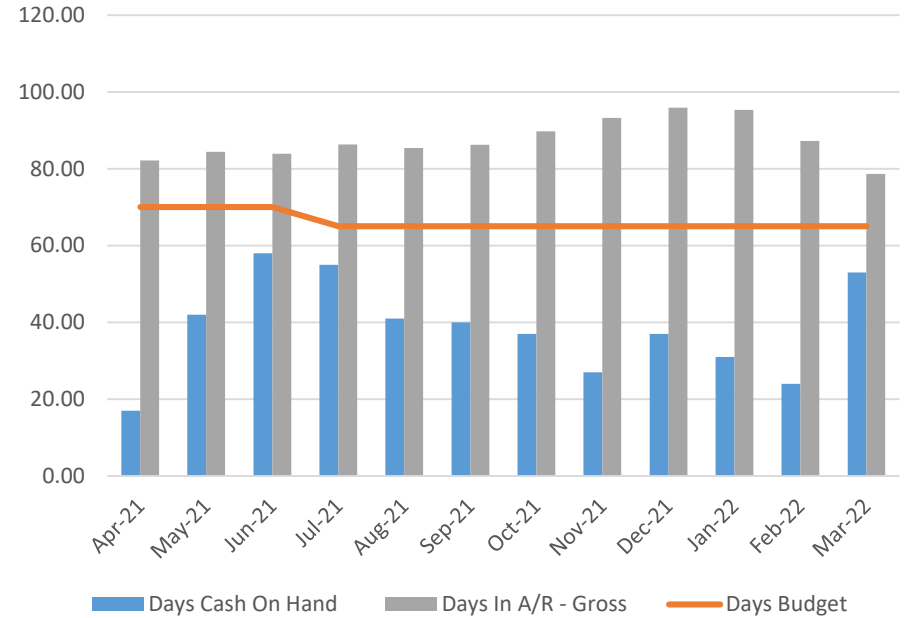
## EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expense**  
 March 31, 2022

	JANUARY	FEBRUARY	MARCH	BUDGET MARCH	VARIANCE POS (NEG)	PY MARCH
<b>Gross Patient Revenue</b>	\$ 97,984,263	\$ 87,636,700	\$ 97,607,248	\$ 89,438,284	9%	\$ 96,359,640
Contractual Deductions	(73,256,917)	(65,586,135)	(76,332,166)	(69,198,261)	10%	(70,384,390)
<b>Net Revenue</b>	24,727,346	22,050,565	21,275,083	20,240,024	5%	25,975,250
Indigent Funding	13,111,881	13,102,123	22,237,923	13,468,684	65%	32,389,620
Correctional Medicine	2,242,175	2,583,481	2,583,481	2,616,667	(1%)	2,669,615
County Contribution	285,526	285,211	285,211	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	725,547
<b>Net Patient Revenue</b>	40,366,928	38,021,379	46,381,697	36,608,269	27%	62,045,243
Gain/(Loss) on Health-Related Entity	0	0	0	0	0%	0
Other Operating Revenue	2,057,914	2,788,999	3,640,750	1,773,823	105%	3,502,424
Other Non-Operating Revenue	2,004,765	2,302,336	2,011,230	283,903	608%	(1,154,894)
<b>Total Revenue</b>	44,429,606	43,112,715	52,033,678	38,665,994	35%	64,392,773
<b>Expenses</b>						
Salaries	17,262,049	14,865,291	15,913,542	16,717,532	(5%)	15,899,102
Employee Benefits	6,921,972	6,636,609	6,781,663	7,613,437	(11%)	9,353,919
Registry	5,854,184	5,415,401	6,274,104	1,643,628	282%	2,361,176
Medical Fees	1,772,682	1,773,518	1,799,557	1,954,511	(8%)	1,798,897
Other Professional Fees	1,729,246	1,627,625	1,620,441	1,530,811	6%	1,374,253
Supplies	5,822,112	4,798,682	5,523,170	4,755,393	16%	5,858,095
Purchased Services	2,012,686	2,046,220	2,084,535	1,936,730	8%	1,975,422
Other Expenses	1,653,957	1,364,961	1,819,368	1,611,891	13%	3,492,764
Operating Expenses	43,028,888	38,528,307	41,816,379	37,763,934	11%	42,113,628
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,400,718	\$ 4,584,408	\$ 10,217,299	\$ 902,060	1,033%	\$ 22,279,145
EBIDA Margin	3%	11%	20%	2%	742%	35%
Interest	84,468	84,051	84,190	138,079	(39%)	122,822
Depreciation	671,551	661,829	670,027	466,931	43%	463,348
Amortization	295,228	295,228	295,228	254,168	16%	256,257
Total Expenses	44,080,135	39,569,414	42,865,824	38,623,112	11%	42,956,055
<b>Operating Gain (Loss)</b>	\$ 349,471	\$ 3,543,300	\$ 9,167,854	\$ 42,882	21,279%	\$ 21,436,718
<b>Operating Margin</b>	0.8%	8.2%	17.6%	0.11%	15,787%	33.29%

**KERN MEDICAL**  
**Year-to-Date: Revenue & Expense**  
 March 31, 2022

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
<b>Gross Patient Revenue</b>	\$ 883,946,920	\$ 797,987,666	11%	\$ 780,942,150	13%
Contractual Deductions	(676,598,493)	(623,028,079)	9%	(593,592,082)	14%
<b>Net Revenue</b>	207,348,427	174,959,587	19%	187,350,068	
Indigent Funding	129,896,116	121,218,160	7%	136,860,481	(5%)
Correctional Medicine	23,109,136	23,550,000	(2%)	23,238,116	(0.6%)
County Contribution	2,567,213	2,546,043	1%	2,566,937	0.011%
Incentive Funding	0	0	0%	4,926,980	(100%)
<b>Net Patient Revenue</b>	362,920,893	322,273,791	13%	354,942,583	2%
Gain/(Loss) on Health-Related Entity	0	0	0%	0	0%
Other Operating Revenue	21,567,543	14,773,500	46%	17,540,052	23%
Other Non-Operating Revenue	6,393,375	2,509,337	155%	1,488,723	329%
<b>Total Revenue</b>	390,881,810	339,556,627	15%	373,971,357	5%
<b>Expenses</b>					
Salaries	146,161,468	149,112,484	(2%)	141,136,179	4%
Employee Benefits	62,283,786	67,876,031	(8%)	66,409,316	(6%)
Registry	42,193,450	14,653,430	188%	15,303,731	176%
Medical Fees	15,806,001	16,060,983	(2%)	15,517,736	2%
Other Professional Fees	13,985,746	12,463,676	12%	12,435,868	12%
Supplies	53,641,576	41,983,839	28%	50,042,595	7%
Purchased Services	17,618,434	16,060,582	10%	16,923,279	4.11%
Other Expenses	14,793,177	13,229,570	12%	16,135,629	(8%)
Operating Expenses	366,483,637	331,440,594	11%	333,904,335	10%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 24,398,173	\$ 8,116,033	201%	\$ 40,067,022	(39%)
EBIDA Margin	6%	2%	161%	11%	(42%)
Interest	759,882	1,242,714	(39%)	1,199,187	(37%)
Depreciation	6,033,679	4,202,375	44%	4,216,479	43%
Amortization	2,375,723	2,287,516	3.9%	2,306,317	3%
Total Expenses	375,652,921	339,173,200	11%	341,626,318	10%
<b>Operating Gain (Loss)</b>	\$ 15,228,889	\$ 383,427	3872%	\$ 32,345,040	(53%)
<b>Operating Margin</b>	4%	0.1%	3350%	9%	(55%)

**KERN MEDICAL  
BALANCE SHEET**

	<b>MARCH 2022</b>	<b>MARCH 2021</b>
<b>ASSETS:</b>		
<i><b>Total Cash</b></i>	<b>\$ 74,299,542</b>	<b>\$ 36,999,827</b>
Patient Receivables Subtotal	291,206,221	249,983,069
Contractual Subtotal	(240,148,240)	(207,139,166)
<i><b>Net Patient Receivable</b></i>	<b>51,057,980</b>	<b>42,843,903</b>
Total Indigent Receivable	136,436,994	149,222,354
Total Other Receivable	8,495,347	5,600,970
Total Prepaid Expenses	5,230,304	4,837,494
Total Inventory	4,107,661	5,996,086
<i><b>Total Current Assets</b></i>	<b>279,627,827</b>	<b>245,500,633</b>
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	223,365,539	195,945,122
Total Construction in Progress	3,909,125	24,119,875
<i><b>Total Property, Plant &amp; Equipment</b></i>	<b>227,274,664</b>	<b>220,064,996</b>
Total Accumulated Depr & Amortization	(133,792,212)	(122,204,230)
<i><b>Net Property, Plant, and Equipment</b></i>	<b>93,482,452</b>	<b>97,860,767</b>
<i><b>Total Long Term Assets</b></i>	<b>127,290,855</b>	<b>87,863,462</b>
<i><b>Total Assets</b></i>	<b>\$ 500,401,134</b>	<b>\$ 431,224,861</b>

**KERN MEDICAL  
BALANCE SHEET**

	<b>MARCH 2022</b>	<b>MARCH 2021</b>
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 18,341,419	\$ 11,271,183
Total Accrued Compensation	34,744,023	36,832,813
Total Due Government Agencies	15,950,983	38,087,830
Total Other Accrued Liabilities	46,934,705	40,586,726
<b><i>Total Current Liabilities</i></b>	<b>115,971,130</b>	<b>126,778,551</b>
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	64,286,919	96,456,658
<b><i>Total Long-Term Liabilities</i></b>	<b>445,439,730</b>	<b>418,560,455</b>
<b><i>Total Liabilities</i></b>	<b>561,410,860</b>	<b>545,339,007</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	(97,723,748)	(150,828,167)
<b><i>Total Fund Balance</i></b>	<b>(61,009,726)</b>	<b>(114,114,145)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 500,401,134</b>	<b>\$ 431,224,861</b>



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

May 18, 2022

**Subject:** Kern County Hospital Authority Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.

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

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on May 18, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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



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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on May 18, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Alizae Bagsby, a minor,  
by and through her guardian ad litem, Abigail Bagsby v. Kenneth Hutchins, P.A.,  
an individual; Kern County Hospital Authority, a governmental entity; and DOES 1  
through 10, inclusive, Kern County Superior Court Case No. BCV-20-102566 TSC

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