



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, November 16, 2022

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Joshua Plunkett, CPhT-Adv, upon his receipt of the California Society of Health-System Pharmacists 2022 Technician Achievement Award –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

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

- CA
- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on October 19, 2022 –
APPROVE

- CA
- 6) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for one Kern Medical Center employee to attend California Hospital Association’s “2022 Behavioral Health Care Symposium” and “Emergency Services Forum” from December 5-7, 2022, in Riverside, California –
APPROVE; ADOPT RESOLUTION

- CA
- 7) Proposed appointment of Mohammad A. S. Molla, M.D., as Joint Chair and Director of the Department of Psychiatry for Kern Medical Center and Kern County Behavioral Health and Recovery Services, effective November 16, 2022 –
RATIFY APPOINTMENT

CA

- 8) Proposed Amendment No. 2 to Master Services Agreement 002-2019 with CIOX Health, LLC, an independent contractor, for medical record reproduction services, for the period January 16, 2019 through January 15, 2023, extending the term for three years from January 16, 2023 through January 15, 2026, in an amount not to exceed \$375,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Purchase Agreement with GE Precision Healthcare, LLC, a GE Healthcare business, an independent contractor, for purchase of an Optima 660 CT Scanner, effective November 16, 2022, in an amount not to exceed \$373,540, plus applicable taxes –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 2 to Agreement 073-2019 with Arman G. Froush, D.O., a contract employee, for professional medical and administrative services in the Department of Radiology, for the period December 11, 2019 through December 10, 2022, extending the term through January 31, 2023, and increasing the maximum payable by \$150,000, from \$3,150,000 to \$3,300,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Cloud Services Agreement and Business Associate Agreement with Qualtrics, LLC, an SAP America Inc. company, an independent contractor, containing nonstandard terms and conditions, for patient experience services from November 16, 2022 through November 15, 2025, in an amount not to exceed \$200,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Agreement with Igor Garcia-Pacheco, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine from December 2, 2022 through December 1, 2025, in an amount not to exceed \$1,860,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Amendment No. 2 to Agreement 43819 with Helen A. Davis, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period December 2, 2019 through December 1, 2022, extending the term two years from December 2, 2022 through December 1, 2024, and increasing the maximum payable by \$925,000, from \$1,365,000 to \$2,290,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Amendment No. 5 to Agreement 07020 for Personal/Professional Services with American Incorporated dba MD Concrete Cutting & Demolition, an independent contractor, for maintenance and repair of HVAC units and air handlers, for the period December 2, 2019 through December 1, 2022, extending the term three years from December 2, 2022 through December 1, 2025, at no additional cost –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Renewal of Agreement 012-2020 with Advanced Technologies Group, Inc., an independent contractor, for subscription services to the Environment of Care Rounding Solution, for the period January 1, 2020 through December 31, 2022, extending the term for three years from January 1, 2023 through December 31, 2025, and increasing the maximum payable by \$20,000, from \$12,000 to \$32,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Agreement for Personal/Professional Services with Mesa Energy Systems, Inc., dba Emcor Services Hillcrest, an independent contractor, for labor, materials and equipment for HVAC repairs and maintenance, controls and new installation from December 2, 2022 through December 1, 2025, in an amount not to exceed \$1,000,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Amendment No. 2 to Agreement 56219 for Personal/Professional Services with R.F. MacDonald Co., Inc., an independent contractor, for boiler system maintenance and repair, for the period December 13, 2019 through December 12, 2022, extending the term for three years from December 13, 2022 through December 12, 2025, and increasing the maximum payable by \$600,000, from \$400,000 to \$1,000,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed Amendment No. 3 to Memorandum of Understanding 61320 with Kern Health Systems, an independent contractor, for translation services for Kern Medical Center patients, for the period December 14, 2020 through December 31, 2022, extending the term for one year from January 1, 2023 through December 31, 2023, and increasing the maximum payable by \$600,000, from \$1,025,000 to \$1,625,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Cerner Sales Order OPT-0352599 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for the purchase of professional and shared computing laboratory services from November 16, 2022 through November 15, 2027, in an amount not to exceed \$15,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed Amendment No. 2 to Agreement 041-2021 with Jeffrey L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period July 31, 2021 through July 30, 2026, reducing the annual compensation by \$300,000, from \$750,000 to \$450,000, effective November 16, 2022 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 21) Proposed Agreement with QCERA, Inc., an independent contractor, containing nonstandard terms and conditions, for access to LeaveSource® SaaS Software for employee leave and absence administration, effective November 16, 2022, in an amount not to exceed \$40,220 during the initial term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- CA
22) Public hearing regarding proposed closure of the pediatric clinic at 6001 Truxtun Avenue, Suite 210-B, Bakersfield, and relocation of pediatrics services from 6001 Truxtun Avenue, Suite 210-B to 9330 Stockdale Highway, Suite 500, Bakersfield –
OPEN HEARING; RECEIVE PUBLIC COMMENT; CLOSE HEARING; APPROVE CLOSURE OF PEDIATRIC CLINIC AT 6001 TRUXTUN AVENUE, SUITE 210-B, BAKERSFIELD; DIRECT STAFF TO RELOCATE PEDIATRIC SERVICES FROM 6001 TRUXTUN AVENUE, SUITE 210-B, BAKERSFIELD TO 9330 STOCKDALE HIGHWAY, SUITE 500, BAKERSFIELD
- CA
23) Proposed Resolution regarding acceptance of grant funds from California Department of Health Care Access and Information in the amount of \$2,915,162.60 –
APPROVE; ADOPT RESOLUTION
- 24) Kern County Hospital Authority Chief Financial Officer report –
RECEIVE AND FILE
- 25) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE
- CA
26) Monthly report on What's Happening at Kern Medical Center –
RECEIVE AND FILE
- CA
27) Claims and Lawsuits Filed as of October 31, 2022 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 28) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) –
- 29) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –
- 30) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9, subdivision (d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –
- 31) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC –

- 32) 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) –
- 33) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) –
- 34) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, DECEMBER 14, 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.

27) CLAIMS AND LAWSUITS FILED AS OF OCTOBER 31, 2022 –
RECEIVE AND FILE

- A) Unfair Practice Charge No LA-CE-1607-M in the matter of Service Employees International Union, Charging Party v. Kern County Hospital Authority, Employer
- B) Claim in the matter of Ronald Joseph Squyres
- C) Claim in the matter of Joseph Carl Rogers



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

November 16, 2022

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

Recommended Action: Approve; Adopt Resolution

Summary:

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

Discussion:

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

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

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

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

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

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

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

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

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

In the matter of:

Resolution No. 2022-____

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

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of November, 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 December 14, 2022.

6. This Board shall reevaluate the above findings on December 14, 2022, and every 30 days thereafter.

7. Resolution No. 2022-020, adopted by the Board of Governors on October 19, 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, October 19, 2022

11:30 A.M.

BOARD RECONVENED

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

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 PELZ JOINED THE MEETING AFTER THE VOTE ON THE CONSENT AGENDA

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!**

CORRESPONDENCE DATED OCTOBER 18, 2022, RECEIVED FROM SYDNEE GALUSHA CONCERNING COMMENTS AND QUESTIONS FOR THE OCTOBER 19, 2022 BOARD MEETING, A COPY OF WHICH MAY BE OBTAINED UPON REQUEST BY CONTACTING THE AUTHORITY BOARD COORDINATOR AT (661) 326-2000

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

DIRECTOR BERJIS REPORTED ON THE 5TH ANNUAL GRADUATE MEDICAL EDUCATION SUMMIT HELD ON SEPTEMBER 29-30, 2022. VISITING FROM UCLA MEDICAL CENTER WERE NELSON SOOHOO M.D., DESIGNATED INSTITUTIONAL OFFICIAL AND ASSOCIATE DEAN FOR GRADUATE MEDICAL EDUCATION, AND ARETI TILLOU, M.D., VICE CHAIR, DEPARTMENT OF SURGERY AND ASSISTANT DESIGNATED INSTITUTIONAL OFFICIAL. DIRECTOR BERJIS HAS BEEN INVITED TO ATTEND THE UCLA GRADUATE MEDICAL EDUCATION COMMITTEE IN DECEMBER TO PROVIDE AN OVERVIEW OF KERN MEDICAL AND DISCUSS OPPORTUNITIES FOR COLLABORATION AND PARTNERSHIP. DIRECTOR BERJIS AND AMBER JONES, D.O., GENERAL SURGERY PROGRAM DIRECTOR, HAVE BEEN INVITED TO PRESENT GRAND ROUNDS AND MEET WITH THE SURGERY DEPARTMENT CHAIR, PROGRAM DIRECTOR AND RESIDENTS AT UCLA. DIRECTOR BERJIS THANKED THOSE BOARD MEMBERS WHO WERE ABLE TO ATTEND THE SUMMIT; CHAIRMAN BIGLER COMMENTED ON THE EVENING EVENT

DIRECTOR BERJIS REPORTED DAVID A. CONNETT, D.O., ACTING DEAN, WESTERN UNIVERSITY, AND MEMBERS OF THE CLINICAL EDUCATION STAFF TOURED KERN MEDICAL, MET WITH STUDENTS AND LUNCHEDED WITH COLLEAGUES FROM BAKERSFIELD COLLEGE

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Infectious Disease Fellowship Program –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; DIRECTOR BERJIS HEARD; RASHA KURAN, M.D., HEARD

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 2022-020

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on September 21, 2022 –
APPROVED

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 6) Proposed Resolution establishing regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2023 –
APPROVED; ADOPTED RESOLUTION 2022-021

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 7) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for two Kern Medical Center employees to attend HCCA's virtual "Healthcare Enforcement Compliance Conference" from November 7-9, 2022 –
APPROVED; ADOPTED RESOLUTION 2022-022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 8) Proposed Amendment No. 1 to Agreement 064-2021 with Vision y Compromiso, an independent contractor, for community outreach and education to Medi-Cal Managed Care beneficiaries assigned to Kern Medical Center, for the period October 20, 2021 through October 19, 2022, extending the term for one year from October 19, 2022 to October 19, 2023, and increasing the maximum payable by \$505,000, from \$504,000 to \$1,009,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 115-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 9) Proposed retroactive Amendment No. 1 to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the period July 1, 2021 through June 30, 2022, for the provision of health care services to in-custody inmates housed in the Kern Justice Facility, extending the term for two years from July 1, 2022 through June 30, 2024 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 116-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 10) Proposed Amendment No. 1 to Agreement 057-2018 with Acute Care Surgery Medical Group, Inc., an independent contractor, for trauma and general surgery hospitalist services in the Department of Surgery, for the period November 5, 2018 through October 31, 2022, extending the term from November 1, 2022 through October 31, 2025, and increasing the maximum payable by \$16,638,682, from \$20,510,331 to \$37,149,013, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 117-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 11) Proposed Amendment No. 3 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., an independent contractor, for professional medical services in the Department of Anesthesiology, for the period November 9, 2016 through November 8, 2022, extending the term for three years from November 9, 2022 through November 8, 2025, for a new maximum payable of \$22,806,681 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 118-2022
Berjis-McLaughlin: 5 Ayes; 2 Absent – Kitchen, Pelz

CA

- 12) Proposed Agreement with M. Brandon Freeman, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery from October 22, 2022 through October 21, 2025, in an amount not to exceed \$2,100,000, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 119-2022
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 13) Proposed Agreement with Tung Thanh Trang, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery from November 13, 2022 through November 12, 2025, in an amount not to exceed \$2,300,000, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 120-2022
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 14) Proposed Agreement with Soroush Bazargani, M.D., a contract employee, for professional medical services in the Department of Surgery from August 1, 2023 through September 30, 2028, in an amount not to exceed \$4,000,000, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 121-2022
Berjis-McLaughlin: 5 Ayes; 2 Absent – Kitchen, Pelz

CA

- 15) Proposed Amendment No. 3 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 the performance of FAA flight physicals, and increasing the maximum payable by \$108,442, from \$9,441,558 to \$9,550,000, to cover the term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 122-2022
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 16) Proposed Amendment No. 2 to Agreement 041-2021 with Jeffrey L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period July 14, 2021 through July 31, 2026, reducing the annual compensation by \$300,000, from \$750,000 to \$450,000, effective October 20, 2022 –
WITHDRAWN

CA

- 17) Proposed Amendment No. 1 to Agreement 08420 for Personal/Professional Services with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction services for new fire panel upgrades, for the period December 2, 2019 through December 1, 2022, extending the term through December 1, 2025, and increasing the maximum payable by \$600,000, from \$150,000 to \$750,000, to cover the extended term – MADE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 123-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$750,000

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 18) Proposed Subscription Renewal (Quote Q-696566) with Lansweeper Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of product licenses in support of information technology asset management, for the period December 18, 2021 through December 17, 2022, extending the term for one year from December 18, 2022 through December 17, 2023, in an amount not to exceed \$6,400 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN PURCHASE ORDER 124-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 19) Proposed Amendment No. 25 to Agreement No. 2016-036 with Cerner Corporation, an independent contractor, for the purchase of shared computing services to update the Cerner Ignite Millennium API solution, reducing the initial purchase price by \$28,020, from \$200,993 to \$172,973 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 125-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 20) Proposed Customer License and Service Agreement and Business Associate Agreement with Novarad Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of the Picture Archiving and Communications System (PACS) from October 19, 2022 through October 18, 2027, in an amount not to exceed \$1,262,555, plus applicable taxes – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 126-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN RECEIPT FOR EQUIPMENT UPON DELIVERY

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

CA

- 21) Proposed Retirement and Extended Maintenance Notice from Change Healthcare Technologies, LLC, an independent contractor, for extension of the current Picture Archiving and Communications System (PACS) maintenance and support, for a term of one year from September 30, 2022 through September 30, 2023, in an amount not to exceed \$100,608 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 127-2022

Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

- CA
22) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for construction services and installation of perimeter fencing of Kern Medical Center, effective October 19, 2022, in an amount not to exceed \$66,839 –
MADE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 128-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$66,839
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz
- 23) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED
Berjis-Pelz: 6 Ayes; 1 Absent - Kitchen
- 24) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Alsop-McLaughlin: 6 Ayes; 1 Absent - Kitchen
- CA
25) Monthly report on What's Happening at Kern Medical Center –
RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz
- CA
26) Claims and Lawsuits Filed as of September 30, 2022 –
RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 2 Absent - Kitchen, Pelz

ADJOURNED TO CLOSED SESSION
Pelz-Alsop

CLOSED SESSION

- 27) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) – SEE RESULTS BELOW
- 28) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9, subdivision (d)(1)) Name of case: Patricia Smith v. Kern Medical Center, and DOES 1 through 10, Kern County Superior Court Case No. BCV-18-101315 – SEE RESULTS BELOW
- 29) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.90, subdivision (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

- 30) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Government Code Section 54956.9, subdivisions (d)(2) & (e)(2)) Number of cases: One (1)
Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Claim of Jeffry Huffman – SEE RESULTS BELOW
- 31) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9, subdivision (d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 32) 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
- 33) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – SEE RESULTS BELOW
- 34) 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) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Berjis-Alsop

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 27 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR BERJIS, SECOND BY DIRECTOR ALSOP; 1 ABSENT - DIRECTOR KITCHEN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 28 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9, subdivision (d)(1)) Name of case: Patricia Smith v. Kern Medical Center, and DOES 1 through 10, Kern County Superior Court Case No. BCV-18-101315 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 29 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.90, subdivision (d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 30 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9, subdivisions (d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Claim of Jeffry Huffman – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 31 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9, subdivision (d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 32 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 33 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 34 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) – HEARD; NO REPORTABLE ACTION TAKEN

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

Alsop

/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**

November 16, 2022

Subject: Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for CHA's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum"

Recommended Action: Approve; Adopt Resolution

Summary:

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

Safety National covers the Authority's workers' compensation program; MedPro provides Hospital Professional Excess Liability insurance to the Authority. Safety National and MedPro have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend CHA's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum," from December 5-7, 2022. This training session is necessary in connection with official Authority business.

Therefore, Kern Medical recommends your Board adopt the attached proposed resolution to accept the travel donation from Safety National and MedPro for travel and related expenses and authorize the Chief Executive Officer to designate one employee to attend this important conference.

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

In the matter of:

Resolution No. 2022-____

**ACCEPTANCE OF DONATION OF TRAVEL
AND RELATED EXPENSES FOR THE CHA
“2022 BEHAVIORAL HEALTH CARE SYMPOSIUM”
AND “EMERGENCY SERVICES FORUM”**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of November, 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) The conflict of interest policy for the Kern County Hospital Authority (“Authority”) prohibits Authority employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment; and

(b) Safety National provides coverage for the Authority's self-insured workers' compensation program; and

(c) MedPro provides Hospital Professional Excess Liability insurance to the Authority; and

(d) Safety National and MedPro have offered to donate to the Authority all travel and related expenses (conference fees only) for one Authority employee to attend CHA's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum" in Riverside, California, from December 5-7, 2022; and

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

(f) The Authority desires to obtain the donation of travel and related expenses from Safety National and MedPro to the Authority and will retain full control over the use of the donation; and

(g) Neither Safety National nor MedPro has made any restrictions as to how the donation may be used.

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

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

2. This Board hereby accepts from Safety National and MedPro the donation of travel and related expenses to cover all costs for one Authority employee to travel to in Riverside, California, to attend CHA's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum" from December 5-7, 2022.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend CHA's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum" in Riverside, California, from December 5-7, 2022.

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

Chief Financial Officer
Legal Services Department
Human Resources Department



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

November 16, 2022

Subject: Proposed appointment of Mohammed A. S. Molla, M.D., as Joint Chair and Director of the Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services

Requested Action: Ratify appointment

Summary:

Kern Medical is requesting that your Board ratify the appointment of Mohammed A. S. Molla, M.D., as Joint Chair and Director of Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services. The Psychiatry Department has been without a full-time Chair since 2015. Dr. Molla, who is board certified in general psychiatry with subspecialty certification in child and adolescent psychiatry, was appointed the Acting Joint Chair effective July 14, 2015. Since that time, he has performed the responsibilities and duties required of a department chair in exemplary fashion and in accordance with the Medical Staff Bylaws (Bylaws). He also served as President of the Medical Staff.

The process for appointing a department chair is set forth in the Bylaws, which includes the formation of a search committee to seek applicants to fill the position. After conducting a search for the most desirable candidate, the search committee, comprised of the Chief Executive Officer, Chief Medical Officer, and members of the Medical Staff, has recommended to Mr. Thygerson that Dr. Molla be appointed the Joint Chair of the Department. Mr. Thygerson concurs with the recommendation. The Bylaws require that your Board ratify the final decision.

Therefore, it is recommended that your Board ratify the appointment of Mohammed A. S. Molla, M.D., as Joint Chair and Director of Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services, effective November 16, 2022.



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

November 16, 2022

Subject: Proposed Amendment No. 2 to the Master Services Agreement (002-2019) with CIOX Health, LLC to provide medical record reproduction services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 2 to the Master Services Agreement #002-2019 with CIOX Health, LLC to provide medical record reproduction services.

Kern Medical entered into a Master Services Agreement with CIOX Health, LLC, effective January 16, 2022 to provide copies of medical records that are requested by patients, insurance companies, attorneys, law enforcement, governmental entities, and any other agencies/person that have the legal right and/or authorization to procure medical record information. CIOX Health, LLC ensures that all of their staff who process and interact with the protected health information are trained and educated on all regulatory requirements for handling, transmitting, and storing documents that require high-level confidentiality and security.

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

Agreement Year – Actual Cost	Proposed Amendment Cost	Variance
2025 - Estimated	\$125,000	\$0
2024 - Estimated	\$125,000	\$0
2023 - Estimated	\$125,000	\$0
2022 - Estimated	\$125,000	\$19,749
2021- \$105,251		\$32,174
2020 - \$73,077		\$25,513
2019 - \$50,564		

Therefore, it is recommended that your Board approve the proposed Amendment No. 2 to the Master Services Agreement with CIOX Health, LLC for medical record reproduction services, effective January 16, 2023 through January 15, 2026, in an amount not to exceed \$375,000, and authorize the Chairman to sign.

**AMENDMENT NO. 2 TO
MASTER SERVICES AGREEMENT
(Kern County Hospital Authority – Ciox Health, LLC)**

This Amendment No. 2 to the Master Services Agreement (“Amendment No. 2”) is made effective as of the 16th day of November, 2022 (“Effective Date”), by and between Ciox Health, LLC (“Ciox”), and the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (“Medical Facility”).

RECITALS

- A. Ciox and Medical Facility have entered into a Master Services Agreement (“MSA) and Release of Information Service Order (“Service Order”) (dated January 16, 2019) as further amended in that certain Amendment No. 1, dated April 20, 2022, to provide medical record reproduction services (collectively listed as the “Agreement”).
- B. The Agreement and the Service Order are expected to expire January 15, 2023; 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 to amend the Agreement as follow:

- 1. Section 5.1.3 shall be deleted from the MSA and replaced with the following:

“5.1.3 The Agreement is amended for an additional three (3) year term effective January 16, 2023, for a total seven (7) year term.”

- 2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 2 have the meaning set forth in the Agreement.

- 4. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

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

KERN COUNTY HOSPITAL AUTHORITY

CIOX HEALTH, LLC

By _____
Russell Bigler
Chairman, Board of Governors
Date:

DocuSigned by:
By Jon Roberts
Printed Name: Jon Roberts

Title/Position: Division, Chief Financial Officer
Date: November 2, 2022

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Andrew Cantu
Chief Financial Officer
Date:

APPROVED AS TO FORM:
Legal Services Department

By [Signature]
Name: _____
Hospital Counsel
Date: 11/2/22



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

November 16, 2022

SUBJECT: Proposed Purchase Agreement with GE Precision Healthcare LLC, a GE Healthcare business (GE Healthcare)

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Purchase Agreement with GE Healthcare for purchase of the Optima 660 CT Scanner for utilization in the Kern Medical emergency department. The CT scanner will replace the Siemens CT scanner currently in operation, which has reached its end of life.

The Optima 660 CT Scanner is a GE GoldSeal, which is refurbished by GE Healthcare and comes at a significant discount, but provides for the same-as-new warranty. The Purchase Agreement is effective November 16, 2022 with a total maximum payable not to exceed \$373,540, plus applicable taxes.

Therefore, it is recommended that your Board approve the Purchase Agreement with GE Precision Healthcare LLC, a GE Healthcare business, to purchase the Optima 660 CT Scanner, effective November 16, 2022, with a total maximum payable not to exceed \$373,540, plus applicable taxes, and authorize the Chairman to sign.



Addendum to Agreement

GE Healthcare

This Addendum ("Addendum") is made by Kern County Hospital Authority with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and GE Precision Healthcare LLC, a GE Healthcare business, with an address at 3000 N. Grandview Blvd., Waukesha, WI 53188 ("GE Healthcare"), parties to Quotation # 2009359518.8 dated October 12, 2022 ("Quotation", attached as Exhibit A) for the products and/or services listed on the Quotation in accordance with the terms and conditions identified in the Quotation ("Agreement").

The Agreement is amended as follows:

- Section 10.1 ("Binding Arbitration") of the GE Healthcare Terms and Conditions is deleted in its entirety and replaced with the following:

"10.1 Dispute Resolution. The parties will first attempt to resolve in good faith any disputes related to this Agreement. Violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm for which the award of money damages alone is inadequate. GE Healthcare may: (i) seek injunctive relief and any other available remedies; (ii) immediately terminate the license grant and require Customer to cease use of and return the Software and Third Party Software; and/or (iii) terminate Customer access to the SaaS or remote hosted Software. Other than these violations or collection matters, unresolved disputes will be submitted to mediation prior to initiation of other means of dispute resolution."
- The parties agree that the Business Associate Agreement executed by the parties as of February 16, 2022, a copy of which is attached as Exhibit B, will apply to this Agreement.
- Except as set forth in this Addendum, the Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and the Agreement or any other earlier amendment, the terms of this Addendum will prevail. Except as otherwise expressly provided in this Addendum, the parties agree that all provisions of the Agreement are hereby ratified and agreed to be in full force and effect and are incorporated herein by reference. This Addendum and the Agreement contain the entire agreement among the parties relating to the subject matter herein and all prior proposals, discussions and writings by and among the parties and relating to the subject matter herein are superseded hereby and thereby.
- Customer's form of payment is:

Initial to indicate form of payment :
 (If potential for a lease exists, GE HEF or otherwise, select lease)

_____ Cash * _____ Lease _____ GE HEF Loan

If leasing please provide name of finance company below:

*Selecting cash declines option for GE HEF financing
 *Cash is the default option if this Addendum is signed and the form of payment is not indicated above.

Initial to indicate tax status:

_____ Exempt from Sales and Use Tax (Note: GEHC must have a Current Tax Exemption Certificate)

_____ Subject to Sales and Use Tax*

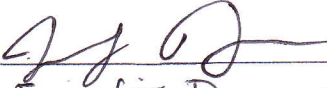
*Subject to Sales and Use Tax is the default option if this Addendum is signed and the tax status is not indicated above.

The parties have caused this Addendum to be executed by their authorized representative as of the last signature date below.

Kern County Hospital Authority

Signature: _____
Print Name: Russell Bigler
Title: Chairman, Board of Governors
Date: _____

GE Healthcare

Signature: 
Print Name: Jennifer Darrance
Title: GM, Imaging
Date: 11/7/22

APPROVED AS TO FORM
Legal Services Department

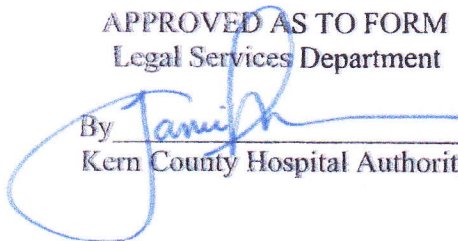
By 
Kern County Hospital Authority

Exhibit A

Quotation # 2009359518.8 dated October 12, 2022
Please see attached

Exhibit B

Business Associate Agreement

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 GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("GE Healthcare" or "Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the underlying Agreement (the "Effective Date").

RECITALS

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

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

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

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

AGREEMENT

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

**ARTICLE I
DEFINITIONS**

- 1.1 "Breach" shall have the meaning given under 45 C.F.R. § 164.402.
- 1.2 "Breach Notification Rule" shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.
- 1.3 "Designated Record Set" shall have the meaning given such term under 45 C.F.R. § 164.501.
- 1.4 "Disclose" and "Disclosure" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.
- 1.5 "Electronic PHI" or "e-PHI" means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.

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

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

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

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

1.10 "SubContractor" shall have the meaning given to such term under 45 C.F.R. § 160.103.

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

1.12 "Use" or "Uses" mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate's internal operations, as set forth in 45 C.F.R. § 160.103.

1.13 "Workforce" shall have the meaning given to such term under 45 C.F.R. § 160.103

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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

by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

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

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

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

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

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

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

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

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to

accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

5.10 Notice of Request or Subpoena for Data. GE Healthcare [or Business Associate] agrees to notify Covered Entity, without unreasonable delay, of any subpoena, discovery request, other legal request or demand of GE Healthcare [or Business Associate] for disclosure or production of Covered Entity's PHI, provided that such notification does not violate any applicable law, confidentiality obligations, or legal privileges held by GE Healthcare [or Business Associate].

5.11 Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt

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

Covered Entity's Notice Address:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer
contracts@kernmedical.com

Business Associate's Notice Address:

GE Precision Healthcare, LLC
9900 W. Innovation Drive
Wauwatosa, WI 53226
Attn: Legal Department

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:
The Kern County Hospital Authority

Title: Chairman, Board of Governors
Date: _____

BUSINESS ASSOCIATE:
GE Precision Healthcare, LLC

Catherine Kaphingst

Title: Commercial Legal Operations Specialist
Date: _____

APPROVED AS TO FORM
Legal Services Department

By Jamie R.
Kern County Hospital Authority



October 12, 2022
 Quote Number: 2009359518.8
 Customer ID: 1-23R4ES
 Agreement Expiration Date: 12/10/2022

Kern Medical
 1700 Mount Vernon Ave
 Bakersfield, CA 93306-4018

This Agreement (as defined below) is by and between the Customer and the GE Healthcare business ("GE Healthcare"), each as identified below for the sale and purchase of the Products and/or Services identified in this Quotation, together with any applicable schedules referred to herein ("Quotation"). "Agreement" is this Quotation and either: (i) the Governing Agreement identified below; or (ii) if no Governing Agreement is identified, the GE Healthcare Terms and Conditions and Warranties that apply to the Products and/or Services identified in this Quotation. In the event of conflict, the Quotation supersedes.

GE Healthcare can withdraw this Quotation at any time before Customer: (i) signs and returns this Quotation or (ii) provides evidence of Quotation acceptance satisfactory to GE Healthcare ("Quotation Acceptance"). On Quotation Acceptance, this Agreement is the complete and final agreement of the parties relating to the Products and/or Services identified in this Quotation. There is no reliance on any terms other than those expressly stated or incorporated by reference in this Agreement and, except as permitted in this Agreement, no attempt to modify will be binding unless agreed to in writing by the parties. Modifications may result in additional fees and cannot be made without GE Healthcare's prior written consent.

Handwritten or electronic modifications on this Agreement (except an indication of the form of payment, Customer purchase order number and signatures on the signature blocks below) are void.

Governing Agreement:	GEHC Standard Terms Apply
Terms of Delivery	FOB Destination
Billing Terms	100% billing at Ship Completion (Fulfillment) / Delivery
Payment Terms	Due On Receipt-30 Days
Sales and Use Tax Exemption	No Certificate on File

IMPORTANT CUSTOMER ACTIONS:

Please select your planned source of funds. Source of funds is assumed to be cash unless you choose another option. Once equipment has been shipped, source of funds changes cannot be allowed.

- Cash
- GE HFS Loan GE HFS Lease
- Other Financing Loan Other Financing Lease Provide Finance Company Name _____

The parties have caused this Agreement to be executed by their authorized representative as of the last signature date below.

Kern County Hospital Authority

Signature: _____

Print Name: Russen Bigler

Title: Chairman, Board of Governors

Date: _____

 Purchase Order Number, if applicable

GE Precision Healthcare LLC, a GE Healthcare business

Signature: Gregg Russo

Title: Region Manager- Vaso Mfr Rep

Date: October 12, 2022

APPROVED AS TO FORM
 KCHA LEGAL SERVICES DEPARTMENT

Jamie A. Mason

 Jamie A. Mason
 Hospital Counsel



October 12, 2022
 Quote Number: 2009359518.8
 Customer ID: 1-23R4ES
 Agreement Expiration Date: 12/10/2022

To Accept This Quotation

Please sign and return this quotation together with your Purchase Order to:

Name: Mo Youssef
 Email: mo.youssef@ge.com
 Phone: +1 714 308 5041
 Fax:

Payment Instructions

Please remit payment for invoices associated with this quotation to:

GE Precision Healthcare LLC
P.O. Box 96483
Chicago, IL 60693

FEIN: 83-0849145

Kern Medical

Addresses:

Bill To KERN COUNTY HOSPITAL
 AUTHORITY

KERN COUNTY HOSPITAL AUTHORITY, ACCOUNTS PAYABLE PO BOX
 3519 BAKERSFIELD, CA,93306-4018

Ship To KERN COUNTY HOSPITAL
 AUTHORITY

, 1700 MOUNT VERNON AVE BAKERSFIELD, CA, 93306-4018 US

To Accept This Quotation

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

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

(i) Per the terms of Quotation # _____, (ii) Per the terms of GPO # _____; (iii) Per the terms of MPA# _____; or (iv) Per the terms of SAA # _____.

Include applicable quote/agreement number with the reference on the purchase order. In addition, Source of Funds (choice of Cash/Third Party Load or GE HFS Lease Loan or Third Party Lease through _____), must be indicated, which may be done on the Quote Signature Page (for signed quotes), or the Purchase Order (where quotes are not signed) or via a separate written source of funds statement (if provided by GE Healthcare).”



October 12, 2022
 Quote Number: 2009359518.8
 Customer ID: 1-23R4ES
 Agreement Expiration Date: 12/10/2022

Summary by Configuration

Configuration Name	Modality	Net Price (USD)
GoldSeal CT660 Merc40 64/64 ASiR	CT	\$373,540.00
		Grand Total:\$373,540.00

Summary by Modality

Modality Totals	Net Price (USD)
	Grand Total:\$373,540.00

Catalog Item Details

Line	Qty	Catalog		Net Price
1	1.00	S7660ML	GoldSeal Optima 660 Merc40 with 2000mm table, ASiR NIO 64 Console	
			<u>List Price</u>	<u>Discount</u>
			\$700,000.00	60.39 %
			<u>Extended Price</u>	<u>Net Price</u>
			\$700,000.00	\$277,246.67

GoldSeal Optima 660 Merc40 with 2000mm table, ASiR NIO 64 Console

The GoldSeal Optima 660 64 is refurbished and comes standard with one year full warranty on the system and Xray tube.

Now includes ASiR as standard

Smart MAR is optional, Rear gantry controls are optional

GoldSeal System will be shipped with the following Standard s/w Options:

ASiR, Neuro Filter, Auto Filter and Transfer, Data Export, 64 Slice, Large Image Series, Auto MA, Interchange, .4 sec rotation, DMPR, Shutter Mode, Organ Dose Modulation, Dynamic transition, 120 sec helical, .4 Sec rotation, Smart Prep 90 KVA, 72kw, Connect Pro, Volume Viewer, Exam split,

GoldSeal System will be shipped with the following Standard h/w Options:

New Long cable interconnect set, Low Profile head holder, New keyboard, New Media Tower, New SCIM – scan control module, New ship collector, gantry accessory interface, rear cable cover, New Monitors, New Console desk and chair, Table Tray & IV Pole, Arm Support Assembly, Straps Auto Traction, Body Strap, Catheter Bag Holder, Technical Publications & manuals, Knee, Head, Ankle and Shoulder Support Pads, Chin Straps, Body Straps, Head Straps, 10 & 25 degree wedges, Head Holder, foam Metalless Compatible Phantom Holder, QA Phantom

The Optima CT660 is GE's latest generation intelligent CT system. It is a scalable 64 slice platform including advanced innovations from our Discovery Series (TM). This means that Optima CT660 is capable of addressing your advanced clinical needs. Optima CT660 with Xstream gantry display is ready to help you deliver personalized care for your demanding patient schedule and quickly manage your unscheduled ED exams. With the Optima CT660 you get fast, high-quality acquisition at optimized dose for patients young and old, large and small, across a wide spectrum of procedures: angiography, brain, chest, abdomen, orthopedic, and more.

Key Features:

- * Exclusive V-Res (TM) Detector technology providing 20mm of 0.625mm or 40mm of 1.25mm acquisitions
- * Volara* XT Digital DAS (Data Acquisition System): The Volara* XT digital DAS for faster sampling and improved image performance and reduced artifacts
- * Fast coverage speed of 110mm/sec
- * Full 360 degree rotation in 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0 and 2.0 (axial) seconds, ensuring short breath holds, comfortable exams and flexibility to customize protocols for unique patient needs with minimal coverage impact
- * Routine thin slice scanning, as thin as 0.625mm or 1.25mm optimizing the use of thinner images for sagittal, coronal, oblique, and volume image presentation and review
- * The overlapped reconstruction feature enables 192 slices reconstruction in helical acquisitions and 64 slices per rotation in axial mode delivering improved Z-axis visualization performance relative to non-overlapped reconstruction
- * Highly efficient compact geometry design delivering optimum performance of the x-ray tube and generator
- * Image decomposition to:
 - o Retrospective thin images from data sets where thicker images were initially reconstructed
 - o Facilitates more detailed image analysis
 - o Improves 3D and reformat visualization
- * ASiR reconstruction technology may enable reduction in pixel noise standard deviation (a measurement of image noise). The ASiR reconstruction algorithm may allow for reduced mA in the acquisition of images, thereby reducing the dose required (**).
- * A reconstruction technology that may enable improvement in low contrast detectability(**)

(**) In clinical practice, the use of ASiR may reduce CT patient dose depending on the clinical task, patient size, anatomical location and clinical practice. A consultation with a radiologist and physicist should be made to determine the appropriate dose to obtain diagnostic image quality for

the particular clinical task.

Fast, User-Friendly Simultaneous Workflow:

- * Advanced Workflow Platform, the next evolution of GE's workflow platform built to help you maximize productivity.
- o Delivers up to 16 images per second (ips) reconstruction
- o Image Check delivers up to 55 images per second (ips) reconstruction (340x340 matrix)
- o Up to 10 fps network transfer rates
- o Direct Multiplanar Reformats (DMPR) that enables the move from 2D review to prospective 3D review of sagittal, coronal and oblique planes automatically
- o Data Export and Interchange that allow you to easily share images with referring physicians and patients
- * One Stop ED mode: Optima CT660's exclusive 12" Xtream touch display on the gantry enables unique one stop ED scanning to streamlined ED exam workflow allowing patient selection, protocol selection and confirming exam parameters directly at the gantry, without having to leave the patient's side.
- * Includes reference protocols and the ability to customize your own for a total of 6,840 programmable protocols
- * SmartPrep with Dynamic Transition allows low dose intermittent monitoring of intravenous contrast enhancement in a user-selected section of anatomy. With Dynamic Transition when the prescribed contrast enhancement is reached the system will automatically transition from the monitoring phase to the scan phase
- * 10 Prospective Multiple Reconstructions: Up to 10 reconstructions can be pre-programmed as part of the scan protocol prior to acquisition. The operator can select different start/end location, slice thickness, interval, interval reconstruction algorithms and display fields of view for each reconstruction. Assisting to prospectively prescribing the image reconstructions needed, even for complex trauma exams and freeing the user up to focus on the patient
- * Remote tilt from the operator console to increase exam speed
- * Built-in breathing lights with a countdown timer, so the patient does not have to guess how much longer to hold their breath
- * New built-in 12-inch touch screen gantry display allows technologists to deliver personalized care by displaying the patient's name on it. When not scanning, the video of relaxing scenes or cartoons may have a calming effect on children or patients of all ages
- * By using the One Step patient positioning on built-in 12-inch touch screen gantry display the bed provides automatic positioning according to the type of exam, reducing manual positioning and streamlining workflow
- * In room start button mounted on gantry with countdown display, facilitates single technologist operation and improved departmental productivity
- * GE software allows you to automate or build every task into the protocols to increase throughput
- * Has up to 250,000 uncompressed 512 x 2 image files storage capacity, and 3,520 scan rotations, or up to 1,500 scan data files, or up to 300 exams

Dose Management Leadership:

- * OptiDose management features: new bowtie filters optimized for adult and pediatric body exams, full 3D dose modulation, color coding for kids, tracking collimator hardware and software for x-ray beam tracking to name a few of GE's dose optimization features, all based on the ALARA principle
- * Dynamic Z-axis tracking provides automatic and continuous correction of the x-ray beam shape to block unused x-ray at the beginning and end of a helical scan to reduce unnecessary patient radiation
- * 3D Dose modulation - Before the scan, clinicians must select the desired Noise Index as well as the minimum and maximum mA setting. The system automatically accounts for the changing dimensions of the patient's anatomy enabling patient to patient reproducibility in this aspect of image quality and real-time x-y-z during each scan
- * Tracking collimator hardware and software for x-ray beam tracking to minimize patient dose
- * Filtration of the x-ray beam is optimized independently for body and head applications
- * DLP (dose length product), and dose efficiency display during scan prescription provides the patient's dose information to the operator
- * Dose Reporting provides access to the CTDIvol and DLP with the patient record prior and post exam. DICOM Structured Dose Report is also supported.
- * Dose Check provides the user with tools to help them manage CT dose in clinical practice and is based on the standard XR-25-2010 published by The Association of Electrical and Medical Imaging Equipment Manufacturers (NEMA), XR-29 Compliant. Dose Check provides the following:
 - o Checking against a Notification Value if the estimated dose for the scan is above your site established value
 - o Checking against an Alert Value where the user needs specific authority to continue the scan at the current estimated dose without changing the scan parameters if the estimated dose exceeds the alert value
 - o The ability to define Alert Values for Adult and Pediatric with age threshold
 - o Audit logging and review capabilities
 - o Protocol Change Control capabilities

The Advanced Reconstruction breaks through existing limits on speed, image quality and flexibility to provide an optimized volumetric workflow solution from acquisition to final report and has the capability to deliver up to 16 full fidelity images per second (ips) reconstruction and 10 fps network transfer rates.

Clinical Benefits:

- * CTA runoffs
- * Thin slices fast; routine use of thin slices
- * Organ coverage in arterial phase
- * Long helical scans
- * Multi-phase organ studies
- * Improved multi-planar reformats with isotropic microvoxel imaging
- * Fast scanning with outstanding image performance and GE's proprietary cross beam and hyperplane helical reconstruction algorithms
- * System designed for optimization of z-axis resolution and dose with 0.625mm slice thickness

System Components:

Gantry:

- * Advanced slip ring design continuously rotates the generator, Performix 40 X-ray tube, detector and Volara XT digital data acquisition system around the patient.
- o Aperture: 70 cm
- o Maximum SFOV: 50 cm
- o Rotational Speeds: 360 degrees in 0.4 0.5, 0.6, 0.7, 0.8, 0.9, 1.0 and 2.0 (axial) seconds
- o Tilt: +/- 30 degrees, speed 1 degree/sec
- o Remote tilt from operator's console
- o Integrated breathing lights and countdown timer
- o Integrated 12-inch touch screen on gantry with workflow features
- o Integrated start scan button with countdown timer to indicate when x-ray will turn on
- * Visual readout is easy to read from the tableside or from the operator console. Gantry tilt controls are located on the side of the gantry.

Laser Alignment Lights:

- * Defined internal and external scan planes to +/- 1mm accuracy
- * Operate over full range of gantry tilt
- * Coronal light remains perpendicular to axial light as gantry tilts

Table:

- * Cantilever design for easy access
- * Vertical range: 43.0 cm to 99.1 cm
- * Vertical scannable range: 79.1 cm to 99.1
- * Horizontal range: 1,745 mm (VT1700 Table), or 2,045 mm (VT 2000 Table)
- * Horizontal speed: up to 137.5 mm/sec
- * Table load capacity: 227 kg (500 lb) +/- 0.25mm positional accuracy

X-ray Tube: Performix 40 metal-ceramic tube unit

- * Performix 40 tube with 6.3 MHU of storage and capable of 72kW operation provides increased helical performance with greater patient throughput
- * Wide range of technique (10 mA to 560 mA, in 5 mA increments) gives technologist and physician flexibility to tailor protocols to specific patient needs, while optimizing patient dose, and providing the power needed to perform a broad spectrum of examinations.
- * Maximum anode heat storage capacity: 6.3 MHU
- * Dual Focal Spots:



- o Small Focal Spot: 0.9 x 0.7 IEC60336:2005
- o Large Focal Spot: 1.2 x 1.1 IEC60336:2005
- * Maximum power: 72 kW
- * Beam collimated to 56 degree fan angle

High Voltage Generator: High Frequency on-board generator allows for continuous operation during scan.

- * 72 kW Output Power
- * kV: 80, 100, 120, 140 kV
- * mA: 10 to 560 mA, 5 mA increments

Maximum mA for Each kV Selection (large focal spot):

- * 400mA @ 80kV
- * 480mA @ 100kV
- * 560mA @ 120kV
- * 515mA @ 140kV

V-Res Detector: The V-Res detector was designed for high performance imaging. V-Res detector benefits are:

- * Solid 40mm coverage per rotation
- * GE's exclusive patented detector material

Volara XT Digital DAS (Data Acquisition System): The Volara XT digital DAS dramatically reduces electrical noise for improved imaging performance.

- * 2,460Hz maximum sample rate
- * Effective analog to digital conversion

Image Networking: Exams can be selected and moved between the Optima CT660 CT System and any imaging system supporting DICOM protocol for network send, receive and pull/inquiry.

- * Standard Auto-configuring Ethernet
- * Direct Network Connection
- * Supports 1GB or 1000/100/10 BaseT

DICOM Conformance Standards

- * DICOM Storage Service Class
- * Service Class User (SCU) for image send
- * Service Class Provider(SCP)for image receive
- * DICOM Query/Retrieve Service Class
- * DICOM Storage Commitment Class Push
- * DICOM Modality Worklist (incl. Performed Procedure Step) (through ConnectPro option)
- * DICOM Print

The Optima CT660 workflow platform is designed to deliver high performance in each of these tasks:

- * SmartTools Simplifies Scan Setup and Includes All Reconstructions, Filming, Archiving, Transferring Prospectively
- * Workflow platform built on the LINUX operating system delivers up to 16 fps reconstruction and the fast network transfer rates of up to 10 fps
- * Data Export and Interchange allow you to easily share images with referring physicians and patients



- * Direct MPR that enables the move from 2D review to 3D image review of axial, sagittal, coronal and oblique planes automatically
- * Exam Split delivers the capability to split a series of patient images into separate groups for networking
- * Exam Rx desktop environment provides the clinical tools desired for fast, efficient control of patient studies. Exam Rx tools include patient scheduling and data entry, exam protocol selection, protocol viewing and editing, scan data acquisition, image display and routine analysis, AutoTransfer, AutoStore, and AutoFilm
- * ImageWorks is a desktop environment designed to take advantage of the Optima CT660 CT System advanced computer systems. Standard features include archive, network and manual film control, as well as some advanced image processing such as Direct multi-planar reformatting (DMPR), multi-projection volume rendering (MPVR) and display. The ImageWorks desktop also provides a gateway for DICOM 3.0 image transactions, either through a local area network, or via DICOM-formatted media
- * Volume Viewer includes Volume Analysis, Volume Rendering and Navigator software. This combination allows the user to render volumetric data in three dimensions for use in analysis of patient condition, i.e. CT Angiography (CTA), gives more information on the spatial relationships of structures than standard 3D, allows the translucent visualization of structures for improved problem solving, can perform "virtual endoscopies" of air and contrast filled structures. Enables 3D reformats in any plane, ALL on the Xstream ready console.

Scan Modes: The Optima CT660 system can perform virtually any clinical application due to its wide variety of scan modes. Helical scan mode offers continuous 360 degree scanning with table incrementation and no interscan delay. Axial scan mode allows for up to 64 contiguous axial slices acquired simultaneously with each 360 degree rotation.

- * Helical scanning pitches: 0.516:1, 0.984:1, 1.375:1
- * Retrospective reconstruction image thicknesses: 64 x 0.625

Scan Enhancements:

- * Anatomical programmer: a ten region anatomical selector allows quick and easy access to user programmable protocols and a separate selector for adult and pediatric exams with greater than 6,840 protocol storage available
- * Protocols include preset scan time, kV, mA, scan mode, image thickness and spacing, table speed, scan FOV, display FOV and center, recon algorithm, and special image acquisition and processing options like DMPR
- * Any scan parameters may be edited for each scan or all scans - either before or during an exam. The number of scans may also be easily changed
- * AutoScan: Automates longitudinal table movement and start of each scan
- * Auto-Voice: 3 preset (9 languages) and 17 user defined messages automatically deliver patient breathing instructions, especially useful for multiple helical scanning
- * Trauma Patient: Allows patient scans and image display/analysis without entering patient data before scanning
- * Reconstruction Algorithms: Soft Tissue, Standard, Detail, Chest, Bone, Bone Plus, Lung, and Edge

For US and Canadian Customers, this quotation includes access to the DoseWatch Explore application for a period of time concurrent with the system warranty. DoseWatch Explore is an introductory dose management software application that provides you secure access, via any PC with internet access, to dose and protocol data from this system. An InSite connection to the system and completion of the registration process is required to use the DoseWatch Explore application.

Warranty: The published Company warranty in effect on the date of shipment shall apply. The Company reserves the right to make changes. All specifications are subject to change. Regulatory compliance: This product is designed to comply with applicable standards under the radiation control for Health and Safety Act of 1968.

Laser alignment devices contained within this product are appropriately labeled according to the requirements of the Center for Devices and Radiological Health.

Siting Considerations: See the Pre-Installation manual for details of the siting requirements for the Optima CT660.

This product is a CE-compliant device that satisfies IEC60601-1:1998 and applicable collateral and particular standards, including regulations regarding Electro-Magnetic Compatibility (EMC) and Electro-Magnetic Interference (EMI), pursuant to IEC-60601-1-2:2004.

This product complies with NEMA Standard 29-2013 / MITA Smart Dose Standard.

Availability

Since GoldSeal Refurbished Equipment may be offered Simultaneously to Several Customers, its sale to You is Subject to Availability and subject to Prior Sale at the Time You Offer to purchase It. If the Equipment is no Longer available, (1) GE Will Attempt to Identify Other GoldSeal Refurbished Equipment in Inventory that meets your needs, and (2) if substitute equipment is Not Acceptable to You, GE will cancel your Order and refund any deposit you have paid GE for the cancelled order.



Line	Qty	Catalog			
2	1.00	B76982FJ		SmartMAR option	
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$60,000.00	60.39 %	\$60,000.00
					<u>Net Price</u>
					\$23,764.00

SmartMAR (Metal Artifact Reduction) software helps reduce photon starvation, beam hardening and streak artifacts caused by high Z materials in the body, such as hip implants.

The clarity of SmartMAR images is addressing the challenges posed by metal artifacts, helping clinicians accurately contour targets and critical organs.

MAR offers:
Exceptional image quality.
SmartMAR is based on the latest in GE Healthcare smart technology, which uses a novel three-step, sinogram-based iterative algorithm.

Streamlined workflow.
SmartMAR requires only one scan, making the process of obtaining a corrected image fast and efficient.

Dose conscious.
SmartMAR requires only one acquisition.

Patient comfort.
The efficient, single-scan process helps to reduce patient time inside the scanner.

Versatility.
SmartMAR is designed to enhance clarity across a range of images including scans of hip implants, dental fillings, screws and other metal objects.

Line	Qty	Catalog			
3	1.00	B7850PL		SmartScore Acquisition Software	
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$5,000.00	60.39 %	\$5,000.00
					<u>Net Price</u>
					\$1,980.33

CT Operator Console Acquisition Software for Prospective Gating

Line	Qty	Catalog			
4	1.00	B7877ZS		SmartStep with Monitor	
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$45,000.00	60.39 %	\$45,000.00
					<u>Net Price</u>
					\$17,823.00

SmartStep for CT Scanner Systems
(Includes In -Room Monitor & Boom)

SmartStep
Enables an Imaging Mode for Performing Biopsies and Other Interventional Procedures. An In-room Monitor, Hand Held Controller, X-ray Exposure Foot Pedal and Cradle Handle Provide In-room Control for Image Acquisition and Image Review. The Hand Held Controller Provides the Operator with Controls to Prepare the Scanner for Imaging, to Turn Alignment Lights On and Off, to Move the Cradle, Review Images and Adjust the Window Width and Level; and the Foot Switch Provides In-room Control of X-ray On.

A Highly Functional Image Display Presents a Set of 3 Interventional Images in 3 Viewports, a Free Viewport, and Timers for the Remaining and Accumulated Time. The Display Control Panel Provides Roam, Zoom, Magnify, Measurement, Annotation, Grid, Image Orientation, and Save Screen Image Review Capabilities. Data Acquisition Includes a 4i Data Acquisition Mode Using 4x1.25 mm, 4x2.25 mm, and 4x3.75 mm Detector Configurations and a 3i Reconstruction Mode to Create 2.5, 3.75 and 7.5 mm Thick 512 Matrix Images. All Scan Fields of View and Reconstruction Algorithms are Available with



0.8s and 1.0s Gantry Rotation Speed.

System Includes the In-room Monitor & Boom.

Line	Qty	Catalog			
5	1.00	B75202FJ	In-Room Monitor Cable		
				<u>List Price</u>	<u>Discount</u>
				\$0.00	0.00 %
				<u>Extended Price</u>	<u>Net Price</u>
				\$0.00	\$0.00

In Room Monitor Cable for RIO console

Line	Qty	Catalog			
6	1.00	B7868FM	SmartView Fluoro Option		
				<u>List Price</u>	<u>Discount</u>
				\$45,000.00	60.39 %
				<u>Extended Price</u>	<u>Net Price</u>
				\$45,000.00	\$17,823.00

SmartView software™ provides continuous, real-time CT fluoroscopy with a nominal image lag of only 0.20 seconds and reconstruction at up to 24 fps (3 view ports at 8fps each) with in-room viewing and manual x-ray control. SmartView provides tilted or nontilted imaging for performing biopsies and other interventional procedures with coverage up to 15mm.

The intuitive user interface provides six user-selectable display layouts, in-room image review and WW/WL control.

The image display supports single or multiple real-time images, a free viewport, and timers for remaining and accumulated exposure time. The display control panel provides roam, zoom, magnify, measurement, annotation, grid, image orientation and save screen image review capabilities.

Line	Qty	Catalog			
7	1.00	B77292CA	CT Service Cabinet		
				<u>List Price</u>	<u>Discount</u>
				\$0.00	0.00 %
				<u>Extended Price</u>	<u>Net Price</u>
				\$0.00	\$0.00

Service cabinet for system accessories storage

Line	Qty	Catalog			
8	1.00	E8016AN	CT Table Slicker with Cushion - 2000 Systems (2-pc Set)		
				<u>List Price</u>	<u>Discount</u>
				\$440.00	21.00 %
				<u>Extended Price</u>	<u>Net Price</u>
				\$440.00	\$347.60

FEATURES/BENEFITS

- Two-piece, sealed slicker cushion set has comfort pads enclosed inside the slicker cover and extender cover
- Durable, clear PVC plastic cover facilitates faster, more thorough cleanup of blood and fluids
- Increase system uptime by protecting table from spills and particulate contaminants
- Thermo-sealed seams and flaps prevent contaminate buildup in hard to clean areas

COMPATIBILITY

- VCT with GT 2000 Table, CT HD750

Line	Qty	Catalog			
9	1.00	E8016BA	CT Footswitch Slicker - 2000 & 1700 Systems		
				<u>List Price</u>	<u>Discount</u>
				<u>Extended Price</u>	<u>Net Price</u>



\$50.00 21.00 % \$50.00 \$39.50

The footswitch slicker for CT VCT 2000 and 1700 systems is made of durable, clear PVC plastic that protects the footswitch and facilitates faster, more thorough cleanup of contamination caused by blood and other body fluids. Cover is held securely in place with Velcro.

Line	Qty	Catalog			
10	1.00	E4502BB	CT Main Disconnect and UPS Control 380-480V 50 60Hz 90A		
	<u>List Price</u>		<u>Discount</u>	<u>Extended Price</u>	<u>Net Price</u>
	\$6,479.00		21.00 %	\$6,479.00	\$5,118.41

NOTES:

- Customer is responsible for arranging for installation with a qualified party
 - ITEM IS NON-RETURNABLE AND NON-REFUNDABLE
- Main Disconnect Panel (MDP) UL 90A 400/480V 50/60Hz 3 phases for CT, PET and PETCT

The (Main Disconnect and UPS Control Panel serves as the main facility power disconnect source installed ahead of the CT system PDU. On systems where the optional partial system UPS is included in the system, the panel provides NEC mandated UPS emergency power-off control function via a UPS control cable included with the UPS. The optimized design PDB saves time, installation labor, and valuable mounting space by consolidating the main circuit breaker, control power source and required warning lights into a compact factory manufactured panel. The panel provides short circuit protection, overload protection and National Electrical Code and Canadian Electrical Code required emergency shutdown for the system. The 24-volt low voltage controls all power, using either the panel cover mounted EMERGENCY OFF push button or the remote EMERGENCY OFF push button included with each system. The PDB is painted to match the imaging system for a total coordinated system appearance. Available in a combination surface\semi-flush mounted enclosure. The system provides stock availability of otherwise special-order devices, saving time and installation costs.

Benefits

- The System Main Disconnect saves time, installation labor, and valuable mounting space by consolidating the main circuit breaker, the feeder overcurrent devices, magnetic contactors and UPS emergency power-off into one compact panel
- The system provides stock availability of otherwise special-order devices, saving time and installation costs
- Reduces installation time and cost by eliminating delays in obtaining individually enclosed components and by eliminating on site assembly
- UPS emergency power-off functions are included for future, partial system UPS addition.
- Disconnects system power on first loss of incoming power, preventing damage to system components
- Provides a standardized platform for UPS or other future GE engineered modifications or upgrades
- Main power disconnect operating handle can be padlocked in the OFF position for servicing safety and OSHA lock out/tag out
- The door has provisions for padlocking
- Enclosure door is interlocked with ON / OFF disconnect handle to prevent unauthorized access if disconnect is in the ON position

Features

- Optional partial system UPS provides clean uninterrupted power to the system computer, maintaining system integrity during power loss while also providing a solution to power quality problems
- UL, cUL listed, and CE labeled
- Supplied with low voltage, cover mounted Push to Stop, Twist to Restore pushbutton and long-life LED pilot lights
- Provides overcurrent and short circuit protection with GE GuardEON solid-state circuit breakers
- Suitable for use on systems with 25,000A of short circuit current. It is the installer's responsibility to verify that the available short circuit current is 25,000A or less for compliance to all electrical codes
- Emergency-off disconnects power to both the PDU and optional partial system UPS output, per National Electric Code
- Factory wired and tested
- All devices are selected for high reliability and long life
- Panel disconnect provides OSHA lockout / tag out provisions

Remote EPO

- This MDP comes with two normally closed contact blocks attached to the back of the emergency off push button.

Seismic Specifications

- This Panel has been certified by an independent California structural engineer in conformance with the shake testing requirements of ICC-AC 156. The California OSHPD number is OSP-0457-10.
- The seismic performance characteristics are as follows: SDS(g) ≤ 2.56; z/h ≤ 1.0 ; Ip ≤ 1.5

Physical Characteristics



October 12, 2022
 Quote Number: 2009359518.8
 Customer ID: 1-23R4ES
 Agreement Expiration Date: 12/10/2022

- Dimensions: Height x Width x Depth: 24 x 16 x 7 inches (610 x 407 x 178 mm)
 - Handle depth: 2.75 inches (70 mm)
 - Weight: 46 pounds (21 kg)
- Components supplied with each panel

- The Main Disconnect and UPS Control Panel
- An Installation, Operations & Service Manual
- (2) sets of Emergency Power Off pushbuttons with 2NC on each EPO
- Drawings and Electrical Schematics

Line	Qty	Catalog			
11	1.00	E4502KZ	Liebert GXT4 10kVA 208Y/120V 2-phase CT partial UPS		
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$20,286.00	21.00 %	\$16,025.94

Line	Qty	Catalog			
12	1.00	W0303CT	TIP CT Scanner 3 Training Program		
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$34,286.00	61.00 %	\$13,371.54

This training program is designed for customers purchasing a GEHC CT system to include EVO-ES or Discovery RT. GEHC will work with the designated Customer contact to agree upon a reasonable training schedule for a pre-defined group of core technologists that will leverage blended content delivery and may include a combination of onsite days and virtual offerings, to include Tip Virtual Assist, the GEHC Answerline and available on-demand courses ("Virtual Inclusions"). This blended curriculum with multiple delivery platforms promotes learner retention and allows for an efficient and effective skill development.

This program may contain:

- Onsite training (generally 5 days)
- Virtual Inclusions may include:
- Remote instructor-led training: Instructor leads a remote training session one-on-one or in a group, typically for 1 hour
- Answerline Support-Access to GEHC experts for clinical, non-emergency applications assistance via phone or by using the iLinq button on the imaging console
- Tip Virtual Assist-Direct interactive access to a GEHC expert for enhanced support.
- On Demand courses-On healthcare learning system. Self-paced courses and webinars (CE and non-CE).

Training will be delivered at a mutually agreed upon time between the customer and GE Healthcare (excluding GE Healthcare holidays and weekends), are subject to availability and generally will not exceed 10 days. This training program has a term of twelve (12) months commencing on Acceptance, where all onsite training must be scheduled and completed within twelve (12) months of Acceptance and all Virtual Inclusions also expire at the end of such twelve (12) month period. Additional onsite days may be available for purchase separately.

All GEHC "Training" terms and conditions apply. Given the unique nature of this program, if this program is purchased as part of a purchase under a Governing Agreement, including any Master Purchase Agreement, Group Purchasing Organization Agreement, or Strategic Alliance Agreement, this program shall take precedence over any conflicting training deliverables set forth therein.

Line	Qty	Catalog			
13	1.00	Services-CE-Americas-Clinical Ed TV	Clinical Ed TIP TV		
			<u>List Price</u>	<u>Discount</u>	<u>Extended Price</u>
			\$0.00	0.00 %	\$0.00



GE Healthcare

October 12, 2022
Quote Number: **2009359518.8**
Customer ID: **1-23R4ES**
Agreement Expiration Date: **12/10/2022**

<i>Total Quote List Price:</i>	\$916,541.00
<i>Total Quote Discount:</i>	59.24%
<i>Total Quote Subtotal:</i>	\$373,540.00

Total Quote Net Selling Price: **\$373,540.00**

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



1. Definitions. As identified in this Agreement, “Equipment” is hardware and embedded software that is licensed with the purchase of the hardware delivered to Customer in GE Healthcare’s packaging and with its labeling; “Software” is software developed by GE Healthcare and/or delivered to Customer in GE Healthcare’s packaging and with its labeling, and Documentation associated with the software; “Third Party Software” and “Third Party Equipment” are respectively software developed by a third party, and hardware and embedded software that is licensed with the purchase of the hardware, that is delivered to Customer in the third party’s packaging and with its labeling (collectively, “Third Party Product”); “Product” is Equipment, Software and Third Party Product; “Services” are Product support or professional services; “Subscription” is a limited-term, non-transferable license to access and use a Product (except Healthcare Digital Products), including any associated support Services; “Healthcare Digital Products” are: (i) Software identified in the Quotation as “Centricity”; (ii) Third Party Software licensed for use in connection with Centricity Software; (iii) hardware used to operate Centricity or Third Party Software; (iv) Services provided for implementation, installation or support and maintenance of Centricity or Third Party Software licensed for use in connection with Centricity Software; and/or (v) any Product or Service that is identified in a Healthcare Digital Quotation. “Specifications” are GE Healthcare’s written specifications and manuals as of the date the Equipment shipped; and “Documentation” is the online help functions, user instructions and manuals regarding the installation and operation of the Product as made available by GE Healthcare to Customer.

2. Term and Termination. Software licenses, Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement and/or the Quotation that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate the respective Agreement or Quotation. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement or a Quotation. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination. Expiration or termination of this Agreement will have no effect on Quotations executed prior to the date of expiration or termination.

3. Software License. Other than as identified in a Quotation, GE Healthcare grants Customer a non-exclusive, non-transferable, non-sublicensable, perpetual license to use the Software for Customer’s internal business purposes only in the United States consistent with the terms of this Agreement. Customer’s independent contractors (except GE Healthcare competitors) may use the Software, but Customer is responsible for their compliance with this license, and additional license fees may apply. Customer cannot modify, reverse engineer, copy or create derivative works of the Software, except for making 1 backup copy, and cannot remove or modify labels or notices of proprietary rights of the Software or Documentation. If GE Healthcare provides Third Party Software, Customer will comply with third party license terms, and licensors are third-party beneficiaries of this Agreement.

4. Commercial Logistics

4.1 Order Cancellation and Modifications.

4.1.1 Cancellation. If Customer cancels an order prior to shipment without GE Healthcare’s written consent, Customer will be responsible for all third-party expenses incurred by GE Healthcare prior to Customer’s order cancellation and GE Healthcare may charge: (i) a fee of up to 10% of the Product price; and (ii) a fee for site evaluations performed prior to cancellation. GE Healthcare will retain, as a credit, payments received up to the amount of the cancellation charge. Customer must pay applicable progress payments (other than final payment) prior to final calibration, and GE Healthcare may delay calibration until those payments are received. If Customer does not schedule a delivery date within 6 months after order entry, GE Healthcare may cancel on written notice. This Section does not apply to Software or Subscriptions, Third Party Products and/or related professional or installation services; those orders are non-cancellable.

4.1.2 Used Equipment. Equipment identified as pre-owned, refurbished, remanufactured or demonstration Equipment is not new and may have received reconditioning to meet Specifications (“Used Equipment”). Sale of Used Equipment is subject to availability. If it is no longer available, GE Healthcare will attempt to identify other Used Equipment in its inventory that meets Customer’s needs, and if substitute Used Equipment is not acceptable, GE Healthcare will cancel the order and refund any deposit Customer paid for the Used Equipment.

4.2 Site Preparation. Customer is responsible for network and site preparation, including costs, in compliance with GE Healthcare’s written requirements and applicable laws. GE Healthcare may refuse to deliver or install if the site has not been properly prepared or there are other impediments.

4.3 Transportation, Title and Risk of Loss. Unless otherwise identified in the Quotation, shipping terms are FOB Destination. Title and risk of loss to Equipment and Third-Party Equipment passes to Customer on delivery to Customer’s designated delivery location.

4.4 Delivery, Returns and Installation. Delivery dates are approximate. Products may be delivered in installments. GE Healthcare may invoice multiple installment deliveries on a consolidated basis, but this does not release Customer’s obligation to pay for each installment delivery. Delivery occurs: (i) for Product, on electronic or physical delivery to Customer; and (ii) for Services, on performance.

Products cannot be returned for refund or credit if they match the Quotation.

Delivery and installations will be performed from 8am to 5pm local time, Monday-Friday, excluding GE Healthcare holidays, and outside those hours for an additional fee. Customer will: (i) install cable and assemble products not provided by GE Healthcare; (ii) enable connectivity and interoperability with products not provided by GE Healthcare; (iii) pay for construction and rigging costs; and (iv) obtain all licenses, permits and approvals for installation, use and disposal of Products. For upgrades and revisions to non-Healthcare Digital Products, Customer must return replaced components to GE Healthcare at no charge.

4.5 Information Technology Professional Services (“ITPS”). ITPS must be completed within 12 months of the later of the ITPS order date or Product delivery. If not done within this time period, other than because of GE Healthcare's failure to perform, ITPS performance obligations expire without refund. ITPS includes project management, HL7/HIS system integration, database conversion, network design and integration and separately cataloged software installations. This Section does not apply to Healthcare Digital Products.

4.6 Acceptance.

4.6.1 Equipment Acceptance. Beginning on completion of installation (not to exceed 30 days from shipment) or delivery (if installation is not required), Customer will have 5 days to determine if the Equipment operates substantially in accordance with Specifications (“Equipment Test Period”). If the Equipment fails to perform accordingly, Customer will provide to GE Healthcare: (i) written notice; (ii) access to the Equipment; and (iii) a reasonable time to bring the Equipment into compliance. After correction by GE Healthcare, Customer will have the remainder of the Equipment Test Period or 3 days, whichever is greater, to continue testing. Equipment is accepted on the earlier of expiration of the Equipment Test Period or the date the Equipment is first used for non-acceptance testing purposes.

4.6.2 Software Acceptance. Beginning on completion of Software implementation, Customer will have 30 days to determine if the Software operates substantially in accordance with the Documentation (“Software Test Period”). If the Software fails to perform accordingly, Customer will provide to GE Healthcare: (i) written notice; (ii) access to the Software; and (iii) a reasonable time to bring the Software into compliance. After correction by GE Healthcare, Customer will have the remainder of the Software Test Period or 5 days, whichever is greater, to continue testing. Software is accepted on the first to occur of: (a) expiration of the Software Test Period; (b) the date Software is first used to process actual data; or (c) the “Go-Live Date” as defined in the Quotation.

4.6.3 Third Party Product Acceptance. Third Party Products are accepted 5 days after delivery.

4.6.4 Subscription Acceptance. Products provided pursuant to a Subscription are accepted 5 days after GE Healthcare provides Customer access to the Products.

4.7 Third Party Products and Services. If GE Healthcare provides Third Party Products and/or Services, then (i) GE Healthcare is acquiring them on Customer's behalf as its agent and not as a supplier; (ii) GE Healthcare provides no warranties or indemnification, express or implied; and (iii) Customer is responsible for all claims resulting from or related to their acquisition or use.

4.8 Mobile Equipment. GE Healthcare will assemble Equipment it has approved for mobile use at the vehicle location identified by Customer. Customer will comply with the vehicle manufacturer's planning requirements and arrange for delivery of the vehicle. Equipment placed in a mobile environment must be used for medical, billing, or other non-entertainment use by bona fide medical professionals authorized to use and prescribe such use.

4.9 Audit. GE Healthcare may audit Customer's use of Software, Subscription and Healthcare Digital Products to verify Customer's compliance with this Agreement up to 12 months following termination or expiration of the applicable Quotation. Customer will provide reasonable assistance and unrestricted access to the information. Customer must pay underpaid or unpaid fees discovered during the audit, and GE Healthcare's reasonable audit costs, within 30 days of written notification of the amounts owed. If Customer does not pay, or the audit reveals that Customer is not in compliance, GE Healthcare may terminate Customer's Software license, Subscription or use of the Healthcare Digital Product.

4.10 Product Inflation. For GE Healthcare imaging Products only (to exclude ultrasound and life care solutions Products), due to the potential long cycle time from Product order to Product delivery, GE Healthcare may increase Product Total Quote Net Selling Price by an amount equal to the increase in the U.S. Bureau of Labor Statistics Consumer Price Index (“CPI”) from the date of Product order to the date of notice prior to Product delivery, by providing at least 4 weeks prior notice from the requested delivery date.

5. **Security Interest and Payment.**

5.1 Security Interest. Customer grants GE Healthcare a purchase money security interest in all Products in the Quotation until full payment is received, and Customer will perform all acts and execute all documents necessary to perfect GE Healthcare's security interest.

5.2 Failure to Pay. If, after Product delivery, Customer is more than 45 days past due on undisputed payments, GE Healthcare may, on 10 days' prior written notice, disable and/or remove the Products.

5.3 Lease. If Customer leases a Product, Customer continues to be responsible for payment obligations under this Agreement.

6. **Trade-In Equipment.** Trade-in equipment identified in a Quotation will be subject to separate trade-in terms and conditions.

7. **Subscriptions.** The following terms apply to all Subscriptions (excluding Healthcare Digital Products).

7.1 Commencement. Unless otherwise indicated in this Agreement or the Quotation, the Subscription commences on the date GE Healthcare provides Customer access to the Products.

7.2 Renewal / Non-Renewal. The Subscription term renews automatically for the same duration as the initial term of the Subscription unless otherwise identified in the Quotation. Except as otherwise identified in this Agreement or a Quotation, GE Healthcare may increase prices annually by no more than the Consumer Price Index for All Urban Consumers (U.S. City Average, December to December) plus 2%, upon 90 days' prior written notice. Subscriptions are not cancellable; however, either party may opt to not renew the Subscription after the initial Subscription term or any subsequent renewal term by providing at least 60 days' prior written notice to the other party prior to renewal.

7.3 Subscription Equipment. Title to Equipment and Third-Party Equipment provided via Subscription ("Subscription Equipment") remains with GE Healthcare. Customer will not place, or permit the placement of, liens, security interests, or other encumbrances on Subscription Equipment. Customer shall not repair or service Subscription Equipment, or allow others to do so, without the prior written consent of GE Healthcare.

7.4 Support Services. Unless otherwise noted in the Quotation, GE Healthcare will provide support Services as described in the Subscription Products and ViewPoint Software Maintenance Terms and Conditions.

7.5 Upgrades. Included in the Subscription fees if Customer does not owe any undisputed payments, GE Healthcare will provide upgrades if and when they become available and to the extent they are provided to all GE Healthcare customers with a Subscription for the Products, at mutually agreed upon delivery and installation dates. Upgrades do not include: (i) any optional or separately licensable features; (ii) any Products not covered by the Subscription; or (iii) any virtual environment required to host an upgraded Product. GE Healthcare shall have no obligation to provide upgrades if Products are not maintained within the current major release version or the immediately prior major release version.

7.6 Access Controls. Customer must: (i) ensure users maintain individually-assigned confidential user credentials and control mechanisms to access the Subscription; and (ii) take reasonable steps to prevent unauthorized access to Products.

7.7 Post-Termination. Upon termination or expiration of the Subscription: (i) Customer must immediately discontinue use of the Products and return Subscription Equipment to GE Healthcare in proper operating condition; (ii) Customer must destroy its copies of Software and Documentation; (iii) Customer must remove its data from Subscription Equipment; (iv) GE Healthcare is not responsible for and may destroy Customer-provided information, images or data; and (v) GE Healthcare will remove Customer's access.

7.8 Professional Services. For Services not covered under this Agreement or required due to Customer not meeting its responsibilities under the Agreement, applicable additional professional Services and fees will be required: (i) identified in the Quotation; and (ii) subject to GE Healthcare's then-current pricing.

8. General Terms.

8.1 Confidentiality. Each party will treat this Agreement and the other party's proprietary information as confidential, meaning it will not use or disclose the information to third parties unless permitted in this Agreement or required by law. Customers are not prohibited from discussing patient safety issues in appropriate venues.

8.2 Governing Law. The law of the state where the Product is installed, Service is provided, or Subscription is accessed will govern this Agreement.

8.3 Force Majeure. Performance time for non-monetary obligations will be reasonably extended for delays beyond a party's control.

8.4 Assignment; Use of Subcontractors. Neither party may assign this Agreement or any rights, interests or obligations provided by this Agreement without the prior written consent of the other party; provided, however, that either party may assign this Agreement and any or all rights and obligations under this Agreement to any of its affiliates upon prior written notice to the other party; provided, further, that no such assignment shall release either party from any liability under this Agreement. Notwithstanding anything to the contrary in this Agreement, GE Healthcare may assign this Agreement and all of its rights, interests and obligations under this Agreement to a GE Healthcare Subsidiary (as defined below), subject to the GE Healthcare Subsidiary agreeing to be bound by all of the terms and conditions of this Agreement and assuming all of the rights, interests and obligations of GE Healthcare under this Agreement. Immediately upon such assignment and assumption, automatically and without the requirement of any further action by any person or entity, (i) all references in this Agreement to GE Healthcare shall instead apply to GE Healthcare Subsidiary unless the context otherwise requires and (ii) GE Healthcare shall be unconditionally and irrevocably released and discharged from any and all liabilities and obligations under or in connection with this Agreement. "GE Healthcare Subsidiary" means a majority owned direct or indirect subsidiary of GE Healthcare Parent. "GE Healthcare Parent" means an entity that (A) has at the time of such assignment and assumption (or concurrently therewith) an investment-grade unsecured corporate credit rating issued by each of Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business (or any successor thereto), and Moody's Investors Service, Inc. (or any successor thereto), and (B) has succeeded to ownership, directly or indirectly, of substantially all of the assets formerly owned by the GE Healthcare business of the General Electric group of companies. Notwithstanding anything to the contrary in this Agreement, in the event of any change of direct or indirect ownership of GE Healthcare in connection with the previously-announced separation of the General Electric group of companies, regardless of the form such separation takes, the other party hereby acknowledges and consents to the change of ownership of GE Healthcare as part of such separation. GE Healthcare may hire subcontractors to perform work under this Agreement but will remain responsible for its obligations.

8.5. Waiver: Survival. If any provision of this Agreement is not enforced, it is not a waiver of that provision or of a party's right to later enforce it. Terms in this Agreement related to intellectual property, compliance, data rights and terms that by their nature are intended to survive will survive the Agreement's expiration or termination.

8.6. Intellectual Property. GE Healthcare owns all rights to the intellectual property in GE Healthcare's Products, Services, Documentation, Specifications, and statements of work related to a Quotation or otherwise. Customer may provide GE Healthcare with feedback related to Products, Services, and related Documentation, and GE Healthcare may use it in an unrestricted manner.

9. Compliance.

9.1. Generally. Each party will comply with applicable laws and regulations. Customer is only purchasing or licensing Products for its own medical, billing and/or non-entertainment use in the United States, or for the purposes of renting or leasing the Products for medical, billing and/or non-entertainment purposes through a mobile system or modular building where Customer maintains title to the Products GE Healthcare will not deliver, install, service or train if it discovers Products have been or are intended to be used contrary to this Agreement. This Agreement is subject to GE Healthcare's ongoing credit review and approval. Customer is aware of its legal obligations for cost reporting, including 42 C.F.R. § 1001.952(g) and (h), and will request from GE Healthcare any information beyond the invoice needed to fulfill Customer's cost reporting obligations. GE Healthcare will provide safety-related updates for Equipment and Software required by applicable laws and regulations at no additional charge.

9.2. Security. GE Healthcare is not responsible for: (i) Customer's passwords or password management (ii) securing Customer's network; (iii) preventing unauthorized access to Customer's network or the Product; (iv) backup management; (v) data integrity; (vi) recovery of lost, corrupted or damaged data, images, software or equipment; (vii) third party operating systems, unless specifically provided in the Quotation; or (viii) providing or validating antivirus or related IT safeguards unless sold to Customer by GE Healthcare. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR DAMAGES CAUSED BY UNAUTHORIZED ACCESS TO THE NETWORK OR PRODUCTS REGARDLESS OF A PARTY'S COMPLIANT SECURITY MEASURES.

9.3. Environmental Health and Safety ("EHS"). GE Healthcare personnel may stop work without penalty due to safety concerns. Customer must: (i) comply with GE Healthcare's EHS requirements; (ii) provide a safe environment for GE Healthcare personnel; (iii) tell GE Healthcare about chemicals or hazardous materials that might come in contact with Products or GE Healthcare personnel; (iv) perform decommissioning or disposal at Customer facilities; (v) obtain and maintain necessary permits; (vi) thoroughly clean Products before Service; (vii) provide radioactive materials required for testing Products; and (viii) dispose of waste related to Products and installations.

9.4. Parts and Tubes. GE Healthcare: (i) recommends the use of parts it has validated for use with the Product; (ii) is not responsible for the quality of parts supplied by third parties to Customer; and (iii) cannot assure Product functionality or performance when non-validated parts are used. Certain Products are designed to recognize GE Healthcare-supplied tubes and report the presence of a non-GE Healthcare tube; GE Healthcare is not responsible for the use of, or effects from, non-GE Healthcare supplied tubes.

9.5. Training. GE Healthcare's training does not guarantee that: (i) Customer trainees are fully trained on Product use, maintenance or operation; or (ii) training will satisfy any licensure or accreditation. Customer must ensure its trainees are fully qualified in the use and operation of the Product. Unless otherwise identified in the training catalog, Customer will complete training within 12 months of: (a) the date of Product delivery for a Product purchase; (b) the respective start date for Services or Subscription for purchase of Service or Subscription; or (c) the date training is ordered for training-only purchases. If not completed within this time period, other than because of GE Healthcare's fault, training expires without refund. Training will be invoiced and payment due pursuant to the billing terms listed in the equipment Quotation. Recording of GE Healthcare training sessions is prohibited.

9.6. Medical Diagnosis and Treatment. All clinical and medical treatment, diagnostic and/or billing decisions are Customer's responsibility.

9.7. Connectivity. If a Product has remote access capability: (i) Customer will provide GE Healthcare with, and maintain, a GE Healthcare-validated remote access connection to service the Product; or (ii) GE Healthcare reserves the right to charge Customer for onsite support at GE Healthcare's then-current billing rate. This remote access and collection of machine data (e.g., temperature, helium level) will continue after the end of this Agreement unless Customer requests in writing that GE Healthcare disable it.

9.8. Use of Data.

9.8.1. Protected Health Information. If GE Healthcare creates, receives, maintains, transmits or otherwise has access to Protected Health Information (as defined in 45 C.F.R. § 160.103) ("PHI"), GE Healthcare may use and disclose the PHI only as permitted by law and by the Business Associate Agreement. Before returning any Product to GE Healthcare, Customer must ensure that all PHI stored in it is deleted.

9.8.2. Data Rights. GE Healthcare may collect, prepare derivatives from and otherwise use non-PHI data related to Products and/or Services for such things as training, demonstration, research, development, benchmarking, continuous improvement and facilitating the provision of its products, software and services. GE Healthcare will own all intellectual property and other rights that could result from this collection, preparation and use. The non-PHI data will not be used to identify Customer or sold by GE Healthcare without Customer's consent.

9.9. Customer Policies. GE Healthcare will use reasonable efforts to respect Customer-provided policies that apply to GE Healthcare and do not materially contradict GE Healthcare policies. Failure to respect Customer policies is not a material breach unless it is willful and adversely affects GE Healthcare's ability to perform its obligations.

9.10. Insurance. GE Healthcare will maintain coverage in accordance with its standard certificate of insurance.

9.11. Excluded Provider. To its knowledge, neither GE Healthcare nor its employees performing Services under this Agreement have been excluded from participation in a Federal Healthcare Program. If an employee performing Services under this Agreement is excluded, GE Healthcare will replace that employee within a reasonable time; if GE Healthcare is excluded, Customer may terminate this Agreement upon written notice to GE Healthcare.

10. Disputes and Arbitration

10.1. Binding Arbitration. Other than collection matters and actions seeking injunctive relief to prevent or cease a violation of intellectual property rights related to Products or Services, the parties agree to submit all disputes arising under or relating to this Agreement to the American Arbitration Association ("AAA") office closest to the largest metropolitan area of the location where the Product is installed or the Service is provided for binding arbitration conducted in accordance with AAA's then-current Commercial Arbitration Rules. Costs, including arbitrator fees and expenses, will be shared equally, and each party will bear its own attorneys' fees. The arbitrator will have authority to award damages only to the extent available under this Agreement. Nothing in this Section shall allow either party to arbitrate claims of any third-party not a party to this Agreement. The parties further agree to keep confidential: (i) the fact that any arbitration occurred, (ii) the results of any arbitration, (iii) all materials used, or created for use, in the arbitration, and (iv) all other documents produced by another party in the arbitration and not otherwise in the public domain.

11. Liability and Indemnity.

11.1. Limitation of Liability. GE HEALTHCARE'S LIABILITY FOR DIRECT DAMAGES TO CUSTOMER UNDER THIS AGREEMENT WILL NOT EXCEED: (I) FOR PRODUCTS, THE PRICE FOR THE PRODUCT THAT IS THE BASIS FOR THE CLAIM; OR (II) FOR SERVICE OR SUBSCRIPTIONS, THE AMOUNT OF SERVICE OR SUBSCRIPTION FEES FOR THE 12 MONTHS PRECEDING THE ACTION THAT IS THE BASIS FOR THE CLAIM. THIS LIMITATION WILL NOT APPLY TO GE HEALTHCARE'S DUTIES TO INDEMNIFY CUSTOMER UNDER THIS AGREEMENT.

11.2. Exclusion of Damages. NEITHER PARTY WILL HAVE ANY OBLIGATION FOR: (I) CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT OR REPUTATIONAL DAMAGES; (II) PROFIT, DATA OR REVENUE LOSS; OR (III) CAPITAL, REPLACEMENT OR INCREASED OPERATING COSTS.

11.3. IP Indemnification. GE Healthcare will indemnify, defend and hold Customer harmless from third-party claims for infringement of United States intellectual property rights arising from Customer's use of the Equipment or Software in accordance with the Specifications, Documentation and license.

11.4. General Indemnification.

11.4.1. GE Healthcare will indemnify, defend and hold Customer harmless for losses which Customer becomes legally obligated to pay arising from third party claims brought against Customer for bodily injury or damage to real or tangible personal property to the extent the damage was caused by GE Healthcare's: (i) design or manufacturing defect; (ii) negligent failure to warn, negligent installation or negligent Services; or (iii) material breach of this Agreement.

11.4.2. Customer will indemnify, defend and hold GE Healthcare harmless for losses which GE Healthcare becomes legally obligated to pay arising from third party claims brought against GE Healthcare for bodily injury or damage to real or tangible personal property to the extent the damage was caused by Customer's: (i) medical diagnosis or treatment decisions; (ii) misuse or negligent use of the Product; (iii) improper storage of the Product (iv) modification of the Product; or (v) material breach of this Agreement.

11.5. Indemnification Procedure. For all indemnities under this Agreement: (i) the indemnified party must give the other party written notice before claiming indemnification; (ii) the indemnifying party will control the defense; (iii) the indemnified party may retain counsel at its own expense; and (iv) the indemnifying party is not responsible for any settlement without its written consent.

12. Payment and Finance.

12.1. Late Payment. Customer must raise payment disputes before the payment due date. For any undisputed late payment, GE Healthcare may: (i) suspend performance under this Agreement until all past due amounts are paid; (ii) charge interest at a rate no more than the maximum rate permitted by applicable law; and (iii) use unapplied funds due to Customer to offset any of Customer's outstanding balance. If GE Healthcare suspends performance, any downtime will not be included in the calculation of any uptime commitment. If Customer fails to pay when due: (a) GE Healthcare may revoke its credit and designate Customer to be on credit hold; and (b) all subsequent shipments and Services must be paid in full on receipt.

12.2. Taxes. Prices do not include applicable taxes, which are Customer's responsibility.

12.3. Customer Payment Obligation. If installation or acceptance is delayed more than 90 days because of any reason for which Customer or its subcontractor is responsible, GE Healthcare will provide written notice and bill the remaining balance due on the order, and Customer must pay according to the payment terms listed on the Quotation.

13. Notices. Notices will be in writing and considered delivered when received if sent by certified mail, postage prepaid, return receipt requested, by overnight mail, or by fax. Notice to Customer will be directed to the address on this Agreement, and notice to GE Healthcare to General Counsel, 9900 W Innovation Dr., Wauwatosa, WI 53226.

14. **Imaging Equipment Uptime Commitment**. GE Healthcare will provide an uptime commitment during warranty for CT, MR, nuclear imaging, and x-ray Equipment, excluding peripherals ("Eligible Equipment") if Customer provides GE Healthcare with: (i) access to Eligible Equipment through a secure connection meeting Specifications and industry best practices; (ii) notice of changes that impact Customer's connection; and (iii) prompt and unencumbered access to Eligible Equipment. The "Uptime Commitment" for nuclear imaging and x-ray Eligible Equipment is 95%, except digital mammography, digital radiographic and vascular x-ray systems and all other Eligible Equipment is 97%. Other Products may be eligible for an uptime commitment if identified in the Quotation.

If GE Healthcare fails to meet the Uptime Commitment over a 26-week period, it will extend the warranty as follows:

<u>% Less than Uptime Commitment</u>	<u>Warranty Extension</u>
0.1 - 3.0	1 week
3.1 - 8.0	2 weeks
8.1 - 13.0	4 weeks
> 13.0	6 weeks

Uptime is calculated as follows:

$$\left(\frac{\text{UptimeBase} - \text{Downtime}}{\text{UptimeBase}} \right)$$

"Uptime Base" = ("a" hours per day X "b" days per week X 26 weeks) – (Planned Maintenance ("PM") hours during prior 26 weeks), where "a" hours per day and "b" days per week are determined by the standard warranty for Eligible Equipment. "Downtime" is the number of hours during which Eligible Equipment is subject to a Critical Malfunction. Downtime starts when Customer notifies GE Healthcare that Eligible Equipment is inoperable and unavailable for use due to GE Healthcare's design, manufacturing, material or performance failure ("Critical Malfunction"). Downtime ends when Eligible Equipment is available for clinical use. To be eligible for the Uptime Commitment, Customer must maintain a performance log that includes data required to calculate Downtime.

15. **DoseWatch Device License**. Each connection of a Device (defined below) to the DoseWatch Software requires Customer to purchase a unique Device license referencing a Device ID that allows concurrent use of the DoseWatch Software with that Device at a specified Customer facility on Customer's secured network. All other terms, duration and warranties applicable to the Software license apply to the Device license. "Device" is specific Customer equipment approved by GE Healthcare to be connected to DoseWatch Software under this Agreement. Additional Device connections may be added to this Agreement, subject to individual Device licenses, and related installation, implementation, configuration and optimization services at GE Healthcare's then-current rates.

16. **Subscription Products and ViewPoint Software Maintenance Terms and Conditions.**

16.1. Overview. GE Healthcare will, in accordance with the terms and conditions of this section, maintain, support and update: (i) Products provided via Subscription (excluding Healthcare Digital Products); and (ii) ViewPoint Software licensed by Customer ("ViewPoint Software") and HIS interface software installed in the United States covered by a Software Maintenance Agreement ("SMA").

16.2. Scope.

16.2.1. Software Support and Maintenance. GE Healthcare will use reasonable efforts to provide Error Correction (defined below) for verifiable and reproducible Errors (defined below) within a reasonable time after: (a) Customer reports the Error to GE Healthcare; or (b) detection by GE Healthcare. Updates (defined below), if released, will be provided at no additional cost as a part of this maintenance commitment. New functionality must be purchased separately, unless otherwise agreed.

16.2.2. Equipment Maintenance. Preventative maintenance service may be required periodically during normal business hours of 8:00 a.m. to 5:00 p.m. (local time) on mutually agreed dates. Customer will make the Equipment available for preventative maintenance upon GE Healthcare request. Additional services to be performed, including specific additional terms thereof, shall be specified in the Quotation or alternate schedules.

16.2.3. Definitions. "Error" means any Software-related problem that: (i) materially interferes with Customer's use of the Software; and (ii) results from a failure of the Software to materially conform to the Documentation. "Error Correction" means: (a) modification of the

Software that corrects an Error by bringing the Software into material conformity with the Documentation; or (b) a procedure that avoids the material adverse effect of the nonconformity. "Update" means a change that provides Error Corrections and/or enhances functionality of the Software version licensed by Customer. An Update does not involve major changes or provide significant, new functionality or applications, or changes to the software architecture or file structure. Updates retain the same license as the original Software.

16.2.4. Hotline Support. GE Healthcare will provide phone and email support during standard business hours, excluding GE Healthcare holidays, for problem solving, Error resolution and general help.

16.2.5. Remote Access Support. GE Healthcare may access Software remotely via Customer's network and GE Healthcare-supplied secure tunnelling software to monitor Software parameters to help prevent and detect Errors. Customer will reasonably cooperate with GE Healthcare to establish remote connections. Certain modules require remote access in order to obtain support.

16.2.6. Warranty. GE Healthcare warrants that its Services will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will re-perform non-conforming Services as long as Customer provides prompt written notice to GE Healthcare. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. SERVICE MANUALS AND DOCUMENTATION ARE PROVIDED "AS IS". GE HEALTHCARE DOES NOT GUARANTEE PRODUCTS WILL OPERATE WITHOUT ERROR OR INTERRUPTION.

16.2.7. Exclusions. GE Healthcare has no obligation to Customer for: (i) use of Products in combination with software, hardware, or services not recommended in writing by GE Healthcare; (ii) use in a manner or environment for which GE Healthcare did not design or license the Products, or in violation of GE Healthcare's recommendations or instructions; (iii) interface configuration (often referred to as HIS, PACS or EMR interfaces necessary due to changing vendors or versions); (iv) reorganization of Customer data; (v) consulting or software engineering and programming; (vi) support of Products outside the scope of the foregoing maintenance commitments; (vii) failure to use or install, or permit GE Healthcare to use or install, Error Corrections or Updates; (viii) failure to maintain Products within the current major release version or the immediately prior major release version; (ix) defects in products or services not made and provided by GE Healthcare; (x) any cause external to the Products or beyond GE Healthcare's control; (xi) failure of Customer's network; (xii) replacement of disposable or consumable items; (xiii) additional equipment or upgrades in connection with Products; and (xiv) migration of Software to different hardware or operating systems.

16.2.8. Software Maintenance Agreement Term. The following applies to ViewPoint software and HIS interface software only: The SMA term and start date is identified in the Quotation and its related Schedule A. Either party may terminate the SMA without cause after the first anniversary by providing at least 90 days' prior written notice to the other party. SMA payments are due within 30 days after receipt of GE Healthcare's invoice.

17. Positron Emission Tomography ("PET") and Computed Tomography ("CT"). Customer will provide all radioactive sources and radioisotopes for calibration and performance checks of such system.



GE Healthcare Warranty Statement

1. Warranty.

1.1. **Equipment.** For non-customized Equipment purchased from GE Healthcare or its authorized distributors, unless otherwise identified in the Quotation, GE Healthcare warrants that Equipment will be free from defects in title, and, for 1 year from Equipment Acceptance, it will: (i) be free from defects in material and workmanship under normal use and service; and (ii) perform substantially in accordance with the Specifications. The warranty covers parts and labor and only applies to end-users that purchase Equipment from GE Healthcare or its authorized distributors.

1.2. **Software.** For Software licensed from GE Healthcare, GE Healthcare warrants that: (i) it has the right to license or sublicense Software to Customer; (ii) it has not inserted Disabling Code into Software; (iii) it will use efforts consistent with industry standards to remove viruses from Software before delivery; and (iv) unless otherwise identified in the Quotation, for 90 days from Software Acceptance, Software will perform substantially in accordance with the Documentation. “Disabling Code” is code designed to interfere with the normal operation of Software, but code that prohibits use outside of the license scope is not Disabling Code.

1.3. **Services.** GE Healthcare warrants that its Service will be performed by trained individuals in a professional, workman-like manner.

1.4. **Used Equipment.** Certain Used Equipment is provided with GE Healthcare’s standard warranty for the duration identified in the Quotation, but in no event more than 1 year. If no warranty is identified, the Used Equipment is provided “AS IS” and is not warranted by GE Healthcare.

1.5. **Accessories and Supplies.** Warranties for accessories and supplies are at www.gehealthcare.com/accessories.

1.6. **Third Party Product.** Third Party Product is covered by the third party’s warranty and not GE Healthcare’s warranties.

1.7. **Subscription Products.** Unless otherwise specified, Products provided via Subscription do not include a warranty.

1.8. **SaaS Offerings.** Unless otherwise specified, SaaS Offerings do not include a warranty.

2. **Remedies.** If Customer promptly notifies GE Healthcare of its claim during the warranty and makes the Product available, GE Healthcare will: (i) at its option, repair, adjust or replace the non-conforming Equipment or components; (ii) at its option, correct the non-conformity or replace the Software; and/or (iii) re-perform non-conforming Service. Warranty service will be performed from 8am to 5pm local time, Monday-Friday, excluding GE Healthcare holidays, and outside those hours at GE Healthcare’s then-current service rates and subject to personnel availability. GE Healthcare may require warranty repairs to be performed via a secure, remote connection or at an authorized service center. If GE Healthcare replaces Equipment or a component, the original becomes GE Healthcare property and Customer will return the original to GE Healthcare within 5 days after the replacement is provided to Customer. Customer cannot stockpile replacement parts. Prior to returning Equipment to GE Healthcare, Customer will: (a) obtain a return to manufacturer authorization; and (b) back up and remove all information stored on the Equipment (stored data may be removed during repair). Customer is responsible for damage during shipment to GE Healthcare. The warranty for a Product or component provided to correct a warranty failure is the unexpired term of the warranty for the repaired or replaced Product.

GE Healthcare may provide a loaner unit during extended periods of Product service. If a loaner unit is provided: (i) it is for Customer’s temporary use at the location identified in the Quotation; (ii) it will be returned to GE Healthcare within 5 days after the Product is returned to Customer, and if it is not, GE Healthcare may repossess it or invoice Customer for its full list price; (iii) it, and all programs and information pertaining to it, remain GE Healthcare property; (iv) risk of loss is with Customer during its possession; (v) Customer will maintain and return it in proper condition, normal wear and tear excepted, in accordance with GE Healthcare’s instructions; (vi) it will not be repaired except by GE Healthcare; (vii) GE Healthcare will be given reasonable access to it; (viii) Customer is not paying for its use, and Customer will ensure charges or claims submitted to a government healthcare program or patient are submitted accordingly; and (ix) prior to returning it to GE Healthcare, Customer will delete all information, including PHI, from it and its accessories, in compliance with industry standards and instructions provided by GE Healthcare.

NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. SERVICE MANUALS AND DOCUMENTATION ARE PROVIDED “AS IS”. GE HEALTHCARE DOES NOT GUARANTEE PRODUCTS WILL OPERATE WITHOUT ERROR OR INTERRUPTION.

3. **Limitations.** GE Healthcare has no obligation to Customer for warranty claims if Customer uses the Product: (a) for non-medical or entertainment use or outside the United States; (b) in combination with software, hardware, or services not recommended in writing by GE Healthcare; and (c) in a manner or environment for which GE Healthcare did not design or license it, or in violation of GE Healthcare’s recommendations or instructions. GE Healthcare has no obligation to Customer for warranty claims for damages or deficiencies outside GE Healthcare’s reasonable control.

In addition, these warranties do not cover: (i) defects or deficiencies from improper storage or handling, maintenance or use that does not conform to Specifications and/or Documentation, inadequate backup or virus protection, cyber-attacks, failure to maintain power quality, grounding, temperature, and humidity within Specifications and/or Documentation, or other misuse or abuse; (ii) repairs due to power anomalies or any cause external to the Products or beyond GE Healthcare’s control; (iii) payment or reimbursement of facility costs arising from repair or replacement of the Products or parts; (iv) planned maintenance (unless applicable to Equipment), adjustment, alignment, or calibration; (v) network and antenna installations not performed by GE Healthcare or its subcontractors; (vi) lost or stolen Products; (vii) Products with serial numbers altered, defaced or removed; (viii) modification of Product not approved in writing by GE Healthcare (ix) Products immersed in liquid; (x) for Mobile Equipment, defects or deficiencies from mobile use outside of normal transportation wear and tear (excluding OEC regarding transportation wear and tear) and (xi) replacement of disposable or consumable items.

4. Exceptions to Standard Warranty.

Partial System Equipment Upgrades for CT, MR, X-Ray, IGS, PET (Scanners, Cyclotrons and Chemistry Labs) and Nuclear systems: 6 months (only applies to the upgraded components unless the parties otherwise agree to modify the coverage of the upgraded and existing components in an existing service agreement. Optima XR240amx partial upgrades are warranted for 1 year on the wireless detector.

Cyclotron and Radiopharmacy: Warranty starts on the earlier of (i) 3 months after the date GE Healthcare completes mechanical installation, or (ii) the date Product testing is successfully completed

MR Systems: Warranty does not cover: (i) a defect or deficiency from failure of water chillers supplied or serviced by Customer, and (ii) for MR systems with LHe/LN or shield cooler configured superconducting magnets (except for MR Systems with LCC magnets), any cryogen supply, cryogenic service or service to the magnet, cryostat, coldhead, shield cooler compressor or shim coils unless the need for supply or service is caused by a defect in material or workmanship covered by this warranty.

Proteus XR/a, Definium and Precision 500D X-Ray Systems: Warranty does not cover collimator bulbs

Performix 160A (MX160) Tubes: 3 years

X-Ray High Voltage Rectifiers and TV Camera Pick-Up Tubes: 6 months

X-Ray Wireless Digital Detectors: In addition to the standard warranty, GE Healthcare will provide coverage for detector damage due to accidental dropping or mishandling. If accidental damage occurs, GE Healthcare will provide Customer with 1 replacement detector during warranty at no additional charge. If subsequent accidental damage occurs during warranty, each additional replacement will be provided for \$30,000 per replacement. This additional coverage excludes damage caused by any use that does not conform to original equipment manufacturer (“OEM”) guidelines, use that causes fluid invasion, holes, deep scratches or the detector case to crack, and damage caused by abuse, theft, loss, fire, power failures or surges. If the warranty is voided by these conditions, repair or replacement is Customer’s responsibility.

Bone Mineral Densitometry: Alpha Source, Inc. will perform installation, application support and warranty services. Direct warranty claims to Alpha Source, Inc. at 1-800-654-9845. Upgraded computer, printer and monitor components include a 1 month warranty. Customer will not be credited the value of this warranty against pre-existing warranties or service agreements.

OEC New or Exchange Service Parts: 120 days

OEC Tubes and Image Intensifiers: 1 year

HealthNet Lan, Advantage Review — Remote Products: 3 months

LOGIQ e, Venue 50, Venue Go, Versana Active and related transducers purchased with them: 5 years

LOGIQ V1, LOGIQ V2, Vivid iq, Vscan and Vscan Extend and related transducers purchased with them: 3 years

Except the following have a 1 year warranty:

Transducers: TEE Probes,

Carts: Venue 50 Docking Cart, Venue Go Cart, Venue Go mounting cradle, LOGIQ e Isolation Cart, LOGIQ e Docking Cart, LOGIQ V1/V2 Cart and Vivid IQ cart

Other Accessories: Batteries (internal & external), and printers and peripherals, TEE cleaning & storage system, ICECord Connector and printers

Warranty covers defective parts and components and includes: (i) repair at GE Healthcare facilities, (ii) a loaner unit or probe replacement shipped for next business day delivery for requests received by 3pm Central Time, (iii) phone support from 7am to 7pm Central Time, Monday-Friday, excluding GE Healthcare holidays. For an additional charge, GE Healthcare may provide field support/service, planned maintenance, and/or coverage for damage due to accidental dropping or mishandling.

LOGIQ P9 R2.5 and newer and, Versana Premier, Versana Balance, Venue and related transducers purchased with them: 5 years

Voluson P8 BT18 and newer, Voluson SWIFT, Voluson S8 Touch and Voluson S10 Expert, LOGIQ F8 2016 and newer, LOGIQ V5, Vivid T8 and Vivid T9 and related transducers purchased with them: 3 years

Except the following have a 1 year warranty:

Other Accessories: Batteries (internal & external) and printers and peripherals, TEE cleaning & storage system

Transducers: TEE Probes

Warranty Includes: (i) repair at Product location by a qualified service technician Monday-Friday 8am to 5pm local time, excluding GE Healthcare holidays, and (ii) phone support from 7am to 7pm Central Time, Monday-Friday, excluding GE Healthcare holidays. For an additional charge, GE Healthcare may provide planned maintenance and/or coverage for damage due to accidental dropping or mishandling.

Ultrasound Partial System Equipment Upgrades: 3 months (only applies to the upgraded components). Customer will not be credited the value of the warranty against pre-existing warranties or service agreements.

Veterinary Use: Notwithstanding anything herein, any Product validated and sold by GE Healthcare for specific use in the veterinary market shall have a one (1) year warranty.

Batteries: 3 months, except for x-ray nickel cadmium or lead acid batteries and ultrasound batteries, which are warranted for 1 year

CARESCAPE Monitors B450, B650 and B850 3 years parts, 1 year labor (excluding displays, which are standard 1 year parts and labor)

CARESCAPE ONE : 3 year parts, 1 year labor (excluding displays, which are standard 1 year parts and labor)

Micromodules: 3 year parts, 1 year labor (i) repair services performed at GE Healthcare Repair Operations Center

B40 Monitors: 2 years parts, 1 year labor (excluding displays, which are standard)

B105 B125, and B155 Patient Monitors: 3 years with: (i) repair services performed at GE Healthcare Repair Operations Center, (ii) phone support from 7am to 5pm Central Time, Monday-Friday, excluding GE Healthcare holidays; and (iii) a loaner Product (subject to availability; shipping charges included).

Novii Wireless Patch System- Interface and Pods: 1 year starting 40 days after shipment with: (i) exchange services performed at GE Healthcare Repair Operations Center; and (ii) phone support from 7am to 5pm Central Time, Monday-Friday, excluding GE Healthcare holidays. Customer may elect to purchase coverage for Pod damage due to accidental dropping or mishandling. This coverage excludes patches and cables, which are considered Product accessories, and are warranted pursuant to Section 1.5 above.

MAC 5, MAC 7, MAC 2000 and MAC 3500: 3 years (i) repair services performed at GE Healthcare Repair Operations Center, (ii) phone support from 7am to 5pm Central Time, Monday-Friday, excluding GE Healthcare holidays

CARESCAPE V100 and VC150 Vital Signs Monitors: 2 years

SEER 1000: 2 years (i) repair services performed at GE Healthcare Repair Operations Center, (ii) phone support from 7am to 5pm Central Time, Monday-Friday, excluding GE Healthcare holidays

Exergen: 4 years

Microenvironment and Phototherapy consumable components: 1 month

Corometrics® Fetal Monitoring: Warranty includes: (i) warranty starting on the earlier of (a) if GE Healthcare or Customer installs, 5 days after installation or (b) 40 days after shipment; and (ii) 2 years parts, 1 year labor

Corometrics® Nautilus Transducers: 2 years

Lullaby Phototherapy System: 3 years on lamp assembly

Blood pressure cuffs and related adaptors and air hoses: 1 month

Anesthesia Monitor Mounting Solutions: If purchased directly from GE Healthcare, it will be warranted as a GE Healthcare Product

Tec 850 Vaporizers: 3 years

Tec 6 Plus Vaporizers: 2 years

CARESCAPE Gateway: 1 year

CARESCAPE Bridge: 1 year

Vscan Air and Vscan Air Vet Warranty: 3 years with the exception of the battery and peripherals which are covered for 1 year. Warranty covers defective parts and components and includes: (i) a replacement unit, and (ii) phone support from 7am to 7pm Central Time, Monday-Friday, excluding GE Healthcare holidays. For an additional charge, GE Healthcare may provide additional battery and/or coverage for damage due to accidental dropping or mishandling



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

November 16, 2022

Subject: Proposed Amendment No. 2 to Agreement 073-2019 with Arman G. Froush, D.O., a contract employee, for professional medical and administrative services in the Department of Radiology

Recommended Action: Approve; Authorize Chairman to Sign

Summary:

Kern Medical is requesting your Board approve the proposed Amendment No. 2 to Agreement 073-2019 with Arman G. Froush, D.O., for professional medical and administrative services in the Department of Radiology. Dr. Froush, a board-certified interventional radiologist, has been employed by Kern Medical as a full-time employee since January 2017. Dr. Froush serves as the Chair, Department of Radiology and Chief, Division of Vascular and Interventional Radiology. This amendment extends the term of the agreement through January 31, 2023, while a new agreement is established, and increases the maximum payable by \$150,000 to provide for the extended term.

Therefore, it is recommended that your Board approve Amendment No. 2 to Agreement 073-2019 with Arman G. Froush, D.O., for professional medical and administrative services in the Department of Radiology, effective December 10, 2022, increase the maximum payable by \$150,000, from \$3,150,000 to \$3,300,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Arman G. Froush, D.O.)**

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 Arman G. Froush, D.O. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #073-2019, dated December 11, 2019) and Amendment No. 1 (Agt. #111-2022, dated September 21, 2022) (the “Agreement”), for the period December 11, 2019 through December 10, 2022, whereby Physician provides professional medical and administrative 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 December 11, 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 commence as of December 11, 2019 (the “Commencement Date”), and shall end January 31, 2023 (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. 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 \$3,300,000 over the 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 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 _____
Arman G. Froush, D.O.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend.Froush.110922



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

November 16, 2022

SUBJECT: Proposed Cloud Services Agreement and Business Associate Agreement with Qualtrics, LLC, an SAP America Inc. company (“Qualtrics”)

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Cloud Services Agreement with Qualtrics to provide Consumer Assessment of Healthcare Provider and Systems surveys, as required by the Centers for Medicare and Medicaid Services (CMS), as well as surveys for providers and ancillary outpatient clinics through both digital and direct mail.

In 2020, Kern Medical implemented a new patient experience survey vendor, Survey Vitals, to enhance the quality, timeliness and response rates of these surveys, while recognizing significant savings. Earlier this year, Kern Medical was notified that Qualtrics had entered into an agreement to purchase Survey Vitals and that the Survey Vitals platform would sunset in the final quarter of 2022. As a result of the acquisition, Kern Medical worked with the top patient experience vendors to view products, capabilities and compare pricing. Through that review, Qualtrics provided a solution that was best able to meet our needs at considerable savings to alternatives. The term of the Cloud Services Agreement is three years, effective November 16, 2022, with a total maximum payable not to exceed \$200,000.

The Cloud Services Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the inability to terminate without cause, which is standard in the industry and consistent with other vendors. Additionally, the Business Associate Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to Qualtrics unwillingness to provide indemnification or insurance coverage in the event of a privacy breach. Failure to contract with a patient experience survey vendor would place Kern Medical in violation of CMS regulations, and therefore Kern Medical believes the benefit outweighs the risk of moving forward with the Cloud Services Agreement and Business Associate Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Cloud Services Agreement and Business Associate Agreement with Qualtrics, LLC, an SAP America Inc. company, effective November 16, 2022, with a maximum payable not to exceed \$200,000, for the three-year term, and authorize the Chairman to sign.



Order Form

Parties:	Qualtrics, LLC 333 W. River Park Dr. Provo, UT 84604 United States ("Qualtrics")	Kern County Hospital Authority 1700 Mount Vernon Ave Bakersfield, CA 93306 United States ("Customer")	
Effective Date:	The date signed by the last party to sign.		
Governing Document:	This Order Form is subject to the Master Services Agreement or General Terms and Conditions between the parties dated on or about the Effective Date (the "Agreement"). All capitalized terms used but not defined herein have the meanings given to them in the Agreement. If there is a conflict between the terms of the Agreement and this Order Form, this Order Form will control.		
Attachments:	<ul style="list-style-type: none"> - Service Level Exhibit - Fees Exhibit - Cloud Service Exhibit 		
Services:	As set forth in the exhibits attached hereto		
Term:	As set forth in the exhibits attached hereto		
Payment Terms:	As set forth in the exhibits attached hereto		
Additional Terms:			
To be completed by Customer			
Regional Data Center:	US	Purchase Order Number (if any):	
Email Address for Invoice Submission:	kevin.jenson@kernmedical.com	Shipping Address:	
Invoicing Instructions (if applicable):		Billing Address for Invoice Submission:	1700 Mount Vernon Ave Attn: Kern Medical Center Foundation Bakersfield CA United States 93306

Qualtrics	Customer
By (signature):	By (signature):
Name:	Name: Russell Bigler
Title:	Title: Chairman, Board of Governors
Date:	Date:
Qualtrics Primary Contact:	Customer Primary Contact:
Name: Marshall Hartley	Name: Kevin Jenson
Phone:	Phone:
Email: marshallh@qualtrics.com	Email: kevin.jenson@kernmedical.com

REVIEWED ONLY, NOT APPROVED AS TO FORM
KCHA Legal Services Department



Order Form

Service Level Exhibit

Service Levels

1. **Availability.** Qualtrics will use commercially reasonable efforts to ensure that the Cloud Service will be available at all times, excluding when the Cloud Service is unavailable due to (a) required system maintenance as determined by Qualtrics ("**Scheduled Maintenance**"); and (b) causes outside of the reasonable control of Qualtrics that could not have been avoided by its exercise of due care, including any outages caused by: (i) the Internet in general; (ii) a Customer-caused event; or (iii) any Force Majeure Event ("**Availability**").
2. **Scheduled Maintenance.** A minimum of five days' advance notice will be provided by email to Customer for all Scheduled Maintenance exceeding two hours. For Scheduled Maintenance lasting less than two hours, notice will be displayed on the login page.
3. **Downtime.** "**Downtime**" is defined as the Cloud Service having no Availability, expressed in minutes.
4. **Remedies for Downtime.** If Downtime exceeds a certain amount per month, Customer will be entitled, upon written request, to a credit ("**Fee Credit**") based on the formula: Fee Credit = Fee Credit Percentage set forth below * (1/12 current annual Fees paid for Software affected by Downtime). All times listed immediately below are per calendar month.
 1. If Downtime is 30 minutes or less, no Fee Credit Percentage is awarded.
 2. If Downtime is from 31 to 120 minutes, Customer is eligible for a Fee Credit Percentage of 5%.
 3. If Downtime is from 121 to 240 minutes, Customer is eligible for a Fee Credit Percentage of 7.5%.
 4. If Downtime is 241 minutes or greater, Customer is eligible for a Fee Credit Percentage of 10.0%

Order Form

Fees Exhibit

License Details

Start Date	End Date	Term in Months
16-Nov-2022	15-Nov-2025	36

Cloud Service Details

Period	Services	Price	Estimated Invoice Date	Payment Terms from Invoice	License Configuration
16-Nov-2022 TO 15-Nov-2023	Cloud Professional	\$41,100.00 \$0.00	Effective Date	Net 30	Q-1789512
16-Nov-2023 TO 15-Nov-2024	Cloud Professional	\$53,000.00 \$0.00	16-Oct-2023	Net 30	Q-1789520
16-Nov-2024 TO 15-Nov-2025	Cloud Professional	\$53,000.00 \$0.00	16-Oct-2024	Net 30	Q-1789521
Total		USD \$147,100.00			

Prices shown do not include applicable taxes. Applicable taxes will be presented on the invoice.

Press Release

Notwithstanding anything to the contrary in the Agreement, upon mutual execution of this Order Form Customer grants Qualtrics the right to issue a press release naming Customer as a customer of Qualtrics and identifying the product purchased.

Order Form

Cloud Service Exhibit

Cloud Service Renewal (not applicable to pilots or proofs of concept). Qualtrics sends renewal notices to customers at least 60 days before the end of the term. Upon expiration of each term, this Order may renew on an annual basis with up to a 5% uplift upon mutual agreement in writing by the parties.

[Description of Services on following page]

Order Form

YEAR 1
Q-1789512

CLOUD SERVICE

CX Use-Case

Location - User : Includes up to 50

SMS Text Reserve : up to 100000

Location - Responses : up to 100000

YEAR 2
Q-1789520

CLOUD SERVICE

CX Use-Case

Location - User : Includes up to 50

SMS Text Reserve : up to 100000

Location - Responses : up to 100000

YEAR 3
Q-1789521

CLOUD SERVICE

CX Use-Case

Location - User : Includes up to 50

SMS Text Reserve : up to 100000

Location - Responses : up to 100000



Order Form

Parties:	Qualtrics, LLC 333 W. River Park Dr. Provo, UT 84604 United States ("Qualtrics")	Kern County Hospital Authority 1700 Mount Vernon Ave Bakersfield, CA 93306 United States ("Customer")
Effective Date:	The date signed by the last party to sign.	
Governing Document:	This Order Form is subject to the Master Services Agreement or General Terms and Conditions between the parties dated on or about the Effective Date (the "Agreement"). All capitalized terms used but not defined herein have the meanings given to them in the Agreement. If there is a conflict between the terms of the Agreement and this Order Form, this Order Form will control.	
Attachments:	Research Services Exhibit	
Services:	As set forth in the exhibits attached hereto	
Term:	As set forth in the exhibits attached hereto	
Payment Terms:	As set forth in the exhibits attached hereto	
Additional Terms:		
To be completed by Customer		
Email Address for Invoice Submission:	Shipping Address:	
Invoicing Instructions (if applicable):	Billing Address for Invoice Submission:	Attn:

Qualtrics	Customer
By (signature):	By (signature):
Name:	Name: Russell Bigler
Title:	Title: Chairman, Board of Governors
Date:	Date:
Qualtrics Primary Contact:	Customer Primary Contact:
Name: Reed Gabrielsen	Name: Kevin Jenson
Phone:	Phone:
Email: rgabrielsen@qualtrics.com	Email: kevin.jenson@kernmedical.com

REVIEWED ONLY, NOT APPROVED AS TO FORM
KCHA Legal Services Department

Jamie A. Mason

Jamie A. Mason
Hospital Counsel

Order Form

Research Services Exhibit

Customer agrees that Qualtrics may use partners to deliver any portion(s) of the Services set forth in this Exhibit at Qualtrics' discretion.

1. Definitions

- a. **"Deliverables"** refers to those service deliverables included in the Project Scope in Section 2.
- b. **"Delivery Team"** refers to the set of resources assigned by Qualtrics for fulfillment of project scope.
- c. **"Project"** refers to the project that is the cumulation of Deliverables to be provided under this Research Services Exhibit.
- d. **"Standard Business Hours"** are 0900 to 1700 hours according to the time zone of the office in which Delivery Team is located, unless otherwise agreed to in writing during the Project.

2. Project Scope

- a. Inclusions
 - i. Deliverable descriptions are outlined in Schedule 1. Please note that **only the Deliverables listed immediately below are included in this Project**. Each line item represents a Deliverable and quantity in brackets.

HCAHPS (1)

- b. General Assumptions
 - i. Unless prior arrangements are made with Qualtrics, Customer must have access to and the right to use a current license to Qualtrics' Cloud Services and access to any license features necessary to execute the Project.
 - ii. For the duration of the Project, Customer will provide the Delivery Team with access to Customer's Qualtrics brand (account) as a brand administrator.
 - iii. Estimated pricing herein is based on the original Project scope, and changes to the Project scope may result in additional charges and adjusted estimated timeline and must be approved by both parties.
 - iv. Notwithstanding the pricing set forth herein, all Projects will have a minimum fee of USD 3000 (as converted into the currency in which the price set forth herein is given at the established exchange rate on the effective date hereof).
 - v. Notwithstanding anything to the contrary set forth herein, all Project funds and Delivery Team obligations set forth in this Research Services Exhibit expire one year after the Effective Date

3. Responsibilities

- b. Delivery Team Responsibilities
 - vi. Engages with Customer throughout the Project, keeping Customer informed of timelines and progress toward completion throughout the Project.
 - vii. Completes all items listed under Delivery Team Responsibilities in Schedule 1 for each Deliverable.

Order Form

- viii. Offers guidance and support required to ensure Customer can fulfill responsibilities listed in Schedule 1 for each Deliverable.
 - ix. All services will be performed remotely from Delivery Team offices unless noted otherwise in this contract or specifically agreed upon by both parties. Customer is responsible for any travel and accommodation expenses if and as incurred in the course of this project, in accordance with Qualtrics' then current travel practices and/or policies.
- b. Customer Responsibilities
- i. Engages actively throughout the Project, following a cadence decided with Delivery Team during kickoff call; changes or cancellations of any meetings require 24 hours' notice in order to avoid forfeiture of allotted time.
 - ii. Manages User Acceptance Testing ("UAT") process and any special testing requirements, ensuring that each stage of the Project is complete, and the scope of work has been met.
 - iii. As needed, provides resources to fill all required roles for successful delivery, which may include project sponsorship, signatory, stakeholder management, project coordination, customer experience lead, technical lead, operational support.
 - iv. Answers questions and clarifies requirements as needed during the Project.
 - v. Completes all steps listed under Customer Responsibilities in Schedule 1 for each applicable Deliverable.
 - vi. Unless otherwise agreed, Customer assumes full responsibility for the program following the Project period, and agrees to maintain all license features, including updates to Deliverables created during the Project, as well as the creation of any new Deliverables, including surveys, dashboards, reports, and sample collection.

3. Governance

- a. Timing of project start will be mutually agreed between Delivery Team and Customer based on Delivery Team availability and Customer's milestones.
- b. The Project is complete based on completion of delivery and Customer's acceptance, per the terms of the Acceptance Criteria section.
- c. Unless otherwise agreed by both parties in writing, all interactions and meetings will be conducted in English, and will be conducted remotely, via phone, email, or videoconference.

4. Acceptance Criteria

- a. Once a Project phase is completed and the Delivery Team provides notification of the Deliverables for review and approval, the Customer will either (1) confirm the requirements have reasonably been met and sign off on the approval for the next Project phase to begin or (2) reply to the Delivery Team, in writing, detailing the specific requirements that must still be met. Upon mutual agreement, both parties may agree to extend the time period for UAT, though additional time may impact Project timelines and budget and be subject to a Change Order (as defined below).
- b. All Deliverables are reviewed and signed off according to the following process:
 - vii. After receiving the Deliverable, Customer will provide written sign off or report any issues within 5 business days.
 - viii. The Delivery Team will correct reported issues within a mutually agreed time frame.

Order Form

- ix. Customer will provide written feedback and raise issues related to the reworked portion of the Deliverable within a mutually agreed time frame, and the Delivery Team will make changes necessary to resolve the issues.
- x. Customer will provide final review and written signoff on the reworked Deliverables within 2 business days.
- xi. Deliverables will be considered accepted if the Customer does not provide written notification of Deliverable rejection within the timelines specified above.

5. Third Party Vendors and Products

- a. Customer remains responsible for their own vendors and third parties providing services related hereto, that are not otherwise contracted through this agreement.
- b. Qualtrics is not responsible for third party products obtained by Customer.

6. Change Orders

- a. If Customer or Delivery Team wishes to change the scope of the Project, they will submit details of the requested change to the other in writing. Delivery Team will, within a reasonable time after such request is received, provide a written estimate to Customer of changes to Project cost, timeline, and/or scope.
- b. Promptly after receipt of the written estimate, Customer and Delivery Team will negotiate and agree in writing on the terms of such change (a "Change Order"). Each Change Order complying with this Section will be considered an amendment to this Order Form.

7. Payments and Fees

Item(s)	Invoice Date	Payment Terms from Invoice	Price (USD)
HCAHPS	Effective Date (one-time)	Net 30 days	USD 10,000
Total:			USD 10,000

8.

Order Form

Schedule 1: Research Services Deliverable Description

This outlines all Deliverables that *may* be included in a Project, along with associated Delivery Team and Customer responsibilities. **Deliverables listed below may not be included in the specific Project referenced in the above Order Form. For a list of specific Deliverables included in this Project, refer to Section 2: Project Scope above.**

Unless otherwise noted, all Deliverables will be configured using standard features available in the Qualtrics platform; custom features can be scoped and purchased separately through Qualtrics Engineering Services. For all Deliverables, Customer is responsible for any setup or configuration beyond what the Delivery Team provides as part of the Project, including additional surveys or dashboards, and any required translations for surveys, dashboards, reports, Website Feedback creatives, or any other features of the Qualtrics platform. **Customer will maintain all aspects of the Deliverables after completion of the Project.**

Project work and program oversight may be conducted by Survey Vitals, a Qualtrics Company, LLC. in our Novi, MI office.

Service	Description
<p>HHCAHPS</p>	<p>HHCAHPS</p> <p>For purposes of clarity only, CAHPS may include HCAPHs, OAS CAHPS, HH CAHPS, Hospice CAHPS, ICH_CAHPs, ACO CAHPS, MIPS CAHPS, and Health Plan CAHPS.</p> <p>Delivery Team Responsibilities: In compliance with CAHPS protocols, paper surveys will be mailed to eligible patients via a 3rd party mail distribution center for an agreed upon target number of completed surveys annually per facility. Delivery Team will manage the vendor relationship and provide oversight for all CAHPS protocols.</p> <p>Vendor Responsibilities: The vendor will be responsible for all out-going, incoming, and scanning of all 1st and 2nd wave surveys and dispositioning undeliverables, completed surveys and non-respondents. The vendor will provide a monthly data file back to Qualtrics and all completed survey data will be imported into the Qualtrics dashboard for reporting along with any available CAHPS public report benchmark data and submitted to Quality Net monthly for official CAHPS reporting.</p> <p>Customer Responsibilities: Customer is responsible to transmit all patient files for the survey administration in an encrypted .csv file via secure file transfer protocol (SFTP) weekly, twice per month, or monthly. Customer is responsible to send all required data fields as required for corresponding CAHPS program and submit any update files in accordance with CAHPS dates and deadlines.</p>

GENERAL TERMS AND CONDITIONS FOR QUALTRICS CLOUD SERVICES ("GTC")

Between

**Qualtrics, LLC
(an SAP America Inc. company)
333 W. River Park Drive
Provo, Utah 84604
("Qualtrics")**

And

Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306

("Customer")

1. DEFINITIONS

Capitalized terms used in this document are defined in the Glossary.

2. USAGE RIGHTS AND RESTRICTIONS

2.1 Grant of Rights.

Qualtrics grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials (as applicable) and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

2.2 Authorized Users.

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

2.3 Acceptable Use Policy.

With respect to the Cloud Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

2.4 Verification of Use.

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. Qualtrics may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.5 Suspension of Cloud Service.

Qualtrics may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. Qualtrics will promptly notify Customer of the suspension or limitation. Qualtrics will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.6 Third Party Web Services.

The Cloud Service may include integrations with web services made available by third parties (other than Qualtrics' Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.

2.7 Mobile Access to Cloud Service.

If applicable, Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be

governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

3. QUALTRICS RESPONSIBILITIES

3.1 Provisioning.

Qualtrics provides access to the Cloud Service as described in the Agreement.

3.2 Support.

Qualtrics provides support for the Cloud Service as referenced in the Order Form.

3.3 Security.

Qualtrics will implement and maintain appropriate technical and organizational measures to protect the personal data processed by Qualtrics as part of the Cloud Service as described in the Data Processing Agreement attached hereto as **Exhibit A ("DPA")** for Cloud Services incorporated into the Order Form in compliance with applicable data protection law.

3.4 Modifications.

- (a) The Cloud Service and Qualtrics Policies may be modified by Qualtrics. Qualtrics will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to Qualtrics within thirty days after receipt of Qualtrics' informational notice.

3.5 Analyses.

Qualtrics or Qualtrics' Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("**Analyses**"). Analyses will anonymize and aggregate information and will be treated as Cloud Materials.

Unless otherwise agreed, personal data contained in Customer Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:

- a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new Qualtrics products and services,
- b) improving resource allocation and support,
- c) internal demand planning,
- d) training and developing machine learning algorithms,
- e) improving product performance,
- f) verification of security and data integrity
- g) identification of industry trends and developments, creation of indices and anonymous benchmarking

4. CUSTOMER AND PERSONAL DATA

4.1 Customer Data.

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to Qualtrics (including Qualtrics' Affiliates and subcontractors) a nonexclusive right to process Customer Data solely to provide and support the Cloud Service.

4.2 Personal Data.

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.3 Security.

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from Qualtrics.

4.4 Access to Customer Data.

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Customer Data.

- (b) Before the Subscription Term expires, if available, Customer may use Qualtrics' self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service. Alternatively, Customer may request data export through support ticket.
- (c) At the end of the Agreement, Qualtrics will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (d) In the event of third party legal proceedings relating to the Customer Data, Qualtrics will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES

5.1 Fees and Payment.

Customer will pay fees as stated in the Order Form. After prior written notice, Qualtrics may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

5.2 Taxes.

Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than Qualtrics' income and payroll taxes. Customer must provide to Qualtrics any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If Qualtrics is required to pay taxes (other than its income and payroll taxes), Customer will reimburse Qualtrics for those amounts and indemnify Qualtrics for any taxes and related costs paid or payable by Qualtrics attributable to those taxes.

6. TERM AND TERMINATION

6.1 Term.

The Subscription Term is as stated in the Order Form.

6.2 Termination.

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty day period,
- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.
- (d) Customer's payment obligation for each contract year of the Agreement is conditioned upon the availability and appropriation of funds, subject to this Section 6. If funds are not appropriated to support continuation of performance in a subsequent fiscal year period, Customer shall have the right to terminate the Agreement at the end of the then-current contract year with prior written notice to Qualtrics at least 30 days prior to the start of the next contract year (a "Non-Appropriation Termination"). In the event of a Non-Appropriation Termination, Customer will not be entitled to any refund of any prepaid fees and shall be responsible for payment of amounts incurred up to the date of such termination.

6.3 Refund and Payments.

For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4 Effect of Expiration or Termination.

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Cloud Service and all Qualtrics Confidential Information will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5 Survival.

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

7. WARRANTIES

7.1 Compliance with Law.

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of Qualtrics, the operation of Qualtrics' business as it relates to the Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

7.2 Good Industry Practices.

Qualtrics warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

7.3 Remedy.

Customer's sole and exclusive remedies and Qualtrics' entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient Cloud Service, and
- (b) if Qualtrics fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of Qualtrics' failure to re-perform.

7.4 System Availability.

- (a) Qualtrics warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement or Supplement ("SLA").
- (b) Customer's sole and exclusive remedy for Qualtrics' breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow Qualtrics' posted credit claim procedure. When the validity of the service credit is confirmed by Qualtrics in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.
- (c) In the event Qualtrics fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Qualtrics with written notice within thirty days after the failure.

7.5 Warranty Exclusions.

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by Qualtrics, or
- (c) the Cloud Service was provided for no fee.

7.6 Disclaimer.

Except as expressly provided in the Agreement, neither Qualtrics nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Qualtrics or product roadmaps in obtaining subscriptions for any Cloud Service.

8. THIRD PARTY CLAIMS

8.1 Claims Brought Against Customer.

- (a) Qualtrics will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. Qualtrics will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Qualtrics enters into) with respect to these claims.

- (b) Qualtrics' obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by Qualtrics, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, Qualtrics may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, Qualtrics or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

8.2 Claims Brought Against Qualtrics.

Customer will defend Qualtrics against claims brought against Qualtrics and its Affiliates and subcontractors by any third party related to Customer Data, except if such claim results from Qualtrics' breach of the Agreement.

Customer will indemnify Qualtrics against all damages finally awarded against Qualtrics and its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3 Third Party Claim Procedure.

- (a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.
- (b) The party that is obligated to defend a claim will have the right to fully control the defense.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

8.4 Exclusive Remedy.

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

8.5 Insurance -during the term of the Agreement, Qualtrics, using commercially reasonable efforts, shall maintain the following insurance policies with insurer(s) having an AM Best Rating of A- or better: (a) commercial general liability with a limit of \$1,000,000 per occurrence and in general aggregate; (b) commercial automobile liability with a combined single limit of \$1,000,000 per occurrence; (c) workers' compensation in compliance with statutory requirements; (d) employer's liability with limits of \$1,000,000 each accident, \$1,000,000 by disease each employee and \$1,000,000 by disease policy limit; (e) excess\umbrella liability with a limit of \$5,000,000 per occurrence and in the aggregate with respect to coverage required in (a) and (b); and (f) technology professional liability with a limit of \$5,000,000 per claim and in the aggregate. Following execution of the Agreement and upon request of Customer, Qualtrics shall deliver or make available for download a blanket certificate of insurance evidencing existence of the required coverage. Qualtrics, its insurer(s) or broker(s) shall endeavor to provide Customer thirty (30) days advance written notice in event of cancellation of policies required herein. None of the requirements contained herein as to types or limits or Customer's approval of insurance coverage to be maintained by Qualtrics are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Qualtrics under the Agreement.

9. LIMITATION OF LIABILITY

9.1 Unlimited Liability.

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's negligence or willful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

9.2 Liability Cap.

Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or Qualtrics' subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3 Exclusion of Damages.

Subject to Section 9.1:

- (a) neither party (nor its respective Affiliates or Qualtrics' subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
- (b) Qualtrics will not be liable for any damages caused by any Cloud Service provided for no fee.

9.4 Risk Allocation.

The Agreement allocates the risks between Qualtrics and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 QUALTRICS Ownership.

Qualtrics, Qualtrics' Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to Qualtrics and its licensors.

10.2 Customer Ownership.

Customer retains all rights in and related to the Customer Data. Qualtrics may use Customer-provided trademarks solely to provide and support the Cloud Service.

10.3 Non-Assertion of Rights.

Customer covenants, on behalf of itself and its successors and assigns, not to assert against Qualtrics and its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

11. CONFIDENTIALITY

11.1 Use of Confidential Information.

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.
- (c) The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order, or regulatory agency, on the condition that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information that is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

11.2 Exceptions.

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

11.3 Publicity.

Neither party will use the name of the other party in publicity activities without the prior written consent of the other.

11.4 Disclosure on Legal Requirement

The receiving party may disclose Confidential Information as required by law (including as required by The Freedom of Information Act, 5 U.S.C. § 552 or analogous state law), provided that the receiving

party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a legal requirement), and (ii) discloses only such information as is required by law.

12. MISCELLANEOUS

12.1 Severability.

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

12.2 No Waiver.

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

12.3 Electronic Signature.

Electronic signatures that comply with applicable law are deemed original signatures.

12.4 Regulatory Matters.

Qualtrics Confidential Information is subject to export control laws of various countries, including the laws of the United States. Customer will not submit Qualtrics Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export Qualtrics Confidential Information to countries, persons or entities if prohibited by export laws.

12.5 Notices.

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by Qualtrics relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

12.6 Assignment.

Without Qualtrics' prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. Qualtrics may assign the Agreement to Qualtrics Affiliates.

12.7 Subcontracting.

Qualtrics may subcontract parts of the Cloud Service or Consulting Services to third parties. Qualtrics is responsible for breaches of the Agreement caused by its subcontractors.

12.8 Relationship of the Parties.

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.9 Force Majeure.

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.10 Governing Law.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within two years from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.11 Entire Agreement.

The Agreement constitutes the complete and exclusive statement of the agreement between Qualtrics and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Qualtrics accepts or does not otherwise reject the purchase order.


12.12 Data Processing Agreement.

Where Customer is processing personal data using the Services, the DPA shall govern the processing of such personal data.

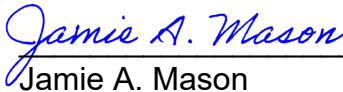
Glossary

- 1.1 "Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2 "Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 "Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of
- (a) Customer,
 - (b) Customer's Affiliates, and/or
 - (c) Customer's and Customer's Affiliates' Business Partners.
- 1.4 "Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
- 1.5 "Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on- demand solution provided by Qualtrics under an Order Form.
- 1.6 "Cloud Materials"** mean any materials provided or developed by Qualtrics (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.7 "Confidential Information"** means
- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
 - (b) with respect to Qualtrics: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding Qualtrics research and development, product offerings, pricing and availability.
 - (c) Confidential Information of either Qualtrics or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.8 "Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by Qualtrics' employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.9 "Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include Qualtrics' Confidential Information.
- 1.10 "Documentation"** means Qualtrics' then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 "Order Form"** means the ordering document for a Cloud Service that references the GTC.
- 1.12 "Qualtrics Policies"** means the operational guidelines and policies applied by Qualtrics to provide and support the Cloud Service as incorporated in an Order Form.
- 1.13 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.
- 1.14 "Supplement"** means as applicable, the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.15 "Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

THE PARTIES ENTER INTO THIS AGREEMENT AS OF THE LAST SIGNATURE DATE BELOW ("GTC EFFECTIVE DATE").

CUSTOMER:	QUALTRICS, LLC
By:	By: 
Name: Russell Bigler	Name: Mark Creer
Title: Chairman, Board of Governors	Title: Director
Date:	Date: 9 November 2022

REVIEWED ONLY, NOT APPROVED AS TO FORM
KCHA Legal Services Department



Jamie A. Mason
Hospital Counsel

Exhibit A
Data Processing Agreement

PERSONAL DATA PROCESSING AGREEMENT FOR QUALTRICS CLOUD SERVICES

This Data Processing Addendum ("DPA") is entered into

BETWEEN

(1) Customer; and

(2) Qualtrics.

1. DEFINITIONS

- 1.1. **"Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to Qualtrics be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.2. **"Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement and includes, as far as it concerns the relationship between the parties regarding the processing of Personal Data by Qualtrics on behalf of Customer and to the extent applicable to the Cloud Services being provided by Qualtrics to Customer as set forth in an Order Form, the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq and its legally binding implementing regulations with respect to any Personal Data, as currently enacted as of the Effective Date of the applicable Order Form ("CCPA").
- 1.3. **"Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 1.4. **"EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 1.5. **"GDPR"** means the General Data Protection Regulation 2016/679.
- 1.6. **"New SCC Relevant Transfer"** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
- 1.7. **"New Standard Contractual Clauses"** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof which shall automatically apply. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.
- 1.8. **"Personal Data"** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is:
 - a) entered by Customer or its Authorized Users into or derived from their use of the Cloud Service; or
 - b) supplied to or accessed by Qualtrics or its Subprocessors in order to provide support under the Agreement. Personal Data is a sub-set of Customer Data (as defined under the Agreement).
- 1.9. **"Personal Data Breach"** means a confirmed:
 - a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
 - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 1.10. **"Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 1.11. **"SAP"** means SAP SE, Qualtrics parent company.
- 1.12. **"Schedule"** means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.

- 1.13. **"Standard Contractual Clauses (2010)"** means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
- 1.14. **"Subprocessor"** or **"sub-processor"** means Qualtrics Affiliates, SAP, SAP Affiliates and third parties engaged by Qualtrics, Qualtrics' Affiliates in connection with the Cloud Service and which process Personal Data in accordance with this DPA.
- 1.15. **"Technical and Organizational Measures"** means the technical and organizational measures for the relevant Cloud Service set out in Schedule 2.
- 1.16. **"Third Country"** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

2. BACKGROUND

2.1. Purpose and Application

- 2.1.1. This document ("DPA") is incorporated into the Agreement and forms part of a written (including in electronic form) contract between Qualtrics and Customer.
- 2.1.2. This DPA applies to Personal Data processed by Qualtrics and its Subprocessors in connection with its provision of the Cloud Service.
- 2.1.3. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by Qualtrics. Customer shall not store Personal Data in such environments.

2.2. Structure

Schedules 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects (Schedule 1) and the applicable Technical and Organizational Measures (Schedule 2).

2.3. Governance

- 2.3.1. Qualtrics acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA.
- 2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use Qualtrics as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud Service. Where Qualtrics informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service. Customer shall forward such information and notices to the relevant Controllers.
- 2.3.3 CCPA. The parties agree that Qualtrics is a "Service Provider" under the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq and its legally binding implementing regulations with respect to any Personal Data, both as currently enacted as of the Effective Date of the applicable Order Form ("CCPA"). Qualtrics certifies that it will not sell, retain, use, or disclose, Personal Data for purposes other than performing Cloud Services as contemplated by this DPA and Agreement, or as otherwise permitted by Service Providers under the CCPA. In the event of any future amendments to the CCPA, the parties will discuss in good faith any changes that may be required in order for the parties to comply with their respective obligations under such changes to the CCPA.

3. SECURITY OF PROCESSING

3.1. Applicability of the Technical and Organizational Measures

Qualtrics has implemented and will apply the Technical and Organizational Measures. Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.

3.2. Changes

- 3.2.1. Qualtrics applies the Technical and Organizational Measures to Qualtrics' entire customer base hosted out of the same data center or receiving the same Cloud Service. Qualtrics may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

3.2.2. Qualtrics will publish updated versions of the Technical and Organizational Measures at www.qualtrics.com/terms-of-service.

4. QUALTRICS OBLIGATIONS

4.1. Instructions from Customer

Qualtrics will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. Qualtrics will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or Qualtrics otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, Qualtrics will immediately notify Customer (email permitted).

4.2. Processing on Legal Requirement

Qualtrics may also process Personal Data where required to do so by applicable law. In such a case, Qualtrics shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

4.3. Personnel

To process Personal Data, Qualtrics and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. Qualtrics and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

4.4. Cooperation

4.4.1. At Customer's request, Qualtrics will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding Qualtrics' processing of Personal Data or any Personal Data Breach.

4.4.2. If Qualtrics receives a request from a Data Subject in relation to the Personal Data processing hereunder, Qualtrics will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

4.4.3. In the event of a dispute with a Data Subject as it relates to Qualtrics' processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably cooperate with the aim of resolving the dispute amicably with the Data Subject.

4.4.4. Qualtrics shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, Qualtrics will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

4.5. Personal Data Breach Notification

Qualtrics will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. Qualtrics may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by Qualtrics.

4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, Qualtrics will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, audit reports and certifications). Any additional assistance shall be mutually agreed between the Parties.

5. DATA EXPORT AND DELETION

5.1. Export and Retrieval by Customer

During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and

retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Personal Data.

5.2. Deletion

Before the Subscription Term expires, Customer may use Qualtrics' self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs Qualtrics to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed 6 months) unless applicable law requires retention.

6. CERTIFICATIONS AND AUDITS

6.1. Customer Audit

Customer or its independent third party auditor reasonably acceptable to Qualtrics (which shall not include any third party auditors who are either a competitor of Qualtrics or not suitably qualified or independent) may audit Qualtrics' control environment and security practices relevant to Personal Data processed by Qualtrics only if:

- a) Qualtrics has not provided sufficient evidence of its compliance with the Technical and Organizational Measures that protect the production systems of the Cloud Service through providing either: (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 or ISAE3000 or other SOC1-3 attestation report. Upon Customer's request audit reports or ISO certifications are available through the third party auditor or Qualtrics;
- b) a Personal Data Breach has occurred;
- c) an audit is formally requested by Customer's data protection authority; or
- d) provided under mandatory Data Protection Law conferring Customer a direct audit right and provided that Customer shall only audit once in any 12 month period unless mandatory Data Protection Law requires more frequent audits.

6.2. Other Controller Audit

Any other Controller may assume Customer's rights under Section 6.1 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by Qualtrics on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

6.3. Scope of Audit

Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited in time to a maximum of 3 business days. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to Qualtrics.

6.4. Cost of Audits

Customer shall bear the costs of any audit unless such audit reveals a material breach by Qualtrics of this DPA, then Qualtrics shall bear its own expenses of an audit. If an audit determines that Qualtrics has breached its obligations under the DPA, Qualtrics will promptly remedy the breach at its own cost.

7. SUBPROCESSORS

7.1. Permitted Use

Qualtrics is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- a) Qualtrics or Qualtrics affiliates on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. Qualtrics shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;

- b) Qualtrics will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- c) Qualtrics' list of Subprocessors in place on the effective date of the Agreement is published by Qualtrics at www.qualtrics.com/subprocessor-list or Qualtrics will make it available to Customer upon request, including the name, address and role of each Subprocessor Qualtrics uses to provide the Cloud Service.

7.2. New Subprocessors

Qualtrics' use of Subprocessors is at its discretion, provided that:

- a) Qualtrics will inform Customer in advance (by email or by posting on the Cloud Service) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- b) Customer may object to such changes as set out in Section 7.3.

7.3. Objections to New Subprocessors

- 7.3.1. If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to Qualtrics. Such termination shall take effect at the time determined by the Customer which shall be no later than 30 days from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this 30-day period, Customer is deemed to have accepted the new Subprocessor.
- 7.3.2. Within the 30-day period from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties discuss in good faith a resolution to the objection. Such discussions shall not extend the period for termination and do not affect Qualtrics' right to use the new Subprocessor(s) after the 30-day period.
- 7.3.3. Any termination under this Section 7.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

7.4. Emergency Replacement

Qualtrics may replace a Subprocessor without advance notice where the reason for the change is outside of Qualtrics' reasonable control and prompt replacement is required for security or other urgent reasons. In this case, Qualtrics will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

8. INTERNATIONAL PROCESSING

8.1. Conditions for International Processing

Qualtrics shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

8.2. Applicability of the Standard Contractual Clauses (2010)

- 8.2.1. Where, for the period up to and including 26 September 2021, Personal Data of a Controller that is subject to GDPR is processed in a Third Country, or where Personal Data of a Swiss or United Kingdom based Controller or another Controller is processed in a Third Country and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses (2010), then:
 - a) Qualtrics and Customer enter into the Standard Contractual Clauses (2010);
 - b) Customer joins the Standard Contractual Clauses (2010) entered into by Qualtrics or Qualtrics SE and the Subprocessor as an independent owner of rights and obligations; or
 - c) Other Controllers whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into Standard Contractual Clauses (2010) with Qualtrics or the relevant Subprocessors in the same manner as Customer in accordance with Section 8.2.1 a) and b) above. In such case, Customer will enter into the Standard Contractual Clauses (2010) on behalf of the other Controllers.
- 8.2.2. The Standard Contractual Clauses (2010) shall be governed by the law of the country in which the relevant Controller is established.
- 8.2.3. Where applicable Data Protection Law adopts the New Standard Contractual Clauses as meeting any

required adequacy means as an alternative or update to the Standard Contractual Clauses (2010) then the New Standard Contractual Clauses shall apply in accordance with Section 8.3.

8.3. Applicability of New Standard Contractual Clauses

- 8.3.1. The following shall apply with effect from 27 September 2021 and shall solely apply in respect of New SCC Relevant Transfers:
 - 8.3.1.1. Where Qualtrics is not located in a Third Country and acts as a data exporter, Qualtrics has entered in to the New Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the New Standard Contractual Clauses shall apply to such New SCC Relevant Transfers.
 - 8.3.1.2. Where Qualtrics is located in a Third Country:
 - Qualtrics and Customer hereby enter into the New Standard Contractual Clauses with Customer as the data exporter and Qualtrics as the data importer which shall apply as follows:
 - a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
 - b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer acts as Processor under Module 3 (Processor to Processor) of the New Standard Contractual Clauses, Qualtrics acknowledges that Customer acts as Processor under the instructions of its Controller(s).
- 8.3.2. Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the New Standard Contractual Clauses with Qualtrics in the same manner as Customer in accordance with Section 8.3.1.2 above. In such case, Customer enters into the New Standard Contractual Clauses on behalf of the other Controllers or Processors.
- 8.3.3. With respect to a New SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the New Standard Contractual Clauses entered into between Customer and Qualtrics (including the relevant Schedules), available to Data Subjects.
- 8.3.4. The governing law of the New Standard Contractual Clauses shall be the law of Ireland.

8.4. Relation of the Standard Contractual Clauses to the Agreement

Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses (2010) or the New Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the Standard Contractual Clauses (2010) and the New Standard Contractual Clauses.

8.5. Third Party Beneficiary Right under the New Standard Contractual Clauses

- 8.5.1. Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the New Standard Contractual Clauses and Qualtrics is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:
- 8.5.2. In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without a successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected Cloud Service solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs Qualtrics to erase or return the Personal Data.

9. DOCUMENTATION; RECORDS OF PROCESSING

- 9.1. Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

Schedule 1 Description of the Processing

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

1. A. LIST OF PARTIES

1.1. Under the Standard Contractual Clauses (2010)

1.1.1. Data Exporter

The data exporter under the Standard Contractual Clauses (2010) is the Customer who subscribed to a Cloud Service that allows Authorized Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also data exporters.

1.1.2. Data Importer

Qualtrics and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).

1.2. Under the New Standard Contractual Clauses

1.2.1. Module 2: Transfer Controller to Processor

Where Qualtrics is located in a Third Country, Customer is the Controller and Qualtrics is the Processor, then Customer is the data exporter and Qualtrics is the data importer.

1.2.2. Module 3: Transfer Processor to Processor

Where Qualtrics is located in a Third Country, Customer is a Processor and Qualtrics is a Processor, then Customer is the data exporter and Qualtrics is the data importer.

2. B. DESCRIPTION OF TRANSFER

2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service, transmitted to, made available to, accessed or otherwise processed by the data importer.

2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data per Cloud Service subscribed. Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service.

The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data that Authorized Users enter into the Cloud Service.

2.3. Special Data Categories (if agreed)

2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("Sensitive Data"). Qualtrics has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.

2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- a) training of personnel;
- b) encryption of data in transit and at rest;
- c) system access logging and general data access logging.

2.3.3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.

2.4. Purposes of the data transfer and further processing; Nature of the processing

- 2.4.1. The transferred Personal Data is subject to the following basic processing activities:
- a) use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical support);
 - b) continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
 - c) provision of professional services;
 - d) communication to Authorized Users;
 - e) storage of Personal Data in dedicated data centers (multi-tenant architecture);
 - f) release, development and upload of any fixes or upgrades to the Cloud Service;
 - g) back up and restoration of Personal Data stored in the Cloud Service;
 - h) computer processing of Personal Data, including data transmission, data retrieval, data access;
 - i) network access to allow Personal Data transfer;
 - j) monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
 - k) security monitoring, network-based intrusion detection support, penetration testing; and
 - l) execution of instructions of Customer in accordance with the Agreement.
- 2.4.2. The purpose of the transfer is to provide and support the Cloud Service. Qualtrics and its Subprocessors may support the Cloud Service data centers remotely. Qualtrics and its Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.

2.5. Additional description in respect of the New Standard Contractual Clauses:

- 2.5.1. Applicable Modules of the New Standard Contractual Clauses
- a) Module 2: Transfer Controller to Processor
 - b) Module 3: Transfer Processor to Processor
- 2.5.2. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing: In respect of the New Standard Contractual Clauses, transfers to Subprocessors shall be on the same basis as set out in the DPA.
- 2.5.3. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis). Transfers shall be made on a continuous basis.
- 2.5.4. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period.
Personal Data shall be retained for the duration of the Agreement and subject to Section 5.2 of the DPA.

3. C. COMPETENT SUPERVISORY AUTHORITY

- 3.1. In respect of the New Standard Contractual Clauses:
- 3.1.1. Module 2: Transfer Controller to Processor
 - 3.1.2. Module 3: Transfer Processor to Processor
- 3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

Schedule 2 Technical and Organizational Measures

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

Qualtrics will apply and maintain the Technical and Organizational Measures.

To the extent that the provisioning of the Cloud Service comprises New SCC Relevant Transfers, the Technical and Organizational Measures set out in Schedule 2 describe the measures and safeguards which have been taken to fully take into consideration the nature of the personal data and the risks involved. If local laws may affect the compliance with the clauses, this may trigger the application of additional safeguards applied during transmission and to the processing of the personal data in the country of destination (if applicable: encryption of data in transit, encryption of data at rest, anonymization, pseudonymization).

1. TECHNICAL AND ORGANIZATIONAL MEASURES

The following sections define Qualtrics' current technical and organizational measures. Qualtrics may change these at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

1.1 Physical Access Control. Unauthorized persons are prevented from gaining physical access to premises, buildings or rooms where data processing systems that process and/or use Personal Data are located.

Measures:

- Qualtrics protects its assets and facilities using the appropriate means based on the Qualtrics Security Policy
- In general, buildings are secured through access control systems (e.g., smart card access system).
- As a minimum requirement, the outermost entrance points of the building must be fitted with a certified key system including modern, active key management.
- Depending on the security classification, buildings, individual areas and surrounding premises may be further protected by additional measures. These include specific access profiles, video surveillance, intruder alarm systems and biometric access control systems.
- Access rights are granted to authorized persons on an individual basis according to the System and Data Access Control measures (see Section 1.2 and 1.3 below). This also applies to visitor access. Guests and visitors to Qualtrics buildings must register their names at reception and must be accompanied by authorized Qualtrics personnel.
- Qualtrics employees and external personnel must wear their ID cards at all Qualtrics locations.

Additional measures for Data Centers:

- All Data Centers adhere to strict security procedures enforced by guards, surveillance cameras, motion detectors, access control mechanisms and other measures to prevent equipment and Data Center facilities from being compromised. Only authorized representatives have access to systems and infrastructure within the Data Center facilities. To protect proper functionality, physical security equipment (e.g., motion sensors, cameras, etc.) undergo maintenance on a regular basis.
- Qualtrics and all third-party Data Center providers log the names and times of authorized personnel entering Qualtrics' private areas within the Data Centers.

1.2 System Access Control. Data processing systems used to provide the Cloud Service must be prevented from being used without authorization.

Measures:

- Multiple authorization levels are used when granting access to sensitive systems, including those storing and processing Personal Data. Authorizations are managed via defined processes according to the Qualtrics Security Policy
- All personnel access Qualtrics' systems with a unique identifier (user ID).
- Qualtrics has procedures in place so that requested authorization changes are implemented only in accordance with the Qualtrics Security Policy (for example, no rights are granted without authorization). In case personnel leaves the company, their access rights are revoked.
- Qualtrics has established a password policy that prohibits the sharing of passwords, governs responses to password disclosure, and requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In the case of domain passwords, the system forces a password change every six months in compliance with the requirements for complex passwords. Each computer has a password-protected screensaver.
- The company network is protected from the public network by firewalls.
- Qualtrics uses up-to-date antivirus software at access points to the company network (for e-mail accounts), as well as on all file servers and all workstations.
- Security patch management is implemented to provide regular and periodic deployment of relevant security updates. Full remote access to Qualtrics' corporate network and critical infrastructure is protected by strong authentication.

1.3 Data Access Control. Persons entitled to use data processing systems gain access only to the Personal Data that they have a right to access, and Personal Data must not be read, copied, modified or removed without authorization in the course of processing, use and storage.

Measures:

- As part of the Qualtrics Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the Qualtrics Information Classification standard.
- Access to Personal Data is granted on a need-to-know basis. Personnel have access to the information that they require in order to fulfill their duty. Qualtrics uses authorization concepts that document grant processes and assigned roles per account (user ID). All Customer Data is protected in accordance with the Qualtrics Security Policy.
- All production servers are operated in the Data Centers or in secure server rooms. Security measures that protect applications processing Personal Data are regularly checked. To this end, Qualtrics conducts internal and external security checks and penetration tests on its IT systems.
- An Qualtrics security standard governs how data and data carriers are deleted or destroyed once they are no longer required.

1.4 Data Transmission Control. Except as necessary for the provision of the Cloud Services in accordance with the Agreement, Personal Data must not be read, copied, modified or removed without authorization during transfer. Where data carriers are physically transported, adequate measures are implemented at Qualtrics to provide the agreed-upon service levels (for example, encryption and lead-lined containers).

Measures:

- Personal Data in transfer over Qualtrics internal networks is protected according to Qualtrics Security Policy.
- When data is transferred between Qualtrics and its customers, the protection measures for the transferred Personal Data are mutually agreed upon and made part of the relevant agreement. This applies to both physical and network based data transfer. In any case, the Customer assumes responsibility for any data transfer once it is outside of Qualtrics-controlled systems (e.g. data being transmitted outside the firewall of the Qualtrics Data Center).

1.5 Data Input Control. It will be possible to retrospectively examine and establish whether and by whom Personal Data have been entered, modified or removed from Qualtrics data processing systems.

Measures:

- Qualtrics only allows authorized personnel to access Personal Data as required in the course of their duty.
- Qualtrics has implemented a logging system for input, modification and deletion, or blocking of Personal Data by Qualtrics or its subprocessors within the Cloud Service to the extent technically possible.

1.6 Job Control. Personal Data being processed on commission (i.e., Personal Data processed on a customer's behalf) is processed solely in accordance with the Agreement and related instructions of the customer.

Measures:

- Qualtrics uses controls and processes to monitor compliance with contracts between Qualtrics and its customers, subprocessors or other service providers.
- As part of the Qualtrics Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the Qualtrics Information Classification standard.
- All Qualtrics employees and contractual subprocessors or other service providers are contractually bound to respect the confidentiality of all sensitive information including trade secrets of Qualtrics customers and partners.

1.7 Availability Control. Personal Data will be protected against accidental or unauthorized destruction or loss.

Measures:

- Qualtrics employs regular backup processes to provide restoration of business-critical systems as and when necessary.
- Qualtrics uses uninterrupted power supplies (for example: UPS, batteries, generators, etc.) to protect power availability to the Data Centers.
- Qualtrics has defined business contingency plans for business-critical processes and may offer disaster recovery strategies for business critical Services as further set out in the Documentation or incorporated into the Order Form for the relevant Cloud Service.
- Emergency processes and systems are regularly tested.

1.8 Data Separation Control.

Measures:

- Qualtrics uses the technical capabilities of the deployed software (for example: multi-tenancy, system landscapes) to achieve data separation among Personal Data originating from multiple customers.
- Customer (including its Controllers) has access only to its own data.

1.9 Data Integrity Control. Personal Data will remain intact, complete and current during processing activities.

Measures:

Qualtrics has implemented a multi-layered defense strategy as a protection against unauthorized modifications. In particular, Qualtrics uses the following to implement the control and measure sections described above:

- Firewalls;
- Security Monitoring Center;
- Antivirus software;
- Backup and recovery;
- External and internal penetration testing;
- Regular external audits to prove security measures.



Business Associate Agreement

This Business Associate Agreement (“**BAA**”), effective on the date signed by the last party to sign (“**Effective Date**”), is entered into by and between Qualtrics, LLC (“**Qualtrics**”), and Kern County Hospital Authority (“**Customer**”, and each of Qualtrics and Customer, a “**Party**” and together, the “**Parties**”).

Recitals

- A.** The Parties entered into an agreement providing for services (the “**Services**”) to be performed by Qualtrics for or on behalf of the Customer (the “**Services Agreement**”).
- B.** Customer is a Covered Entity under the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act and otherwise, and its implementing regulations at 45 CFR Parts 160, 162, and 164 (collectively, “**HIPAA**”).
- C.** Qualtrics, as a Business Associate, may create, receive, maintain, or transmit Protected Health Information (“**PHI**”) (as defined herein) in its performance of the services described in the Services Agreement.
- D.** HIPAA requires Customer to obtain certain satisfactory assurances from Qualtrics regarding the safeguarding of such PHI.
- E.** The Parties intend for this BAA to constitute such satisfactory assurances.
- F.** Customer acknowledges that Qualtrics neither declares nor classifies any data entered into its Services (“**Data**”) since the Customer's users control all aspects of the data input.

Agreement

THEREFORE, in consideration of the Parties’ continuing obligations under the Services Agreement, the Parties agree to the provisions of this BAA in order to address the HIPAA requirements .

SECTION 1 PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

Section 1.1 Delivery of Services. Qualtrics may use or disclose PHI as necessary to provide the Services in the Services Agreement or as otherwise agreed to in writing by the Parties, except that Qualtrics may not use or disclose any PHI in a manner that would violate HIPAA if done by Customer.

Section 1.2 Proper Management and Administration. Qualtrics may (a) use PHI to the extent necessary for Qualtrics’ proper management and administration or to carry out Qualtrics’ legal responsibilities; and (b) disclose PHI to the extent necessary for Qualtrics’ proper management and administration or to carry out Qualtrics’ legal responsibilities, on the condition that: (1) the disclosure is Required by Law or (2) (i) Qualtrics has received from the third party written assurances regarding its confidential handling of such PHI and that its use and further disclosure will only be as Required by Law or for the purpose for which it was disclosed, and (ii) the third party agrees in writing to notify Qualtrics if it becomes aware that the confidentiality of the information has been breached.

Section 1.3 Minimum Necessary. Qualtrics shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of any use, disclosure, or request. Because Qualtrics’ need, if any, to access or interact with any PHI is incidental to the primary services provided by Qualtrics, Customer shall make reasonable efforts to withhold or minimize Qualtrics’ access to any PHI.

SECTION 2 RESPONSIBILITY OF QUALTRICS WITH RESPECT TO PHI

Section 2.1 Qualtrics shall not use or further disclose the PHI other than as permitted or required by this BAA or as Required by Law.

Section 2.2 Qualtrics shall, without undue delay, and in any event within 72 hours after discovery thereof, provide written notice to the Customer of any Security Incident or unauthorized use or disclosure of PHI of which it becomes aware, which shall include the necessary information required for Customer to

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comply with binding state breach notification requirements, except that this Section hereby serves as notice, and no additional reporting is required, of the regular occurrence of unsuccessful attempts at unauthorized access, use, disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system that involves PHI. If a Security Incident or an unauthorized use or disclosure of PHI constitutes a Breach of Unsecured PHI, Qualtrics will supplement its initial report with the information required by 45 CFR Section 164.410 within 30 days after discovery of the Breach. Qualtrics shall reasonably cooperate with Customer to provide any information in its possession needed by Customer to conduct a Breach risk assessment or to respond to Individuals' inquiries regarding a successful Security Incident or an unauthorized use or disclosure of PHI.

Section 2.3 Qualtrics shall establish procedures for mitigating, to the extent practicable, any known deleterious effects from any unauthorized use or disclosure of PHI that Qualtrics reports to the Customer.

Section 2.4 Qualtrics shall use appropriate administrative, technical and physical safeguards to maintain the privacy and security of the PHI and to prevent the unauthorized use or disclosure of such PHI. Qualtrics shall comply, and shall ensure that any Subcontractor that creates, receives, maintains or transmits Electronic PHI on behalf of Qualtrics agrees to comply, with the applicable requirements of the Security Standards for Protection of Electronic Protected Health Information at 45 CFR Part 164 Subpart C.

Section 2.5 Qualtrics shall require all of its Subcontractors that create, receive, maintain, or transmit PHI on Qualtrics' behalf to agree to the same restrictions and conditions that apply to Qualtrics pursuant to this BAA.

Section 2.6 Qualtrics shall, in accordance with United States laws, make available all internal practices, records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Secretary of Health and Human Services for purposes of determining the Customer's and Qualtrics' compliance with HIPAA.

Section 2.7 Within 30 days after receiving a written request from Customer therefor, Qualtrics shall provide to Customer an accounting of each disclosure of PHI made by Qualtrics or its employees, agents, representatives, or subcontractors that is subject to 45 CFR Section 164.528. Qualtrics shall implement a process that allows for an accounting to be collected and maintained for any disclosure of PHI for which Customer is required to maintain such an accounting. Qualtrics shall include in the accounting, to the extent known to Qualtrics: (a) the date of the disclosure; (b) the name, and address if known, of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of the disclosure. For each disclosure that requires an accounting under this section, Qualtrics shall document the information specified in the preceding sentence and shall securely retain this documentation for the period of time necessary for the Customer to be able to comply with 45 CFR Section 164.528.

Section 2.8 Qualtrics shall forward to Customer any Individual's request for access, amendment, or an accounting of disclosures if the Individual identifies that the request relates to Customer.

Section 2.9 Qualtrics does not maintain any PHI in a Designated Record Set.

Section 2.10 To the extent Qualtrics is to carry out one or more of Customer's obligations under Subpart E of 45 CFR Part 164, Qualtrics shall comply with the requirements of Subpart E that apply to the Customer in the performance of such obligations.

SECTION 3 RESPONSIBILITIES OF THE CUSTOMER WITH RESPECT TO PHI

Section 3.1 Customer shall delete, de-identify or anonymize all PHI data in Qualtrics' Services when such data are no longer needed.

Section 3.2 Customer shall provide Qualtrics with any changes in, or revocation of, permission to use or disclose PHI, to the extent it may affect Qualtrics' permitted or required uses or disclosures. To the extent that it may affect Qualtrics' permitted use or disclosure of PHI, Customer shall notify Qualtrics of any

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restriction on the use or disclosure of PHI that Customer has agreed to in accordance with 45 CFR Section 164.522.

Section 3.3 Customer shall not request or cause Qualtrics to make use of or disclosure of PHI that would violate HIPAA if performed by Customer.

SECTION 4 TERM AND TERMINATION

Section 4.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect until Qualtrics is no longer a "Business Associate" (as defined in HIPAA) of Customer, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this BAA shall survive its expiration or other termination in accordance with Section 4.3 herein.

Section 4.2 Termination by Customer. As provided under 45 CFR Section 164.504(e)(2)(iii), the Customer may immediately terminate this BAA, the Services Agreement, and any related agreements if the Customer makes the determination that Qualtrics has breached a material term of this BAA. Alternatively, the Customer may choose, in its discretion, to: (a) provide Qualtrics with 30 days written notice of the existence of an alleged material breach of this Agreement; and (b) afford Qualtrics an opportunity to cure such alleged material breach upon mutually agreeable terms. Customer may immediately terminate this Agreement, the Services Agreement, and any related agreements if Qualtrics fails to cure such material breach in such period.

Section 4.3 Effect of Termination. Following termination of Customer's access to the applicable Service, Qualtrics shall return or destroy the applicable PHI to the extent feasible. If it is infeasible for Qualtrics to return or destroy such PHI, including PHI retained in backup tapes and PHI that Customer fails to download and delete, then Qualtrics shall extend any and all protections, limitations, and restrictions contained in this BAA to Qualtrics' use or disclosure of any PHI retained after the termination of this BAA, and limit any further uses or disclosures to the purposes that make the return or destruction of the PHI not feasible.

SECTION 5 MISCELLANEOUS

Section 5.1 Amendments; Waiver. This BAA may be modified solely in writing signed by both Parties. A waiver of any breach of this BAA is not deemed a waiver of any other breach.

Section 5.2 Equitable Relief. Qualtrics understands and acknowledges that any Disclosure or misappropriation of any PHI in material breach of this BAA may cause Customer 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 Customer shall deem appropriate. Such right of Customer is to be in addition to the remedies otherwise available to Customer at law or in equity. Qualtrics 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 Customer.

Legal Actions. Qualtrics shall promptly advise Customer of any actual proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Customer or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such legal action or proceeding, except to the extent prohibited by law.

Requests from Secretary. Except to the extent prohibited by law, Qualtrics shall advise Customer of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

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

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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. Notwithstanding the foregoing, notices by Qualtrics may be in the form of an electronic notice to Customer's authorized representative or administrator designated by Customer within the Cloud Service.

Customer's Notice Address:

Kern Medical Center

1700 Mount Vernon Avenue

Bakersfield, CA 93306

Attn: Chief Executive Officer

Qualtrics' Notice Address:

333 W River Park Dr, Provo, UT 84604

Attn: Legal Sales

notices@qualtrics.com

Section 5.1 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Qualtrics is an independent Consultant and not an agent of Customer under this BAA. Qualtrics has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Qualtrics obligations under this BAA

Section 5.2 No Third-Party Beneficiaries. Nothing herein confers upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Section 5.3 Counterparts; Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

Section 5.4 Regulatory References. A reference in this BAA to a section in HIPAA means the section and its binding regulations issued by the Secretary as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

Section 5.5 Conformity with the Services Agreement. Each Party's liability to the other Party in connection with this BAA shall be subject to the same limitations and exclusions of liability as apply under the Services Agreement as if the liability arose under the Services Agreement.

Section 5.6 Miscellaneous. The terms of this BAA are hereby incorporated into the Services Agreement. Any ambiguity in this BAA shall be resolved to permit Customer to comply with HIPAA. The terms of this BAA govern in the event of any conflict or inconsistency between this BAA and any other agreement (including the Services Agreement) to the extent relating to the use or disclosure of PHI. This BAA constitutes the entire agreement between the parties with respect to the subject matter hereof, and this BAA supersedes and replaces any former Qualtrics agreement or addendum entered into by the parties with respect to the subject matter hereof.

SECTION 6 DEFINITIONS

Section 6.1 "Electronic PHI" has the meaning set out in its definition in 45 CFR Section 160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised, as limited to the information that Qualtrics creates, receives, uses, maintains, or transmits from or on behalf of Customer.


Business Associate Agreement

Section 6.2 "Individual" has the same meaning as set forth in 45 CFR Section 160.103, except that it shall also include a personal representative of the individual pursuant to 45 CFR Section 164.502(g).

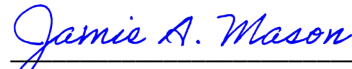
Section 6.3 "PHI" has the same meaning as "protected health information" as set forth in 45 CFR Section 160.103, but limited to the information that Qualtrics receives, uses, maintains, or transmits on behalf of Customer.

Section 6.4 Other terms. All other capitalized terms used, but not otherwise defined, in this BAA have the same meanings given to those terms by HIPAA as in effect or as amended from time to time.

The Parties have executed this Business Associate Agreement as of the Effective Date.

Qualtrics	Customer
By: 	By:
Name: Mark Creer	Name: Russell Bigler
Title: Director	Title: Chairman, Board of Governors
Date: 10 November 2022	Date:
Address: Qualtrics, LLC Attn: Legal Department 333 W River Park Dr. Provo, UT 84604 United States	Address:

REVIEWED ONLY, NOT APPROVED AS TO FORM
KCHA Legal Services Department



Jamie A. Mason
Hospital Counsel



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

November 16, 2022

Subject: Proposed Agreement for Professional Services with Igor Garcia-Pacheco, M.D., a contract employee

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Igor Garcia-Pacheco, M.D., for professional medical and administrative services in the Department of Medicine. Dr. Garcia-Pacheco has been employed by Kern Medical since 2019, and serves as the Chief of the Inpatient Hospitalist Services. He is board certified in internal medicine with subspecialty certification in critical care medicine.

The proposed Agreement is for a term of three years from December 2, 2022 through December 1, 2025, with an option to renew for two additional two-year terms. Dr. Garcia-Pacheco will be paid a base salary of \$580,000 annually, with additional compensation for ICU weekend coverage that exceeds 1:4 weekends and hospital shift coverage. In addition to his compensation package, Dr. Garcia-Pacheco will continue to receive the standard complement of benefits offered to all Kern Medical Physicians. The maximum payable will not to exceed \$1,860,000 over the three-year term of the Agreement.

Therefore, it is recommended that your Board approve the Agreement with Igor Garcia-Pacheco, M.D., for professional medical and administrative services in the Department of Medicine from December 2, 2022 through December 1, 2025, in an amount not to exceed \$1,860,000 over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Igor Garcia-Pacheco, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Igor Garcia-Pacheco, 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. #068-2019, dated November 13, 2019), for the period December 2, 2019 through December 1, 2022; and

(e) Each party expressly understands and agrees that Agt. #068-2019 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 December 2, 2022 (the “Commencement Date”), and shall end December 1, 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 Chief, Inpatient Hospitalist Service 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 and critical care medicine-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 "B," attached hereto and incorporated herein by this reference, and to execute all other documents required by KMC from time to time and to otherwise fully cooperate with KMC to enable KMC and its agents to obtain such information from third parties.

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

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

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician's activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term 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 \$22,307.69 biweekly not to exceed \$580,000 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 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 ICU Weekend Coverage. Authority shall pay Physician a fixed fee in the amount of \$2,000 per twenty-four (24) hour day, less all applicable federal and state taxes and withholdings, for ICU weekend coverage (Saturday and Sunday) that exceeds one in four (1:4) days.

5.3 Hospitalist Shift Coverage. Authority shall pay Physician for hospitalist shift coverage as follows: Physician shall be paid a fixed fee in the amount of \$1,672, less all applicable federal and state taxes and withholdings, for each daytime, 12-hour shift, 7:00 a.m.-7:00 p.m., hospitalist shift coverage assigned.

5.4 Signing Bonus.

5.4.1 Bonus. Physician shall receive a signing bonus in the amount of \$30,000, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the date of the last signature herein below.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before December 2, 2023, Physician will repay to Authority an amount equal to \$30,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within 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 signing 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 \$1,860,000 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 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. **[Reserved]**

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

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

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

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

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

Igor Garcia-Pacheco, M.D.
11904 Indianapolis Drive
Bakersfield, California 93312

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 
Igor Garcia-Pacheco, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT “A”
JOB DESCRIPTION
Igor Garcia-Pacheco, M.D.

Position Summary: Reports to the Chair, Department of Medicine; serves as Chief, Inpatient Hospitalist Service; serves as ICU intensivist; serves as full-time attending physician in the Department and residency program; Physician work effort will be a minimum 2,500 hours annually in teaching, administrative, and clinical activity; provides professional, comprehensive and safe clinical coverage for operations, timely completion of therapeutic and diagnostic procedures, direct patient care, scholarly research and resident education; works collaboratively with clinic and Department staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities.
 - Supervises residents and medical students while on service
 - Supervises and ensures competence of mid-level activity
 - Performs therapeutic and diagnostic procedures within the scope of practice for an internal medicine and critical care specialist while on service
 - Coordinates faculty schedules and activities to provide service and improve efficiency for clinical activities
 - Provides mutually agreed upon coverage in the intensive care and direct observation units
 - Provides mutually agreed upon weekday and weekend after hours call coverage for the intensive care and direct observation units
 - Conducts daily inpatient rounds as a hospitalist while on service in accordance with the hospitalist schedule, while remaining physically present in the hospital during the entire shift without leaving the hospital until relieved from duty
 - Manages patients through the continuum of hospital care including seeing patients in the emergency department, following them through the inpatient units, and organizing post-acute care
 - Serves as an intermediary in adjudicating venue of care decisions or coordination of care between the emergency medicine physicians and other medical staff
 - Prescribes medications or treatment regimens to hospital inpatients in accordance with Hospital Formulary standards
 - Orders or interprets the results of tests such as laboratory tests and imaging studies
 - Provides inpatient consultations
 - Provides mutually agreed upon coverage in the intensive care and direct observation units
 - Coordinates mutually agreed upon weekday professional staffing of the ICU
 - Provides mutually agreed upon weekday and weekend after hours call coverage
 - Supervises procedures performed by residents and mid-levels while on service
 - Performs therapeutic and diagnostic procedures with the scope of practice for an internal medicine and critical care specialist while on service

2. Medical Education; Academic Responsibilities.

- Provides clinical mentoring to and evaluation of residents and medical students
 - Establishes and maintains academic appointment at David Geffen School of Medicine at University of California, Los Angeles
 - Serves as a mentor to internal medicine residents who desire to conduct research or other scholarly activity
 - Demonstrates active involvement in continuing medical education
 - Demonstrates active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements
 - Participates in development of Department curriculum
 - Attends and participates in Department didactic sessions as assigned
 - Delivers assigned lectures to residents
3. Leadership and Administrative Responsibilities.
- Leads the continuing development of the hospitalist service, including implementing an appropriate hospitalist schedule that supports clinical and academic needs with plans to provide hospitalist coverage in-house 24 hours per day, seven days per week, 365 days per year
 - Assists in clinical and administrative integration efforts across KMC as appropriate for internal medicine, critical care, and a hospitalist service assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
 - Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
 - Applies appropriate utilization management principles
 - Refers patients to appropriate medical specialists, social services, or other professionals
 - Participates in morning huddle and team care planning activities
 - Directs, coordinates, and supervises coordination of care activities with nursing and support staff
 - Completes timely patient discharge summaries and communicates them to primary care, specialty, and consulting physicians
 - Works closely with case management and nursing to coordinate transfers from outside facilities and assists with care transitions to the ambulatory environment upon discharge
 - Supports the Department Chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
 - Participates in the preparation, monitoring, review, and performance of clinical activity in the Department
 - Participates in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
 - Completes medical records in a timely fashion and works to improve the quality, accuracy, and completeness of documentation

- Works collaboratively with other clinical departments to develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Follows and complies with the Medical Staff Bylaws, Rules, Regulations, and policies as well as Authority and KMC policies and procedures
- Attends Department staff meetings and the annual Medical Staff meeting
- Attends and actively participates in Medical Staff and hospital committees as may be assigned
- Participates in other clinical, academic, and administrative activities, as assigned by the Department Chair

Employment Standards:

Completion of an accredited residency program in internal medicine; two (2) years post-residency fellowship training in critical care 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 and critical care medicine-subspecialty

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

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

[Attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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



Physician

11/02/22

Date



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

November 16, 2022

Subject: Proposed Amendment No. 2 to Agreement 43819 with Helen A. Davis, M.D., a contract employee

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 2 to Agreement 43819 with Helen A. Davis, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Davis, a board-certified ophthalmologist, has been employed by Kern Medical since December 2, 2019.

The Amendment extends the three-year term of the Agreement for two additional years from December 2, 2022 through December 1, 2024, without any change to her compensation or benefits, and increases the maximum payable by \$925,000, from \$1,365,000 to \$2,290,000, to cover the extended term.

Therefore, it is recommended that your Board approve Amendment No. 2 to Agreement 43819 with Helen A. Davis, M.D., for professional medical services in the Department of Surgery, for the period December 2, 2019 through December 1, 2022, extending the term for two years from December 2, 2022 through December 1, 2024, increasing the maximum payable by \$925,000, from \$1,365,000 to \$2,290,000, plus applicable benefits, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Helen A. Davis, 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 Helen A. Davis, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #43819, dated September 25, 2019) from December 2, 2019 through December 1, 2022, for 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 December 2, 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 five (5) years, commencing as of December 2, 2019 (the “Commencement Date”), and shall end December 1, 2024 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. 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 5.4, 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 \$2,290,000 over the five (5) year Term of this Agreement.”

3. Section 16, Dispute Resolution, shall be deleted in its entirety and replaced with the following:

“16. **[Reserved]**”

4. Exhibit "A," Job Description, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit "A," Job Description, attached hereto and incorporated herein by this reference.
5. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
6. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
7. 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.
8. 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.

PHYSICIAN

By _____
Helen A. Davis, 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.Davis.102822

**AMENDMENT NO. 1
TO
EXHIBIT "A"
Job Description
Helen A. Davis, M.D.**

Position Description: Reports to Chair, Department of Surgery; serves as full-time member in the Department; provides a minimum work effort of 2,500 hours annually in teaching, administrative, and clinical activity; provides professional, comprehensive and safe clinical coverage for operations, timely completion of therapeutic and diagnostic procedures, direct patient care, scholarly research and resident education; works collaboratively with clinic and Department staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities.

- Supervises residents and medical students while on service
- Provides a minimum of two (2) full days of outpatient ophthalmology clinic per week, as KMC may designate in its sole discretion, to meet the needs of the ophthalmology service
- Performs ophthalmic procedures
- Performs ophthalmic surgery in an ambulatory surgery center setting and/or at KMC in the operating room, as KMC may designate in its sole discretion, to meet the needs of the ophthalmology service
- Performs ophthalmic procedures
- Provides inpatient consultations
- Provides a minimum of 1:4 weekday and weekend afterhours call coverage for KMC
- Supervises and ensures competence of mid-level activity
- Performs therapeutic and diagnostic procedures within the scope of practice for an ophthalmology specialist while on service
- Coordinates with faculty schedules and activities to provide service and improve efficiency for clinical activities

2. Medical Education; Academic Responsibilities.

- Provides clinical mentoring to and evaluation of residents and medical students when on service

3. Administrative Responsibilities:

- Assists in clinical and administrative integration efforts across KMC as appropriate for ophthalmology assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication

of services, increase workflow efficiency, and provide the highest quality of care to KMC patients

- Supports the Department chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Participates in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participates in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
- Completes medical records in a timely fashion and works to improve the quality, accuracy, and completeness of documentation
- Works collaboratively with other clinical departments to develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Follows and complies with the medical staff bylaws, rules, regulations, and policies as well as Authority and KMC policies and procedures
- Attends department staff meetings and the annual medical staff meeting
- Attends and actively participate in medical staff and hospital committees as may be assigned
- Participates in other clinical, academic, and administrative activities, as assigned by the Department chair and the president of the medical staff

Employment Standards:

Completion of an accredited residency program in ophthalmology; one (1) year of fellowship experience in ophthalmology 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 Ophthalmology in ophthalmology-general

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

[Intentionally left blank]



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

November 16, 2022

Subject: Proposed Amendment No. 5 to Agreement 07020 for Personal/Professional Services with American Incorporated dba MD Concrete Cutting & Demolition

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 5, effective November 16, 2022, to the Personal/Professional Services Agreement with American Incorporated dba MD Concrete Cutting & Demolition, for maintenance and repair of HVAC units and air handlers at Kern Medical and its outpatient clinics.

The Personal/Professional Services Agreement term is from December 2, 2019 through December 1, 2022. The Amendment extends the term three years, from December 1, 2022 to December 1, 2025, at no extra cost.

Therefore, it is recommended that your Board approve Amendment No. 5 to the Personal/Professional Services Agreement with American Incorporated dba MD Concrete Cutting & Demolition, effective November 16, 2022, extending the term 3 years from December 1, 2022 to December 1, 2025, at no extra cost, and authorize the Chairman to sign.

**AMENDMENT NO. 5
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority–American Incorporated)**

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

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement (KCHA Agt. #21320, effective December 2, 2019), Amendment No. 1 (KCHA Agt. #21320, effective April 22, 2020), Amendment No. 2 (KCHA Agt. # 47820, effective June 30, 2020), Amendment No. 3 (KCHA Agt. # 24721, effective February 10, 2021), and Amendment No. 4 (HA Agmt. #040-2022, effective March 16, 2022) ("Agreement"), for the period December 2, 2019 through December 1, 2022; and

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

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

- X **Term.** The Agreement shall be extended from December 1, 2022 to December 1, 2025, unless sooner terminated as provided for in the Agreement.
- Fees** payable by KCHA under the Agreement shall increase by XXX, from XXX to XXX.

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

IN WITNESS WHEREOF, this Amendment No. 5 to the Agreement has been executed as of the date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

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

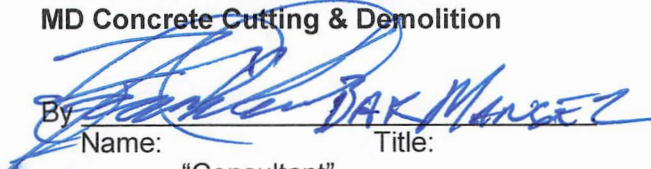
Date: _____

APPROVED AS TO CONTENT:
Responsible KCHA Department

By _____
Scott Thygerson, Chief Executive Officer


Date: _____

**AMERICAN INCORPORATED dba
MD Concrete Cutting & Demolition**

By  _____
Name: DAK MURPHY Title: _____
"Consultant"

Date: 10/27/22

APPROVED AS TO FORM:
Legal Services Department

By  _____
Jamie A. Mason, Hospital Counsel

Date: November 1, 2022



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

November 16, 2022

SUBJECT: Proposed Renewal to Agreement 012-2020 for Environment of Care Solution Subscription with Advanced Technologies Group, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed renewal of the Environment of Care Solution Subscription with Advanced Technologies Group, Inc., to provide software for monitoring compliance of Environment of Care requirements promulgated by The Joint Commission and Centers for Medicare and Medicaid Services.

The Subscription term is from January 1, 2020 through December 31, 2022 and the renewal, effective January 1, 2023, extends the term by three years through December 31, 2025 and increases the maximum payable by \$20,000 from \$12,000 to \$32,000.

Therefore, it is recommended that your Board approve the renewal of Environment of Care Solution Subscription with Advanced Technologies Group, Inc., effective January 1, 2023, extending the term 3 years from December 31, 2022 to December 31, 2025, and increasing the maximum payable by \$20,000 from \$12,000 to \$32,000, to cover the term, and authorize the Chairman to sign.



377 East Butterfield Road, Suite 900 Lombard Illinois 60148
tel +1 630 964 9700 www.atginc.com

October 5, 2022

Rebekah Morales
Safety Officer
Kern Medical
1700 Mt Vernon Ave
Bakersfield, CA 93306

RE: Renewal of the Environment of Care Subscription Services

Dear Rebekah,

Kern Medical Center’s ongoing subscription services for the Environment of Care (EOC) solution is set to expire December 31, 2022. Prior to the expiration of the existing contract, Advanced Technologies Group, Inc. (ATG), a wholly owned subsidiary of Jones Lang LaSalle Americas, Inc. (JLL), is pleased to provide Kern Medical Center with this renewal agreement to continue the subscription services for an additional three (3) years.

The following services are included as part of the ongoing subscription services:

- Online training sessions via WebEx for the EOC solution, including the inspection application
- Unlimited storage of EOC data on the ATG cloud-based platform
- Application and notification system updates
- EOC reports and control panel updates
- Technical support for facility staff on all EOC-related matters

The renewal agreement will be in effect from January 1, 2023 through December 31, 2025. Reimbursable expenses for the project are not anticipated and will be billed in accordance with the attached Terms and Conditions. The annual professional fees will be invoiced in one lump sum at the beginning of each term as follows:

Contract Term	Annual Fee (\$)
1/1/2023 – 12/31/2023	\$4,700
1/1/2024 – 12/31/2024	\$5,100
1/1/2025 – 12/31/2025	\$5,600

Consultant shall provide access to one or more modules of Consultant’s software as a service known as Active Visual System (“AVS”) and may perform related professional services (collectively, the “Services”). Services described in this proposal are subject to the Standard Terms and Conditions attached to this proposal. Consultant shall begin providing the applicable services on the commencement date set forth in the Proposal. Upon the earlier of Client’s (i) acceptance of this proposal, (ii) issuance of a purchase order based on this proposal, or (iii) written authorization of Services (electronic mail being an acceptable form of “written”), the Standard Terms and Conditions and the Proposal are deemed accepted by Client. This proposal is valid for a period of sixty (60) days from submittal. After sixty (60) days, this proposal becomes null and void. The terms of any Purchase Order provided by Client will not modify or supersede any terms of this proposal and Standard Terms and Conditions.



377 East Butterfield Road, Suite 900 Lombard Illinois 60148
tel +1 630 964 9700 www.atginc.com

If the foregoing fee of \$15,400 over a period of three (3) years is acceptable, please return a signed copy of this recommendation along with any necessary purchase order reference number as our notice to proceed.

Respectfully submitted:

Richard Park
Regional Director, Healthcare

Accepted for Kern County Hospital Authority:

Chairman, Board of Governors

Signature

Title

Date

Purchase Order #

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



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

November 16, 2022

SUBJECT: Proposed Personal/Professional Services Agreement with Mesa Energy Systems, Inc. dba Emcor Services Hillcrest

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Personal/Professional Services Agreement with Mesa Energy Systems, Inc. dba Emcor Services Hillcrest, to provide HVAC system maintenance, repairs and control programming at Kern Medical and its outpatient clinics.

The term of the Agreement is three years, effective December 2, 2022 through December 1, 2025, with a total maximum payable not to exceed \$1,000,000, to cover the term.

Therefore, it is recommended that your Board approve the Personal/Professional Services Agreement with Mesa Energy Systems, Inc. dba Emcor Services Hillcrest, effective December 2, 2022, for a term of three years, from December 2, 2022 through December 1, 2025, with a total maximum payable not to exceed \$1,000,000, and authorize the Chairman to sign.

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

THIS SCHEDULE shall be effective on: December 2, 2022 ("Effective Date") and shall terminate no later than December 1, 2025.

Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")

Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.

Service Provider: Mesa Energy Systems, Inc. dba Emcor Services Hillcrest

("Consultant") Located at: 2 Cromwell, Irvine, California 92618

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

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

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder in an aggregate sum not to exceed \$1,000,000. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the following KCHA per diems: Lodging, \$116.00 per night plus tax; breakfast, \$14.00; lunch, \$16.00; dinner, \$26.00; economy rental car; and mileage, if by private automobile, at \$.56 per mile; and by common carrier at actual fare charged for economy or coach class.

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

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

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

Russell Bigler, Chairman, Board of Governors

By _____
Scott Thygerson, Chief Executive Officer

Date: _____

Date: _____

**MESA ENERGY SYSTEMS, INC. dba
EMCOR SERVICES HILLCREST**

APPROVED AS TO FORM:
Legal Services Department

By *Sal Salgado*

By *Jamie A. Mason*
Hospital Counsel, Kern County Hospital Authority

Name: Sal Salgado
Title: Branch Manager
"Consultant"

Date: _____

Date: 11/1/22

**EXHIBIT A
SERVICES**

Consultant to provide all labor, materials & equipment for all HVAC repairs and maintenance, controls, and new installation.

EXHIBIT A-1

IRS FORM W-9

EXHIBIT "C" Insurance

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

3. Automobile Liability Insurance:

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

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Consultant's profession.
 - (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
 - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
 - (d) Required Evidence of Coverage: Certificate of Insurance.
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
6. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
 - (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services – Master Facility Plan.**"
 - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
 - (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (e) Consultant shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (f) Upon written request, certified copies of required insurance policies must be provided to KCHA within 30 days.
9. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
11. Waiver of Subrogation: Consultant hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Consultant may acquire against KCHA by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not KCHA has received a waiver of subrogation endorsement from the insurer.
12. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

[Intentionally left blank]

EXHIBIT E
ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS

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

I. COMPLIANCE WITH LABOR STANDARDS

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

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

II. APPRENTICESHIP PROGRAM

1. Compliance Required

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

2. Certification of Approval

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

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

3. Fund Contributions

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

4. Apprenticeship Standards

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

III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

1. INSURANCE

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

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

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

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

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

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

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

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

2. INDEMNIFICATION

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

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

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

RECITALS

- A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in **Exhibit A**.
- C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.
- D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

AGREEMENT

1. **Services to be Rendered.** Consultant shall provide the services and products described in **Exhibit A** ("Services").
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.
7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.
8. **Indemnification.**
 - a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("**KCHA Indemnified Parties**") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

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

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

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

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

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;

2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing KCHA's ability to use the Services as intended;

3. **Procure Rights.** Promptly procure the right of KCHA to continue using the Services; or

4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and KCHA is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to KCHA all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by KCHA if the court does not so direct.

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

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

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

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

a. Expertise and Staff. Consultant has the expertise, support staff and facilities necessary to provide the Services; and

b. No Adverse Interests. Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and

c. Timeliness. Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

15. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("Applicable Law"), each of which is made a part of this Agreement. While on KCHA property, Consultant will also follow all applicable policies and any direction of staff.

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

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

18. **Cooperation with KCHA Compliance Obligations.** Consultant shall cooperate with the compliance program maintained by KCHA and KMC (the "Compliance Program") to the extent that such requirements are (i) applicable to the operation of KCHA or KMC and Consultant's provision of services under this Agreement, (ii) consistent with applicable industry standards and laws, and (ii) communicated to Consultant, so that KCHA may meet all requirements imposed by laws and any governing or advisory body

having authority to set standards governing the operation of KCHA and KMC.

19. Disqualified Persons. Consultant represents and warrants that no person providing goods and/or services under the terms of this Agreement (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is Ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Consultant agrees that if any individuals providing goods and/or services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Consultant shall immediately notify KCHA and such individual shall be immediately removed by Consultant from any functions, provided, however, that if Consultant is directly involved in the Enforcement Action, any agreement between KCHA and Consultant shall terminate immediately.

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

21. Health Insurance Portability and Accountability Act-HITECH. Consultant understands that KCHA is a Covered Entity that provides medical and mental health services and that Consultant has no authorization to obtain access to any Protected Health Information ("PHI") in any form while performing services for KCHA. If, in the course of performing services, Consultant sees or hears any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from KCHA. The privacy and confidentiality of KCHA's patients are protected by KCHA policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Consultant agrees to execute a business associate agreement with KCHA to supplement this Agreement if requested, to be incorporated herein as Exhibit D if so required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. **Exhibits.** The below exhibits attached to this Agreement are incorporated into this Agreement by reference.
Exhibit A: Services
Exhibit A-1: IRS Form W-9
Exhibit B: Intentionally Omitted
Exhibit C: Insurance
Exhibit D: Intentionally Omitted
Exhibit E: Additional Engineering Terms



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

November 16, 2022

SUBJECT: Proposed Amendment No. 2 to Agreement 56219 for Personal/Professional Services with R.F. MacDonald Co., Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve proposed Amendment No. 2 to the Personal/ Professional Services Agreement with R.F. MacDonald Co., Inc., to provide boiler maintenance and repairs at Kern Medical facilities.

The Agreement term is from December 13, 2019 through December 12, 2022. The Amendment extends the term three years, effective November 16, 2022, from December 12, 2022 to December 12, 2025, and increases the maximum payable by \$600,000 from \$400,000 to \$1,000,000 to cover the term.

Therefore, it is recommended that your Board approve Amendment No. 2 to the Personal/Professional Service Agreement, effective November 16, 2022, extending the term 3 years, from December 12, 2022 to December 12, 2025, and increasing the maximum payable by \$600,000 from \$400,000 to \$1,000,000 to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority–R.F. MacDonald Co.)**

THIS AMENDMENT TO AGREEMENT, effective November 16, 2022, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and R.F. MacDonald Co., Inc. ("Consultant") with its principal place of business located at 25920 Eden Landing Road, Hayward, California 94545.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated December 13, 2019 (PPSA# 56219) and Amendment No. 1 dated October 1, 2021 (Agt.# 58521) ("Agreement"), for the period December 13, 2019 through December 12, 2022; and

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

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

- X **Term.** The Agreement shall be extended from December 12, 2022 to December 12, 2025, unless sooner terminated as provided for in the Agreement.
- X **Fees** payable by KCHA under the Agreement shall increase by \$600,000 from \$400,000 to \$1,000,000.

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

IN WITNESS WHEREOF, this Amendment No. 2 to the Agreement has been executed as of the date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

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

Date: _____

APPROVED AS TO CONTENT:
Responsible KCHA Department

By _____
Scott Thygerson, Chief Executive Officer

Date: _____

R.F. MACDONALD CO., INC.

By **Pete Sentner** _____
Digitally signed by Pete Sentner
DN: cn=Pete Sentner, o=R.F.
MacDonald Co., ou,
email=pete.sentner@rfmacdonald.c
om, c=US
Date: 2022.11.09 08:54:23 -08'00'
"Consultant"

Date: _____

APPROVED AS TO FORM:
Legal Services Department

By *Jamie A. Mason* _____
Hospital Counsel

Date: November 9, 2022



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

November 16, 2022

Subject: Proposed retroactive Amendment No. 3 to Memorandum of Understanding 61320 with Kern Health Systems for Translation Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends that your Board retroactively approve the attached proposed Amendment No. 3 to the Memorandum of Understanding (MOU) with Kern Health Systems (KHS) for translation services for all Kern Medical patients, which includes KHS Members.

On December 11, 2020, Kern Medical and KHS entered into the MOU whereby KHS provided the necessary equipment for use by Kern Medical to access audio and video translation services for the entire Kern Medical patient population for a period not to exceed six months, commencing December 14, 2020. Amendment No. 1 extended the term of the MOU through December 13, 2021, and provided for a maximum payable of \$425,000 over the term. Amendment No. 2 extended the term of the MOU through December 31, 2021, and increased the maximum payable by \$600,000, from \$425,000 to \$1,025,000, to cover the extended term.

The proposed Amendment extends the term of the MOU through December 31, 2023, and increases the maximum payable by \$600,000, from \$1,025,000 to \$1,625,000, to cover the extended term. The new maximum payable is calculated based on the average monthly usage of approximately \$40,000 per month, and provides additional dollars in the event there is a spike in usage.

Kern Medical continues to pay KHS an amount not to exceed 70% of monthly utilization of the KHS Language Line Translation Services as originally agreed upon in the MOU.

Therefore, it is recommended that your Board approve Amendment No. 3 to the MOU with Kern Health Systems for the continued provision of translation services, extending the term for one year from January 1, 2023 through December 31, 2023, increase the maximum payable by \$600,000, from \$1,025,000 to \$1,625,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 3
TO
MEMORANDUM OF UNDERSTANDING
(Kern County Hospital Authority – Kern Health Systems)**

This Amendment No. 3 to the Memorandum of Understanding 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 Kern Health Systems, a county health authority (“KHS”).

RECITALS

(a) Authority and KHS have heretofore entered into a Memorandum of Understanding (Agt. #61320, dated December 11, 2020), Amendment No. 1 (Agt. #043-2021, dated August 18, 2021), and Amendment No. 2 (Agt. 019-2022, dated February 16, 2022) (collectively, the “MOU”), whereby KHS provides Translation Services to patients of KMC which include KHS Members, as such services are unavailable from Authority resources; and

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

(c) The Agreement is amended effective December 14, 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, Responsibilities of KHS, paragraph A, shall be deleted in its entirety and replaced with the following:

“A. KHS will maintain Translation Services for KHS Members and will make such services available to KMC for the entire KMC patient population for the period commencing December 14, 2020, and continuing through December 31, 2023 (the “Term”).”

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

“B. Maximum Payable. The maximum payable under this MOU shall not exceed \$1,625,000 over the Term of this MOU.”

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

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 MOU and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

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

KERN HEALTH SYSTEMS

By: _____
Emily Duran
Chief Executive Officer

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By: _____
Scott Thygerson
Chief Executive Officer
Kern County Hospital Authority

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
Karen S. Barnes,
Vice President & General Counsel
Kern County Hospital Authority



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

November 16, 2022

Subject: Proposed Cerner Sales Order OPT-0352599 with Cerner Corporation for the purchase of professional and shared computing services for the integration of the Stago Coagulation Laboratory Instrument.

Recommended Action: Approve; Authorize Chairman to sign and the Chief Executive Officer to sign receipt of delivery

Summary:

Kern Medical requests that your Board approve the proposed Cerner Sales order for professional and shared computing services, in the amount of one-time fees of \$4,500 and maintenance fees of \$175 per month paid over 60 months. The total cost would not exceed \$15,000 over the term of the contract.

Cerner will provide professional services and shared computing services for the CareAware iBus for Laboratory Medical Device Integration used to support the Stago Coagulation Laboratory Instrument. Completion of services will provide communication of orders and results to and from the instrument and the electronic health record. Manual entry of both orders and results would be required without the existence of this automated device integration.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the possibility that the fees for services can increase each year of the agreement, the agreement auto-renews for one (1) year terms, and any goods purchased are FOB at origin.

This is the only way to integrate the laboratory process into the electronic health record, therefore, it is recommended that your Board approve the proposed Sales Order OPT-0352599 with Cerner Corporation for the purchase of professional and shared computing services for the integration of the Stago Coagulation Laboratory Instrument, with a maximum payable of \$15,000, for a term of sixty (60) months beginning on the November 16, 2022, and authorize the Chairman to sign and the Chief Executive Officer to receive delivery.



CERNER SALES ORDER

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

Kern County Hospital Authority (“Client”)

and **Cerner Corporation (“Cerner”)**

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

a Delaware corporation with its principal place of business at

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

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

Cerner Sales Contact: Jordan Russell
+1 816 906 2094
jordan.russell@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36), dated July 01, 2016, between Client and Cerner (the “Agreement”). If the total fees due from Client for products and services set forth in this Cerner Sales Order are US \$250,000 or less, then Client’s submission of a Purchase Order referencing this Cerner Sales Order shall be deemed Client’s confirmation of agreement to the terms and conditions of the Agreement, regardless of whether this Cerner Sales Order is signed by Client.

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

KERN COUNTY HOSPITAL AUTHORITY

CERNER CORPORATION

Authorized signatory: _____
(signature) *RF*

(printed name)
Title: _____

Authorized signatory: _____
Teresa Waller

Teresa Waller
Title: _____
Sr. Director, Contract Management

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

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

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



Kern County Hospital Authority
OPT-0352599_Q-159702.1_LA-0000326079
October 9, 2022



CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SOLUTIONS		
Shared Computing Services	--	123.00
EQUIPMENT		
Equipment and Installation (if applicable)	0.00	--
PROFESSIONAL SERVICES		
Fixed Fee	4,500.00	--
TOTALS:	4,500.00	123.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until November 30, 2022. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

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

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

TERM AND TERMINATION

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

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

FEE INCREASES



Kern County Hospital Authority
OPT-0352599_Q-159702.1_LA-0000326079
October 9, 2022



CERNER SALES ORDER

Cerner may increase the monthly fee for Support services and each recurring service (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) any time following the initial twelve (12) month period after such recurring service fees begin (but not more frequently than once in any twelve (12) month period) by giving Client sixty (60) days prior written notice of the price increase. The amount of any increase in the fees shall not exceed the previous calendar year's percentage increase in CPI, plus 1% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner's fee to the third party.

SOLUTIONS

SHARED COMPUTING SERVICES

Mfg. Part No.	Solution Detail Description	Scope of Use Metric	Qty./ Scope of Use Limit	Term (Mo.)	Monthly Range	Extended One-Time Fees	Extended Monthly Fees	Solution Description Code	Third-Party Component(s)	Pass-Through Code	Per Unit Monthly Expansion Fees
CI-400500	CareAware iBus for Laboratory Medical Device Integration **	Devices	1	60	1-60	--	123	SD100565_04	--	--	175.00
TOTAL:						--	123	--	--	--	--

** This is an Interoperability Element subject to the 21st Century Cures Act. All available allowances have been applied.

Shipping and Handling. Client will pay standard shipping and handling fees, not to exceed \$0 USD. Additional fees may apply if Client requests expedited shipping. Notwithstanding any other agreement between the parties regarding shipping terms, the items set forth in this Cerner Sales Order will be shipped FOB the manufacturer's plant.

EQUIPMENT AND INSTALLATION (if applicable)

Quote: Q-159702.1						
Line No.	Manufacturer Part No.	Solution Detail Description	Qty.	Per Unit One-Time Fees	Extended One-Time Fees	Pass-Through Code
1	CFG_MDI	CareAware MDI	1	0.00	0.00	--
TOTAL:					0.00	--



Kern County Hospital Authority
OPT-0352599_Q-159702.1_LA-0000326079
October 9, 2022



CERNER SALES ORDER

EQUIPMENT/SUBLICENSSED SOFTWARE DELIVERY

Delivery Information. The following delivery information is required to process the equipment/sublicensed software in this Cerner Sales Order.

Delivery Address	Delivery Contact Information
_____ <i>(Name of Facility)</i>	_____ <i>(Name – Printed)</i>
_____ <i>(Address Line 1)</i>	_____ <i>(E-mail Address)</i>
_____ <i>(Address Line 2)</i>	_____ <i>(Phone Number)</i>
_____ <i>(City, State/Province, Zip/Postal Code, Country)</i>	_____ <i>(Fax Number)</i>

Delivery Requirements. Please check the applicable box for each question below to help ensure a successful delivery.

Does the facility accommodate a 48-foot trailer?		Yes		No	
Does the facility have a loading dock?		Yes		No	
What are the receiving days and hours of operation? <i>(Please enter days and times available)</i>	Days:		Start Time:		End Time:
Will a lift gate and/or ramp be required?	No		Lift Gate		Ramp
To what floor will the equipment be delivered?	Basement		Ground		Floor:
Does the facility have an elevator, or will a stair crawler be required?	Elevator		Stair Crawler		N/A
Does the facility require floor covering?		Yes		No	

PROFESSIONAL SERVICES

FIXED FEE

Service Project Detail	Manufacturer Part No.	Solution	One-Time Fees	Third-Party Component(s)	Pass-Through Code
<i>Standard Services</i>					
CareAware MDI	CTS-CAMDI-IMP	CareAware iBus for Laboratory Medical Device Integration Imp	4,500	--	--
TOTALS:			4,500	--	--



Kern County Hospital Authority
OPT-0352599_Q-159702.1_LA-0000326079
October 9, 2022



CERNER SALES ORDER

SCOPE OF USE

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

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

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

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

Scope of Use Metric	Scope of Use Definition
Devices	The total number of instruments, personal computers, handheld devices, or other pieces of mechanical or electronic equipment to be used in conjunction with the application being licensed.

FACILITIES

Permitted Facilities. For use and access by these facilities:

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

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

SOLUTION DESCRIPTIONS

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

QUOTE ASSUMPTIONS



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

Device in Scope: Stago Sta R Ma

ADDITIONAL TERMS AND PROVISIONS**SHARED COMPUTING SERVICES**

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

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

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

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

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

Information Management Tools. Client acknowledges and agrees that the Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Services. Client further acknowledges and agrees that the Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

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

GENERAL SCOPE

PROFESSIONAL SERVICES

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

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

Client and Cerner must fulfill their responsibilities and adhere to the other requirements and descriptions set forth herein to meet the goals of an ‘on-time’ and ‘on-budget’ project. Modifications to this Scope shall be mutually agreed upon by Cerner and Client’s executive steering committee and set forth on a new Cerner Sales Order.

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

Travel, Lodging, Out-of-Pocket Expenses, and Per Diem Rates. The fees in this Cerner Sales Order do not include travel, lodging, per diem, or other out-of-pocket expenses. Such fees will be billed monthly as incurred per the terms of the Business Agreement.

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

SOLUTION DETAIL SCOPE

PROFESSIONAL SERVICES

CAREWARE IBUS FOR LABORATORY MEDICAL DEVICE INTEGRATION IMPLEMENTATION (CI-400550, CTS-CAMDI-IMP)

Implementation Summary	<ul style="list-style-type: none">Number of Multiplexor devices to be implemented: 1
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Kern County Hospital Authority
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CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

CAREAWARE IBUS FOR LABORATORY MEDICAL DEVICE INTEGRATION IMPLEMENTATION

(CI-400550, CTS-CAMDI-IMP)

	<ul style="list-style-type: none"> • Number of facilities to be implemented: 1 • When implementing on the traditional <i>CareAware</i> platform implementation is limited to 1 production environment and 1 non-production environment • When implementing on the <i>CareAware</i> Cloud platform implementation is limited to 1 production and 2 non-production environments
Cerner Tasks/Activities	<ul style="list-style-type: none"> • Assist in the integration of devices from agreed upon <i>CareAware</i> MDI devices as defined in this Scope • Define data elements for integration via <i>CareAware</i> MDI • Establish connectivity to device(s) • Assist in the configuration and verification of assay alias mapping from the device to the electronic health record (EHR) • Assist in the configuration and verification of assay orders from the EHR to the device (if applicable) • Assist in troubleshooting and the resolution of issues that arise during Client testing
Client Tasks/Activities	<ul style="list-style-type: none"> • Ensure all <i>CareAware</i> MDI device connectivity hardware is configured and connected to the network • Run cable for <i>CareAware</i> MDI device connectivity hardware throughout the facility (if applicable) • Perform all parameter testing with all <i>CareAware</i> MDI devices in scope • Responsible for all aspects related to Client-owned equipment and medical devices located at Client facilities (such as procurement, installation, management, and support)
Deliverables	<ul style="list-style-type: none"> • Implement and configure <i>CareAware</i> MDI device(s) as set forth in this Scope • Provide specialized solution training and Documentation regarding maintenance, server configuration, and operational procedures
Project Assumptions	<ul style="list-style-type: none"> • Estimated project duration is 4 to 6 months depending on the number of devices and connectivity method. <ul style="list-style-type: none"> ◦ Quantity of devices and device availability will determine the actual project duration. • A solution overview focus group will follow where the project plan, domain strategy, remaining visits, and more will be discussed. • Cerner will provide remote support for 1 go-live event, when applicable. • Should additional on-site support be needed, additional services and fees will apply. • Client shall incur additional fees if services are requested beyond the scope of work herein.



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EXECUTION INVOICE

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

Invoice No: EXEC CSO No. OPT-0352599
Invoice Date: October 09, 2022
Due Date: Effective Date

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

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

TOTAL AMOUNT DUE: \$3,726

Sales tax, if applicable, will be invoiced separately.

Description	Total Amount	Percent Payable	Net Amount
Professional Services: Fixed Fee	\$4,500	50%	\$2,250
Shared Computing Services Monthly Fees - Year 1	\$1,476	100%	\$1,476
GRAND TOTAL:			\$3,726



Kern County Hospital Authority
 OPT-0352599_LA-0000326079
 October 9, 2022



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

November 16, 2022

Subject: Proposed Amendment No. 2 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. 2 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 modifies Dr Huffman's annual compensation from \$750,000 per year to \$450,000 per year.

Therefore, it is recommended that your Board approve Amendment No. 2 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, modifying his annual compensation from \$750,000 per year to \$450,000 per year, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Jeffry L. Huffman, 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 Jeffry 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) and Amendment No. 1 (Agt. #075-2022, dated July 20, 2022) (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 October 19, 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 5.1, Annual Compensation, shall be deleted in its entirety and replaced with the following:

“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 \$450,000 per year, to be paid as follows: Physician shall be paid \$17,307.69 biweekly not to exceed \$450,000 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.”

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.

[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 _____
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



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

November 16, 2022

Subject: Proposed Agreement with QCERA, Inc. for access to LeaveSource® SaaS Software for employee leave and absence administration

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Agreement with QCERA, Inc. for access to LeaveSource® SaaS Software for employee leave and absence administration. QCERA is a Software as a Service (SaaS) application that helps companies to simplify and streamline the process of complying with all federal and state leave laws.

Currently, Broadspire Services, Inc., processes all leave requests on behalf Kern Medical. Because of our size, the number of leaves requested, and the complexity of our leave process, we have concluded that this process would be better handled in house by existing Human Resources staff. We will utilize the QCERA software to track leaves, store leave documentation, monitor intermittent leaves and all reasonable accommodation processes. We believe this will reduce response times to both management and employees since information will be more readily available and ensure that all proper documentation is kept for all requests. This product will replace Broadspire Services Inc. once we have completed the initial implementation period and the QCERA secure site has been built to our specifications.

The Agreement contains nonstandard terms and conditions and cannot be approved as to form by Counsel due to the inability to terminate without cause during the initial 12-month term and the auto-renewal provision. Kern Medical believes the benefit of moving forward with the Agreement outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

The Agreement is effective upon approval by your Board for an initial term of 12-months and automatically renews every 12 months unless terminated with 90 days' notice prior to the end of the then current term (initial or extended).

Costs associated with Agreement:

Initial Implementation Costs (not included in annual costs):	\$7,100.00
Approximate Annual Cost (based on employee count on a monthly basis):	\$33,120.00
Annual cost of current vendor \$59,357.00	Savings of \$26,237.00

Therefore, it is recommended that your Board approve the proposed agreement with QCERA, Inc.

QCERA LEAVESOURCE[®]

Software as a Service Agreement

QCERA's LeaveSource[®] software is a Software as a Service ("SaaS") application that helps companies to simplify and streamline the process of complying with the Family Medical Leave Act. This SaaS access agreement (the "Agreement") is made and entered into as of _____, 2022 ("Effective Date") by and between **Kern County Hospital Authority**, a public agency that is a local unit of government, which owns and operates Kern Medical Center, with its principal place of business located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Subscriber"), and **Qcera, Inc.**, a California corporation with offices at 1525 S. Sepulveda Blvd., Suite A, Los Angeles, CA 90025 ("QCERA"). Subscriber and QCERA may be referred to individually as "Party" or collectively as "Parties".

INTRODUCTION

QCERA's LeaveSource[®] SaaS application is referred to in this Agreement as the "SaaS Software".

This Agreement governs the Subscriber's access to and use of the SaaS Software. This Agreement includes the System Specifications and Performance Support Terms (Exhibit A), and the Privacy and Data Protection Terms (Exhibit B), attached hereto and incorporated by reference herein.

In consideration of the foregoing and of the following mutual promises and covenants, QCERA and Subscriber agree as follows:

1. SaaS Software Access and Use

- 1.1 Upon Subscriber's timely payment of the fees described in the Order Form, QCERA agrees to allow electronic access to the SaaS Software via the Internet and permit its use by Subscriber's users. Subscriber agrees to be responsible for establishing its own access to the Internet in order for Subscriber to access and use the SaaS Software. No rights are granted in or to the SaaS Software's binary code or source code. QCERA retains all rights, title, ownership and interest in and to the SaaS Software, including all related intellectual property rights, derivative works thereof, and anything developed or delivered by or on behalf of QCERA in this Agreement. All rights not expressly granted to Subscriber, are reserved to, and by, QCERA.
- 1.2 Subscriber acknowledges the system requirement specifications that are set forth in Exhibit A and agrees that the proper operation of the SaaS Software is contingent upon Subscriber's adherence to the system requirement specifications.

2. Restrictions

- 2.1 During the term of this Agreement, Subscriber may only use the SaaS Software for its own internal business purposes related to its leave and absence administration for its own employees. Subscriber shall not, and shall not cause or permit others, to license, sell, rent, lease, transfer, assign, distribute, host, outsource, or permit timesharing or otherwise commercially exploit or make available the SaaS Software to any third party without written consent by QCERA.
- 2.2 Subscriber agrees that it will not allow login accounts to be shared or used by more than one individual user. However, Subscriber may reassign a login account to a new user in the event that an Authorized User no longer requires use of a login account.
- 2.3 Subscriber shall not directly or indirectly, use all or any part of the SaaS Software in competition with QCERA. Subscriber shall not access the SaaS Software to copy or to build, or to facilitate others to copy or to build a competitive and/or similar product or service, or to use the SaaS Software as model for development of similar software application. Without limiting the foregoing, Subscriber shall not build a software application using similar ideas, features, functions or graphics of the SaaS Software, or copy, alter, merge, adapt, modify, enhance, revise or create derivative works based on any ideas, features, functions or graphics of the SaaS Software hereunder, or any copy thereof, in whole or in part.

- 2.4 Subscriber shall not enter, transmit or convey any personally identifiable information of any person into the SaaS Software in violation of any data privacy law or regulation and Subscriber agrees to indemnify and defend QCERA from any third-party claims that Subscriber violated any data privacy law or regulation. QCERA agrees to indemnify, defend, and hold harmless Subscriber from and against any and all third-party claims that the SaaS Software contains, stores, processes or otherwise uses any person's personally identifiable information in violation of any data privacy law or regulation.
- 2.5 Subscriber shall not use the SaaS Software to store, process or transmit malicious code of any type or nature.
- 2.6 This Agreement includes no rights in, or to, the binary code or the source code versions of the SaaS Software. Subscriber shall not reverse-engineer, decompile, disassemble or otherwise make any attempt to reverse-engineer, decompile, disassemble or access the source code of the SaaS Software hereunder, in whole or in part.
- 2.7 Subject to the limited rights expressly granted hereunder, QCERA retains all rights, title, ownership and interest in and to the SaaS Software, including all related intellectual property rights, derivative works thereof, and anything developed or delivered by or on behalf of QCERA in this Agreement. All rights not expressly granted to Subscriber, are reserved to, and by, QCERA.

3. Term of the Agreement

- 3.1 Initial Term - The Initial Term of the Agreement shall commence on the Effective Date and shall expire twelve (12) months following the date the SaaS Software is made available to Subscriber in a live production environment, (the "Go-Live Date").
- 3.2 Extended Term - Upon expiration of the Initial Term, the Agreement will renew in twelve (12) month increments (each such increment an "Extended Term") unless notice of non-renewal is issued by either Party not less than ninety days prior to the expiration of the Initial Term or any Extended Term.
- 3.3 Term - The Initial Term and the Extended Term (if any) are collectively referred to as the "Term".

4. Fees & Payment Terms

- 4.1 Subscriber shall pay to QCERA the fees set forth in the relevant and applicable Order Form during the Term of this Agreement. Fees may include a one-time, non-recurring implementation fee specified in the Order Form, a recurring monthly SaaS Software license fee, pass-through fees, other service fees as requested and approved by Subscriber.
- 4.2 QCERA will issue an invoice to Subscriber for the implementation fee after both Parties sign this Agreement. QCERA will issue an invoice to Subscriber for the monthly SaaS Software license fee when the SaaS Software is made available in the live production environment (the "Go-Live Date"). Additional professional services rendered by QCERA at the Subscriber's request will be included in the monthly invoice upon the start of the requested service in accordance with the fees set forth in an approved Order Form.
- 4.3 If Subscriber disputes the fees specified in any invoice, it agrees that it will pay QCERA the undisputed portion of the invoice and that it shall provide written details to QCERA explaining why it has not paid the fees in full. Subscriber may withhold the disputed portion during pendency of such dispute, during which time both Parties agree to use their best efforts to resolve the dispute in accordance with the process established herein at Section 24.
- 4.4 All undisputed fees are due and payable upon receipt of an invoice. Failure to pay an undisputed invoice after QCERA has provided Subscriber with notice of default via mail or email shall constitute a material breach of this Agreement and shall permit QCERA to terminate this Agreement and the rights granted herein to access and use the SaaS Software.

- 4.5 If applicable, Subscriber shall reimburse QCERA for any pass-through expenses mutually agreed by Subscriber and QCERA in writing and required by Subscriber of QCERA, such as software service fees for Subscriber's accounts payable and invoice collection software. QCERA will promptly provide Subscriber with a copy of the third-party invoice received by QCERA for such expense. QCERA will invoice Subscriber for such charges as part of the monthly billing.
- 4.6 Fees do not include sales, use or other taxes. All taxes (except taxes that are based on QCERA's net income) are the responsibility of Subscriber.
- 4.7 The maximum payable under this Agreement shall not exceed \$250,000 during the Term.

5. Responsibility for Leave Administration

- 5.1 Subscriber acknowledges that the SaaS Software is an employee leave management tool and not a substitute for the overall process of employee leave management.
- 5.2 Subscriber agrees that it will retain full and sole authority and responsibility for the administration of all leave and absence entitlements and benefits under any and all plans, policies or regulations sponsored or provided by Subscriber.
- 5.3 Subscriber agrees that QCERA shall not be responsible for the accuracy and completeness of information supplied to the SaaS Software by Subscriber. Subscriber shall be responsible for all questions and processing relating to the eligibility, leave entitlement, payment of benefits under any plan, policy or regulation sponsored or provided by Subscriber.

6. Termination & Expiration

- 6.1 Non-Renewal - Either Party may elect to allow this Agreement to expire at the end of the Initial Term or any Extended Term by giving the other Party a written notice of intent to not renew at least ninety (90) days prior to the end of the Initial Term or Extended Term. Upon expiration of the Initial Term or an Extended Term, Subscriber's right to access and use the SaaS Software will end.
- 6.2 Termination for Breach - In the event of a material breach of this Agreement, the non-breaching Party may (but shall not be required to) terminate this Agreement, as follows:
 - (a) The non-breaching Party shall provide written notice of the breach to the breaching Party and shall specify the facts and circumstances constituting the breach.
 - (b) The breaching Party shall attempt to cure the breach within thirty (30) days after service of the notice of breach (the "Cure Period").
 - (c) If the breaching Party fails to cure the breach within the Cure Period to the reasonable satisfaction of the non-breaching Party, the non-breaching Party may terminate this Agreement immediately upon providing notice of such termination.
- 6.3 Termination for Bankruptcy or Insolvency - Either Party may terminate this Agreement by providing written notice of termination to the other Party if the other Party files a petition in bankruptcy, is adjudicated bankrupt, is declared insolvent under the laws of any jurisdiction, makes an assignment for the benefit of its creditors, is voluntarily or involuntarily dissolved, or has a trustee, receiver, or other court officer appointed with respect to its property or business.
- 6.4 Termination for claimed IP Infringement - If the SaaS Software is held by any legal authority, or if QCERA reasonably believes that the SaaS Software is likely to be held to infringe upon the copyright, patent or trade secret of a third party, QCERA will seek to insulate Subscriber from any such matter and may terminate this Agreement upon ninety (90) days advance written notice to Subscriber.
- 6.5 Access to Subscriber's content - Upon termination of this Agreement, Subscriber's electronic records and information will be sent to Subscriber in an industry standard format. QCERA will delete Subscriber records in an irretrievable manner sixty (60) days after the date of termination of this Agreement.

6.6 Survival - All provisions of this Agreement that by their nature are intended to survive the termination of this Agreement shall survive such termination, including, without limitation, the payment of accrued but unpaid fees, obligations regarding the confidentiality and protection of the proprietary information and proprietary rights of the Parties.

7. Confidentiality

7.1 By virtue of this Agreement, the Parties may have access to each other's information that is confidential ("Confidential Information").

7.1.1 QCERA's Confidential Information shall include but is not limited to the terms and pricing under this Agreement, software, software design, software features, training materials, manuals and software specifications (including, without limitation, any software changes or modifications that result from input from Subscriber). Confidential Information received from QCERA under this Agreement is proprietary and is an invaluable trade secret and has been developed at great expenditure of resources, time and money. Any disclosure or use thereof outside of this Agreement can cause irreparable harm and loss to QCERA.

7.1.2 Subscriber's Confidential information shall include Subscriber's data and all information clearly identified as confidential at the time of disclosure.

7.2 A Party's Confidential Information shall not include information that:

7.2.1 is or becomes a part of the public domain through no act or omission of the other Party;

7.2.2 was in the other Party's lawful possession prior to the disclosure and was not obtained by the other Party either directly or indirectly from the disclosing Party;

7.2.3 is lawfully disclosed to the other Party by a third party without restriction on the disclosure;
or

7.2.4 is independently developed by the other Party.

7.3 Subscriber and QCERA both agree to disclose only information that is required for the performance of obligations under this Agreement and both Parties agree not to disclose each other's Confidential Information to any third party other than as set forth in this Agreement. Notwithstanding the foregoing, either Party may disclose Confidential Information to its employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement.

7.4 Nothing shall prevent either Party from disclosing Confidential Information pursuant to a court order or applicable law, provided such use or disclosure is to the minimum extent required by such court order or applicable law. In the event that either party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, governmental authority or other administrative or judicial process) to disclose any Confidential Information, the Party under such requirement shall, to the extent permitted by law, provide the other Party with written notice of any such request or requirement within ten (10) calendar days of any such request or requirement so that the owner of the Confidential Information may seek an appropriate protective order.

7.5 Subscriber and QCERA each agree that they will destroy all Confidential Information relating to the other Party that is in their possession, including all copies thereof, no later than 120 days after termination of the Agreement.

8. Warranty

8.1 QCERA represents and warrants:

(a) that it is duly organized and existing and is qualified and in good standing as a California corporation;

(b) that neither the execution and delivery of this Agreement, nor the licenses granted hereunder will conflict with or violate any other license, instrument, contract, agreement, or other commitment or arrangement to which QCERA is a party or by which QCERA is bound;

- (c) that the SaaS Software will perform substantially in accordance with the descriptions and specifications contained in the online user's manual, under normal use and circumstances.
- 8.2 Except as provided above in Section 8.1(a), 8.1(b) and 8.1(c), QCERA MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING FROM A COURSE OF DEALING OR A COURSE OF PERFORMANCE. QCERA'S SaaS Software and its LeaveSource® leave management services ARE PROVIDED ON AN "AS IS" BASIS.
- 8.3 QCERA MAKES **NO** REPRESENTATION OR WARRANTY THAT (i) the SaaS Software will be error free or that QCERA will correct all errors in the SaaS Software or that the SaaS Software will properly operate in combination with Subscriber's content or Subscriber's applications or with any particular hardware or software. To this end, QCERA expressly disclaims any warranty or responsibility for any issues or problems that relate to the performance of either the SaaS Software or to the security of the services or software that arise from Subscriber's content or third-party content, or any software applications not provided by QCERA.

9. Indemnification

- 9.1 Mitigation of claims of alleged IP Infringement – If the SaaS Software is held by any legal authority, or if QCERA reasonably believes, that the SaaS Software is likely to be held to infringe upon the copyright, patent or trade secret of a third party, QCERA will attempt to address the claimed infringement by (i) modifying the SaaS Software to avoid the alleged infringement, (ii) obtaining a license permitting Subscriber's access and use of the SaaS Software to continue unimpeded, or (iii) terminating this Agreement pursuant to Section 6.4 herein and refunding an equitable portion of the fees paid to QCERA for the Software during the three (3) months immediately prior to the copyright, patent or trade secret infringement.
- 9.2 QCERA Indemnification of Subscriber - If the event the above stated actions are insufficient to avoid the commencement of a legal action against Subscriber, QCERA will indemnify, defend, and hold harmless Subscriber (and its respective directors, officers, employees, agents, and representatives) from and against any and all third party claims or assertions that are awarded against Subscriber by a judicial court or entity as due to any claim alleging that the SaaS Software infringes or violates any copyright, patent or trade secret of a third party and/or any act or omission of QCERA that results in a breach of Subscriber's Confidential Information; provided that Subscriber (a) promptly provides written notice of the claim to QCERA; (b) provides QCERA sole control to defend or settle the claim (provided that QCERA may not settle or defend any claim unless QCERA unconditionally releases Subscriber of all liability); (c) provides QCERA with all available information and reasonable assistance; and (d) has not compromised or settled such claim. QCERA shall not enter into any stipulated judgment or settlement that purports to bind Subscriber without Subscriber's prior written authorization, which shall not be unreasonably withheld.
- 9.3 Subscriber Indemnification of QCERA - Subscriber will defend, indemnify and hold QCERA harmless from and against any and all third party claims or assertions that relate to or arise out of any actual or reasonably suspected unauthorized use, acquisition, or disclosure of, or unauthorized access to the QCERA system resulting from any failure on the part of Subscriber or its employees or agents to properly safeguard any system access credentials that have been provided to Subscriber or its employees.
- 9.4 Each indemnified Party agrees that it will (1) promptly give written notice of the claim to the indemnifying Party; (2) give the indemnifying Party sole control to defend or settle the claim (provided that the indemnifying Party may not settle or defend any claim unless the indemnifying Party unconditionally release indemnified Party of all liability); (3) provide to the indemnifying Party all available information and reasonable assistance; and (4) has not compromised or settled such claim. Neither indemnifying Party shall enter into any stipulated judgment or settlement that purports to bind the indemnified Party without the indemnified Party's prior written authorization, which shall not be unreasonably withheld. This provision states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described herein.

10. Limitations of Liability

10.1 No Consequential Damages

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, REGARDLESS OF WHETHER SUCH ACTION RESIDES IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 Direct Damage limitation

EXCEPT FOR AND OTHER THAN THE INDEMNIFICATION OBLIGATIONS SPECIFIED HEREIN, THE DIRECT DAMAGES FOR EITHER PARTY THAT ARE INCURRED OR THAT ARISE UNDER THIS AGREEMENT, FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, (WHETHER IN CONTRACT, TORT OR OTHERWISE), IS LIMITED TO AN AMOUNT EQUAL TO THE LESSER OF THE ACTUAL DAMAGE OR THE FEES PAID BY SUBSCRIBER DURING THE THREE MONTHS IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO LIABILITY.

10.3 Liability of Subscriber

The liabilities or obligations of Subscriber with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Subscriber and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California (Health & Saf. Code, § 101853, subd. (g)).

10.4 Essential Element

THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 10 IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

11. Relationship of the Parties

11.1 Independent Contractor: It is understood and agreed that in the performance of QCERA's duties and obligations hereunder, QCERA shall at all times be acting and performing as an independent contractor. It is expressly agreed that no work, act, commission, or omission by or of a Party, or such Party's employees, principals, or agents, pursuant to the terms and conditions of this Agreement, shall be construed to make or render the Party (including its officers, directors, employees, and representatives) an employee, principal, agent, or joint venturer, of the other Party.

11.2 Contract for Services only: It is the intent of both Parties, that this Agreement is a contract for the sale of services only, and not a contract of indemnity or a policy of insurance.

12. Notices

12.1 To Subscriber - QCERA may give all notices required or permitted to be given hereunder via electronic mail to the primary Subscriber email address on record or by written communication sent by first class mail or pre-paid post to Subscriber's primary mailing address on record. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

12.2 To QCERA - Subscriber may give notice to QCERA (such notice shall be deemed given when received by QCERA) at any time via electronic mail to the QCERA primary contact or by written communication delivered by first class postage prepaid mail or nationally recognized overnight delivery service to QCERA at the following address:

QCERA, Inc.
1525 S. Sepulveda Boulevard, Suite A
Los Angeles, California 90025
Attn: Client Services

13. **No other Agreement**
The Parties acknowledge and agree that no oral or written agreement or understanding presently exists between them, which would modify or supersede the terms of this Agreement.
14. **Severability**
It is the intention of the Parties that all provisions of this Agreement shall be enforceable to the fullest extent permissible under applicable law. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, that invalidity, illegality or unenforceability shall not affect, prejudice or disturb the validity of the remainder of this Agreement, which shall remain in full force and effect, and the invalid, illegal or unenforceable provision shall be replaced by a provision that is valid, legal and enforceable and that comes closest to the intention of the invalid, illegal or unenforceable provision.
15. **Assignment**
This Agreement shall not be assigned by the Subscriber without QCERA's prior written consent. Any actual or proposed change in the Subscriber that results or would result in a competitor of QCERA directly or indirectly owning or controlling the Subscriber or being owned or controlled by the Subscriber shall entitle QCERA to terminate this Agreement immediately upon written notice.
16. **Binding upon Successors**
This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns to the extent that assignment or transfer is permitted hereunder.
17. **Parties in Interest**
Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over against any Party to this Agreement.
18. **Headings**
Section and paragraph captions or headings are for purposes of description only and are not to be used to interpret this Agreement.
19. **Counterparts**
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.
20. **Non-Solicitation**
Each Party agrees that it will not knowingly solicit employment from or offer employment to any employee of the other Party during the term of this Agreement, except as otherwise agreed in writing between the Parties.
21. **Force Maleure**
Acts of God - Neither Party shall be liable nor deemed to be in default of its obligations hereunder for any delay or failure in performance under this Agreement resulting, directly or indirectly, from unforeseen pandemics, civil or military authority, acts of a public enemy, war, accidents, natural disasters or catastrophes, interruptions of electrical service, or any other cause beyond the reasonable control of the Party affected thereby. However, each Party shall utilize its best good faith efforts to perform such obligations to the extent of its ability to do so in the event of any such occurrence or circumstances.
22. **No Legal Advice**
Subscriber acknowledges and agrees that neither the SaaS Software nor QCERA's LeaveSource® leave management services constitute legal advice. Subscriber acknowledges and agrees that QCERA is not a law firm and has not represented itself to be a law firm. QCERA is not engaged in the business of providing legal services or advice. As such, neither the LeaveSource® leave management services nor the SaaS Software should be used as a substitution for professional legal consultation and services.
23. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of laws.

24. Dispute Resolution


24.1 Obligation to discuss - If a dispute arises out of this Agreement or relates to the rights and obligations of the Parties under this Agreement or for a breach hereof, the Parties will first make a reasonable good faith attempt with a spirit of mutual cooperation to resolve the dispute promptly by meeting, discussing and negotiating a resolution. Each Party shall appoint an officer or other individual with the authority to make decisions regarding the dispute to participate in such negotiations.

24.2 Arbitration - If the Parties cannot resolve the dispute within thirty (30) days after notice of the dispute from one Party to the other, then the dispute may be decided by binding arbitration, which either party may commence, in accordance with the Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services (JAMS). The decision of the arbitrator shall be binding upon the Parties, and a judgment upon the decision rendered by the arbitrator may be entered in any court of competent jurisdiction. As part of the arbitration proceedings, the parties shall have the right to conduct discovery as provided in California Code of Civil Procedure Section 1283.05. Unless otherwise agreed upon by the Parties, discovery shall be limited by the arbitrator so as to maintain the arbitration as a speedy and economical method of dispute resolution. The arbitration shall take place in Kern County, California, unless the Parties otherwise agree in writing. Each Party shall bear its own costs of suit, including attorneys' fees.

25. Authority

Each Party represents and warrants that it has the right, power, legal capacity and authority to enter into and perform the obligations under this Agreement on its own behalf and on behalf of its affiliates, and that no further approval or consent of any person or entity is necessary for it to enter into and perform such obligations. The persons signing on behalf of each Party hereto represent and warrant that they have the actual authority to sign this Agreement on behalf of the party.

WHEREFORE, the Parties hereto have executed this Agreement as of the date first set forth above.

QCERA, INC. (QCERA)		KERN COUNTY HOSPITAL AUTHORITY (SUBSCRIBER)	
Name/Title:	<i>Peter Fak Vice President</i>	Name/Title:	Russell E. Bigler, Chairman, Board of Governors
Date:	<i>11/9/2022</i>	Date:	
Signature:		Signature:	

Reviewed Only
Not Approved as to Form:

By _____
Vice President & General Counsel
Kern County Hospital Authority

Exhibit A

System Specifications & Performance Terms

Subscriber agrees and acknowledges the following:

A. System Specifications

1. LeaveSource® SaaS Software users will use PC based workstations running a version of Microsoft Windows operating system that has not reached "End of Support" status from Microsoft.
2. LeaveSource® SaaS Software will be accessed using Microsoft Internet Explorer 11.0 browser and above, Microsoft Edge, Mozilla Firefox 27 and above or Google Chrome 30 and above.
3. Subscriber workstations will be configured to run the operating system and browser at acceptable performance levels. If additional applications, system services, anti-virus programs or other utilities are running on the workstation, additional memory and processor capable of running all programs may be required.
4. Broadband Internet connection is highly recommended. Broadband is defined to be DSL, cable, T1/T3 or other variations that constitute a bandwidth of over 1Mbps.

B. Performance Terms

1. QCERA shall respond to a Subscriber request for support for Services described in the Service Order Form via the Software Service within one (1) business day, excluding delays due to "force majeure" events described in this Agreement.
2. LeaveSource® availability is measured during the following period, Monday through Friday, 5:00AM to 6:00PM Pacific Standard Time ("Measured Period"). LeaveSource is available 24x7, excluding scheduled downtime for system maintenance, excluding downtime due to "force majeure" events described in the Agreement and Internet backbone or Internet infrastructure outage. Downtime for system maintenance is scheduled outside the Measured Period with the exception of the very rare occasion of urgent maintenance that cannot be delayed in order to provide a stable and secure environment.

EXHIBIT B
Privacy & Data Protection Terms

1. Privacy & Data Security

- 1.1 QCERA agrees that it will implement and maintain reasonable and appropriate technical and organizational measures to protect the security and confidentiality of Subscriber's Confidential Information that take into account the nature, scope, context and purposes of the SaaS Software data processing, as well as the risk (in terms of likelihood and severity) to the rights and freedoms of Subscriber's that take into account the state of the art of technology and the associated costs of implementation.
- 1.2 QCERA agrees that it will not process Subscriber's Confidential Information for any purpose other than for the purpose of administering and managing the SaaS Software and only to the extent reasonably necessary for the performance of the QCERA's obligations under this Agreement.
- 1.3 QCERA agrees that it will ensure that only duly authorized QCERA personnel who have a need to know the Subscriber's Confidential Information for the purposes of administering and managing the SaaS Software are permitted to access Subscriber's Confidential Information.
- 1.4 QCERA agrees that it will cooperate and assist Subscriber to comply with applicable data privacy regulations.
- 1.5 QCERA agrees that it will not sell, lease, trade or disclose Subscriber Confidential Information for any purpose other than for the specific purpose of performing the SaaS Software services specified in this Agreement. Notwithstanding the foregoing, QCERA may disclose Subscriber Confidential Information as necessary to comply with a valid and binding order of a governmental body (e.g. a subpoena or court order). QCERA agrees that it will give Subscriber reasonable notice of the demand, unless QCERA is legally prohibited from doing so.
- 1.6 QCERA agrees that it will not retain, use or disclose Subscriber Personal Data outside of the direct business relationship between Subscriber and QCERA other than providing the SaaS Software services specified in the Agreement.
- 1.7 QCERA agrees that will not combine Subscriber Personal Data that QCERA receives from Subscriber with information that it receives from another business.

2. Data Breach

If an event occurs that results in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Subscriber Confidential Information, QCERA will, upon becoming aware of such event, notify Subscriber without undue delay. QCERA will also take reasonable steps to mitigate the effects of the event and will work to minimize any damage that results. QCERA will include in the notification such information as QCERA is reasonably able to disclose to Subscriber, taking into account the information available to QCERA at the time of the notification, and any restrictions imposed by law enforcement or confidentiality obligations.

3. Compliance audits

QCERA shall make available to Subscriber once annually at Subscriber's request, all information reasonably necessary to demonstrate compliance with the obligations established by this Exhibit.

4. Right of Individuals

QCERA will promptly assist Subscriber to respond to data subject requests. If a person contacts QCERA with regard to his or her individual personal data, QCERA will promptly notify Subscriber. QCERA will not respond to a data subject request directly unless instructed by Subscriber, except where QCERA or a sub-processor is required by law to respond, in which case QCERA shall respond within a reasonable period of time as required by applicable law.



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

November 16, 2022

Subject: Hearing regarding proposed changes in Kern Medical Center Services

Recommended Action: Open hearing; receive public comment; close public hearing; approve closure of pediatric clinic; direct staff to relocate pediatric services

Summary:

Kern Medical Center requests your Board conduct a public hearing on the proposed closure of the pediatric clinic located at 6001 Truxtun Avenue, Suite 210-B, Bakersfield, and relocation of those services to 9330 Stockdale Highway, Suite 500, Bakersfield.

This proposed action requires that your Board conduct a public hearing in accordance with Health and Safety Code section 1442.5 (also known as a Beilenson hearing). A notice to the public concerning this proposal was posted at all Kern Medical Center locations and all entrances to county health care facilities on Tuesday, November 1, 2022, at least 14 days in advance of the hearing, as required by section 1442.5. The notice contains the requisite information required by the statute. A copy of the notice is attached. This plan will allow for increased operational efficiencies and enhanced patient amenities.

Neither patients nor staff will be affected by the closure of the Truxtun Avenue clinic; the same services provided at the Truxtun location will be provided at a different clinic site located at 9330 Stockdale Highway, Suite 500. It is anticipated that Kern Medical Center will save \$150,000 annually by closing the Truxtun clinic and relocating these services to the Stockdale Highway clinic. The existing Truxtun staff will relocate to the new clinic location. The expected date of the closure is no later than November 17, 2022.

Therefore, it is recommended that your Board take the following actions:

1. Open the hearing and receive public comment on the proposed closure of the pediatric clinic located at 6001 Truxtun Avenue, Suite 210-B, Bakersfield; and
2. Close the public hearing; and
3. Approve the closure of the pediatric clinic located at 6001 Truxtun Avenue, Suite 210-B, Bakersfield, effective no later than November 17, 2022; and
4. Direct staff to relocate pediatric services from 6001 Truxtun Avenue, Suite 210-B to 9330 Stockdale Highway, Suite 500, Bakersfield.

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

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



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

November 16, 2022

Subject: Proposed Acceptance of Grant Funds from California Department of Health Care Access and Information

Recommended Action: Approve; Adopt Resolution

Summary:

Kern Medical Center requests your Board adopt the attached proposed resolution accepting grant funds of \$2,915,162.60, less administrative costs and costs of issuance, if any, from California Department of Health Care Access and Information (HCAI), to inform and motivate minority and disadvantaged students to pursue health professional careers and provide support, encouragement, and training to minority health professionals to practice in health professional shortage areas of California. The grant funds are earmarked specifically for the internal medicine residency program.

The proposed resolution authorizes the Chief Executive Officer sign the grant agreement, a requirement of the grant, and appoint Erica Easton to administer the grant funds on behalf of the hospital, and also authorizes the Chief Financial Officer to establish an interest-bearing account to deposit the grant award for purposes of payments of project expenditures to better track the accounting of the receipt and expenditure of the grant award.

Therefore, it is recommended that your Board adopt the proposed resolution accepting the grant funds from California Department of Health Care Access and Information.

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

In the matter of:

Resolution No. 2022-____

**ACCEPTANCE OF GRANT PROCEEDS
FROM CALIFORNIA DEPARTMENT OF
HEALTH CARE ACCESS AND INFORMATION**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director Pelz, seconded by Director Brar, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of November, 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) The Kern County Hospital Authority Act (Health & Saf. Code, §101852 et seq.) provides that the Kern County Hospital Authority (“Authority”) has the power “*to participate in, contract for, and to **accept**, gifts, **grants**, and loans of funds, property, or other aid or finance opportunity in any form **from** the federal government, the state, **a state agency**, or other source or combination thereof, as otherwise would be available to a public, government, or private entity and to comply, subject to this chapter, with the terms and conditions thereof.*” (Health & Saf. Code, § 101855(a)(13).) (Emphasis added.); and

(b) California Department of Health Care Access and Information (“HCAI”) is authorized by Health and Safety Code Section 127885 et seq. to maintain a Health Professional Career Opportunity Program (“HPCOP”) to inform and motivate minority and disadvantaged students to pursue health professional careers and provide support, encouragement, and training to minority health professionals to practice in health professional shortage areas of California; and

(c) HCAI supports healthcare accessibility through the promotion of a diverse and competent workforce while providing analysis of California's healthcare infrastructure and coordinating healthcare workforce issues; and

(d) HPCOP provides grants to support economically disadvantaged and/or underrepresented minorities to pursue health careers, including pipeline programs that provide comprehensive academic enrichment and career development, internships, and fellowships to enable students to compete for admission to graduate health professions schools or employment in the health field; and

(e) The Authority applied to participate in the HPCOP by submitting an application in response to the Health Professions Pathways Program (“HPPP”) Grant Guide Fiscal Year 2022-2023; and

(f) The Authority was selected by HCAI to receive Grant Funds in the amount of \$2,915,162.60 through procedures duly adopted by HCAI for administering such grants; and

(g) The Board of Governors has received information about the terms and conditions of the Grant Agreement with HCAI, attached hereto and incorporated herein by this reference as Exhibit “A”, and intends to accept said terms and conditions of the Grant Agreement; and

(h) As a condition to receiving the Grant Funds, the Board of Governors must provide HCAI a true, correct, complete and certified copy of a resolution adopted by the Board of Governors as the governing body of Kern Medical Center, authorizing execution of the Grant Agreement; and

(i) It is in the best interest of Kern Medical Center that the Board of Governors accept the Grant Funds.

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

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

2. This Board hereby accepts all terms and conditions of the Grant Agreement in the amount of \$2,915,162.60, less administrative costs and costs of issuance, if any, on

behalf of the Kern Medical Center, and expressly authorizes and directs the Chief Executive Officer, to carry out any duties necessary to effectuate acceptance on behalf of Kern Medical Center, including but not limited to the execution and delivery of the Grant Agreement and other relevant documents as may be necessary.

3. This Board hereby authorizes the Chief Executive Officer to appoint Erica Easton to administer the Grant Agreement on behalf of Kern Medical Center.

4. This Board hereby authorizes the Chief Financial Officer to establish an interest-bearing account to deposit the Grant Funds for purposes of payments of project expenditures to better track the accounting of the receipt and expenditure of the Grant Funds.

5. The provisions of this Resolution shall be effective, in force, and operative as the 16th day of November, 2022.

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

Chief Executive Officer
Chief Financial Officer
Legal Services Department
California Department of Health Care Access and Information
Erica Easton



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

November 16, 2022

Subject: Kern County Hospital Authority Chief Financial Officer Report – September 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations

Kern Medical key performance indicators:

- Average Daily Census of 172 for September is 24 more than the September budget of 148 and 9 more than the 163 average over the last three months
- Admissions of 738 for September are 246 less than the September budget of 984 and 47 less than the 785 average over the last three months
- Total Surgeries of 484 for September are 19 more than the September budget of 465 and 12 more than the 472 average over the last three months
- Clinic Visits of 16,013 for September are 1,192 more than the September budget of 14,821 and 408 more than the 15,605 average over the last three months. The total includes 158 COVID-19 vaccination visits

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

Patient Revenue

Kern Medical operated 2% above the budgeted dollar amount for gross patient revenue for the month due to strong census levels. On a year-to-date basis there is a small unfavorable budget variance due to temporary billing delays in certain inpatient departments in July 2022.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month and on a year-to-date basis due the receipt and recognition of a larger than expected payment from the Global Payment Program (GPP).

Other Operating Revenue:

Other operating revenue has an unfavorable budget variance for the month and on a year-to-date basis. Revenue for items such as grants are received on a quarterly, or otherwise periodic basis. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year, but should agree with the planned budgeted dollar amount at year-end.

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month and on a year-to-date basis because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Nurse Registry Expense:

Nurse registry expense is under budget for the month because Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years the staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. The year-to-date budget variance is slightly unfavorable because of higher than average registry usage in July as Kern Medical was in the process of lowering its usage of these services. COVID-19 remains active and Kern Medical plans to continue its need for registry services.

Medical Fees:

Medical fees are over budget for the month and on a year-to-date basis because of an increase in services provided by the Acute Care Medical Surgery Group. The budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

Other Professional Fees:

Other professional fees are over budget for the month and on a year-to-date basis because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical.

Supplies Expense:

Supplies expense is under budget for the month and on a year-to-date basis due to lower than average costs for pharmaceuticals and for general medical supplies.

Purchased Services:

Purchased services are over budget for the month because of additional revenue cycle support services provided by Signature Performance. On a year-to-date basis Kern Medical is operating at the budgeted dollar amount for purchased services.

Other Expenses:

Other expenses are over budget for the month and on a year-to-date basis, primarily because of higher than average utility costs. Electricity expenses were particularly high during July and August due to extreme weather conditions.

Interest Expense:

Interest expense is slightly over budget for the month and on a year-to-date basis due to higher than anticipated certificate of participation (COP) bond interest.

Depreciation and Amortization Expense:

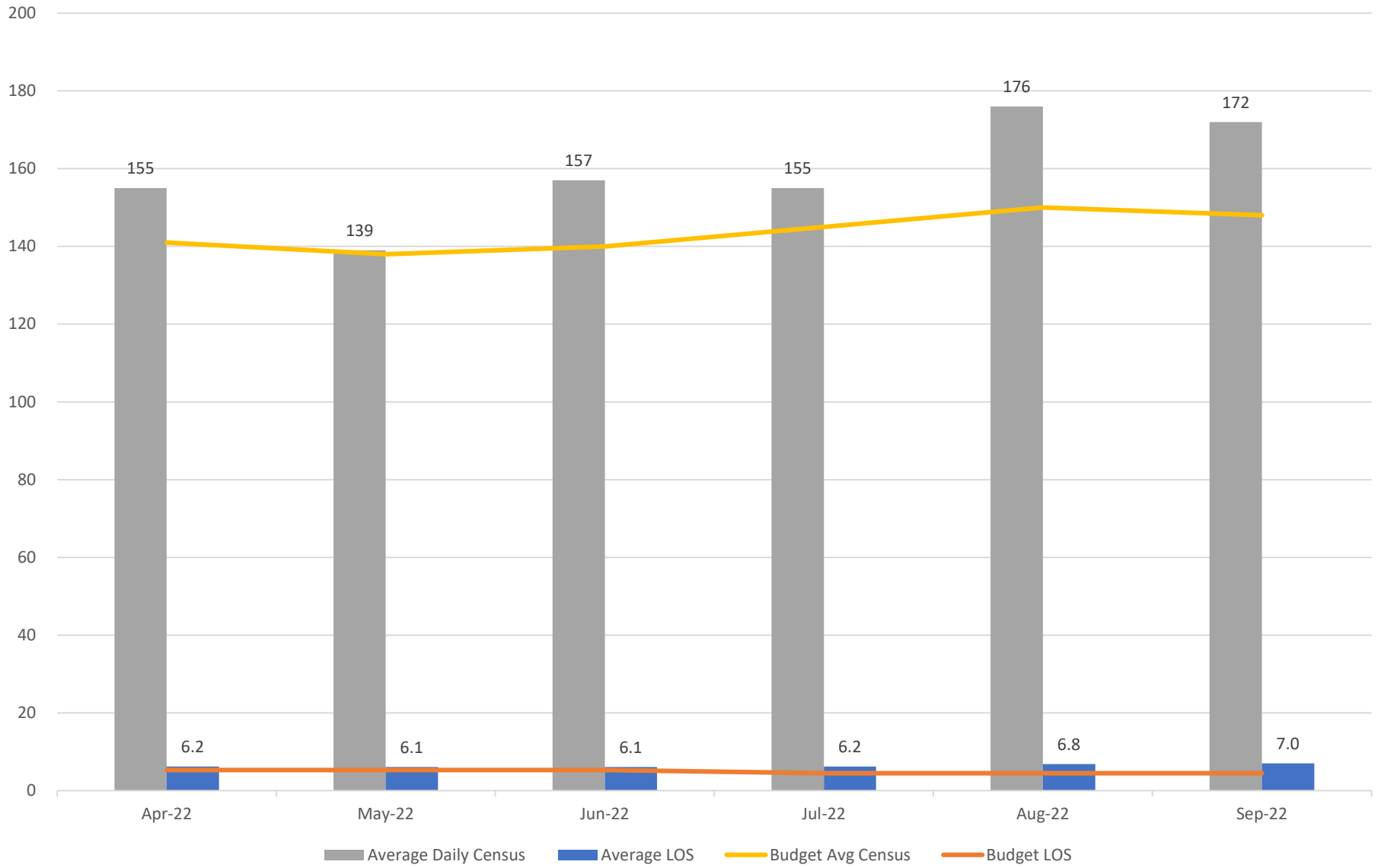
Kern Medical operated at the budgeted dollar amount for depreciation and amortization expense for the month and is at the budgeted dollar amount on a year-to-date basis as well.



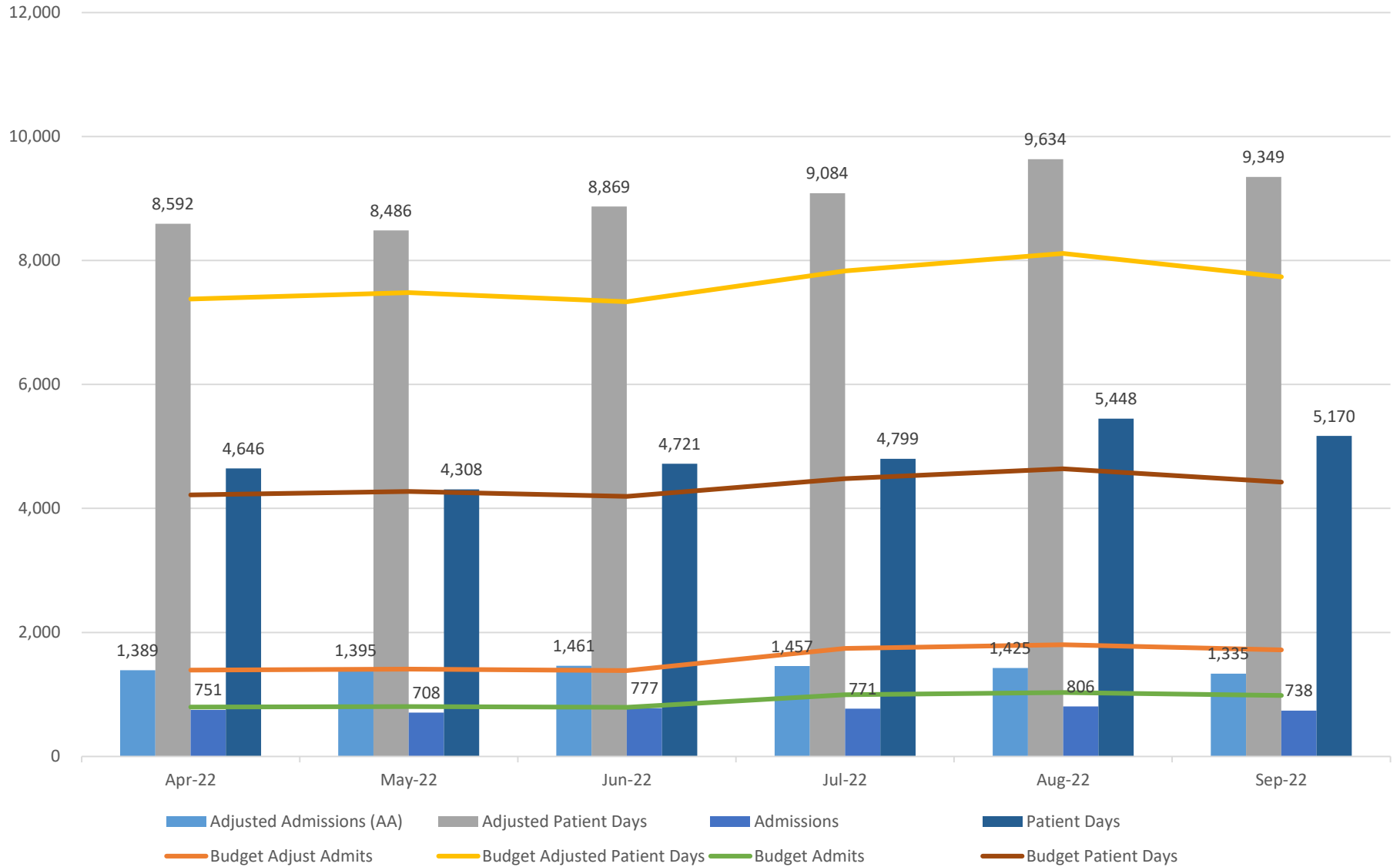
**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – SEPTEMBER 2022**



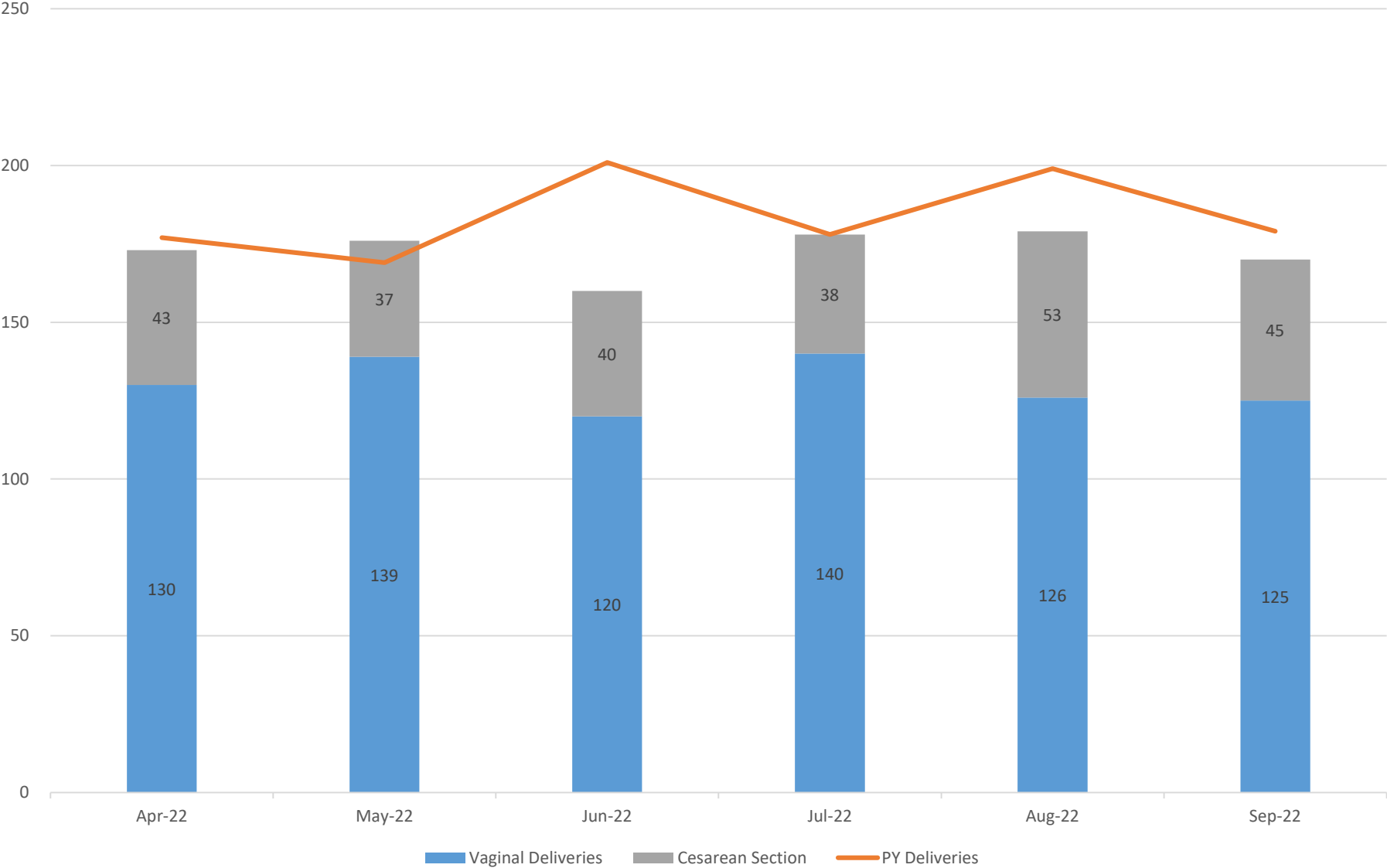
Census & ALOS



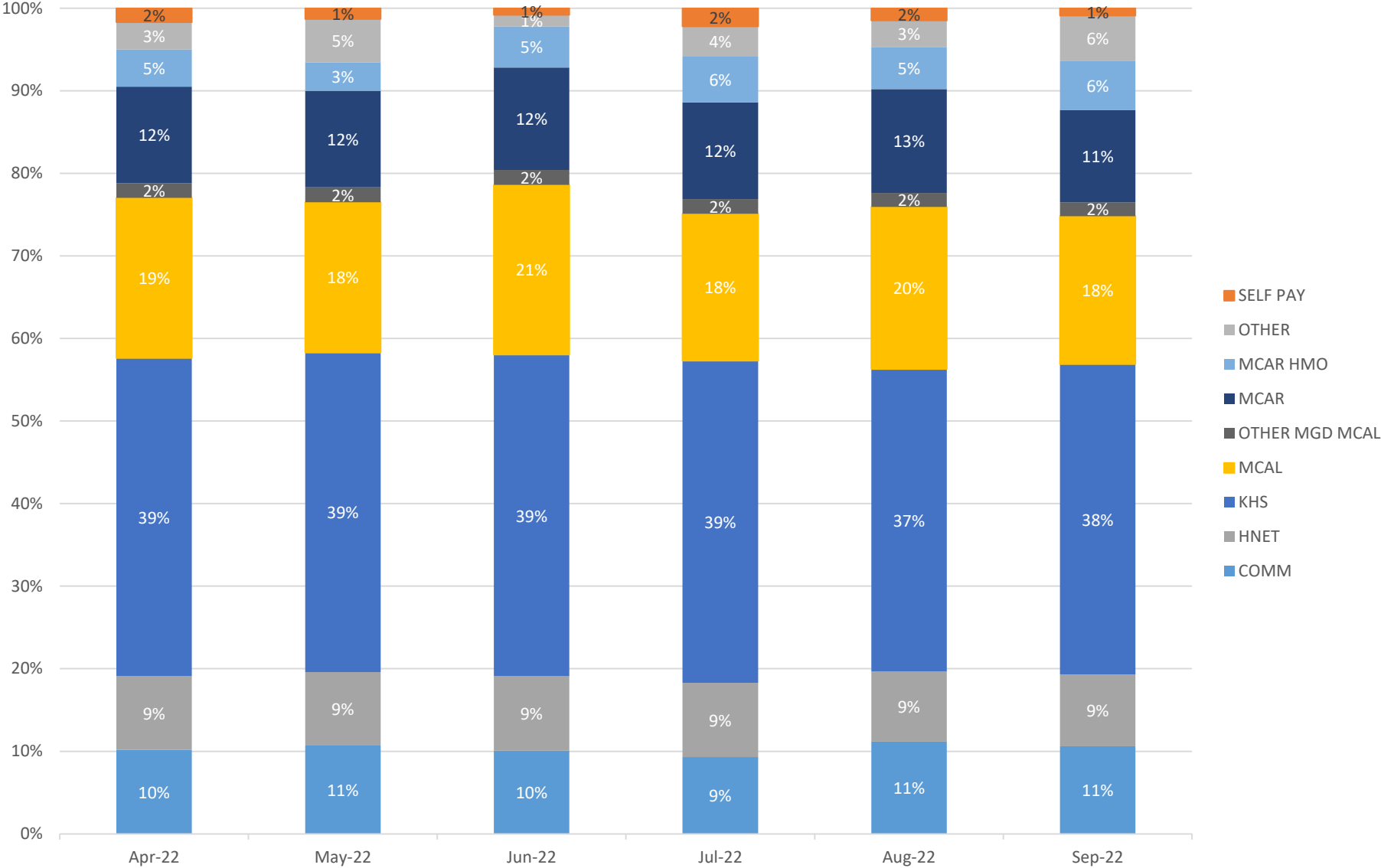
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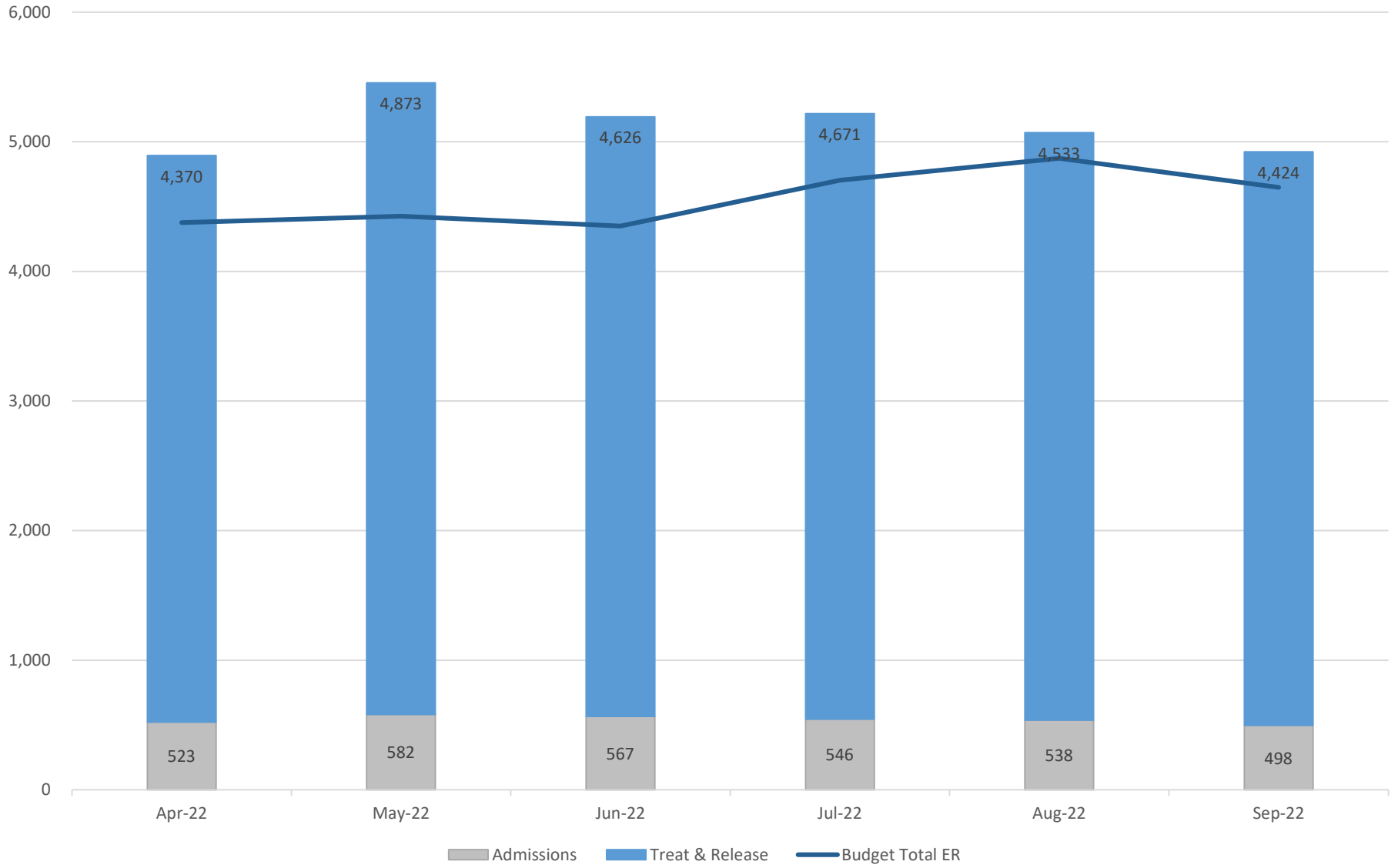
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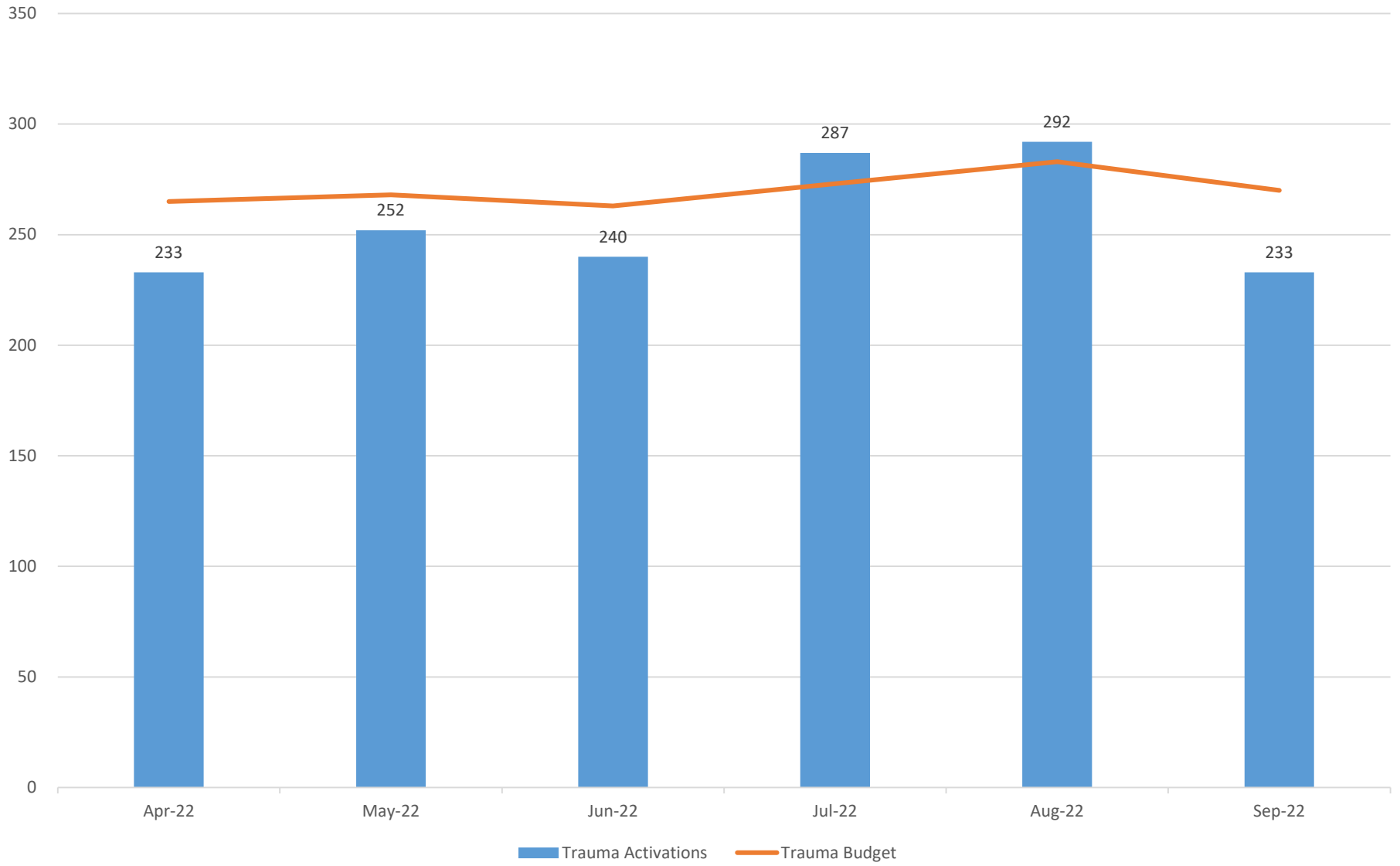
PAYER MIX



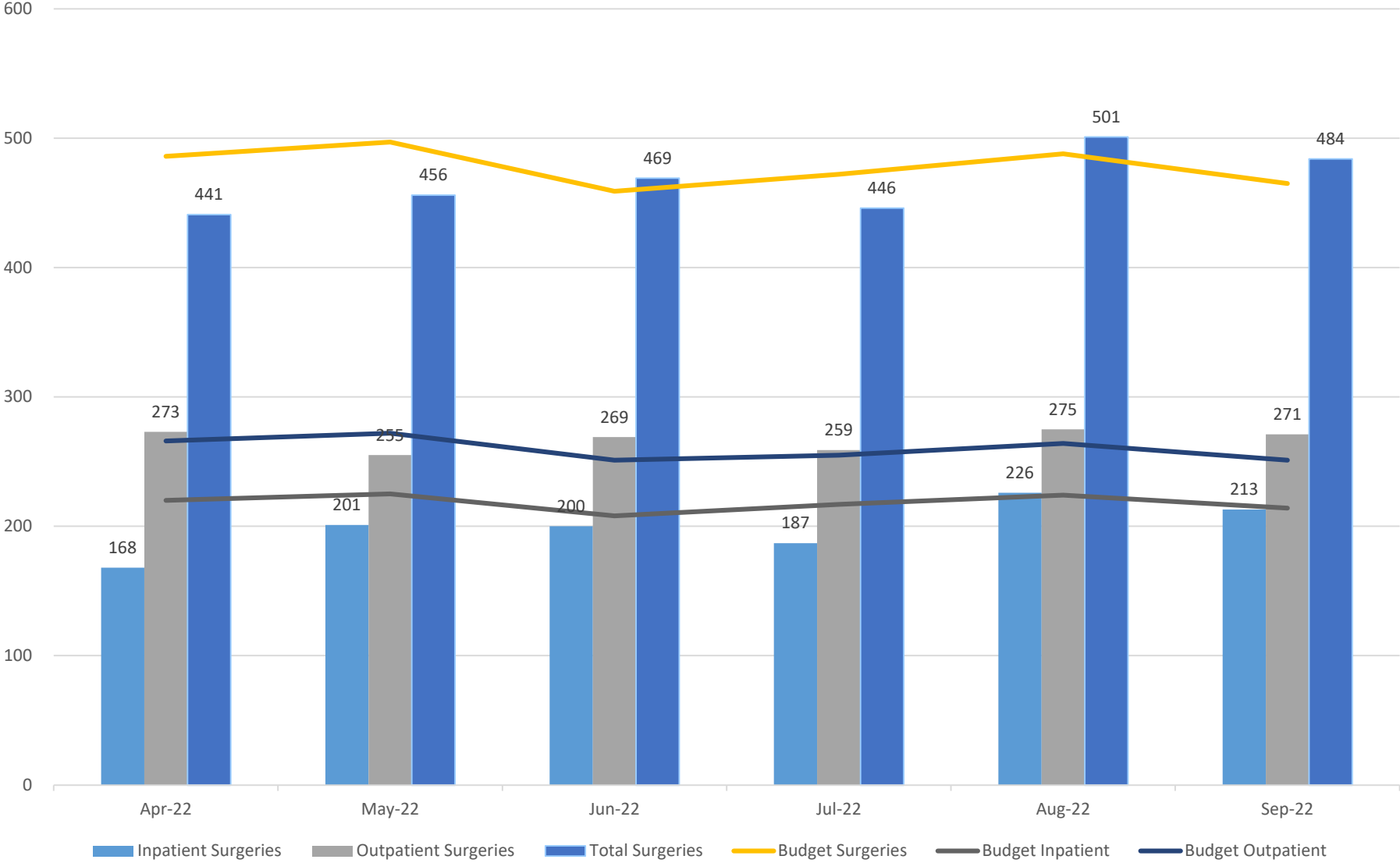
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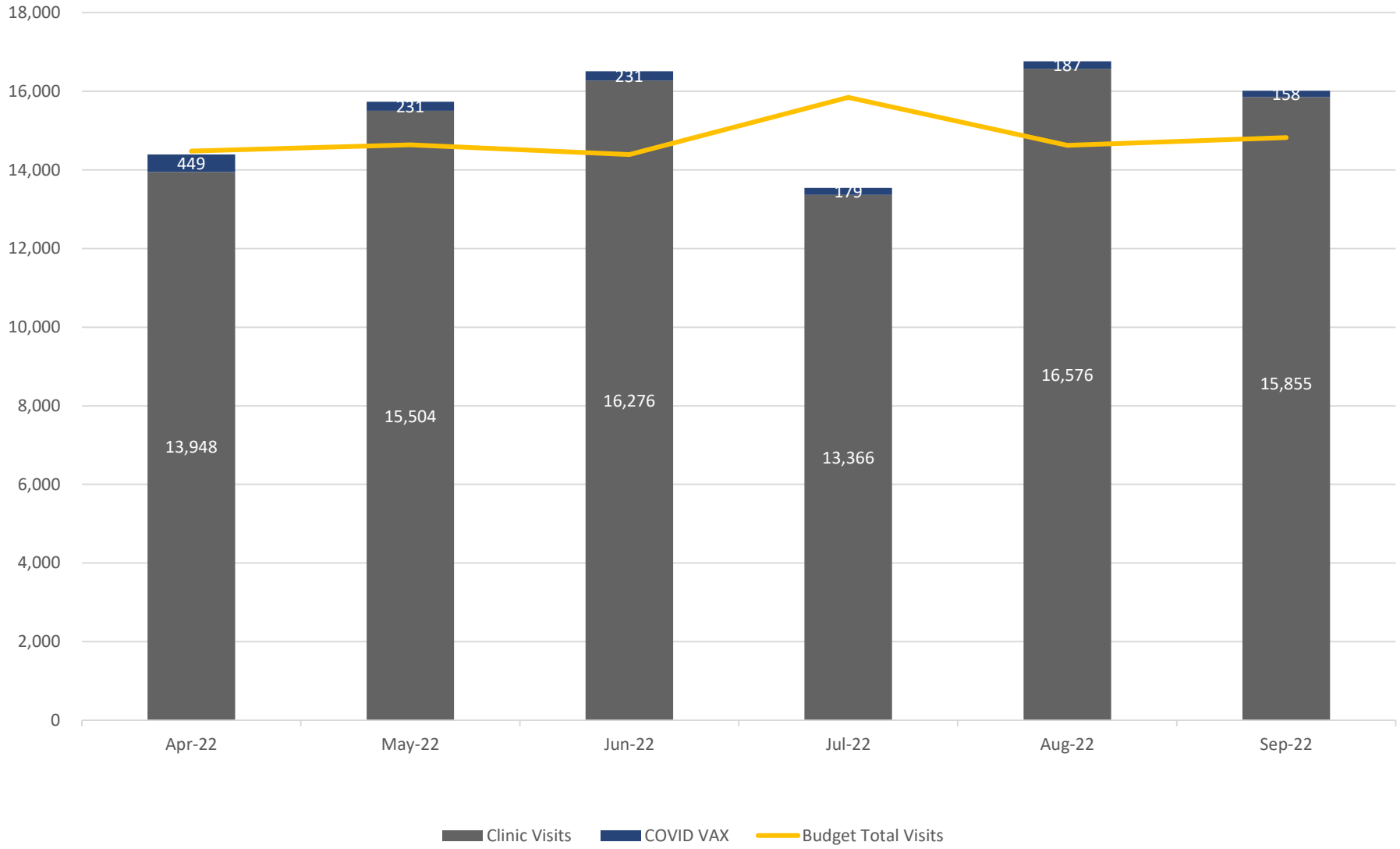
Trauma Activations



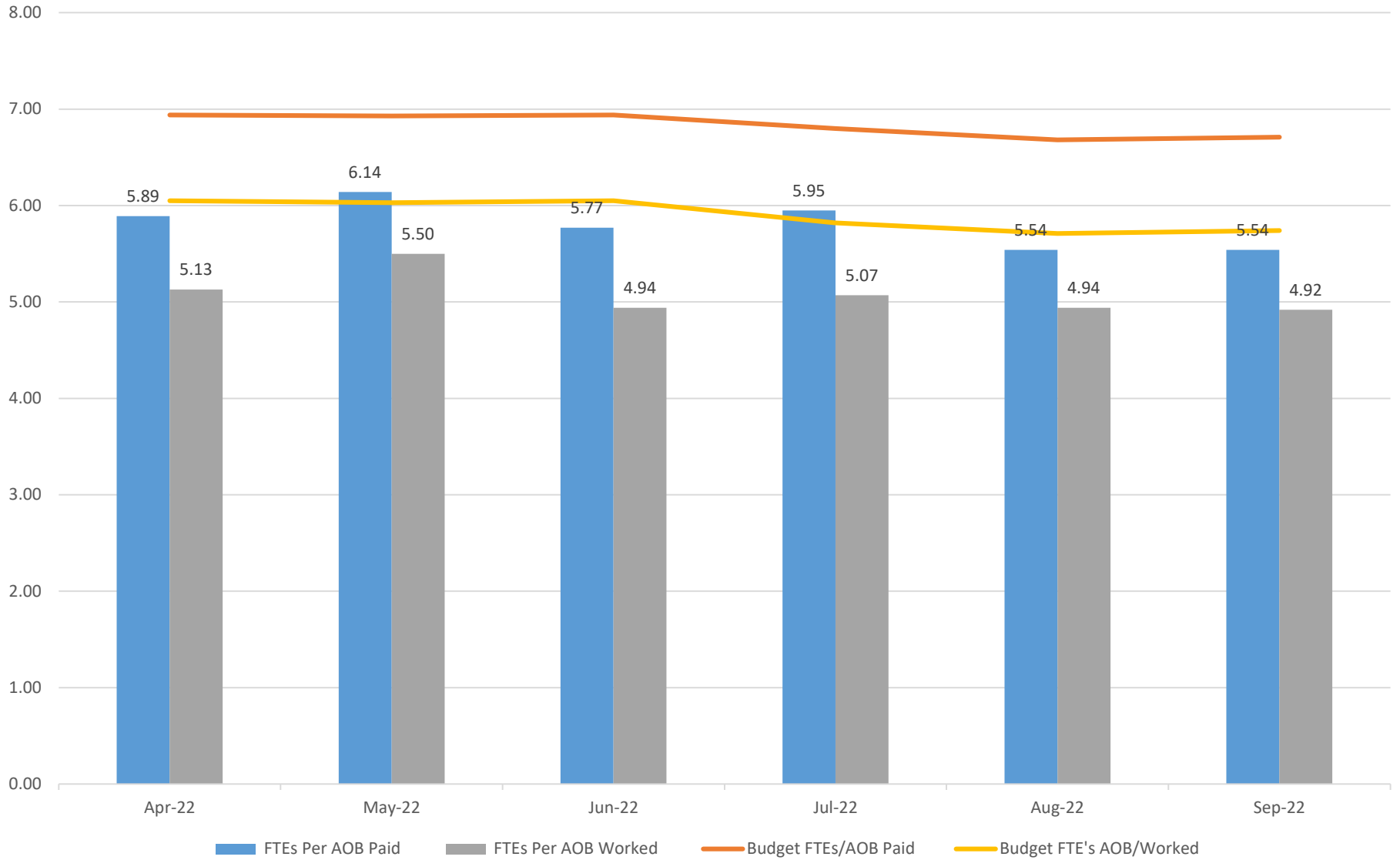
Surgical Volume



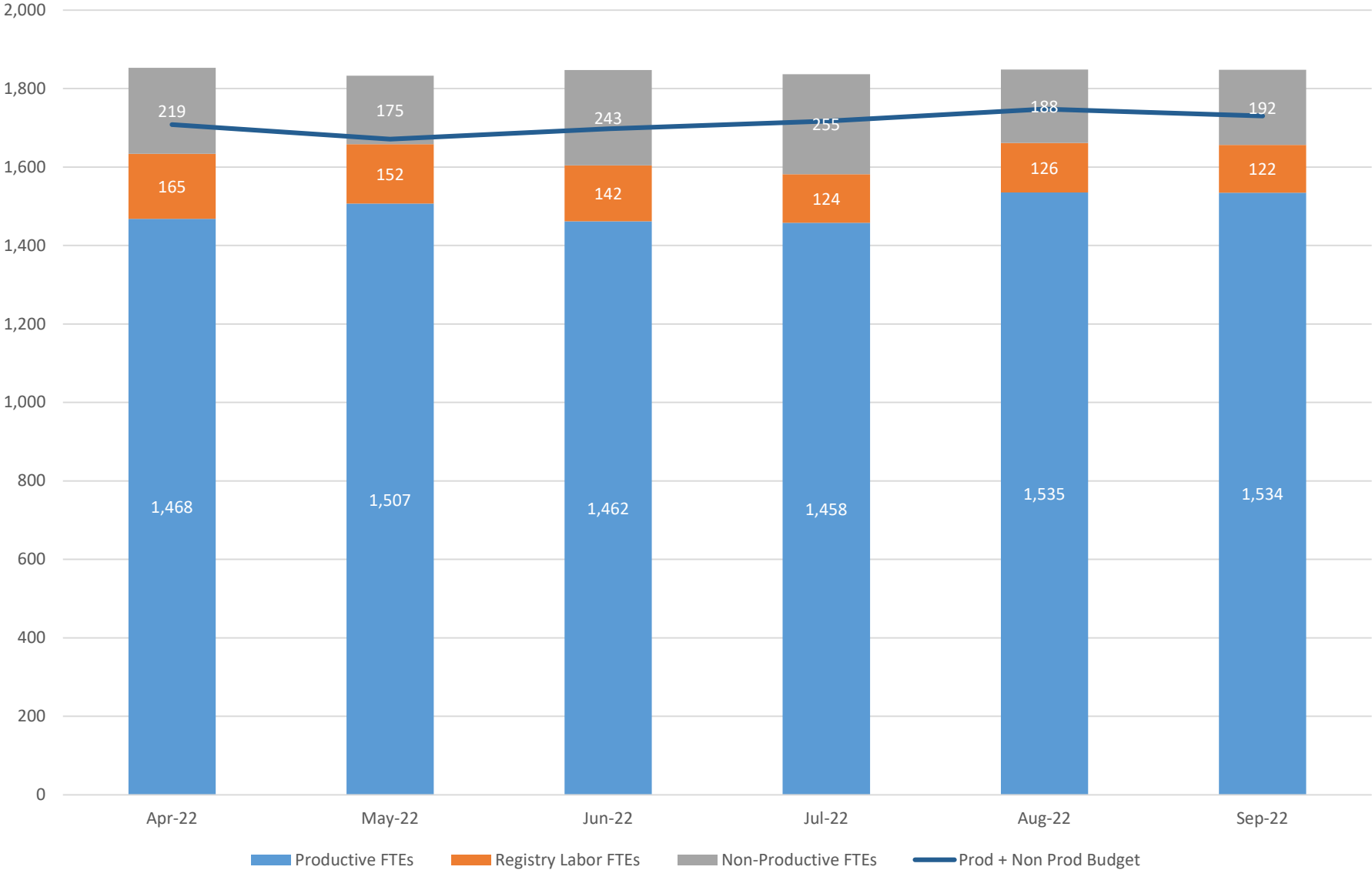
Clinic Visits



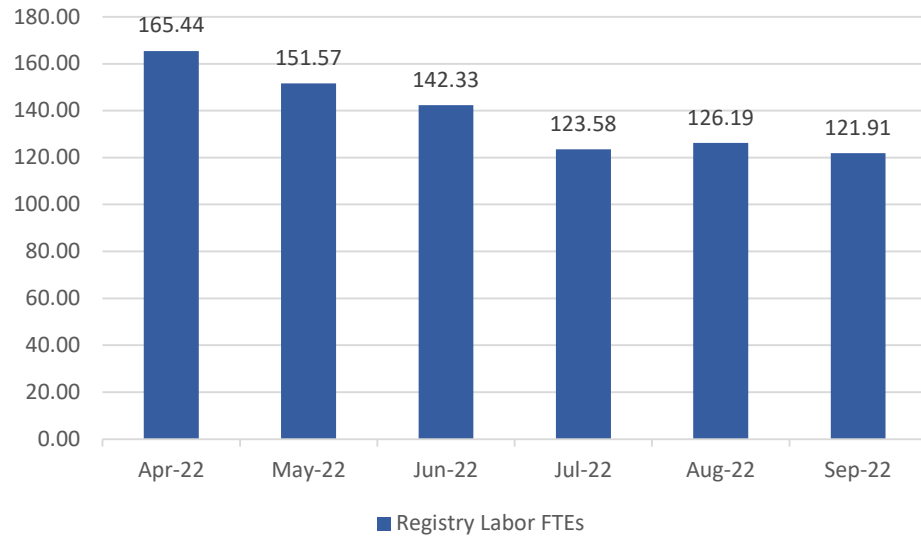
Labor Metrics



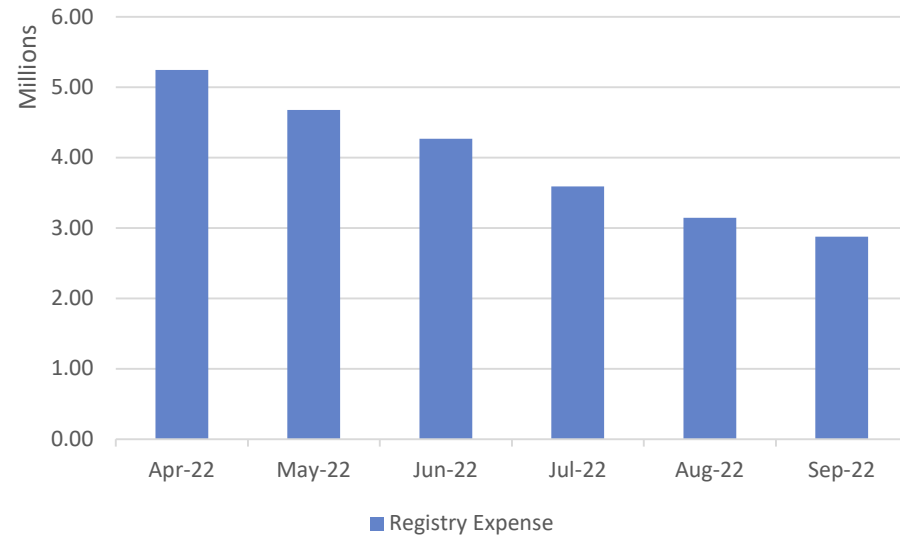
Productivity



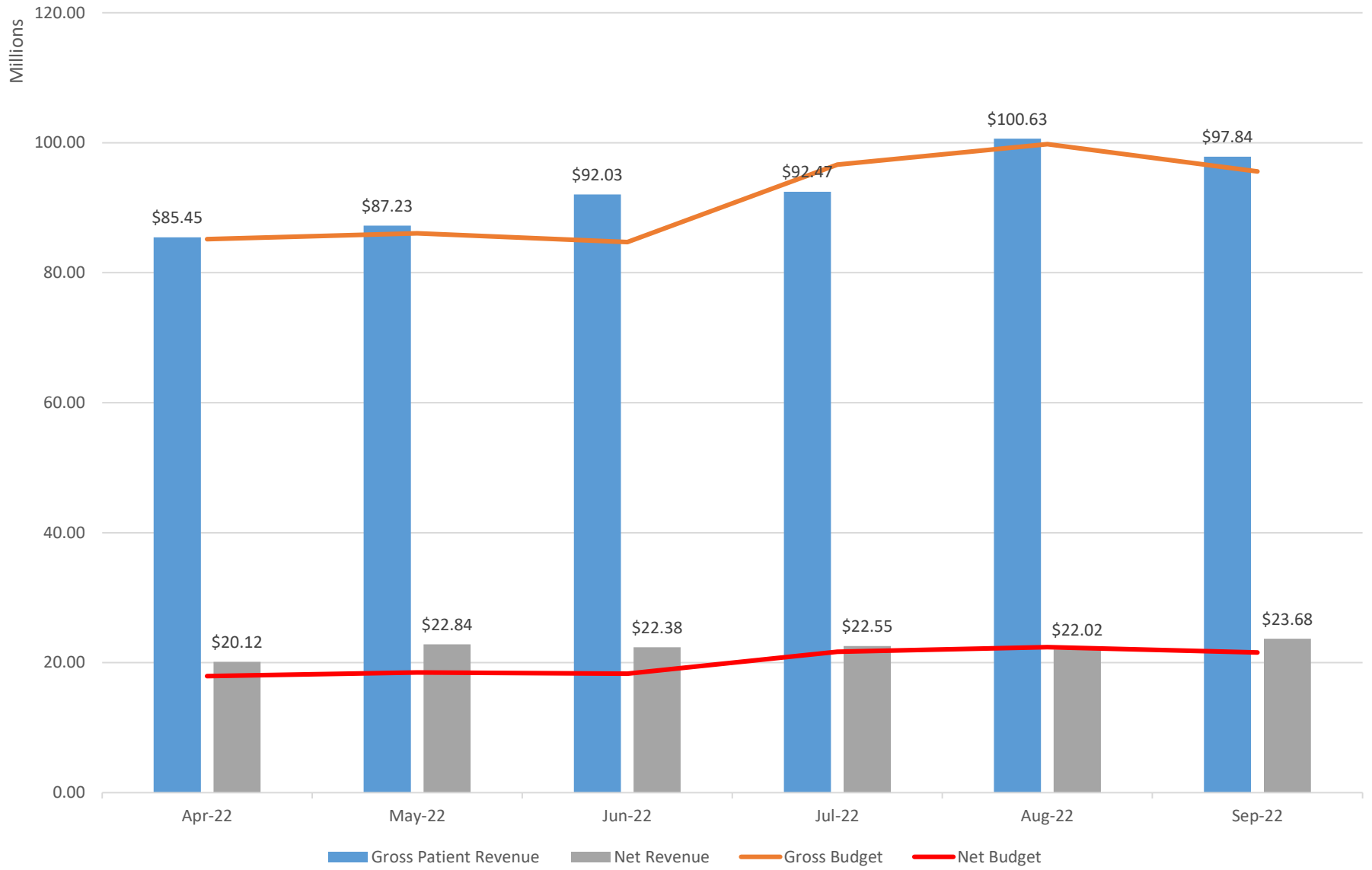
Registry FTE's



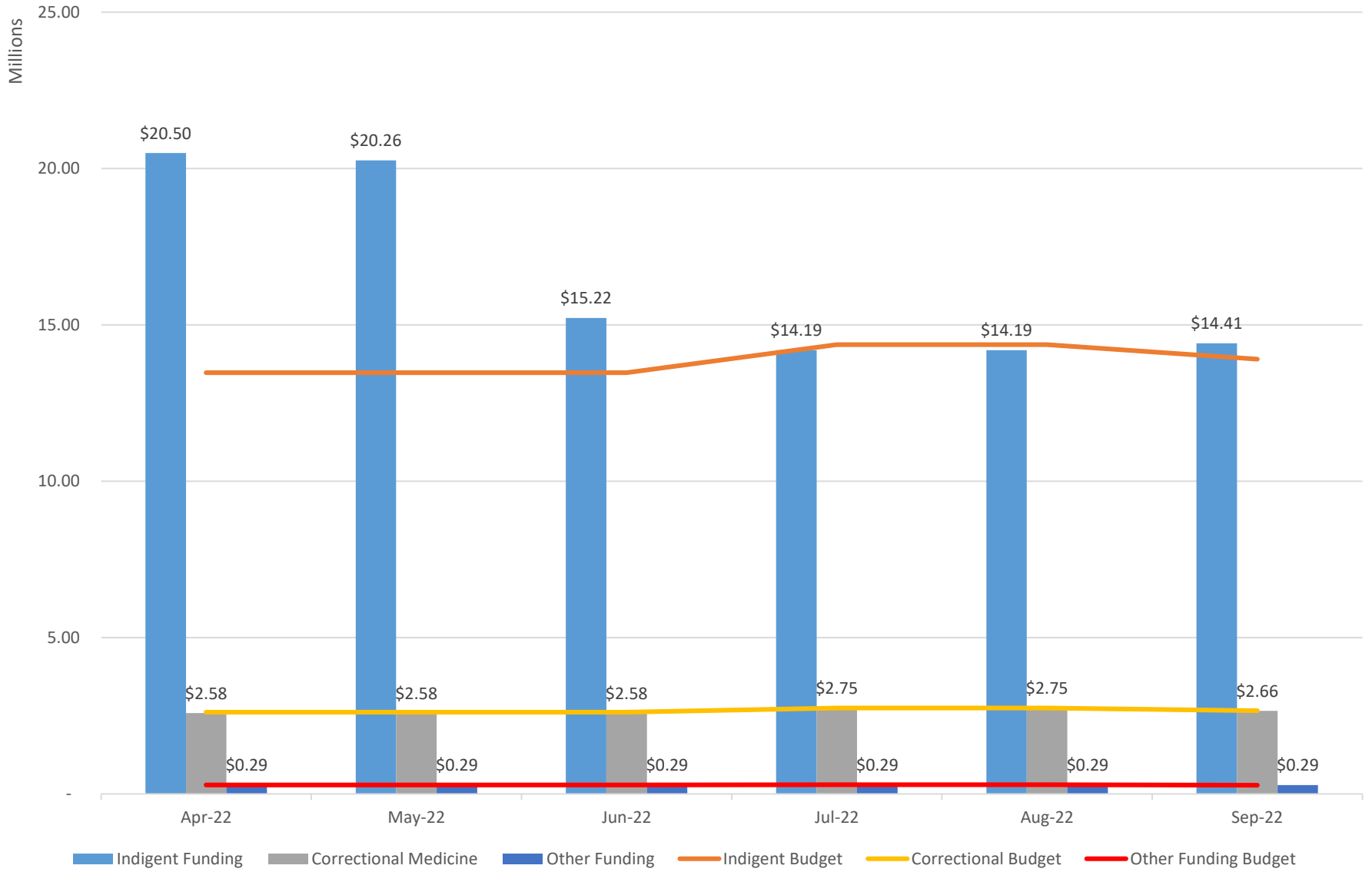
Registry Expense



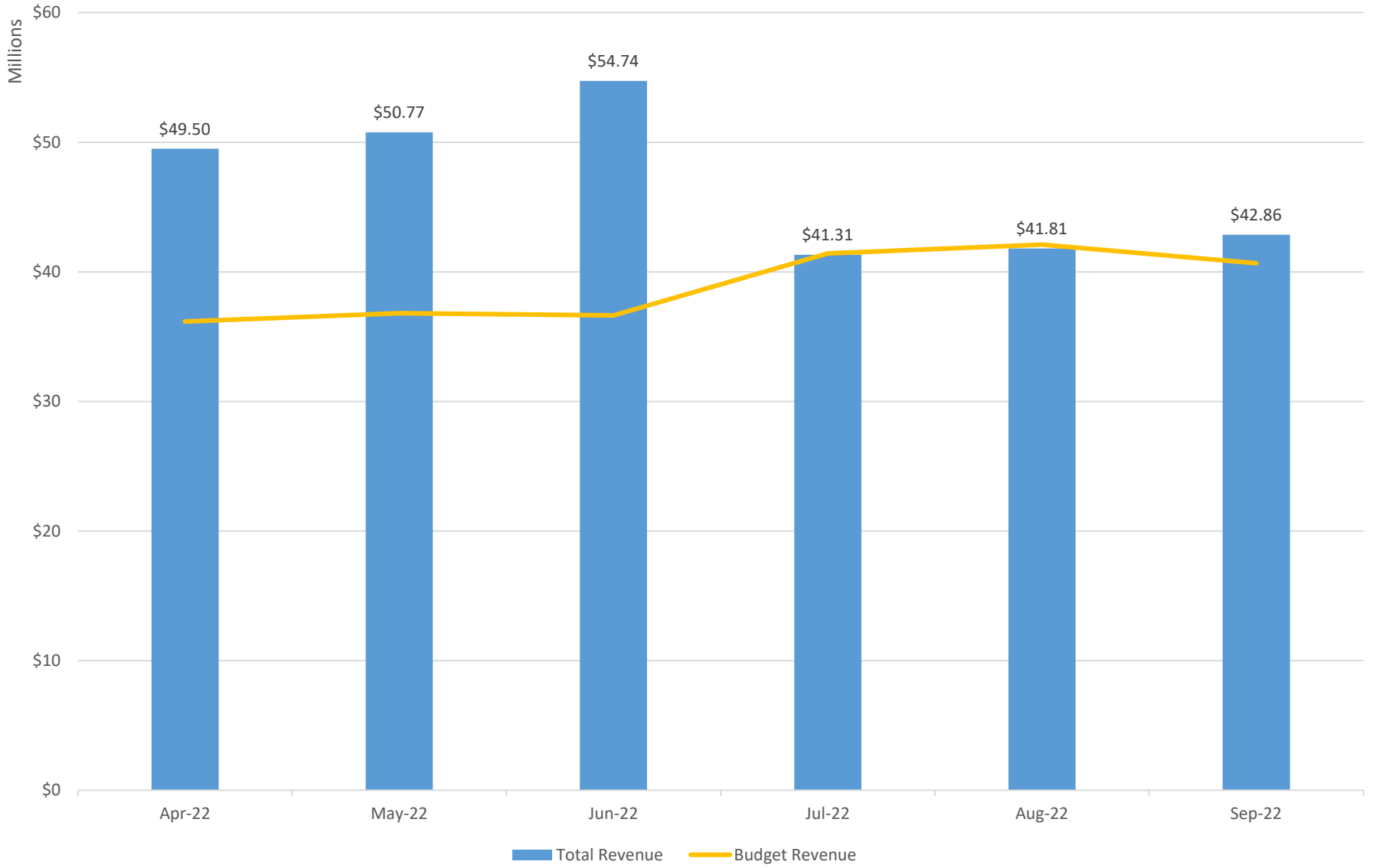
Patient Revenue



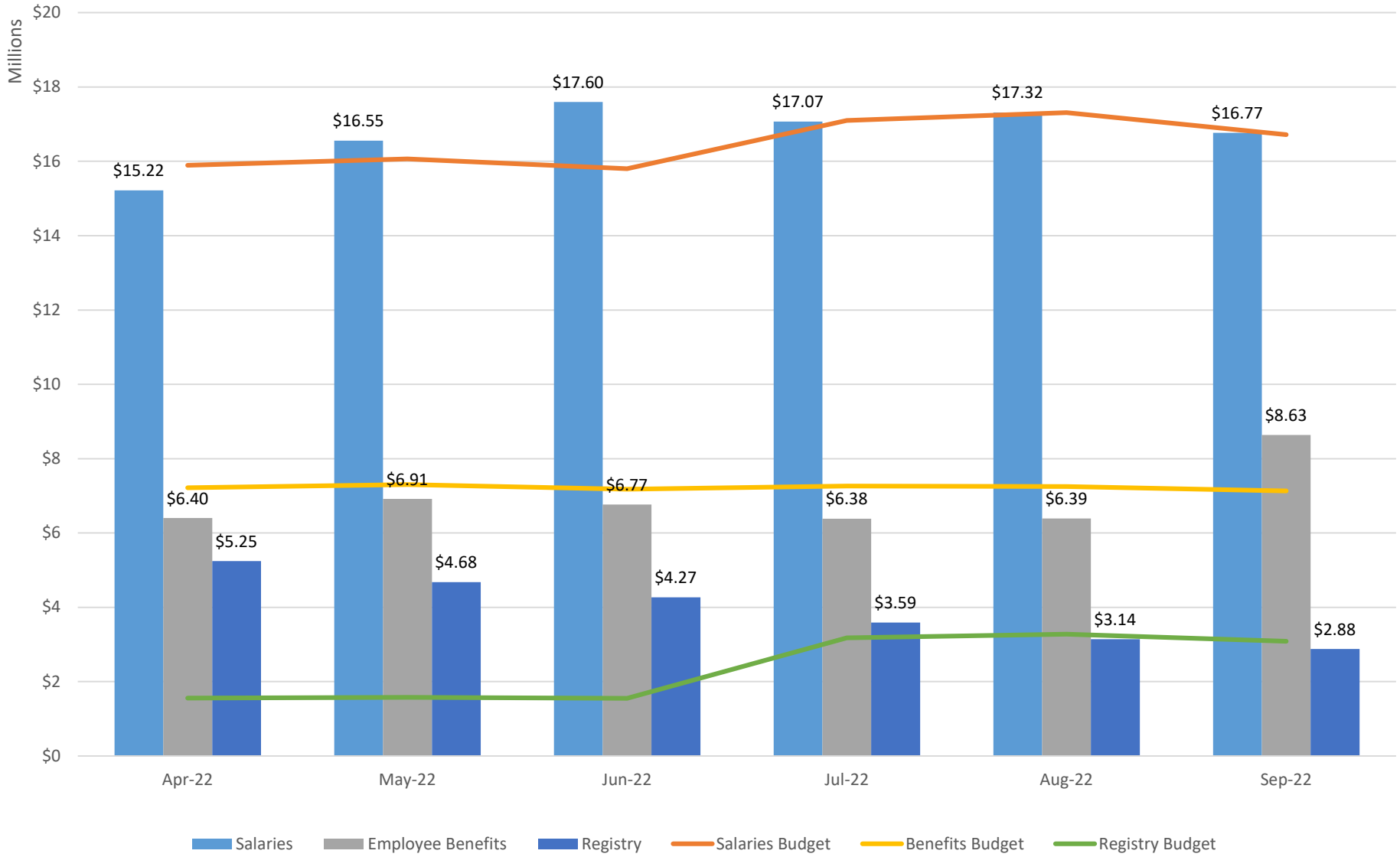
Indigent & Correctional Revenue



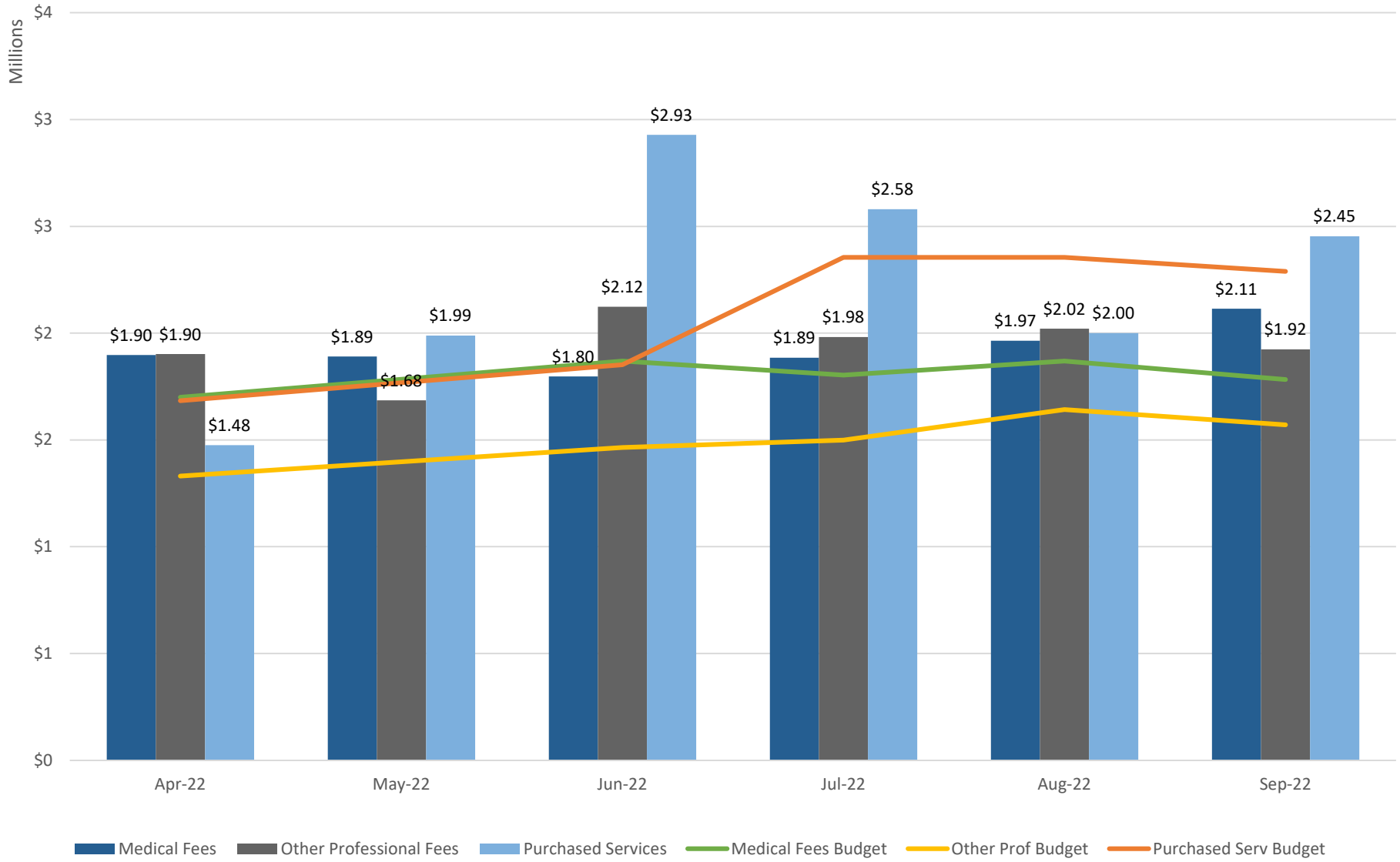
Total Revenue



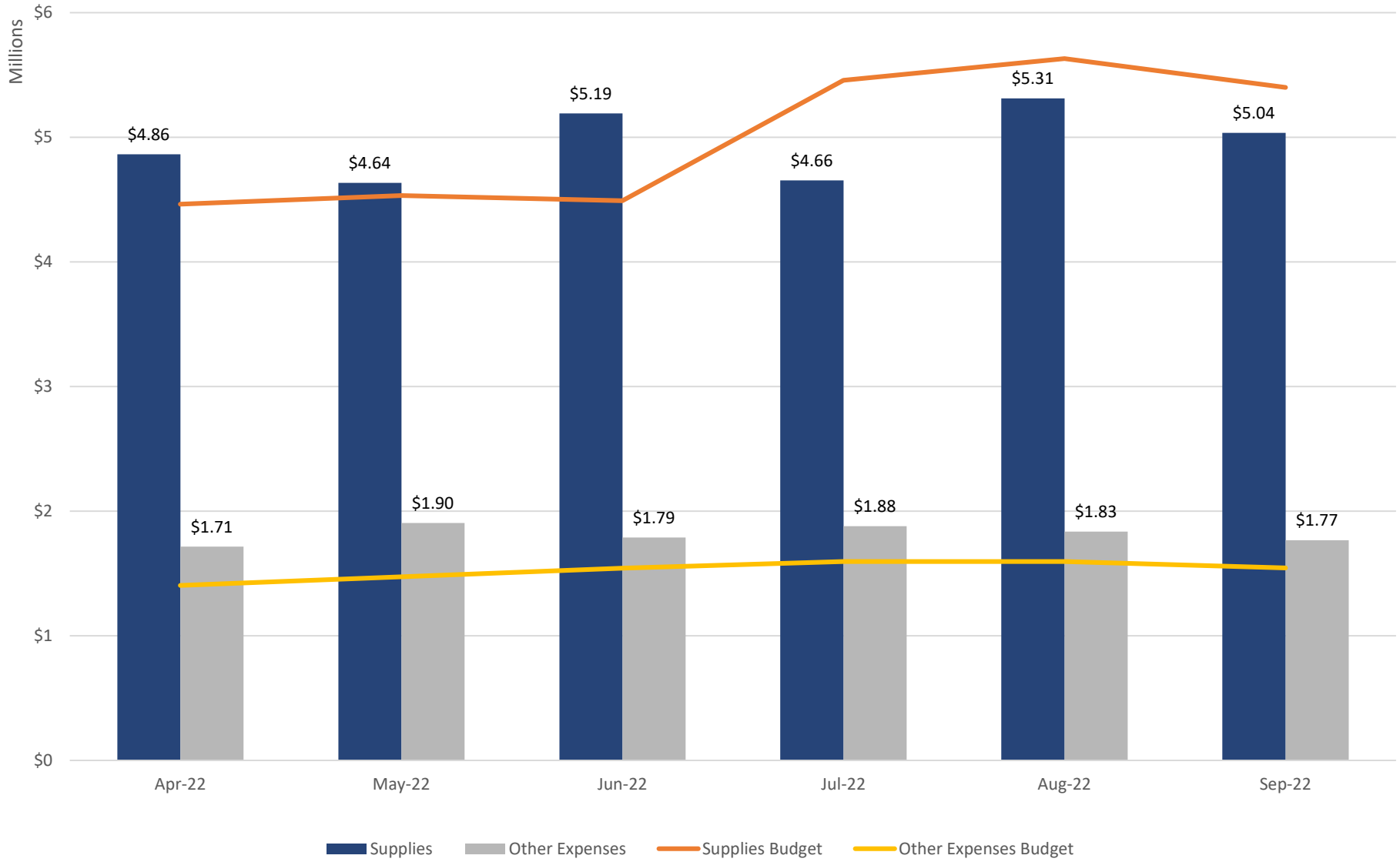
Expenses



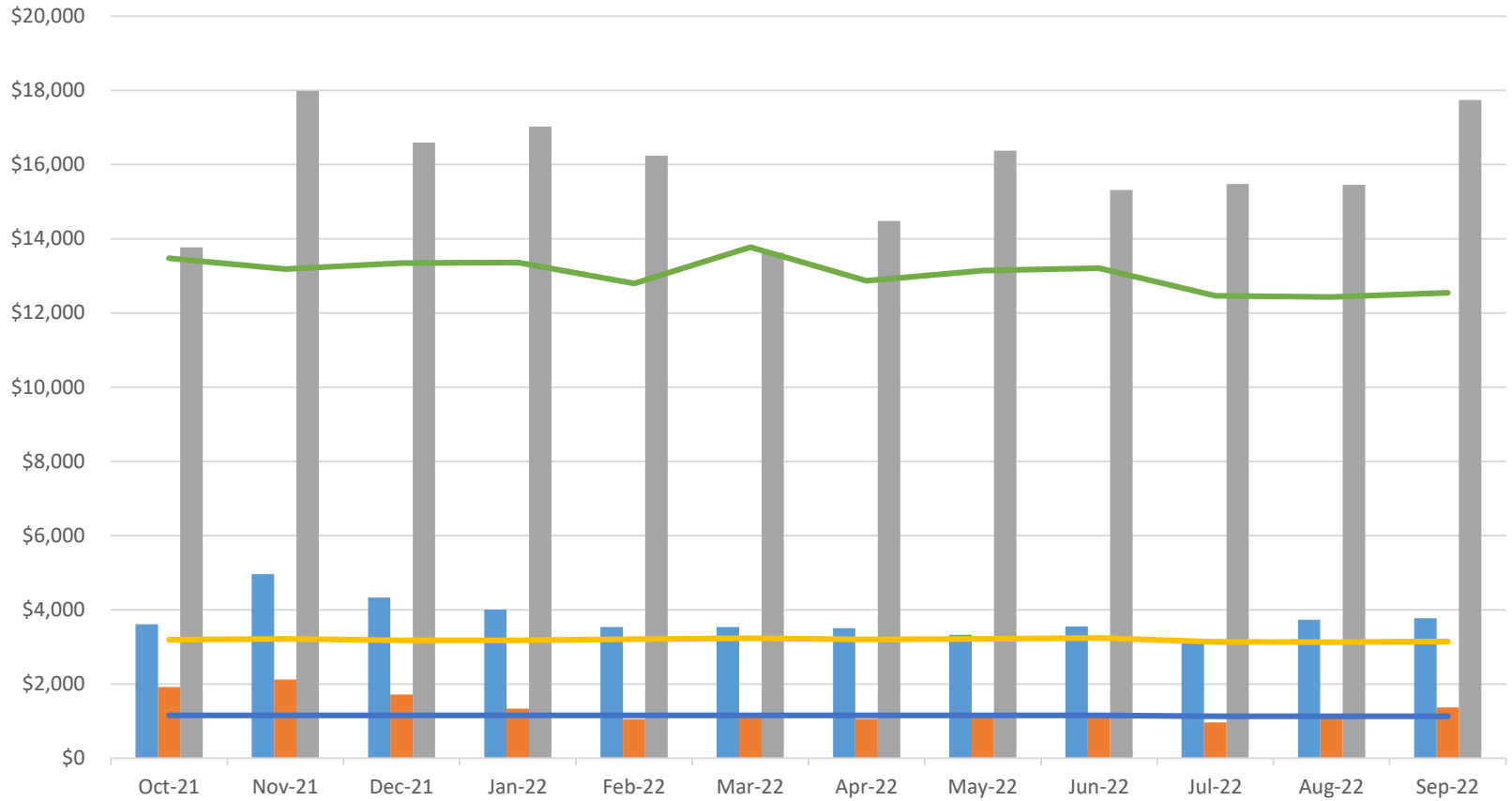
Expenses



Expenses

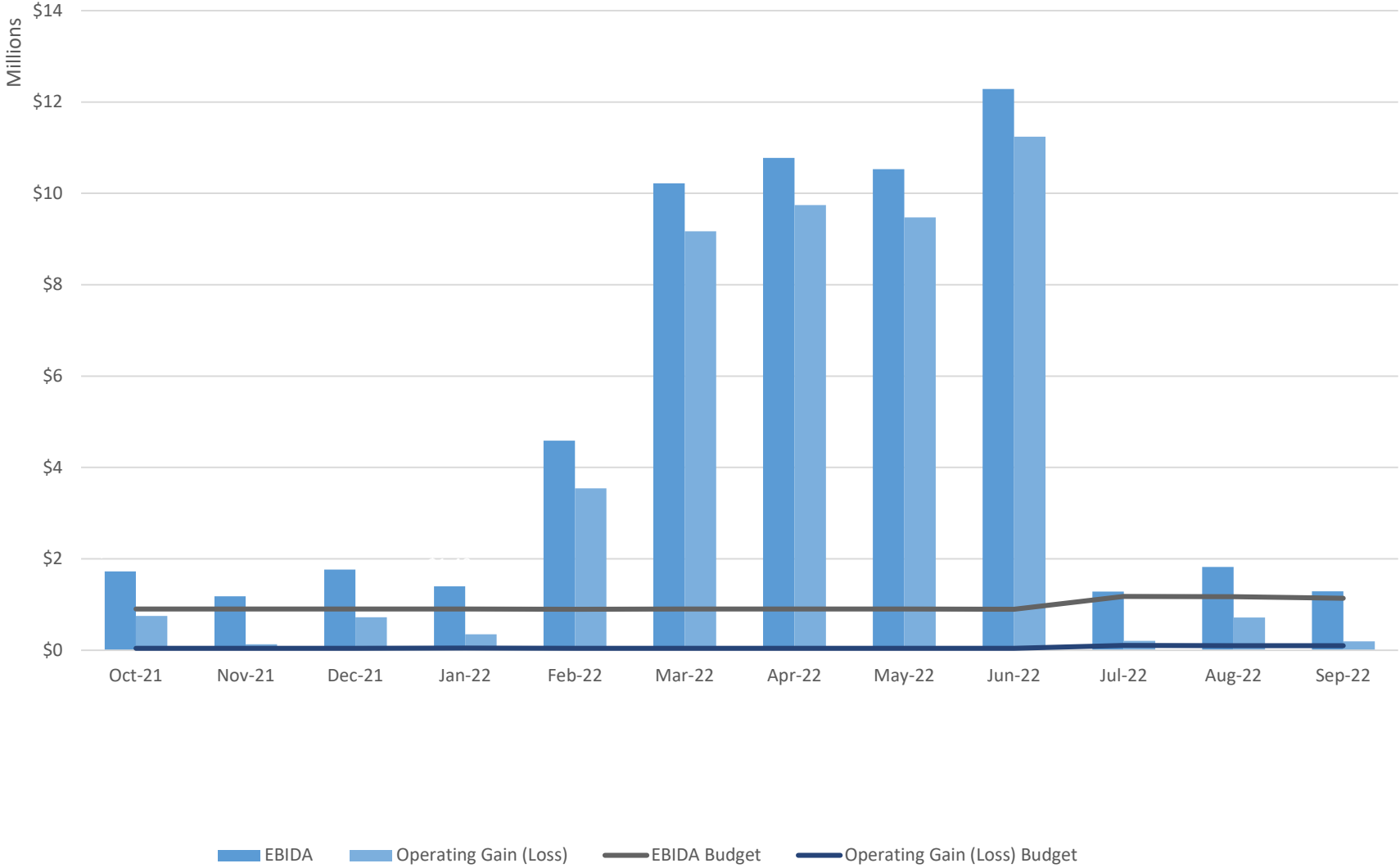


Operating Metrics

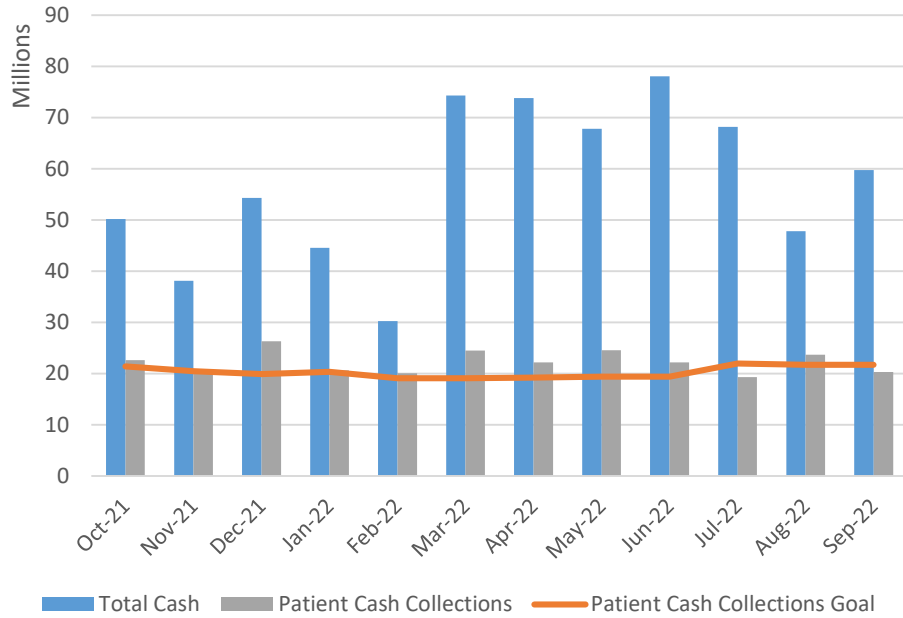


	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22
Supply Expense per AA	\$3,606	\$4,959	\$4,333	\$4,007	\$3,534	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728	\$3,773
Pharm Cost per AA	\$1,918	\$2,120	\$1,712	\$1,339	\$1,048	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101	\$1,364
Net Revenue Per AA	\$13,769	\$17,988	\$16,591	\$17,019	\$16,237	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451	\$17,743
Budget Supp/AA	\$3,196	\$3,217	\$3,175	\$3,174	\$3,208	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125	\$3,140
Budget Pharm/AA	\$1,154	\$1,156	\$1,153	\$1,153	\$1,154	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126	\$1,126
Budget Net Rev/AA	\$13,477	\$13,187	\$13,344	\$13,359	\$12,793	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428	\$12,543

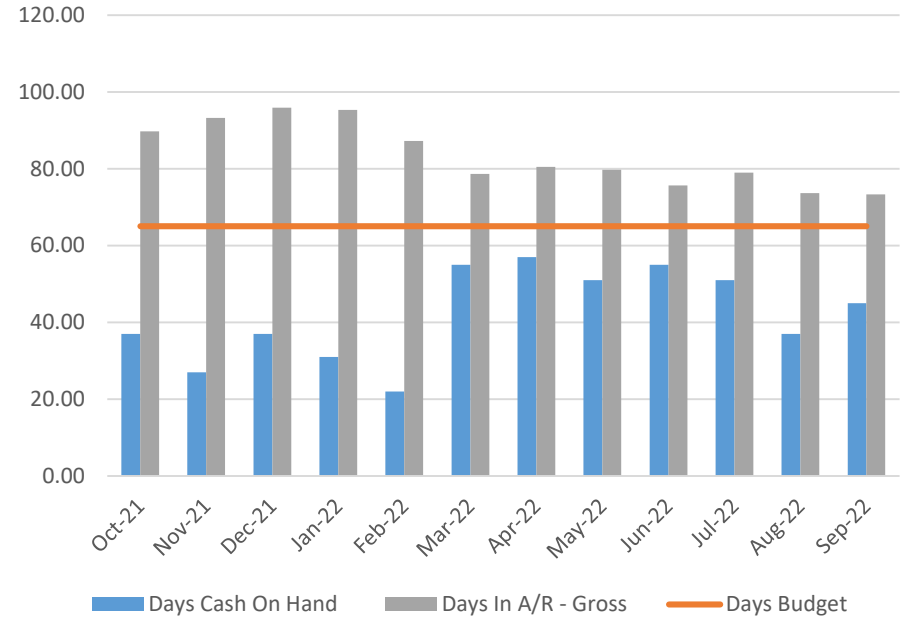
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
September 30, 2022

	JULY	AUGUST	SEPTEMBER	BUDGET SEPTEMBER	VARIANCE POS (NEG)	PY SEPTEMBER
Gross Patient Revenue	\$ 92,471,107	\$ 100,633,105	\$ 97,840,455	\$ 95,586,864	2%	\$ 103,289,808
Contractual Deductions	(69,920,186)	(78,610,132)	(74,161,703)	(74,014,819)	0.2%	(80,299,516)
Net Revenue	22,550,921	22,022,973	23,678,752	21,572,044	10%	22,990,291
Indigent Funding	14,191,888	14,191,888	14,409,710	13,907,054	4%	13,293,612
Correctional Medicine	2,746,855	2,746,855	2,658,247	2,658,247	0%	2,616,667
County Contribution	285,211	285,211	285,211	281,729	1%	289,845
Net Patient Revenue	39,774,875	39,246,927	41,031,920	38,419,074	7%	39,190,415
Other Operating Revenue	1,524,826	2,552,147	1,813,521	2,193,942	(17%)	2,141,211
Other Non-Operating Revenue	11,583	12,128	15,823	47,856	(67%)	17,360
Total Revenue	41,311,284	41,811,202	42,861,263	40,660,872	5.4%	41,348,986
Expenses						
Salaries	17,068,626	17,317,578	16,765,881	16,719,473	0.3%	16,821,011
Employee Benefits	6,384,561	6,391,119	8,633,534	7,130,610	21%	6,870,264
Registry	3,592,259	3,143,169	2,878,459	3,087,572	(7%)	3,321,361
Medical Fees	1,885,530	1,965,025	2,114,453	1,782,494	19%	1,589,766
Other Professional Fees	1,981,485	2,020,590	1,924,341	1,570,785	23%	1,287,916
Supplies	4,655,496	5,313,466	5,035,783	5,401,056	(7%)	6,726,033
Purchased Services	2,580,701	2,000,552	2,453,497	2,289,554	7%	1,964,713
Other Expenses	1,878,413	1,834,850	1,766,483	1,543,770	14%	1,580,600
Operating Expenses	40,027,072	39,986,349	41,572,431	39,525,314	5%	40,161,664
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,284,212	\$ 1,824,854	\$ 1,288,832	\$ 1,135,558	13%	\$ 1,187,323
EBIDA Margin	3%	4%	3%	3%	8%	3%
Interest	110,982	112,346	112,658	83,419	35%	84,361
Depreciation	674,589	703,915	687,309	660,849	4%	677,964
Amortization	294,594	294,594	294,594	291,183	1%	224,132
Total Expenses	41,107,238	41,097,204	42,666,992	40,560,765	5%	41,148,121
Operating Gain (Loss)	\$ 204,047	\$ 713,998	\$ 194,272	\$ 100,107	94%	\$ 200,865
Operating Margin	0.5%	1.7%	0.5%	0.25%	84%	0.49%

KERN MEDICAL
Year to Date: Revenue & Expense
September 30, 2022

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 290,944,666	\$ 292,012,364	(0.4%)	\$ 295,408,187	(2%)
Contractual Deductions	(222,692,021)	(226,344,582)	(2%)	(229,875,811)	(3%)
Net Revenue	68,252,645	65,667,782	4%	65,532,376	
Indigent Funding	42,793,487	42,648,298	0.3%	39,880,836	7%
Correctional Medicine	8,151,957	8,151,957	0%	7,850,000	4%
County Contribution	855,633	863,968	(1%)	855,633	(0%)
Net Patient Revenue	120,053,722	117,332,005	2%	114,118,844	5%
Other Operating Revenue	5,890,494	6,681,616	(12%)	5,855,595	1%
Other Non-Operating Revenue	39,534	146,760	(73%)	43,962	(10%)
Total Revenue	125,983,750	124,160,381	1%	120,018,402	5%
Expenses					
Salaries	51,152,085	51,130,778	0.04%	49,214,044	4%
Employee Benefits	21,409,215	21,612,072	(1%)	21,282,940	1%
Registry	9,613,887	9,540,663	1%	7,864,020	22%
Medical Fees	5,965,008	5,455,512	9%	5,155,831	16%
Other Professional Fees	5,926,416	4,712,356	26%	4,390,840	35%
Supplies	15,004,744	16,492,770	(9%)	17,852,699	(16%)
Purchased Services	7,034,751	7,000,344	0.5%	6,038,429	16%
Other Expenses	5,479,746	4,734,228	16%	4,692,298	17%
Operating Expenses	121,585,852	120,678,722	1%	116,491,101	4%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 4,397,898	\$ 3,481,659	26%	\$ 3,527,301	25%
EBIDA Margin	3%	3%	24%	3%	19%
Interest	335,986	255,818	31%	253,631	32%
Depreciation	2,065,813	2,026,603	2%	2,037,321	1%
Amortization	883,783	892,963	(1.0%)	672,397	31%
Total Expenses	124,871,433	123,854,105	1%	119,454,449	5%
Operating Gain (Loss)	\$ 1,112,317	\$ 306,276	263%	\$ 563,952	97%
Operating Margin	1%	0.2%	258%	0%	88%

**KERN MEDICAL
BALANCE SHEET**

SEPTEMBER 2022 SEPTEMBER 2021

ASSETS:

<i>Total Cash</i>	\$ 59,758,650	\$ 54,163,643
Patient Receivables Subtotal	261,247,548	276,935,852
Contractual Subtotal	(211,718,168)	(235,867,505)
<i>Net Patient Receivable</i>	49,529,380	41,068,347
Total Indigent Receivable	150,235,890	135,672,644
Total Other Receivable	15,864,796	14,716,316
Total Prepaid Expenses	5,149,642	5,704,298
Total Inventory	4,146,138	4,324,652
<i>Total Current Assets</i>	284,684,497	255,649,900
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	226,295,924	213,803,802
Total Construction in Progress	8,017,838	9,577,727
<i>Total Property, Plant & Equipment</i>	234,313,762	223,381,529
Total Accumulated Depr & Amortization	(139,619,594)	(128,092,528)
<i>Net Property, Plant, and Equipment</i>	94,694,168	95,289,001
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 506,669,520	\$ 438,802,363

BALANCE SHEET

	SEPTEMBER 2022	SEPTEMBER 2021
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 14,098,654	\$ 17,836,598
Total Accrued Compensation	40,015,881	34,676,528
Total Due Government Agencies	16,779,249	34,899,107
Total Other Accrued Liabilities	22,206,189	42,944,241
<i>Total Current Liabilities</i>	93,099,973	130,356,474
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	61,859,422	80,914,207
<i>Total Long-Term Liabilities</i>	443,012,233	403,018,004
<i>Total Liabilities</i>	536,112,206	533,374,478
Fund Balance	36,714,022	36,714,022
Retained Earnings	(66,156,707)	(131,286,137)
<i>Total Fund Balance</i>	(29,442,686)	(94,572,115)
<i>Total Liabilities and Fund Balance</i>	\$ 506,669,520	\$ 438,802,363



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

November 16, 2022

Subject: Kern County Hospital Authority Chief Executive Officer Report

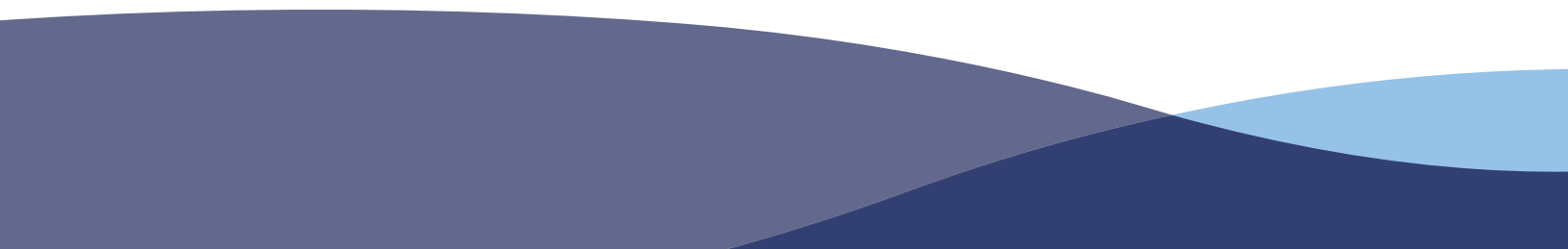
Recommended Action: Receive and File

Summary:

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



What's Happening?



KERN COUNTY FAIR



NAMI WALK



VETERANS STAND DOWN



LEADERSHIP RETREAT



KERN MEDICAL IN THE MEDIA



Dr. Alex Elias - The Importance of Getting Your Colonoscopy

TRUNK OR TREAT



Bakersfield College
Domestic Violence Awareness

TRUNK OR TREAT

Costume Contest • Candy
Everyone is welcome!

Prizes for best costume and best group costume
1st, 2nd, and 3rd place prizes for StudOrgs Booth/Trunk Halloween themed decor

Thursday, October 27, 2022
4 - 7 p.m.
Corner of Haley & University

Contact: Adrianna Ocegueda Donahue
adrianna.oceguera@intern.bakersfieldcollege.edu
aocegueradonahue@opendoorhelps.org

the open door
at bakersfield college



KERN MEDICAL'S DEPARTMENT PUMPKIN CARVING CONTEST

- DEPARTMENTS MUST SIGN UP BY EMAILING: MARKETING@KERNMEDICAL.COM
- ONE (1) PUMPKIN PER DEPARTMENT
- PICK UP PUMPKIN FROM CAFETERIA OCTOBER 24-26, FROM 9AM-11AM OR 1:30PM-3PM
- SUBMIT YOUR PUMPKIN FOR JUDGING MONDAY, OCTOBER 31, AT THE COURTYARD FROM 7AM-10AM



KERN MEDICAL'S HALLOWEEN COSTUME CONTEST RULES

- ALL COSTUMES MUST BE "G-RATED", MODEST, AND MEET KERN MEDICAL STANDARDS
- COSTUME MUST ALLOW STAFF TO DO THEIR ASSIGNED JOB DUTIES
- NO INFLATABLE COSTUMES
- NO HALLOWEEN MASKS DURING PATIENT CARE OR INTERACTIONS
- NO MESSY OR STICKY SUBSTANCES ON YOUR COSTUME
- NO SCARY OR GROSS MAKE-UP
- REGISTER FOR JUDGING IN THE CAFE COURTYARD AT 2:00 P.M. ON MONDAY, OCTOBER 31

KernMedical

HEALTHFUL HARVEST



HEALTHFUL HARVEST

Join us for a fun-filled community health event
with food, music, and giveaways!

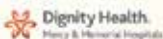
SUNDAY, NOVEMBER 6TH

1:00 PM TO 5:00 PM

**Haven Drive Middle School
341 Haven Drive, Arvin**

For more event information, call 661.632.5582

EVENT PRESENTED BY:



Connect with providers and local resources.

Make sure to visit informational
booths for a chance to win prizes!

- Health Screenings*
- Mammograms*
- Mental Health Resources
- Immunizations / Flu Shots
- Food Baskets**
- Health Insurance Enrollment
- Community Resources
- Health Education
- AND MUCH MORE!

* Health Screenings and Mammograms are limited and by appointment only. To schedule, please call 661.854.6525

** First Come, First Served - While Supplies Last

NATIONAL RECOGNITIONS IN OCTOBER

- American Pharmacist Month
- Breast Cancer Awareness Month
- Down Syndrome Awareness Month
- National Physical Therapy Month
- World Hospice and Palliative Care Day (Oct. 8)
- Medical Assistants Recognition Week (Oct. 15-19)
- Pharmacy Technician Day (Oct. 16)
- International Infection Prevention Week (16-21)
- Medical Assistants Recognition Day (Oct. 17)
- Healthcare Quality Week (Oct. 21-27)

NATIONAL RECOGNITIONS IN NOVEMBER

- American Diabetes Month
- Lung Cancer Awareness Month
- COPD Awareness Month
- Stomach (Gastric) Cancer Awareness Month
- Epilepsy Awareness Month
- Family Caregivers Month
- Alzheimer's Disease Month
- National Hospice & Palliative Care Month
- National Patient Transport Week (Nov. 1-7)
- Allied Health Professionals Week (Nov. 6-12)
- National Radiologic Technology Week (Nov. 6-12)
- International Accounting Day - Nov. 10
- World Pneumonia Day - Nov. 12
- National Nurse Practitioner Week (Nov. 13-19)
- Perioperative Nurses Week (Nov. 13-19)
- U.S. Antibiotic Awareness Week (Nov.18-24)
- Computer Security Day - Nov. 30

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

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 16, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

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**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 November 16, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

 X CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees
International Union, Local 521, Charging Party, v. Kern County Hospital Authority,
Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –

**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: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC –

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

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on November 16, 2022, to consider:

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

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

Government Code Section 54957.7

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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 Financial Officer (Government Code Section 54957.6) –

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

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