



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, July 20, 2022

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) 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

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on June 15, 2022 –
APPROVE

CA

- 5) Proposed Agreement with Everardo Cobos, M.D., a contract employee, for professional medical services in the Department of Medicine from August 8, 2022 through August 7, 2025, in an amount not to exceed \$1,650,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed retroactive Amendment No. 3 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through June 30, 2022, extending the term for 90 days from July 1, 2022 through September 30, 2022, and increasing the maximum payable by \$115,000, from \$1,350,000 to \$1,465,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Amendment No. 1 to Agreement 041-2021 with Jeffry L. Huffman, M.D., a contract employee, for professional services in the Department of Surgery, for the period July 31, 2021 through July 30, 2026, adding compensation for dual hospital coverage, and increasing the maximum payable by \$467,200, from \$4,088,000 to \$4,555,200, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Amendment No. 2 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, adding compensation for dual hospital coverage, and increasing the maximum payable by \$467,200, from \$8,974,358 to \$9,441,558, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Agreement with Danny Long Huynh, M.D., a contract employee, for professional services in the Department of Surgery from August 8, 2022 through August 7, 2027, in an amount not to exceed \$4,360,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 2 to Agreement 06222 with Tri M. Ngo, M.D., an independent contractor, for professional medical services in the Department of Radiology, for the period January 3, 2022 through January 2, 2024, increasing the maximum payable by \$500,000, from \$250,000 to \$750,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed retroactive 340B Split Billing Service Agreement and Business Associate Agreement with Verity Solutions Group, Inc., an independent contractor, containing nonstandard terms and conditions, to provide 340B split billing services and software, for a term of three years, effective June 24, 2022, in an amount not to exceed \$115,000 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 12) Proposed Purchase Agreement and Service Agreement with Philips Healthcare, a division of Philips North America, LLC, an independent contractor, for the purchase of three EPIQ Elite Diagnostic Ultrasound Systems, and continued Service Agreement for a term of four years following expiration of the 12-month warranty period, in an amount not to exceed \$541,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Affiliation Agreement with Ross University School of Medicine and American University of the Caribbean School of Medicine, independent contractors, for clinical training of third- and fourth-year medical students from August 1, 2022 through July 31, 2025 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed retroactive Workforce Disruption Staffing Agreement with Aya Healthcare, Inc., an independent contractor, containing nonstandard terms and conditions, to provide emergency assistance with crisis staffing in response to labor disputes, strikes or other work stoppages from July 1, 2022 through June 30, 2023, in an amount not to exceed \$15,000,000 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 15) Proposed retroactive Amendment No. 5 to Agreement 620-2009 with Craneware, Plc., an independent contractor, for migration to Trisus Chargemaster Product (formerly Chargemaster Toolkit) and continued access to Physician Revenue and Online Reference Toolkits, for the period June 30, 2009 through June 29, 2022, extending the term five years from June 30, 2022 through June 29, 2027, and increasing the maximum payable by \$1,590,297, from \$2,605,613 to \$4,195,910, to cover the additional services and extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Sales Agreement with Axonics, Inc., an independent contractor, containing nonstandard terms and conditions, for the purchase of cystoscope and intraoperative urethral bulking system used for urology and urogynecology procedures, for a term of three years, effective July 20, 2022, in an amount not to exceed \$125,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Purchase Agreement with Philips Healthcare, a division of Philips North America, LLC, an independent contractor, for the purchase of upgraded telemetry monitoring systems, effective July 20, 2022, in an amount not to exceed \$1,370,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed Attachment 1 to Agreement 180-99 with 3M Health Information Systems, Inc., an independent contractor, containing nonstandard terms and conditions, to provide pass-through third-party terms to support software for the electronic health record, for a term that is coterminous with the current Agreement, with a term expiration of August 1, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Quote 2003222207515-07 with Presidio Networked Solutions Group, LLC, an independent contractor, for the purchase of network infrastructure equipment to support core network services under the terms and conditions of Master Services Agreement 053-2018, for a term of 60 months effective July 25, 2022, in an amount not to exceed \$2,215,708 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed retroactive Amendment No. 1 to Agreement 049-2019 with Cantu Management Group, Inc., an independent contractor, for Chief Financial Officer, healthcare consulting and financial management services, for the period September 1, 2019 through August 31, 2023, increasing the maximum payable by \$13,043,284, from \$7,200,000 to \$20,243,284, to cover the term, effective September 1, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

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

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

CA

- 23) Claims and Lawsuits Filed as of June 30, 2022 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 24) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 25) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court Case No. BCV-15-100647 –
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL –
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Paula Torres and Martin Alejandrez Cruz v. Kern County Hospital Authority, Yasser Ratl Mrad, M.D., and DOES 1 through 250, Inclusive, Kern County Superior Court Case No. BCV-21-101001 –
- 28) 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) –
- 29) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –
- 30) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Marcel Monji v. County of Kern, et al., United States District Court, Eastern District of California, Case No. 1:19-cv-01526-JLT-BAK (SKO) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, AUGUST 17, 2022 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

- 23) CLAIMS AND LAWSUITS FILED AS OF JUNE 30, 2021 –
RECEIVE AND FILE
- A) Claim in the matter of Manuel Leos Romero
 - B) Claim in the matter of Olen Dean McDowell
 - C) Claim in the matter of Maria De Los Angeles Campos



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

July 20, 2022

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

Recommended Action: Approve; Adopt Resolution

Summary:

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

Discussion:

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

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

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

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

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

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

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

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

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

In the matter of:

Resolution No. 2022-____

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

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of July, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

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

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

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

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

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

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

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

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

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

5. This Resolution shall take effect immediately upon its adoption and remain in effect until August 17, 2022.

6. This Board shall reevaluate the above findings on August 17, 2022, and every 30 days thereafter.

7. Resolution No. 2022-010, adopted by the Board of Governors on June 15, 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, June 15, 2022

11:30 A.M.

BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Roll Call: 4 Present; 3 Absent - Alsop, Berjis, Brar

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

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

BOARD ACTION SHOWN IN CAPS

NOTE: DIRECTOR ALSOP JOINED THE MEETING AFTER THE VOTE ON THE CONSENT AGENDA AND PRIOR TO THE DISCUSSION AND VOTE ON ITEM 4

PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Garth “Jon” Olango, M.D., for his outstanding leadership and service as President of Staff of the Medical Staff of Kern Medical Center from July 1, 2020 through June 30, 2022 –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; INCOMING PRESIDENT OF STAFF, RICK A. MCPHEETERS, D.O., INTRODUCED

ITEMS FOR CONSIDERATION

CA

- 4) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVED; ADOPTED RESOLUTION 2022-010
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on May 18, 2022 –
APPROVED
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 6) Proposed acceptance of donation from Safety National and MedPro for travel and related expenses for one Kern Medical Center employee to attend the American Society for Health Care Risk Management “ASHRM Express 2022” in Chicago, Illinois, from July 11-12, 2022 –
APPROVED; ADOPTED RESOLUTION 2022-011
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 7) Proposed Amendment No. 3 to Agreement 06816 with Health Advocates, LLC, an independent contractor, for accounts receivable and financial services for the period July 1, 2016 through June 30, 2022, extending the term for 90 days from July 1, 2020 through September 30, 2022, and increasing the maximum payable by \$1,050,000, from \$14,800,000 to \$15,850,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 065-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent – Alsop, Berjis, Brar

CA

- 8) Proposed Agreement with Michael J. Eagan, M.D., a contract employee, for professional medical services in the Department of Surgery from June 24, 2022 through June 23, 2025, in an amount not to exceed \$3,300,000, plus applicable benefits –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 066-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 9) Proposed Amendment No. 2 to Agreement 871-2015 with Shahab Hillyer, M.D., a contract employee, for professional services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, adding compensation for dual hospital coverage and services as Chief, Division of Urology, and increasing the maximum payable by \$667,200, from \$7,974,358 to \$8,641,558, to cover the term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 067-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 10) Proposed Agreement with Wong Moon, 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 \$2,740,625, plus applicable benefits –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 068-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 11) Proposed Amendment No. 1 to Agreement 032-2019 with M. Brandon Freeman, M.D., a contract employee, for professional services in the Department of Surgery, for the period July 17, 2019 through July 16, 2022, extending the term for 90 days from July 17, 2022 through October 21, 2022, and increasing the maximum payable by \$150,000, from \$1,800,000 to \$1,950,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 069-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 12) Proposed Amendment No. 4 to Agreement 529-2018 with County of Kern, as represented by the Kern County Sheriff's Office – Coroner Section, for morgue and autopsy services, for the period July 1, 2018 through June 30, 2022, extending the term for one year from July 1, 2022 through June 30, 2023, and increasing the maximum payable by \$80,000, from \$200,000 to \$280,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 070-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 13) Proposed renewal and binding of insurance coverages for hospital professional liability, general liability and umbrella/excess liability, workers' compensation and employers liability, automobile liability, heliport and non-owned aircraft liability, directors and officers liability, employment practices liability, healthcare regulatory liability, crime, privacy and security (cyber) liability, premises pollution liability, underground storage tank liability, employed lawyers professional liability, and fiduciary liability from July 1, 2022 through June 30, 2023, with option to finance selected premiums through PRISM and BankDirect Capital Finance in an amount not to exceed \$1,826,850 –

APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT 071-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

CA

- 14) Proposed Sales Order (OPT-0297289) with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of the Cerner/Tonic Patient Intake Solution, for a term of 66 months, effective June 15, 2022, in an amount not to exceed \$879,978

–
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 072-2022
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

- 15) Report on the status of Cerner Electronic Health Record implementation –
WITHDRAWN

- 16) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED
McLaughlin-Pelz: 5 Ayes; 2 Absent - Berjis, Brar

- 17) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Pelz-McLaughlin: 5 Ayes; 2 Absent - Berjis, Brar

CA

- 18) Claims and Lawsuits Filed as of May 31, 2022 –
RECEIVED AND FILED
Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Berjis, Brar

ADJOURNED TO CLOSED SESSION
McLaughlin-Alsop

CLOSED SESSION

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

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

- 21) CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court Case No. BCV-15-100647 – SEE RESULTS BELOW

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

- 23) 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

RECONVENED FROM CLOSED SESSION

Alsop - Pelz

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 19 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR ALSOP; 2 ABSENT - BERJIS, BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING; AND VOLUNTARY RESIGNATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 20 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – THIS ITEM WAS NOT HEARD

Item No. 21 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court Case No. BCV-15-100647 – THIS ITEM WAS NOT HEARD

Item No. 22 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL – THIS ITEM WAS NOT HEARD

Item No. 23 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

ADJOURNED TO WEDNESDAY, JULY 20, 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**

July 20, 2022

Subject: Proposed Agreement with Everardo Cobos, M.D., for professional medical and administrative services in the Department of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Everardo Cobos, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine. Dr. Cobos serves as Chair, Department of Medicine and Chief, Division of Hematology and Oncology, and has been employed by Kern Medical since August 8, 2016.

The proposed Agreement is for a term of three-years from August 8, 2022 through August 7, 2025. The maximum payable will not to exceed \$1,650,000 over the three-year term of the Agreement.

Dr. Cobos'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. Cobos.

Therefore, it is recommended that your Board approve the Agreement with Everardo Cobos, M.D., for professional medical and administrative services in the Department of Medicine from August 8, 2022 through August 7, 2025, in an amount not to exceed \$1,650,000, plus applicable benefits, and authorize the Chairman to sign.

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

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

**I.
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #040-2019, dated July 17, 2019), for the period August 8, 2019 through August 7, 2022; and

(e) Each party expressly understands and agrees that Agt. #040-2019 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of August 8, 2022 (the “Commencement Date”), and shall end August 7, 2025 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

4.3.2 Board Certification. Physician shall be board certified by the American Board of Internal Medicine in internal medicine-general, hematology-subspecialty and medical oncology-subspecialty, and maintain such certifications at all times during the Term of this Agreement.

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

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

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

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

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

services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

4.7 Authorization to Release Information. Physician hereby authorizes Managed Care Organizations, government programs, hospitals and other third parties to release to KMC and its agents any information requested by KMC or its agents from time to time relating to Physician's professional qualifications or competency. Physician agrees to execute the Authorization to Release Information in the form set forth in Exhibit "C," 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 or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate

thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$19,491.26 biweekly not to exceed \$506,773 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.2 Salary Adjustment. Physician shall be subject to an automatic salary adjustment of two percent (2%) in accordance with the salary schedule set forth in Exhibit "B," Salary Schedule, attached hereto and incorporated herein by this reference, commencing August 8, 2023, and annually thereafter during the Term.

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

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

5.2 Incentive Compensation. Physician shall be eligible to receive annual incentive compensation in the amount of \$25,000 each Employment Year if Physician achieves certain performance measures (the “Incentive Payment”). Measures shall be determined annually. If multiple measures are used (i.e., more than one measure annually), the Incentive Payment shall be divided by the total number of measures and the prorated amount paid if the target metric is achieved. Payment shall be made within sixty (60) days of the end of each Employment Year. Each Incentive Payment made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements. Any adjustment in the Incentive Payment shall be in writing and signed by both parties through a formal amendment to this Agreement.

5.3 Professional Fee Billing.

5.3.1 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.

5.3.2 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.

5.4 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,650,000 over the three (3) year Term of this Agreement.

6. **Benefits Package.**

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

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 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 retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

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

6.6 Education Leave. Physician shall receive 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 Chief Medical Officer 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 Chief Medical Officer. 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 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

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

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

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

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

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

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

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

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

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

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

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to

any services rendered at any location other than 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:

Everardo Cobos, M.D.
3740 Acadia Circle
Bakersfield, California 93311

Notice to Authority:

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

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

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

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

28. **Termination.**

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

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

that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (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 _____
Everardo Cobos, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Cobos.070722

EXHIBIT “A”
JOB DESCRIPTION
Everardo Cobos, M.D.

Position Description: Reports to Chief Medical Officer; serves as Chair, Department of Medicine and Chief, Division of Hematology and Oncology; serves as a full-time faculty member in the Department; provides no fewer than eighty (80) hours per pay period of service; day-to-day work activities and clinical workload shall include coverage within the Department; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of care, direct patient care, scholarly research, and resident education. Physician shall work collaboratively with Department faculty, staff and administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Provide leadership as Department Chair, including mentoring and professional development of all Department faculty, residents, and medical students
- Maintain and enhance excellence of the internal medicine residency program and accreditation by the RRC and ACGME
- Appoint and provide oversight of the internal medicine residency Program Director and program curriculum
- Develop a Department culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization as well as a culture that consistently focuses on patient care and patient safety
- Develop a Department culture that does not allow disruptive behavior
- Monitor individual physician clinical performance by tracking and trending outcomes, utilization of resources, adherence to established protocols, and document and counsel as appropriate
- Develop mechanisms to conduct patient care reviews objectively for the purpose of analyzing and evaluating the quality and appropriateness of patient care and treatment
- Responsible for preparing or delegating staff schedules and clinical assignments to maximize productivity and quality care as well as ensuring that all faculty are present at KMC performing their assigned and scheduled clinical, teaching, and administrative duties
- Oversight of Department meetings, morbidity and mortality conferences, and ensuring leadership, structure and function of Department committees, including assigning faculty to appropriate committees and facilitating their involvement in hospital-wide quality and performance improvement programs
- Conduct annual performance evaluations of faculty
- Pursue further alignment with the University of California, Los Angeles (UCLA) in conjunction with all other KMC initiatives as well as specific alignment for the Department of Medicine with UCLA or another appropriate academic medical institution
- Membership on the Medical Executive Committee and participate in Medical Staff and other hospital committees

- Participation in quality and system improvement initiatives, including improving patient satisfaction and enhancing timely access to care as well as peer review within the Medical Staff and Department
- Collaboration with all other KMC Department Chairs
- Collaboration with KMC administration to enhance engagement with area health plans, community physicians, and members of the Medical Staff to improve patient care and overall volume growth
- Lead the clinical preparation monitoring, review, and performance of clinical activity in the Department
- Develop a faculty succession and recruitment plan
- Recruit and recommend to the Chief Executive Officer and Chief Medical Officer new faculty, after appropriate vetting, for faculty appointments in the Department, in consultation with Department faculty
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across clinical departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Support the development of the Simulation Laboratory and related education programs and curriculum
- Follow and comply with the Medical Staff Bylaws, Rules, Regulations, and policies, and Authority and KMC policies and procedures
- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment

B. Clinical Responsibilities

- Model exemplary clinical outcomes and professional leadership behaviors, as a Chair in a working clinical position
- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and procedures within the scope of practice for hematology/oncology specialist while on service
- Supervise residents and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise procedures performed by residents and mid-levels while on service

C. Medical Education, Teaching, and Academic Responsibilities

- Serve as a core faculty member providing supervision and instruction to residents and medical students
- Provide clinical mentoring to and evaluation of residents and medical students
- Establish and maintain an academic appointment at the David Geffen School of Medicine at UCLA
- Serve as a mentor to residents and medical students who desire to conduct research or other scholarly activity

- Demonstrate active involvement in continuing education for internal medicine and hematology/oncology
- Demonstrate active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements
- Support the activities of the residency educational program
- Participate in the development of Department curriculum
- Attend and participate in the weekly Department didactic sessions
- Deliver lectures as appropriate throughout the year

Employment Standards:

Completion of an accredited residency program in internal medicine

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 Internal Medicine in internal medicine-general, hematology-subspecialty, and medical oncology-subspecialty

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to internal medicine, hematology, and oncology; principles of effective supervision and program development.

[Intentionally left blank]

**EXHIBIT “B”
SALARY SCHEDULE
Everardo Cobos, M.D.**

<u>Effective Date</u>	<u>Annual Rate of Compensation</u>	<u>Biweekly Payment</u>
August 8, 2022	\$506,773	\$19,491.26
August 8, 2023	\$516,908	\$19,881.07
August 8, 2024	\$527,246	\$20,278.69

EXHIBIT "C"
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



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

July 20, 2022

Subject: Proposed Retroactive Amendment No. 3 to Agreement 20119-2019 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 3 to the Agreement with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through June 30, 2022. Dr. Lopez, an obstetrician and gynecologist, has been employed by Kern Medical Center since 2004. Currently he serves as Chair of the Department.

The proposed Amendment is extending the term of the Agreement by 90 days from July 1, 2022 through September 30, 2022, during which time a new agreement will be negotiated with Dr. Lopez. The Amendment increases the maximum payable by \$115,000, from \$1,350,000 to \$1,465,000, to cover the extended term.

Therefore, it is recommended that your Board approve the Amendment No. 3 to Agreement 20119-2019 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology, extending the term for 90 days from July 1, 2022 through September 30, 2022, increasing the maximum payable by \$115,000, from \$1,350,000 to \$1,465,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 3
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Juan M. Lopez, M.D.)**

This Amendment No. 3 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Juan M. Lopez, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #20119, dated May 30, 2019), Amendment No. 1 (Agt. #55319, dated November 26, 2019), and Amendment No. 2 (Agt. #05321, dated February 15, 2022 (the “Agreement”), for the period July 1, 2019 through June 30, 2022, whereby Physician provides professional medical and administrative services in the Department of Obstetrics and Gynecology at KMC; and

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

(c) The Agreement is amended effective 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, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of July 1, 2019 (the “Commencement Date”), and shall end September 30, 2022 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement date and each annual period thereafter.”

2. Section 5, Compensation Package, paragraph 5.8, Maximum Payable, shall be deleted in its entirety and replaced with the following:

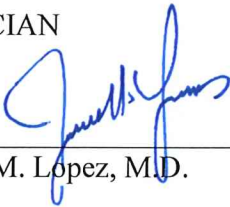
“5.8 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$1,465,000 over the three (3) year Term of this Agreement.”

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.
6. Except as provided herein, all other terms, conditions and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Intentionally left blank]

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

PHYSICIAN

By  _____
Juan M. Lopez, 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

Amend3.Lopez.070822



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

July 20, 2022

Subject: Proposed Amendment No. 1 to Agreement 041-2021 with Jeffry L. Huffman, 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 the proposed Amendment No. 1 with Jeffry L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Huffman, a fellowship trained urologist, has been employed by Kern Medical since July 31, 2021.

The proposed Amendment adds compensation for dual hospital coverage. In anticipation of the future joint hospital coverage efforts in the Division of Urology with Adventist Health, a Dual Hospital Coverage Compensation Schedule has been developed in collaboration with Adventist Health. This schedule outlines what the compensation from to our employed urologists based on the number of full-time employed physician equivalents in the supergroup. Dual hospital coverage will not be required until there is a minimum of five urologists participating in the collective call pool. The schedule also allows for physicians to be compensated should they choose to provide dual hospital coverage voluntarily prior to five urologists participating in the call pool. The Amendment is effective July 20, 2022.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 041-2021 with Jeffry L. Huffman, M.D., for professional medical services in the Department of Surgery, for the period July 31, 2021 through July 30, 2026, adding compensation for dual hospital coverage, increasing the maximum payable by \$467,200, from \$4,088,000 to \$4,555,200, to cover the term, and authorize the Chairman to sign.

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

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

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #041-2021, dated July 14, 2021) (the “Agreement”), for the period July 31, 2021 through July 30, 2026, whereby Physician provides professional medical services in the Department of Surgery at KMC; and

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

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

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

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

“5.4 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$4,555,200 over the five (5) year Initial Term of this Agreement.”

2. Section 5, Compensation Package, paragraph 5.5, Dual Hospital Coverage, shall be made part of the Agreement as follows:

“5.5 Dual Hospital Coverage. Authority shall pay Physician for dual hospital coverage according to the call ratio and corresponding rates set forth in Exhibit “C,” Dual Hospital Coverage Compensation Schedule, attached hereto and incorporated herein by this reference.”

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

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

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

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

[Intentionally left blank]

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

PHYSICIAN

By _____
Jeffry L. Huffman, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend1.Huffman.062922

EXHIBIT “C”
DUAL HOSPITAL COVERAGE COMPENSATION SCHEDULE
Jeffrey L. Huffman, M.D.

Physician shall be paid for dual hospital coverage (KMC and Adventist Health Bakersfield) based on a tiered call compensation schedule comprised of full-time employed physician equivalents in a “supergroup” of core physicians with an added differential when there are fewer than six (6) full-time employed physician equivalents. Providers outside the supergroup may participate in call coverage. Dual hospital coverage is expected to commence when there is a minimum of five (5) urologists participating in the collective call pool (not five (5) full-time employed physician equivalents in the supergroup). Physician shall be paid at the 1:5 call ratio if Physician volunteers to provide dual hospital coverage prior to five (5) urologists participating in the collective call pool. The tiered call compensation, based on the number of full-time employed physician equivalents in the supergroup, is set forth below.

Call Ratio	Weekday Rate (Monday-Friday)	Weekend Rate (Saturday/Sunday)	Differential Weekday	Differential Weekend
1:4	Cover KMC Only			
1:5	\$1,000	\$1,200	\$600	\$400
1:6	\$1,000	\$1,200	\$0.00	\$0.00
1:7	\$500	\$600	\$0.00	\$0.00
1:8	\$0.00	\$0.00	\$0.00	\$0.00

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

July 20, 2022

Subject: Proposed Amendment No. 2 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 2 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Nalesnik, a fellowship trained urologist, has been employed by Kern Medical since January 1, 2016, and serves as the Chair of the Department of Surgery.

The proposed Amendment adds compensation for dual hospital coverage. In anticipation of the future joint hospital coverage efforts in the Division of Urology with Adventist Health, a Dual Hospital Coverage Compensation Schedule has been developed in collaboration with Adventist Health. This schedule outlines what the compensation to our employed urologists will be based on the number of full-time employed physician equivalents in the supergroup. Dual hospital coverage will not be required until there is a minimum of five urologists participating in the collective call pool. The schedule also allows for physicians to be compensated should they choose to provide dual hospital coverage voluntarily prior to five urologists participating in the call pool. The Amendment is effective July 20, 2022.

Therefore, it is recommended that your Board approve Amendment No. 2 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, adding compensation for dual hospital coverage, increasing the maximum payable by \$467,200, from \$8,974,358 to \$9,441,558, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Jeffrey G. Nalesnik, M.D.)**

This Amendment No. 2 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Jeffrey G. Nalesnik, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #873-2015, dated December 8, 2015) and Amendment No. 1 (Agt. #045-2021, dated August 18, 2021) (the “Agreement”), for the period January 1, 2016 through December 31, 2025, whereby Physician provides professional medical and administrative services in the Department of Surgery at KMC; and

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

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

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

1. Section 5, Compensation Package, paragraph 5.5, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$9,441,558 over the 10-year Term of this Agreement.”

2. Section 5, Compensation Package, paragraph 5.7, Dual Hospital Coverage, shall be made part of the Agreement as follows:

“5.7 Dual Hospital Coverage. Authority shall pay Physician for dual hospital coverage according to the call ratio and corresponding rates set forth in Exhibit “C,” Dual Hospital Coverage Compensation Schedule, attached hereto and incorporated herein by this reference.”

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

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

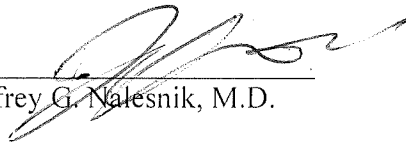
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

6. 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.

[Intentionally left blank]

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

PHYSICIAN

By 
Jeffrey G. Nalesnik, 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

Amend2.Nalesnik.051622

EXHIBIT “C”
DUAL HOSPITAL COVERAGE COMPENSATION SCHEDULE
Jeffery G. Nalesnik, M.D.

Physician shall be paid for dual hospital coverage (KMC and Adventist Health Bakersfield) based on a tiered call compensation schedule comprised of full-time employed physician equivalents in a “supergroup” of core physicians with an added differential when there are fewer than six (6) full-time employed physician equivalents. Providers outside the supergroup may participate in call coverage. Dual hospital coverage is expected to commence when there is a minimum of five (5) urologists participating in the collective call pool (not five (5) full-time employed physician equivalents in the supergroup). Physician shall be paid at the 1:5 call ratio if Physician volunteers to provide dual hospital coverage prior to five (5) urologists participating in the collective call pool. The tiered call compensation, based on the number of full-time employed physician equivalents in the supergroup, is set forth below.

Call Ratio	Weekday Rate (Monday-Friday)	Weekend Rate (Saturday/Sunday)	Differential Weekday	Differential Weekend
1:4	Cover KMC Only			
1:5	\$1,000	\$1,200	\$600	\$400
1:6	\$1,000	\$1,200	\$0.00	\$0.00
1:7	\$500	\$600	\$0.00	\$0.00
1:8	\$0.00	\$0.00	\$0.00	\$0.00

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

July 20, 2022

Subject: Proposed Agreement with Danny Long Huynh, M.D.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Danny Long Huynh, M.D., for professional medical services in the Department of Surgery, for a term of five years from August 8, 2022 through August 7, 2027, in an amount not to exceed \$4,360,000. Dr. Huynh is a fellowship trained, board certified urologist. Dr. Huynh has been in private practice in Bakersfield for six years and will be closing his practice to join Kern Medical.

Dr. Huynh's annual salary of \$750,000 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents reasonable fair market value compensation for the services provided. Dr. Huynh's compensation is comprised of (i) a base salary for teaching and administrative duties; (ii) payment for care of KMC patients; (iii) maintaining a median level (50th percentile) of worked relative value units; (iv) and weekday and weekend call coverage. In addition to his annual salary, Dr. Huynh will receive a starting bonus of \$20,000 and is eligible to receive incentive compensation defined as 25% of the professional fee net collections in excess of \$750,000, less all applicable federal and state taxes and withholdings, per Employment Year. Dr. Huynh will also receive the same benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, healthcare coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$4,360,000 over the five-year term, excluding the cost of benefits.

The Agreement also contains a provision for Dual Hospital Coverage, including a compensation schedule, in anticipation of the future joint hospital coverage efforts in the Division of Urology with Adventist Health. This schedule outlines the compensation to be paid to Dr. Huynh and our other employed urologists and is based on the number of full-time employed physician equivalents in the supergroup. Dual hospital coverage will not be required until there is a minimum of five urologists participating in the collective call pool. The schedule also allows for the urologists to be compensated should they choose to provide dual hospital coverage voluntarily prior to five urologists participating in the call pool.

Therefore, it is recommended that your Board approve the Agreement with Danny Long Huynh, M.D., for professional medical services in the Department of Surgery from August 8, 2022 through August 7, 2027, in an amount not to exceed \$4,360,000, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Danny Long Huynh, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2022, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Danny Long Huynh, 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; and

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 five (5) years, commencing as of August 8, 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, including without limitation, hospital and clinic locations owned and operated by Adventist Health (collectively, “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority’s employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

4.3.2 **Board Certification.** Physician shall be board certified by the American Board of Urology in urology-general and maintain such certification at all times during the Term of this Agreement.

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

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

4.3.4 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 "C," 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 or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician's own account or as an employee, landlord, lender, trustee, associate, consultant, partner, agent, principal, contractor, owner, officer, director, investor, member or stockholder of any other person, or in any other capacity, directly or indirectly, in whole or in part: (i) engage in any activities that are in competition with KMC, including the operation of any medical practice or offering of any medical services that are similar to services offered at the Practice Sites; (ii) solicit or encourage the resignation of any

employee of Authority or KMC with whom Physician had a working relationship during Physician's employment with Authority; (iii) solicit or divert patients with whom Physician had personal contact during such employment; or (iv) influence or attempt to influence any payer, provider or other person or entity to cease, reduce or alter any business relationship with Authority or KMC relating to the Practice Sites.

5. **Compensation Package.**

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

5.1.1 **Annual Salary.** Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$750,000 per year,² to be paid as follows: Physician shall be paid \$28,846.15 biweekly not to exceed \$750,000 annually. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Initial Term of this Agreement.

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

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

5.2 **Dual Hospital Coverage.** Authority shall pay Physician for dual hospital coverage according to the call ratio and corresponding rates set forth in Exhibit "B," Dual Hospital Coverage Compensation Schedule, attached hereto and incorporated herein by this reference.

5.3 **Incentive Compensation.** Within thirty (30) days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the professional fee net collections (defined as actual cash received) for all professional services provided by Physician. Physician shall receive twenty-five percent (25%) of the professional fee net collections in excess of \$750,000, less all applicable federal and state taxes and withholdings, per Employment Year.

² The Annual Salary paid to Physician is comprised of a base salary for teaching and administrative duties in the amount of \$80,000 and payment for care of KMC patients in the amount of \$670,000 (MGMA 50th percentile with Worked RVU threshold of 7,518 = \$480,000; call coverage = \$190,000).

5.4 Starting Bonus.

5.4.1 Bonus. Physician shall receive a starting bonus in the amount of \$20,000, 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.

5.4.2 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 \$20,000 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.

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

5.5 Professional Fee Billing.

5.5.1 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.

5.5.2 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.

5.6 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$4,360,000 over the five (5) 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 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 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 credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of two hundred forty (240) hours per Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of three hundred twenty (320) hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Department Chair must approve all vacation leave in advance. 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), less 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 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

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

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

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

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

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

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

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

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

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

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

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than 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:

Danny Long Huynh, M.D.
12312 Champlin Place
Bakersfield, California 93311

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty

against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (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  _____
Danny Long Huynh, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Huynh.062422

EXHIBIT “A”
JOB DESCRIPTION
Danny Long Huynh, M.D.

Position Description: Reports to Chief, Division of Urology; serves as a full-time faculty member in the Department; provides those services assigned by the Department Chair; provides no fewer than eighty (80) hours of service per pay period.

Essential Functions:

1. Clinical Responsibilities

- Performs urologic procedures
- Schedules and maintains adequate clinic hours, a minimum of two (2) half days per week, to meet the needs of the urology service

2. Teaching Responsibilities

- Assists in didactic curriculum and teaching conferences, as requested
- Assists in resident research and scholarly activity

3. Administrative Responsibilities

- Assists in clinical and administrative integration efforts across KMC as appropriate for the urology service ensuring proper planning, surgeon recruitment, faculty development, resource allocation, analysis, communication, and assessment
- Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase productivity, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Supports the Department Chair to develop monitoring tools to measure financial, access, quality, and satisfaction outcomes for the urology service
- Attends and actively participates in assigned Medical Staff and hospital committees

Employment Standards:

Completion of an accredited residency program in urology; one (1) year of post-residency experience in urologic surgery desirable

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 Urology in urology-general

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

[Intentionally left blank]

**EXHIBIT “B”
DUAL HOSPITAL COVERAGE
COMPENSATION SCHEDULE
Danny Long Huynh, M.D.**

Physician shall be paid for dual hospital coverage (KMC and Adventist Health Bakersfield) based on a tiered call compensation schedule comprised of full-time employed physician equivalents in a “supergroup” of core physicians with an added differential when there are fewer than six (6) full-time employed physician equivalents. Providers outside the supergroup may participate in call coverage. Dual hospital coverage is expected to commence when there is a minimum of five (5) urologists participating in the collective call pool (not five (5) full-time employed physician equivalents in the supergroup). Physician shall be paid at the 1:5 call ratio if Physician volunteers to provide dual hospital coverage prior to five (5) urologists participating in the collective call pool. The tiered call compensation, based on the number of full-time employed physician equivalents in the supergroup, is set forth below.

Call Ratio	Weekday Rate (Monday-Friday)	Weekend Rate (Saturday/Sunday)	Differential Weekday	Differential Weekend
1:4	Cover KMC Only			
1:5	\$1,000	\$1,200	\$600	\$400
1:6	\$1,000	\$1,200	\$0.00	\$0.00
1:7	\$500	\$600	\$0.00	\$0.00
1:8	\$0.00	\$0.00	\$0.00	\$0.00

[Intentionally left blank]

EXHIBIT "C"
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

7/9/22

Date



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

July 20, 2022

SUBJECT: Proposed Amendment No. 2 to Agreement 06222 with Tri M. Ngo, M.D., an independent contractor, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve Amendment No. 2 to the Agreement with Tri M. Ngo, M.D., for professional medical services in the Department of Radiology. Dr. Ngo provides radiology reading services on a scheduled and as-needed basis.

Dr. Ngo has provided radiology services at Kern Medical as an independent contractor since transitioning from full-time employment in January of 2022. Kern Medical continues to require the services of Dr. Ngo to provide scheduled and as-needed coverage in the Department. Due to staffing needs within the department, Dr. Ngo has increased the number of shifts worked and as such, we are requesting your Board's approval to increase the maximum payable under the Agreement by \$500,000, from \$250,000 to \$750,000, over the two-year term of the Agreement.

Therefore, it is recommended that your Board approve the proposed Amendment No. 2 with Tri M. Ngo, M.D., an independent contractor, for professional medical services in the Department of Radiology, increasing the maximum payable by \$500,000, from \$250,000 to \$750,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Tri M. Ngo, M.D.)**

This Amendment No. 2 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Tri M. Ngo, M.D., a sole proprietor (“Contractor”), whose principal place of business is located at 10321 Finchley Avenue, Westminster, California 92683.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #06222, dated February 14, 2022) and Amendment No. 1 (Agt. # and date to be determined) (“Agreement”), for the period January 3, 2022 through January 2, 2024, for professional medical services in the Department of Radiology at KMC; and

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

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

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

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

“4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$750,000 over the two (2) year term of this Agreement.”

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

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

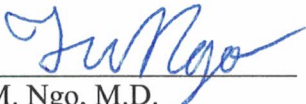
4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

[Signatures follow on next page]

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

CONTRACTOR

By 
Tri M. Ngo, 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

Amend2.Ngo.070722



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

July 20, 2022

SUBJECT: Proposed retroactive 340B Split Billing Service Agreement and Business Associate Agreement with Verity Solutions Group, Inc.

Requested Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the 340B Split Billing Service Agreement and Business Associate Agreement with Verity Solutions Group, Inc., which provides 340B split billing services and software. As a disproportionate share hospital, Kern Medical is able to participate in the 340B Drug Pricing Program, which enables entities to stretch scarce resources by allowing reduced purchase prices on the acquisition of certain pharmaceuticals. Verity Solutions Group, Inc. provides a virtual inventory system that will enable Kern Medical to participate in and manage compliance with the 340B program.

The term of the 340B Split Billing Service Agreement and Business Associate Agreement is three years, effective June 24, 2022, with a total maximum payable not to exceed \$115,000.

Both the 340B Split Billing Service Agreement and Business Associate Agreement contain nonstandard terms and cannot be approved as to form by Counsel due to (1) the inability to terminate the 340B Split Billing Agreement without cause and (2) limiting liability to \$5,000,000 in the Business Associate Agreement in the event of a privacy breach. Efforts were made to negotiate these nonstandard terms to no avail. This service and software 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 340B Split Billing Service Agreement and Business Associate Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board retroactively approve the 340B Split Billing Service Agreement and Business Associate Agreement with Verity Solutions Group, Inc., effective June 24, 2022, with a maximum payable not to exceed \$115,000 for the three-year term, and authorize the Chief Executive Officer to sign.

VERITY 340B SPLIT BILLING SERVICES AGREEMENT

Agreement Summary

DATE OF OFFER: 6/3/2022

The pricing and terms herein are valid for 90 days from the Date of Offer.

This VERITY 340B SPLIT BILLING SERVICES AGREEMENT ("**Agreement**") is entered into on _____ ("**Effective Date**") by and between following parties:


"Verity"	Attention: Legal Department
Verity Solutions Group, Inc.	
12131 113th Ave. NE, Suite 200	Phone: (425) 947-1940
Kirkland, Washington 98034	Fax: (425) 947-1940

"Customer"	Attention: Sally Htoy
Kern County Hospital Authority	Email: shtoy@coh.org
1700 Mt Vernon Ave	Phone:
Bakersfield, CA 93306	Fax:
Customer A/P and Billing Information	Billing Address if different from above
A/P Billing Contact: Debbie Contreras	Address:
Phone: 661.862.4134	City/State/Zip:
Email: accountspayable@kernmedical.com	


This Agreement is comprised of the following documents and is entered into by the parties as of the Effective Date set forth above:

1. Agreement Summary
2. Standard Terms and Conditions
3. Exhibit A: Verity 340B Split Billing
4. Exhibit B: Pricing and Payment Terms
5. Exhibit C: Service Level Policy

Each party causes this Agreement to be executed by its duly authorized representative.

By:	By: 
Printed Name:	Printed Name: Scott Thygerson
Title:	Title: Chief Executive Officer
Date:	Date: 6/24/2022
VERITY SOLUTIONS GROUP, INC.	KERN COUNTY HOSPITAL AUTHORITY

REVIEWED ONLY, NOT APPROVED AS TO FORM



Jamie A. Mason

Kern County Hospital Authority, Legal Services Department

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Standard Terms and Conditions

1. Definitions.

1.1 **“340B Act”** refers to Section 340B of the Public Health Services Act, enacted by Section 6-2 of Public Law 102-585, the Veteran’s Health Care Act of 1992. The 340B Act provides for price limitations on certain drugs purchased by qualified entities.

1.2 **“340B Services”** means the web-based 340B management solution further described on Exhibit A that is made available by Verity to Customer during the Term pursuant to this Agreement.

1.3 **“Confidential Information”** means: (a) any information marked confidential or proprietary; (b) the 340B Services and any non-public information relating to either party’s software, products, services, business plans, designs, customers, partners, costs, prices, finances, marketing plans, business opportunities, personnel, research development or know-how; and (c) the terms and conditions of this Agreement. “Confidential Information” does not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of, or inducement by the receiving party; (ii) is known and has been reduced to tangible form by the receiving party prior to the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; or (iv) is lawfully obtained from a third party that has the right to make such disclosure. Further, Verity 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 Confidential Information by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

1.4 **“Covered Entity”** means a health care organization that is eligible to purchase certain drugs at reduced prices under the 340B Act.

1.5 **“Documentation”** means all user guides and other published written documentation provided by Verity to Customer. Documentation does not include any materials or information prepared by a third party.

1.6 **“Location”** means a particular Customer site that is enrolled in 340B Services, as set forth on Exhibit B.

1.7 **“Setup Fee”** means one-time implementation charge as described in Exhibit B.

1.8 **“Subscription Fees”** means the recurring monthly fees paid in exchange for the 340B Services, as described in Exhibit B.

All other capitalized terms have the meanings assigned to them in this Agreement.

2. 340B Services.

Subject to the terms and conditions of this Agreement, Verity hereby grants Customer a limited, non-exclusive, non-transferable right, without the right to sublicense, to use the 340B Services and the Documentation during the Term. In addition to any other restrictions herein, Customer will not: (a) remove, modify or obscure any proprietary rights notices on any Documentation; (b) modify or create derivative works of the Documentation; (c) electronically transfer or otherwise disclose the Documentation outside of Customer’s organization; (d) use the 340B Services in any renting, leasing or sharing arrangement or allow any third-party to have access; or (e) publish or disclose the results of any benchmark tests or other performance assessment for the 340B Services.

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3. Professional Services.

In connection with the 340B Services, Verity will provide implementation, hosting (by Amazon Web Services) and support services (collectively, “**Professional Services**”) during the Term. Implementation of the 340B Services will commence following the Effective Date of this Agreement, as agreed to between the parties. Support services for the 340B Services will be provided in accordance with Verity’s Service Level Policy, attached hereto as Exhibit C. Any Professional Services requested outside of Verity’s standard services will be detailed in a mutually agreeable work order setting forth scope and fees.

4. Term.

This Agreement shall commence as of the Effective Date and shall remain in effect for an initial term of thirty-six (36) months from the Effective Date (the “**Term**”), after which it shall renew automatically for successive 12-month periods (each, a Renewal Term” and together with the Initial Term, the “Term”), at then-current pricing on each renewal date. Notwithstanding anything to the contrary, to the extent Verity is providing the 340B Services to Customer, then this Agreement shall govern.

5. Customer Obligations.

5.1 Customer shall promptly provide any and all assistance that Verity may reasonably request in connection with Verity’s performance of its obligations under this Agreement, including without limitation, setup, implementation, testing and performance of the 340B Services. In addition, Customer shall timely provide all requested data and related files to Verity in accordance with Verity’s data specifications, which may be updated from time to time (“**Verity Data Specifications**”). Customer is responsible for ensuring that all sensitive data, including but not limited to Protected Health Information under HIPAA, is encrypted at the source prior to being transmitted to Verity’s sFTP server. To the extent Customer does not comply with this requirement, then notwithstanding any limitations on liability herein, Customer is solely responsible for all risk and costs associated with such transmission.

5.2 Customer shall ensure that all necessary consents and approvals have been obtained in order to provide all required data to Verity in accordance with the Verity Data Specifications.

5.3 Customer may provide suggestions, comments or other input to Verity relating to the 340B Services (“**Feedback**”). Between the parties, Verity will own all Feedback and will be free to use Feedback without obligation or restriction of any kind.

6. Fees.

6.1 Customer will pay to Verity a one-time Setup Fee and monthly Subscription Fees during the Term of the Agreement, as described in Exhibit B. All payments made pursuant to this Agreement will be in United States dollars without any rights of offset. Customer shall reimburse Verity for all costs associated with collection of unpaid fees.

6.2 If Customer fails to make any payment to Verity when due and payable under this Agreement and fails to pay within 10 days of the date of its receipt of written notice from Verity of such failure, Verity shall have the right to immediately terminate this Agreement and/or suspend the 340B Services or Professional Services.

7. Confidentiality. Each party will protect the other’s Confidential Information from unauthorized dissemination and use the same degree of care that such party uses to protect its own like information, but in no event less than a commercially

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reasonable degree of care. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement, which includes using Customer's Confidential Information for purposes of running benchmark reports. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party. No ownership or license rights are granted in any Confidential Information. Notwithstanding the foregoing, either party may disclose any information in accordance with judicial or other governmental order, provided that the receiving party gives the disclosing party reasonable notice prior to such disclosure and will comply with any protective order or equivalent. Notwithstanding anything to the contrary, Customer also acknowledges and agrees that Verity may de-identify and collect, aggregate, compile, use and publish any data and system outputs collected by Verity in performance of the 340B Services (collectively, "Analytics Data"). Verity may use, disclose and retain at all times the Analytics Data in its discretion; provided that such Analytics Data shall be anonymous as to Customer, and is de-identified in accordance with applicable standards. To the extent Verity will perform any business associate functions for Customer, the parties will enter into a separate Business Associate Agreement. To the extent of any conflict between this Agreement and a Business Associate Agreement, this Agreement shall control.

8. Representations and Warranties.

8.1 Each party represents and warrants for the benefit of the other party that it is duly organized and validly existing under the laws of the state of its incorporation, has full corporate power and authority to enter into this Agreement and is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder.

8.2 Customer represents and warrants that its use of the 340B Services will comply with all applicable laws and regulations including, but not limited, to HIPAA.

8.3 Customer represents and warrants that all data and information provided to Verity reflects accurate and complete information and is in accordance with the Verity Data Specifications.

8.4 Verity warrants that the 340B Services will perform substantially in accordance with the Documentation and the Service Level Policy.

9. Disclaimer of Warranty. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8, THE 340B SERVICES ARE PROVIDED AS-IS WITHOUT WARRANTIES EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. EXCEPT AS SET FORTH IN SECTION 8, VERITY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY THAT THE 340B SERVICES WILL CAPTURE ALL AVAILABLE 340B ELIGIBLE DISPENSES; ANY WARRANTY APPLICABLE TO ANY THIRD PARTY SOFTWARE; OR ANY WARRANTY THAT A DRUG IS COMMERCIALY AVAILABLE (I.E SUBJECT TO A DRUG SHORTAGE). Without limiting the foregoing, Customer acknowledges that it has selected the 340B Services based on its own knowledge of its internal use and legal requirements, and Verity will not be responsible for any losses caused, directly or indirectly, by the data provided by Customer to Verity for the 340B Services or the interruption or loss of use of the 340B Services.

10. Indemnity.

Verity will defend and indemnify Customer against any claims made by an unaffiliated third-party that the use of the 340B Services in compliance with this Agreement infringes a valid U.S. patent, copyright, or trademark or misappropriates a trade secret of such third party; provided that Customer gives Verity prompt written notice of any such claim, control of the defense and settlement, and reasonable assistance in such defense or settlement. If the 340b Services become or, in Verity's opinion, are likely to become the subject of an indemnified claim, Verity may at its option (a) procure for Customer the right to continue using the 340B Services; 9b) replace or modify the 340B Services so that they become

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non-infringing; or (c) terminate customer's rights to access and use the allegedly infringing 340B Services and refund any payments made for future periods. The foregoing states the entire liability of Verity with respect to infringement or misappropriation of intellectual property rights.

11. Limitation of Liability and Limitation on Damages.

11.1 EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 10, VERITY'S TOTAL LIABILITY, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED FEES PAID BY CUSTOMER TO VERITY DURING THE 12-MONTHS IMMEDIATELY PRECEDING FILING OF THE APPLICABLE CLAIM.

11.2 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF DATA) ARISING OUT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE PRODUCTS OR IN ANY OTHER WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Termination.

12.1 Either party may terminate this Agreement thirty (30) days after providing notice to the other party of any material breach of this Agreement, if that breach remains uncured by the end of the 30 day period.

12.2 Either party may terminate this Agreement at the end of the initial term or a subsequent renewal term by providing written notice to the other party at least sixty (60) days prior to the end of the then current term.

12.3 Customer may, at its option and upon at least sixty (60) days prior written notice, terminate this Agreement with respect to a specific Location if such Location becomes ineligible for 340B pricing, ceases operations or in the event legislation, rules, regulation or other government laws are enacted which extend 340B pricing to inpatient services.

Within ten (10) days following expiration or termination of this Agreement, Customer will return to Verity all full and or partial copies of the Documentation and any Confidential Information of Verity in Customer's possession.

13. Assignment. Customer may not, directly or indirectly, sell, assign, transfer, pledge or encumber any of its rights or delegate any of its duties or obligations under this Agreement, including any transfer of rights due to change of operation or control of Customer either by merger, acquisition, or operation of law whereby the current controlling person or group no longer directs the operation of Customer, without the prior written consent of Verity. Any purported transfer in violation of this Section will be null and void.

14. Notices and Requests. All notices, authorizations, reports, statements and requests in connection with this Agreement will be deemed received: (a) five days after the day they are deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (b) sent by overnight courier, charges prepaid; and addressed as to each of the parties at the addresses listed in the Agreement Summary above.

15. Governing Law; Attorney's Fees. If not otherwise provided herein, the laws of the State of California govern this Agreement and Customer consents to the exclusive jurisdiction in the state and federal courts sitting in Kern County of the State of California. The prevailing party in any dispute arising under this Agreement shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party.

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16. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

17. Independent Contractors. Verity and Customer are independent parties and this Agreement creates a non-exclusive relationship. Nothing in this Agreement creates an employer-employee relationship, a partnership, or a joint venture between the parties.

18. Subcontractors. Verity may, in its sole discretion, engage the services of one or more subcontractors to perform any of its duties under this Agreement; provided that Verity will remain responsible to Customer for any services provided by such subcontractors hereunder.

19. Force Majeure. Failure of either party to perform its obligations under this Agreement (except the obligation to make payments) will not subject such party to any liability to the other if such failure is caused by acts of God, transportation conditions, materials shortages, supplier delays, riot, sabotage, embargo, strikes or any other cause beyond the reasonable control of such party. The parties will adjust applicable performance time periods referenced herein accordingly so that neither party is held liable for the failure to meet such dates as a result of a force majeure event. The affected party will resume the performance of its obligations as soon as practicable after the force majeure event has ceased.

20. Taxes. All amounts payable under this Agreement are exclusive of any sales, use and all other taxes or duties, whether currently imposed or imposed in the future (but excluding taxes on Verity net income) (collectively "**Taxes**"). Customer will be responsible for all Taxes without offset or deduction.

21. [Intentionally Omitted].

22. Entire Agreement. This Agreement constitutes the complete agreement between Verity and Customer with respect to its subject matter, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements. This Agreement may not be amended except in a paper writing (e.g., not via email) duly signed by authorized representatives of Verity and Customer respectively.

23. Survival. Upon expiration or termination of this Agreement, those terms that should be reasonably construed to survive the termination of this Agreement shall survive.

24. Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Customer 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).

-End of Standard Terms and Conditions-

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Exhibit A

Verity 340B Split Billing

V340B Split Billing is a virtual inventory system that enables Covered Entities to participate in and manage compliance with the 340B Act without maintaining multiple physical drug inventories. V340B Split Billing accumulates all drug dispenses and sorts them into outpatient and inpatient accumulators and optionally filters Medicaid transactions based on the data provided by Covered Entity including eligible outpatient dispenses. Additional configuration allows for filtering by 340B eligible and ineligible locations. V340B Split Billing facilitates ordering of replenishment inventory on Covered Entity's wholesaler account by intercepting and splitting purchase orders among Covered Entity's 340B, GPO (if applicable) and WAC purchasing accounts. The user interface allows Covered Entity to have visibility into drug accumulations, order history, savings and costs among other metrics. For a Split Match setup, V340B Split Billing also incorporates a matching feature to assist with identifying eligible drug dispenses at open-door pharmacy locations. For an Own Use setup, V340B Split Billing can enable tracking Customer's Own Use eligible dispenses. V340B Split Billing keeps a complete audit trail for maximum compliance. Verity's standard offering includes the following features and services:

- A dedicated and knowledgeable support team
- Monthly business reviews with a dedicated account manager (bi-weekly for 6 months after go-live)
- Access to all supported wholesalers and EDI interfaces
- Enterprise view and reporting for multi-site facilities
- Unlimited access to test environment
- Remote HRSA audit support (onsite support available with travel costs)

Additional add-on features and services described on [Exhibit B](#) to the extent applicable.

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Exhibit B
Pricing and Payment Terms

Location/Address For Each Accumulator	340B ID Number	Setup Option	Shared Accumulator	Subscription Fee (monthly)	Setup Fee (one-time)
Kern Medical 1700 Mt. Vernon Ave. Bakersfield, CA 93306	DHS050315	<input checked="" type="checkbox"/> Split Billing <input type="checkbox"/> Owned Outpatient/Split Match <input type="checkbox"/> Own Use	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$2,700.00	\$4,500.00*
*Implementation Fee above to include support of mapping creation					

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Payment Terms

The Setup Fee is a one-time charge payable upon the Effective Date and applies to the original installation at each distinct location identified above. Such amount is due on the Effective Date. Payments are due upon receipt of invoice.

The Subscription Fees are due and payable the first day of the second month following the Effective Date. Subscription fees are due the first of each subsequent month. Payments are due upon receipt of invoice. The Subscription Fee are assessed on a per Location basis, which generally corresponds with the number of distinct accumulators. After the first payment, remaining Subscription Fees are invoiced and payable on the first of each subsequent month.

V340B Environment Set Up Actions – occurs prior to commencement of Subscription Fees:

- Discovery / Kick Off call executed
- Customer account set up and V340B login/passwords provided to client

If Customer wishes to add another Location, such Location may sign an addendum to this Agreement to avoid renegotiation of the terms; provided however that the Effective Date, Term and Payment Term obligations will be defined in the addendum. For purposes of clarity, if a new Location wishes to start using the Product, it will be obligated to pay a Set Up Fee and a monthly Subscription Fee at then current prices.

Payments

Customer's payments will be made by check or wire transfer of immediately available funds to the address or account designated below or such other address or account identified in writing by Verity from time to time.

Payment By Check should be overnight mailed to:

Verity Solutions Group, Inc.
Dept. CH 17728
Palatine, IL 60055-7728

Payment By Wire transfer should be made to:

Verity Solutions Group, Inc.
(Account information provided upon request)

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Exhibit C

Service Level Policy

This Verity Service Level Policy (“**Service Policy**”) will apply to Customer’s production environment of the Verity 340B Cloud Services during Customer’s subscription term. All capitalized terms used herein and not separately defined with have the meanings given to them in Customer’s master services agreement (“**Master Agreement**”). This Service Policy may be updated from time to time, in Verity’s discretion, upon notice to Customer.

1. Definitions. When used in this Service Policy, the following capitalized terms will have the following meanings:

“**Downtime**” means the Verity 340B Cloud Services are not available for use according to Verity’s performance and monitoring services. Downtime does not include Emergency Downtime or Scheduled Downtime.

“**Emergency Downtime**” means those times where Verity becomes aware of a vulnerability which Verity deems to require immediate remediation and, as a result, the Verity 340B Cloud Services are temporarily unavailable in order for Verity to address the vulnerability.

“**Monthly Uptime Percentage**” means the total number of minutes in the calendar month, minus the number of minutes of Downtime during the calendar month, divided by the total number of minutes in the calendar month, times 100.

“**Scheduled Downtime**” means those times where Verity notifies Customer of periods of system Downtime in advance of such Downtime. There will be no more than thirty (30) hours of scheduled Downtime per calendar year.

“**Service Credit**” means the credit that may be provided to Customer according to the following schedule:

One Week Credit (99.4% - 97%)	Includes seven (7) days of Verity 340B Cloud Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is between 99.4% and 97%.
Two Week Credit (96.9% - 92%)	Includes fourteen (14) days of Verity 340B Cloud Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is between 96.9% and 92%.
One Month Credit (<92%)	Includes thirty (30) days of Verity 340B Cloud Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is less than 92%.

“**Verity 340B Cloud Services**” means the cloud-based software ordered by Customer pursuant to the Master Agreement and made available to Customer over the internet by Verity Solutions, and does not include any third-party software.

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2. Verity's Uptime Commitment. The 340B Cloud Services will be available to Customer 99.5% of the time in any calendar month not taking into account any Scheduled Downtime or Emergency Downtime ("**Uptime Commitment**"). If Verity fails to meet its Uptime Commitment in a given calendar month during Customer's subscription term and while Customer is in compliance with its Master Agreement, then as Customer's sole and exclusive remedy, Customer may be eligible for a Service Credit.

2.1 Procedures for Service Credits. In order to receive a Service Credit, Customer must notify Verity in writing within thirty (30) days of the day Customer becomes eligible to receive a Service Credit. Verity will review any request for a Service Credit within thirty (30) days, and to the extent a Service Credit is owed (as determined by Verity's monitoring services), Verity will apply the same to a future billing cycle. Service Credits may only be applied to Customer's invoice, and may not be exchanged for monetary compensation. Service Credits are the sole and exclusive remedy for failure to meet the Uptime Commitment.

2.2 Exclusions. The Uptime Commitment does not apply to any performance issues: (a) caused by factors outside of Verity's reasonable control; (b) that resulted from any actions or inactions from Customer or any third parties including Verity's hosting infrastructure contractors; or (c) that resulted from Customer's equipment and/or third party equipment not within the control of Verity. The Uptime Commitment also does not apply during any period that Customer is not paying subscription fees to Verity (e.g., a free trial period).

3. Product Releases. During Customer's subscription term so long as Customer is in compliance with all terms of its agreement(s) with Verity, Customer will have access to to all generally available fixes, patches, updates and upgraded versions of the Verity 340B Cloud Services in accordance with Verity's product roadmap and release cycle. Where practical, Verity will schedule such activities during Scheduled Downtime.

4. Customer Support. As part of Customer's subscription to the Verity 340B Cloud Services, Verity provides product support for issues related to the Verity 340B Cloud Services ("**Support**"). For clarity, Support does not include (a) assisting Customer with preparing its data for submission to Verity, (b) remediating incorrect data, (c) retrieving any data or reports from the system on Customer's behalf, (d) assisting Customer with a change to Customer's EMR (version or product), (e) adding a new or changing an existing wholesaler account outside of what is included in Customer's implementation package, or (f) any other requests that relate to Customer adding or changing third-party hardware or software. All Support will be provided remotely utilizing screen share, phone and email. Customer shall designate a primary point of contact for all Support requests, and the primary contact should be familiar with and trained on the Verity 340B Cloud Services.

4.1. Standard Support Hours. Verity's customer support desk is staffed during the following days/times ("**Standard Support Hours**") (all times are Pacific Standard Time):

- Monday thru Friday: 5:00 a.m. to 5:00 p.m.
- Saturday, Sunday: 8:00 a.m. to 4:00 p.m.
- Holidays: 8:00 a.m. to 1:00 p.m

For Severity 1 Support issues, Verity may also assign resources during the following additional days/times: Mon thru Friday from 4:00 a.m. thru 8:00 a.m. and again from 5:00 p.m. thru 8:00 p.m. ("**On Call Hours**")

4.2 Submitting Support Requests. Requests for support must include all pertinent information including, but not limited to subject, contact name, site name, product name and a detailed description of the issue. Customer must

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Verity Solutions Group, Inc. 12131 113th Ave. NE, Suite 200 | Kirkland, WA 98034 | Verity340b.com | 1.800.581.1378

be available to answer questions and assist Verity with duplicating the issue and testing any resolution. All requests for Support should be submitted to Verity via any of the following methods:

Method	Contact	Hours
Email:	support@verity340b.com	Support requests may be submitted by email at all times (24x7x365)
Telephone:	1-800-581-1378	Support requests may be submitted over the phone during Verity Standard Support Hours
Customer Support Portal:	Via the Feedback & Support link in the V340B application; or: https://verity340b.force.com/CustomerSolutions/login	Support requests may be submitted thru the Customer support portal at all times (24x7x365)

4.3 Response Time. All Support issues reported by Customer shall be assigned a severity level (“**Severity Level**”) at the time the Support request is received via one of the methods described in Section 4.2. Verity will use commercially reasonable efforts to respond to and resolve all requests for Support within a reasonable period of time during Standard Support Hours, with it being understood that the below target timelines are estimates only.

Severity Level	Description	Target Initial Response Time
Severity 1	Production application down (not including during Scheduled Downtime or Emergency Downtime) and/or material malfunction of the application that is impacting critical business functions	Within 1 hour from receipt of Support request during Standard Support Hours and On Call Hours
Severity 2	Material degradation of the application performance or functionality	Within 4 hours from receipt of Support request during Standard Support Hours
Severity 3	Issue or question with limited business impact	Within 8 hours from Support request during Standard Support Hours

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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 Verity Solutions Group, Inc. (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of the effective date of the date of last signature (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 promptly 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 seventy-two (72) 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 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. Within five (5) days of the first day on which Business Associate determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall notify Covered Entity of the Breach. To the extent that information is available to Business Associate, Business Associate's notice to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall reasonably 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 reasonably: (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 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). In the event an Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) days of receipt of such a request, and take no direct immediate action on any such request. If the Covered Entity determines that an Individual is to be granted access to PHI, then Business Associate shall cooperate with the Covered Entity to provide any Individual, at the Covered Entity's direction, any PHI requested by such 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 provide the relevant PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets to Covered Entity for amendment and incorporate any such amendments in the PHI as required under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of receipt of a request for amendment of PHI from an Individual. All decisions to amend or deny requests for amendments to PHI shall be solely the responsibility of Covered Entity. Any errors in not amending the PHI as requested due to an error or omission of Business Associate shall be the sole responsibility of Business Associate.

2.8 Accounting. Within thirty (30) days of receipt of a request from Covered Entity for an accounting of disclosures of PHI made by Business Associate regarding an Individual during the six (6) years prior to the date on which the accounting was requested, then Business Associate and its SubContractors shall make available to Covered Entity the information in its possession and 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. All preparation and delivery of accountings requested by Individuals shall be solely the responsibility of Covered Entity.

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, 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 compliance with the HIPAA Rules.

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. Business Associate may in good faith determine what constitutes the minimum necessary to accomplish the intended purpose of any disclosure of PHI.

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 4.2, the term of this BAA shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including the return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's SubContractors), unless sooner terminated as provided herein.

4.2 Termination for Cause. 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 upon mutually agreeable terms; provided that if Business Associate fails to cure the breach or end the violation within such mutually-agreed upon time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA 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 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. All such amendments shall be made in writing and signed by both parties.

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 may 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, cyber risk liability insurance covering claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees and agents under this BAA. Such insurance coverage will be maintained for the term of this BAA, and 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. Notwithstanding anything to the contrary, Business Associate's total aggregate liability under this Agreement shall not exceed Five Million Dollars.

5.9 Legal Actions. Business Associate shall promptly advise Covered Entity of any actual action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may adversely 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 legal action or proceeding, except to the extent prohibited by law.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to promptly notify Covered Entity of Business Associate's receipt of any request or subpoena for PHI or an accounting thereof, except to the extent prohibited by applicable law. Business Associate shall promptly comply with Covered Entity's reasonable instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

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

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

that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Verity Solutions Group, Inc.
12131 113th Avenue NE, Suite 200
Kirkland, Washington 98034
Attn: Legal Department

5.13 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor 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; provided, however, that either Party may assign this BAA without the prior written consent of the other Party in connection with a sale of the business, a merger, or a change of control.

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 [Intentionally Omitted].

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

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

COVERED ENTITY:

The Kern County Hospital Authority



Title: Chief Executive Officer

Date: 6/24/2022

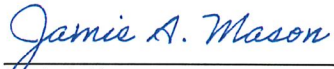
BUSINESS ASSOCIATE:

Verity Solutions Group, Inc.

Title:

Date: _____

REVIEWED ONLY, NOT APPROVED AS TO FORM



Jamie A. Mason

Kern County Hospital Authority, Legal Services Department



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

July 20, 2022

SUBJECT: Proposed Purchase Agreement and related Service Agreement with Philips Healthcare, a division of Philips North America, LLC

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Purchase Agreement and related Service Agreement with Philips Healthcare, a division of Philips North America, LLC, for the purchase of three EPIQ Elite Diagnostic Ultrasound Systems for the Kern Medical Q Street Clinic Imaging Center and continued service for the systems following the expiration of the 12-month factory warranty.

The Purchase Agreement is effective as of July 20, 2022, with the Service Agreement beginning upon the expiration of the 12-month factory warranty, for a four-year term, for a combined total maximum payable not to exceed \$541,000.

Therefore, it is recommended that your Board approve the Purchase Agreement and related Service Agreement with Philips Healthcare, a division of Philips North America, LLC, July 20, 2022, with the Service Agreement beginning upon the expiration of the 12-month factory warranty, for a four-year term, for a combined total maximum payable not to exceed \$541,000, and authorize the Chairman to sign.

PHILIPS HEALTHCARE
A division of Philips North America LLC
414 Union St, 2nd Floor
Nashville, TN 37219



Quotation #: 1-2JYMGR	Rev: 6	Effective From: 08-Jun-22	To: 07-Aug-22
Presented To: KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 Tel: Alternate Address:	Presented By: Annie Yeung Account Manager Bert Foreman Regional Manager	Tel: (310) 210-3683 Fax: Tel: Fax:	
Date Printed: 08-Jun-22			

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips.

IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

Quote Solution Summary

Line #	Product	Qty	Price
	101978 EPIQ Elite Diagnostic Ultrasound System	1	\$116,332.35
	101978 EPIQ Elite Diagnostic Ultrasound System	1	\$133,667.55
	101978 EPIQ Elite Diagnostic Ultrasound System	1	\$135,172.20
Equipment Total:			\$385,172.10

Solution Summary Detail

Product	Qty	Each	Monthly	Price
101978 EPIQ Elite Diagnostic Ultrasound System	1	\$116,332.35		\$116,332.35

Buying Group: HEALTHTRUST PURCHASING GROUP **Contract #:** HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Payment Terms: 0% Down, 100% due upon Invoicing Net 30

101978 EPIQ Elite Diagnostic Ultrasound System	1	\$133,667.55	\$133,667.55
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Buying Group: HEALTHTRUST PURCHASING GROUP **Contract #:** HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Payment Terms: 0% Down, 100% due upon Invoicing Net 30

101978 EPIQ Elite Diagnostic Ultrasound System	1	\$135,172.20	\$135,172.20
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Buying Group: HEALTHTRUST PURCHASING GROUP **Contract #:** HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Payment Terms: 0% Down, 100% due upon Invoicing Net 30

Quote Summary

101978 EPIQ Elite Diagnostic Ultrasound System

Qty	Product
1	NNAV418 EPIQ Elite G
1	NNAV423 Adv 3D/4D Technology Pkg Non-A
1	NNAV456 Essential Purewave Transducers
1	NUSY041 Radiology
1	NUSY173 aBiometry Assist
1	FUS9191 L12-3 ERGO Transducer
1	FUS9192 L12-5 Transducer
1	FUS9196 eL18-4 EMT Transducer
1	FUS7000 English Manual
1	NUSY301 HD Max Display
1	NUSY313 Internal Color Printer
1	SP019 Trade in Allowance
1	SEBLRSVNP1 Customer Note

Quote Summary

101978 EPIQ Elite Diagnostic Ultrasound System

Qty	Product
1	NNAV418 EPIQ Elite G
1	NNAV423 Adv 3D/4D Technology Pkg Non-A
1	NNAV456 Essential Purewave Transducers
1	NUSY041 Radiology
1	NUSY173 aBiometry Assist
1	FUS9191 L12-3 ERGO Transducer
1	FUS9192 L12-5 Transducer
1	FUS9193 L15-7io Transducer
1	FUS9196 eL18-4 EMT Transducer
1	FUS9200 S5-1 Transducer
1	FUS7000 English Manual
1	NUSY301 HD Max Display
1	NUSY313 Internal Color Printer
1	SP019 Trade in Allowance
1	SEBLRSVNP1 Customer Note

Quote Summary

101978 EPIQ Elite Diagnostic Ultrasound System

Qty	Product
1	NNAV418 EPIQ Elite G
1	NNAV423 Adv 3D/4D Technology Pkg Non-A
1	NNAV458 Essential Radiology High Frequ
1	NNAV464 Innovation 3D/4D Volume Array
1	NUSY041 Radiology
1	NUSY173 aBiometry Assist
1	FUS9186 mC12-3 Transducer
1	FUS9192 L12-5 Transducer
1	FUS7000 English Manual
1	NUSY301 HD Max Display
1	NUSY313 Internal Color Printer
1	SP019 Trade in Allowance
1	SEBLRSVNP1 Customer Note

101978 EPIQ Elite Diagnostic Ultrasound System

System Type: New
Freight Terms: FOB Destination
Warranty Terms: Part numbers beginning with two (2) asterisks (**) are covered by a System 12 Months Warranty. All other part numbers are third (3rd) party items.
Special Notations: Contingencies must be removed 120 days before scheduled shipment to assure delivery on specified date. Any rigging costs are the responsibility of the Purchaser.
Additional Terms:

Line #	Part #	Description	Qty
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1	**NNAV418	<p>EPIQ Elite G</p> <p>EPIQ Elite for general imaging is a premium diagnostic ultrasound system featuring an uncompromised level of clinical performance, design and intelligence to meet the challenges of today's most demanding practices.</p> <ul style="list-style-type: none"> • Proprietary nSIGHT Imaging architecture for elevated levels of tissue uniformity, frame rate and penetration. • Supports PureWave family of transducers • xMATRIX upgradable • Supports 3D/4D imaging modes across various clinical options • XRES Pro next generation image processing, Variable XRES • Supports MicroFlow Imaging option with MicroFlow HD across various transducers and applications • Supports Needle Visualization enhancement (eL18-4 transducer) • Supports CEUS clinical option • Supports TrueVue Pro photorealistic 3D option • Supports FlexVue curved MPR capability • Supports TouchVue with MPR touch • Supports Fusion and Navigation Interventional option • Active Native data for post-processing of frozen image data and Cineloop image data • Supports strain elastography, ElastPQ and ElastQ Imaging shear wave elastography clinical options across various applications and transducers • AutoScan (real time iSCAN) automatically optimizes gain and TCG continuously • SmartExam system-guided protocols • Tablet-like user interface with gesture control • Infinite articulation of control panel and monitor allows for perfect alignment whether sitting or standing • Control panel adjustability with 720 degrees of freedom to scan ergonomically • Enhanced mobility with battery backup options • MaxVue High Definition Ultrasound with over a 1 million more pixels and 38% larger viewing area • Standard 21-inch high definition LED display for easy viewing in virtually any environment • Optional 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization • 4 active transducer ports • Supports Anatomically Intelligent Ultrasound (AIUS) options (some options require xMATRIX upgrade) <p>-AI Breast -Dynamic HeartModel -AAA Model -AutoRegistration for Fusion/Nav -aBiometry Assist -aReveal</p> <ul style="list-style-type: none"> • Windows 10 Operating System • Defense in depth security support • Multi-Modality Query Retrieve (Allows for the viewing of DICOM CT, Mammography, NM, MRI and ultrasound images – you can review these images while you are live imaging) 	1
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101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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- NetLink/DICOM 3.0 provides network print and store, commit, modality worklist, DICOM Query and Retrieve, and structured reporting for adult and pediatric echo, vascular, and OB/GYN
- DICOM 3.0 Print and Store capability to internal drive or DVD/CD
- Integrated Wireless DICOM
- On-board workstation-class data management with thumbnail previews and storage of images, loops,
- Retrospective and prospective clip capture to internal drive or removable media and reports

MicroFlow Imaging MicroFlow Imaging (MFI) enhances visualization of small and weak blood. Now includes MFI HD a sub mode that offers twice the sensitivity and resolution of MFI feature. DVD Option Integrated DVD/CD burning capability for storage of DICOM images or export in JPEG and .avi for PC compatibility. SafeGuard This is a standard computer administration tool used to prevent unauthorized programs (malware) from running on the ultrasound system.

Security Plus Security Plus provides a Defense-in-depth strategy implementing security features designed to help healthcare facilities provide additional patient data privacy, and protection from unauthorized access via the ultrasound systems on hospital networks. New data security enhancements will make EPIQ and Affiniti compatible with data security on medical devices.

Extended Life Battery Highly recommended for portable ultrasound studies. Doubles the time to be in transport mode when going mobile as compared to the Battery Standard Life. Allows system to be place in sleep mode and booted up in 20 seconds. Allows activation of the smart handle when not plugged in to central power.

Clinical Education

***2 days of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Qty 2 Essential Education Membership 6 Month, Qty 3 One-Day Travel and Tuition. See travel disclaimer**

The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. 1 Day tuition with Travel - this 1 day tuition may be used to attend any one (1) regularly scheduled "CSS and Speaker-led" course and includes the corresponding travel package. Due to travel and scheduling requirements, a twenty-one (21) day notification of cancellation is required or training / education entitlements will be forfeited. Curriculum is subject to change without notice. Travel & Accommodations for one (1) registered attendee. Includes one (1) participant's airfare from a North American customer location to a Philips North America Ultrasound Clinical Education training location with modest lodging, ground transportation and meal expenses for up to 2 days. Breakfast/dinner are provided by the hotel and lunch/breaks are catered by Philips Healthcare. All other expenses will be the responsibility of the attendee (ie. Baggage fees, meals while traveling, transportation to and from customer's home airport). Details are provided during the scheduling process. Purchased Education expires one (1) year from equipment installation date or purchase date if sold separately.*Must be used consecutively with other offsite advanced customer training tuitions associated with the same system, if purchased with other options that include offsite advanced customer training; offsite advanced customer training will be limited to a maximum of 2 consecutive days. See travel disclaimer**

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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****TRAVEL Disclaimer:** Travel & Accommodations for registered attendees. Each tuition includes one (1) participant's airfare from a North American customer location to a Philips North America Ultrasound Clinical Education training location with modest lodging, ground transportation and meal expenses for the course duration. Breakfast/dinner are provided by the hotel and lunch/breaks are catered by Philips Healthcare. All other expenses will be the responsibility of the attendee (ie. Baggage fees, meals while traveling, transportation to and from customer's home airport). Details are provided during the scheduling process. Note: 21 day Cancellation/Rescheduling policy is strictly enforced.

*****Note:** Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

2	**NNAV423	Adv 3D/4D Technology Pkg Non-A	1
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4D Imaging Quantitative 3D/4D volume acquisition with SonoCT supported on V9-2, V6-2, VL13-5 and 3D9-3v transducers. Also includes 3D Color Power Angio and 3D Color Doppler capabilities. Includes advanced MPR display capability. **TrueVue Pro Bundle** aReveal and FlexVue included for EPIQ ELITE: TrueVue Pro with its advanced GPU upgrade allows for faster transition times with the TrueVue 3D photo realistic rendering mode with enhanced TouchVue touch screen workflow functionality of zoom and editing of 3D volumes. Also, TrueVue rendering on FlexVue. GlassVue is a transparent 3D rendering mode. aReveal uses AIUS technology to automatically detects and removes extraneous 3D information from fetal face volumes. FlexVue and Orthogonal view are highly versatile tools that allows planar visualization of technically difficult anatomical views from 3D volumes. **Clinical Education** ***1 day of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Essential Education Membership 6 Month The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. *****Note:** Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

3	**NNAV456	Essential Purewave Transducers	1
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C5-1 Transducer

PureWave curved array transducer with 5 to 1 MHz extended operating frequency range. C5-1 PureWave Curved Array for high performance OB/GYN, Fetal Echo, Abdominal and Interventional applications. Now, one transducer provides exceptional clinical performance for a wide range of patient types including obese and technically challenging patients.

C10-3v Transducer

PureWave Curved array transducer with 3 to 10 MHz operating frequency range, end fire sector, 11.5 radius at curvature, 130 degree field of view for endovaginal

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
4	**NUSY041	Radiology Includes the following: - Abdominal Clinical Option - Gynecology Clinical Option - Vascular Clinical Option - Pediatric GI Clinical Option - Small Parts Clinical Option - Musculoskeletal Clinical Option - Obstetrical Clinical Option - Fetal Echocardiography Option - Urology Clinical Option - TCD Clinical Option - Interventional Clinical Option	1
5	**NUSY173	aBiometry Assist aBiometry assist is a semi-automated measurement tool for fetal biometry based on Philips Anatomical Intelligent Ultrasound (AIUS). The workflow enhancement measurement tool applies to the following fetal biometric measurements: BPD, HC, OFD, FL and AC.	1
6	**FUS9191	L12-3 ERGO Transducer L12-3 ERGO is an ergonomically designed Linear array transducer with 12 to 3 MHz extended operating frequency range for vascular applications. Also supports musculoskeletal, pediatric radiology, small parts applications.	1
7	**FUS9192	L12-5 Transducer Fine pitch, 256 element, high resolution linear array transducer with 12 to 5 MHz extended operating frequency range for high resolution superficial applications, including small parts, breast, vascular and musculoskeletal imaging.	1
8	**FUS9196	eL18-4 EMT Transducer Ultra-broadband 18-4 MHz PureWave Linear multi-row array transducer with fine elevation focusing. This transducer incorporates integrated EM (electro-magnetic) tracking coils for AI Breast and Fusion/Navigation compatibility. This transducers supports a broad range of high resolution applications including breast, small parts, vascular and musculoskeletal imaging. Also supports pediatric and specialty OB imaging. The eL18-4 transducer features exceptional imaging performance and supports advanced clinical tools such as full solution elastography, MicroFlow Imaging and precision biopsy capabilities.	1
9	**FUS7000	English Manual Operation Manual	1
10	**NUSY301	HD Max Display 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization	1
11	**NUSY313	Internal Color Printer Internal Color Printer	1
12	SP019	Trade in Allowance Customer represents and warrants that (i) Customer has, and shall have when title passes, good and marketable title to the equipment being traded in and (ii) has the authority to effect such trade in. Product: MEDISON SONOACE X8 Serial Number: B09508300005858 Manufacturer: GE MEDICAL SYSTEMS CAPITAL Transducers/OEMs: none Trade-In authorization number: 180279 Trade-In Value: \$1.00 Scheduled Removal Date: At Install Of Purchased System	1

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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Customer warrants the trade-in equipment described above is complete and accurate, which Trade-In the parties agree (i) will be removed on the Removal Date and (ii) is currently in working condition. In addition, the parties agree as follows:

1. Customer represents and warrants that Customer has good and marketable title to the Trade-In as of the date of this Quotation and will have good and marketable title until the Scheduled Removal Date;
2. Title to the Trade-In shall pass from Customer to Philips at installation of the purchased system, but Customer shall be responsible for any loss, theft, or damage to the Trade-In until the date that Philips actually removes the Trade-In from Customer's site (the "Actual Removal Date");
3. Notwithstanding anything to the contrary in any Business Associate Addendum, Customer represents and warrants that by the Actual Removal Date all Protected Health Information will have been deidentified or removed from the Trade-In;
4. If the Actual Removal Date is later than the Scheduled Removal Date, unless Philips causes the delay, then Philips may reduce the price quoted for the Trade-In by six percent (6%) per month.
5. If Customer does not allow Philips to remove the Trade-In, then Philips may invoice Customer for the Trade-In value plus any promotional dollars relating to the Trade-In.

13	SEBLRSVNP1	Customer Note	1
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Philips will ship the Product as soon as commercially reasonable, which Philips expects to be approximately 45 days, and no more than 60 days, from the date the order is accepted.

*****PROMOTIONS*****

Promotion Name	Description
Affiniti, Sparq & EPIQ Multi-System Discount 2 Promotion	Customers receive an additional 2% discount on the purchase of multiple Affiniti, EPIQ or Sparq ultrasound systems.
EPIQ Base Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite Ultrasound system and take advantage of a promotional discount of \$6,000 when trading in a Philips Ultrasound system or non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.
EPIQ Rad/ShS Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite system with a Radiology Clinical Package or Shared Service Clinical Package and take advantage of a promotional discount of \$14,000 when trading in either a Philips Ultrasound System, or a non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system, and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.

101978 EPIQ Elite Diagnostic Ultrasound System

NET PRICE

\$116,332.35

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is:_____.

If you do not issue formal purchase orders indicate by initialing here_____.

Tax Status:

Taxable_____ Tax Exempt_____

If Exempt, please indicate the Exemption Certification Number:_____, and attach a copy of the certificate.

Delivery/Installation Address:

Invoice Address:

Contact Phone #:

Contact Phone #:

Purchaser approval as quoted:

Date:

Title: Chairman, Board of Governors

This quotation is signed and accepted by an authorized representative in acknowledgement of the system configuration, terms and conditions stated herein.

APPROVED AS TO FORM
Kern County Hospital Authority, Legal Services Department

Jamie A. Mason

Jamie A. Mason
Hospital Counsel

101978 EPIQ Elite Diagnostic Ultrasound System

System Type: New
Freight Terms: FOB Destination
Warranty Terms: Part numbers beginning with two (2) asterisks (**) are covered by a System 12 Months Warranty. All other part numbers are third (3rd) party items.
Special Notations: Contingencies must be removed 120 days before scheduled shipment to assure delivery on specified date. Any rigging costs are the responsibility of the Purchaser.
Additional Terms:

Line #	Part #	Description	Qty
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1	**NNAV418	<p>EPIQ Elite G</p> <p>EPIQ Elite for general imaging is a premium diagnostic ultrasound system featuring an uncompromised level of clinical performance, design and intelligence to meet the challenges of today's most demanding practices.</p> <ul style="list-style-type: none"> • Proprietary nSIGHT Imaging architecture for elevated levels of tissue uniformity, frame rate and penetration. • Supports PureWave family of transducers • xMATRIX upgradable • Supports 3D/4D imaging modes across various clinical options • XRES Pro next generation image processing, Variable XRES • Supports MicroFlow Imaging option with MicroFlow HD across various transducers and applications • Supports Needle Visualization enhancement (eL18-4 transducer) • Supports CEUS clinical option • Supports TrueVue Pro photorealistic 3D option • Supports FlexVue curved MPR capability • Supports TouchVue with MPR touch • Supports Fusion and Navigation Interventional option • Active Native data for post-processing of frozen image data and Cineloop image data • Supports strain elastography, ElastPQ and ElastQ Imaging shear wave elastography clinical options across various applications and transducers • AutoScan (real time iSCAN) automatically optimizes gain and TCG continuously • SmartExam system-guided protocols • Tablet-like user interface with gesture control • Infinite articulation of control panel and monitor allows for perfect alignment whether sitting or standing • Control panel adjustability with 720 degrees of freedom to scan ergonomically • Enhanced mobility with battery backup options • MaxVue High Definition Ultrasound with over a 1 million more pixels and 38% larger viewing area • Standard 21-inch high definition LED display for easy viewing in virtually any environment • Optional 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization • 4 active transducer ports • Supports Anatomically Intelligent Ultrasound (AIUS) options (some options require xMATRIX upgrade) <p>-AI Breast -Dynamic HeartModel -AAA Model -AutoRegistration for Fusion/Nav -aBiometry Assist -aReveal</p> <ul style="list-style-type: none"> • Windows 10 Operating System • Defense in depth security support • Multi-Modality Query Retrieve (Allows for the viewing of DICOM CT, Mammography, NM, MRI and ultrasound images – you can review these images while you are live imaging) 	1
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101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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- NetLink/DICOM 3.0 provides network print and store, commit, modality worklist, DICOM Query and Retrieve, and structured reporting for adult and pediatric echo, vascular, and OB/GYN
- DICOM 3.0 Print and Store capability to internal drive or DVD/CD
- Integrated Wireless DICOM
- On-board workstation-class data management with thumbnail previews and storage of images, loops,
- Retrospective and prospective clip capture to internal drive or removable media and reports

MicroFlow Imaging MicroFlow Imaging (MFI) enhances visualization of small and weak blood. Now includes MFI HD a sub mode that offers twice the sensitivity and resolution of MFI feature. DVD Option Integrated DVD/CD burning capability for storage of DICOM images or export in JPEG and .avi for PC compatibility. SafeGuard This is a standard computer administration tool used to prevent unauthorized programs (malware) from running on the ultrasound system.

Security Plus Security Plus provides a Defense-in-depth strategy implementing security features designed to help healthcare facilities provide additional patient data privacy, and protection from unauthorized access via the ultrasound systems on hospital networks. New data security enhancements will make EPIQ and Affiniti compatible with data security on medical devices.

Extended Life Battery Highly recommended for portable ultrasound studies. Doubles the time to be in transport mode when going mobile as compared to the Battery Standard Life. Allows system to be place in sleep mode and booted up in 20 seconds. Allows activation of the smart handle when not plugged in to central power.

Clinical Education

***2 days of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Qty 2 Essential Education Membership 6 Month, Qty 3 One-Day Travel and Tuition. See travel disclaimer**

The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. 1 Day tuition with Travel - this 1 day tuition may be used to attend any one (1) regularly scheduled "CSS and Speaker-led" course and includes the corresponding travel package. Due to travel and scheduling requirements, a twenty-one (21) day notification of cancellation is required or training / education entitlements will be forfeited. Curriculum is subject to change without notice. Travel & Accommodations for one (1) registered attendee. Includes one (1) participant's airfare from a North American customer location to a Philips North America Ultrasound Clinical Education training location with modest lodging, ground transportation and meal expenses for up to 2 days. Breakfast/dinner are provided by the hotel and lunch/breaks are catered by Philips Healthcare. All other expenses will be the responsibility of the attendee (ie. Baggage fees, meals while traveling, transportation to and from customer's home airport). Details are provided during the scheduling process. Purchased Education expires one (1) year from equipment installation date or purchase date if sold separately.*Must be used consecutively with other offsite advanced customer training tuitions associated with the same system, if purchased with other options that include offsite advanced customer training; offsite advanced customer training will be limited to a maximum of 2 consecutive days. See travel disclaimer**

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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***Note: Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

2	**NNAV423	Adv 3D/4D Technology Pkg Non-A	1
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4D Imaging Quantitative 3D/4D volume acquisition with SonoCT supported on V9-2, V6-2, VL13-5 and 3D9-3v transducers. Also includes 3D Color Power Angio and 3D Color Doppler capabilities. Includes advanced MPR display capability. **TrueVue Pro Bundle** aReveal and FlexVue included for EPIQ ELITE: TrueVue Pro with its advanced GPU upgrade allows for faster transition times with the TrueVue 3D photo realistic rendering mode with enhanced TouchVue touch screen workflow functionality of zoom and editing of 3D volumes. Also, TrueVue rendering on FlexVue. GlassVue is a transparent 3D rendering mode. aReveal uses AIUS technology to automatically detects and removes extraneous 3D information from fetal face volumes. FlexVue and Orthogonal view are highly versatile tools that allows planar visualization of technically difficult anatomical views from 3D volumes. **Clinical Education** ***1 day of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Essential Education Membership 6 Month The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. ***Note: Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

3	**NNAV456	Essential Purewave Transducers	1
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C5-1 Transducer

PureWave curved array transducer with 5 to 1 MHz extended operating frequency range. C5-1 PureWave Curved Array for high performance OB/GYN, Fetal Echo, Abdominal and Interventional applications. Now, one transducer provides exceptional clinical performance for a wide range of patient types including obese and technically challenging patients.

C10-3v Transducer

PureWave Curved array transducer with 3 to 10 MHz operating frequency range, end fire sector, 11.5 radius at curvature, 130 degree field of view for endovaginal

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
4	**NUSY041	Radiology Includes the following: - Abdominal Clinical Option - Gynecology Clinical Option - Vascular Clinical Option - Pediatric GI Clinical Option - Small Parts Clinical Option - Musculoskeletal Clinical Option - Obstetrical Clinical Option - Fetal Echocardiography Option - Urology Clinical Option - TCD Clinical Option - Interventional Clinical Option	1
5	**NUSY173	aBiometry Assist aBiometry assist is a semi-automated measurement tool for fetal biometry based on Philips Anatomical Intelligent Ultrasound (AIUS). The workflow enhancement measurement tool applies to the following fetal biometric measurements: BPD, HC, OFD, FL and AC.	1
6	**FUS9191	L12-3 ERGO Transducer L12-3 ERGO is an ergonomically designed Linear array transducer with 12 to 3 MHz extended operating frequency range for vascular applications. Also supports musculoskeletal, pediatric radiology, small parts applications.	1
7	**FUS9192	L12-5 Transducer Fine pitch, 256 element, high resolution linear array transducer with 12 to 5 MHz extended operating frequency range for high resolution superficial applications, including small parts, breast, vascular and musculoskeletal imaging.	1
8	**FUS9193	L15-7io Transducer Compact high resolution linear array transducer with 15 to 7 MHz extended operating frequency range for intraoperative vascular imaging. Also supports high-resolution superficial venous and arterial studies.	1
9	**FUS9196	eL18-4 EMT Transducer Ultra-broadband 18-4 MHz PureWave Linear multi-row array transducer with fine elevation focusing. This transducer incorporates integrated EM (electro-magnetic) tracking coils for AI Breast and Fusion/Navigation compatibility. This transducers supports a broad range of high resolution applications including breast, small parts, vascular and musculoskeletal imaging. Also supports pediatric and specialty OB imaging. The eL18-4 transducer features exceptional imaging performance and supports advanced clinical tools such as full solution elastography, MicroFlow Imaging and precision biopsy capabilities.	1
10	**FUS9200	S5-1 Transducer Sector array transducer with 5 to 1 MHz extended operating frequency range for adult cardiology, and adult and TCD applications.	1
11	**FUS7000	English Manual Operation Manual	1
12	**NUSY301	HD Max Display 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization	1
13	**NUSY313	Internal Color Printer Internal Color Printer	1
14	SP019	Trade in Allowance Customer represents and warrants that (i) Customer has, and shall have when title passes, good and marketable title to the equipment being traded in and (ii) has the authority to effect such trade in.	1

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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Product: 100622.000 iE33 Ultrasound System
 Serial Number: BOMT7N
 Manufacturer: **PHILIPS HEALTHCARE**

Transducers/OEMs: None
 Trade-In authorization number: 180010
 Trade-In Value: \$1.00
 Scheduled Removal Date:

Customer warrants the trade-in equipment described above is complete and accurate, which Trade-In the parties agree (i) will be removed on the Removal Date and (ii) is currently in working condition. In addition, the parties agree as follows:

1. Customer represents and warrants that Customer has good and marketable title to the Trade-In as of the date of this Quotation and will have good and marketable title until the Scheduled Removal Date;
2. Title to the Trade-In shall pass from Customer to Philips at installation of the purchased system, but Customer shall be responsible for any loss, theft, or damage to the Trade-In until the date that Philips actually removes the Trade-In from Customer's site (the "Actual Removal Date");
3. Notwithstanding anything to the contrary in any Business Associate Addendum, Customer represents and warrants that by the Actual Removal Date all Protected Health Information will have been deidentified or removed from the Trade-In;
4. If the Actual Removal Date is later than the Scheduled Removal Date, unless Philips causes the delay, then Philips may reduce the price quoted for the Trade-In by six percent (6%) per month.
5. If Customer does not allow Philips to remove the Trade-In, then Philips may invoice Customer for the Trade-In value plus any promotional dollars relating to the Trade-In.

15 SEBLRSVNP1 Customer Note 1

Philips will ship the Product as soon as commercially reasonable, which Philips expects to be approximately 45 days, and no more than 60 days, from the date the order is accepted.

*****PROMOTIONS*****

Promotion Name	Description
EPIQ Rad/ShS Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite system with a Radiology Clinical Package or Shared Service Clinical Package and take advantage of a promotional discount of \$14,000 when trading in either a Philips Ultrasound System, or a non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system, and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.
EPIQ Base Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite Ultrasound system and take advantage of a promotional discount of \$6,000 when trading in a Philips Ultrasound system or non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.
Affiniti, Sparq & EPIQ Multi-System Discount 2 Promotion	Customers receive an additional 2% discount on the purchase of multiple Affiniti, EPIQ or Sparq ultrasound systems.

101978 EPIQ Elite Diagnostic Ultrasound System

NET PRICE

\$133,667.55

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is:_____.

If you do not issue formal purchase orders indicate by initialing here_____.

Tax Status:

Taxable_____ Tax Exempt_____

If Exempt, please indicate the Exemption Certification Number:_____, and attach a copy of the certificate.

Delivery/Installation Address:

Invoice Address:

Contact Phone #:

Contact Phone #:

Purchaser approval as quoted:

Date:

Title: Chairman, Board of Governors

This quotation is signed and accepted by an authorized representative in acknowledgement of the system configuration, terms and conditions stated herein.

APPROVED AS TO FORM
Kern County Hospital Authority, Legal Services
Department

Jamie A. Mason

Jamie A. Mason
Hospital Counsel

101978 EPIQ Elite Diagnostic Ultrasound System

System Type: New
Freight Terms: FOB Destination
Warranty Terms: Part numbers beginning with two (2) asterisks (**) are covered by a System 12 Months Warranty. All other part numbers are third (3rd) party items.
Special Notations: Contingencies must be removed 120 days before scheduled shipment to assure delivery on specified date. Any rigging costs are the responsibility of the Purchaser.
Additional Terms:

Line #	Part #	Description	Qty
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1	**NNAV418	EPIQ Elite G EPIQ Elite for general imaging is a premium diagnostic ultrasound system featuring an uncompromised level of clinical performance, design and intelligence to meet the challenges of today's most demanding practices. <ul style="list-style-type: none"> • Proprietary nSIGHT Imaging architecture for elevated levels of tissue uniformity, frame rate and penetration. • Supports PureWave family of transducers • xMATRIX upgradable • Supports 3D/4D imaging modes across various clinical options • XRES Pro next generation image processing, Variable XRES • Supports MicroFlow Imaging option with MicroFlow HD across various transducers and applications • Supports Needle Visualization enhancement (eL18-4 transducer) • Supports CEUS clinical option • Supports TrueVue Pro photorealistic 3D option • Supports FlexVue curved MPR capability • Supports TouchVue with MPR touch • Supports Fusion and Navigation Interventional option • Active Native data for post-processing of frozen image data and Cineloop image data • Supports strain elastography, ElastPQ and ElastQ Imaging shear wave elastography clinical options across various applications and transducers • AutoScan (real time iSCAN) automatically optimizes gain and TCG continuously • SmartExam system-guided protocols • Tablet-like user interface with gesture control • Infinite articulation of control panel and monitor allows for perfect alignment whether sitting or standing • Control panel adjustability with 720 degrees of freedom to scan ergonomically • Enhanced mobility with battery backup options • MaxVue High Definition Ultrasound with over a 1 million more pixels and 38% larger viewing area • Standard 21-inch high definition LED display for easy viewing in virtually any environment • Optional 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization • 4 active transducer ports • Supports Anatomically Intelligent Ultrasound (AIUS) options (some options require xMATRIX upgrade) -AI Breast -Dynamic HeartModel -AAA Model -AutoRegistration for Fusion/Nav -aBiometry Assist -aReveal <ul style="list-style-type: none"> • Windows 10 Operating System • Defense in depth security support • Multi-Modality Query Retrieve (Allows for the viewing of DICOM CT, Mammography, NM, MRI and ultrasound images – you can review these images while you are live imaging) 	1
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101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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- NetLink/DICOM 3.0 provides network print and store, commit, modality worklist, DICOM Query and Retrieve, and structured reporting for adult and pediatric echo, vascular, and OB/GYN
- DICOM 3.0 Print and Store capability to internal drive or DVD/CD
- Integrated Wireless DICOM
- On-board workstation-class data management with thumbnail previews and storage of images, loops,
- Retrospective and prospective clip capture to internal drive or removable media and reports

MicroFlow Imaging MicroFlow Imaging (MFI) enhances visualization of small and weak blood. Now includes MFI HD a sub mode that offers twice the sensitivity and resolution of MFI feature. DVD Option Integrated DVD/CD burning capability for storage of DICOM images or export in JPEG and .avi for PC compatibility. SafeGuard This is a standard computer administration tool used to prevent unauthorized programs (malware) from running on the ultrasound system.

Security Plus Security Plus provides a Defense-in-depth strategy implementing security features designed to help healthcare facilities provide additional patient data privacy, and protection from unauthorized access via the ultrasound systems on hospital networks. New data security enhancements will make EPIQ and Affiniti compatible with data security on medical devices.

Extended Life Battery Highly recommended for portable ultrasound studies. Doubles the time to be in transport mode when going mobile as compared to the Battery Standard Life. Allows system to be place in sleep mode and booted up in 20 seconds. Allows activation of the smart handle when not plugged in to central power.

Clinical Education

***2 days of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Qty 2 Essential Education Membership 6 Month, Qty 3 One-Day Travel and Tuition. See travel disclaimer**

The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. 1 Day tuition with Travel - this 1 day tuition may be used to attend any one (1) regularly scheduled "CSS and Speaker-led" course and includes the corresponding travel package. Due to travel and scheduling requirements, a twenty-one (21) day notification of cancellation is required or training / education entitlements will be forfeited. Curriculum is subject to change without notice. Travel & Accommodations for one (1) registered attendee. Includes one (1) participant's airfare from a North American customer location to a Philips North America Ultrasound Clinical Education training location with modest lodging, ground transportation and meal expenses for up to 2 days. Breakfast/dinner are provided by the hotel and lunch/breaks are catered by Philips Healthcare. All other expenses will be the responsibility of the attendee (ie. Baggage fees, meals while traveling, transportation to and from customer's home airport). Details are provided during the scheduling process. Purchased Education expires one (1) year from equipment installation date or purchase date if sold separately.*Must be used consecutively with other offsite advanced customer training tuitions associated with the same system, if purchased with other options that include offsite advanced customer training; offsite advanced customer training will be limited to a maximum of 2 consecutive days. See travel disclaimer**

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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****TRAVEL Disclaimer:** Travel & Accommodations for registered attendees. Each tuition includes one (1) participant's airfare from a North American customer location to a Philips North America Ultrasound Clinical Education training location with modest lodging, ground transportation and meal expenses for the course duration. Breakfast/dinner are provided by the hotel and lunch/breaks are catered by Philips Healthcare. All other expenses will be the responsibility of the attendee (ie. Baggage fees, meals while traveling, transportation to and from customer's home airport). Details are provided during the scheduling process. Note: 21 day Cancellation/Rescheduling policy is strictly enforced.

*****Note:** Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

2	**NNAV423	Adv 3D/4D Technology Pkg Non-A	1
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4D Imaging Quantitative 3D/4D volume acquisition with SonoCT supported on V9-2, V6-2, VL13-5 and 3D9-3v transducers. Also includes 3D Color Power Angio and 3D Color Doppler capabilities. Includes advanced MPR display capability. **TrueVue Pro Bundle** aReveal and FlexVue included for EPIQ ELITE: TrueVue Pro with its advanced GPU upgrade allows for faster transition times with the TrueVue 3D photo realistic rendering mode with enhanced TouchVue touch screen workflow functionality of zoom and editing of 3D volumes. Also, TrueVue rendering on FlexVue. GlassVue is a transparent 3D rendering mode. aReveal uses AIUS technology to automatically detects and removes extraneous 3D information from fetal face volumes. FlexVue and Orthogonal view are highly versatile tools that allows planar visualization of technically difficult anatomical views from 3D volumes. **Clinical Education** ***1 day of Implementation Onsite Training (expires 90 days after install, provided Mon-Fri during normal business hours), Essential Education Membership 6 Month The Essential Education Membership includes: For one individual, One Online e-Learning Bundle (unlimited E-learning, access to average 30 education credits), Access to short "how to" videos, Quick reference guides on system usage, System update reference guide, and unlimited enrollment to all regularly scheduled virtual "CSS and Speaker-led" education with available seats (vary in length from 1 hr to full day). Virtual courses are purposefully designed trainings that allow participants the same quality education of an instructor-led classroom without the need or expense of traveling. Education Access expires six (6) months from term start date. 3rd party content is excluded form this membership. *****Note:** Philips Healthcare personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation. The training sessions should be attended by the appropriate healthcare professional as identified by the department director. Repeat training for staff non-attendance will not be accepted. Site must be patient-ready to meet training expectations.

3	**NNAV458	Essential Radiology High Freque	1
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C5-1 Transducer

PureWave curved array transducer with 5 to 1 MHz extended operating frequency range. C5-1 PureWave Curved Array for high performance OB/GYN, Fetal Echo, Abdominal and Interventional applications. Now, one transducer provides exceptional clinical performance for a wide range of patient types including obese and technically challenging patients.

L12-3 Ergo Transducer

L12-3 ERGO is an ergonomically designed Linear ERGO array transducer with 12 to 3 MHz extended operating frequency range for vascular applications. Also supports musculoskeletal, pediatric radiology, small parts applications.

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
		<p>eL18-4 EMT Transducer Ultra-broadband 18-4 MHz PureWave Linear multi-row array transducer with fine elevation focusing. This transducer incorporates integrated EM (electro-magnetic) tracking coils for AI Breast and Fusion/Navigation compatibility. This transducers supports a broad range of high resolution applications including breast, small parts, vascular and musculoskeletal imaging. Also supports pediatric and specialty OB imaging. The eL18-4 transducer features exceptional imaging performance and supports advanced clinical tools such as full solution elastography, MicroFlow Imaging and precision biopsy</p>	
4	**NNAV464	<p>Innovation 3D/4D Volume Array V9-2 Transducer V9-2 PureWave transducer is a volumetric transducer supporting 2D/3D/4D, STIC offering exceptional ergonomic design for Ob/Gyn applications</p> <p>3D9-3v Transducer Curved array transducer with 9 to 3 MHz extended operating frequency range and 130-degree field of view, supporting high resolution 2D imaging; high resolution quantitative, single sweep 3D volume acquisition; and 4D imaging for endovaginal obstetrical and gynecological applications.</p>	1
5	**NUSY041	<p>Radiology Includes the following: - Abdominal Clinical Option - Gynecology Clinical Option - Vascular Clinical Option - Pediatric GI Clinical Option - Small Parts Clinical Option - Musculoskeletal Clinical Option - Obstetrical Clinical Option - Fetal Echocardiography Option - Urology Clinical Option - TCD Clinical Option - Interventional Clinical Option</p>	1
6	**NUSY173	<p>aBiometry Assist aBiometry assist is a semi-automated measurement tool for fetal biometry based on Philips Anatomical Intelligent Ultrasound (AIUS). The workflow enhancement measurement tool applies to the following fetal biometric measurements: BPD, HC, OFD, FL and AC.</p>	1
7	**FUS9186	<p>mC12-3 Transducer mC12-3 PureWave micro convex transducer for pediatric and vascular applications.</p>	1
8	**FUS9192	<p>L12-5 Transducer Fine pitch, 256 element, high resolution linear array transducer with 12 to 5 MHz extended operating frequency range for high resolution superficial applications, including small parts, breast, vascular and musculoskeletal imaging.</p>	1
9	**FUS7000	<p>English Manual Operation Manual</p>	1
10	**NUSY301	<p>HD Max Display 24-inch HD MAX immersive display monitor for the ultimate ultrasound visualization</p>	1
11	**NUSY313	<p>Internal Color Printer Internal Color Printer</p>	1
12	SP019	<p>Trade in Allowance Customer represents and warrants that (i) Customer has, and shall have when title passes, good and marketable title to the equipment being traded in and (ii) has the authority to effect such trade in. Product: 100645.000 HD15 Ultrasound System Serial Number: US90922795 Manufacturer: **PHILIPS HEALTHCARE**</p>	1

101978 EPIQ Elite Diagnostic Ultrasound System

Line #	Part #	Description	Qty
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Transducers/OEMs: None
 Trade-In authorization number: 180008
 Trade-In Value: \$2,000.00
 Scheduled Removal Date:

Customer warrants the trade-in equipment described above is complete and accurate, which Trade-In the parties agree (i) will be removed on the Removal Date and (ii) is currently in working condition. In addition, the parties agree as follows:

1. Customer represents and warrants that Customer has good and marketable title to the Trade-In as of the date of this Quotation and will have good and marketable title until the Scheduled Removal Date;
2. Title to the Trade-In shall pass from Customer to Philips at installation of the purchased system, but Customer shall be responsible for any loss, theft, or damage to the Trade-In until the date that Philips actually removes the Trade-In from Customer's site (the "Actual Removal Date");
3. Notwithstanding anything to the contrary in any Business Associate Addendum, Customer represents and warrants that by the Actual Removal Date all Protected Health Information will have been deidentified or removed from the Trade-In;
4. If the Actual Removal Date is later than the Scheduled Removal Date, unless Philips causes the delay, then Philips may reduce the price quoted for the Trade-In by six percent (6%) per month.
5. If Customer does not allow Philips to remove the Trade-In, then Philips may invoice Customer for the Trade-In value plus any promotional dollars relating to the Trade-In.

13 SEBLRSVNP1 Customer Note 1

Philips will ship the Product as soon as commercially reasonable, which Philips expects to be approximately 45 days, and no more than 60 days, from the date the order is accepted.

*****PROMOTIONS*****

Promotion Name	Description
GI EPIQ 3D GYN Promo	Customers purchasing a new EPIQ Elite GI ultrasound system will have an opportunity to take advantage of this promotion. When purchasing 3D9-3v, 4D Imaging and FlexVue together, the customer can receive \$500 off for a limited time. Not applicable for Federal Government, VA, and DoD
EPIQ Rad/ShS Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite system with a Radiology Clinical Package or Shared Service Clinical Package and take advantage of a promotional discount of \$14,000 when trading in either a Philips Ultrasound System, or a non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system, and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.
EPIQ Base Trade In GI	Philips Healthcare is pleased to offer you a special promotion. Purchase a new Philips EPIQ Elite Ultrasound system and take advantage of a promotional discount of \$6,000 when trading in a Philips Ultrasound system or non-Philips Ultrasound System. The discount will be taken off the NET purchase price of the new system and is in addition to the FMV of the trade-in system. The serial number, make and model of the trade-in system will be required to take advantage of this promotion, and it must be returned to Philips Healthcare upon delivery of the new EPIQ Elite system.
Affiniti, Sparq & EPIQ Multi-System Discount 2 Promotion	Customers receive an additional 2% discount on the purchase of multiple Affiniti, EPIQ or Sparq ultrasound systems.

101978 EPIQ Elite Diagnostic Ultrasound System

NET PRICE

\$135,172.20

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is:_____.

If you do not issue formal purchase orders indicate by initialing here_____.

Tax Status:

Taxable_____ Tax Exempt_____

If Exempt, please indicate the Exemption Certification Number:_____, and attach a copy of the certificate.

Delivery/Installation Address:

Invoice Address:

Contact Phone #:

Contact Phone #:

Purchaser approval as quoted:

Date:

Title: Chairman, Board of Governors

This quotation is signed and accepted by an authorized representative in acknowledgement of the system configuration, terms and conditions stated herein.

APPROVED AS TO FORM
Kern County Hospital Authority, Legal Services
Department

Jamie A. Mason

Jamie A. Mason
Hospital Counsel

PHILIPS PRODUCT WARRANTY

This product warranty document is an addition to the terms and conditions set forth in the quotation to which this warranty document is attached. Unless specifically listed below, this warranty does not apply to replacement parts. The terms and conditions of the quotation are incorporated into this warranty document. The capitalized terms herein have the same meaning as set forth in the quotation.

1. Twelve (12) Month System Warranty

- 1.1 Philips Healthcare, a division of Philips North America LLC (Philips) warrants to Customer that the Philips' Ultrasound Systems (System) will perform in substantial compliance with its performance specifications, in the documentation accompanying the System, for a period of twelve (12) months after completion of installation and availability for first patient use.
- 1.2 If your purchase includes a Lumify Ultrasound Solution, then the above warranty extends to cover all standard transducers as part of the solution, for a period of sixty (60) months from the date of shipment of the System to the Customer.
 - 1.2.1 If your purchase includes a Diamond Select Lumify Ultrasound Solution the standard twelve (12) Month System Warranty applies.
- 1.3 If your purchase includes a Rugged Lumify System Bundle Solution, then the above warranty extends to the Lumify Transducer and the associated Rugged Tablet for a period of sixty (60) months from the date of shipment to the Customer.
- 1.4 In addition, if your purchase includes a Lumify System Bundle (including transducer(s), commercial off the shelf smart device and smart device sleeve), then the warranty extends to cover the included smart device for a period of twelve (12) months from the date of shipment of the System to the Customer.
- 1.5 If your purchase includes a Sparq or CX50 Ultrasound Solution, then the above warranty extends to cover all standard transducers purchased with the System for a period of sixty (60) months after completion of installation or first patient use, whichever occurs first (not applicable in Canada).
- 1.6 If your purchase includes an Xperius Ultrasound Solution, then the above warranty extends for a period of Sixty (60) months from the date that is ten (10) calendar days after shipment of the System to the Customer.
- 1.7 If your purchase includes an InnoSight Ultrasound Solution, then the above warranty extends for a period of thirty six (36) months from the date that is ten (10) calendar days after shipment of the System to the Customer.

2. Planned Maintenance

- 2.1 During the warranty period, Philips' service personnel will schedule planned maintenance visits in advance at a mutually agreeable time on weekdays, between 8:00 am and 5:00 pm, excluding Philips' observed holidays.
- 2.2 If your purchase includes a Lumify Ultrasound Solution, Lumify System Bundle, or InnoSight solution, then planned maintenance is not required and any technical support is provided remotely.
- 2.3 If your purchase includes an Xperius Ultrasound Solution, then Planned Maintenance is not required.

3. System Options, Upgrades or Accessories

- 3.1 Any Philips' authorized options, upgrades, or accessories for the System which are delivered and/or installed on the System during the original term of the System warranty shall be subject to the same warranty terms contained in the first paragraph of this warranty, except that such warranty shall expire on the later of:
 - 3.1.1 upon termination of the initial twelve (12) month warranty period for the System on which the option, upgrade or accessory is installed; or
 - 3.1.2 after ninety (90) days for parts only from the date of installation.
- 3.2 If your purchase includes a Lumify Ultrasound Solution or Lumify System Bundle, accessories are covered for a period of twelve (12) months from the date of shipment of the System to the Customer.
- 3.3 System upgrades for a Lumify Ultrasound Solution or a Lumify System Bundle are only available in the form of software updates.

4. System Software and Software Updates

- 4.1 The software provided with the System will be the latest version of the standard software available for that System as of the ninetieth (90th) day prior to the date the System is delivered to Customer.
- 4.2 Updates to standard software for the System that do not require additional hardware or equipment modifications will be performed as a part of normal warranty service during the term of the warranty.
- 4.3 All software is and shall remain the sole property of Philips or its software suppliers.
- 4.4 Use of the software is subject to the terms of a separate software license agreement.
- 4.5 No license or other right is granted to Customer or to any other party to use the software except as set forth in the license agreements.
- 4.6 Any Philips' maintenance or service software and documentation provided with the System and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the System, to assist Philips and its authorized agents to maintain and to service the System under a separate support agreement with Customer, or to permit Customer to maintain and service the System.
- 4.7 Customer agrees to restrict the access to such software and documentation to Philips' employees, those of its authorized agents and its authorized employees of Customer only.
- 4.8 If your purchase includes a Lumify Ultrasound Solution, installation of software licenses and updates are not performed by Philips.
- 4.9 If your purchase includes a Lumify System Bundle, the Lumify Software Application will be pre-installed by the Philips' factory.
- 4.10 Software updates and upgrades for a Lumify System Bundle will be available via the GooglePlay store or Apple App store.

5. Warranty Limitations

- 5.1 Philips' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips' option, to the repair or the replacement of the product or a portion thereof within thirty (30) days after receipt of written notice of such material breach from Customer (Product Warranty Cure Period) or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request.
 - 5.2 Any refund will be paid, to the Customer when the product is returned to Philips.
 - 5.3 Warranty service outside of normal working hours (i.e. 8:00 am to 5:00 pm, Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips standard service rates.
 - 5.4 This warranty is subject to the following conditions: the product:
 - 5.4.1 is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips);
 - 5.4.2 is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the products were intended; and,
 - 5.4.3 is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product and Customer is to notify Philips immediately if the product at any time fails to meet its printed performance specifications.
 - 5.5 Philips' obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software running in connection with the Licensed Software without prior approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence (such as cuts, bites, punctures, submersion, and improper cleaning), accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network.
 - 5.6 Philips does not provide a warranty for any third party products furnished to Customer by Philips under the quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product.
 - 5.7 The obligations of Philips described are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.
- Limitation of Remedies for Xperius or InnoSight:** Customer's remedy for damage to an Xperius or InnoSight Transducer or Tablet that affects its functionality and that is covered by the warranty (e.g., excluding damage resulting from abuse or misuse or cosmetic issues) is limited to repair or replacement of each the Xperius or InnoSight Transducer and Tablet not more than once in any twelve (12) month period.
- 5.8 **Limitation of Remedies for Xperius or InnoSight:** Customer's remedy for damage to a Xperius or InnoSight Transducer or Tablet that affects its functionality and that is covered by the warranty (e.g., excluding damage resulting from abuse or misuse or cosmetic issues) is limited to repair or replacement of each the Xperius or InnoSight Transducer and Tablet not more than once in any twelve (12) month period.
 - 5.9 **Limitation of Remedies for Sparq or CX50 Ultrasound Transducer(s):** Customer's remedy for damage to a standard transducer (excludes TEE and Specialty Transducers) ordered with the Sparq or CX50 that affects its functionality and that is covered by the warranty (e.g., excluding damage resulting from abuse or misuse, or cosmetic issues) is limited to repair or replacement of any standard transducer ordered with the Sparq or CX50 Solution not more than twice in any twelve (12) month period.
 - 5.10 **Limitation of Remedies for Lumify Ultrasound Transducer(s) (including Rugged Lumify System Bundle Solution):** Customer's remedy for damage to a Lumify Transducer or Rugged Tablet that affects its functionality and that is covered by the warranty (e.g., excluding damage resulting from abuse or misuse or cosmetic issues) is limited to repair or replacement of each of the Lumify Transducer not more than once in any twelve (12) month period.

5.11 THE WARRANTIES SET FORTH HEREIN WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT), ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT; THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.12 Philips may use refurbished parts in the manufacture of the products, which are subject to the same quality control procedures and warranties as for new products.

6. Philips's Remote Services (PRS) also known as Philips' Remote Services Network (RSN)

6.1 Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips' Remote Services Network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips) for connection to the equipment and to Customer's network; or (b) provide Philips with outbound internet access over SSL; at all times during the warranty period provide full and free access to the equipment and the Customer network for Philips' use in remote servicing of the product, remote assistance to personnel that operate the products, updating the products software, transmitting automated status notifications from the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services).

6.2 Customer's failure to provide such access will constitute Customer's waiver of the scheduled planned maintenance service and will void support or warranty coverage of product malfunctions until such time as planned maintenance service is completed or PRS/RSN access is provided.

6.3 Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips' service personnel waiting for access to the products.

6.4 Warranty service for remote support only products like Lumify and InnoSight Ultrasound Solutions will be available only via phone between 8:00 am to 8:00 pm Eastern StandardTime (EST).

7. Transfer of System

7.1 In the event Customer transfers or relocates the System, all obligations under this warranty will terminate unless Customer receives the prior written consent of Philips for the transfer or relocation.

7.2 Upon any transfer or relocation, the System must be inspected and certified by Philips as being free from all defects in material, software and workmanship and as being in compliance with all technical and performance specifications.

7.3 Customer will compensate Philips for these services at the prevailing service rates in effect as of the date the inspection is performed.

7.4 Any System which is transported intact to pre-approved locations and is maintained as originally installed in mobile configurations will remain covered by this warranty.

7.5 For the Lumify Ultrasound Solution, this warranty is made only to the original purchaser of the Lumify Ultrasound Solution or, if the seller is an authorized Philips' distributor or sub-distributor, this warranty is made to the initial end user of the Lumify Ultrasound Solution.

7.6 In either case, any subsequent sale or transfer of the Lumify Ultrasound Solution will void the warranty.

8. Xtend Coverage and Maximizer Package

8.1 As a supplement to the terms attached for Xtend Coverage the following shall apply:

8.1.1 Transducer coverage. Each year if one standard probe (excluding TEE and laparoscopic transducers) purchased with the system requires replacement due to failure or accidental damage, then Philips will replace such probe. If any additional transducers (excluding TEE and laparoscopic transducers) require replacement due to failure or accidental damage, Philips will provide such replacement at 50% off the Philips Service Exchange Program price.

8.2 As a supplement to the terms attached for Maximizer Package, the following shall apply:

8.2.1 Software options that are purchased separately from Covered System are not included.

8.2.2 Upgrades include software options that are contained within subsequent core operating system software releases.

9. Limitation of Liability

9.1 THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE GIVING RISE TO THE LIABILITY.

9.2 THIS LIMITATION SHALL NOT APPLY TO:

9.2.1 THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT;

9.2.2 CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT;

9.2.3 OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI; and

9.2.4 FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

10. Disclaimer

10.1 IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

11. Force Majeure

11.1 Philips and Customer shall each be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to: acts of God, health pandemics, acts of any civil, military or government authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation, mandatory direction, or request, . For clarity, Customer requests shall not be considered 'government' requests under this section.

Philips' system specifications are subject to change without notice.

Ultrasound Product Warranty Rev. R

PHILIPS HEALTHCARE
22100 Bothell Everett Highway
PO Box 3003
Bothell, Washington 98041- 3003
Tel: (800) 934-7372
Fax: (800) 947-3299



**AMENDMENT
BETWEEN
PHILIPS HEALTHCARE
A DIVISION OF
PHILIPS NORTH AMERICA LLC ("Philips")
and
KERN MEDICAL CENTER ("Customer")**

DATED: June 8, 2022

The following provision of Philips' Quotation No. 1-2JYMGGR rev 6, dated 08-June-22 is hereby amended as follows:

QUOTE

Delete the following language in its entirety from page 1 of the quote:

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips.

and insert in its place:

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips. Philips 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.

The offer to enter into this Amendment is valid 30 days from July 14, 2022.

Accepted and agreed by:
Kern Medical Center

Philips Healthcare a division of Philips North
America LLC

Candice Downs

Electronically signed by: Candice Downs
Reason: I have reviewed and approve this
document
Date: Jul 14, 2022 15:16 PDT

Signature:

Russell Bigler

Printed Name:

Chief Executive Officer

Title:

Date:

Signature:

Candice Downs

Printed Name:

Senior Contract Manager

Title:

Jul 14, 2022

Date:

APPROVED AS TO FORM
KCHA Legal Services Department

Jamie A. Mason

Jamie A. Mason
Hospital Counsel

Quotation #: 1-2JYMGGR	Rev. 6	Effective From: 06/08/2022	To: 08/07/2022
Presented To: KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 Tel: Alternate Address:		Presented By: Annie Yeung <i>Account Manager</i> Bert Foreman <i>Regional Manager</i> Tel: (310) 210-3683 Fax: Tel: Fax:	
Date Printed: 08-Jun-22			

IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

Model	Months	Qty	Service Plan
101978 EPIQ Elite Diagnostic Ultrasound System	48	1	SVC0942 Philips RightFit Value Service Agreement
101978 EPIQ Elite Diagnostic Ultrasound System	48	1	SVC0942 Philips RightFit Value Service Agreement
101978 EPIQ Elite Diagnostic Ultrasound System	48	1	SVC0942 Philips RightFit Value Service Agreement

Home Office Use Only		
Site #	Start Date	End Date

POINT OF SALE SERVICE CONTRACT SECTION

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips.

Philips Ultrasound Customer Services has been Ranked #1 by Customers in the IMV ServiceTrak™ All Systems Survey for over 25 years. More than a quarter century!

EPIQ Elite Diagnostic Ultrasound System

Item #	Part #	Description
1	SVC0942	Philips RightFit Value Service Agreement

Thank you for the opportunity to provide this proposed Philips RightFit Service Agreement. Our Value Service Agreement offers you robust security, a hands-on relationship with Philips, and open communications.

LABOR:

- Labor and travel coverage for on-site service 8:00 am - 5:00 pm, Monday - Friday, excluding Philips published holidays.
- Preferential Scheduling of service calls for service contract customers.
- On-site Response. Philips service goal is to be on-site the next business day.
- Planned maintenance coverage from 8:00 am – 5:00 pm, Monday – Friday, excluding Philips published holidays. Coverage includes activities performed according to a schedule to review safety, image quality, calibrations, equipment cleaning, performance trials and any other planned service prescribed by Philips. Planned Maintenance Inspections will be performed per Philips manufacturing specifications (1 or 2 per year, depending on product). Some Philips Ultrasound systems (i.e. Philips Xperius), do not require Planned maintenance.
- Preferred rates for labor and travel. This includes reduced hourly rates for labor and travel for corrective or planned maintenance outside of Service Agreement coverage hours.

PARTS:

- Standard parts coverage. This provides coverage on parts (including transducers listed on this agreement that fail during the normal use) used to maintain and repair the equipment including both hardware and software items. This excludes TEE transducers.
- Transducer Accidental Damage Protection. Coverage at 50% off the Philips Service Exchange Program price for transducers listed on this agreement. This excludes TEE transducers.

LIFECYCLE:

- System software updates. This includes on-site or remote labor, travel and parts necessary to complete safety, performance and reliability modifications to existing equipment software or hardware.
- 35% discount on the purchase of eligible system upgrades, transducer upgrades and Clinical Education tuition purchased with the upgrade, excluding system platform exchanges.

CUSTOMER CARE SOLUTIONS CENTER:

- Unlimited Technical telephone support.
- Unlimited Clinical telephone support from 8:00 am - 5:00 pm, Monday – Friday.
- Remote Services. This supports remote system diagnostics and monitoring, including Remote Desktop and Remote Proactive Monitoring (requires connection to Philips Remote Services network). Philips equipment is connected via an Internet secure single point of access network to our Solutions Center as described in the Terms and Conditions Exhibit. Features may vary by equipment and software release level.

SOLUTION ENHANCEMENTS:

- Utilization Reports. This provides information on system utilization reports to help improve workflow. May not be available on all platforms.
- On-Board system diagnostics. This provides convenient access to diagnostic data located on the ultrasound system. May not be available on all platforms.

EPIQ Elite Diagnostic Ultrasound System

NOTE:

Philips approved B&W printers and static probes used on this system are covered as part of this agreement

- Coverage for consumables excluded with the exception of battery coverage for the CX50, CX30, Sparq and VISIQ (remote service only on VISIQ).

1.1 SVC10507

1.2 SVC01936 Tech Max Plus

- Philips Technology Maximizer Upgrade - SOFTWARE ONLY; HARDWARE UPDATE NOT INCLUDED.
- Philips software upgrades coverage keeps the equipment up to date with the latest software release, secure with security patches, optimized with image quality, workflow and performance updates.
- Philips will provide equipment software upgrades if and when they become available.
- The software upgrades will only enabled the software applications and options that Customer is currently licensed to use.

EPIQ Elite Diagnostic Ultrasound System

Service Plan: SVC0942 Philips RightFit Value Service Agreement
Quantity: 1

To commence at a time of system warranty expiration with the exception of In-Warranty Coverage and selected Supplement Items Plans

Select Payment Terms Desired:

Select Choice *	Payments Plans	Single System Net	Total Net
<input checked="" type="checkbox"/>	48 Monthly Payments at	\$1,065	\$1,065
<input type="checkbox"/>	16 Quarterly Payments at	\$3,196	\$3,196
<input type="checkbox"/>	4 Yearly Payments at	\$12,784	\$12,784
<input type="checkbox"/>	Single Payment at	\$51,135	\$51,135

* If no selection is made, the default choice will be monthly payments.

Prices above do not include any applicable sales taxes

The service agreement payment does not include optional equipment. If optional equipment is purchased please see attached Equipment Configuration Option Pricing (if available) or contact your Account Manager for amended service pricing.

Buying Group: HEALTHTRUST PURCHASING GROUP **Contract #:** HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

For services performed outside the contract hours of coverage, Philips will request a Purchase Order before dispatching a Field Service Engineer.

Our facility does not issue formal purchase orders. We authorize payments 'in lieu of a Purchase Order' for the equipment as described in Philips Healthcare Service Agreement. Initialed: _____

Our facility does issue formal purchase orders, however, due to our business/system limitations, we cannot issue a formal purchase order until _____ days prior to warranty expiration. Initialed: _____

Customer Agreement as Quoted

Upon customer signing and acceptance by an authorized Philips representative, this document constitutes a contract and customer agrees to be bound by all terms hereof which include IMPORTANT LIMITATIONS OF LIABILITY.

BY: X _____
 Customer Signature
 Russell Bigler
 Printed Name
 Chairman, Board of Governors
 Title _____ Date _____

For Headquarters Use Only

Philips by its acceptance thereof, agrees to provide maintenance service for the equipment listed above in accordance with all terms.

Signature _____
 Title _____ Date _____

APPROVED AS TO FORM
 Kern County Hospital Authority, Legal Services Department

Jamie A. Mason

 Jamie A. Mason
 Hospital Counsel

EPIQ Elite Diagnostic Ultrasound System

Item #	Part #	Description
1	SVC0942	Philips RightFit Value Service Agreement

Thank you for the opportunity to provide this proposed Philips RightFit Service Agreement. Our Value Service Agreement offers you robust security, a hands-on relationship with Philips, and open communications.

LABOR:

- Labor and travel coverage for on-site service 8:00 am - 5:00 pm, Monday - Friday, excluding Philips published holidays.
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- On-site Response. Philips service goal is to be on-site the next business day.
- Planned maintenance coverage from 8:00 am – 5:00 pm, Monday – Friday, excluding Philips published holidays. Coverage includes activities performed according to a schedule to review safety, image quality, calibrations, equipment cleaning, performance trials and any other planned service prescribed by Philips. Planned Maintenance Inspections will be performed per Philips manufacturing specifications (1 or 2 per year, depending on product). Some Philips Ultrasound systems (i.e. Philips Xperius), do not require Planned maintenance.
- Preferred rates for labor and travel. This includes reduced hourly rates for labor and travel for corrective or planned maintenance outside of Service Agreement coverage hours.

PARTS:

- Standard parts coverage. This provides coverage on parts (including transducers listed on this agreement that fail during the normal use) used to maintain and repair the equipment including both hardware and software items. This excludes TEE transducers.
- Transducer Accidental Damage Protection. Coverage at 50% off the Philips Service Exchange Program price for transducers listed on this agreement. This excludes TEE transducers.

LIFECYCLE:

- System software updates. This includes on-site or remote labor, travel and parts necessary to complete safety, performance and reliability modifications to existing equipment software or hardware.
- 35% discount on the purchase of eligible system upgrades, transducer upgrades and Clinical Education tuition purchased with the upgrade, excluding system platform exchanges.

CUSTOMER CARE SOLUTIONS CENTER:

- Unlimited Technical telephone support.
- Unlimited Clinical telephone support from 8:00 am - 5:00 pm, Monday – Friday.
- Remote Services. This supports remote system diagnostics and monitoring, including Remote Desktop and Remote Proactive Monitoring (requires connection to Philips Remote Services network). Philips equipment is connected via an Internet secure single point of access network to our Solutions Center as described in the Terms and Conditions Exhibit. Features may vary by equipment and software release level.

SOLUTION ENHANCEMENTS:

- Utilization Reports. This provides information on system utilization reports to help improve workflow. May not be available on all platforms.
- On-Board system diagnostics. This provides convenient access to diagnostic data located on the ultrasound system. May not be available on all platforms.

EPIQ Elite Diagnostic Ultrasound System

NOTE:

Philips approved B&W printers and static probes used on this system are covered as part of this agreement

- Coverage for consumables excluded with the exception of battery coverage for the CX50, CX30, Sparq and VISIQ (remote service only on VISIQ).

1.1 SVC10507

1.2 SVC01936 Tech Max Plus

- Philips Technology Maximizer Upgrade - SOFTWARE ONLY; HARDWARE UPDATE NOT INCLUDED.
- Philips software upgrades coverage keeps the equipment up to date with the latest software release, secure with security patches, optimized with image quality, workflow and performance updates.
- Philips will provide equipment software upgrades if and when they become available.
- The software upgrades will only enabled the software applications and options that Customer is currently licensed to use.

EPIQ Elite Diagnostic Ultrasound System

Service Plan: SVC0942 Philips RightFit Value Service Agreement

Quantity: 1

To commence at a time of system warranty expiration with the exception of In-Warranty Coverage and selected Supplement Items Plans

Select Payment Terms Desired:

Select Choice *	Payments Plans	Single System Net	Total Net
<input checked="" type="checkbox"/>	48 Monthly Payments at	\$1,065	\$1,065
<input type="checkbox"/>	16 Quarterly Payments at	\$3,196	\$3,196
<input type="checkbox"/>	4 Yearly Payments at	\$12,784	\$12,784
<input type="checkbox"/>	Single Payment at	\$51,135	\$51,135

* If no selection is made, the default choice will be monthly payments.

Prices above do not include any applicable sales taxes

The service agreement payment does not include optional equipment. If optional equipment is purchased please see attached Equipment Configuration Option Pricing (if available) or contact your Account Manager for amended service pricing.

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: HPG500280

Add'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

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For services performed outside the contract hours of coverage, Philips will request a Purchase Order before dispatching a Field Service Engineer.

Our facility does not issue formal purchase orders. We authorize payments 'in lieu of a Purchase Order' for the equipment as described in Philips Healthcare Service Agreement. Initialed: _____

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Upon customer signing and acceptance by an authorized Philips representative, this document constitutes a contract and customer agrees to be bound by all terms hereof which include IMPORTANT LIMITATIONS OF LIABILITY.

BY: X _____
 Customer Signature
 Russell Bigler

 Printed Name
 Title Chairman, Board of Governors Date _____

For Headquarters Use Only

Philips by its acceptance thereof, agrees to provide maintenance service for the equipment listed above in accordance with all terms.

Signature _____
 Title _____ Date _____

APPROVED AS TO FORM

Kern County Hospital Authority, Legal Services Department

Jamie A. Mason

 Jamie A. Mason
 Hospital Counsel

EPIQ Elite Diagnostic Ultrasound System

Item #	Part #	Description
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- Preferred rates for labor and travel. This includes reduced hourly rates for labor and travel for corrective or planned maintenance outside of Service Agreement coverage hours.

PARTS:

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EPIQ Elite Diagnostic Ultrasound System

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1.2 SVC01936 Tech Max Plus

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EPIQ Elite Diagnostic Ultrasound System

Service Plan: SVC0942 Philips RightFit Value Service Agreement
Quantity: 1

To commence at a time of system warranty expiration with the exception of In-Warranty Coverage and selected Supplement Items Plans

Select Payment Terms Desired:

Select Choice *	Payments Plans	Single System Net	Total Net
<input checked="" type="checkbox"/>	48 Monthly Payments at	\$1,065	\$1,065
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Buying Group: HEALTHTRUST PURCHASING GROUP **Contract #:** HPG500280

Add'l Terms:

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Customer Agreement as Quoted

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BY: X _____
 Customer Signature
 Russell Bigler
 Printed Name
 Title Chairman, Board of Governors Date _____

For Headquarters Use Only

Philips by its acceptance thereof, agrees to provide maintenance service for the equipment listed above in accordance with all terms.

 Signature
 Title _____ Date _____

APPROVED AS TO FORM
 Kern County Hospital Authority, Legal Services Department

Jamie A. Mason

 Jamie A. Mason
 Hospital Counsel

Service Agreement Terms and Conditions

PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS (REV R.2)

1. SERVICES PROVIDED

1.1 The services listed in the quotation and/or Attachment A (the "Services") are offered by Philips Healthcare, a division of Philips North America LLC ("Philips") only under the terms and conditions described below, and on the quotation and any exhibits and attachments hereto, each of which are hereby incorporated (the "Agreement").

2. EXCLUSIONS

- 2.1 The Services do not include:
- 2.1.1 Servicing or replacing components of the system other than those systems or components listed in the quote, attachments and exhibits, as applicable (the "Covered System") that is at the listed system location ("Site");
 - 2.1.2 Servicing the Covered System if contaminated with blood or other potentially infectious substances;
 - 2.1.3 Any service necessary due to:
 - 2.1.3.1 a design, specification, or instruction provided by Customer or Customer representative;
 - 2.1.3.2 the failure of anyone to comply with Philips' written instructions or recommendations;
 - 2.1.3.3 any combining of the Covered System with other manufacturer's product or software other than those recommended by Philips;
 - 2.1.3.4 any alteration or improper storage, handling, use, or maintenance of the Covered System by anyone other than Philips' subcontractor or Philips;
 - 2.1.3.5 damage caused by an external source, regardless of nature;
 - 2.1.3.6 any removal or relocation of the Covered System; or
 - 2.1.3.7 neglect or misuse of the Covered System;
 - 2.1.4 Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors; or
 - 2.1.5 Any services or costs related to batteries, which are not included in coverage for any purpose, system, or modality, including, but not limited to, Biomedical Equipment, as defined herein, or Uninterruptible Power Supply (UPS) systems of any size or type.

3. CUSTOMER RESPONSIBILITIES

- During the term of this Agreement, Customer will:
- 3.1 Ensure that the Site is maintained in a clean and sanitary condition and that the Covered System, product or part is decontaminated prior to service, shipping or trade-in as per the published manufacturer's operating instructions;
 - 3.2 Dispose of hazardous or biological waste generated;
 - 3.3 Maintain operating environment within Philips' specifications for the Site including temperature and humidity control, incoming power quality (including but not limited to voltage spikes, brownouts, and outages), incoming water quality, and fire protection system; and
 - 3.3.1 For customers choosing not to use a Philips approved UPS, Philips reserves the right to insert a power monitor at any time during the contracted period to collect power quality statistics. Should results show that power quality negatively impacted system performance and resulted in additional Philips cost to maintain the system, Philips reserves the right to bill for service events related to poor power quality.
 - 3.4 Use the Covered System in accordance with the published manufacturer's operating instructions.

4. SYSTEM AND BIOMEDICAL EQUIPMENT AVAILABILITY

- 4.1 System Availability. If Customer schedules service and the Covered System is not available at the agreed upon time, then Philips may cancel the service or charge Customer at Philips' then current labor and travel rates for all time spent by Philips service personnel waiting for access to the Covered System.
- 4.2 Biomedical Equipment Availability. In order to achieve contracted Planned Maintenance (PM) compliance, Customer agrees to make the Biomedical Equipment available for PM service during normal business hours (Monday through Friday, 8 AM to 5 PM, excluding Philips recognized holidays) starting fourteen (14) days before the month in which PMs are due and ending on the last day of the actual month in which PMs are due. If the Biomedical Equipment is unavailable during the month in which PMs are due, and this results in Philips having to perform service of more than twenty-five percent (25%) of the PM volume in the last week of the month that PMs are due, Philips will charge Customer at Philips then current labor rates (and travel, if required) for all overtime incurred as a result of the Biomedical Equipment not being available. For the purposes of this Agreement, Biomedical Equipment means clinical equipment that is mobile and not in a fixed location. Biomedical Equipment does not include diagnostic imaging equipment that is non-mobile. This subsection 4.2 does not apply to services provided under Exhibits 9 (Clinical Informatics Service Agreements), 9-A (Clinical Informatics Service Agreements for Interoperability Platform), and 10 (Clinical Informatics Hardware Support Coverage).

5. PAYMENT

- 5.1 All payments under this Agreement are due thirty (30) days from the date of Philips' invoice.
- 5.1.1 Customer will pay interest on any amount not paid when due at the lesser of one percent (1%) interest per month or the maximum rate permitted by applicable law.
 - 5.1.2 Payments may be made by check, ACH, or wire. Philips does not accept transaction fees for wire transfers.
 - 5.1.3 If the quotation indicates net prices that are each associated with a payment method, then Philips will invoice Customer, and Customer will pay, the net price that corresponds to Customer's elected payment method.

6. FORCE MAJEURE

6.1. Each party shall be excused from performing its obligations (except for payment obligations for Services rendered) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, health pandemics, acts of any civil, military or government authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation, or mandatory direction or request. For clarity, Customer requests shall not be considered government requests under this section.

7. TERM AND TERMINATION

- 7.1 The term of this Agreement shall be set forth in the quote(s) and/or Attachment A attached hereto and incorporated herein ("Term").
- 7.2 This Agreement is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement. However, Customer may cancel service coverage for an individual Covered System under this Agreement upon sixty (60) days' written notice to Philips representing that the Covered System is being permanently removed from the Site and that the Covered System is not being used in any other Customer site.
- 7.3 Upon sixty (60) days' written notice to Philips, Customer may cancel this Agreement specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such sixty (60) day notice period. Termination under this clause shall not impact fees paid for Services rendered up to the time of such material breach, which shall remain payable to Philips.
- 7.4 In addition, if the Customer sells or otherwise transfers any of the Covered System to a third party and the System remains installed and in use at the same location, and such third party assumes the obligations of the Customer under this Agreement or enters into a new service agreement with Philips the price will be equal to the price in this Agreement and a term at least equal to the unexpired/unused term of this Agreement. If such third party does not assume the obligations of the Customer under this Agreement, then the Customer may terminate this Agreement with respect to such Covered System upon no less than thirty (30) days' prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to thirty percent (30%) of the remaining payments due under this Agreement for such Covered System from the date of termination through the scheduled expiration of the term of this Agreement.
- 7.5 If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within five (5) business days of such termination.
- 7.6 Clinical Education training and credits will expire upon termination of the Agreement.

8. DEFAULT

8.1 Customer's failure to pay any undisputed amount due under this Agreement within thirty (30) days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured; (ii) declare all sums due; (iii) commence collection activities for all sums due or that become due hereunder, including, but not limited to, costs and expenses of collection and reasonable attorney's fees; (iv) terminate this Agreement with ten (10) days' notice to Customer; and (v) pursue any other remedies permitted by law.

9. ADULTERATED SYSTEMS

9.1 If Philips determines that a Covered System has been modified or adulterated in a manner not explicitly specified in the documentation accompanying the Covered System, including without limitation by including a part, component, or device not specified as compatible (an "Adulterated System"), and such modification or adulteration hinders Philips' ability to provide the Service or maintain the Covered System in a safe or effective manner, then Philips will promptly notify Customer of such Adulterated System. Following receipt of such notice, if Customer does not permit Philips (at Customer's cost) to remediate the Adulterated System, then Philips may remove the Adulterated System from the Site list, adjust the Services under this Agreement, and provide Customer with a refund of any Customer pre-payments for periods of Service not yet rendered or parts not yet provided.

10. END OF LIFE

10.1 AFTER THE END OF LIFE DATE, PHILIPS WILL CONTINUE TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR SYSTEMS, BASED ON PARTS AND TRAINED ENGINEER AVAILABILITY, BUT WITH NO UPTIME GUARANTEE. AFTER THE END OF LIFE DATE, PHILIPS WILL NOT CREATE OR TEST BUG FIXES, PATCHES, OR ENHANCEMENTS TO THE SYSTEM HARDWARE OR SOFTWARE.

10.2 If Philips determines that its ability to provide the Services is hindered due to the unavailability of parts or trained personnel, or that the Covered System can no longer be maintained in a safe or effective manner, as determined by Philips, then Philips may terminate this Agreement with respect to such Covered System upon notice to Customer and provide Customer with a refund of any Customer pre-payments for periods of Service coverage not already completed.

11. WARRANTY DISCLAIMER

11.1 All labor shall be performed in a good and workmanlike manner consistent with industry practices by personnel with training. Philips' full contractual service obligations to Customer are described in this Agreement, including all exhibits attached hereto that apply to the specific Services offering and coverage purchased under the Agreement. In the event of a material breach of the foregoing, Customer shall provide Philips written notice and an opportunity to cure per the termination section of this Agreement. Except as otherwise provided in this Agreement, Philips provides no additional warranties express or implied under this Agreement. NO WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO SERVICES OR SERVICE ITEMS PROVIDED BY PHILIPS UNDER THIS AGREEMENT.

12. INTELLECTUAL PROPERTY INDEMNIFICATION

12.1 Philips shall indemnify, defend, and hold harmless Customer against any claim that Services, including any software, part, or service materials provided under this Agreement (collectively "Service Item(s)"), infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Philips prompt written notice of the claim and (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim.

12.2 If a Service Item is found or believed by Philips to infringe a valid patent or copyright, Customer has been enjoined from using a repaired product or Service Item pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for Customer to use the Service Item(s); (ii) replace or modify the Service Item(s) to avoid infringement; or (iii) refund to Customer a portion of the service fees upon the return of the Service Item(s) that are subject of such claims of infringement. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the Service Item(s), which are not permissible hereunder; use of the covered Philips product (based on Service Item(s) delivered under this Agreement) other than in accordance with the product specifications or applicable written instructions; use of the covered Philips product, including with Service Item(s), with any other product not sold by Philips to Customer and the Philips product (including Service Items) in and of itself is not infringing; if claims of infringement would have been avoided by the use of a current unaltered release of covered Philips products; provided that Philips makes such unaltered release available to Customer at no additional charge for use of the Philips Product (including with Service Items) after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement (provided that this shall not be a replacement for the remedies set forth in 12.2 (i)-(iii) above). The terms in this section 12.2 state Philips' entire obligation and liability for claims of infringement and Customer's sole remedy in the event of a claim of infringement.

13. LIMITATIONS OF LIABILITY AND DISCLAIMER

13.1 THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING FROM OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM THE SERVICES OR PHILIPS' PERFORMANCE OF THE SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE STATED IN THIS AGREEMENT FOR THE SERVICE GIVING RISE TO THE LIABILITY. THIS LIMITATION SHALL NOT APPLY TO:

13.1.1 THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE;

13.1.2 CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT;

13.1.3 OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PHI, AS DEFINED BY HIPAA;

13.1.4 FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY; ANY SUCH FINES OR PENALTIES CONSTITUTING DIRECT DAMAGES; and

13.1.5 PHILIPS' INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 ABOVE.

13.2 IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, OR OTHER TORT.

14. PROPRIETARY SERVICE MATERIALS

14.1 Philips may deliver or transmit certain proprietary service materials (including software, tools and written documentation intended solely to assist Philips and its authorized agents in performing Services under this Agreement) ("Proprietary Service Materials") that have not been purchased by or licensed to Customer. The presence of this property within the Site will not give Customer any right or title to this property or any license or other right to access, use, or decompile this property. Customer agrees to restrict access to such software, tools, and written documentation to Philips' employees and authorized agents only, and to permit Philips to remove its Proprietary Service Materials upon request. Customer will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use of this property by any unauthorized party. Customer shall immediately report to Philips any violation of this section.

15. THIRD PARTY MANAGEMENT

15.1 If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization, or the like ("Third Party Organization") for purposes of centralized billing and management of Services provided to Customer, at Customer's written request, Philips will route invoices for payment of Services rendered by Philips to such Third Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, the Services provided by Philips are subject solely to the terms and conditions set forth in this Agreement. Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third Party Organization or any payments Customer has made to the Third Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and Services Philips provides are not covered by Customer's arrangement with such Third Party Organization, Customer shall promptly pay for such parts and Services on demand.

16. TAXES AND PRICE

16.1 The price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the effective date, otherwise, Philips shall invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.

16.2 Price Indexation. Philips reserves the right to adjust customer list pricing and (or) net pricing, during the Term of the agreement in accordance with the Consumer Price Index published by the United States Department of Labor on its website at <http://www.bls.gov/cpi>. Such adjustment in pricing requires thirty (30) day written notice, will not be retroactive, cannot start before first year of contract, and will not exceed more than five percent (5%) change annually.

16.3 List Price Harmonization. In an effort to simplify and harmonize Philips services and/or products portfolio pricing structure Philips may, no more than once during the term of the Agreement, unilaterally adjust the price list and discount schedule for services and/or products under this Agreement, with no impact to the current net price. Philips will:

16.3.1 Provide 30 days' written notice prior to fixing the net price of the service(s) and/or product(s) sold under this Agreement for 12 months (the "Lock Period") at the net price (the "Lock Price") of the service(s) and/or product(s) in effect at the time of Customer's receipt of the written notice.

16.3.2 Provide an updated Agreement price file showing the new list price and new discount, which together will not change the Lock Price set at the beginning of the Lock Period. Upon termination of the Lock Period, the net price of the service(s) and/or product(s) will be maintained in the manner defined in the Agreement.

17. INDEPENDENT CONTRACTOR

17.1 Philips is Customer's independent contractor, not Customer's employee, agent, joint venturer, or partner. Philips' employees and Philips' subcontractors are under Philips' exclusive direction and control. Philips has no liability or responsibility for and does not warrant Customer's or Customer's employees' acts or omissions related to any services that are performed by Customer employees under this agreement. Only Philips or its employees may authorize a third party to perform Services or obligations required of Philips under this Agreement on its behalf. Neither party has the authority to bind the other party in any promise, agreement, or representations other than as expressly provided for in this Agreement.

18. RECORD RETENTION AND ACCESS

18.1 Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Services pursuant to these Terms and Conditions of Service, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Terms and Conditions of Service and the books, documents, and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Terms and Conditions of Service through a subcontract with a value or cost of ten thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v)(1)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)(1) (1989)), as amended from time to time to these Terms and Conditions of Service. If Section 1861(v)(1)(1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

19. COMPLIANCE

19.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, and the Veterans Act of 1972 as amended), E-Verify, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Health care providers are reminded that if this Agreement includes a discount, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

19.2 Business Associate Agreements (BAA). The most current BAA duly executed between Philips and Customer in effect at the time of Philips performance of the Services shall apply and is incorporated into this Agreement. In the event terms that explicitly govern the handling, processing, storage, disclosure, or use of PHI expressly set forth in the BAA conflict with terms set forth in this Agreement, the terms set forth in the BAA shall govern in such instance. Otherwise, the terms expressly set forth herein shall apply.

19.3 In the course of providing the Services to Customer hereunder, it may be necessary for Philips to have access to, view, and/or download computer files from the Covered System that might contain Personal Data. "Personal Data" includes information relating to an individual from which that individual can be directly or indirectly identified. Personal Data can include personal health information (e.g., images, heart monitor data, and medical record number) and non-health personal information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its Service obligations under this Agreement. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer may, at Philips' discretion, be recorded.

20. CONFIDENTIALITY

20.1 Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing, visually, or orally, relating to the business of the disclosing party, its customers, employees, and/or its patients, the quotation and this Agreement and its terms, including its pricing terms. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of this Agreement or any other obligation of confidentiality or (b) is lawfully obtained by the receiving party from a third party without any breach of confidentiality or violation of law. Notwithstanding the foregoing, in the event that the receiving party is required by law to disclose any confidential information to a court, government department/agency, or regulatory body, the receiving party may so disclose, provided that it shall, to the extent permitted by applicable law, first inform the disclosing party of the request or requirement for disclosure to allow an opportunity for the disclosing party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto, including notifying Philips and providing Philips an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder.

21. SUBCONTRACTS AND ASSIGNMENTS

21.1 Philips may subcontract to third parties of Philips' choice any of Philips' obligations under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.

22. INSURANCE

22.1 Upon Customer request, Philips will provide a Certificate of Philips insurance coverage.

23. RULES AND REGULATIONS

23.1 To the extent made known in writing to Philips, Philips and its subcontractors will comply with Customer's rules and regulations provided such rules and regulations do not conflict with established Philips policies.

24. EXCLUDED PROVIDER

24.1 As of the Effective Date of this Agreement, Philips represents and warrants that Philips, its employees, and subcontractors, are not debarred, excluded, suspended, or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the products and Services provided under this Agreement (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors, providing the Services hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer-related concerns, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this Agreement by express written notice for Services not yet rendered prior to the date of exclusion.

25. GENERAL TERMS

25.1 Survival. Customer's obligation to pay any money due to Philips hereunder survives expiration or termination of this Agreement. All of Philips' rights, privileges, and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement.

25.2 Performance. The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the Service and delivery of similar or dissimilar services shall not serve as references in interpreting the terms and conditions of this Agreement.

25.3 Severability. If any provision of the Agreement is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired and shall continue in full force and effect.

25.4 Counterparts. This Agreement may be executed in one or more counterpart copies, each of equal validity, that together constitute one and the same instrument. Any photocopy or facsimile of this Agreement or any such counterpart is deemed the equivalent of an original and any such facsimiles constitute evidence of the existence of this Agreement.

25.5 Governing Law. All transactions contemplated under this Agreement shall be governed by the laws of the state in which the Covered System is located, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act ("UCITA"), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

25.6 Entire Agreement. This Agreement constitutes the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and/or Attachment A, and supersedes any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation and/or Attachment A. No additional terms, conditions, consents, waivers, alterations, or modifications will be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement.

25.7 Additional Terms. Service specific exhibits and any associated attachments are incorporated herein as they apply to the Services listed on the quotation and/or Attachment A and their additional terms shall apply solely to Customer's purchase of the Services specified therein. If any terms set forth in an exhibit conflict with terms set forth in these Terms and Conditions of Service, the terms set forth in the exhibit shall govern.

26. AUTHORITY TO EXECUTE

26.1 The parties acknowledge that they have read the terms and conditions of this Agreement, that they know and understand the same, and that they have the express authority to execute this Agreement.

ADDITIONAL IMAGING SYSTEM SERVICE TERMS AND CONDITIONS

Exhibit 1 ADDITIONAL IMAGING SYSTEM SERVICE TERMS AND CONDITIONS (for Philips and/or Non-Philips Equipment)

1. SERVICES PROVIDED

1.1. Initial Covered System Inspection. Within ninety (90) days after the Effective Date, Philips will inspect the Covered System not previously serviced by Philips and notify Customer of any Covered System that does not meet manufacturers' specifications. Philips will provide Customer a written estimate for repairs necessary to bring any of the Covered System within proper manufacturers' specifications. Upon Customer's request, Philips will provide necessary repairs at Philips' then current labor and travel rates. If Customer elects not to have Covered System repaired, then Philips may remove such system from coverage under this Agreement.

1.2. Repair Service. Commencing on the Effective Date and subject to the repair limitation below, Philips or Philips' subcontractors will provide repair Services for Covered System. Philips will provide all replacement parts, which may be refurbished, and labor necessary to repair Covered System, unless excluded in Section 3 herein. All components used are subject to Philips' inspection and quality control procedures and shall be warranted to the same extent that a non-refurbished component is warranted. Parts removed for replacement become the property of Philips and Philips will remove parts from the Covered System Site ("Exchange Basis"). Philips may increase its contract prices if the Covered System is upgraded or reconfigured.

1.3. Planned Maintenance Service. Philips will provide Customer a planned maintenance schedule for the Covered System. Philips will provide such planned maintenance during the service coverage hours (as defined in the Agreement) at a time that is mutually agreed upon. Customer will make the Covered System available in accordance with this Exhibit. Philips or its subcontractors will provide planned maintenance on the Covered System at scheduled intervals. If Philips cannot locate Covered System, or Covered System was not made available for planned maintenance when scheduled, Philips will notify Customer that Customer has ninety (90) days to make available Covered System for planned maintenance, otherwise Customer waives right to service, and Philips may delete Covered System from this Agreement.

1.4. Software Updates. Philips will install operating system software updates provided by the Original Equipment Manufacturer (OEM) for Covered System. Software updates mean revisions to OEM proprietary operating system software that enhance existing Covered System functions and operation without hardware changes but will not install operating system software upgrades to new software platforms or software options offered separately for sale by the OEM.

2. CONTRACT ADMINISTRATION

2.1. System Additions and Deletions. After completing the inspection, Customer may add a system to the Covered System list by contacting Philips. Customer and Philips will agree on a mutually agreeable price and contract start date. The Covered System will be added to this Agreement after receipt of the signed inventory modification form. Customer may delete Covered System only if: (i) Customer permanently removes it from operation or (ii) it is no longer under Customer's exclusive ownership or control and Customer notifies Philips in writing. The Covered System will be deleted from the Agreement pursuant to Section 7 of the Terms and Conditions of Service.

2.2. Management and Staffing. If on-site staffing is provided, Philips will determine and provide the management and service staff necessary to provide the Services under this Exhibit. Philips will pay all salaries, payroll and other employment taxes or fees, worker's compensation insurance, and other charges or insurance levied or required by any federal, state, or local statutes, relating to its employees.

2.3. If applicable, Customer shall execute the Subcontracting Confirmation and Agency Authorization Agreement as required by Philips to perform certain duties and responsibilities included within this Exhibit.

3. EXCLUSIONS

Unless specifically included in this Agreement, the Services do not include providing or paying the cost of:

3.1 Any rigging or structural alteration incident to the Services;

3.2 Consumable items and supplies (as defined below) ("Consumables"), cryogenics, PET calibration sources, film, batteries, cassettes;

3.2.1 Consumables include, but are not limited to, the following: Biomedical Equipment batteries and battery chargers; biomedical laser tubes; patient use pads; filters; light bulbs and light sources; line cords and power cords; external cables and hoses; patient leads and cables; SpO2 sensors and O2 sensors; Probes (TOCO, Doppler, Biomed Ultrasound, Pencil, Bladder Scan, Temp probe, etc.); BP hose/cuff; foot pedals; hand pieces; scopes (laryngoscope, baton, endoscope, etc.); defibrillator cables; paddles and test plugs; or table accessories.

3.3 Cosmetic repairs;

3.4 Repair or replacement of ultrasound transducers and their accessory(ies) and/or attachment(s) due to abuse or negligence (e.g., cuts, bites, punctures, submersion, or improper cleaning);

3.5 The cost of factory reconditioning, rebuilds, or overhauls if repairs cannot maintain the equipment in satisfactory operating condition;

3.6 Disposing hazardous, infectious, or biomedical waste or materials;

3.7 Providing service to any system under a current service agreement between Customer and another vendor until such agreements expire or are terminated by Customer. Philips is not liable for any cancellation penalty or cost associated with Customer's termination of any such agreement;

3.8 Unless otherwise specified in the quote, maintaining or repairing third-party products including but not limited to nuclear camera detector crystals, CT Tubes and radiation therapy tubes, x-ray tubes, flat panel detectors, image intensifiers magnet replacement, magnet refrigeration system (coldhead, compressor, chillers), and the equipment between the Chiller and Liquid Cooling Cabinet (LCC) such as Chiller Interface Panel (CIP), the booster pump, lines, valves, flow setters, flow meters, and/or any other items required to meet the specifications), MR RF rooms, surface coils HVAC systems, power conditioners, uninterruptible power supplies, ultrasound transducers (probes) (accessory or attach), TEE probes, TV camera pick-up tubes, photo multiplier tubes, accelerator center beam lines, piped medical gases (up to the wall outlets), copier drums, electron guns, fiber optic bundles, foot/hand controls (switches, accessory, or attachment), klystrons and thyratrons, magnetrons, plumbicons, waveguides, and attachments;

3.9 If this Agreement includes coverage for biomedical services, the following are not included in the definition of Biomedical Equipment: arthroscopy instruments, blood pressure cuffs (accessory or attachment), fume hoods, high-end lab analyzers, lead aprons/shields, nurse call, and surgical robots, electronic thermometer probes, electro-surgical instruments (pencils & pads), general or surgical instruments, laboratory glass, laser tubes, phaco hand pieces (cataract extraction units, accessory or attachment), non-electrical surgical equipment, rigid & semi-rigid scopes.

4. COVERAGE

4.1 Philips will provide services on-site during the hours listed in Customer's service agreement, excluding Philips observed holidays, unless otherwise set forth in attachments or exhibits ("Service Coverage"). Customer may request service outside of the Service Coverage or service that is not otherwise included in this Agreement and, subject to the availability of personnel and repair parts, Philips will provide such service at Philips's then current preferred labor and travel rates. Customer will be charged a minimum of two hours on-site time plus applicable travel charges and expenses per service visit.

5. DOCUMENTATION

5.1 Upon Customer's written request, Philips will provide repair and planned maintenance records for the Covered System.

6. CUSTOMER RESPONSIBILITIES

During the term of this Agreement, Customer will:

6.1 Attend a start-up meeting at Customer's facility, prior to the Effective Date of this Agreement, so Philips can explain the Services to Customer's management and selected staff;

6.2 Provide a secure dedicated space within Customer's main facility and at each additional facility or location as necessary for the resident Philips staff;

6.3 Provide Philips with broadband internet or Wi-Fi access for business purposes;

6.4 Provide Philips with the Covered System service manuals for any non-Philips System;

6.5 Maintain all software licenses applicable to the Covered System;

6.6 For Philips use in remote servicing of the System, if required by Philips:

6.6.1 Provide Philips a secure location for hardware to connect System to Philips Remote Service ("PRS"), and such hardware will remain Philips' property and is only provided during the term of this Agreement; and:

6.6.1.1 Provide Philips and its vendors full and free access to the PRS hardware to enable Philips to remotely access the Covered System or non-Philips System;

6.6.1.2 Provide Philips at each Covered System Site, at all times during the term of this Agreement, a dedicated broadband Internet access node, including public and private interface access, suitable to establish a successful connection to the System through the PRS and Customer network; and

6.6.1.3 If the Covered System cannot be connected to the PRS, and Customer fails to provide the access described in Section 6, then Customer waives its rights to Services under this Agreement and any uptime guarantee;

6.6.2 Allow Philips to connect to Customer's Covered System via Collaboration Live, which is powered by Reacts, or connect with Customer directly through the Reacts Collaboration Platform (and may be subject to a separate license, a copy of which will be provided upon request); and:

6.6.2.1 Provide Philips at each Covered System Site, at all times during the term of this Agreement, a dedicated Internet access node, including public and private interface access, suitable to connect the System to the Collaboration Live;

6.6.2.2 Provide Philips the ability to connect with Customer directly through a smart device if Philips cannot connect to Customer's system directly;

- 6.6.2.3 Only use Collaboration Live or the Reacts Collaboration Platform for the purpose of Philips servicing of the System; and
- 6.6.2.4 If the Customer fails to meet the requirements in this Section 6.6.2, then Customer waives its rights to Services under this Agreement and any uptime guarantee.
- 6.6.3 Allow Philips to remotely download the error logs for remote servicing purposes.

7. HELIUM REPLENISHMENT (APPLIES ONLY TO MRI SERVICE)

7.1 If Helium Replenishment Service is included in this Agreement, Customer shall report any magnet cooling system (cold head, compressor, or chiller) malfunction within twenty-four (24) hours. If Customer fails to report any malfunctions or provide continuous chilled water or power to the MRI system, then Customer is responsible for any additional helium expenses.

7.2 Customer shall provide access to the MRI system to perform helium replenishment, cryo refrigeration system and chiller services during contract hours of corrective and/or planned maintenance services.

7.3 If the Covered System is not connected to the PRS, then Customer shall report helium level readings weekly for all MRI systems covered under this Agreement into the Philips Helium Reading Registration System at: <https://heliumreg.onphilipsmde.com/>.

7.4 During the term of the Agreement Customer will immediately inform Philips upon the happening of any of the following:

7.4.1 An on-screen message appears on the Covered System computer that Helium refill is required; or

7.4.2 The liquid helium level is below the minimum operating helium level as indicated in the Instructions for Use. (In such case an on-screen message may also appear on the system computer indicating that scanning will be prohibited within certain days or immediately. In both cases Customer shall immediately inform Philips and in the latter case Customer shall also immediately cease to operate the MRI Equipment);

7.4.3 A sudden, unexpected drop of liquid helium level is encountered; or

7.4.4 The MRI magnet refrigeration system is out of order and/or not operational.

7.5 Customer shall act on alerts provided by the MRI Equipment and/or monitoring processes which apply to the operating environment condition.

7.6 If liquid Helium is purchased by Customer from Philips, Customer shall ensure that the filling of liquid Helium is done by Philips authorized personnel only.

7.7 If Helium Replenishment Service is excluded from this Agreement, Philips does not accept any responsibility and Philips will not be liable for any cost or damages due to the loss of liquid Helium or due to the services provided by a third party other than a subcontractor of Philips. Any costs will be fully charged to Customer, including the costs of refill of the liquid Helium, including shipment, labor, duties and taxes.

7.8 Customer will inform Philips of any planned power outages.

8. FURTHER USE OF SYSTEM DATA

8.1- Mandatory Data. Customer acknowledges and agrees that by executing this Agreement and using the Licensed Software, it has agreed that product inventory and crash signature data generated by the Licensed Software shall be delivered into the custody of Philips, or of systems maintained on Philips' behalf, without notice to Customer. Such data is referred to herein as "Mandatory Data" and such data is described in the Licensed Software's documentation for each Licensed Software release; the data comprising Mandatory Data is subject to change with each release of upgrades, updates, patches and modifications to the Licensed Software. Customer agrees that any Mandatory Data will be the property of Philips. Part of the Mandatory Data might constitute (non-sensitive) Personal Data. Notwithstanding any other term of the Agreement, Customer agrees that Philips may de-identify data generated by the devices used by Customer such as log files, exam files, errors data, utilization data, and system log files ("Device Data") and use and disclose de-identified Device Data for Philips' own purposes (including, but not limited to for data analytics activities to determine trends of usage of Philips' devices and services; to facilitate and advise on continued and sustained use of Philips' products and services; substantiation of marketing claims and for benchmarking purposes). Philips shall de-identify Device Data in accordance with the standards of the HIPAA Privacy Rule. Separation of such data from the Philips database is impossible, therefore Philips shall have the right to continue using such data upon expiration of this Agreement.

8.2- Enhanced Data. Customer also acknowledges and agrees that additional system performance data related to errors or status of devices shall be delivered into the custody of Philips, or of systems maintained on Philips' behalf, without notice to Customer. This additional data includes alert such as low disk space and device reboot; performance indicators such as slow database query; and additional statistics such as critically low battery and packets sent ("Enhanced Data"). Customer acknowledges that the Enhanced Data feature is activated as default in the Licensed Software, and Customer is responsible for turning off the Enhanced Data feature at install. Customer acknowledges that by activating the Enhanced Data feature, Customer will be able to access an interface, which allows Customer to export data onto Customer's Network Management System. Customer agrees that any Enhanced Data will be the property of Philips. Customer agrees to assign, and hereby assigns, all right, title, and interest worldwide in the Enhanced Data to Philips. Customer acknowledges and agrees that Philips may use such Enhanced Data for its business purposes without restriction. In addition, Philips will not expose any data set tied to Customer, to another customer of Philips or any other third party. In addition, Customer will be able to select within the Licensed Software settings if they choose to enable or disable the Licensed Software from sending Enhanced Data information to Philips.

Rev-R-2 (May 2022)

Technology Maximizer Exhibit

Exhibit 2

ADDITIONAL TERMS AND CONDITIONS FOR TECHNOLOGY MAXIMIZER

1. SERVICES

If Philips Technology Maximizer ("Technology Maximizer") is purchased under this Agreement and the requirements of the Agreement are satisfied, then Philips will upgrade the Covered System as follows:

1.1. Software Upgrades and Updates. Philips will provide software updates and upgrades consisting of revisions to, and new versions of, software for existing applications and operating system licenses when made commercially available by Philips. Any other third party Software is not included. Customer has no right to updates and upgrades that are released before the start date of the Agreement. If the Agreement expires after Philips notifies Customer that an update or upgrade is available, then Customer is entitled to receive the offered update or upgrade for three (3) months following such termination.

1.1.1. Technology Maximizer. Customer is entitled to upgrades to the equipment operating system software, basic application software and software applications previously purchased or bundled with the Covered System when made commercially available. Customer may purchase new, separately licensed functionality or applications for the Covered System separately after the start date of the Agreement. Customer acknowledges that certain functionality in current and previous software versions may not be available in upgrades.

1.1.2. Technology Maximizer Pro. If Customer has purchased a Technology Maximizer Pro option under this Agreement, Philips will provide new software applications when such applications are (i) made commercially available by Philips after the Effective Date of this Agreement; (ii) supported by the Covered System hardware configuration; and (iii) intended for use in the "clinical domain" identified in the quotation or otherwise as explicitly specified in the quotation.

1.2. Hardware Upgrades and Updates. Software updates and upgrades may require hardware updates or upgrades. Unless included hereunder, Customer is responsible for any such hardware updates or upgrades. If included in the quotation, Philips will provide one commercially available computer hardware upgrade during the term of the Agreement, to the Covered System hardware component(s) expressly described on the quotation under the Technology Maximizer option. Philips will provide such hardware upgrade at the time and quantity as expressly described on the quotation under the Technology Maximizer option. In no case will Philips obligation under any Covered System hardware provided under the Agreement exceed \$5,000 or the amount expressly described on the quotation under the Technology Maximizer option, whichever is greater. This paragraph (1.2) does not apply if the software only Technology Maximizer option.

1.3. Ultrasound Hardware Upgrades and Updates. This Agreement does not include hardware upgrades or updates for Ultrasound systems. Customer is responsible for any hardware upgrades or updates required to install a software upgrade or update.

1.4. To receive an upgrade:

1.4.1. Customer must be in compliance with all terms and conditions of this exhibit and the Agreement, including the availability of Philips remote service capability and access to the Covered System by Philips personnel;

1.4.2. Customer must identify one Customer representative who will manage and be responsible for Customer's selection and scheduling of upgrades installation under this exhibit.

1.5. The Covered System that will receive the update or upgrade must meet the specifications of the update or upgrade. Unless provided hereunder, Customer shall provide the Covered System hardware and/or software necessary to meet such specifications. Customer may not resell, transfer, or assign the right to such upgrades, updates, or fixes to any third party. All upgrades, updates, and fixes provided to the Covered System under this exhibit are subject to the terms and conditions of this Agreement, and any license terms and conditions included in the purchase of the system from Philips or later provided to Customer.

2. INSTALLATION SERVICES AND CLINICAL EDUCATION FOR SOFTWARE UPGRADES AND UPDATES.

2.1. Philips will install the upgrades or updates that Customer is entitled to receive under this Agreement either on-site or remotely, at Philips sole discretion, at a mutually agreeable time. Update or upgrade installation and clinical support of the installation shall take place during standard onsite response hours, Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays.

2.2. Prior to the installation, Philips will specify the clinical support or clinical education that Customer is entitled to receive to support the software and/or hardware upgrade. Scope, duration, and delivery methodology of the clinical support of the installation or clinical education will vary by upgrade, update, or fix and will be defined by Philips at Philips' sole discretion. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor and material rates. Clinical support at the installation will be provided in support of the new software revision installation and does not include end-user clinical education.

3. TERMINATION

3.1. If the Agreement is terminated due to the fault of Customer or Customer defaults under the Agreement after any upgrades to the Covered System software or hardware are provided by Philips, then Customer will pay Philips the list price of the provided upgrades within thirty (30) days of such termination or default.

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PHILIPS HEALTHCARE
22100 Bothell Everett Highway
PO Box 3003
Bothell, Washington 98041- 3003
Tel: (800) 934-7372
Fax: (800) 947-3299



**AMENDMENT
BETWEEN
PHILIPS HEALTHCARE
A DIVISION OF
PHILIPS NORTH AMERICA LLC (“Philips”)
and
KERN COUNTY HOSPITAL AUTHORITY (“Customer”)**

DATED: June 8, 2022

The following provision of Philips’ Quotation No. 1-2JYMGGR rev 6, dated 08-June-22 is hereby amended as follows:

QUOTE

Delete the following language in its entirety from page 1 of the quote:

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips.

and insert in its place:

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips. Philips 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.

The offer to enter into this Amendment is valid 30 days from June 8, 2022.

Accepted and agreed by:
Kern County Hospital Authority

Philips Healthcare a division of Philips North
America LLC

Candice Downs

Electronically signed by:
Candice Downs
Reason: I have reviewed
and approve this document
Date: Jun 8, 2022 10:16
PDT

Signature:
Russell Bigler

Printed Name:
Chairman, Board of Governors

Title:

Date:

Signature:
Candice Downs

Printed Name:
Senior Contract Manager

Title:
Jun 8, 2022

Date:

Jamie A. Mason
Hospital Counsel



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

July 20, 2022

Subject: Proposed Affiliation Agreement with Ross University School of Medicine and American University of the Caribbean School of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Affiliation Agreement with Ross University School of Medicine (“Ross”) and American University of the Caribbean School of Medicine (“AUC”), for clinical training of third- and fourth-year medical students at Kern Medical.

Kern Medical initially partnered with Ross and AUC in 2012, becoming a core site for third-year medical student clerkships and fourth year medical student electives. Both schools of medicine are under the corporate umbrella of Adtalem Global Education and represent for-profit health professions universities, located in Barbados, W.I. and St. Maarten, respectively. Ross offers degrees in both medicine and veterinary medicine, and represents one of the first medical schools located in the Caribbean. In like manner, AUC has matriculated students in the health sciences since 1978. Both schools have a history of identifying students who match into residency programs in the United States in multiple specialties. Over the last decade, approximately one quarter of our matched applicants into our residency programs have been former students from these two universities, the majority of whom either decide to stay at Kern Medical as faculty or practice within our community after graduation.

Our affiliation with Ross and AUC has provided extra benefits for both parties, including the creation of a dedicated Student Union on campus, integrated student advisors, and the promotion of faculty development sessions fostering medical student teaching and feedback.

All parties share a common goal to recruit and retain the most qualified students into our residency programs who, in turn, will remain in our community. To assist with creating this “pipeline,” Ross will fund annually 10 Merit Scholarships in the amount of \$10,000 each to be awarded to future students from the San Joaquin Valley at the sole discretion of Kern Medical.

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

1. Annual payments of \$980,000 with the following allocation:
 - Annual Contribution to the Kern Medical Center Foundation: \$500,000
 - Standard Institutional Fee: \$200,000
 - Simulation Lab Fee: \$100,000
 - Clerkship Director Fees: \$120,000
 - Clinical Coordinator Fee: \$60,000
2. Estimated annual payments invoiced quarterly for third-year rotations: \$691,200
3. Estimated annual payments invoiced quarterly for fourth-year rotations: \$468,000

The annual payments to Kern Medical and the Kern Medical Center Foundation are guaranteed. However, payments for student matriculation in our clerkships and electives are dependent on the actual number of students accepted into our institution each year.

Therefore, it is recommended that your Board approve the Affiliation Agreement with Ross University School of Medicine and American University of the Caribbean School of Medicine for a term of three years from August 1, 2022 through July 31, 2025, and authorize the Chairman to sign.

AFFILIATION AGREEMENT

This Clinical Education Affiliation Agreement ("Agreement") is entered into on August 1, 2022 ("Effective Date"), by and between AUC School of Medicine B.V. d/b/a American University of the Caribbean School of Medicine ("AUC"), with administrative offices at 1600 SW 80th Terrace, Plantation, FL 33324, Ross University School of Medicine ("RUSM"), with administrative offices at 1600 SW 80th Terrace, Plantation, FL 33324 ("RUSM" and "AUC" are also each referred to herein as "Institution" and collectively referred to herein as "Institutions"), and Kern County Hospital Authority, a local unit of government ("Authority"), which owns and operates Kern Medical Center ("Hospital"), located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306. (Institution and Hospital are each a "Party," and collectively, the "Parties".)

RECITALS

WHEREAS, AUC is a medical educational institution maintaining a campus in St. Maarten, and offering a Doctor of Medicine degree; and

WHEREAS, RUSM is a medical educational institution maintaining a campus in Barbados, W.I., and offering a Doctor of Medicine degree; and

WHEREAS, Hospital is an acute care teaching hospital serving the communities of Kern County, California; and

WHEREAS, Institutions and Hospital share a mutual goal of ensuring optimum patient care and excellence in undergraduate medical education; and

WHEREAS, the Parties are interested in establishing a program through which a certain number of Institutions' third and fourth-year students will obtain some or all of their clinical training at Hospital ("Program");

NOW, THEREFORE, in consideration of the mutual covenants and promises to set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Institutions and Authority hereby agree as follows:

ARTICLE I.
Term

Term -- Subject to the termination provisions of Section 1.2 below, the term of this Agreement shall commence on August 1, 2022, and continue for a three (3) year period ending on July 31, 2025 (“Term”). Any prior agreements between the parties shall be superseded by this Agreement.

1.1 **Termination for Breach** -- Any Party may terminate this Agreement by reason of a Material Breach, as that term is defined below, by the other Party provided that written notice containing a detailed description of the alleged breach is delivered to the alleged breaching party, and the breaching party does not remedy the breach within 30 days following its receipt of said notice. For the purpose of this Agreement, a Material Breach shall, without limitation, include:

- a. Any failure by Hospital to operate the Program in a manner consistent with the standards set forth below in Sections 3.1 (a), and (b) and (c);
- b. Any failure by Hospital to allocate at least the number of clinical slots in the core clinical rotations specified below in Section 3.1 (d);
- c. Hospital is the subject of any voluntary or involuntary bankruptcy, insolvency, receivership, and assignment for the benefit of creditors or any similar court proceeding;
- d. Any failure by Institutions to pay to Hospital or to Kern Medical Center Foundation (“Foundation”) consideration, including payment of the core clinical rotation fees, payment of the annual payments to Foundation, payment of the elective clinical rotation fees or provision of Merit Scholarships to eligible students through the Foundation, in an amount or in the manner specified under Exhibit “A”; and
- e. Loss of accreditation, licensure, or certification.

1.2 **Termination Without Cause.** Any Party may terminate this Agreement at any time on expiration of 90 days' advance written notice, provided that students who are then in rotation at Hospital are to complete then current rotation(s). In the event of a termination, or expiration of this Agreement by its terms, Hospital shall allow Institutions' students to continue their rotations and complete their clerkships, to the extent those students had scheduled their clerkships to begin on or before the effective termination or expiration date and provided that any payments required hereunder have been made by Institutions and received by Hospital for the period of time through the completion of the clerkships. Additionally, all Parties agree to extend the termination or expiration date of this Agreement to be coterminous with the last date of the last rotation completed by the last Institutions' student and all Parties will sign an Amendment for this purpose.

1.3 **Effect of Termination** -- In event of a termination pursuant to Section 1.2, Hospital shall allow Institutions' students to complete their clerkships, to the extent those students had scheduled their clerkships to begin on or before the effective termination date and provided that any payments required hereunder have been made by Institutions and received by Hospital for the period of time through the completion of the clerkships. Additionally, all Parties agree to extend the termination or expiration date of this Agreement to be coterminous with the last date of the last rotation completed by the last Institutions' student and all Parties will sign an Amendment for this purpose.

ARTICLE II.

Institutions' Rights and Responsibilities

2.1 **Rights and Responsibilities** -- Institutions hereby assume the following obligations and acquire the following rights with respect to the Program:

- a. Institutions shall appoint for clinical clerkships at Hospital only those students who have satisfied all academic requirements in the

pre-clinical sciences and who are qualified to begin their clinical clerkship experiences;

- b. The Deans of each Institution and/or their representatives will visit Hospital at regular intervals to maintain an active liaison between Institutions and Hospital;
- c. Institutions shall pay to Hospital and Foundation consideration in an amount and manner consistent with the terms set forth in Exhibit "A," attached hereto and incorporated by reference herein;
- d. Institutions shall assume and maintain throughout the Term full responsibility for the planning and execution of the educational programming, administration and curriculum content for those Institutions students participating in the Program;
- e. Institutions shall have the sole and final right to evaluate its students' total academic accomplishments and make all determinations as to whether to advance a student participating in the Program to the next level within the medical school or to grant a student the Doctor of Medicine degree;
- f. Institutions shall take all reasonable steps to ensure that students participating in the Program abide by the policies, rules and regulations of Hospital as they apply to its medical staff;
- g. Institutions shall consider for faculty appointments those physicians participating in the Program who are identified by Hospital as candidates for such appointments, said appointments to be for a minimum term of one year from the commencement of the Program;
- h. Institutions' students shall be responsible for their own costs incurred for lodging, meals, transportation, uniforms, health insurance and incidental expenses;
- i. Institutions shall be solely responsible for scheduling its students in the core and elective rotations listed in Section 3.1(d) and Section 3.1(f);
- j. Institutions shall provide to Hospital a roster of prospective students for the August 2022 cohort no later than 45 days prior to the start of the rotations. The Institutions shall provide to Hospital a roster of prospective students for all other cohorts 90 days prior to the start of the rotations and shall allow for Hospital to interview prospective students to be confirmed for scheduling within 30 days after Institutions submit a roster of prospective students;
- k. Institutions shall maintain professional liability insurance covering the acts and omissions of Institutions' students participating in the

Program of not less than two million dollars (\$2,000,000) per incident or occurrence and four million dollars (\$4,000,000) in the aggregate. Institutions shall provide Hospital with certificates of insurance evidencing such coverage prior to Institutions' students beginning the Program. Further, Institutions shall upon reasonable request provide confirmation of health insurance for students of Institutions while they are formally enrolled in clerkships at Hospital; and

- l. Institutions shall require that all students provide Hospital a current medical examination (not more than six (6) months old) and up to date immunizations and TB testing. These documents will be sent to Hospital no later than two (2) weeks prior to the starting date of the student's rotation.
- m. Institutions shall ensure that each student assigned to Hospital complies with the onboarding requirements set forth in Exhibit "C," attached hereto and incorporated herein by this reference, as amended from time to time, at no cost to Authority or Hospital. Hospital may from time-to-time contact Institutions to request current information to validate presence of documentation, to meet regulatory requests, or anytime a student may not be in compliance. In addition, Institutions shall notify Hospital in the event of any questionable findings which, in Hospital's discretion, may restrict the student's access to Hospital facilities;
- n. Institutions shall ensure that each student assigned to Hospital receives basic information regarding the Occupational Exposure to Bloodborne Pathogens regulations ("Regulations") issued by the Department of Labor (29 C.F.R. § 1910.1030) prior to any student being assigned to Hospital. Institution agrees to maintain records evidencing compliance with the Regulations. Hospital shall contact Institution to request current information in order to validate presence of documentation, to meet regulatory requests;
- o. Institutions shall notify its students participating in the Program that they are responsible for:
 - (i) complying with Hospital's clinical and administrative policies, procedures, rules and regulations, including without limitation, standards of The Joint Commission and regulations pertaining to general acute care hospitals set forth in title 22, California Code of Regulations, as may be amended from time to time;
 - (ii) costs incurred for lodging, meals, transportation, uniforms, and health insurance;

- (iii) assuming responsibility for their personal illnesses, necessary immunizations, tuberculin tests, and annual health examinations;
 - (iv) maintaining the confidentiality of patient information;
 - (v) complying with Hospital's dress code and wearing name badges provided by Hospital, identifying themselves as students;
 - (vi) attending an orientation to be provided by Hospital;
 - (vii) notifying Hospital immediately of any violation of state or federal laws by any student; and
 - (viii) providing services to patients only under the direct supervision of Hospital's professional staff; and
- p. Institutions represent and certify that to their knowledge no Institution's student participating in the Program at Hospital under the terms of this Agreement:
- (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General and provided proof of such reinstatement to Institutions and Hospital;
 - (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation; or
 - (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs.
- q. Institutions shall pay Hospitals for the student core and elective rotations scheduled and used, Hospital Support commitment, and the Merit Scholarships payments as specified under Exhibit "A." Institutions will not pay for any clinical core or elective rotations that are not filled by students.

ARTICLE III.

Hospital's Rights and Responsibilities

3.1 **Rights and Responsibilities** -- Hospital hereby assumes the following obligations and acquires the following rights with respect to the Program:

- a. Hospital acknowledges that it has received and reviewed Institutions' current Clinical Curriculum Guide (the "Guide"), a copy of which is attached hereto as Exhibit "B," and incorporated herein by reference. Future revisions of the Guide will be provided by Institutions to keep participating Hospital teaching faculty current and updated. Hospital shall provide clinical medical education under this Agreement in a manner consistent with the Guide, as a minimum standard. Upon receiving notice from Institutions of any substantive changes in the Guide, Hospital shall promptly incorporate such changes into its clinical medical education curriculum;
- b. Hospital shall, throughout the Term, maintain sponsored or affiliated residency training programs accredited by the Accreditation Council for Graduate Medical Education ("ACGME") and shall provide Institutions' students with core and elective clinical training in the areas covered in Table No. 1 under Section 3.1(d) and Table No. 2 under Section 3.1(f). Hospital shall notify Institutions within 30 days of any loss, citations or change in accreditation from the Accreditation Council for Graduate Medical Education (ACGME);
- c. It is expressly understood and agreed by Hospital that, as of the Effective Date, each residency training program referred to in Section 3.1(b) must be specifically listed as an accredited sponsor or affiliated participant program on the ACGME website(s);
- d. Hospital agrees to provide sufficient rotations to Institutions' students so that students can sequentially complete the required rotations listed in Table No. 1 within fifty-two (52) weeks of the students' first core rotation, with an initial combined cohort of thirty-two (32) students beginning on **August 1, 2022**. Subsequent cohorts shall begin on **July 31, 2023** and **July 29, 2024**, for the remainder of the Term of this Agreement.

<u>TABLE NO. 1: CORE ROTATION</u>		
<u>ACGME #</u>	<u>SPECIALTY</u>	<u>ROTATION WEEKS REQUIRED PER STUDENT</u>
1200500738	Family Medicine (FM)	6 weeks per student per core rotation
2200531027	Obstetrics and Gynecology	6 weeks core per student per rotation

1200500738	Pediatrics under FM Umbrella	6 weeks core per student per rotation
4000522298	Psychiatry	6 weeks core per student per rotation
1400531031	Internal Medicine (IM)	12 weeks core per student per rotation
1200500738	Surgery under FM Umbrella	12 weeks core per student per rotation

- e. Hospital shall have the opportunity to interview prospective core students prior to their placement at Hospital for core rotations. The timing and process for performing these interviews shall be collaboratively agreed to by Hospital and Institutions no later than 60 days prior to confirming scheduling. Hospital's interviews of prospective students shall be conducted no later than 30 days after receiving Institutions' roster for prospective students and confirmations for students' core rotations no later than 60 days.
- f. Hospital shall make available to Institutions a minimum of 20 elective rotations per month in the specialties listed in Table No. 2. Hospital, in its sole discretion, may offer to Institutions additional elective rotations each month. Hospital will provide Institutions with advance notification of Hospital's available elective subspecialties within the specialties listed in Table No. 2.

<u>TABLE NO. 2 – ELECTIVE ROTATIONS</u>		
<u>ACGME #</u>	<u>HOSPITAL CLINICAL CLERKSHIP ELECTIVES</u>	<u>ROTATION WEEKS REQUIRED PER STUDENT</u>
<i>Subspecialties in Core Areas Below</i>		
1200500738	Family Medicine (FM)	a minimum of 4 weeks per student per elective rotation
2200531027	Obstetrics and Gynecology	a minimum of 4 weeks per student per rotation for electives
1200500738	Anesthesia under FM Umbrella	a minimum of 4 weeks per student per rotation for electives

4000522298	Psychiatry	a minimum of 4 weeks per student per rotation for electives
1200500738	Surgery under FM Umbrella	a minimum of 4 weeks per student per rotation for electives
1400531031	Internal Medicine (IM)	a minimum of 4 weeks per student per rotation for electives
1200500738	Pathology under FM umbrella	a minimum of 4 weeks per student per rotation for electives
4050531191	Child and Adolescent Psychiatry	a minimum of 4 weeks per student per rotation for electives
1200500738	Radiology under FM Umbrella	a minimum of 4 weeks per student per rotation for electives
1460514214	Infectious Disease	a minimum of 4 weeks per student per rotation for electives
1100512001	Emergency Medicine	a minimum of 4 weeks per student per rotation for electives

- g. Hospital shall designate a member of its staff to serve as Program Coordinator;
- h. Hospital shall designate a member of its staff to supervise the core clerkship as Clinical Site Director for Clinical Education;
- i. Hospital shall collaborate with Institutions to appoint a member of its staff to serve as Clinical Site Director for each of the core clerkships listed in Sections 3.1(d) of the Agreement and allow said Clinical Site Director to orient Institutions' participating students on the first day of their clerkship to the rules, regulations, policies, and procedures of Hospital as well as Hospital's facilities, operations, and emergency protocols;
- j. All clinical faculty members teaching Institutions' students at Hospital must receive Institutions' faculty appointments, be assigned a faculty rank and title, and are considered Institutions' clinical faculty;

- k. Hospital shall allocate adequate clerical/administrative support staff to ensure the needs of Institutions' students participating in the Program are met;
- l. Hospital shall ensure that residents who are part of either sponsored or participant ACGME programs, as provided for in Sections 3.1(b), supervise Institutions' students participating in core and elective rotations at Hospital at a maximum ratio of four (4) students per resident (although it is expressly understood and agreed that a 2:1 ratio is preferred) and that attending physicians supervise those residents;
- m. Hospital shall permit students from Institutions with the appropriate access to patients at Hospital's facilities while they are formally enrolled in clerkships;
- n. Hospital shall provide Institutions timely notice of any substantially inappropriate behavior on the part of any Institutions' student, which may indicate the need for sustained counseling or correction;
- o. Hospital shall provide Institutions' students with regular, appropriate, and timely feedback concerning their performance and behavior in relation to the assigned rotation(s);
- p. Upon request, Hospital shall provide to Institutions accurate and current data concerning student clinical activities, including, but not limited to, patient census (i.e. average daily census) for each course area of clinical instruction;
- q. Hospital shall make available the following health services to Institutions' students while they are assigned to clerkships at Hospital provided Institutions' students assume the usual fees and costs for such services:
 - (i) medical referrals through Hospital's referral services;
 - (ii) emergency services provided by the emergency department; and
 - (iii) basic health services as required by regulatory agencies from time to time; and
 - (iv) In the event an Institutions' student is exposed to an infectious or environmental hazard or other occupational injury (e.g., needle stick) while at the Hospital, Hospital, upon notice of such incident from the student, will provide such emergency care as is provided its employees, including, where applicable: examination and evaluation by Hospital's emergency department or other appropriate facility as soon as possible after the injury; emergency medical care immediately following the

injury as necessary; initiation of the HBV, Hepatitis C (HCV), and/or HIV protocol as necessary; and HIV counseling and appropriate testing as necessary. In the event that Hospital does not have the resources to provide such emergency care, Hospital will refer such student to the nearest emergency facility. The student bears the financial responsibility for any charges generated.

- r. Hospital shall provide the following support services to Institutions' students while they are assigned to clerkships at Hospital 's facilities:
 - (i) Housing referrals, if available;
 - (ii) Hospital Wi-Fi and Internet access;
 - (iii) Medical library access including on-line computer medical data base access and other learning resources;
 - (iv) In-house accommodations for Institutions' on-call students, including call rooms, lockers, scrubs at no additional charge; and
 - (v) Cafeteria access, study space and parking, if available;
- s. Hospital shall maintain commercial general liability, workers' compensation, and professional malpractice liability insurance, as applicable, that provide coverage for the negligent acts or omissions of its officers, directors, employees or agents. Coverage limits shall not be less than two (2) million dollars (\$2,000,000) per claim and five (5) million dollars (\$5,000,000) in the aggregate for each policy year per policy type;
- t. Hospital's Medical Education Director shall have the authority to immediately suspend any Institutions' student whose behavior does not conform to the expectations provided in orientation by Hospital, refuses to follow Hospital's administrative policies, procedures, rules and regulations, or violates any federal or state law or regulation, provided the student's Institution is given immediate (i.e., within 24 hours) written notice of such action;
- u. Hospital shall complete a formative mid-clerkship assessment form for each student at the mid-point of each clerkship;
- v. Hospital shall submit, in a timely and appropriate manner, a written clinical evaluation of each student at the completion of each clerkship rotation by the supervising physician, and countersigned by the Director of Medical Education, said evaluation to be delivered to Institutions within two (2) weeks, but not later than 30 days of completion of the clerkship; and

- w. Hospital shall maintain the confidentiality of student information in accordance with applicable state and federal laws. The foregoing confidentiality obligations shall survive the termination or expiration of this Agreement for any reason;
- x. Hospital acknowledges that Institutions will conduct site visits for the purposes of maintaining accreditation and evaluating the quality of the educational Program provided to students. Hospital agrees to cooperate with Institutions' Clinical Deans or other appointed Institutions' administration with scheduling, arranging meetings with Hospital Leadership, students and others as may be required by Institution's accreditors. Hospital agrees to cooperate with Institutions to address and remedy any conditions for approval of the clinical Program at Hospital as stipulated by Institutions' accreditors.
- y. Institutions' students participating in the Program, as trainees, shall be considered members of Hospital's "workforce," as that term is defined by the HIPAA regulations at 45 C.F.R. § 160.103, and shall be subject to Hospital's policies respecting confidentiality of medical information. In order to ensure that students comply with such policies, Hospital shall provide students with substantially the same HIPAA training that it provides to its regular employees;
- z. Hospital may request that Institutions remediate any student who Hospital determines, in its sole discretion, is not performing satisfactorily according to the ACGME core competencies. Such requests must be in writing and must include a statement as to the reason or reasons for Hospital's request.
- aa. In compliance with title 22, California Code of Regulations, section 70713, Hospital shall retain professional and administrative responsibility for the services rendered under this Agreement.

ARTICLE IV.

Confidentiality

4.1 **Confidential Information** -- As used herein, the term "Confidential Information" shall mean all information provided by one Party to the other(s) in connection with the Program or this Agreement, whether said information is communicated orally, in writing or in electronic format and regardless of whether it was disclosed before or after the Parties' formal execution of this Agreement. Confidential Information shall include, without limitation, information regarding a Party's financial affairs, business operations, business plans or business strategies.

Further, Confidential Information shall include all information directly or indirectly derived from, based on or containing, in whole or in part, any Confidential Information, regardless of who actually prepared such information.

4.2 **Use and Disclosure** -- Each Party shall maintain the Confidential Information in strict confidence and use same only for purposes of facilitating the Program. In no event and under no circumstances will any Party use any of the Confidential Information for any purpose other than facilitating the Program. Without in any way limiting the generality of the foregoing, each Party further agrees that:

- a. it will disclose the Confidential Information only to those of its employees, officers, directors, agents, and professional advisors (collectively, "Representatives") who require such Confidential Information to facilitate the Program;
- b. it will advise its Representatives who receive any of the Confidential Information of the confidential nature of said information, and will secure affirmative assurances from all such Representatives that they will abide by the terms and conditions of this Agreement as if they were parties hereto;
- c. it will undertake all reasonable and necessary steps to preserve the confidentiality of the Confidential Information; and
- d. it shall be responsible for any breach by its Representatives of the terms of this Agreement.

4.3 **No Disclosure to Third Parties** -- No Party, either through its acts or omissions, shall permit the disclosure of Confidential Information to any third party other than its Representatives as provided for in Section 4.2 above. In the event that a Party becomes aware of the disclosure of any Confidential Information to a third party, that Party shall promptly notify the other Parties of such disclosure so as to afford the other Parties a reasonable opportunity (but not the obligation) to compel the return of said information and/or preclude the further dissemination of such information.

4.4 **Legal Process** -- Nothing set forth herein is intended to restrict a Party's ability to comply with its obligation to respond to any subpoena, court order or other valid legal process seeking the disclosure of Confidential Information. In the event a Party receives a subpoena, court order or other valid legal or regulatory process purporting to compel the disclosure of Confidential Information, including any request made pursuant to the California Public Records Act, that Party shall promptly notify the other Parties so as to afford the other Parties a reasonable opportunity (but not the obligation) to object to and/or oppose such disclosure. Further, the Party receiving such a subpoena, court order or other valid legal process, including any request made pursuant to the California Public Records Act, will cooperate with the other Parties, at the other Parties' expense, in objecting to or opposing such disclosure.

4.5 **Ownership and Return of Information** -- With respect to the ownership and disposition of any Confidential Information disclosed either during the course of the parties' negotiation of this Agreement or the duration of the Term, or any extension thereof, the parties agree as follows:

- a. **Institution's Obligations** -- Institutions acknowledge and agree that all Confidential Information coming into its possession, custody or control from Hospital is the exclusive property of Hospital. Institutions further acknowledge that they have not been granted by this Agreement any license, copyright, or similar right with respect to any of the Confidential Information provided to them by Hospital. Institutions expressly acknowledge that Hospital does not represent or warrant (expressly or by implication) the accuracy or completeness of such Confidential Information. Institutions also agree that they are not entitled to rely on the accuracy or completeness of any Confidential Information and that they shall be entitled to rely solely on such representations and warranties regarding Confidential Information as may be made herein. Upon the request of Hospital, Institutions shall return or destroy all copies of Confidential Information provided by Hospital and will destroy all documents in their respective possession or control which contain any of the Confidential Information (including all documents, summaries, analyses, forecasts, extracts, memoranda, notes, and other materials whatsoever prepared based in whole or in part on any Confidential Information). Upon the request of Hospital, such destruction shall be certified in writing to the

requesting Party by any authorized officer or agent supervising such destruction. Notwithstanding the return or destruction of any Confidential Information or any such other materials based in whole or in part on any Confidential Information, Institutions shall continue to be bound by their obligations under this Agreement. Any Confidential Information and other materials that are not returned or destroyed shall remain subject to the confidentiality obligations set forth herein.

- b. **Hospital's Obligations** -- Hospital acknowledges and agrees that all Confidential Information coming into its possession, custody or control from Institutions is the exclusive property of Institutions. Hospital acknowledges that it has not been granted by this Agreement any license, copyright, or similar right with respect to any of the Confidential Information provided to it. Hospital expressly acknowledges that Institutions does not represent or warrant (expressly or by implication) the accuracy or completeness of such Confidential Information. Hospital also agrees that it is not entitled to rely on the accuracy or completeness of any Confidential Information and that it shall be entitled to rely solely on such representations and warranties regarding Confidential Information as may be made herein. Upon the request of Institutions, Hospital shall return or destroy all copies of Confidential Information provided by Institutions and will destroy all documents in its possession or control which contain any of the Confidential Information (including all documents, summaries, analyses, forecasts, extracts, memoranda, notes, and other materials whatsoever prepared based in whole or in part on any Confidential Information). Upon the request of Institutions, such destruction shall be certified in writing to the requesting party by any authorized officer or agent supervising such destruction. Notwithstanding the return or destruction of any Confidential Information or any such other materials based in whole or in part on any Confidential Information, Hospital shall continue to be bound by its obligations under this Agreement. Any Confidential Information and other materials that are not returned or destroyed shall remain subject to the confidentiality obligations set forth herein.

4.7 **Remedy** -- It is expressly understood and agreed that a Party's breach or threatened breach of its obligations with respect to Confidential Information as set forth in this Article V shall pose an immediate threat to the other Parties of irreparable harm for which monetary damages shall be an inadequate remedy, thus entitling the other Parties to injunctive relief enjoining such breach or threatened breach.

4.8 **Continuing Obligation** -- The Parties' obligations with respect to Confidential Information as set forth in this Article V shall be deemed to survive the termination or expiration of this Agreement.

ARTICLE V.

Miscellaneous

5.1 **Entire Agreement** -- This Agreement, and all exhibit hereto, sets forth the entire agreement between the Parties with respect to the subject matter hereof. It supersedes any and all prior oral or written agreements relating thereto. There are no other understandings or agreements between or among the Parties with respect to the subject matter hereof except as set forth herein.

5.2 **No Oral Modification** -- No condition or provision of this Agreement may be modified, waived, or revised in any way except in writing executed by the Parties and referring specifically to this Agreement.

5.3 **Binding Effect** -- This Agreement and all rights and duties set forth herein shall be binding upon and inure to the benefit of the Parties hereto, as well as their respective successors and assigns.

5.4 **Governing Law** -- This Agreement and its interpretation and performance shall be governed by the laws of the state of California, without giving effect to the conflict of law rules of that state.

5.5 **Venue** -- Any action arising in any way out of the terms of this Agreement, or a Party's performance or non-performance thereof, shall be brought to the United States Federal District Court for the Eastern District of California or the state court of competent jurisdiction located in Kern County, California, and the Parties expressly consent to the exercise by those courts of personal jurisdiction over them with respect to any such action.

5.6 **Partial Invalidity** -- In the event any provision of this Agreement is held to be contrary to or invalid under the laws of any country, state, municipality or other jurisdiction, such illegality or invalidity shall not affect in any way any of the other provisions hereof, all of which shall continue in full force and effect.

5.7 **Captions** -- The captions set forth in this Agreement are intended solely for the Parties' convenience and ease of reference and are not intended to modify, limit, describe or affect in any way the scope, content, or intent of this Agreement.

5.8 **Signatures** -- This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The Parties agree that signatures by facsimile or PDF shall be deemed original signatures.

5.9 **Authorizations** -- The Parties hereby represent that their respective representatives identified below are fully authorized to execute this Agreement on their behalf.

5.10 **Acknowledgement** -- The Parties hereto acknowledge and agree that they have entered into this Agreement and have executed it without duress or coercion and have done so with the full advice of counsel. Each Party further acknowledges and agrees that no other Party has made any representations, warranties, promises, or agreements not set forth herein and no Party relies in any way on any representation, warranty, statement of fact or opinion, understanding, disclosure or non-disclosure not set forth herein in entering into this Agreement and executing it, and that no party has been induced in any way, except for the consideration, representations, warranties, statements and covenants recited herein, to enter into this Agreement.

5.11 **Construction and Enforcement** -- The terms of this Agreement are the product of negotiations between the Parties through their respective counsel, if any, and the Parties agree

that those terms shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

5.12 **No Waiver** -- The failure of any Party to this Agreement to exercise and/or delay in exercising any power or right hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise of any other power or right hereunder. Further, the waiver by any Party to this Agreement of any right or remedy hereunder on any occasion shall not be construed as a waiver of any such right or remedy on any future occasion.

5.13 **Notices** -- All notices, requests, demands or other communications required or contemplated hereunder or relating hereto shall be in writing and forwarded by overnight delivery and/or facsimile as follows:

If to American University of the Caribbean School of Medicine:

Administrative Office:
1600 SW 80th Terrace
Plantation, FL 33324
Attention: Dean and VP of Clinical Operations

With a copy to:

Adtalem Global Education
500 West Monroe Street, Suite 28
Chicago, IL 60661
Attention: General Counsel
Email: ATGELegalNotices@adtalem.com

If to Ross University School of Medicine:

Administrative Office:
1600 SW 80th Terrace
Plantation, FL 33324
Attention: Dean and VP of Clinical Operations

With a copy to:

Adtalem Global Education
500 West Monroe Street, Suite 28
Email: ATGELegalNotices@adtalem.com

If to Hospital:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attention: Chief Executive Officer

With a copy to:

Vice President & General Counsel
Kern County Hospital Authority
4520 California Avenue, Suite 100
Bakersfield, CA 93309
Email: Karen.Barnes@kernmedical.com

5.14 **Status of the Parties** -- The Parties are independent contractors under this Agreement, and no Party shall have the authority to bind, represent or commit the other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose. The Parties acknowledge that students are not employees or agents of either Party.

5.15 **Indemnification** –

5.15.1 **Authority Indemnification** -- Authority agrees to protect, defend, hold harmless and indemnify Institutions, its respective successors and assigns, officers, directors, employees, or agents (all foregoing parties hereinafter collectively referred to as “Indemnitees”), from and against all claims, actions, liabilities, damages, losses, costs, and expenses, including attorneys’ fees, of whatever nature arising out of or resulting from:

- a. the negligent acts or omissions of Hospital or any employee or agent of Hospital in the performance of Hospital’s obligations under this Agreement;
- b. the negligent acts or omissions of Institutions’ students while under the supervision of Hospital;

- c. Hospital's failure to comply with the terms of this Agreement.

In the event of any such claim, the Indemnitee shall notify Hospital and reasonably cooperate with Hospital in the defense thereof. Hospital shall permit Indemnitee to participate in the selection of defense counsel, and Hospital shall keep the Indemnitee informed on a periodic basis as to the status of Hospital's efforts and consult with the Indemnitee concerning Hospital's efforts.

5.15.2 **AUC's Indemnification** -- AUC agrees to protect, defend, hold harmless and indemnify Authority and Hospital, their respective successors and assigns, employees, officers, directors, employees or agents (all of the forgoing parties hereinafter collectively referred to as "Indemnitees"), from and against all claims, actions, liabilities, damages, losses, costs and expenses, including attorneys' fees, of whatever nature arising out of or resulting from:

- a. The negligent acts or omissions of AUC or any employee, student or agent of AUC in the performance of AUC's obligations under this Agreement; and/or
- b. AUC's failure to comply with the terms of this Agreement.

In the event of any such claim, the Indemnitees shall notify AUC and reasonably cooperate with AUC in the defense thereof. AUC shall permit the Indemnitees to participate in the selection of defense counsel, and AUC shall keep the Indemnitees informed on a periodic basis as to the status of AUC's efforts and consult with the Indemnitees concerning Institution efforts.

5.15.3 **Ross's Indemnification** – Ross agrees to protect, defend, hold harmless and indemnify Authority and Hospital, their respective successors and assigns, employees, officers, directors, employees or agents (all of the forgoing parties hereinafter collectively referred to as "Indemnitees"), from and against all claims, actions, liabilities,

damages, losses, costs and expenses, including attorneys' fees, of whatever nature arising out of or resulting from:

- a. The negligent acts or omissions of Ross or any employee, student or agent of Ross in the performance of Ross's obligations under this Agreement; and/or
- b. Ross' failure to comply with the terms of this Agreement.

In the event of any such claim, the Indemnitees shall notify Ross and reasonably cooperate with Ross in the defense thereof. Ross shall permit the Indemnitees to participate in the selection of defense counsel, and Ross shall keep the Indemnitees informed on a periodic basis as to the status of Ross's efforts and consult with the Indemnitees concerning Ross's efforts.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, BREACH OF STATUTORY DUTY OR OTHERWISE DUE TO, UNDER AND/OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT TO THE EXTENT SUCH LOSS OR DAMAGE IS CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE, WHETHER OR NOT SUCH PARTY HAD BEEN ADVISED OF THE LIKELIHOOD OF ANY SUCH LOSS OR DAMAGE.

This entire Section 5.15 shall survive expiration or termination of the Agreement for any reason.

5.16 **Force Majeure** -- Any delay or failure in the performance by any Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, pandemics, labor strikes and other like

events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

5.17 **Right to Investigate** -- Each Party shall notify the other Parties of any complaints or internal or external investigations pertaining to a student during the course of the Program, including, but not limited to, sexual harassment investigations and ethics investigations. If a student notifies a Party of sexual misconduct by an employee of Hospital or another student in the program, pursuant to Title IX of the Education Amendments of 1972 (“Title IX”), each Party will have the right to investigate per such Party’s policies and procedures.

5.18 **Accommodations** -- The Parties shall comply with the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008 (“ADA”), effective as of January 1, 2009, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and Title IX, and shall cooperate to ensure that applicable student(s) receive reasonable accommodations.

5.19 **Use of Name; Press Releases**. No party shall use the name of the other in any other manner without the prior written consent of the other party. Institutions and Hospital shall not make any public announcement or issue any press release regarding this Agreement or any activities performed hereunder without the prior mutual written consent of the Parties.

5.20 **Nondiscrimination** -- All Parties agree to abide by applicable federal and state laws prohibiting discrimination against any employee, applicant for employment, student or patient because of race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity, sexual orientation, age or veteran status.

5.21 **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 WHEREOF, the Parties have executed this Affiliation Agreement effective as of the Effective Date first set forth above.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

DocuSigned by:
Signature By: Pedro Delgado
Name: Pedro Delgado, MD
Title: Dean

Date: 7/11/2022 | 10:14:49 AM CDT

ROSS UNIVERSITY SCHOOL OF MEDICINE

DocuSigned by:
Signature By: Heidi Chumley
Name: Heidi Chumley, MD, MBA
Title: Dean

Date: 7/11/2022 | 9:15:37 AM CDT

KERN COUNTY HOSPITAL AUTHORITY

Signature By: _____
Name: Scott Thygeron
Title: Chief Executive Officer

Date: _____

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
Vice President & General Counsel
Kern County Hospital Authority

Date: _____

EXHIBIT "A"

FINANCIAL CONSIDERATION

Institutions hereby agree to pay Hospital \$450.00 US dollars per week, per student, for each Hospital core and elective clinical clerkship scheduled and used by Institutions at Hospital.

All clinical clerkship fees will be due and payable to Hospital within thirty (30) days after Institutions receives an original completed clinical evaluation and an invoice from Hospital indicating the amount owed.

In addition, Institutions shall pay Hospital for the **Hospital Support**, as detailed below in No.1 through No. 5, annual payments of nine-hundred eighty thousand (\$980,000) US dollars per year of the Agreement (which runs August 1 through July 31). The first annual payment shall be made on August 1, 2022 and thereafter subsequently on August 1, 2023 and August 1, 2024. An invoice reflecting the applicable Hospital Support payment shall be submitted by Hospital to Institution at least thirty (30) days prior to each August 1.

1. An annual contribution for Kern Medical Center Foundation in the amount of \$500,000 through electronic payable to Kern Medical Center Foundation ("Foundation"), which shall be separate from any check or electronic payment to Hospital;
2. An annual payment to Hospital for Simulation Support for \$100,000;
3. An annual General Hospital Support payment to Hospital for \$200,000;
4. An annual Clerkship Directors Support payment to Hospital for \$120,000; and
5. An annual Clinical Coordinator Salary payment to Hospital (at one (1) FTE) for \$60,000.

Furthermore, Institutions shall make payments to fund ten (10) of Hospital's annual Merit Scholarships in the amount of \$10,000 each, totaling no more than \$100,000 US dollars annually and shall be Institutions' students from Kern County. The total Merit Scholarship support awarded to students shall be at the sole discretion of Hospital. Institutions shall make payments directly to the selected students receiving the Merit Scholarships.

IN WITNESS WHEREOF, the Parties have executed the Financial Considerations under Exhibit A as set forth above.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

DocuSigned by:
Signature By: Pedro Delgado
Name: Pedro Delgado, MD
Title: Dean

Date: 7/11/2022 | 10:14:49 AM CDT

ROSS UNIVERSITY SCHOOL OF MEDICINE

DocuSigned by:
Signature By: Heidi Chumley
Name: Heidi Chumley, MD, MBA
Title: Dean

Date: 7/11/2022 | 9:15:37 AM CDT

KERN COUNTY HOSPITAL AUTHORITY

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

Date: _____

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____

Date: _____

EXHIBIT “B”

**CLINICAL CURRICULUM GUIDES:
AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE
ROSS UNIVERSITY SCHOOL OF MEDICINE**

EXHIBIT “C”

ONBOARDING REQUIREMENTS



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

July 20, 2022

Subject: Proposed retroactive Workforce Disruption Staffing Agreement with Aya Healthcare, Inc., to provide emergency assistance with crisis staffing in response to labor disputes, strikes or other work stoppages.

Recommended Action: Approve; Authorize Chief Executive Officer to sign

Summary:

Kern Medical requests your Board retroactively approve the Workforce Disruption Staffing Agreement (“Agreement”) with Aya Healthcare Inc. to provide emergency assistance with crisis staffing in response to anticipated workforce disruption due to a labor disputes, strikes or other work stoppages for a one (1) year term beginning July 1, 2022 terminating on June 30, 2023.

Aya Healthcare Inc. will be recruiting clinical and non-clinical candidates to provide Kern Medical with temporary staffing in anticipation of a workforce disruption. The type and number of crisis staffing is only an estimate at this time, but the workforce disruption is set to begin at 0400 July 26, 2022 and terminating at 0359 on July 29, 2022. The maximum not-to exceed amount for the Agreement is \$15,000,000.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel, due to the limitation of Aya Healthcare, Inc.’s liability to the cost of the amount paid for the placed temporary staff, complicated exclusivity terms and the right for Kern Medical to use other vendors for its workforce disruption staffing needs, and payment of staff delayed to be placed due to issues outside the control of Aya Healthcare, Inc. Efforts were made to negotiate the deletion of this offending provision to no avail.

Workforce Disruption Staffing Agreement

This Workforce Disruption Staffing Agreement (the "**Agreement**") is made and entered into as of July 1, 2022 (the "**Effective Date**") between Aya Healthcare, Inc., located at 5930 Cornerstone Court West, Suite 300, San Diego, CA 92121, ("**Aya**") and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("**Client Entity**"). Aya and Client (as defined below) are sometimes referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties**".

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions contained herein, Aya and Client agree as set forth below.

I. WORKFORCE DISRUPTION STAFFING SERVICES.

- a. Client Entity is a healthcare organization that owns or operates one or more hospitals, clinics, or other healthcare facilities, including those identified in the attached Exhibit A (the "**Participating Facilities**"). Client Entity and the Participating Facilities are collectively, referred to as "**Client**." Client has requested that Aya provide emergency assistance with crisis staffing of Candidates (as defined below) in response to labor disputes, strikes or other work stoppages that may commence at Client or one of its facilities (as set forth in the applicable SOW). Aya shall also provide personnel to provide support related administrative services onsite at Client's location, at designated support locations, or remotely, as determined in Aya's discretion (the "**Support Personnel**"). Aya has agreed to provide such services for an anticipated workforce disruption under the terms set forth in the attached SOW-1: Statement of Work for Workforce Disruption Staffing, which is incorporated herein by reference as though set forth in full at this point. Additional Statements of Work (each an "**SOW**") for other workforce disruptions may be added upon mutual written agreement of the Parties. Notwithstanding the foregoing, neither Aya nor any of its Agencies shall be required to recruit or source using local organizations, and the Parties acknowledge that recruitment outreach efforts may be affected by pandemic conditions and the nature of the engagement as a workforce disruption. As used in this Agreement and the SOWs, the phrase "**Candidates**" means the following types of personnel:
 - i. **Clinical Candidates**: Registered nurses, certified nurse assistants, clinical technicians, therapists, and other clinical, nursing and allied healthcare professionals (not including advanced practice nurses, physicians, or physicians' assistants) who are assigned to perform work for Client on a temporary or supplemental basis.
 - ii. **Non-Clinical Candidates**: Personnel, laborers, and professionals who are assigned to perform non-clinical work (including, but not limited to, IT, HIM, housekeeping, and all other non-clinical supplemental labor) for Client on a temporary or supplemental basis.
- b. Aya may use its corporate affiliates or third-party staffing subcontractors (each an "**Agency**") to perform its duties and obligations under this Agreement and each SOW, including to provide Candidates and Support Personnel. Aya shall have the discretion to choose its Agencies; provided, however, Client may instruct Aya in writing to not use particular Agencies. In furtherance and not in limitation of the foregoing, Aya shall coordinate and facilitate confirmations, the exchange of documents, and all other communications with Agencies. Client will not communicate directly with any Agency without Aya's written consent.

II. FEES, INVOICING AND PAYMENT TERMS. Fees and invoicing procedures will be set forth in the applicable SOW. Client shall pay all the invoices within net fourteen (14) days of invoice date, , unless an earlier payment due date is specified in the SOW (including, but not limited to, the payment due dates for fees and deposit amounts).

IV. GENERAL TERMS

- a. **TERM; TERMINATION.** The term of this Agreement shall be for a period of one (1) year, and thereafter, this Agreement may be renewed upon mutual written agreement of the Parties. Either Party may terminate this Agreement, with or without cause, at any time upon ninety (90) days written notice to the other Party. Either Party may also terminate this Agreement upon the occurrence of any of the following events (a "**Termination for Cause**"): (i) the other Party has materially breached any of the terms or conditions of this Agreement and such breach, if capable of cure, is not cured by the breaching Party within ten (10) calendar days following written notice to the breaching Party, (ii) the other Party dissolves; (iii) the other Party becomes insolvent or institutes insolvency proceedings or files, or is subject to a voluntary bankruptcy proceeding, petition, or action; (iv) the filing of relief against the other Party of, or the other Party is otherwise subject to, an involuntary bankruptcy proceeding, petition or action where such action is not removed or terminated within sixty (60) calendar days; (v) the assignment by the other Party of its property for the benefit of creditors; or (vi) the appointment of any receiver, trustee or liquidator for the other Party or for

Workforce Disruption Staffing Agreement

any property of the other Party, where such appointment is not removed or terminated within sixty (60) calendar days. If either Party terminates this Agreement (other than a Termination for Cause by Aya), all Candidates then on an assignment will continue on and complete their assignments, in accordance with the terms of this Agreement. The provisions of this Agreement relating to confidentiality and any other provisions which by their nature should survive termination or expiration of this Agreement shall so survive.

- b. **CONFIDENTIALITY.** The Parties acknowledge that they may receive from each other from time to time, information and/or material which is confidential in nature, including, but not limited to, marketing, pricing, or other confidential business information relating to Aya, Client, or each of their clients, customers, patients, subcontractors or employees, or personnel, Compliance Documentation or Competency Documentation of Relief Candidates, Support Personnel, or applicants (collectively "**Confidential Information**"). The Parties agree to treat as confidential and not to divulge to any third-parties any Confidential Information of the other Party (and with respect to Client of Agencies), except to their own employees, agents, attorneys, accountants, or representatives (collectively, "**Representatives**"), and to use such Confidential Information only for legitimate business needs relating to the performance, administration or enforcement of this Agreement. In the event a Party provides Confidential Information to such Party's Representatives, the Party shall be liable for such Representatives' compliance with the terms of this paragraph and shall require the Representatives to treat such information and/or material as confidential. Nothing herein, shall prohibit either Party from responding to lawful inquiries from government agencies or other lawful process, such as subpoenas. The Parties agree to the issuance of an injunction to prevent violations of this paragraph. Aya is aware that Client is a government entity and is subject to California Public Records Act, *Cal. Gov. Code, § 6250 et seq.*, the Brown Act, *Cal. Gov. Code § 54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed under these laws will not be considered "Confidential Information" hereunder by the Parties and will be disclosed only to the extent required by law to comply with legal obligation. Client shall use commercially reasonable efforts to notify Aya in writing in advance of any such disclosure
- c. **INSURANCE.** Aya will provide general liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year. Aya will provide professional liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year for clinical Candidates employed by Aya or its affiliates. Aya will also provide or cause to be provided worker's compensation insurance with statutory limits required by applicable law for each Candidate employed by Aya or its affiliates. Aya will provide certificates of insurance to Client if requested.
- d. **INDEMNIFICATION.**
- i. **Aya and Client Mutual Indemnification.** To the fullest extent permitted by law, each Party (an "**Indemnifying Party**") agrees to indemnify, defend, and hold the other Party and the other Party's respective affiliates, and each of their respective officers, directors, agents, and employees (each an "**Indemnified Party**"), harmless from any claims, damages, interest, penalties, and attorneys' fees and costs ("**Losses**") to the extent caused by: (i) any breach of this Agreement by the Indemnifying Party or its agents; (ii) violations of applicable law by the Indemnifying Party or its agents in connection with the performance of this Agreement; or (iii) negligent or willful acts or omissions of the Indemnifying Party or its agents in connection with the performance of this Agreement; except that the indemnity obligations in this section shall not apply to the extent the Losses are caused by the negligent act or omission, willful misconduct, breach of this Agreement or unlawful act of an Indemnified Party. Provided Aya has substantially complied with its obligations under subdivision (iii) below, Aya shall have no obligation to indemnify Client for acts of Agencies, Candidates, or Support Personnel.
- ii. **Client Indemnification of Agencies.** To the fullest extent permitted by law, Client (the "**Indemnifying Client**") agrees to indemnify and hold each Agency and its respective affiliates, and each of their respective officers, directors, agents, and employees (each an "**Indemnified Agency Party**"), harmless from any Losses to the extent caused by: (i) any breach of this Agreement by the Client or its agents; (ii) violations of applicable law by the Client or its agents in connection with the performance of this Agreement; or (iii) negligent or willful acts or omissions of the Client or its agents in connection with the performance of this Agreement; except that the indemnity obligations in this section shall not apply to the extent the Losses are caused by the negligent act or omission, willful misconduct, breach of this Agreement or unlawful act of Agency. Notwithstanding anything to the contrary in the Agreement, Agencies shall be considered third-party beneficiaries of Client's indemnification obligations under this section.

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- iii. **Agency Indemnification of Client.** Aya shall contractually require Agencies (each an "**Indemnifying Agency**"), to the fullest extent permitted by law, to agree to indemnify, defend, and hold each Client and its respective affiliates, and each of their respective officers, directors, agents, and employees (each an "**Indemnified Client Party**"), harmless from any Losses to the extent caused by: (i) any breach of Agency's agreement with Aya by Agency or its agents; (ii) violations of applicable law by the Agency or its agents in connection with the performance of the Agency's agreement with Aya in respect to performance of work for Client; or (iii) negligent or willful acts or omissions of the Agency or its agents in connection with the performance of the Agency's agreement with Aya; except that the indemnity obligations in this section shall not apply to the extent the Losses are caused by the negligent act or omission, willful misconduct, breach of this Agreement or unlawful act of Client.
- iv. **Indemnification Procedure:** Any person or entity claiming a right to indemnity under this section (the "**Indemnitee(s)**") shall notify all entities and persons that it believes may owe a duty to indemnify it (the "**Indemnitor(s)**") in writing promptly after receiving notice of a claim, lawsuit, demand, or action or threatened claim lawsuit, demand, or action for Losses covered by the indemnity obligations in this section (a "**Claim**") and provide documentation pertaining to the Claim to the Indemnitors upon request. The Indemnitees and Indemnitors agree to keep each other reasonably informed regarding the status of any Claims and allow each other reasonable opportunities to participate in the defense and settlement of Claims, including by providing notice and consulting with each other prior to settling any Claim. Any omission or delay in complying with this section by an Indemnitee shall relieve an Indemnitor of its obligations to the extent it is prejudiced by such omission or delay. Notwithstanding anything to the contrary in this Agreement, this section shall survive any termination or expiration of this Agreement.
- e. **FEES INCLUSIVE.** Client acknowledges fees and expenses are inclusive of certain expenses for travel, lodging, meals and incidental expenses, and that it will be subject to the 50% deduction limitation under Internal Revenue Code ("**IRC**") § 274(n) to the extent such limitation applies to any reimbursement for which it is responsible. Aya or the applicable Agency will provide Client with sufficient substantiation of any such reimbursement in accordance with IRC § 274(d).
- f. **LIMITATION OF LIABILITY; DISCLAIMER.** NOTWITHSTANDING ANY OTHER AGREEMENT OR PROVISION TO THE CONTRARY IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY HERETO OR AGENCIES BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (AND TO THE FULLEST EXTENT PERMITTED BY LAW, PUNITIVE DAMAGES) INCLUDING, BUT NOT LIMITED TO, FINES OR PENALTIES AND LOSS OF PROFITS, WHETHER IN CONTRACT, TORT, NEGLIGENCE, WARRANTY OR OTHERWISE, WHETHER OR NOT A PARTY OR AGENCY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AYA'S LIABILITY HEREUNDER SHALL BE NO GREATER THAN THE AMOUNT PAID BY CLIENT FOR THE SERVICES FOR THE PRECEDING SIX MONTH (6) PERIOD PRIOR TO THE INCIDENT GIVING RISE TO THE CLAIM THAT IS THE BASIS FOR SUCH LIABILITY. Client acknowledges and agrees that the Relief Candidates and Support Personnel who perform work for Client are provided by Aya for the sole purpose of supplementing Client's existing work force, and Client hereby expressly disclaims any representation or warranty that such Relief Candidates or Support Personnel will enable Client to attain any particular goal or objective or provide Client with any solution to any particular problem. Notwithstanding anything to the contrary in this Agreement, this section shall survive any termination or expiration of this Agreement.
- g. **LIABILITY OF CLIENT.** The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California, to the extent provided by California Health and Safety Code Section 101853(g).
- h. **TECHNOLOGY SOLUTION.**
 - i. **Terms of Use.** In connection with its performance of this Agreement, Client may be given access to a technology solution(s), provided by Aya or a third party, to facilitate the performance of this Agreement, such as Aya's proprietary web-based portal known as "Aya Connect" (collectively, the "**Technology Solutions**"). Client agrees to comply with all terms of use requirements for such Technology Solutions at all times, including, but not limited to, such terms as may be provided by third party providers of the Technology Solutions, and to execute further agreements as may be required to obtain access to such systems. The current terms of use of Aya Connect and its related websites can be found at: <https://www.ayahealthcare.com/terms-of-service> and the current electronic consent policy is located at:

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<http://www.ayahealthcare.com/electronic-consent-agreement> (collectively, the "**Terms of Use**") and are incorporated by reference herein as though set forth in full at this point. Client agrees to comply with the Terms of Use and that it is "**You**" as defined and used in the Terms of Use. The Terms of Use are modified herein so that in lieu of the notice procedures in such agreement, any notices required to be given to Aya under the Terms of Use, including any updates to email addresses, shall be provided in accordance with the notice provisions in this Agreement. Client agrees that the entirety of the Aya Connect technology solution, including, but not limited to, its design, source code, databases, content, and data or materials stored on, generated by, created using, or transmitted through it (collectively "**Aya Technology Information**") shall be considered Confidential Information of Aya.

- ii. **License; Proprietary Rights.** Client hereby grants Aya a worldwide, perpetual, royalty-free, irrevocable, nonexclusive right and license to use, reproduce, modify, adapt, publish, transmit and distribute any Aya Technology Information provided by Client in any form, medium, or technology now known or later developed. Except for the limited, non-exclusive, revocable use rights expressly granted herein, Aya reserves all rights, titles, and interests not expressly granted to Client and this Agreement does not transfer any right, title or interest in the Technology Solutions, Aya Connect, Aya Technology Information or other Aya Confidential Information to Client.
- iii. **Use Restrictions.** Client agrees that its access and use of the Technology Solutions shall be limited only to the extent such access and use directly relates to and is necessary for Client's performance under this Agreement. Client shall limit access to the Technology Solutions to only those employees or agents of Client with a legitimate business need for such access. Client's access and use of the Technology Solutions may be terminated: (i) upon Client's breach of this Agreement, (ii) automatically upon the termination or expiration of this Agreement, or (iii) at Aya's discretion upon notice. In no event shall Aya be liable for damages in connection with such termination. Client shall not, and shall ensure that its employees, agents, and contractors do not use or make Technology Solutions available for use by any unauthorized persons or for any use not explicitly permitted by this Agreement, and Client agrees it shall be responsible for any violation by Client or its agents or employees of this provision or the applicable terms of use in effect at the time of such access. Client shall be responsible for notifying Aya promptly in the event Client's relationship with any employee or agent who had access to the Technology Solutions is severed, so that passwords may be updated or accounts disabled as necessary. Client's use of the Technology Solutions may be monitored for usage level and ensure compliance with this Agreement and any applicable terms and conditions.
- iv. **Disclaimer.** ALL TECHNOLOGY SOLUTIONS ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND. AYA FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM TRADE USAGE OR COURSE OF DEALING. AYA DOES NOT WARRANT THAT TECHNOLOGY SOLUTIONS WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.
 - i. **ACCESS CLAUSE: COMPLIANCE WITH SECTION 420.302(b).** To the extent required by applicable law, Aya agrees to comply with 42 C.F.R. Section 420.302(b) and will provide access to the Comptroller General of the United States, the Department of Health and Human Services and their duly authorized representatives to this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of the services performed. This includes Aya subcontractors that have a contract with Aya for which the cost or value is \$10,000 or more in a twelve (12) month period. Said access shall be limited to a period of four (4) years after the furnishing of services under this Agreement hereunder.
 - j. **COMPLIANCE WITH APPLICABLE LAWS & ACCREDITING STANDARDS.** The Parties will abide by and comply with all applicable local, state, and federal laws, regulations, and regulatory agency requirements in performing this Agreement. Client will also comply with all applicable standards of any accrediting organizations of which it is a member or by which it is accredited.
 - k. **NONDISCRIMINATION.** In compliance with federal law, including the provisions of the Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Acts of 1973, and the American with Disabilities Act of 1990, the Parties hereto will not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, sexual orientation or military service.
 - l. **INDEPENDENT NATURE OF PARTIES.** Aya provides services to Client as an independent contractor. Neither Party to this Agreement shall be considered the agent, partner, joint venture, franchisor, franchisee, employer, or employee of the other Party. Client acknowledges that Aya and its affiliates are not licensed to practice medicine and do not engage in the practice of medicine or any similarly regulated profession;

Workforce Disruption Staffing Agreement

nothing herein shall be construed in a manner that would require Aya or an affiliate to engage in any task that could be considered the corporate practice of medicine or any other similarly regulated profession.

- m. **SUBCONTRACTORS.** Aya may use affiliates and subcontractors to perform its duties and obligations under this Agreement and any SOW, including to provide Candidates, Relief Candidates, and/or Support Personnel.
- n. **NOTICES.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or on the second day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as provided below. Any Party may change its address for purposes of this paragraph by giving the other Party written notice of the new address in the manner set forth above.

To: **Kern County Hospital Authority**

ATTN: Scott Thygerson, CEO

1700 Mount Vernon Avenue

Bakersfield, CA 93306

Email: contracts@kernmedical.com

To: **Aya Healthcare, Inc.**

Attn: Facility Contracts

5930 Cornerstone Court West, Suite 300

San Diego, CA 92121

Email: facilitycontracts@ayahealthcare.com

CC: Attn: Legal

Aya Healthcare, Inc.

5930 Cornerstone Court West, Suite 300

San Diego, CA 92121

- o. **ASSIGNMENT.** Client will not assign this Agreement or any of its rights or duties under this Agreement except upon prior written notice to Aya. Aya (and its successors and assigns) may assign, transfer or encumber any of its rights or duties under this Agreement in its discretion. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties.
- p. **GOVERNING LAW; ARBITRATION.** The Parties hereto agree that this Agreement will be governed by and construed in accordance with the laws of the State of California without reference to its choice of law rules and as if wholly performed within the State of California. Unless otherwise provided herein, any dispute, controversy or claim arising out of or relating to this Agreement may be submitted to binding arbitration before the Judicial Arbitration and Mediation Services ("**JAMS**"). The arbitrator shall be selected from the JAMS panel in accordance with the then-applicable JAMS rules. The arbitration shall be conducted pursuant to the then-applicable Comprehensive Arbitration Rules and Procedures of JAMS, except that the Parties agree that the JAMS Streamlined Arbitration Rules and Procedures shall apply for all disputes in which no claim or counter claim exceeds \$250,000.00, not including attorneys' fees and costs. JAMS's then-applicable rules governing the arbitration may be obtained from JAMS's website, which currently is www.jamsadr.com. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement, including, but not limited to, any claim that all or any part of this Agreement is void or voidable, and shall have the authority to order provisional or interim relief prior to the hearing, including by requiring a respondent to post a bond or security for the amount sought against it where there is a substantial likelihood a claimant shall succeed on the merits of a claim or counter-claim or where an award may be rendered meaningless if a bond or security is not required. Either Party may file a motion for summary judgment with the arbitrator. The arbitrator is entitled to resolve some or all of the asserted claims through such a motion applying the applicable laws as specified in this Agreement. Discovery shall be allowed and conducted pursuant to the then-applicable arbitration rules of JAMS, provided that the Parties shall be entitled to discovery sufficient to adequately arbitrate their claims and defenses. The arbitrator is authorized to rule on discovery motions brought under the applicable discovery rules. Notwithstanding anything to the contrary in this Agreement, this section shall survive any termination or expiration of this Agreement.
- q. **FORCE MAJEURE.** Aya shall not be responsible for failure or delay in providing or continuing to provide services to Client under this Agreement if such failure or delay is due to labor disputes, strikes, fires, riots,

Workforce Disruption Staffing Agreement

war, acts of God, voluntary termination by personnel assigned to Client or any other acts, causes or occurrences beyond the control of Aya.

- r. ENTIRE AGREEMENT. This Agreement, including all exhibits and addenda, contains the entire agreement between the Parties relating to the subject matter hereof. All prior and contemporaneous oral and written agreements, understandings, negotiations, commitments and practices between the Parties are hereby superseded. No amendments to this Agreement may be made except by a written agreement signed by both Client Entity and Aya.
- s. SEVERABILITY. If any provision of this Agreement is held to be invalid, void or unenforceable such provision shall be amended to the extent permissible as to effectuate the original intent of the parties, and all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.
- t. SURVIVAL. Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive, including, but not necessarily limited to, all indemnity, payment, confidentiality and insurance obligations set forth herein.
- u. INCORPORATION BY REFERENCE. Each Exhibit, Schedule or Addendum attached to this Agreement is hereby incorporated by reference in this Agreement as if the same was set out in full in the text of this Agreement.
- v. ADVICE OF COUNSEL. Each Party acknowledges that it has been given the opportunity to discuss this Agreement with their legal counsel and utilized that opportunity to the extent desired. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.
- w. WAIVER. The failure of either Party to enforce at any time, or from time to time, any provision of Agreement shall not be construed as a waiver thereof.
- x. AUTHORITY. Each person signing this Agreement on behalf of a Party represents that they have the authority to bind the Party for whom they are signing to this Agreement. By signing this Agreement, Client represents that it is entering this Agreement on behalf of Participating Facilities, and that it has the authority to bind Participating Facilities to the terms of this Agreement. Client Entity and the applicable Participating Facility shall be irrevocably, jointly and severally liable under this Agreement.
- y. HEADINGS. The titles of the articles, sections, subsections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
- z. COUNTERPARTS. This Agreement may be executed in one or more counterparts and transmitted and executed electronically, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

--SIGNATURE PAGE FOLLOWS --

Workforce Disruption Staffing Agreement

AGREED TO AND ACCEPTED BY:

Kern County Hospital Authority

Aya Healthcare, Inc.

By: 

By: 

Name: Scott Thygerson

Name: Peter Kaufman

Title: Chief Executive Officer

Title: EVP, Enterprise Services

Date: July 14, 2022

Date: July 13, 2022

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department

Workforce Disruption Staffing Agreement

Exhibit A

The following hospitals and clinics are "**Participating Facilities**" in this Agreement:

1700 Mount Vernon Avenue
Bakersfield, CA 93306

1415 Truxtun Avenue
Bakersfield, CA 93301

14401 Sierra Way
Kernville, CA 93238

1010 Shalimar Drive
Bakersfield, CA 93312

1831 Ridge Road
Bakersfield, CA 93305

17824 Quality Road
Bakersfield, CA 93308

17635 Industrial Farm Road
Bakersfield, CA 93308

17801 Industrial Farm Road
Bakersfield, CA 93308

3551 Q Street
Bakersfield, CA 93301

1111 Columbus Avenue
Bakersfield, CA 93306

Workforce Disruption Staffing Agreement

SOW 1:

Statement of Work for Workforce Disruption Staffing

1. **SCOPE & EFFECTIVE DATE.** This Statement of Work for Workforce Disruption Staffing (the "**SOW**") is entered on July 1, 2022 and is intended to apply to all crisis staffing services provided in response to labor disputes, strikes or other work stoppages at the locations of Client listed on Exhibit A to the Agreement during the term of this SOW (each a "**Workforce Disruption**"). The actual period(s) that such crisis staffing may be needed is unknown but is expected to be sometime in July 2022.
2. **EXCLUSIVITY.** Aya shall be the exclusive provider of replacement and support personnel for the Workforce Disruption with respect to all Ordered Positions that Aya agrees to fill. Client shall be entitled to use other vendors ("**Alternate Vendors**") to fill any Ordered Position that Aya does not agree to fill or upon at least 48 hours' notice to Aya of its need to see replacement personnel elsewhere if Aya is not able to propose an available and qualified replacement personnel or staffing plan during the notice period. Aya shall have no responsibility for any personnel placed by Alternate Vendors.
3. **SOW TERM.** The term of this SOW shall be twelve (12) months, and, thereafter, this SOW may be renewed upon the mutual written agreement of the Parties. Either Party may terminate this SOW, with or without cause, at any time upon ninety (90) days written notice to the other Party. Either Party may also terminate this SOW upon the occurrence of a Termination for Cause event (as contemplated by the Agreement).
4. **WORKFORCE DISRUPTION NOTICES.**
 - 4.1. Upon execution of this SOW, Client shall provide Aya with a written preliminary order (the "**Preliminary Order**"). The Preliminary Order shall identify the types and quantity of positions of Relief Candidates anticipated to be needed for the Workforce Disruption (the "**Ordered Position**"), including shifts and any required qualifications for the positions. The number of Support Personnel to be provided is anticipated to be five (5) Support Personnel per one hundred (100) Ordered Positions, or an equivalent prorated amount; provided, however, the actual number of Support Personnel provided may be greater or less and shall be determined in Aya's sole discretion. Each Ordered Position and Support Personnel shall be considered a minimum of thirty-six (36) hours per week full time employee equivalent; part-time positions shall not be ordered or provided. The Preliminary Order shall not be valid until Aya acknowledges its acceptance of and agreement to the Preliminary Order, which Aya shall either accept or reject within three (3) business day of receipt. Aya is not obligated to perform any services under this SOW prior to receiving and accepting the Preliminary Order. Thereafter, if the details in the Preliminary Order change, including because the Workforce Disruption is cancelled, postponed, delayed, or otherwise placed on hold, or the Ordered Position are modified, Client shall immediately notify Aya.
 - 4.2. Upon Client's receipt of a notification from the applicable labor union(s) or otherwise learning that a Workforce Disruption is going to occur, Client shall immediately provide Aya with notice of the Workforce Disruption by placing an order for the crisis staffing assistance needed (the "**Workforce Disruption Notice**"). The Workforce Disruption Notice shall specify the start date (the "**Start Date**") of the Workforce Disruption. The Workforce Disruption Notice shall provide a final order in writing (the "**Order**") by either confirming the Preliminary Order as the final order or identify in writing any requested modifications to the Preliminary Order. The Order shall not be valid until Aya acknowledges its acceptance of and agreement to the Order, including any proposed modifications from the Preliminary Order, which Aya shall either accept or reject within two (2) business days of receipt.
 - 4.3. Client shall keep Aya reasonably informed regarding the status of negotiations and whether and when any Workforce Disruption(s) is likely to occur at all times during the SOW term. If the details in the Preliminary Order or Order change, including because the Workforce Disruption is cancelled, postponed, delayed, or otherwise placed on hold, or the Ordered Positions are reduced, Client shall immediately notify Aya.
 - 4.4. Candidates actually provided by Aya to fill the Ordered Positions or who are confirmed to perform work for Client under this SOW are referred to herein as "**Relief Candidates.**"
 - 4.5. Subject to Sections 4.6 and 5.1 below, Aya shall use commercially reasonable efforts to recruit Relief Candidates (including through the use of Agencies) to fulfil the Ordered Positions following receipt of the Preliminary Order. Client agrees to accept all Relief Candidates that meet the qualifications for the positions provided by Client to Aya except for good cause, such as a known prior issue with that particular Relief Candidate. If Client does not respond to a Relief Candidate submitted by Aya within twenty-four hours, the Relief Candidate shall be deemed accepted by Client.

Workforce Disruption Staffing Agreement

4.6. Notwithstanding anything to the contrary herein, Client acknowledges and agrees that Aya (a) requires at least thirty (30) days from the date it receives the Preliminary Order to recruit for a labor dispute, strike, or other work stoppage and obtain the Workforce Disruption Compliance Documentation (the "**Minimum Time Required to Recruit**"); (b) may not be able to provide Relief Candidates or Support Personnel, in whole or in part, for any Workforce Disruption in the event it is not afforded the Minimum Time Required to Recruit; and (c) shall have no liability whatsoever in the event it does not fill any portion of the Order or need for Support Personnel due to it not being afforded the Minimum Time Required to Recruit. Client hereby assume all risk, loss, and liability associated with or resulting or arising from Aya not being afforded the Minimum Time Required to Recruit. Aya expressly disclaims any representation, warranty, promise, or guarantee as to fulfillment of any Preliminary Order or Order.

4.7. The Preliminary Order and the Order and all notices required under this SOW, shall be made by both email transmission and telephone and directed to the following:

Mr. Peter Kaufman

Telephone: (858) 257-1925

Email: pkaufman@ayahealthcare.com

CC: facilitycontracts@ayahealthcare.com

5. RETAINER FEES.

5.1. Upon receipt of the Preliminary Order, Aya shall begin commercially reasonable efforts to recruit Relief Candidates to fill the Ordered Positions; provided, however, Aya shall have no such obligation until it has actually received the entirety of the Retainer Fee owed by Client. As consideration for such recruitment efforts, Aya shall be paid a retainer fee ("**Retainer Fee**") based upon the number of Ordered Position and Support Personnel needed. The Retainer Fee shall be \$1,500.00 per Ordered Position and for each Support Personnel. Retainer Fees become due and earned, and shall be paid by Client, contemporaneously with the execution of this SOW by Client. Provided that Client has complied with Section 2, in the event the Workforce Disruption occurs and Aya does not provide a Relief Candidate for an Ordered Position that Aya has agreed to fill, fifty percent (50%) of the Retainer Fee (i.e., \$750.00) per each accepted and unfilled Ordered Position will be refunded to Client.

5.2. In the event the Workforce Disruption does not occur by July 31, 2022, Aya shall be paid an additional fee of \$300.00 per Ordered Position and for each Support Personnel ("**Continuation Fee**") for ongoing recruitment and preparations of the Workforce Disruption for each subsequent month until Aya is informed that the Workforce Disruption and this SOW are cancelled.

5.3. If at any time the Workforce Disruption is postponed, delayed, or otherwise moved after a Workforce Disruption Notice is provided, Client shall pay an additional fee of \$200.00 per Ordered Position and for each Support Personnel (the "**Rebooking Fee**").

5.4. In the event a Workforce Disruption is cancelled after the Preliminary Order has been issued at any time, Aya shall not be required to refund any Retainer Fees, Continuation Fees, and/or Rebooking Fees. If the number of Ordered Positions or Support Personnel increases at any time, Client shall pay Aya an additional Retainer Fee for each additional Ordered Position and Support Personnel added within two (2) business days of adding such Ordered Positions or Support Personnel.

6. INTENTIONALLY OMITTED.

7. FULFILLMENT EXPENSES & DEPOSITS.

7.1. **Expenses.** Aya shall arrange for any required lodging and transportation for Relief Candidates and Support Personnel. Client is financially responsible for and will reimburse Aya for all travel (including airfare, mileage, or rental cars, as applicable), housing/lodging (including hotel accommodations, if applicable), hospitality services, meals, meals and incidental per diems or stipends, local or other transportation, security, licensing fees, and all other costs or expenses incurred by Aya relating to the Preliminary Order, the Order, the Workforce Disruption, or provision of Relief Candidates and/or Support Personnel (the "**Expenses**"). As a Government Entity, Client follows the U.S. General Services Administration (GSA) per diem rates for lodging, meals, and incidental expenses and will reimburse Aya pursuant to current per diems for the County of Kern.

7.2. **Fulfillment Deposits.** Client shall pay an Initial Fulfillment Deposit and Ongoing Fulfillment Deposit (collectively, the "**Fulfillment Deposits**") as set forth below. The reimbursement obligations set forth in

Workforce Disruption Staffing Agreement

this section shall apply to all Expenses incurred by Aya following the transmission of the Preliminary Order regardless of whether the Workforce Disruption is cancelled, shortened or delayed.

- 7.2.1. **Initial Fulfillment Deposit.** Client will pay Aya an initial fulfillment deposit of \$6,330 per Ordered Position and for each Support Personnel ("**Initial Fulfillment Deposit**"). The Initial Fulfillment Deposit is anticipated to cover the Expenses for the first workweek. As used in this SOW, the term "**workweek**", shall mean the initial and each successive seven (7) day period beginning with date the Relief Candidates and Support Personnel first have to report for the Workforce Disruption including for any required orientation. The Initial Fulfillment Deposit is due upon the transmission of the Workforce Disruption Notice. At least nine (9) calendar days prior to the Start Date, Client shall wire or otherwise electronically transmit the funds for the Initial Fulfillment Deposit to Aya for same day receipt. In the event the number of Ordered Positions or Support Personnel increases after the Initial Fulfillment Deposit is paid or additional Relief Candidates or Support Personnel are otherwise needed, Client will pay Aya an additional Initial Fulfillment Deposit for each additional Ordered Position and Support Personnel added within two (2) business days of adding such Ordered Positions or Support Personnel or confirming additional Relief Candidates or Support Personnel. An additional Initial Fulfillment Deposit will also apply for each new Relief Candidate or Support Personnel provided as a replacement in subsequent weeks if the Workforce Disruption lasts more than one week.
- 7.2.2. **Ongoing Fulfillment Deposit.** In the event the Workforce Disruption is anticipated to continue for subsequent weeks, Client shall immediately notify Aya in writing of each anticipated weekly continuation, which such notice shall be provided at least seventy-two (72) hours prior to the beginning of the subsequent workweek and shall specify the number of positions needed to be filled in the subsequent week (each a "**Continuation Notice**"). In the event Client issues a Continuation Notice and the Workforce Disruption continues for more than one week, Client will pay Aya an ongoing fulfillment deposit of \$6,330 per Ordered Position and for each Support Personnel per workweek ("**Ongoing Fulfillment Deposit**"). The Ongoing Fulfillment Deposit is due one (1) calendar day before the start of the workweek for which it applies.
- 7.2.3. **Reconciliation.** Within sixty (60) days of the end of the Workforce Disruption, Aya will prepare an invoice to Client detailing the Expenses incurred and applying any applicable Fulfillment Deposits. Client shall raise any disputes to such invoices as soon as possible and in no event more than fourteen (14) days after receipt. In the event the actual Expenses exceed any Fulfillment Deposits paid, Client shall pay such amounts within fourteen (14) days of invoice date. In the event the actual Expenses are less than the Fulfillment Deposits paid by Client, Aya shall refund the excess amounts.
8. **RELIEF CANDIDATES' AND SUPPORT PERSONNEL FEES & DEPOSITS.** The following rates and rate rules shall apply to services provided under this SOW.
- 8.1. **Rates & Billing Terms.** Client shall be billed hourly for services of Relief Candidates and Support Personnel as set forth on the Rate Card attached as Exhibit SOW 1-A (the "**Rate Card**"). If the Workforce Disruption does not occur by July 31, 2022, Aya reserves the right to adjust the rates based on market conditions.
- 8.2. **Guaranteed Hours.** Each Relief Candidate and Support Personnel shall be scheduled for a minimum of thirty-six (36) hours for the first workweek and a minimum of thirty-six (36) hours for each subsequent workweek (the "**Guaranteed Hours**") for the duration of the Workforce Disruption. If a Relief Candidate or Support Personnel works less than or is scheduled for less than the Guaranteed Hours in a workweek for any reason, including facility or unit closures or shift cancellations, the full Guaranteed Hours will still be billable to Client. Hours worked in excess of the Guaranteed Hours will be billed to Client at the applicable rates.
- 8.3. **Orientation.** Client shall provide all orientation and training required of each Relief Candidate and Support Personnel. All orientation and training hours will be billed at the regularly applicable rates set forth herein and shall be in addition to any weekly Guaranteed Hours. Client shall guarantee a minimum of twelve (12) hours of onsite or online orientation or training for each Relief Candidate and Support Personnel ("**Guaranteed Orientation Hours**"). If a Relief Candidate or Support Personnel completes less than or is scheduled for less than the Guaranteed Orientation Hours for any reason, the full Guaranteed Orientation Hours will still be billable to Client. Orientation or training in excess of the Guaranteed Orientation Hours will be billed to Client at the applicable rates. In the event the Workforce Disruption is cancelled for any reason, Aya shall bill Client for the Guaranteed Orientation Hours plus all

Workforce Disruption Staffing Agreement

time spent in excess thereof by Relief Candidates and Support Personnel on orientation, training modules, and other training, whether onsite or online, prior to the first workweek, in addition to any other billable amounts hereunder.

- 8.4. **Travel Time.** In addition to any Guaranteed Hours, Guaranteed Orientation Hours, and other hours worked in connection with the Workforce Disruption, Aya shall bill Client for all time spent by Relief Candidates and Support Personnel in excess of thirty (30) minutes one-way traveling to and from the worksite each day. Travel time begins when the Relief Candidate or Support Personnel boards the bus, shuttle, or other transportation and ends when the Relief Candidate or Support Personnel disembarks the bus, shuttle, or other transportation. Aya shall document and track such travel time. Travel time shall be billed the applicable rates set forth herein.
- 8.5. **Overtime.** Overtime is defined as all hours worked by Relief Candidates and Support Personnel in excess of eight (8) hours in a workday or in excess of forty (40) hours in one workweek. Overtime shall be billed at one and one-half times (1.5x) the regular rate.
- 8.6. **Double-Time.** Double-time is defined as all hours worked by Relief Candidates and Support Personnel in excess of twelve (12) hours in a workday and all hours worked in excess of eight (8) on the seventh consecutive day of work in a workweek. Double-time will be billed at two (2) times the regular rate.
- 8.7. **Holidays.** Work performed on Holidays, as defined below, will be invoiced at a premium Holiday rate of one and one-half times (1.5x) the regular rate. Holidays are New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Holidays begin at 7:00pm on the night before the Holiday and end at 7:00am the day after the Holiday.
- 8.8. **On-Call & Call-Back.** On-call hours will be billed at the rate of twenty percent (20%) of the regular rate. All call-back hours will be billed at the regularly applicable hourly rate unless overtime or other premium pay applies. On-Call hours do not count towards the Guaranteed Hours.
- 8.9. **Mileage.** For Relief Candidates or Support Personnel where driving is required to perform their job, Client will reimburse Aya for mileage incurred for the driving. All mileage shall be reimbursed at the IRS Standard Mileage Rate in effect at the time of travel.
- 8.10. **Labor Deposits.** Client shall pay an Initial Labor Deposit and Ongoing Labor Deposit (collectively, the "Labor Deposits") as set forth below.
 - 8.10.1. **Initial Labor Deposit.** Client will pay Aya an initial labor deposit equal to forty-eight (48) hours at the applicable hourly rate, including anticipated overtime charges, per Ordered Position and for each Support Personnel ("Initial Labor Deposit"). The Initial Labor Deposit is due upon the transmission of the Workforce Disruption Notice. At least nine (9) calendar days prior to the Start Date, Client shall wire or otherwise electronically transmit the funds for the Initial Labor Deposit to Aya for same day receipt. In the event the number of Ordered Positions or Support Personnel increases after the Initial Labor Deposit is paid or additional Relief Candidates or Support Personnel are otherwise needed, Client will pay Aya an additional Initial Labor Deposit for each additional Ordered Position and Support Personnel added within two (2) business days of adding such Ordered Positions or Support Personnel or confirming additional Relief Candidates or Support Personnel.
 - 8.10.2. **Ongoing Labor Deposit.** In the event the Workforce Disruption continues for more than one week, Client will pay Aya an ongoing labor deposit of thirty-six (36) hours at the regularly applicable rate per Ordered Position and for each Support Personnel per workweek ("Ongoing Labor Deposit"). The Ongoing Labor Deposit is due one (1) day before the start of the workweek for which it applies.
 - 8.10.3. **Reconciliation.** Within sixty (60) days of the end of the Workforce Disruption, Aya will prepare an invoice to Client for the hourly rates and fees of Relief Candidates and Support Personnel, including any billable Guaranteed Hours amounts. Client shall raise any disputes to such invoices as soon as possible and in no event more than fourteen (14) days after receipt. In the event the actual amounts billed exceed any Labor Deposits paid by Client, Client shall pay such amounts within fourteen (14) days of invoice date. In the event the actual fees are less than the Labor Deposits paid by Client, Aya shall refund the excess amounts.
9. **ADMINISTRATIVE FEE.** In addition to any other fees, expenses, or other amounts owed or payable by Client to Aya hereunder, Client shall pay Aya an administrative fee ("**Administrative Fee**") equal to ten percent (10%) of all amounts actually billed hereunder (including all of the billed fees, expenses, and hourly costs contemplated

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by Sections 5-8 above). The Administrative Fee will generally be invoiced as part of the reconciliation invoices contemplated above, but may also be invoiced separately, as determined in Aya's sole discretion.

10. **RELIEF CANDIDATE AND SUPPORT PERSONNEL TIMEKEEPING & APPROVAL.** Client is responsible for approving the time worked by Relief Candidates and Support Personnel as accurate. Client shall not permit Relief Candidates or Support Personnel to perform work "off-the-clock." Each day, Client will approve daily time records for all Relief Candidates and Support Personnel in an electronic or other format acceptable to Aya immediately at the end of the shift worked. The time records shall reflect all time worked by each Relief Candidate and Support Personnel (including the start and stop times of each work period and start and stop times of each meal period) as well as any other billable hours (such as on-call time). If Client fails to timely provide or otherwise promptly approve or object to time records, the time records submitted by the Relief Candidate, the Support Personnel, Aya, or an Agency will be presumed accurate.
11. **TRAVEL ORDER; CANCELLATION; STANDBY.**
 - 11.1. Client shall provide an order to travel at least seventy-two (72) hours prior to the first shift of the Workforce Disruption. The order to travel (the "**Travel Order**") shall be deemed given on the earlier of: (i) when Client notifies Aya to have Relief Candidates and/or Support Personnel commence travel verbally or in writing; or (ii) if such notification is not provided, it shall be deemed provided seventy-two (72) hours before the first shift of the Workforce Disruption unless Client notifies Aya in writing prior to that time not to have Relief Candidates and Support Personnel begin travel. In the event the Workforce Disruption is cancelled, delayed or otherwise postponed after the Travel Order is given or deemed given, the Initial Labor Deposit is non-refundable and Aya shall be entitled to bill Client for the first week's Guaranteed Hours and Guaranteed Orientation Hours at the regularly applicable rates for each Relief Candidate and Support Personnel confirmed by Aya as of the date of cancellation.
 - 11.2. In the event the Workforce Disruption is cancelled, delayed or otherwise postponed after the Workforce Disruption Notice is provided, but before the Travel Order is given, Aya shall refund the Initial Labor Deposit, less a fee equal to eight (8) hours at the otherwise applicable billing rates (the "**Mobilization Fee**") per Ordered Position and Support Personnel.
 - 11.3. If the Workforce Disruption is postponed, delayed, or otherwise placed on hold, but is not immediately cancelled, and there are Relief Candidates and/or Support Personnel who have commenced travel to the facility location to perform services under this SOW, such Relief Candidates and Support Personnel who have commenced travel shall complete travel to the location and be placed on "**Standby**" status. Aya shall use commercially reasonable efforts to maintain such Relief Candidates and Support Personnel on Standby status unless and until the Client notifies Aya that the Workforce Disruption is cancelled or is to be delayed for more than one (1) week, or unless and until the Workforce Disruption actually commences. While on Standby status, Aya shall be permitted to bill Client for the full Guaranteed Hours and Guaranteed Orientation Hours and shall be entitled to reimbursement for Expenses.
12. **SECURITY.** Client shall provide safe and lawful working conditions for all staff provided pursuant to this SOW and shall ensure that Relief Candidates and Support Personnel are not subject to discrimination, harassment or other unlawful acts. Client shall take whatever steps are necessary to ensure that Relief Candidates and Support Personnel can safely cross any picket lines and shall provide security escorts for Relief Candidates and Support Personnel, if necessary, to protect their personal safety. Client shall immediately report any unsafe working conditions or any incidents of any nature involving Relief Candidates or Support Personnel provided under this SOW to Aya. Relief Candidates and Support Personnel shall not be required to work following the resolution or end of the Workforce Disruption, regardless of whether they have worked all Guaranteed Hours or not.
13. **COMPLIANCE DOCUMENTATION.** Except where prohibited by law, Aya will maintain or require Agencies to maintain on file competency and compliance documentation for each Relief Candidate provided by Aya (the "**Workforce Disruption Compliance Documentation**"). Such documentation will generally include the documentation included on Exhibit SOW 1-B based on the Relief Candidate's position and Aya shall not be required to maintain or provide any additional competency and compliance documentation unless agreed to in writing by Aya and Client. Client agrees that online certifications shall be permitted. Aya may follow any state or Joint Commission guidelines regarding licensing, certifications, or other documentation during the current or any future state of emergency.

All Client requests for additional documentation must be made in writing and will be provided only where mutually agreed by the Parties in writing. Client agrees to treat all Workforce Disruption Compliance Documentation and other personnel information relating to Relief Candidates as Confidential Information within the meaning of the Agreement, including as required by applicable state and federal law, such as the Americans

Workforce Disruption Staffing Agreement

with Disabilities Act. Client also agrees to comply with all applicable laws governing the use and handling of personnel files and backgrounds checks, including, but not limited to, the federal Fair Credit Reporting Act and to only use such information for purposes related to the services provided under this SOW. This provision shall apply in lieu of any other applicable section of the Agreement governing compliance.

With respect to Relief Candidates approved for travel or deemed to have been approved for travel as contemplated by Section 11.1, Client shall be responsible for all Expenses reasonably incurred relating to all such Relief Candidates and the first week's Guaranteed Work Hours even if items are still pending and Relief Candidates are not cleared by the Workforce Disruption Start Date or in time to perform work for the Workforce Disruption.

Client acknowledges that delays in obtaining licenses for Relief Candidate may occur and be outside of Aya's reasonable control (including, but not limited to, processing delays or other action or inaction by applicable governmental authorities). Aya shall have no liability for any delay in obtaining a license to the extent it is outside of Aya's reasonable control.

14. PROVISION OF RELIEF CANDIDATES AND SUPPORT PERSONNEL.

- 14.1. **COMPENSATION.** Aya or an affiliate will, or will contractually require the applicable Agency to: (i) employ and compensate the Relief Candidates and Support Personnel for hours worked for Client; (ii) deduct all applicable payroll taxes such as FICA, Federal and State from the compensation of Relief Candidates and Support Personnel in compliance with state and federal law; and (iii) maintain relevant employment documentation such as an I-9 form, W-4 form, and photo identification for Relief Candidates and Support Personnel.
- 14.2. **CLIENT POLICIES.** Prior to any Relief Candidate or Support Personnel commencing work with Client, Client shall furnish Aya and the Relief Candidate and Support Personnel with copies of all Client policies and procedures relevant to the scope of practice and duties of such personnel's assignment and with which they will be expected to comply, including, but not limited to, the following: job description(s), performance standards, infection control, blood borne pathogen protective policies, corporate compliance and ethics codes, abuse and neglect, patient privacy and confidentiality, and medical record keeping.
- 14.3. **PERFORMANCE OUTCOMES.** Client shall notify the designated Aya representative immediately and provide written documentation (incident report) of any unsatisfactory performance or conduct of any Relief Candidates or Support Personnel. Client will provide performance evaluations from its director of nursing or equivalent personnel to Aya in the event of any unsatisfactory performance or conduct and at the end of each assignment.
- 14.4. **SENTINEL EVENT & INJURY REPORTING.** In the event of any unexpected incidents, including errors, unanticipated deaths, injuries, safety hazards or other events or claims ("**Sentinel Events**") involving or relating to any Relief Candidate or Support Personnel, Client must report the Sentinel Event to Aya within eight hours for Relief Candidate or Support Personnel injuries and twenty-four hours for all other Sentinel Events. Reports should include the name of Relief Candidate or Support Personnel and any other persons involved, as well as the date, time, location, and description of facts and circumstances surrounding the Sentinel Event. The Parties agree to use reasonable efforts to timely assist each other in conducting investigations of such Sentinel Events. In the event any Relief Candidate or Support Personnel makes a claim against Client alleging any wrongdoing, Client shall immediately notify Aya. In the event of an unexpected injury to any Relief Candidate or Support Personnel at Client's job site, Client will instruct the Relief Candidate or Support Personnel to notify its Agency and to seek treatment at a third-party healthcare provider designated by its Agency unless the injury is an emergency. In the event of an emergency, Client will immediately send the injured Relief Candidate or Support Personnel to the closest emergency room and provide transportation if necessary or appropriate.
- 14.5. **FLOATING.** Client agrees to float Relief Candidates in accordance with Client's floating policies, as well as the clinical experiences of the Relief Candidate being asked to float. Client confirms that Client's policies on floating comply with current standards of The Joint Commission, including the provision of an appropriate orientation to the new unit.
- 14.6. **MANNER OF WORK.** Relief Candidates and Support Personnel are not supervised by Aya; they are subject at all times to Client's direct and indirect supervision. Client shall be solely responsible for the direction, control and supervision of all Relief Candidates and Support Personnel and shall retain professional and administrative responsibility for the work performed by Relief Candidates and Support Personnel. Client shall be responsible for determining the clinical competencies required of Relief

Workforce Disruption Staffing Agreement

Candidates and supervision of Relief Candidates in the performance of clinical duties. Client is responsible for ensuring compliance with applicable scope of practice or profession laws and regulations, including establishment and supervisions with respect to standardized procedures and protocols to the extent applicable to work performed under this SOW. Notwithstanding the foregoing, Client shall not, without the prior written consent of Aya, permit or request any Relief Candidate or Support Personnel to perform any work or task or render any service that does not fall within the scope of the duties and responsibilities for such Relief Candidate's or Support Personnel's confirmed assignment or at any work location other than the confirmed location.

- 14.7. **SAFETY & COVID-19 RESPONSE.** Client agrees to provide Relief Candidates and Support Personnel with a safe and healthy work environment and to provide safety training, equipment, clothing, or devices necessary or required by all applicable laws for any work to be performed, or which is used by Client's own employees or other contractors in the performance of similar work. Client shall also designate a member of its staff who shall act as a coordinator to train and orient the Relief Candidates and Support Personnel to all applicable operational and safety procedures. Client agrees that it shall have in place at all times policies and protocols in compliance with all laws related to employee health, safety and well-being and make such policies available to Relief Candidates and Support Personnel as if they were a member of Client's regular workforce. Client agrees to comply with all applicable occupational health and safety standards and standards and guidance of the Centers for Disease Control, including all precautions and guidance relating to the treatment of patients with or under observation for communicable diseases, including COVID-19 (aka 2019 Novel Coronavirus).
- 14.8. **MEAL AND REST BREAKS.** Client shall schedule Relief Candidates in a manner that allows them sufficient time to take any legally required meal, rest, or recovery breaks. If, in the sole and absolute discretion of Aya, it is determined that paying a meal, rest or recovery period premium or other pay to those Relief Candidates who have missed any rest, meal, and/or recovery break(s) is advisable, then Aya retains the right to bill Client for said premium payment. Client hereby agrees to be responsible and indemnify Aya for, and any payments or other expenses incurred by Aya relating to Client's failure to provide any legally required rest, meal, and/or recovery periods.
- 14.9. **CONVERSION – CLINICAL AND SUPPORT PERSONNEL.** If Client knowingly hires any clinical Relief Candidate or Support Personnel who was presented to Client by Aya within the twelve (12) month period following the later of: (i) the date the clinical Relief Candidate or Support Personnel is introduced to Client by Aya or (ii) the conclusion of the clinical Relief Candidate's or Support Personnel's assignment with Client, then Client agrees to pay Aya a placement fee of twenty percent (20%) of the clinical Relief Candidate's or Support Personnel's annual salary. If the clinical Relief Candidate or Support Personnel has completed 160 billable hours, the fee is reduced to 15%; if the clinical Relief Candidate or Support Personnel has completed 320 billable hours, the fee is reduced to 10%; if the clinical Relief Candidate or Support Personnel has completed 468 billable hours, the fee is waived. Notwithstanding anything to the contrary in this SOW, this Section shall survive any termination or expiration of this SOW.
- 14.10. **CONVERSION – NON-CLINICAL.** If Client knowingly hires any non-clinical Relief Candidate for permanent or temporary services within the twelve (12) month period following the later of: (i) the date the non-clinical Relief Candidate is introduced to Client by Aya; or (ii) the conclusion of the non-clinical Relief Candidate's assignment with Client, then Client agrees to pay Aya a placement fee of twenty percent (20%) of the non-clinical Relief Candidate's annual salary. If the non-clinical Relief Candidate has completed 520 billable hours, the fee is reduced to fifteen percent (15%) of the non-clinical Relief Candidate's annual salary. If the non-clinical Relief Candidate has completed 1040 billable hours, the fee is reduced to ten percent (10%) of the non-clinical Relief Candidate's annual salary. Notwithstanding anything to the contrary in this Agreement, this Section shall survive any termination or expiration of this SOW.

[Signature Page Follows]

Workforce Disruption Staffing Agreement

AGREED TO AND ACCEPTED BY:

Kern County Hospital Authority

By: 

Name: Scott Thygerson

Title: Chief Executive Officer

Date: July 14, 2022

Aya Healthcare, Inc.

By: 

Name: Peter Kaufman

Title: EVP, Enterprise Services

Date: July 13, 2022

REVIEWED ONLY
NOT APPROVED AS TO FORM

By: 
Legal Services Department

Workforce Disruption Staffing Agreement

EXHIBIT SOW 1-A

RATE CARD

Position/Classification	Regular Hourly Bill Rate
RN Cardiac Cath Lab	\$246.00
RN Chemo Certified	\$203.00
RN Clinic- Covid Mobile Vaccine	\$173.00
RN Clinic- Covid Testing	\$173.00
RN Clinic - Medicine	\$203.00
RN Clinic - Medicine Specialty	\$203.00
RN Clinic- Post OP Surgical	\$232.00
RN (DOU) Definitive Observation Unit- ICU	\$203.00
RN ER	\$203.00
RN Gastro Diagnostic Treatment Center (DTC) (Endo)	\$203.00
RN High Risk Infant Clinic (HRIF)	\$232.00
RN ICU	\$203.00
RN Infusion Clinic	\$203.00
RN Inpatient Pediatrics	\$203.00
RN Inpatient Psychiatric Services	\$173.00
RN Inpatient Unit Social Services	\$173.00
RN Labor and Delivery	\$232.00
RN Med Surge 2C	\$203.00
RN Med Surg 3 D	\$203.00
RN Neonatal Intensive Care Unit	\$203.00
RN Operating Room	\$232.00
RN Peri-Anesthesia	\$232.00
RN Post-Partum	\$232.00
RN Pre-Admission Testing (PAT) (Pre-Op)	\$203.00
RN Pre-Op	\$203.00
RN Telemetry 3C	\$203.00
RN Vascular Access Services	\$232.00
RN Whole Person Care M/S RN	\$203.00
Patient Safer Observer (PCT)- Sitter	\$79.00
Aide	\$79.00
Medical Assistant	\$79.00
Mamm Tech/Mamm. Tech. Lead	\$159.00
Rad. Tech. (II/III)	\$159.00
Ultrasound Tech./Ultrasound Tech Lead	\$166.00
MRI Tech./MRI Tech. Lead	\$173.00
Card. Interv. Tech./Tech. Lead	\$203.00

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Cardiovascular Technician	\$203.00
CT Tech	\$173.00
Registered Respiratory Therapist (RRT)	\$173.00
Pharmacist	\$173.00
Pharmacy Tech	\$93.00
Anesthesia Tech	\$251.00
Monitor Technician	\$93.00
OB Tech	\$265.00
Ortho Tech	\$130.00
Surg Tech	\$265.00
Ster. Proc. Tech (SPD)	\$217.00
Speech Language Pathology	\$254.00
Occupational Therapist	\$261.00
Physical Therapists	\$276.00
Physical Therapy Assistant	\$166.00
MSW	\$203.00
Psych MSW	\$217.00
Therapists	\$254.00
Psych. Soc. Serv Coord.	\$210.00
Clinical Lab Asst (Plebo)	\$108.00
Histo. Tech.	\$159.00
Pathology Tech	\$225.00
Patient Access Service Representative (PASR)	\$64.00
Office Svcs Spec	\$64.00
Stock Clerk	\$64.00
Storekeeper	\$64.00
OR Sched	\$217.00
Outpatient Cons. Rep.	\$64.00
Outpatient Sch.	\$64.00
PAR (Pt AR), Pre-Services/ Scheduling/Auths.	\$64.00
Transporter (CNA)	\$64.00
Cook Food Service Worker	\$64.00
Food Service Worker 1 - Pots, Dish, Residents	\$64.00
LSA/II-Linen	\$64.00
Clerks	\$64.00
Birth Clerk	\$64.00
Buyer II	\$79.00
Building Service Worker I (EVS Aide)	\$71.00
Infection Prevention & Employee Health Vocational Nurse (LVN)	\$115.00
RN Anesthesia (Only OR RN Required)	\$232.00

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RN High Risk L&D	\$232.00
*Psych Act. Coord. PCA or Nursing Attendant	\$79.00
*RN Inpatient (Involuntary Psych Unit)	\$203.00
*Mental Health Therapists (MSWs)	\$203.00
Support Services Associate	\$71.00
PACS Administrator Assistant	\$64.00
Patient Navigator (PN) Medical Assistant	\$79.00
POA (Building Services Worker/EVS)	\$71.00
Maintenance Worker	\$71.00
Support Personnel	\$150.00

Workforce Disruption Staffing Agreement

EXHIBIT SOW 1-B

WORKFORCE DISRUPTION COMPLIANCE DOCUMENTATION

Category	Requirement Type	Details	Workforce Disruption	Workforce Disruption
			Clinical Positions	Non-Clinical Positions
Licensure & Certifications	License Verification	Primary Source verification upon hire as applicable by Profession	✓	n/a
	License - Nursys	Nursys verification upon (RNs, LVNs/LPNs, and APRNs)	✓	n/a
	National Certification/ Verification	National Certification/Verification (if applicable)	✓	n/a
	BLS	As applicable by specialty (AHA, ARC, Military acceptable)	✓	Not Required
	Unit Specific Certification	As applicable by specialty- See clinical tracks tab (AHA, ARC, Military acceptable)	✓	Not Required
Background & History	Background Check	Within 1 Year of Start. Search includes: SS Trace and County searches for the last 7 years of locations lived/worked/in school. Nationwide, Sex Offender. Updated annually	✓ Includes: SSN Trace 7-year county resided Nationwide Search Sex Offender Search *May be pending at start due to court closures and quick starts	✓ Includes: SSN Trace 7-year county resided Nationwide Search Sex Offender Search *May be pending at start due to court closures and quick starts
	Background Check Attestation	Candidate will attest they understand BG check results may be pending at start and if results return unfavorably, the assignment may be cancelled.	✓	✓
	OIG/GSA/SAM HHS/OIG	Required upon hire	✓	✓
	Education Verification	Highest level of EDU verified Only required for Non-Clinical positions	Not Required	Not Required
	References	2 Professional References (within 2 years of start)	Not Required	Not Required
	Work History Verification	Non-Clinical Positions Only Within the last 3 years. *References may be considered in the event employment verification gets held up with delayed results	Not Required	Not Required

Workforce Disruption Staffing Agreement

Employee Health	Drug Screen	9 Panel Drug Screen (Instant acceptable) within the last 12 months	Not Required	Not Required
	Drug Screen Attestation	Candidate attests they understand Drug Screen policy and will adhere to guidelines as listed in Handbook.	✓	✓
	TB Screening	PPD, Q Gold, or TSpot within 1 year of start *Chest X-ray within 5 years of start for Positive PPD *Will accept TBQ in lieu of TB for anyone who has received COVID-19 vaccine in last 4 weeks	Not Required Client can also choose to perform TB tests on-site. Aya not responsible for collection of results.	Not Required Client can also choose to perform TB tests on-site. Aya not responsible for collection of results.
	TB Questionnaire	Collected in lieu of TB Screening	✓	✓
	Seasonal Influenza (10/1-3/31)	Vaccine or Declination * Will only collect upon client request	Not Required	Not Required
	MMR	2 Vaccines or Positive Titer *Negative or Equivocal Titers: Declination or 1 Booster Vaccination accepted *All travelers born in 1957 or later must provide proof of Titer or 2 doses of MMR at least 28 days apart.	Not Required	Not Required
	MMR Attestation	Traveler attests they have received MMR vaccines and/or titers in the past but not required to submit copies.	✓	✓
	Varicella	2 Vaccines, Titer, History of Chicken Pox Negative or Equivocal Titers: Declination or 1 Booster Vaccination accepted	Not Required	Not Required
	Varicella Attestation	Traveler attests they have had Varicella history or vaccine in past.	✓	✓
	Hep B	Series, Titer, or Declination *Negative or Equivocal Titers: Declination or 1 Booster Vaccination accepted	Declination only required	Declination only required
	Fit Testing	Performed by client upon first day if needed (role specific)	Not Required	Not Required
	Physical/Health Assessment	Physician Statement within the last 12 months	Not Required	Not Required
	Tdap	Tdap within last 10 years OR Declination	Declination only required	Declination only required

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	COVID-19 Vaccine	Vaccine, Exemption, or Declination * May differ based on client and state guidelines	✓	✓
	Color Blind Exam	Not Required	Not Required	Not Required
Testing & TJC	Skills Checklist	Required annually	✓	n/a
	Competency Exam	Required as applicable to Profession/Specialty	Not Required	n/a
	Medication Exam/Pharmacology Comp	Required as applicable by Profession	Not Required	n/a
	Joint Commission and OSHA Core Mandatories	Signed Acknowledgment covering Joint Commission Training Safety Manual	✓	✓
	Facility Specific Testing & Modules	Facility specific pre-employment Modules & Testing (if required by client)	Not Required (client may choose to administer onsite at orientation. Will not be required prior to start).	Not Required (client may choose to administer onsite at orientation. Will not be required prior to start).
State Specific	State Specific Requirements	Requirements collected as applicable by state (fingerprinting, certification, health requirement, etc.)	✓	✓
Aya Specific Documents - Technology	Technology	Aya Connect - file review / doc upload	✓	✓
Misc	Misc	Package selected will remain in effect if candidate extends for longer assignment. Aya will not be collecting any additional documentation post candidate start date.	✓	✓



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

July 20, 2022

Subject: Proposed retroactive Amendment No. 5 to the Agreement for Intellectual Property License and Service (620-2009) with Craneware, Plc. to add applications to the license of the Trisus Supply solution.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 5 with Craneware, Plc. for the migration to the Trisus Chargemaster Product (formerly Chargemaster Toolkit), and continued access to the Physician Revenue Toolkit and the Online Reference Toolkit.

The Chargemaster contains Kern Medical’s catalog of services, procedures, supplies, and pharmaceuticals, which Kern Medical uses to bill patients and their insurance. An accurate Chargemaster reduces claim errors and payer denials, thereby ensuring timely claim submission and payer reimbursement; as well as compliance with federal, state and local guidelines. Ensuring our Chargemaster is up to date also allows us to be comparable and competitive with the other health care facilities in our local area.

Agreement	Term	Maximum Payable
Original Agreement 620-2009	June 30, 2009 – June 29, 2016	\$463,197
Amendment No. 1 659-2015	June 30, 2016 – June 29, 2022	\$1,363,933
Amendment No. 2 561-2016	Effective May 17, 2016	\$729,021
Amendment No.3 26117	Effective June 30, 2017	No additional fees
Services Agreement 31518	December 3, 2018 – December 2, 2019	\$35,000
Amendment No. 4 003-2019	June 17, 2019 – June 29, 2022	\$49,462
Service Agreement 020-2021	March 17, 2021 – March 16, 2022	\$9,400
Proposed Amendment No. 5	June 30, 2022 – June 29, 2027	\$1,590,297
Total	Without Supplemental Services	With Supplemental Services
	\$4,195,910	\$4,240,310

Therefore, it is recommended that your Board approve the retroactive Amendment No.54 with Craneware, Plc. for the addition of the Trisus Supply solution, extending the term from June 30, 2022 through June 29, 2027, increase the maximum payable by \$1,590,297 from \$2,605,613 to \$4,195,910 to cover the additional services and extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 5 TO
AGREEMENT FOR INTELLECTUAL PROPERTY LICENSE AND SERVICE
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Craneware, Inc.)**

This Amendment No. 5 to the Agreement for Intellectual Property License and Service Independent Contractor (“Amendment No.5”) is entered into this 30th day of June, 2022, by and between the Kern County Hospital Authority, a local unit of government, (“KCHA”), which owns and operates Kern Medical Center (“Kern Medical”) and Craneware, Plc., a public limited company organized under the laws of the United Kingdom with corporate headquarters located at 1 Tanfield, Edinburgh, EH3 5DA, United Kingdom, by and through its agent and wholly owned subsidiary, Craneware, Inc., a Florida corporation with corporate headquarters located at 3340 Peachtree Rd., N.E., Ste. 850, Atlanta, GA 30326, for the benefit of Craneware plc and all of its subsidiaries (“Licensor”).

RECITALS

A. Licensor and KCHA have heretofore entered into an Agreement for Intellectual Property License and Service (Kern County Agt. #620-2009, dated June 30, 2009) (“Agreement”), Amendment No. 1 (Kern County Agt. # 659-2015, dated September 14, 2015) for the period of June 30, 2009 through June 29, 2022, to provide support, education, and workflow management to improve Kern Medical’s overall CDM maintenance business process; Amendment No. 2 (Kern County Agt. #561-2016, dated May 17, 2016) for the period of May 17, 2016 through June 29, 2022, for the license of Craneware’s Physician Revenue Toolkit and Pharmacy ChargeLink solutions; and Assignment of Agreement due to the change of ownership of Kern Medical from the County of Kern to KCHA (Kern County Agt.#379-2016, dated April 26, 2016); Amendment No. 3 (Kern County Agt. #26117, dated June 30, 2017) for the period of June 30, 2018 through June 29, 2022, for the license of Craneware’s InSight Audit solution; Amendment No. 4 (Kern County Agt. #003-2019, dated January 16, 2019) for the period of January 17, 2019 through June 29, 2022, for the license of Craneware’s Trisus Supply solution; and

B. Kern Medical desires to add Licensor’s Trisus Pricing Analyzer and Reimbursement Model Maintenance applications to the Agreement, replacing the presently licensed Pricing Analyzer application effective as of the start date of this Amendment; and

C. Kern Medical requires additional services and the discontinuance of certain services; and

D. Kern Medical and Licensor desire to acknowledge a renaming of the Chargemaster Toolkit application to “Trisus Chargemaster” that has simultaneously transitioned to a new platform;

E. It is the intent of the parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Licensor; and

F. KCHA and Licensor agree to (i) extend the term for an additional period of five years from June 30, 2022 to June 29, 2027, (ii) increase the maximum payable under the Agreement by \$1,590,297, from \$2,605,613 to \$4,195,910 (all fees subject to customary changes to C.P.I. which are not reflected in

Amended Payment Schedule), to cover the additional services and extended term, and agree to (iii) amend the requested services currently provided by Licensor; and

G. The Agreement is Amended by this Amendment No. 5 effective June 30, 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 A. 2. Fees as restated in Amendment No. 4 shall be deleted in its entirety and replaced with the following:

“2. Fees

The total fees for the Services identified in Exhibit A, A-1, A-2, A-3, A-4, A-5, B, C-1, C-2, C-3, C-4, and C-5 are set forth in Exhibit D-1, D-2, D-3, D-4, D-5, E, E-1, E-2, E-4 and E-5 and shall not exceed four million one hundred and ninety five thousand nine hundred and ten dollars (\$4,195,910) (all fees subject to customary changes to C.P.I. which are not reflected in Amended Payment Schedule) and shall be paid consistent with the schedule set forth in Exhibits E, E-1, E-2, E-4 and E-5 which are incorporated herein by this reference.”

2. Exhibit A-5 – “Supplemental Scope of Work”, Exhibit C-5 – “Amended Licensed Products and Services Schedule”, Exhibit D-5 – “Amended Fees and User Licenses”, and Exhibit E-5 “Amended Payment Schedule” are added to the Agreement and incorporated herein by this reference.

3. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 5 have the meanings set forth in the Agreement.

4. This Amendment No. 5 shall be governed by and construed in accordance with the laws of the state of California.

5. This Amendment No. 5 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

[Signatures follow on next page]

CRANEWARE REPRESENTATIVE : Eric Tozer
DATE OF PRESENTATION : May 17, 2022
DATE REVISED : July 13, 2022
RECIPIENT NAME : Andy Cantu
RECIPIENT TITLE : CFO

IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 5 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

LICENSOR

By _____

Russell Bigler

Chairman, Board of Governors

By _____

DocuSigned by:

Craig Preston

B78C8E3A2FEC84B481

Printed Name: Craig Preston

Title/Position: CFO

7/13/2022 | 2:35 PM CDT

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____

Andrew Cantu

Chief Financial Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____

Hospital Counsel

EXHIBIT A-5 – SUPPLEMENTAL SCOPE OF WORK

Trisus Pricing Analyzer Implementation

Purpose: This document outlines the Scope of Work designed to assist Customer in maximizing its immediate return on investment from the Craneware® Trisus Pricing Analyzer and in establishing an effective business process in the ongoing use of Trisus Pricing Analyzer. Craneware's Professional Services team will complete the pricing baseline, initial models and provide education on utilizing the software for sustainable price optimization, market-based pricing competitiveness and value-based pricing. This Scope of Work shall be completed according to defined deliverables and budgeted hours.

Customer Roles:

Executive Sponsor: Customer shall designate an Executive Sponsor for the Trisus Pricing Analyzer project. The Executive Sponsor is typically the CEO, CFO or business office administrator. The Executive Sponsor will be kept apprised of all progress with the Pricing Analyzer project, as well as have responsibility for signing off on key stages of project completion. The Executive Sponsor may become involved in the project if necessary, to address barriers to a timely implementation.

Project Manager: Customer will need to designate a Project Manager for Trisus Pricing Analyzer that will have the authority, staff and other resources reasonably necessary to oversee the installation of Pricing Analyzer, as well as the preparation of any data or software files, and the training of Customer employees in the use of Craneware products. The Project Manager will be available on reasonable notice. He or she will provide Craneware with an address, phone and e-mail where he or she can be reached during normal business hours.

Part I. Offsite Review

1. Establishing a Pricing Baseline

The Professional Services Consultant will complete all set-up tasks required to establish the existing price structure as the baseline:

- Assure the accuracy and completeness of the required extracts
 - CDM
 - Twelve (12) Months Itemized Detailed Patient Claim File
 - Contract/Payer Reimbursement Terms
 - Cost Data
- Define payer(s) and their associated variables
- Create the baseline payer mix group
- Create pricing policy constraints & filters

Craneware Deliverable: Documented report of baseline price structure variables and validation of payor reimbursement modeling.

Customer Deliverable: Assignment of a key contact and validation of key pricing variables. Delivery of required data 45 calendar days prior to training event.

2. Develop Alternative Pricing Models

The Professional Services Consultant will create five (5) types of alternative price models and create an impact summary of each:

- Model One: Flat price increase, possibly subject to constraints and filters
- Model Two: Market-based, model identifies areas of opportunity when compared against Customer selected peers
- Model Three: Cost-based, model identifies areas of opportunity when considering cost
- Model Four: Fee Schedule-based, model identifies areas of opportunity when current pricing is compared against contracted fee-schedule(s) with a lesser of/than clause
- Model Five: Incorporating Customer defined constraints, that may include items from the previous models

Craneware Deliverable: Documented report of baseline price structure variables.

Customer Deliverable: Identification of flat increase percentage, delivery of fee schedules, selection of market peers and other constraints as appropriate.

Part II. Training and Implementation

3. Training and Process Design for Trisus Pricing Analyzer and Model Review

This work will be completed during a two-day training event.

Day One: User training will be conducted utilizing each of the selected models navigating within Trisus Pricing Analyzer and each of its core functions. The following users will be included in the training: CDM Manager, Revenue Cycle, Managed Care, and Finance.

Craneware Deliverable: Training and documented Trisus Pricing Analyzer process.

Customer Deliverables: Ensure staff availability and participation in all training. Provide designated training space, if onsite training event. Participate in creation of customer specific Trisus Pricing Analyzer process.

Day Two: The Professional Services Consultant will present the financial impact of each of the selected models to determine which, if any, is to be adopted by the organization. A primary user will be identified during this meeting. This person along with a designated back-up will be trained on the price transfer functions of the Trisus Pricing Analyzer.

Craneware Deliverable: Review the pros and cons of three identified pricing models.

Customer Deliverable: Ensure availability of key department staff.

4. Delivery of Final Report

Final report will include:

- Summary of analysis of overall data including identification of high opportunity areas, revenue and payer graphs.
- Identified process for achieving sustainable results utilizing Pricing Analyzer.

Craneware Deliverable: Final report including documentation of recommended process.

Customer Deliverable: Hospital(s) is responsible for identifying its team to implement process and create an action plan from information in final report.

Reimbursement Model Maintenance Service

Purpose:

The objective of Craneware's Reimbursement Model Maintenance Service is to ensure successful adoption of Trisus Pricing Analyzer through accurate reimbursement modeling of Customers' payor contracts to arrive at Net Patient Revenue. Craneware's Reimbursement Model Maintenance Service is separate and distinct from Trisus Pricing Analyzer implementation services. Craneware's Reimbursement Analyst is responsible for payor reimbursement modeling during the Trisus Pricing Analyzer implementation and will further perform the ongoing Reimbursement Model Maintenance Service. The Reimbursement Analyst will perform specific duties or leverage additional Craneware experts in specialized fields to:

1. Collaborate with the Customer to define and model payor reimbursement that supports the Trisus Pricing Analyzer solution in calculating Net Patient Revenue. Modeling will be completed for all commercial payors' language specific to Percent of Charge, Fixed Fee (i.e. Per Diem, Case Rate, etc.), Not to Exceed, Stoploss, Outlier, and DRG payment with or without lesser than clause.
2. Establish best practices for Customer delivery of new and modified payor reimbursement language to Craneware for reimbursement model maintenance to ensure optimal and accurate net patient revenue calculations.
3. Team with internal Customer staff to facilitate seamless Reimbursement Model Maintenance assuring all Customer tasks meet established targets.
4. Educate Executive Project Sponsor(s) and Trisus Pricing Analyzer users of implemented payor reimbursement additions and adjustments.

Duration:

Trisus Pricing Analyzer Reimbursement Model Maintenance shall commence upon completion of the software implementation for the facility(s) named in the Trisus Pricing Analyzer Implementation Scope of Work and continue for the duration of the initial Term of the Agreement.

MAJOR TASK SUMMARY:

Craneware's Reimbursement Analyst will maintain the Customer's reimbursement models to ensure timely and accurate payor reimbursement adjustments to the above defined commercial payor language. This will entail:

- Commercial Payor Contract Additions – When a new commercial payor contract is negotiated, the payor and specific language above defined will be modeled into the application.
- Existing Commercial Payor Contract Adjustments – When there is a requirement to adjust an existing model reimbursement rate it will be edited to the new reimbursement rates.
- Commercial Payor Contract Removal – At the customer's request, removal of a specific payor.
- Maintenance activities will be completed in a commercially reasonable and timely manner.

Craneware Deliverable:

- Provide the necessary support and service to ensure payor reimbursement is modeled accurately and in a timely manner.
- Ensure customer is aware of any changes to payor reimbursement models.

Customer Deliverable:

- Ensure necessary reimbursement language is provided timely to maintain the most accurate and current models within Reimbursement Modeling on Trisus.
- Assure availability of key staff members to answer questions regarding reimbursement language.
- Validate accuracy of reimbursement models

EXHIBIT C-5 – AMENDED LICENSE PRODUCTS AND SERVICES SCHEDULE

Products Purchased												
	Medicare Provider Number	CAH Facility	Shares File	Patient Accounting System	Trisus® Chargemaster	Interface Scripting Module – Scripts for CMT	Online Reference Toolkit®	Pharmacy Charge Link®	Physician Revenue Toolkit®	Insight Audit®	Trisus® Pricing Analyzer	Trisus® Supply (includes Trisus® Supplies Assistant)
Licensed Entities (Name and address of all facilities possessing a Medicare Provider Number that are licensed to use the software)												
Kern Medical 1700 Mount Vernon Ave Bakersfield, CA 93306 (HCA193) County: Kern	050315	N		Cerner Millenium	X		X		X	X	X	X
Renewals only: Products removed from Licensed Products and Services Schedule (Identify by individual facility) <i>Effective 6/30/2022</i>												
Kern Medical	050315					X		X				

Abbreviations: **TCHG** – Trisus Chargemaster and **CAH** - Critical Access Hospital

EXHIBIT D-5 – AMENDED PAYMENT SCHEDULE

* Training and implementation and recurring plans are outlined in attached Supplemental Scope of Work, Exhibit A-5.

Licensed Products and Services	Number of Licensed Entities	Total User Licenses <i>(available across licensed entities)</i>	License Fee Annual Amount	Implementation & Training Fees* <i>(one-time fee)</i>	Recurring Service Annual Amount
Trisus® Chargemaster	1	25 per licensed TCHG entity	\$71,143	N/A	
Online Reference Toolkit for TCHG					
Physician Revenue Toolkit	1		\$57,413	N/A	
Online Reference Toolkit for PRT		25 per licensed PRT entity			
Insight Audit <i>(Includes 3 year data back load of Medicare 837's and 1 yr back load of Other Payer 837s)</i>	1		\$49,313		
Trisus® Supply	1		\$61,245		
Trisus® Pricing Analyzer Newly Licensed 6/30/2022	1		\$40,692	\$14,000	
License and Implementation fee totals			\$279,806	\$14,000	
Additional Professional Services - See Scope of Work:					
Reimbursement Model Maintenance For the period June 30, 2022 to June 29, 2027 Newly Added 6/30/2022					\$5,464

EXHIBIT E-5 - AMENDED PAYMENT SCHEDULE

License Period	License Fee Annual Amount inclusive of Recurring Service Fee ¹ **	Implementation & Training	Payment Due Date
June 30, 2022 – June 29, 2023	\$285,270	\$14,000	Due upon contract signature
June 30, 2023 – June 29, 2024	\$299,534		June 30, 2023
June 30, 2024 – June 29, 2025	\$314,510		June 30, 2024
June 30, 2025 – June 29, 2026	\$330,236		June 30, 2025
June 30, 2026 – June 29, 2027	\$346,747		June 30, 2026
TOTALS*	\$1,576,297	\$14,000	

* Fees do not include out of pocket expenses associated with onsite trainings that shall be billed to Licensee at actual cost.

** Fees are shown with the minimum 5% annual adjustment but shall be modified in accordance with customary changes to C.P.I. prior to invoicing in accordance with the then current C.P.I.. Future Annual Fee shall be computed from the prior year's Annual Fee.

¹ Annual Fees and Professional Services Fees shall increase once per year during the Term of this Order Form and any Renewal Term. Increases shall be equal to the greater of C.P.I. or 5%. For purposes of the foregoing, "C.P.I." shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor (base year 1982-84=100), as of the most recent calendar month for which the Index is published prior to the Agreement anniversary month.**

Increases to any Annual Fee due to application of the foregoing provision, as well as any additional sums owed for Sales Taxes as per § 3(b) of the Agreement ("Sales Tax") shall be owed in addition to the Annual Fees listed on each Order Form.

PART 3. SUPPLEMENTAL ADDITIONAL CONTACT INFORMATION

Main Contact	Name:	Margaret Hardman	Email:	Margaret.hardman@kernmedical.com
	Title:	Director of Patient Accounts	Phone:	661-862-4101
CDM Contact	Name:	Margaret Hardman	Email:	Margaret.hardman@kernmedical.com
	Title:	Director of Patient Accounts	Phone:	661-862-4101
IT Contact	Name:	Angelina Reyes	Email:	Angelina.reyes@kernmedical.com
	Title:	Director HIM	Phone:	661-326-2603
CFO/VP Finance	Name:	Andrew Cantu	Email:	Andy.cantu@kernmedical.com
	Title:	CFO	Phone:	661-326-2681
Accounts Payable Contact	Name:	John Mills	Email:	John.mills@kernmedical.com
	Title:	Director of Finance	Phone:	661-862-4130
Billing Address:	Kern Medical 1700 Mt Vernon Ave Bakersfield, CA 93306 County: Kern			



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

July 20, 2022

Subject: Proposed Sales Agreement with Axonics, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Sales Agreement with Axonics, Inc. for the purchase of a cystoscope and intraoperative urethral bulking system used for both urology and urogynecology procedures. Investing in this equipment and product will increase operative case volume for both female and male patients requiring incontinence solutions and improve post-operative patient results and outcomes.

The term of the Agreement is three years, effective July 20, 2022, with a total maximum payable not to exceed \$125,000.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the inability to terminate the Agreement without cause, and limitations on liability and indemnification, with Axonics, Inc. only providing indemnity for fraud, gross negligence, and intentional misconduct. Efforts were made to negotiate these nonstandard terms to no avail. The equipment and associated product 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 Sales Agreement with Axonics, Inc., effective July 20, 2022, with a maximum payable not to exceed \$125,000, for the three-year term, and authorize the Chairman to sign.



QUOTE & ORDER FORM

Customer Ship-to Information

Attention	Sonia Gill
Customer Name	Kern Medical Center
Address Line 1	1700 Mt Vernon Ave
Address Line 2	
City, State Zip	Bakersfield, CA 93906
Contact Email	sonia.gil@kernmedical.com

Customer Bill-to Information Same as Ship-to

Attention	
Customer Name	
Address Line 1	
Address Line 2	
City, State Zip	
Contact Email	

Quote Information

Quote Number	JH-05252022-KERN	Date Issued	05/24/2022	Currency	USD
Axonics Contact	Jim Hansen	Axonics Email	Jim.Hansen@Axonics.com		
Remarks	* Taxes and Shipping are estimated per your zip code and preferred shipping method				

Item List

Line	Item #	Description	UOM	List Price	Unit Price	Order Qty	Extended Amount
1	50050	Bulkamid Urethral Bulking System	1 EA	\$1,950.00	\$ 1,150.00	10	\$ 11,500.00
2	41-0152A	Cystoscope - 2.7 x 113 mm, 0°	1 EA	\$3,495.00	\$ 1,995.00	3	\$ 5,985.00
3	OM-1000-CI	Sterilization Tray	1 EA	\$495.00	\$ 250.00	3	\$ 750.00
Total							\$ 18,235.00

- I. This quote is valid for 30 days from date issued.
- II. This quote is subject to the Terms and Conditions for Sale attached.
- III. Payment Terms: Net 30 Days
- IV. Shipping Terms: Prepaid by Axonics and Added to Invoice (Prepay and Add)

By signing below, Customer agrees this is a valid purchase order subject to the attached Terms and Conditions for Sale and effective as of the signature date:

Authorized by:

Signature:	
Authorized Buyer Name:	Russell Bigler
Title:	Chairman, Board of Governors
Date:	
PO Number:	

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department

TERMS AND CONDITIONS FOR SALE

THIS AGREEMENT ("Agreement") sets forth the terms and conditions governing the sale of products ("Goods") by Axonics, Inc. ("Seller") to the purchaser listed on a purchase order ("Buyer"). Seller and Buyer shall be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

1. **Applicability of this Agreement.** The following terms and conditions of sale supersede any different terms contained in Buyer's purchase order or any other written document or verbal communication pertaining to Buyer's order of Goods. Buyer's assent to the terms and conditions contained in this Agreement shall be conclusively evidenced by Buyer's submission of a purchase order to Seller. None of these terms and conditions may be modified except by a written agreement signed by an authorized officer of Seller.
2. **Purchase Orders.** Buyer agrees to purchase the quantity of Goods specified in Buyer's purchase orders. Purchase orders shall be submitted directly to Seller's customer service department or local sales representative and shall be in sellable units of measure. Accepted purchase orders and payment obligations are non-cancelable. Purchased Goods are non-returnable and non-refundable.
3. **Payment Terms.** Upon shipment, Seller will invoice Buyer for Goods, including applicable taxes and freight charges. Buyer shall make all payments to Seller in full no later than thirty (30) days from receipt of invoice unless different payment terms have been agreed to in writing and in advance of the issuance of a purchase order. Buyer shall pay to Seller a late payment charge of one and one-half percent (1.5%) per month on the unpaid balance of any amount past due. Seller may suspend future deliveries until all invoices are paid in full and subsequently assign a credit limit to Buyer.
4. **Pricing.** Seller reserves the right to revise the prices as specified in any quote with thirty (30) days written notice to Buyer. Seller reserves the right to discontinue Goods or replace a discontinued item with a similar item with the same functionality upon thirty (30) days written notice.
5. **Reporting of Discounts.** The pricing for Goods provided herein may reflect or be subject to discounts, rebates, or other price reductions. Buyer agrees to fully and accurately report all amounts paid hereunder, net of any discounts, credits, or rebates, as may be required by law or contract, including but not limited to, on cost reports filed with Medicare, Medicaid and all other federal and state health care programs and as required by the discount "safe harbor" provision of the U.S. Anti-Kickback Statute (42 CFR 1001.952(h)). Buyer further agrees to provide copies of invoices and related documentation to representatives of these government programs and third-party payors upon their request.
6. **Shipping.** Goods shall be shipped F.O.B. Origin (Buyer's shipping point). Title shall pass to the Buyer upon delivery of Goods to carrier. Seller shall assume liability for loss or damage to Goods in transit. Partial deliveries shall be permitted. Standard delivery time is fourteen (14) days from Seller's acceptance of purchase order. Goods supplied by Seller to Buyer shall have a shelf life of at least twelve (12) months from the date of delivery of the Goods to Buyer.
7. **Acceptance; Returns.** Claims for non-receipt of Goods or non-compliance of Goods delivered must be made to Seller in writing within fourteen (14) days from date of delivery (the "Acceptance Period") to be eligible for credit. Return freight charges shall be pre-paid by Buyer and subsequently credited by Seller. If Buyer does not notify Seller in writing during the Acceptance Period that it is rejecting the Goods, Buyer shall be deemed to have accepted the Goods. No Goods shall be returned for credit without first obtaining a returned material authorization ("RMA") number from Seller. RMAs shall expire thirty (30) days from date of issuance. No credit will be given for Goods that are damaged after delivery to Buyer or returned without an RMA number.
8. **Access.** Seller's sales representatives shall at all times comply with Buyer's credentialing and training requirements of which Buyer has notified Seller in writing. Buyer agrees to grant Seller's sales representatives reasonable access to facilities for meetings and providing technical support related to Seller's Goods during clinical procedures.
9. **Warranty.** Seller warrants to Buyer that all Goods purchased hereunder will, at the time of shipment and for a period of twelve (12) months thereafter, meet Seller's most recent specifications and be free of defects in workmanship or materials, if used as indicated by the applicable instructions for use. Any claim for breach of this warranty shall be made within thirty (30) days after the date Buyer discovers the failure to meet specifications or the defect. Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for a breach of this warranty is limited to Seller's obligation to repair the Goods, replace the Goods or refund to Buyer the price paid for the Goods, at the sole option of Seller. Seller will have no liability for the breach of warranty that as a result from: (a) Buyer's failure to follow Seller's instructions for use for such Goods (b) Buyer's misuse, neglect, modification, or alternation of the Goods; (c) the transfer or sale of the Goods by Buyer to a third party; or (d) the repair of the Goods by any person other than Seller.
10. **Limitation of Warranty and Liability.** THE EXPRESS WARRANTIES SET FORTH IN SECTION 9 OF THIS AGREEMENT ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS AND THE PARTIES HEREBY EXPRESSLY EXCLUDE ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED (INCLUDING FAULT OR NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, INCLUDING BUT NOT LIMITED TO DATA LOSS, LOSS OF PROFITS, GOODWILL OR BUSINESS INTERRUPTION.
11. **Confidentiality.** Each Party will treat the pricing and other terms of this Agreement and the other Party's proprietary information disclosed hereunder ("Confidential Information") as confidential and will not use or disclose it to any third Parties unless: (i) permitted under this Agreement; (ii) mutually agreed upon in writing by the Parties, or (iii) required by law. Each Party will carefully protect the other Party's Confidential Information from disclosure, with at least the same level of care it uses to protect its own Confidential Information of similar importance, but in no event with less than reasonable care.
12. **Intellectual Property.** All intellectual property rights in the Goods shall at all times remain vested in Seller or its licensors. Any user license granted to Buyer under the Agreement shall be non-transferrable and non-exclusive.
13. **Mutual Indemnification.** Each Party shall defend, indemnify, and hold harmless the other Party from and against any and all damages incurred or suffered by such indemnified Party arising from any third-party claims related to (a) breach of this Agreement; or (b) fraud, gross negligence or intentional misconduct by the indemnifying Party or its representatives in connection with this Agreement. Seller shall defend, indemnify, and hold harmless Buyer from and against any and all damages incurred or suffered by Buyer in connection with any claim that the Goods infringe the intellectual property rights of a third party. In addition, Buyer shall defend, indemnify, and hold harmless Seller and its affiliates and their representatives from and against any and all damages incurred or suffered by Seller arising from any misuse or use of the Goods not in compliance with their instructions for use.
14. **Force Majeure.** Neither Party shall be liable for any failure of or delay in performing any of its obligations under this Agreement (other than any payment obligation), and neither Party shall be deemed to be in breach of any of its obligations hereunder if such failure, delay or breach is due to any cause beyond the reasonable control of the other Party ("Force Majeure Event"). If the Force Majeure Event exceeds two (2) months, Seller may immediately terminate the Agreement and any outstanding purchase orders.
15. **Compliance with Laws.** Each Party represents and warrants that it shall comply with all applicable federal and state laws and regulations, including but not limited to the U.S. Anti-Kickback Statute (42 U.S.C. § 1320a-7b) and any applicable safe harbors. The Parties represent that it is their intent and good faith belief that this Agreement complies with the Anti-Kickback Statute, and regulations promulgated thereunder. Neither Party shall make any payment to the other Party as compensation or reward for referrals or business, except for the payment for purchase of Goods as provided in this Agreement. Buyer represents and warrants that it is purchasing Goods under this Agreement for its own internal use only and not for resale or export.
16. **Miscellaneous.** This Agreement represents the entire agreement between the Parties and supersedes all prior agreements between the Parties concerning the subject matter hereof. No modification, amendment, revision, waiver, or other change to this Agreement shall be binding on either Party unless agreed to in writing by both Parties. This Agreement shall be governed by and construed in accordance with the Laws of the State of California, without regard to principles of choice of laws. The waiver by a Party of any term or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach by the other Party.



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

July 20, 2022

Subject: Proposed Agreement with Philips Healthcare, a division of Philips North America, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Agreement with Philips Healthcare, a division of Philips North America, LLC, to purchase upgraded telemetry monitoring systems. The purchase of upgraded telemetry monitoring systems will increase the ability to monitor key vital signs during patient transport throughout the hospital, which is vital to meet the needs of the patients Kern Medical serves. The Agreement is effective as of July 20, 2022, with a maximum payable not to exceed \$1,370,000.

Therefore, it is recommended that your Board approve the Agreement with Philips Healthcare, a division of Philips North America, LLC, effective July 20, 2022, with a maximum payable not to exceed \$1,370,000, and authorize the Chairman to sign.



Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Sold to (94310879):

KERN MEDICAL CENTER
1700 Mount Vernon Ave
BAKERSFIELD CA 93306-4018
UNITED STATES

Last updated: 07/11/2022 19:35:20

Expiration date: 7/28/2022

Our contact details

Account Manager: Chris Mojarad

Telephone: 4708802733

Email: matt.hyde@philips.com

Incoterms: FOB DESTINATION

Payment terms: Within 30 Days Due Net

Item	Product and Description	Quantity	UoM	Price/Unit	Amount
	<ul style="list-style-type: none"> - Philips to upgrade & consolidate Classic systems to (1) primary server with (2) physio servers (OVA files provided by Philips, customer to provision 3 virtual machines) - Philips to replace all 19" displays with 27" high resolution displays - Philips to upgrade PIC Classic System to Rev C (216 upgraded Surveillance sectors, 32 upgraded Overview sectors, 12 new Overview sectors, 6 new 12-lead analysis licenses for ED, & 13 new Enterprise Link sectors for Outpatient). - Philips to upgrade all MP Bedside Monitors to Rev M, and all MX Monitors to Rev N (or M if preferred): - 72 MP5's - 54 MP50's - 24 MP70's (6 will be replaced for ED Trauma with new MX550's) - 5 MX700's - Philips to provide (68) new MX40 patient worn telemetry monitors with 802.11 wireless, ECG enhanced arrhythmia/SpO2 & battery adapters for use with rechargeable batteries (provided by Philips along with charging stations). (52) are for the Tele area, (15) are for the 2nd floor Tele expansion, and (1) is a spare. - Philips to de-install (6) Trauma Bay MP70's & replace with (6) new MX550 15-inch monitors with (6) new wireless X3 Transports Monitors as the patient input module for easy transport, along with (6) new Microstream CO2 extensions for the ED trauma bays. These monitors will be 12 lead capable along with the central station which will now be able to perform 12-lead analysis. - Philips to provide/install (23) additional wireless X3 Transport Monitors with docking stations as new transport solution for all departments, along with (2) X3 Transport Monitors with spare batteries/battery conditioner & (6) X3's mounted on roll-stands for Emergency connected wirelessly to the central station for monitoring & EMR integration. - Philips to repurpose (10) MP5's and re-assign to ED/configure on the 32-bed Central Station - Philips to configure IBE to support HL7 vital signs, ADT, & Wave Strip Integration with EMR for all networked monitors - All clinical training, monitor configuration needs are included - IBE does not require upgrade (on B.09 currently) - Includes Philips Wireless Assessment for 802.11 WLAN 				

Note: Customer must pull all cables for this project

Via ACH/EFT:
Payee: Philips Healthcare
Bank: Bank of America
Account#: 3750202223
ABA#: 1110-0001-2

Via Check:
Philips Healthcare
P.O. Box 100355
Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity UoM	Price/Unit	Amount Currency: USD
10	866424 PIC iX Hardware	3 PCE		
	HVM VMWare Server	3 PCE	2,648.80/1 PCE	7,946.40
	NEW Hardware or OS	3 PCE	0.00/1 PCE	0.00
	RVC PIC iX C	3 PCE	0.00/1 PCE	0.00
	UPC code: 884838052130			
	Agreement number: GPOHT00010			
	Commodity code (HS/HTS): 0000000003			
		Net amount	2,648.80/1 PCE	7,946.40
				Agreement Discount included in net - 44.000 %
20	866389 Patient Information Center iX	1 PCE		
	EPN Network	216 PCE	260.40/1 PCE	56,246.40
	ERC Classic or A to C upgrade	216 PCE	260.40/1 PCE	56,246.40
	EVC Overview Rev C	32 PCE	201.60/1 PCE	6,451.20
	RVC PIC iX Software Release C	1 PCE	0.00/1 PCE	0.00
	UPG Upgrade Software Version	1 PCE	0.00/1 PCE	0.00
	UPC code: 884838048645			
	Agreement number: GPOHT00010			
	Commodity code (HS/HTS): 8523510000			
		Net amount	118,944.00/1 PCE	118,944.00
				Agreement Discount included in net - 44.000 %
30	866390 Patient Information Center iX Expand	1 PCE		
	12C 12-Lead ECG Rev C	6 PCE	310.80/1 PCE	1,864.80
	NEW New Add On or Expand	1 PCE	0.00/1 PCE	0.00
	RVC PIC iX Software Release C	1 PCE	0.00/1 PCE	0.00
	Agreement number: GPOHT00010			
	Commodity code (HS/HTS): 8523519000			
		Net amount	1,864.80/1 PCE	1,864.80
				Agreement Discount included in net - 44.000 %
40	866390 Patient Information Center iX Expand	1 PCE		
	NEW New Add On or Expand	1 PCE	0.00/1 PCE	0.00
	NLC PIC iX Enterprise Link	13 PCE	1,024.80/1 PCE	13,322.40
	RVC PIC iX Software Release C	1 PCE	0.00/1 PCE	0.00
	OVC Overview Rev C	12 PCE	795.20/1 PCE	9,542.40
	Agreement number: GPOHT00010			
	Commodity code (HS/HTS): 8523519000			
		Net amount	22,864.80/1 PCE	22,864.80
				Agreement Discount included in net - 44.000 %

Via ACH/EFT:
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ABA#: 1110-0001-2

Via Check:
Philips Healthcare
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Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity UoM	Price/Unit	Amount Currency: USD
50	866424 PIC iX Hardware	16 PCE		
	HS1 PC Hardware with SSD	16 PCE	2,262.40/1 PCE	36,198.40
	NEW Hardware or OS	16 PCE	0.00/1 PCE	0.00
	RVC PIC iX C	16 PCE	0.00/1 PCE	0.00
	H1U UPS Hardware	16 PCE	305.20/1 PCE	4,883.20
			Net amount	2,567.60/1 PCE
				41,081.60
	UPC code: 884838052130			
	Agreement number: GPOHT00010			Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 0000000003			
60	865053 Remote IIC Speaker Kit	6 PCE	Net price	193.20/1 PCE
			Net amount	193.20/1 PCE
				1,159.20
	UPC code: 884838022607			
	Agreement number: GPOHT00010			Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 90181910			
70	865352 IntelliVue MX40 802.11a/b/g/n	68 PCE		
	C01 Enhanced Arrhythmia	68 PCE	221.20/1 PCE	15,041.60
	S02 ECG + Fast SpO2 Enabled	68 PCE	3,690.40/1 PCE	250,947.20
			Net amount	3,911.60/1 PCE
				265,988.80
	UPC code: 884838030350			
	Agreement number: GPOHT00010			Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 9018195500			
80	865220 IntelliVue CL Charging Station	8 PCE	Net price	1,512.02/1 PCE
			Net amount	1,512.02/1 PCE
				12,096.16
	UPC code: 884838020696			
	Agreement number: GPOHT00010			Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 9018199560			
90	989803205901 SPO2 Reus Adult Clip Sensor M1196A	67 PCE	Net price	66.33/1 PCE
			Net amount	66.33/1 PCE
				4,444.11
	UPC code: 884838102569			
	Agreement number: GPOHT00010			Agreement Discount included in net - 30.000 %
	Commodity code (HS/HTS): 9018199560			
100	989803171851 CBL ECG 5lead Grabber, AAMI + SpO2, Tele	67 PCE	Net price	118.97/1 PCE
			Net amount	118.97/1 PCE
				7,970.99
	UPC code: 884838013407			
				7,970.99
				Agreement Discount included in net - 30.000 %

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Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM	Price/Unit	Amount
					Currency: USD
Agreement number: GPOHT00010					
Commodity code (HS/HTS): 8544422000					
110	989803174131 MX40 Lithium-ion battery pkg 3	37	BX	Net price 756.33/1 PCE	27,984.21
	UPC code: 884838015012			Net amount 756.33/1 PCE	27,984.21
	Agreement number: GPOHT00010			Agreement Discount included in net - 30.000 %	
	Commodity code (HS/HTS): 8507600020				
120	989803176201 MX40 Lithium ion battery pkg 1	8	BX	Net price 259.56/1 PCE	2,076.48
	UPC code: 884838025691			Net amount 259.56/1 PCE	2,076.48
	Agreement number: GPOHT00010			Agreement Discount included in net - 30.000 %	
	Commodity code (HS/HTS): 8507600000				
130	866443 M8105A Software Upgrade	1	PCE		
	DCM Doc. Set for SW Rev.Mxx	72	PCE	103.60/1 PCE	7,459.20
	SUM Upgrade to SW Rev. M	72	PCE	621.60/1 PCE	44,755.20
	UPC code: 884838053762			Net amount 52,214.40/1 PCE	52,214.40
	Agreement number: GPOHT00010			Agreement Discount included in net - 44.000 %	
	Commodity code (HS/HTS): 9018199560				
140	865062 M8002A Trade-up Options	2	PCE		
	SUM Upgrade to SW Rev. M	2	PCE	621.60/1 PCE	1,243.20
	UPC code: 884838021631			Net amount 621.60/1 PCE	1,243.20
	Old material number: M8002AU			Agreement Discount included in net - 44.000 %	
	Agreement number: GPOHT00010				
	Commodity code (HS/HTS): 90181910				
150	865064 M8004A Trade-up Options	74	PCE		
	SUM Upgrade to SW Rev. M	74	PCE	851.20/1 PCE	62,988.80
	UPC code: 884838021655			Net amount 851.20/1 PCE	62,988.80
	Old material number: M8004AU			Agreement Discount included in net - 44.000 %	
	Agreement number: GPOHT00010				
	Commodity code (HS/HTS): 90181910				

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Formal Quotation

Document number: 2301269925

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Item	Product and Description	Quantity	UoM	Price/Unit	Amount
					Currency: USD
160	865308	1	PCE		
	IntelliVue MX700 Software Upgrades				
	DCN Doc. Set for SW Rev.Nxx	5	PCE	103.60/1 PCE	518.00
	SUN Upgrade to SW Rev. N	5	PCE	946.40/1 PCE	4,732.00
				Net amount	5,250.00/1 PCE
					5,250.00
	UPC code: 884838056855				
	Agreement number: GPOHT00010				Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 4907009001				
170	866066	6	PCE	Net price	7,252.00/1 PCE
	IntelliVue Patient Monitor MX550				43,512.00
	A06 6-waves capability	6	PCE	1,265.60/1 PCE	7,593.60
	C07 Adv. Event Surveillance	6	PCE	1,108.80/1 PCE	6,652.80
	H12 Intensive Care Software	6	PCE	2,116.80/1 PCE	12,700.80
				Net amount	11,743.20/1 PCE
					70,459.20
	UPC code: 884838038783				
	Agreement number: GPOHT00010				Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 9018195500				
180	867030	6	PCE		
	IntelliVue Multi-Measurement Module X3				
	A03 3-waves capability	6	PCE	0.00/1 PCE	0.00
	B06 Dual Press and Temp	6	PCE	632.80/1 PCE	3,796.80
	C12 Conventional 12 Lead ECG	6	PCE	543.20/1 PCE	3,259.20
	H72 Critical Care Transport SW	6	PCE	896.00/1 PCE	5,376.00
	J35 802.11 Wireless IF	6	PCE	700.00/1 PCE	4,200.00
	SP1 FAST SpO2	6	PCE	4,709.60/1 PCE	28,257.60
				Net amount	7,481.60/1 PCE
					44,889.60
	UPC code: 884838082588				
	Agreement number: GPOHT00010				Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 9018195500				
190	867031	6	PCE		
	IntelliVue X3 HW Upgrade				
	E33 Carrying Handle Red	6	PCE	137.20/1 PCE	823.20
				Net amount	137.20/1 PCE
					823.20
	UPC code: 884838087415				
	Agreement number: GPOHT00010				Agreement Discount included in net - 44.000 %
	Commodity code (HS/HTS): 0000000003				

Via ACH/EFT:
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 Philips Healthcare
 P.O. Box 100355
 Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM	Price/Unit	Amount	
					Currency: USD	
200	867041 IntelliVue Microstream Extension UPC code: 884838083585 Agreement number: GPOHT00010 Commodity code (HS/HTS): 9018199560	6	PCE	Net price Net amount	4,104.80/1 PCE 4,104.80/1 PCE	24,628.80 24,628.80
				Agreement Discount included in net - 44.000 %		
210	867030 IntelliVue Multi-Measurement Module X3 A03 3-waves capability B06 Dual Press and Temp E31 Carrying Handle H72 Critical Care Transport SW J35 802.11 Wireless IF SP1 FAST SpO2 UPC code: 884838082588 Agreement number: GPOHT00010 Commodity code (HS/HTS): 9018195500	23	PCE			
		23	PCE	0.00/1 PCE	0.00	
		23	PCE	632.80/1 PCE	14,554.40	
		23	PCE	103.60/1 PCE	2,382.80	
		23	PCE	896.00/1 PCE	20,608.00	
		23	PCE	700.00/1 PCE	16,100.00	
		23	PCE	4,709.60/1 PCE	108,320.80	
				Net amount	7,042.00/1 PCE	161,966.00
				Agreement Discount included in net - 44.000 %		
220	867043 IntelliVue Dock UPC code: 884838085244 Agreement number: GPOHT00010 Commodity code (HS/HTS): 9018199560	21	PCE	Net price Net amount	403.20/1 PCE 403.20/1 PCE	8,467.20 8,467.20
				Agreement Discount included in net - 44.000 %		
230	865432 ASSY-PWR Smart Battery Conditioner UPC code: 884838020801 Agreement number: GPOHT00010 Commodity code (HS/HTS): 8504409530	1	PCE	Net price Net amount	1,400.00/1 PCE 1,400.00/1 PCE	1,400.00 1,400.00
				Agreement Discount included in net - 44.000 %		
240	989803202201 X3/MX100 Battery Charger Adapter UPC code: 884838085879 Agreement number: GPOHT00010 Commodity code (HS/HTS): 8504409580	1	PCE	Net price Net amount	38.08/1 PCE 38.08/1 PCE	38.08 38.08
				Agreement Discount included in net - 44.000 %		
250	989803196521 X3/MX100 Lithium Ion Battery UPC code: 884838060012 Agreement number: GPOHT00010	2	PCE	Net price Net amount	145.64/1 PCE 145.64/1 PCE	291.28 291.28
				Agreement Discount included in net - 30.000 %		

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Formal Quotation

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Item	Product and Description	Quantity	UoM	Price/Unit	Amount
Currency: USD					
Commodity code (HS/HTS): 8507600020					
260	989803144791 10 Lead ECG Trunk AAMI/IEC 2m UPC code: 884838010925 Old material number: M1663A Agreement number: GPOHT00010 Commodity code (HS/HTS): 8544429000	6	PCE	Net price 193.23/1 PCE Net amount 193.23/1 PCE Agreement Discount included in net - 30.000 %	1,159.38 1,159.38
270	989803125881 5 Leadset, Grabber,Chest, AAMI,ICU UPC code: 884838021396 Old material number: M1976A Agreement number: GPOHT00010 Commodity code (HS/HTS): 8544602000	6	PCE	Net price 74.98/1 PCE Net amount 74.98/1 PCE Agreement Discount included in net - 30.000 %	449.88 449.88
280	989803145061 5 Lead ECG Trunk, AAMI/IEC 2.7m UPC code: 884838010963 Old material number: M1668A Agreement number: GPOHT00010 Commodity code (HS/HTS): 8544429090	23	PCE	Net price 89.95/1 PCE Net amount 89.95/1 PCE Agreement Discount included in net - 30.000 %	2,068.85 2,068.85
290	989803125841 5 Leadset, Grabber, AAMI, ICU UPC code: 884838021372 Old material number: M1968A Agreement number: GPOHT00010 Commodity code (HS/HTS): 8544429090	29	PCE	Net price 81.47/1 PCE Net amount 81.47/1 PCE Agreement Discount included in net - 30.000 %	2,362.63 2,362.63
300	989803199741 Dual IBP Adapter UPC code: 884838085299 Agreement number: GPOHT00010 Commodity code (HS/HTS): 8544429090	29	PCE	Net price 110.31/1 PCE Net amount 110.31/1 PCE Agreement Discount included in net - 30.000 %	3,198.99 3,198.99
310	989803104341 Adult NIBP Air Hose 3.0m UPC code: 884838001671 Old material number: M1599B	29	PCE	Net price 49.75/1 PCE Net amount 49.75/1 PCE Agreement Discount included in net - 30.000 %	1,442.75 1,442.75

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Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM		Price/Unit	Amount
						Currency: USD
Agreement number: GPOHT00010						
Commodity code (HS/HTS): 9018199530						
320	989803147871	29	PCE	Net price	23.07/1 PCE	669.03
	Easy Care Cuff, 1 Hose, Adult (1)			Net amount	23.07/1 PCE	669.03
	UPC code: 884838003095					
	Old material number: M4555B			Agreement Discount included in net - 30.000 %		
	Agreement number: GPOHT00010					
	Commodity code (HS/HTS): 9018905040					
330	989803205901	29	PCE	Net price	66.33/1 PCE	1,923.57
	SPO2 Reus Adult Clip Sensor M1196A			Net amount	66.33/1 PCE	1,923.57
	UPC code: 884838102569					
	Agreement number: GPOHT00010			Agreement Discount included in net - 30.000 %		
	Commodity code (HS/HTS): 9018199560					
340	MXU0130	1	PCE			
	IBE System Integration Services					
	P02 PIICix Pat.Identity Match	1	PCE		3,550.00/1 PCE	3,550.00
	P07 PIICix Doc Export Config	1	PCE		5,250.00/1 PCE	5,250.00
	P12 PIIC/PIIC iX 128 Bed Config	2	PCE		3,700.00/1 PCE	7,400.00
	A02 ADT License/Configuration	1	PCE		4,450.00/1 PCE	4,450.00
	A18 Config Device Add/Update	1	PCE		1,150.00/1 PCE	1,150.00
	A21 FSE Onsite Labor & Travel	1	PCE		1,950.00/1 PCE	1,950.00
				Net amount	23,750.00/1 PCE	23,750.00
350	989805710133	67	PCE	Net price	158.00/1 PCE	10,586.00
	Labor: MX40 Installation			Net amount	158.00/1 PCE	10,586.00
360	989805710357	13	PCE	Net price	42.00/1 PCE	546.00
	Wall Channel: 13" Seismic			Net amount	42.00/1 PCE	546.00
370	MXU0308	6	PCE	Net price	423.00/1 PCE	2,538.00
	Roll Stand: MP2/X2/X3/MP5/MP5SC			Net amount	423.00/1 PCE	2,538.00
380	MXU0345	13	PCE	Net price	333.00/1 PCE	4,329.00
	M-Series: MX400-850, AD75/85, 12", 6" DP			Net amount	333.00/1 PCE	4,329.00

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Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM		Price/Unit	Amount
						Currency: USD
390	989803207041 2560: KVM, 4 Port	2	PCE	Net price	1,205.00/1 PCE	2,410.00
				Net amount	1,205.00/1 PCE	2,410.00
400	989805710006 Display: 27" Acer, Touch/Non-Touch, 2560 Commodity code (HS/HTS): 8528529100	16	PCE	Net price	1,844.00/1 PCE	29,504.00
				Net amount	1,844.00/1 PCE	29,504.00
410	989803207011 2560: Multi-Video Mirror Sender 4	1	PCE	Net price	1,275.00/1 PCE	1,275.00
				Net amount	1,275.00/1 PCE	1,275.00
420	989803207031 2560: Multi-Video Mirror Receiver	1	PCE	Net price	1,214.00/1 PCE	1,214.00
				Net amount	1,214.00/1 PCE	1,214.00
430	989803206981 2560: Remote Sender	6	PCE	Net price	2,400.00/1 PCE	14,400.00
				Net amount	2,400.00/1 PCE	14,400.00
440	989803206991 2560: Remote Receiver	6	PCE	Net price	2,341.00/1 PCE	14,046.00
				Net amount	2,341.00/1 PCE	14,046.00
450	989803207051 2560: Rack Console, 8 Port	4	PCE	Net price	3,698.00/1 PCE	14,792.00
				Net amount	3,698.00/1 PCE	14,792.00
460	989803206511 Rack: Bracket, 2 Post, 1U, Server	1	PCE	Net price	476.00/1 PCE	476.00
				Net amount	476.00/1 PCE	476.00
470	989803208121 Network Engineer: Standard Hours	2	PCE	Net price	350.00/1 PCE	700.00
				Net amount	350.00/1 PCE	700.00
480	989803208211 CSN: Initial Implementation Consult	1	PCE	Net price	4,450.00/1 PCE	4,450.00
				Net amount	4,450.00/1 PCE	4,450.00
490	989803208251 CSN: On-Site Engagement (8 Hrs FSE)	1	PCE	Net price	1,950.00/1 PCE	1,950.00
				Net amount	1,950.00/1 PCE	1,950.00

Via ACH/EFT:
Payee: Philips Healthcare
Bank: Bank of America
Account#: 3750202223
ABA#: 1110-0001-2

Via Check:
Philips Healthcare
P.O. Box 100355
Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM		Price/Unit	Amount
						Currency: USD
500	989803208261 CSN: Virtual Consult/Validate	1	PCE	Net price	3,350.00/1 PCE	3,350.00
				Net amount	3,350.00/1 PCE	3,350.00
510	989803208271 CSN: Labort Setup-Config-Inst	1	PCE	Net price	1,200.00/1 PCE	1,200.00
				Net amount	1,200.00/1 PCE	1,200.00
520	989803208321 CSN: New 1.4, 802.11, or >128 Beds	1	PCE	Net price	26,250.00/1 PCE	26,250.00
				Net amount	26,250.00/1 PCE	26,250.00
530	989803208701 Project Management: Integrated	148	PCE	Net price	300.00/1 PCE	44,400.00
				Net amount	300.00/1 PCE	44,400.00
540	989805710138 Labor: Standard Time	191	PCE	Net price	275.00/1 PCE	52,525.00
				Net amount	275.00/1 PCE	52,525.00
550	989805710140 Labor: Over Time	8	PCE	Net price	410.00/1 PCE	3,280.00
				Net amount	410.00/1 PCE	3,280.00
560	989805710168 Labor: Upgrade Bedside	87	PCE	Net price	450.00/1 PCE	39,150.00
				Net amount	450.00/1 PCE	39,150.00
570	989805710169 Labor: Upgrade Server Hardware Only	3	PCE	Net price	1,645.00/1 PCE	4,935.00
				Net amount	1,645.00/1 PCE	4,935.00
580	989805710173 Labor: Upgrade PC, Hardware and Software	16	PCE	Net price	1,082.00/1 PCE	17,312.00
				Net amount	1,082.00/1 PCE	17,312.00
590	989805700057 UPS: Rack, PC, 6 Outlets, 500VA, 1U	6	PCE	Net price	276.00/1 PCE	1,656.00
				Net amount	276.00/1 PCE	1,656.00
600	989805710041 UPS: Mounting Brackets for 500VA	6	PCE	Net price	179.00/1 PCE	1,074.00
				Net amount	179.00/1 PCE	1,074.00
610	989805710074 Cable: Patch Cable, Copper, up to 10'	170	PCE	Net price	36.00/1 PCE	6,120.00
				Net amount	36.00/1 PCE	6,120.00

Via ACH/EFT:
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Via Check:
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Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

Item	Product and Description	Quantity	UoM		Price/Unit	Amount
						Currency: USD
620	989803209011 802.11 Passive Survey: Additional sq ft	258,176	PCE	Net price	0.18/1 PCE	46,471.68
				Net amount	0.18/1 PCE	46,471.68
630	989803209001 802.11 Passive Survey: 1 to 18,625 sq ft	1	PCE	Net price	3,317.00/1 PCE	3,317.00
				Net amount	3,317.00/1 PCE	3,317.00
640	989805710251 Mount: CPU, Underdesk, 360 Degree Swivel	1	PCE	Net price	303.00/1 PCE	303.00
				Net amount	303.00/1 PCE	303.00
650	989803216591 Clin Config & Imp: 1 Standard Shift	8	PCE	Net price	2,150.00/1 PCE	17,200.00
				Net amount	2,150.00/1 PCE	17,200.00
660	989803216601 Clin Config & Imp: 1 Overtime Shift	4	PCE	Net price	2,800.00/1 PCE	11,200.00
				Net amount	2,800.00/1 PCE	11,200.00
Total net amount						1,369,066.07

Philips Healthcare is pleased to inform you that financing of its products and services is available to qualified applicants. To obtain more information contact Philips Medical Capital @ 866-513-4PMC.

Contract information for: HEALTHTRUST ACCESS PLUS INVIVO ENHANCED

Prices quoted are subject to and reflect applicable discounts per the terms and conditions of the following contract:
Contract #GTLHT00030 Expiration: 03/31/2024

MD Buyline -- Please be aware that MD Buyline utilizes Philips current list prices as the basis of calculation for discount comparisons. If you are a customer utilizing a GPO contract with fixed pricing, it is likely that the list price on this quotation is based on an older published price list, and may be considerably less than the current list pricing that MD Buyline uses in its analysis. As such, the MD Buyline discount recommendation may be higher than the Philips offering for your particular purchase. If you have a question, please ask your Sales Representative for clarification. Should you have concerns or want additional information relative to how discount comparisons are calculated at MD Buyline, please call your analyst at MD Buyline.

All work is scheduled within normal working hours; Monday through Friday, 8 a.m. to 5 p.m. excluding Philips holidays. All pricing is based on travel zones 1-3. For travel zones beyond 1-3, consult your Philips sales rep for alternate pricing. It is the customer's responsibility to provide Philips with the access necessary to complete the quoted work in a continuous start to finish manner. Excessive delays and multiple visits will result in additional charges. All prices are based upon 'adequate access' to work areas that are free from obstruction. If it is determined, during the implementation that asbestos removal is required; Philips will suspend performance until the Customer remediates the asbestos. Philips will work with the customer's staff to reduce the downtime during the system transition.

Products are for USA end-use only. Taxes, if applicable, are not included unless noted but will be added to the invoice. The Purchase Order must reference the Quote Number and your Purchase Agreement. Please indicate your requested delivery date and your preference, if any, to accept and

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ABA#: 1110-0001-2

Via Check:
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P.O. Box 100355
Atlanta, GA 30384-0355





Formal Quotation

Document number: 2301269925

Date of issue: 07/11/2022

pay for partial shipments. If this quote includes Value-Added Services, they may be invoiced separately. Additional sold training must be completed within twelve months of delivery/installation. System cabling, if included, is specified at the standard grade unless noted otherwise.

This quote specifically excludes Licensing & Permit Fees, Prevailing Wage Compensation and Union Labor.

IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or a discount (including a rebate or other price reduction, they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as maybe required by state or federal law, including but not limited to 42 CFR1001.952(h).

If a Group Purchasing Organization Contract # is listed above, this Formal Quotation (Quotation) and any related accepted purchase order (PO) are subject to the terms and conditions of such Group Purchasing Organization Contract #.

This Quotation contains confidential and proprietary information of Philips Healthcare and is intended for use only by the customer whose name appears on this Quotation. It may not be disclosed to third parties without prior written consent of Philips Healthcare, unless required by law.

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Philips Healthcare
A division of Philips North America LLC
414 Union St, 2nd Floor
Nashville, TN 37219

Approved as to Form
KCHA Legal Services Department

Jamie A. Mason

Hospital Counsel

Via ACH/EFT:
Payee: Philips Healthcare
Bank: Bank of America
Account#: 3750202223
ABA#: 1110-0001-2

Via Check:
Philips Healthcare
P.O. Box 100355
Atlanta, GA 30384-0355





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

July 20, 2022

Subject: Proposed Attachment 1 to Agreement 180-99 with 3M Health Information Systems, Inc., an independent contractor, to incorporate pass-through third-party terms for the use of InterSystems' licensed software to support the physician coding software, reimbursement logic and encoder for integration with the electronic health record

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Attachment 1 with 3M Health Information Systems, Inc. to provide pass-through third-party terms for specialty coding and reimbursement software with no additional cost.

Encoders are software programs that help guide the coder through the various coding conventions and rules to arrive at a correct diagnosis, procedural, or service code. The encoder and APR/DRG grouping software is a vital piece of the revenue cycle. It aids in accuracy, compliance, coding productivity, and reimbursement functions. 3M also offers webinars designed to assist with continuing education for coders. Coding is required for claims to be submitted for payment.

360 Encompass provided by 3M has embedded third-party software from InterSystems. This software is called HeathShare and is an interface component inside 360 Encompass. InterSystems does not receive or have access to PHI and no additional license fees are owed to incorporate this software.

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, liability is limited to the cost of the agreement, and is governed by non-California laws and venue. Efforts were made to negotiate these terms 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 Attachment 1 with 3M Health Information Systems, Inc. to provide pass-through third-party terms for specialty coding and reimbursement software with no additional cost, for a term that is coterminous with the current agreement with 3M Health Information Systems, Inc. with a term expiration of August 1, 2023, and authorize the Chairman to sign.



3M Health Information Systems, Inc.
575 W. Murray Blvd.
Murray, Utah 84123

June 16, 2022

Kern County Hospital Authority
1700 Mt. Vernon Ave.
BAKERSFIELD CA, 93306

VIA email

Re: Third Party Terms and Conditions

To Whom It May Concern:

3M Health Information Systems, Inc. ("3M") and Kern County Hospital Authority ("Client") are parties to that Software License Agreement, agreement number 98-0670 ("Agreement"). Under Section 2 of the Agreement, Client agreed to required Third-Party Content Terms. 3M needs to update these Third-Party Content Terms with the attached flow downs. Upon acknowledgment by Client, this letter serves as notification that Attachment 1 to this letter is now incorporated by reference into the above referenced Agreement.

If there are any questions, please contact Jim Edwards 801-264-7558 or at jbedwards@mmm.com.

Sincerely,

John C. Mathison
HIS Operations

ACKNOWLEDGED BY Kern County Hospital Authority:

Russell Bigler
Chairman, Board of Governors

REVIEWED ONLY
NOT APPROVED AS TO FORM

By .
Legal Services Department

Site ID: 2930294
Agreement Number: 98-0670

ATTACHMENT 1

**THIRD-PARTY CONTENT REQUIRED TERMS
INTERSYSTEMS CORPORATION LICENSE AND SUPPORT TERMS**

1. These License and Support Terms are part of the License Agreement between InterSystems Corporation ("InterSystems") and the end user customer ("you," the "Customer" or the "End User"), who has signed a Master Software and Services Agreement with 3M Health Information Systems, Inc. (the "Partner"). The License Agreement shall not be binding until an order form (the "Order Form") has been fully executed between Partner and InterSystems.
2. As of the date the Order Form has been fully executed (Partner will execute such Order Form prior to implementation of Customer) (the "Effective Date"), InterSystems hereby grants to you a nontransferable and nonexclusive license (the "License") to use the InterSystems product(s) incorporated into the Partner solution internally within your organization in the conduct of your business, provided that all fees are paid by Partner to InterSystems. You may only use the Licensed Software to run the Partner's solution and to connect the Partner's solution to other applications or systems, but not for any other purpose. No License shall be granted upon the physical delivery of any software to you. For the avoidance of doubt, the "Licensed Software" shall not include any open source or third-party software that may be shipped with, installed with or used in conjunction with InterSystems' proprietary software.
3. You are acquiring the License via the Partner so the Partner will be responsible for paying all fees specified therein to InterSystems.
4. If your use of the Licensed Software is regulated, you agree not to use or implement the Licensed Software in any manner that is outside the scope of intended use or otherwise violates any prohibitions or conditions set forth in a Quality Agreement or otherwise communicated to you by InterSystems.
5. Your License is a subscription License. The term ("License Term") of a subscription License begins on the Effective Date and terminates automatically on the last day of the final period for which InterSystems has received the proper fee.
6. The Licensed Software may only be used on servers operated by you or on your behalf. You may not sublicense the Licensed Software or otherwise make it available to third parties except as explicitly provided herein.
7. Software Update and Technical Assistance ("Product Support") shall be provided in accordance with the standard product terms in effect on the date such Product Support is invoiced. You shall receive all Product Support from the Partner and not from InterSystems directly.
8. InterSystems hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with InterSystems' documentation relating thereto for one year from the Effective Date or the end of the License Term, whichever occurs first, and (ii) all Product Support shall be provided in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with InterSystems' documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. INTERSYSTEMS SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR PRODUCT SUPPORT. MOREOVER, THE LICENSED SOFTWARE IS NOT A SUBSTITUTE FOR THE SKILL, KNOWLEDGE AND EXPERIENCE OF THE INDIVIDUALS WHO MAY USE THE LICENSED SOFTWARE. Your exclusive remedy for a breach of the above warranties shall be for InterSystems to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Product Support, as applicable. The limited warranty provided in (i) above does not include Product Support and are not a substitute for Product Support. You must direct any warranty claim to the Partner and the Partner will send the claim directly to InterSystems.
9. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with InterSystems' documentation and instructions, InterSystems shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at InterSystems' sole discretion.
10. InterSystems' liability to you shall in no event exceed the portion of the fee received by InterSystems in respect of the specific Licensed Software or Product Support on account of which such liability arose. In no event shall InterSystems be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
11. Either party may terminate the License Agreement with 30 days advance written notice upon the other party's breach if the breach is not cured during that period. InterSystems will consult the Partner before terminating the License Agreement. The Partner shall be liable for all fees relating to Licensed Software or Product Support provided prior to termination, and Sections 10, 11, 12, 13, and 14 hereof shall survive termination or expiration of the License Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of the License Agreement.
12. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) with the exception of the Partner for the purposes of fulfilling your obligations under your agreement with Partner, disclose to others the Licensed Software or any data or information relating to the Licensed Software. You agree to allow InterSystems or its representatives to audit your use of the Licensed Software upon 5 days advance notice by InterSystems. You agree to provide access to your premises and otherwise cooperate with InterSystems in such audit. Any such audit shall be conducted with the assistance from the Partner.
13. The parties are and shall be independent contractors to one another, and the License Agreement shall not create an agency, partnership or joint venture between the parties. Neither party nor its employees, agents or representatives shall be deemed to be an agent or employee of the other party and each party acknowledges that it is not authorized to bind or in any way commit the other party to any legal, financial or any other obligation.
14. This License Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA. The English version of the License Agreement shall control unless otherwise required by local law.

3M Health Information Systems, Inc.

575 W. Murray Blvd.

Murray, Utah 84123

15. You agree to comply with all applicable laws, including, but not limited to: U.S. export control or similar laws with respect to the distribution of the Licensed Software, Product Support and technical data; the US Foreign Corrupt Practices Act and any other anti-corruption laws; and applicable data protection laws. Without InterSystems' prior written consent, you may not allow the Licensed Software, Product Support or technical data to be exported to or used in a country or region where a license, permit or special permission is required. InterSystems may, but shall not be required to, apply for such license, permit or permission at your expense.
16. This document sets out all the terms (the "License Agreement") between you and InterSystems relating to your use of the Licensed Software and receipt of Product Support and supersedes any prior understandings between us as well as any purchase orders or similar documents that may be submitted to InterSystems. InterSystems shall have the right to transfer or assign the License Agreement without your consent or prior notice to you. You may not assign the License Agreement without InterSystems' prior written consent. The License Agreement may only be modified or amended by a writing signed by both parties.



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

July 20, 2022

Subject: Proposed Quote 2003222207515-07 with Presidio Networked Solutions Group, LLC for the purchase of network infrastructure equipment to support core network services under the terms and conditions of the Master Services Agreement (053-2018)

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Quote with Presidio Networked Solutions Group, LLC (Presidio) for network switches to replace the end of life or in the support of the network switches purchased in 2017. These network switches support all of Kern Medical’s core systems including, but not limited to, the Cerner Electronic Health Records system, the PeopleSoft purchasing system, wireless access, and printing.

The Purchase Price for the CISCO MERAKI Network Switches is \$1,963,371.00 plus tax and fees.

Solution Description	One Time Fee	Term	Estimated Taxes and Fees	Total
Meraki Enterprise Agreement (licenses) and Meraki 48GE L3 POE + Switches	\$1,963,371	60 months	\$196,337	\$2,159,708

Therefore, it is recommended that your Board approve Quote 2003222207515-07 with Presidio Networked Solutions Group, LLC, for a term of sixty (60) months effective 07/25/2022, with an estimated total cost of \$2,159,708, and authorize the Chairman to sign.

TO: Kern Medical Center
 Craig Witmer
 1700 Mt Vernon Ave
 Bakersfield, CA 93306-4018
 craig.witmer@kernmedical.com
 (p) 661-645-9692
 (f) (661) 636-4130

FROM: Presidio Networked Solutions Group, LLC
 Larry Porush
 5000 Hopyard Rd
 Suite 188
 Pleasanton, CA 94588
 lporush@presidio.com
 (p) +1.818.936.9824

Customer#: KERNM001
Account Manager: Larry Porush
Inside Sales Rep: Timothy Kidd
Title: Meraki EA

Contract Vehicle: Usage-Based Services

#	Part #	Description	Unit Price	Qty	Ext Price
EA					
EA3-M		Initial Term: 60 months	Billing Model: Prepaid		
		Auto-Renewal Term: Do Not Renew	Requested Start Date: 07/25/2022		
1	EA3-M	Cisco EA 3.0 BUNDLE	\$0.00	1	\$0.00
2	E3-N-MRNI	Meraki - Network Infrastructure	\$0.00	1	\$0.00
Recurring Charges					
3	E3N-MI-L	Meraki MI-L Enterprise Agreement	\$125.00	1 Licenses for 60 months	\$7,500.00
4	E3N-MI-XL	Meraki MI-XL Enterprise Agreement	\$250.00	4 Licenses for 60 months	\$60,000.00
5	E3N-MR-ENT	Meraki MR Enterprise Agreement	\$4.42	345 Licenses for 60 months	\$91,494.00
6	E3N-MS120-8LP	Meraki MS120-8LP Enterprise Agreement	\$1.48	1 Licenses for 60 months	\$88.80
7	E3N-MS250-48FP	Meraki MS250-48FP Enterprise Agreement	\$17.36	14 Licenses for 60 months	\$14,582.40
8	E3N-MS390-48A	Meraki MS390-48 ADV Enterprise Agreement	\$72.83	204 Licenses for 60 months	\$891,439.20
9	E3N-MT	Meraki MT Enterprise Agreement	\$3.75	19 Licenses for 60 months	\$4,275.00
10	E3N-MX84-SEC	Meraki MX84 SEC Enterprise Agreement	\$55.00	3 Licenses for 60 months	\$9,900.00
11	E3N-MX250-SEC	Meraki MX250 SEC Enterprise Agreement	\$275.00	3 Licenses for 60 months	\$49,500.00
12	E3N-MX450-SEC	Meraki MX450 SEC Enterprise Agreement	\$550.00	4 Licenses for 60 months	\$132,000.00
13	E3N-MX68CW-SEC	Meraki MX68CW SEC Enterprise Agreement	\$28.88	3 Licenses for 60 months	\$5,198.40
14	E3N-MS120-8FP	Meraki MS120-8FP Enterprise Agreement	\$1.92	3 Licenses for 60 months	\$345.60
Total Recurring Charges:					\$1,266,323.40
Total:					\$1,266,323.40
15	PSS-EXCITE-ENAB	Fixed Fee Excite Enablement https://information.presidio.com/excite-enablement	\$13,000.00	1.0000	\$13,000.00



QUOTE:

2003222207515-07

DATE:

06/23/2022

PAGE:

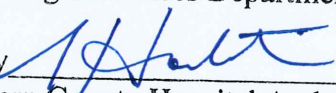
2 of 3

16	Discount-ELA	Discount-ELA	\$-276,000.00	1	(\$276,000.00)
			Total (EA):		\$1,003,323.40
Hardware					
17	MS390-48P-HW	Meraki MS390 48GE L3 POE+ Switch	\$5,042.64	190	\$958,101.60
18	MR36H-HW	Meraki MR36H Wi-Fi 6 Cloud Managed AP	\$397.45	50	\$19,872.50
19	MS120-8FP-HW	Meraki MS120-8FP 1G L2 Cloud Managed 8x GigE 124W PoE Switch	\$690.87	3	\$2,072.61
20	Set Aside Rebate	One-Time Discount - Cisco Fiscal Year End Incentive	\$-20,000.00	1	(\$20,000.00)
			Total (Hardware):		\$960,046.71
			Sub Total:		\$1,963,370.11
			Grand Total:		\$1,963,370.11

This quote is governed by the Master Services Agreement HA053-2018, dated August 15, 2018, as amended.

No signed quote. PO required.

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



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

July 20, 2022

Subject: Proposed retroactive Amendment No. 1 to Agreement 049-2019 with Cantu Management Group, Inc.

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 1 to Agreement 049-2019 for Professional Services with Cantu Management Group, Inc., for Chief Financial Officer and healthcare consulting and financial management services to the hospital authority and Kern Medical. Cantu Management has provided such services since February 9, 2015.

The current Agreement provides for a maximum payable of \$7,200,000 for the period September 1, 2019 through August 31, 2021. The proposed Amendment increases the maximum payable under the Agreement by \$13,043,284, from \$7,200,000 to \$20,243,284, to cover the term, which runs from September 1, 2019 through August 31, 2023. Cantu is paid a monthly management fee for key staff engaged or employed by Cantu. The management fee is calculated on a prorated basis as positions requested by the hospital authority are filled and/or vacated, based on the hourly rate for the position plus a percentage of costs (benefits and expenses) not to exceed 52%. The compensation paid to Cantu covers all salaries, costs and expenses to provide the services. There has been no increase in the management fee since the inception of the Agreement.

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to Agreement 049-2019 with Cantu Management Group, Inc., increasing the maximum payable by \$13,043,284, from \$7,200,000 to \$20,243,284, to cover the term, effective September 1, 2021, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Cantu Management Group, Inc.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Cantu Management Group, Inc., a California corporation (“Contractor”), with its principal place of business located at 11420 Privet Place, Bakersfield, California 93311.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #049-2019, dated August 21, 2019) (“Agreement”), for the period September 1, 2019 through August 31, 2023, whereby Contractor provides healthcare consulting and executive management services including supervision and management of the day-to-day financial operations of KMC; and

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

(c) The Agreement is amended effective September 1, 2021;

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

1. Section 6, Payment for Services, paragraph 6.4, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“6.4 Maximum Payable. The maximum payable under this Agreement shall not exceed \$20,243,284 over the four (4) year term of this Agreement.”

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

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


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

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

[Signatures follow on next page]

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

CANTU MANAGEMENT GROUP, INC.

By 
Andrew Cantu
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:


By _____
Scott Thygerson
Kern County Hospital Authority

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

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

CANTU MANAGEMENT GROUP, INC.

By 

Andrew Cantu
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Kern County Hospital Authority

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority



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

July 20, 2022

Subject: Kern County Hospital Authority Financial Report – May 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Average Daily Census of 139 for May is 1 more than the May budget of 138 and 27 less than the 166 average over the last three months
- Admissions of 1,583 for May are 778 more than the May budget of 805 and 1 more than the 1,582 average over the last three months
- Total Surgeries of 456 for May are 41 less than the May budget of 497 and 5 less than the 461 average over the last three months
- Clinic Visits of 15,735 for May are 1,093 more than the May budget of 14,642 and 333 less than the 16,068 average over the last three months. The total includes 231 COVID-19 vaccination visits
- The May 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 May 2022:

Patient Revenue:

Gross patient revenue has a favorable budget variance for May 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 10% compared to prior year.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month due to the recognition of \$7.1 million of Whole Person Care (WPC) funds received in May 2022 that pertain to prior fiscal years. On a year-to-date basis, in addition to the WPC funds received and recognized in May 2022, the budget variance is favorable due to the recognition of other indigent program revenues that pertain to prior fiscal years that were received and recognized in March 2022.

Other Operating Revenue:

Other operating revenue has a favorable budget variance primarily because of the receipt of a higher than average amount of Proposition 56 tobacco tax funding during the month of May. 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.

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. The true-up was completed in 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 \$52 million compared to a planned budget of \$18 million. Federal American Rescue Plan Act (ARPA) funding has been used to offset a portion of the costs but does not resolve the entire expense variance.

Medical Fees:

Medical fees are over budget for the month because of a slight under accrual for these expenses in prior month. 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 this year 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 the main reason for the unfavorable budget variance.

Purchased Services:

Purchased services are over budget for the month because of higher than average costs for patient care provided by out-of-network sources. 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 higher than average repairs and maintenance expenses and because of Hill-Rom hospital bed rentals. 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.

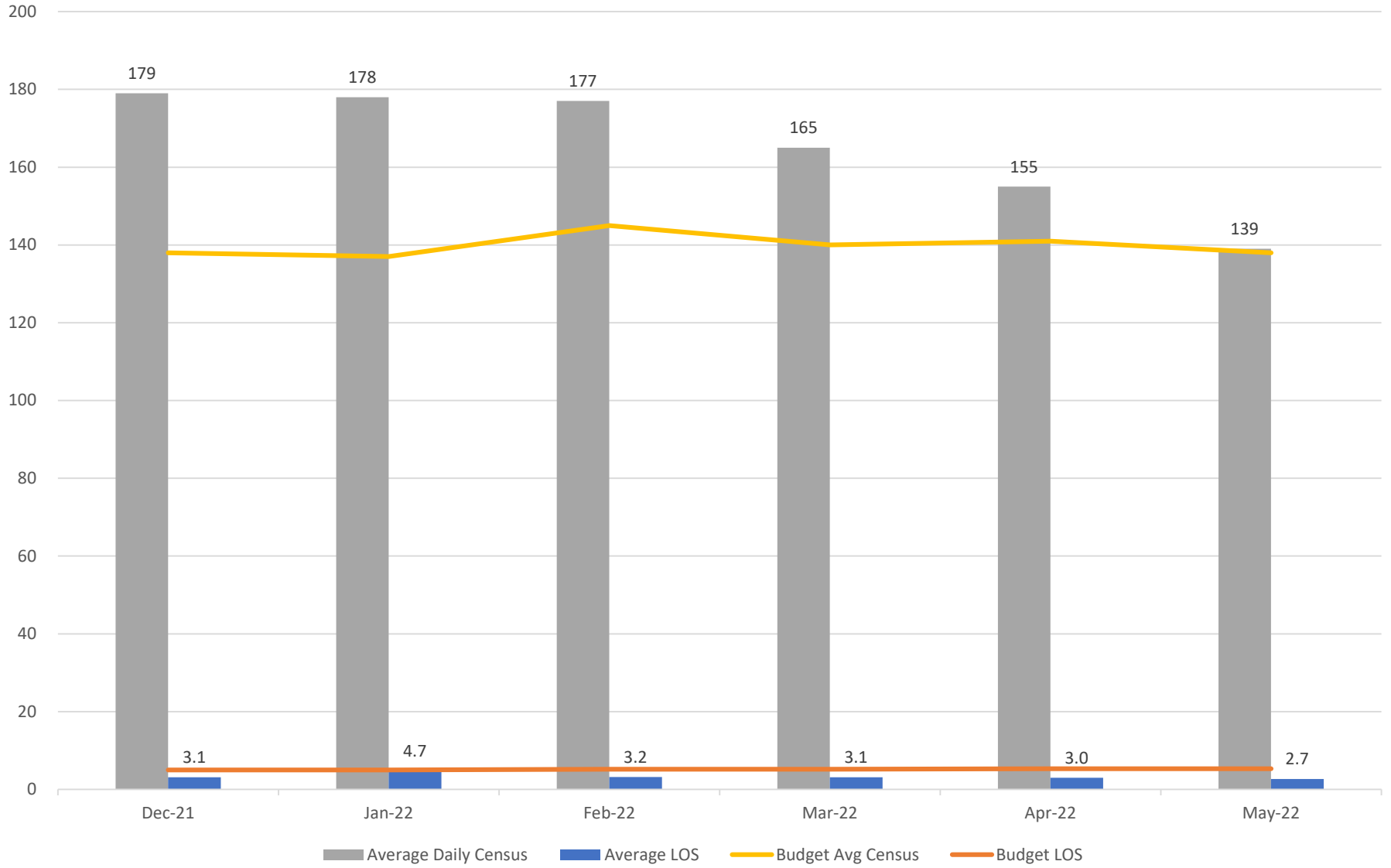
Depreciation and Amortization Expense:

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.

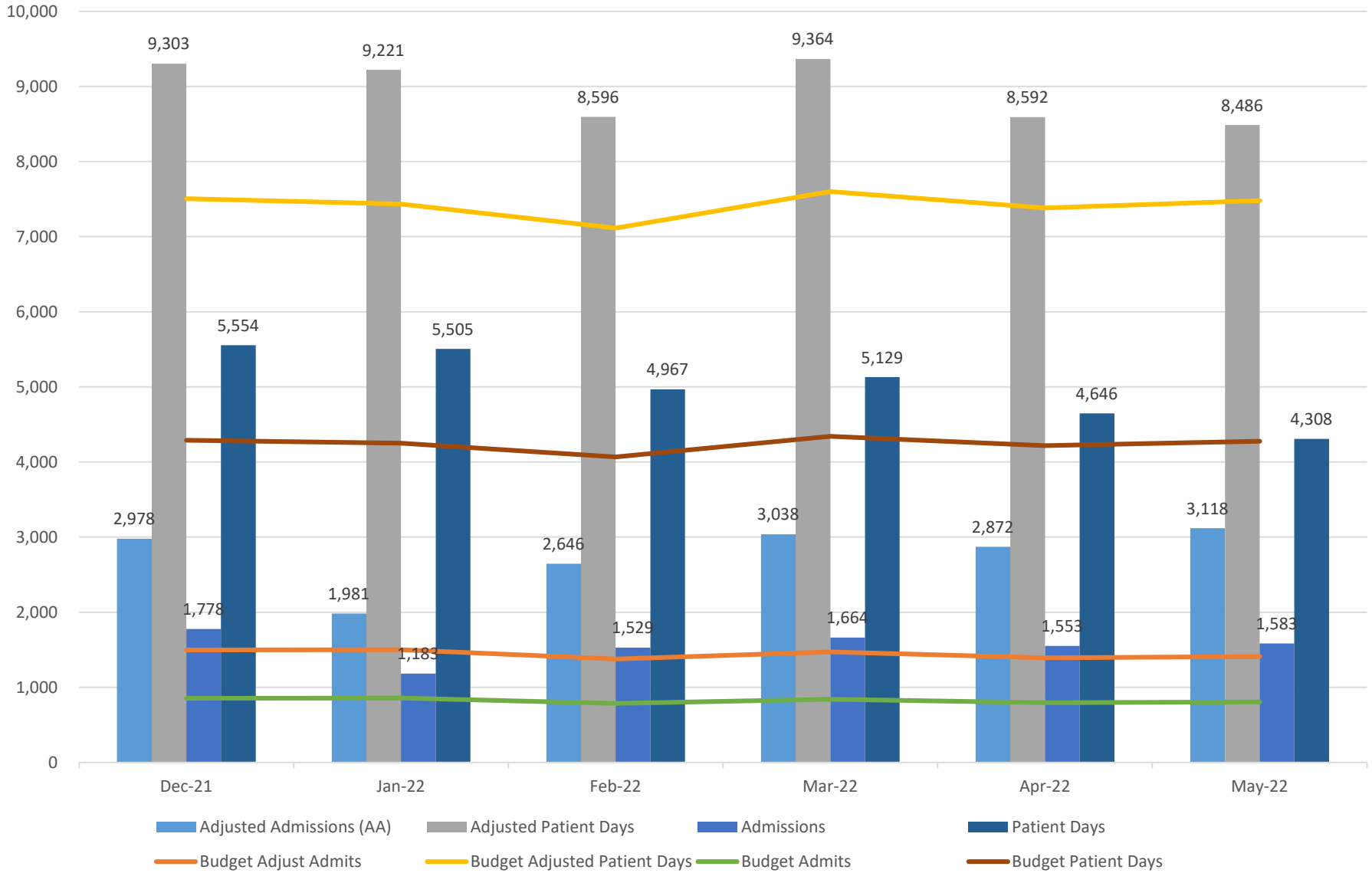


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – MAY 2022**

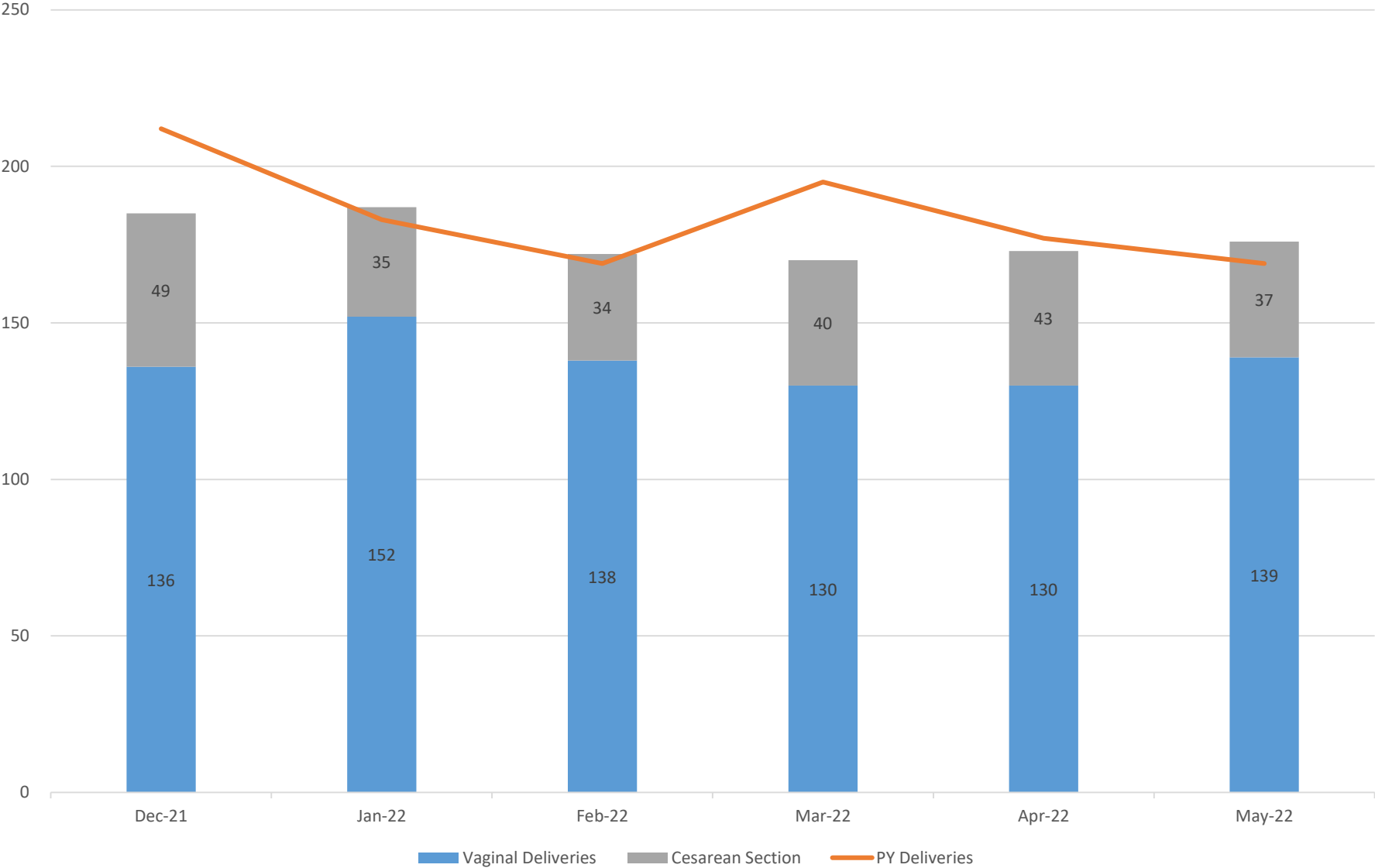
Census & ALOS



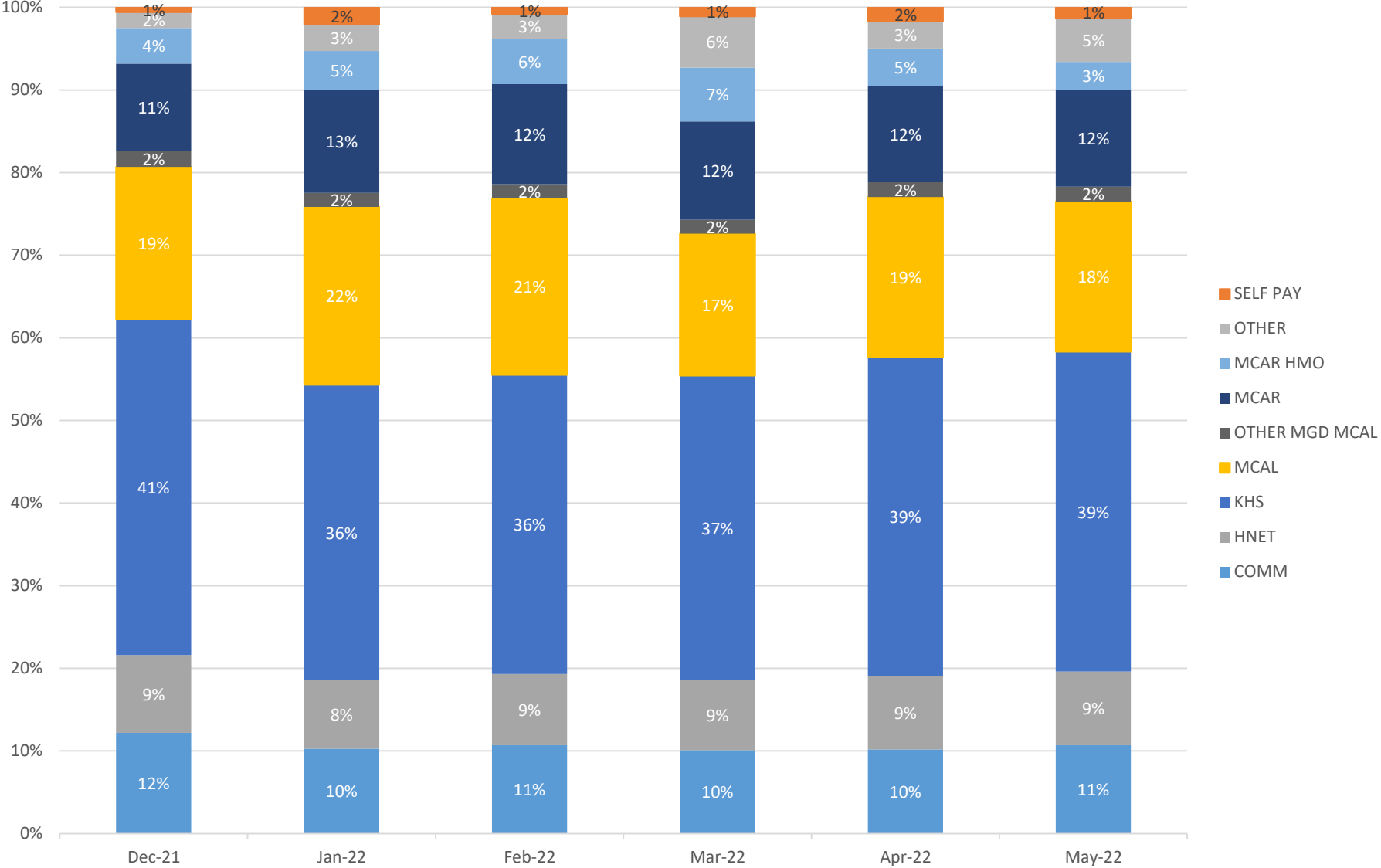
Hospital Volumes



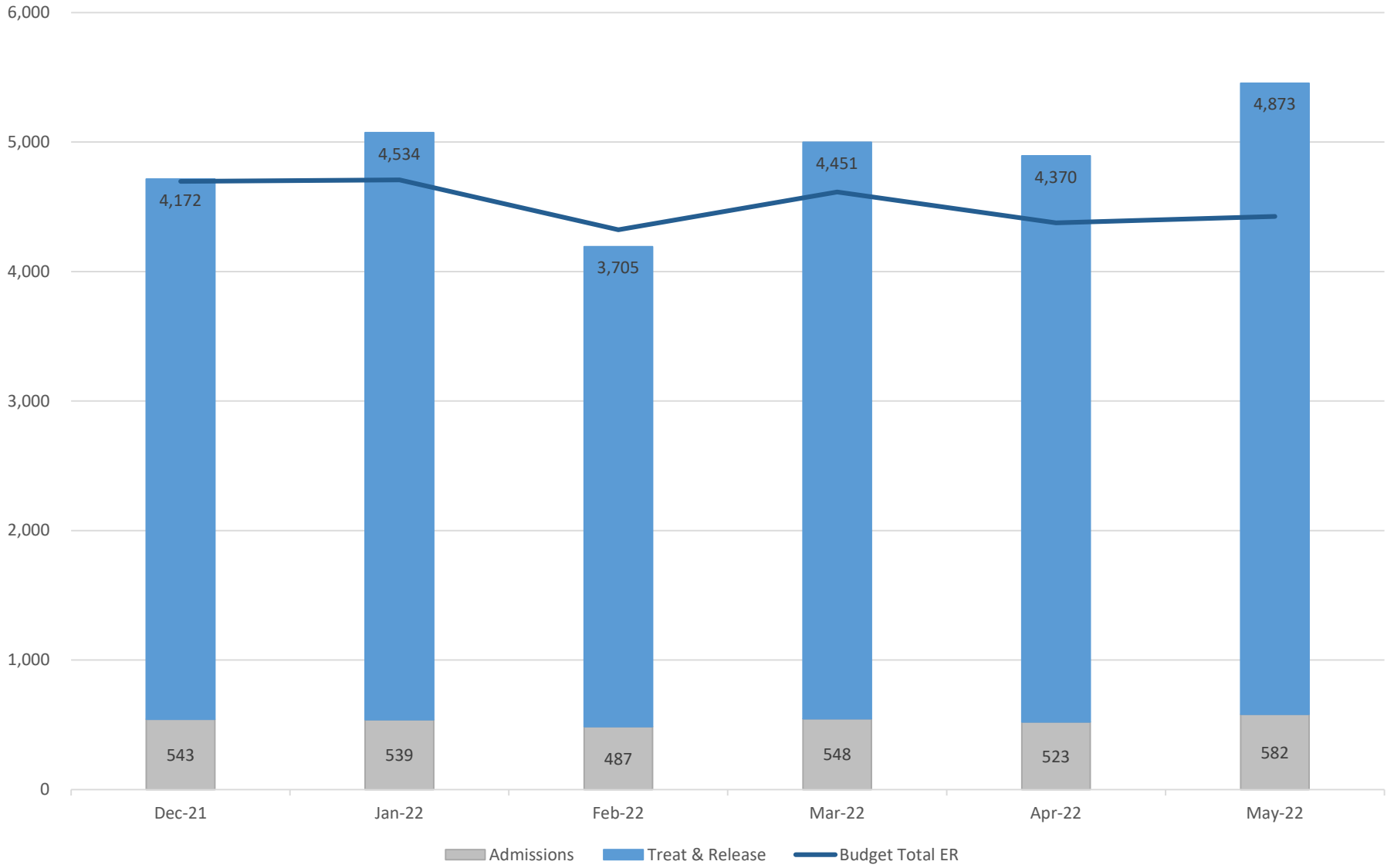
Deliveries



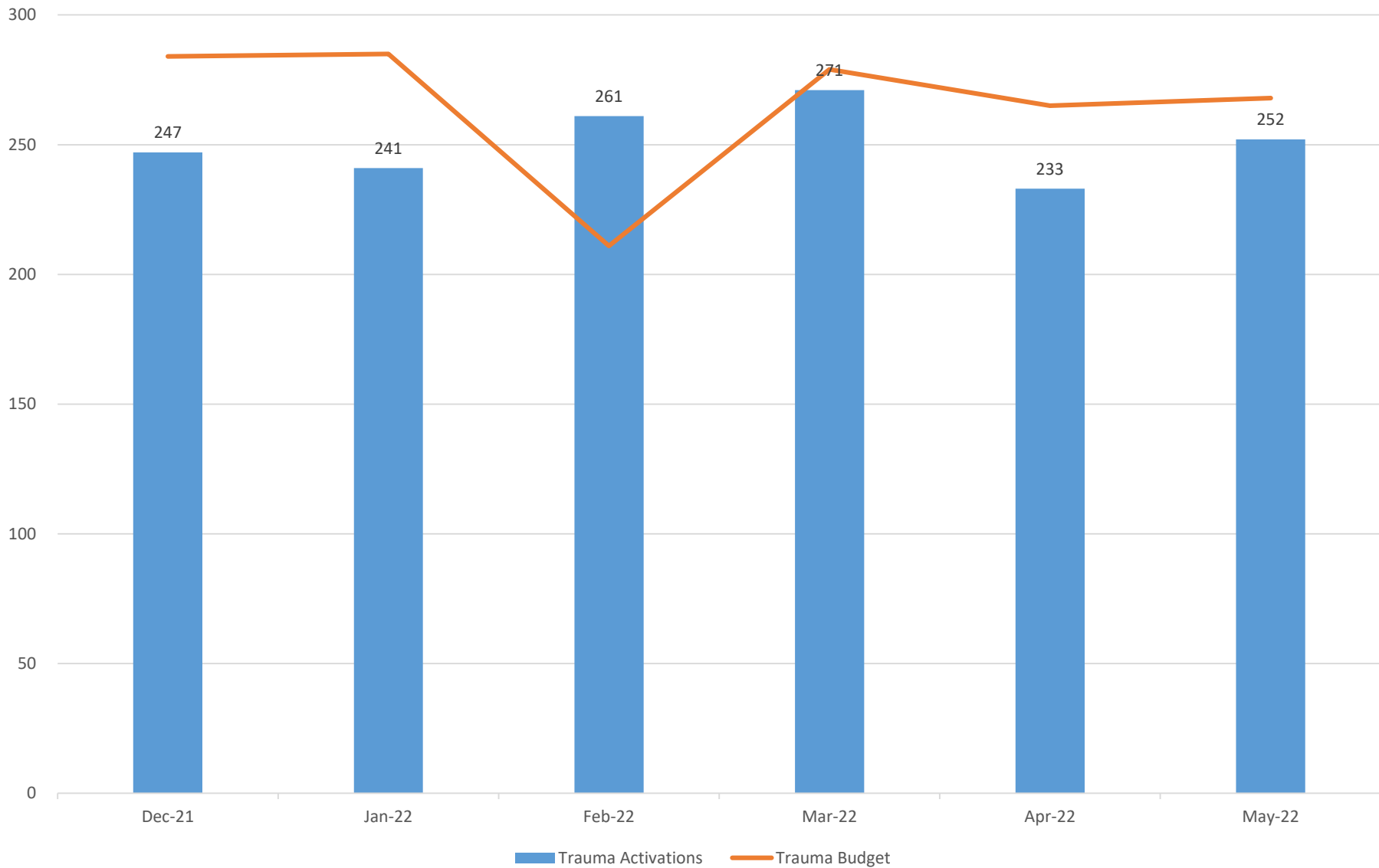
PAYER MIX



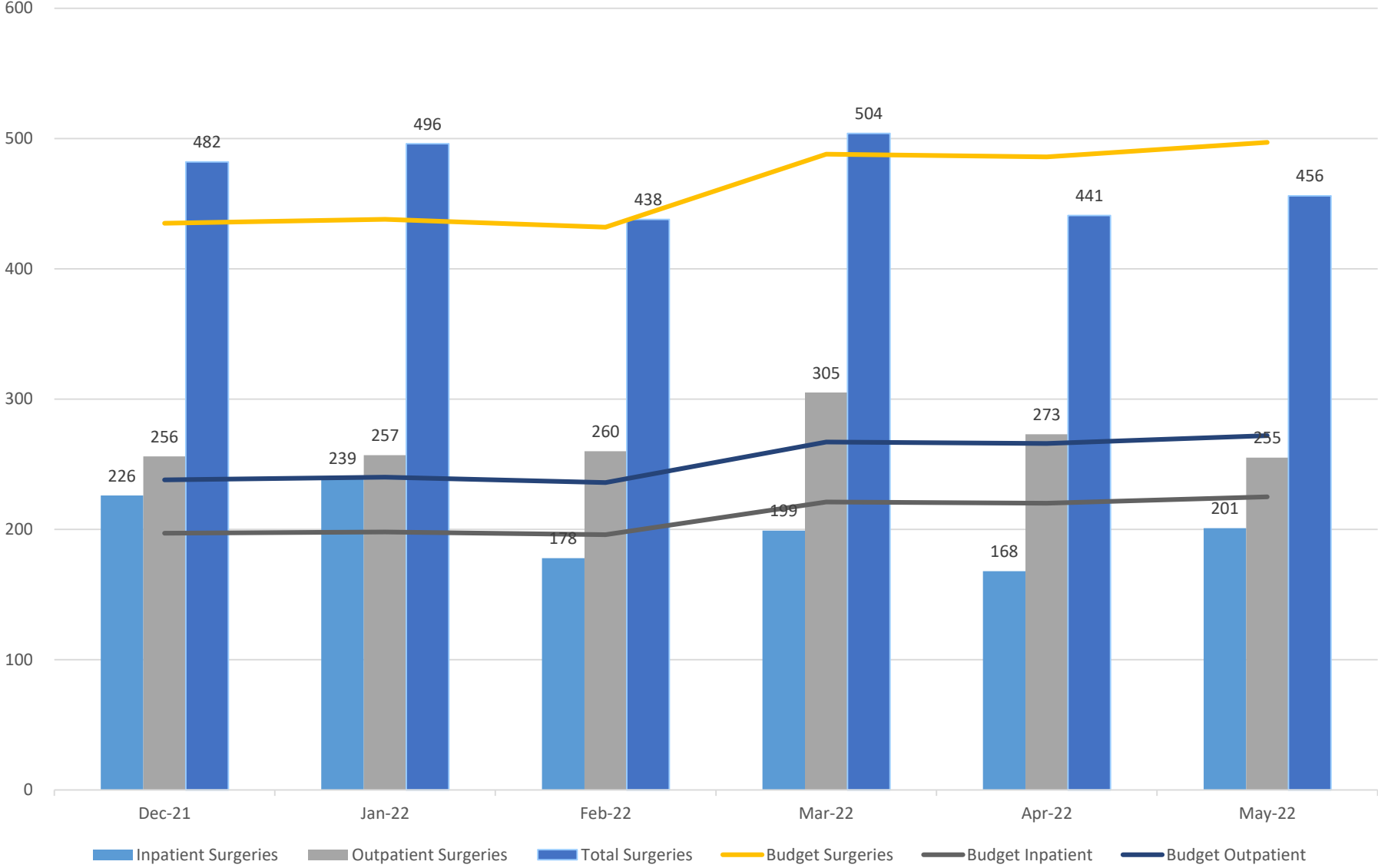
Emergency Room Volume



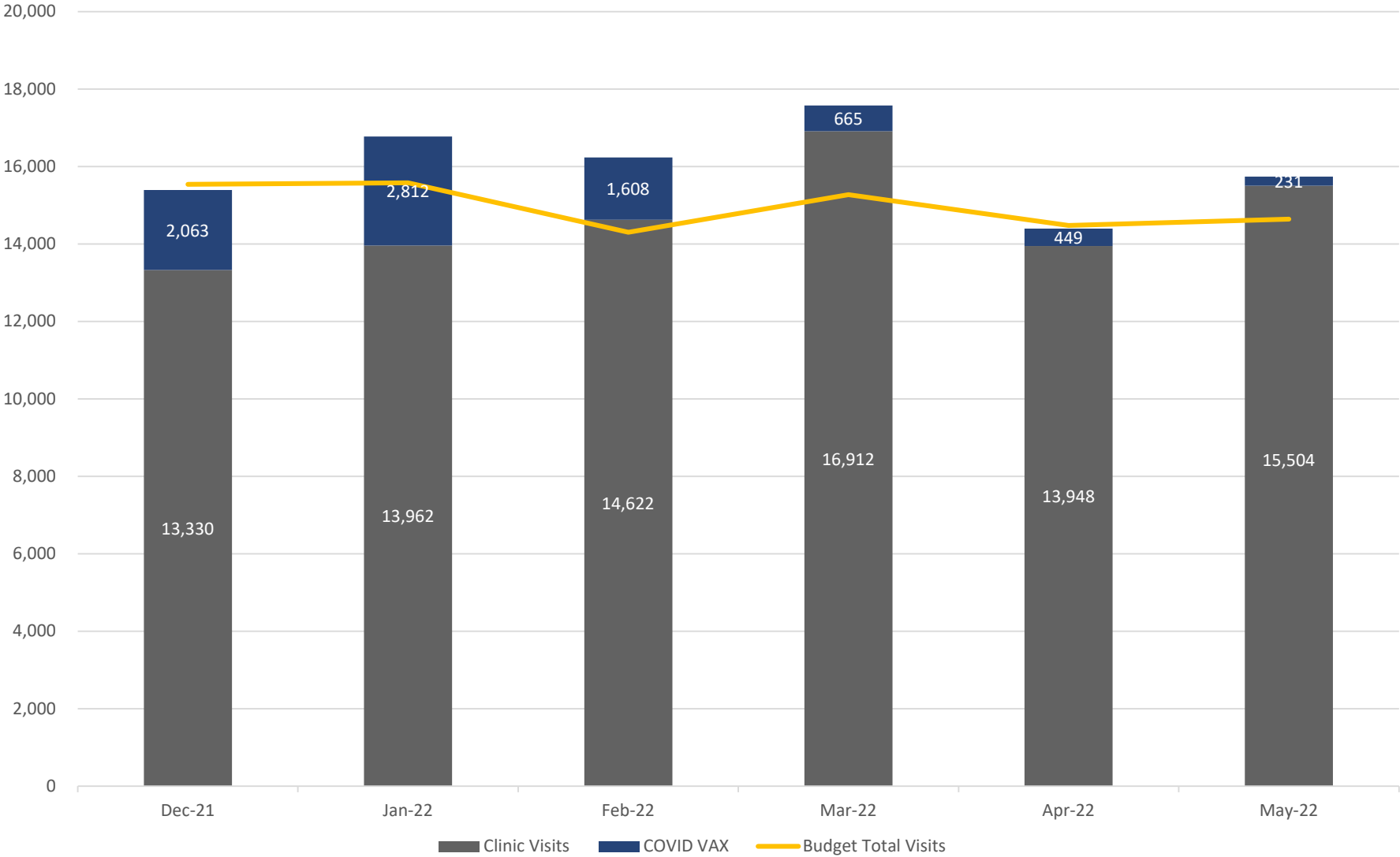
Trauma Activations



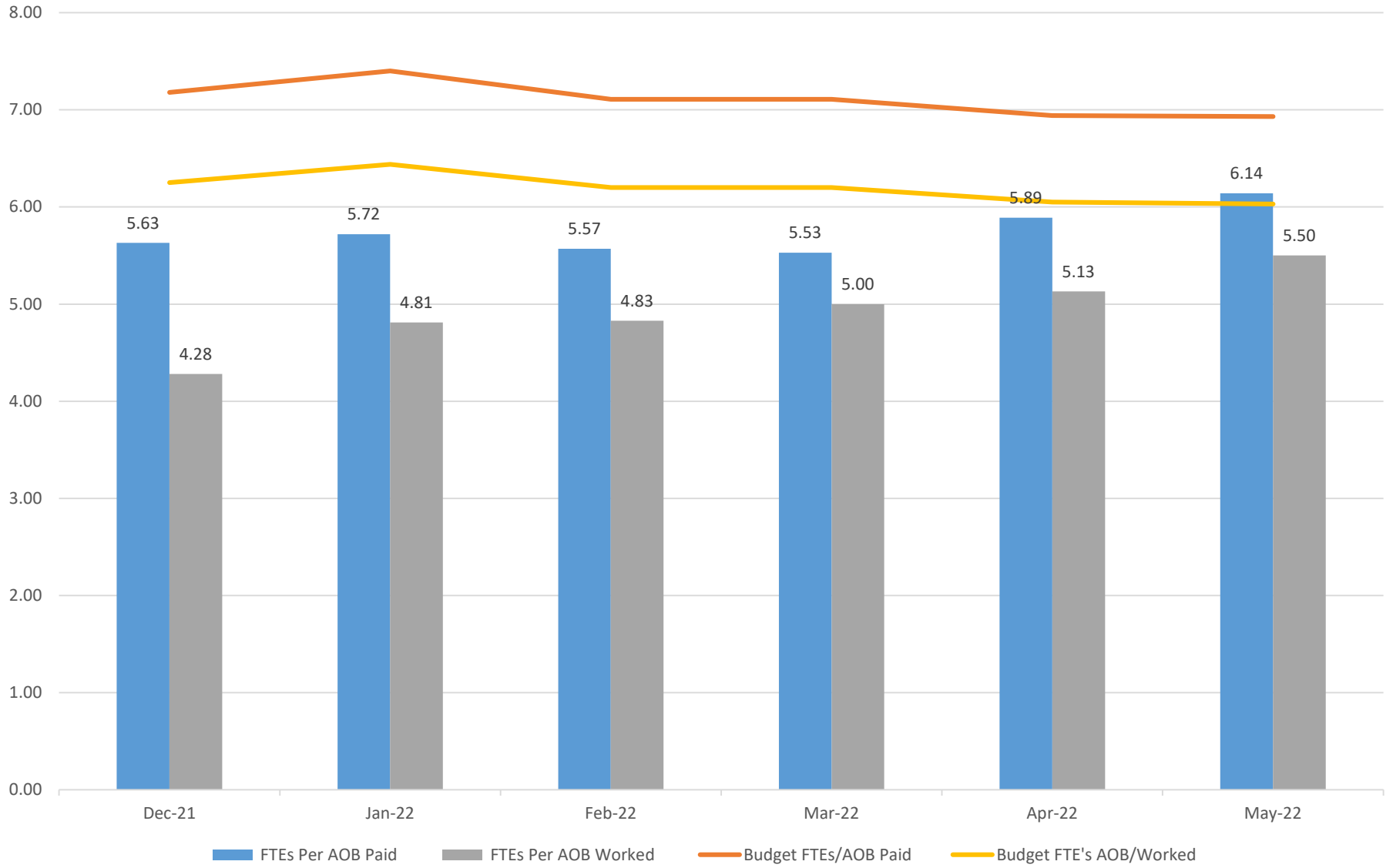
Surgical Volume



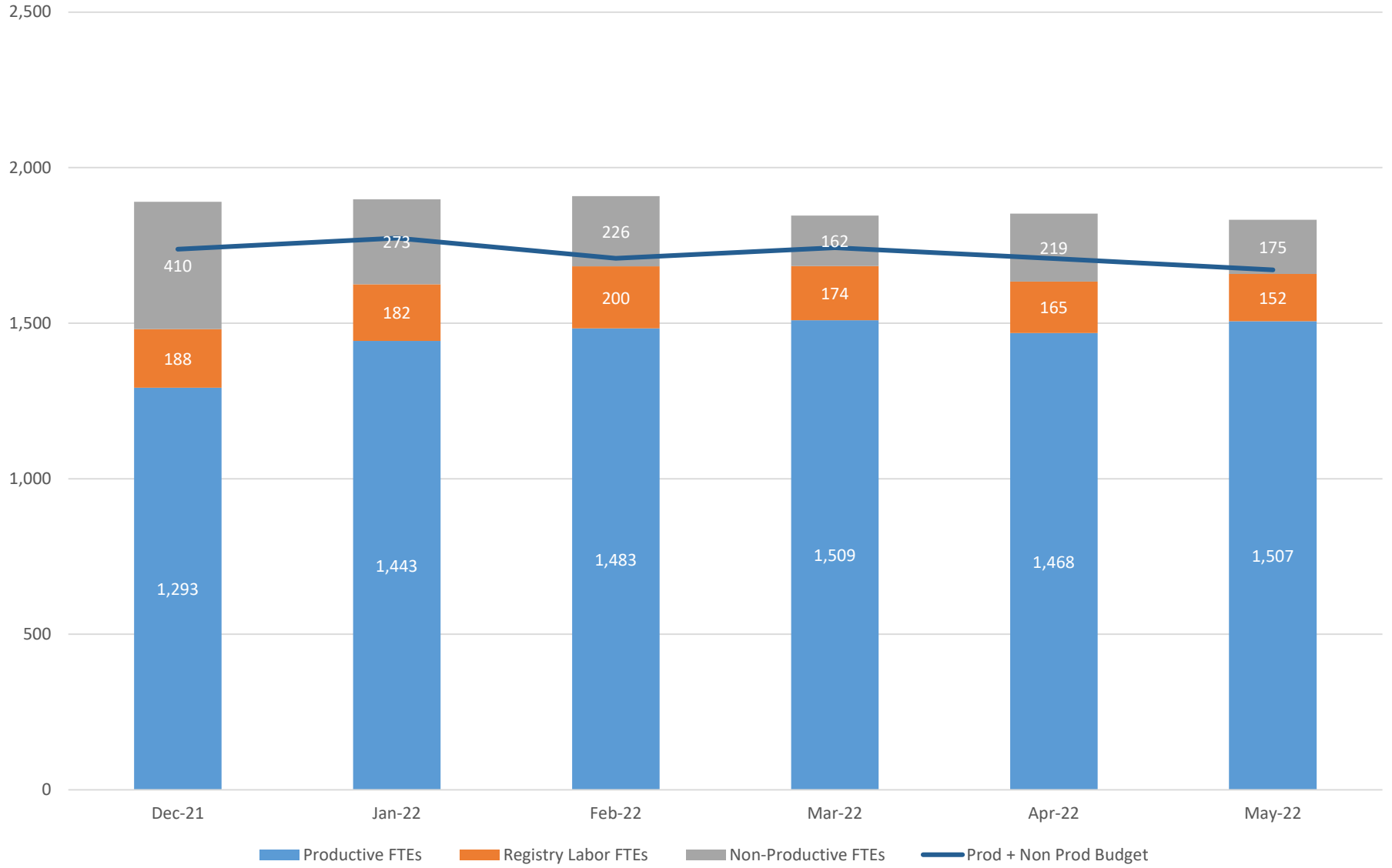
Clinic Visits



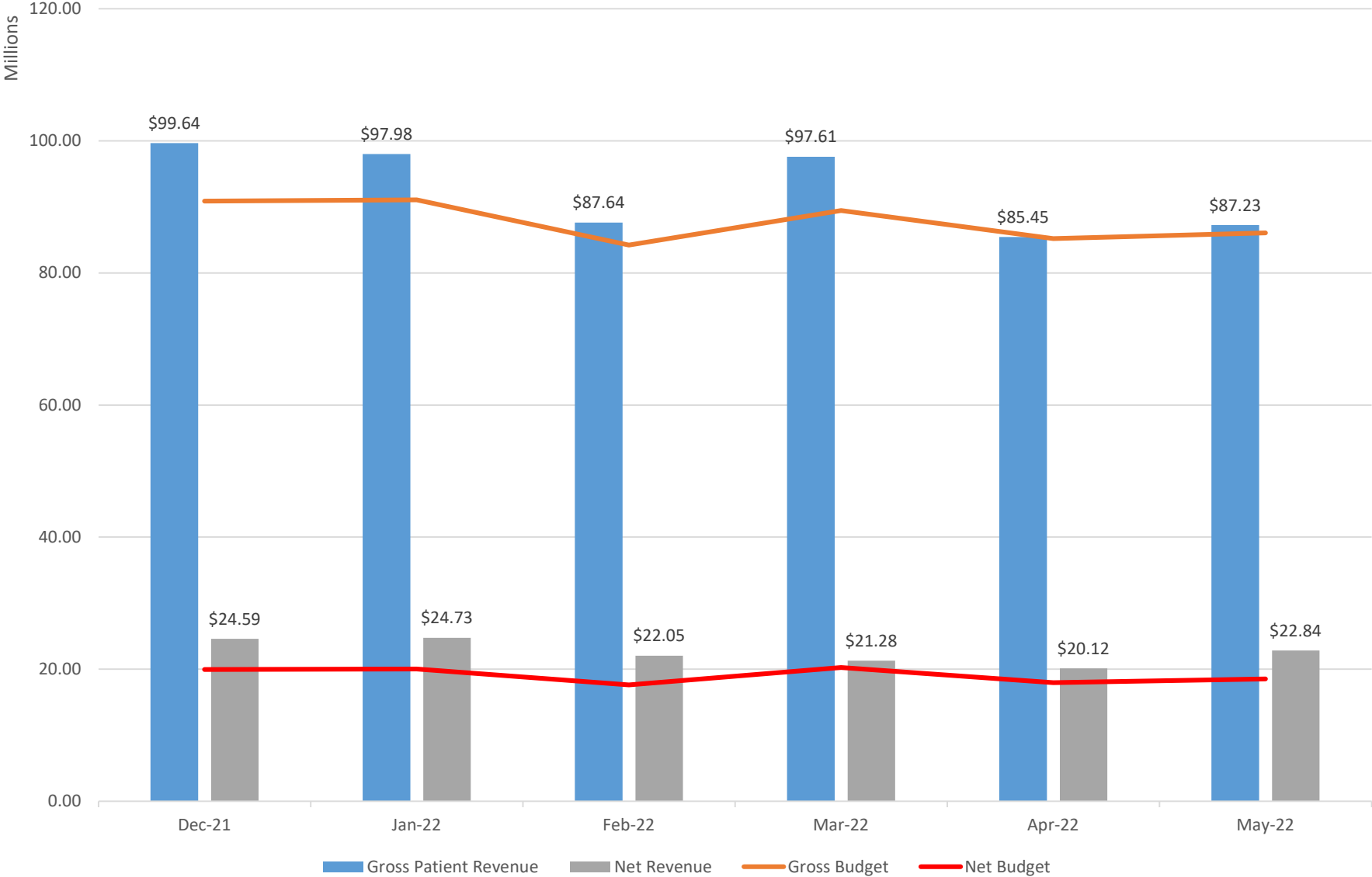
Labor Metrics



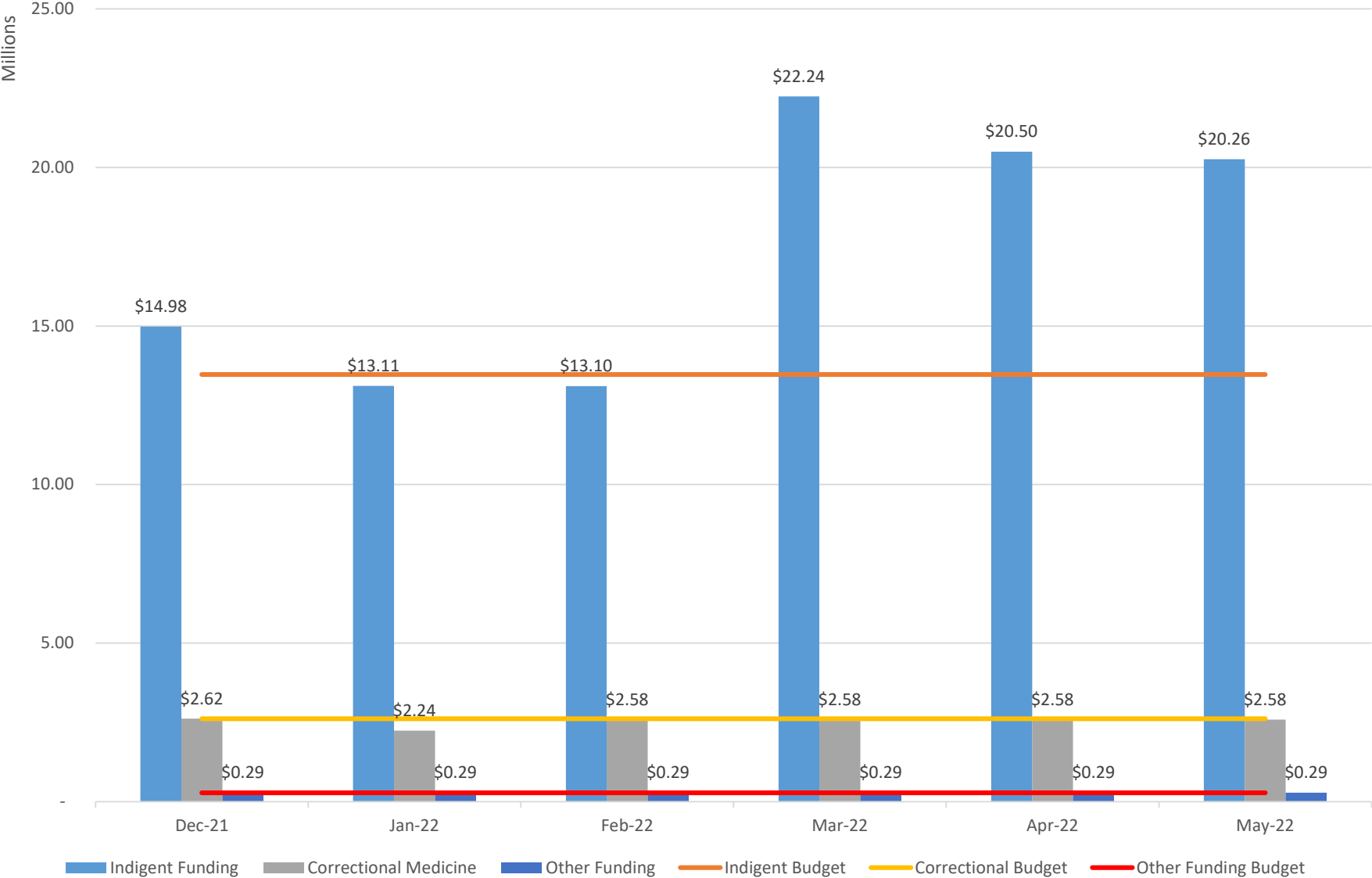
Productivity



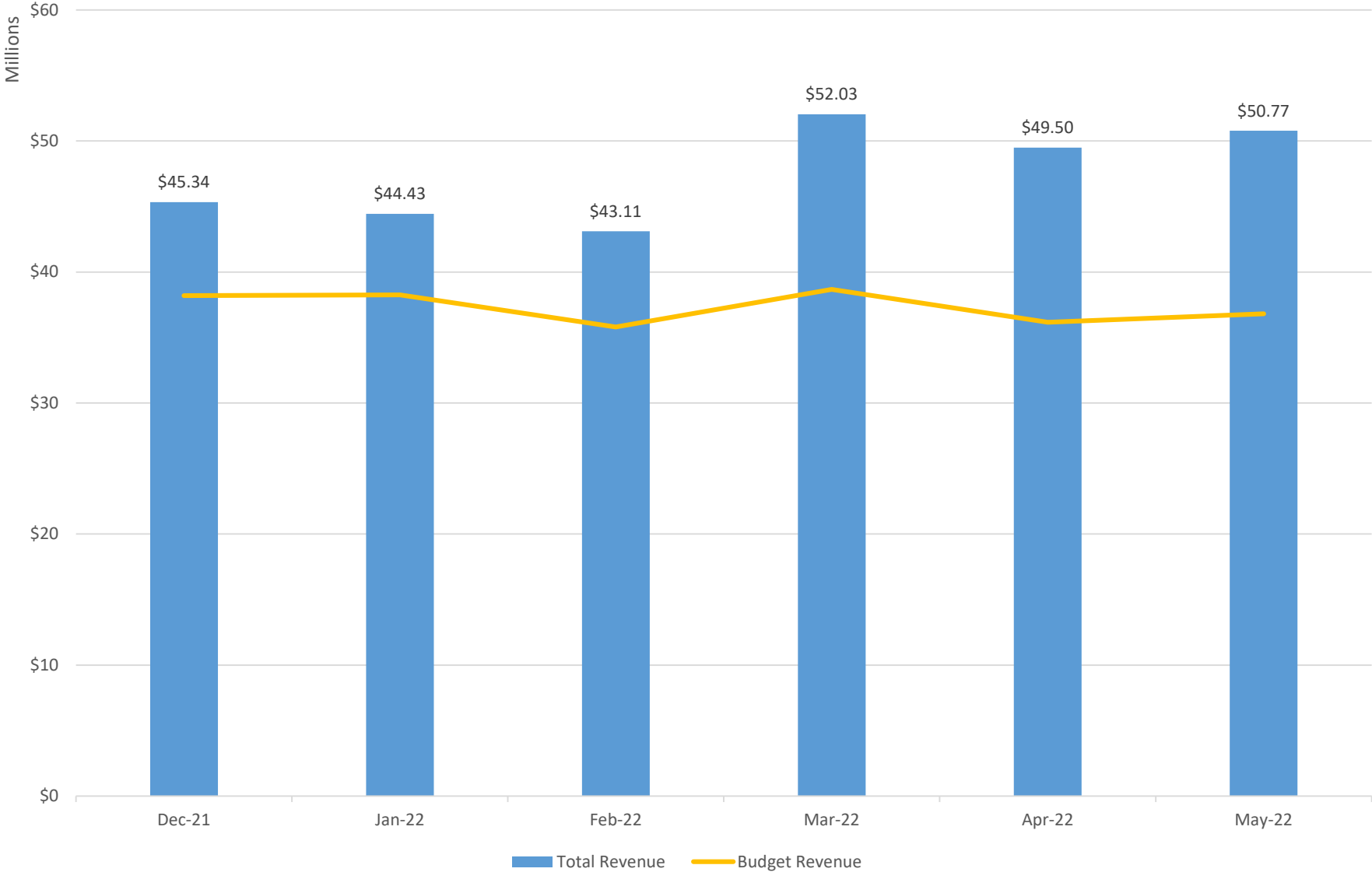
Patient Revenue



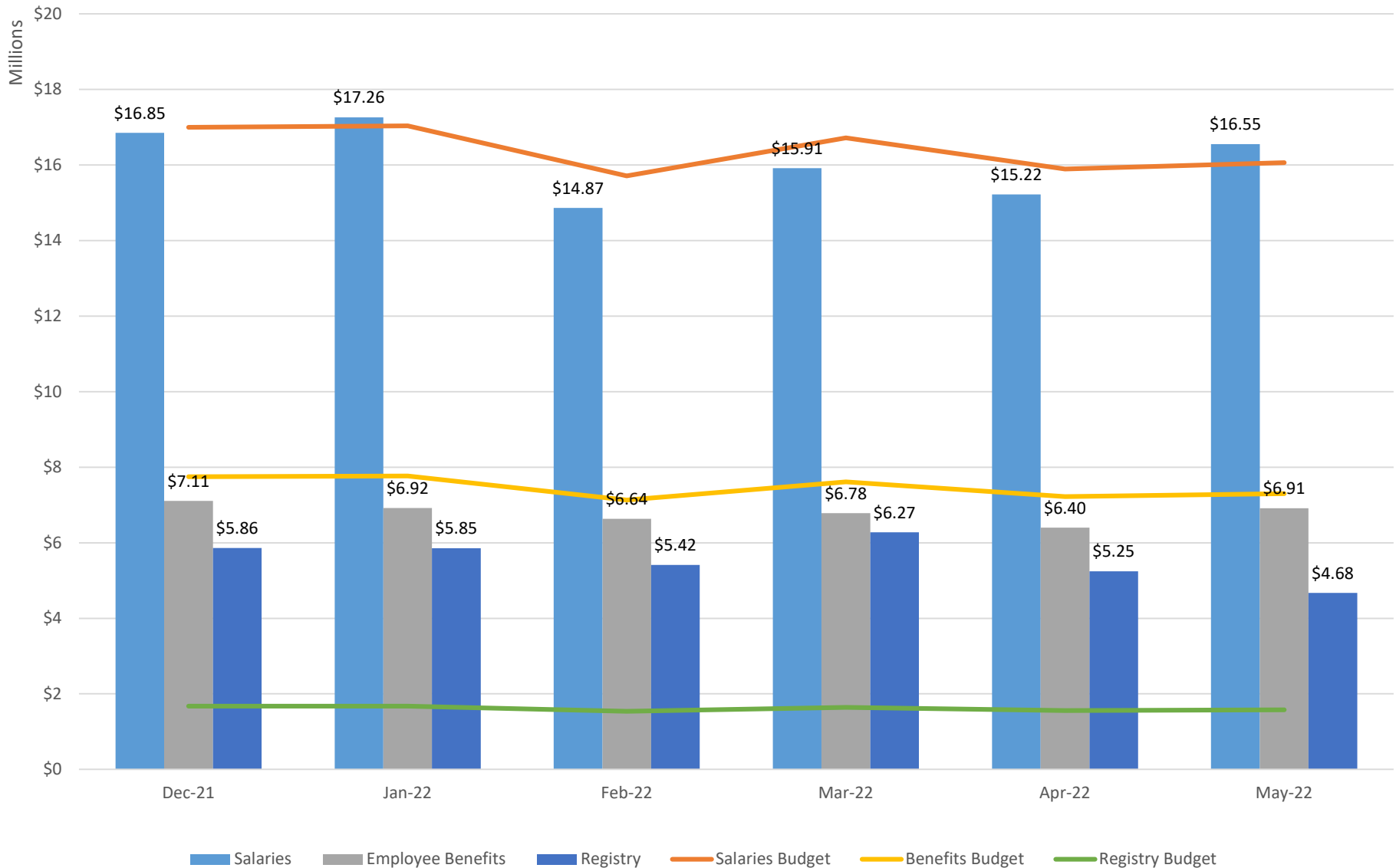
Indigent & Correctional Revenue



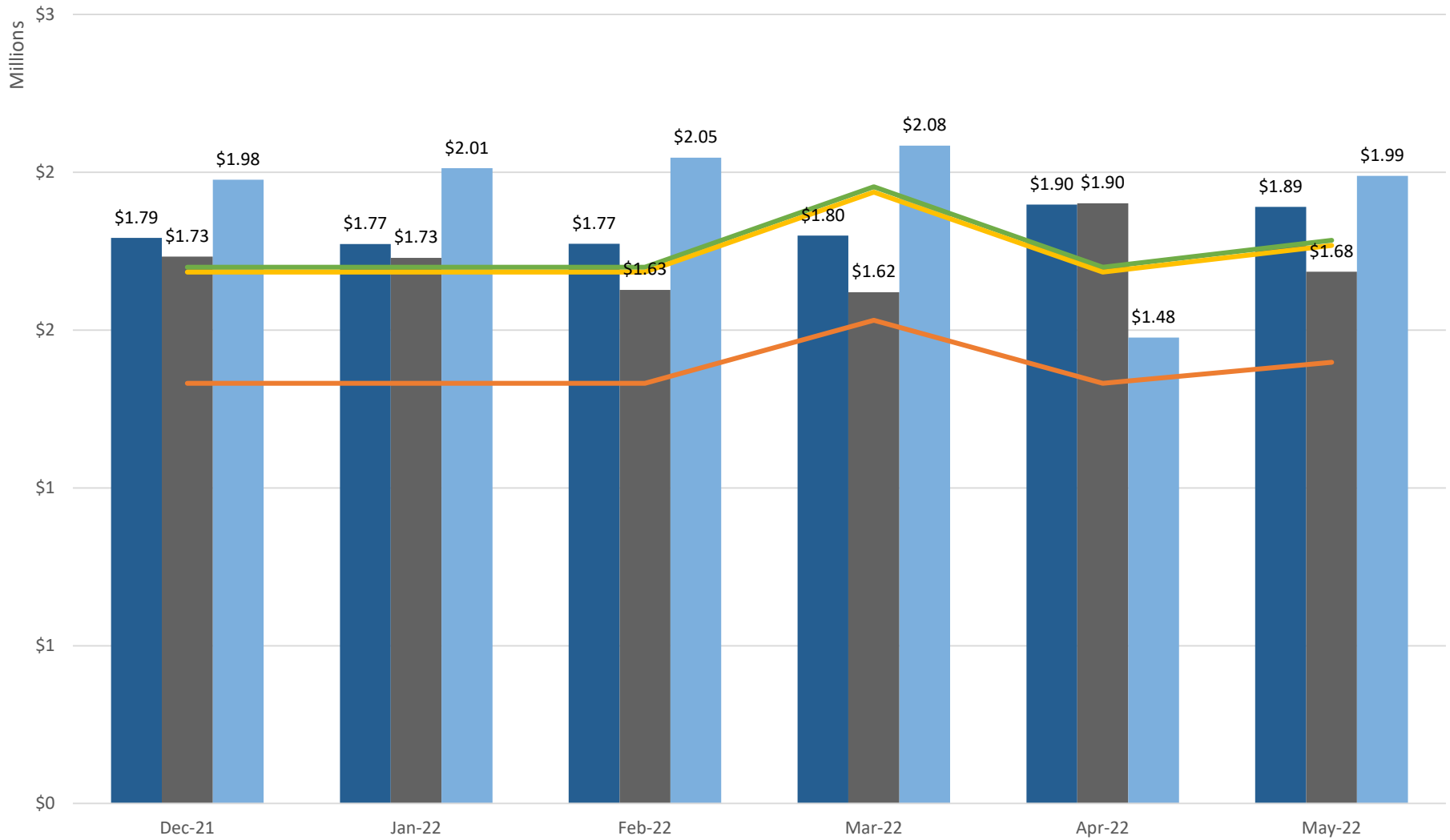
Total Revenue



Expenses

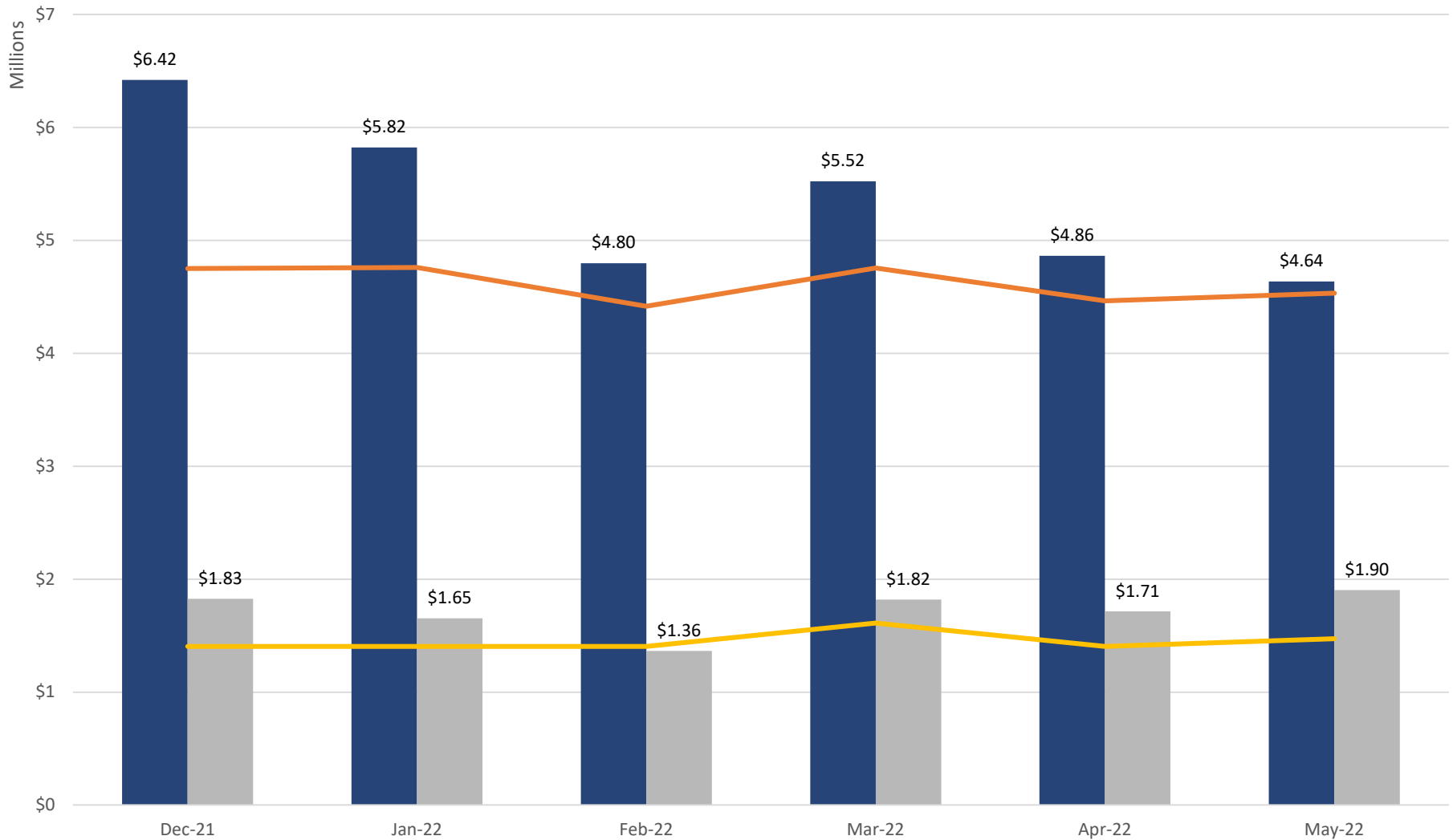


Expenses



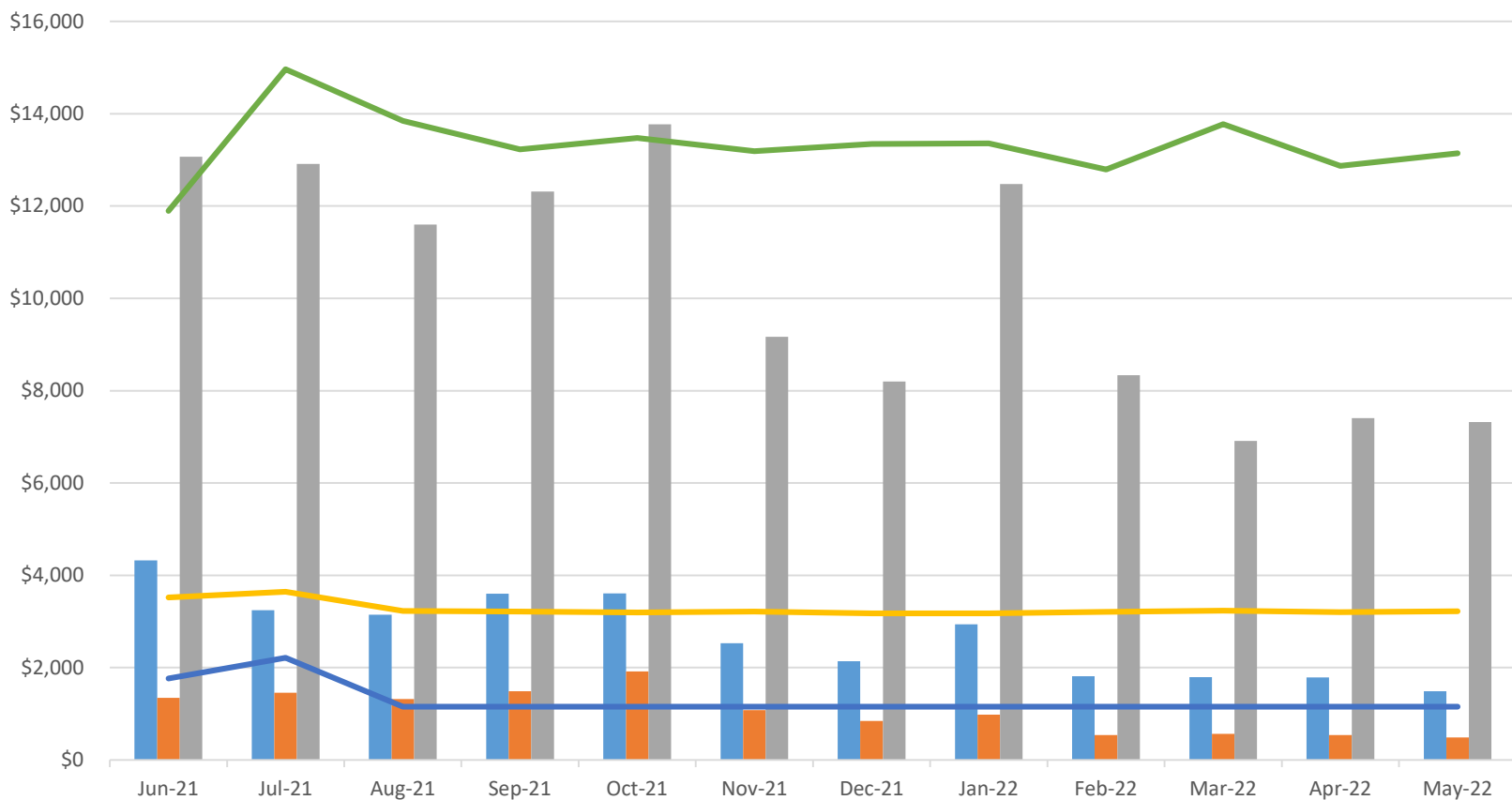
■ Medical Fees
 ■ Other Professional Fees
 ■ Purchased Services
 — Medical Fees Budget
 — Other Prof Budget
 — Purchased Serv Budget

Expenses



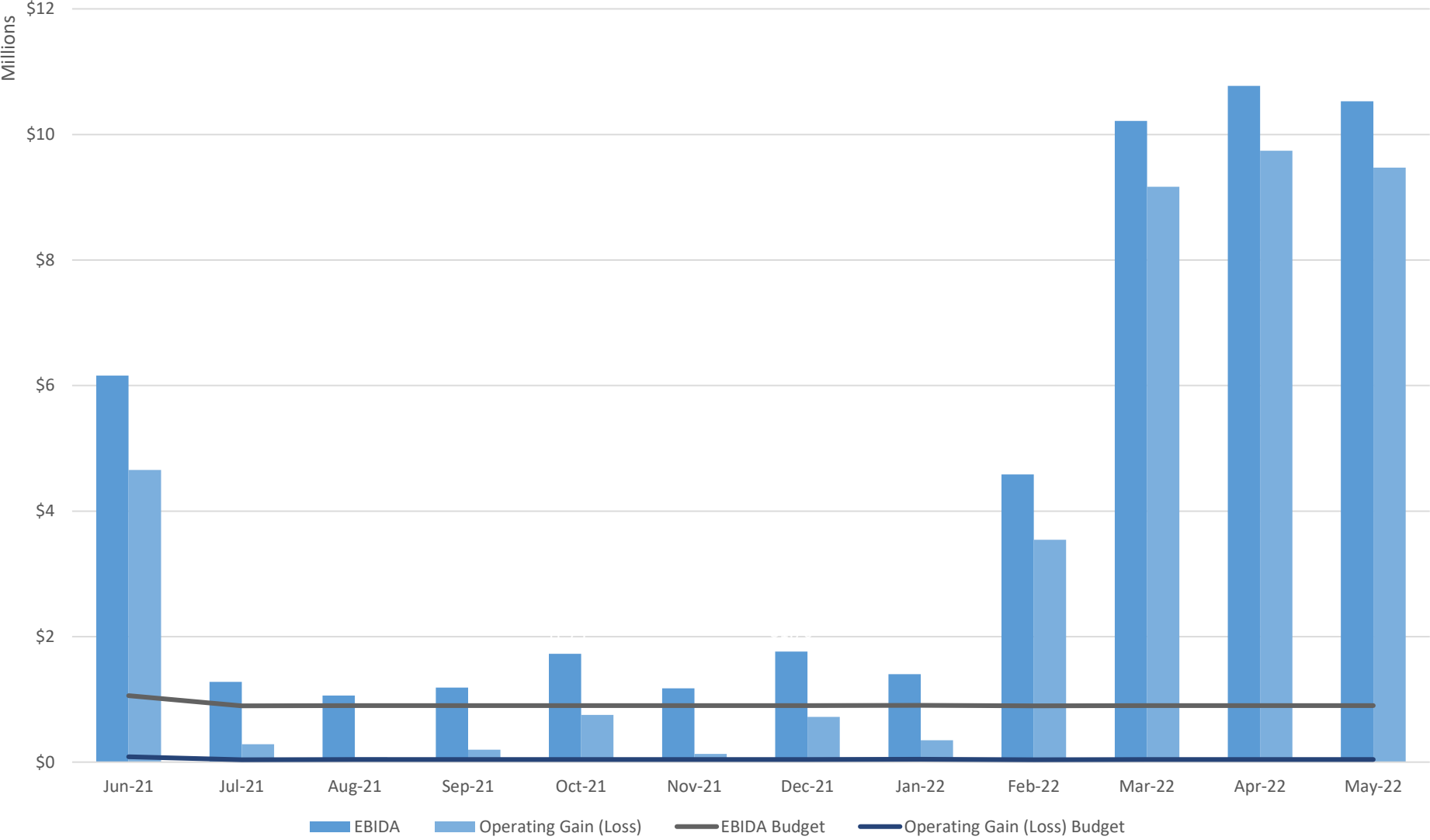
■ Supplies ■ Other Expenses — Supplies Budget — Other Expenses Budget

Operating Metrics

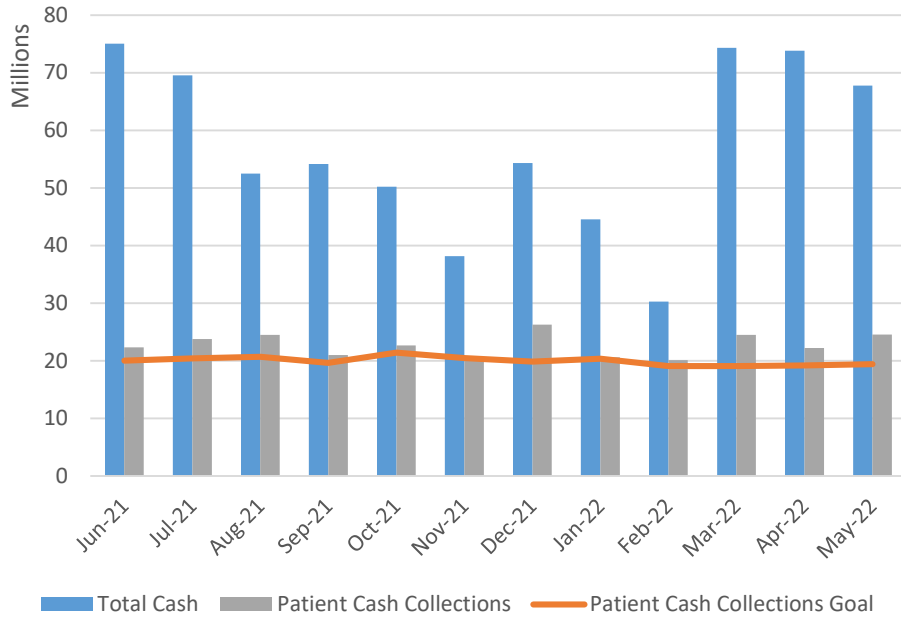


	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22
Supply Expense per AA	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528	\$2,141	\$2,938	\$1,813	\$1,795	\$1,791	\$1,486
Pharm Cost per AA	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081	\$846	\$982	\$538	\$568	\$543	\$491
Net Revenue Per AA	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170	\$8,196	\$12,479	\$8,333	\$6,914	\$7,406	\$7,324
Budget Supp/AA	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217	\$3,175	\$3,174	\$3,208	\$3,236	\$3,202	\$3,220
Budget Pharm/AA	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156	\$1,153	\$1,153	\$1,154	\$1,156	\$1,154	\$1,156
Budget Net Rev/AA	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187	\$13,344	\$13,359	\$12,793	\$13,771	\$12,868	\$13,141

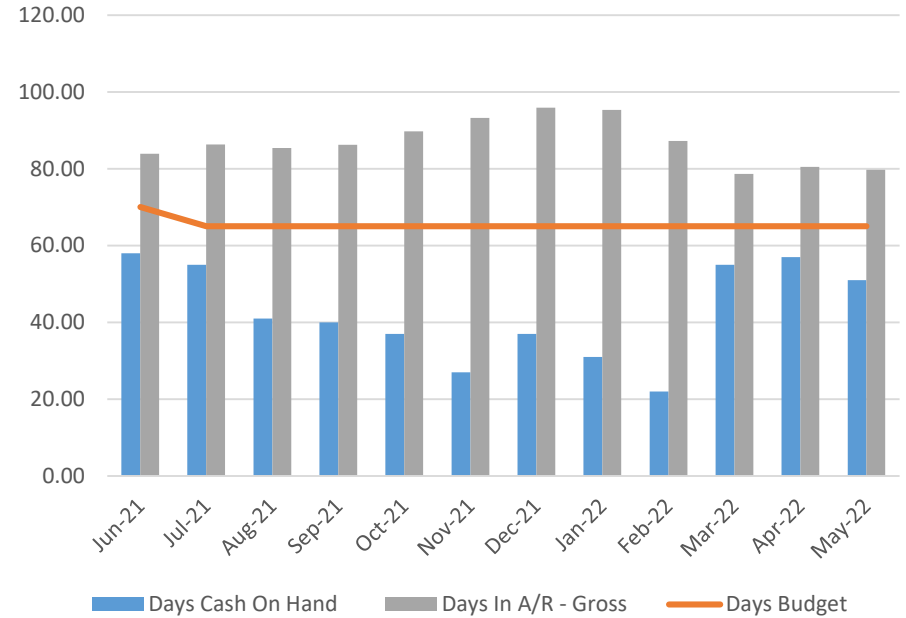
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



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

	MARCH	APRIL	MAY	BUDGET MAY	VARIANCE POS (NEG)	PY MAY
Gross Patient Revenue	\$ 97,607,248	\$ 85,451,968	\$ 87,231,622	\$ 86,056,462	1%	\$ 90,350,855
Contractual Deductions	(76,332,166)	(65,334,122)	(64,394,266)	(67,550,523)	(5%)	(66,061,338)
Net Revenue	21,275,083	20,117,846	22,837,355	18,505,939	23%	24,289,518
Indigent Funding	22,237,923	20,495,159	20,256,874	13,468,684	50%	40,999,163
Correctional Medicine	2,583,481	2,583,481	2,583,481	2,616,667	(1%)	2,594,724
County Contribution	285,211	285,211	285,211	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	41,667
Net Patient Revenue	46,381,697	43,481,696	45,962,921	34,874,184	32%	68,210,282
Other Operating Revenue	3,640,750	4,004,563	2,794,024	1,641,500	70%	2,752,549
Other Non-Operating Revenue	2,011,230	2,009,781	2,017,642	283,903	611%	24,709
Total Revenue	52,033,678	49,496,039	50,774,587	36,799,587	38%	70,987,541
Expenses						
Salaries	15,913,542	15,220,041	16,553,564	16,063,566	3%	15,817,374
Employee Benefits	6,781,663	6,400,347	6,913,706	7,299,943	(5%)	9,104,012
Registry	6,274,104	5,245,361	4,675,337	1,575,950	197%	2,079,722
Medical Fees	1,799,557	1,898,047	1,890,822	1,784,554	6%	1,856,884
Other Professional Fees	1,620,441	1,901,847	1,684,929	1,397,697	21%	1,397,258
Supplies	5,523,170	4,864,270	4,635,192	4,533,886	2%	5,541,552
Purchased Services	2,084,535	1,476,143	1,988,590	1,768,319	12%	2,100,012
Other Expenses	1,819,368	1,714,314	1,904,216	1,473,322	29%	3,758,981
Operating Expenses	41,816,379	38,720,371	40,246,356	35,897,236	12%	41,655,796
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 10,217,299	\$ 10,775,668	\$ 10,528,232	\$ 902,351	1,067%	\$ 29,331,745
EBIDA Margin	20%	22%	21%	2%	746%	41%
Interest	84,190	84,329	84,468	138,079	(39%)	121,483
Depreciation	670,027	655,476	677,391	466,931	45%	1,246,519
Amortization	295,228	295,228	295,228	254,168	16%	256,257
Total Expenses	42,865,824	39,755,403	41,303,442	36,756,414	12%	43,280,056
Operating Gain (Loss)	\$ 9,167,854	\$ 9,740,636	\$ 9,471,145	\$ 43,173	21,838%	\$ 27,707,486
Operating Margin	17.6%	19.7%	18.7%	0.12%	15,800%	39.03%

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

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 1,056,630,510	\$ 969,230,979	9%	\$ 964,513,372	10%
Contractual Deductions	(806,326,882)	(757,825,664)	6%	(735,479,661)	10%
Net Revenue	250,303,628	211,405,315	18%	229,033,711	
Indigent Funding	170,648,149	148,155,529	15%	176,059,788	(3%)
Correctional Medicine	28,276,097	28,783,333	(2%)	28,364,505	(0.3%)
County Contribution	3,137,635	3,111,830	1%	3,137,359	0.01%
Incentive Funding	0	0	0%	5,010,313	(100%)
Net Patient Revenue	452,365,510	391,456,008	16%	441,605,677	2%
Other Operating Revenue	28,366,129	17,990,338	58%	21,471,870	32%
Other Non-Operating Revenue	10,420,798	3,067,985	240%	2,774,741	276%
Total Revenue	491,152,436	412,514,331	19%	465,852,288	5%
Expenses					
Salaries	177,935,073	181,071,452	(2%)	172,337,538	3%
Employee Benefits	75,597,838	82,395,303	(8%)	80,402,351	(6%)
Registry	52,114,148	17,787,926	193%	19,628,973	165%
Medical Fees	19,594,871	19,545,112	0.3%	19,124,524	2%
Other Professional Fees	17,572,522	15,192,513	16%	15,358,451	14%
Supplies	63,141,038	50,982,094	24%	61,649,288	2%
Purchased Services	21,083,167	19,513,015	8%	21,168,940	(0.4%)
Other Expenses	18,411,706	16,107,388	14%	19,306,140	(5%)
Operating Expenses	445,450,363	402,594,803	11%	408,976,204	9%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 45,702,073	\$ 9,919,528	361%	\$ 56,876,084	(20%)
EBIDA Margin	9%	2%	287%	12%	(24%)
Interest	928,679	1,518,873	(39%)	1,443,688	(36%)
Depreciation	7,366,545	5,136,237	43%	5,944,389	24%
Amortization	2,966,179	2,795,853	6.1%	2,818,832	5%
Total Expenses	456,711,767	412,045,765	11%	419,183,113	9%
Operating Gain (Loss)	\$ 34,440,669	\$ 468,566	7,250%	\$ 46,669,175	(26%)
Operating Margin	7%	0.1%	6,073%	10%	(30%)

**KERN MEDICAL
BALANCE SHEET**

	MAY 2022	MAY 2021
ASSETS:		
<i>Total Cash</i>	\$ 67,775,112	\$ 52,567,760
Patient Receivables Subtotal	269,601,699	256,896,143
Contractual Subtotal	(223,984,977)	(213,840,372)
<i>Net Patient Receivable</i>	45,616,723	43,055,771
Total Indigent Receivable	148,101,905	140,725,763
Total Other Receivable	10,233,298	3,877,719
Total Prepaid Expenses	4,094,464	6,032,195
Total Inventory	4,091,211	6,003,750
<i>Total Current Assets</i>	279,912,711	252,262,957
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	223,834,804	213,551,061
Total Construction in Progress	5,698,570	8,050,187
<i>Total Property, Plant & Equipment</i>	229,533,374	221,601,248
Total Accumulated Depr & Amortization	(135,708,528)	(124,451,557)
<i>Net Property, Plant, and Equipment</i>	93,824,846	97,149,691
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 501,028,412	\$ 437,276,110

**KERN MEDICAL
BALANCE SHEET**

	MAY 2022	MAY 2021
ASSETS:		
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 14,556,741	\$ 11,566,313
Total Accrued Compensation	29,365,978	36,018,372
Total Due Government Agencies	16,228,571	34,783,953
Total Other Accrued Liabilities	37,235,338	36,137,027
<i>Total Current Liabilities</i>	97,386,628	118,505,665
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	64,286,919	96,456,658
<i>Total Long-Term Liabilities</i>	445,439,730	418,560,455
<i>Total Liabilities</i>	542,826,357	537,066,120
Fund Balance	36,714,022	36,714,022
Retained Earnings	(78,511,967)	(136,504,032)
<i>Total Fund Balance</i>	(41,797,945)	(99,790,010)
<i>Total Liabilities and Fund Balance</i>	\$ 501,028,412	\$ 437,276,110



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

July 20, 2022

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

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

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

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

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on July 20, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on July 20, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

 X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D.,
et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-
100647 –

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

Government Code Section 54956.9

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- X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital
Authority, a Governmental entity v. California Department of Corrections and
Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL
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**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

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 X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Paula Torres and Martin
Alejandro Cruz v. Kern County Hospital Authority, Yasser Ratl Mrad, M.D., and
DOES 1 through 250, Inclusive, Kern County Superior Court Case No. BCV-21-
101001 –

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

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

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

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

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

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

Government Code Section 54956.9

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 X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Marcel Monji v. County of Kern, et al., United States District Court, Eastern District of California, Case No. 1:19-cv-01526-JLT-BAK (SKO) –