



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, December 9, 2020

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on November 18, 2020 –
APPROVE

CA

- 4) Proposed Agreement with Thyssenkrupp Elevator Corporation, an independent contractor, for design and construction upgrades of the D Wing elevators, effective December 9, 2020, in an amount not to exceed \$2,325,883 –
MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 5) Proposed Quote with CDW Logistics, Inc. and Enterprise Agreement with Microsoft, independent contractors, containing nonstandard terms and conditions, for access to subscription licensing and support of Microsoft products from January 1, 2021 through December 31, 2023, in an amount not to exceed \$1,745,000, plus applicable fees and taxes –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with Siemens Medical Solutions USA, Inc., an independent contractor, for preventive maintenance and repairs for the Siemens MRI and CT machines from December 15, 2020 through December 31, 2024, in an amount not to exceed \$1,050,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Letter from Moss Adams LLP, an independent contractor, regarding audit planning of Kern Medical Center financial statements for Fiscal Year ending June 30, 2020 –
RECEIVE AND FILE

CA

- 8) Proposed retroactive Adoption Agreement, effective January 1, 2020, and Administrative Service Agreement, effective January 1, 2021, with Administrative Solutions, Inc., an independent contractor, containing nonstandard terms and conditions, for the Kern Medical Center Internal Revenue Code Section 125 Cafeteria Plan for eligible employees – APPROVE; ADOPT RESOLUTION; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Cerner Sales Order OPT-0261698 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of the Patient Facing Payment Estimator application from January 1, 2021 through December 31, 2023, in an amount not to exceed \$183,381 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- 10) Kern County Hospital Authority financial report – RECEIVE AND FILE
- 11) Kern County Hospital Authority Chief Executive Officer report – RECEIVE AND FILE
- CA
- 12) Claims and Lawsuits Filed as of November 30, 2020 – RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JANUARY 20, 2021 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

12) CLAIMS AND LAWSUITS FILED AS OF NOVEMBER 30, 2020 –
RECEIVE AND FILE

- A) Claim in the matter of Obie L. Crisp III (November 4, 2020)
- B) Claim in the matter of Obie L. Crisp III (November 9, 2020)
- C) Claim in the matter of Ramiro
- D) Notice of Intent to Sue in the matter of Cynthia Gonzalez, Alejandro Gonzalez, and Cynthia Gonzalez as Guardian Ad Litem for the Estate of Sergio Arturo Gonzalez
- E) Complaint for Declaratory Relief in the matter of The Law Offices of Bob Khakshooy v. Kern Medical Center, et al., Los Angeles County Superior Court Case No. 19STCV46041
- F) Claim in the matter of Alfred John Monges
- G) Claim in the matter of Maranda Elida Maritta Samarripas



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

December 9, 2020

Subject: Proposed Agreement with Thyssenkrupp Elevator Corporation for D Wing West Elevator Upgrades

Recommended Action: Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; Approve the proposed Agreement effective December 9, 2020, in an amount not to exceed \$2,325,883; and Authorize the Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Agreement with Thyssenkrupp Elevator Corporation, in the amount of \$2,325,883, for the design and construction upgrades for the West bank of elevators in the D Wing. This project in general consists of an elevator modernization of five, two-gear passenger elevators. The elevator cabs and shafts will remain intact, all hoist equipment, controls, buttons, visible and audible signals will be new, machines, motors and brakes are to be rebuilt, and the hoist and governor ropes will be replaced and the interior of each car will be modernized.

The Agreement is effective as of December 9, 2020, and the design will begin immediately upon execution of the agreement. The project will also be required to be submitted to OSHPD for review and approval. The estimated completion time for all five cars is Spring of 2023. The agreement can be terminated and/or modified at any time should funding become an issue. Thyssenkrupp would be notified formally in writing to stop work, and paid for any services rendered up to the stop notice was issued.

Therefore, it is recommended that your Board (1) make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; (2) approve the proposed Agreement, effective December 9, 2020, in an amount not to exceed \$2,325,883; and (3) 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 9, 2020 ("Effective Date") and shall terminate upon completion of the services by Consultant.

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

Service Provider: Thyssenkrupp Elevator Corporation ("Consultant")

Located at: 114 Townpark Drive NW, Suite 300, Kennesaw, Georgia 30144

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

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

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$2,325,883.00 which includes (select all that apply)

fees per the rate schedule attached hereto as Exhibit "B".
 fees at the hourly rate of \$ _____.
 other (specify) _____.

(Select one of the following two)

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

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

Workers' Compensation: As required by California Labor Code Section 3700
 Commercial General Liability (\$5,000,000/Occurrence & \$10,000,000/Aggregate) or other amounts _____ & _____
 Automobile Liability (\$1,000,000/Occurrence) or other amounts _____ & _____

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

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

Date: _____

THYSSENKRUPP ELEVATOR CORPORATION

By Tyler Cantrell
Name: _____ Title: _____

Date: 12/3/2020
"Consultant"

APPROVED AS TO CONTENT:

Responsible KCHA Department

By _____
Russell V. Judd, Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

Legal Services Department

By Quen S. James
Hospital Counsel, Kern County Hospital Authority

Date: 12/03/2020

**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." In no event shall Consultant be liable for penalties or indirect, special, liquidated, incidental, exemplary or consequential damages. Notwithstanding anything to the contrary, Consultant's limitations of liability shall not apply to, affect, or limit: (i) any of Consultant's duties to indemnify KCHA in accordance with this agreement and/or (ii) any third party claims.

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**.
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. All schedules and completion dates and any changes thereto, shall be agreed to in writing by both parties before becoming effective. Consultant shall receive an extension of time commensurate with any delay not solely caused by KCHA.
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. Consultant's Indemnification shall be limited to Consultant's and Consultant's Representative's own acts and actions, and shall in no way include the acts, actions, omissions, or negligence of a party indemnified hereunder, or for bare allegations.

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

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

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

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

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

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

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

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

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

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

18. **Disqualified Persons.** Consultant represents and warrants that no person providing goods and/or services under the terms of this Agreement (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Consultant agrees that if any individuals providing goods and/or services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Consultant shall immediately notify KCHA and such individual shall be immediately removed by Consultant from any functions, provided, however, that if Consultant is directly involved in the Enforcement Action, any agreement between KCHA and Consultant shall terminate immediately.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. **Exhibits.** All exhibits attached to this Agreement are incorporated into this Agreement by reference.
Exhibit A: Scope of Service and Fee Schedule
Exhibit B: Payment Terms
Exhibit C: Insurance

Exhibit A

Scope of Services

Design Phase

Consultant shall provide services to complete the design, Office of Statewide Health Planning and Development (OSHPD) submission and approval process, and construction to upgrade and modernize Five (5), -geared passenger elevators in the D wing lobby at Kern Medical Hospital. The project will be performed in two (2) separate sub-projects-- Sub-Project 1 (Cars #1, 2 & 3) and Sub-Project 2 (Cars #4 & 5).

Consultant shall work with the Architect of Record (AOR), selected by the KCHA, to submit complete design document to OSHPD for review and permit process. All work shall be performed in accordance with the most applicable edition of the National Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks (ASME A7.1), Barrier Free Code as pertaining to Passenger Elevators, the Americans with Disabilities Act (ADA), the National Electrical Code, and/or such State and Local elevator codes as may be applicable.

Consultant shall respond to all OSHPD and any other governing agencies having jurisdiction, within 10 working days of receipt of correspondence. KCHA shall pay the initial OSHPD submittal fees and up to two (2) rounds of resubmissions fees, due to OSHPD review comments. Consultant shall pay any additional resubmittal fees. KCHA shall pay all OSHPD, Post Approval Document (PAD)/Change order (CO) review fees, after the initial plans have been approved, except where design changes are the result of negligence on the Consultants part.

Units Included

| Sub-Project | Building | Nickname | Speed | Capacity | Opening |
|-------------|----------|----------|-------|----------|---------|
| 1 | D Wing | #1 Pass | 350 | 4500 | 5 |
| 1 | D Wing | #2 Pass | 350 | 4500 | 5 |
| 1 | D Wing | #3 Pass | 350 | 4500 | 5 |
| 2 | DWing | #4 Pass | 350 | 4000 | 4 |
| 2 | DWing | #5 Pass | 350 | 4000 | 4 |

Design and Construction upgrades shall include:

Controller:

- TAC 32T VVVF Controller
 - 24 VDC Signal Voltage
 - Auto Light and Fan Feature
 - Car Independent Service
 - Door Bypass Operation
 - Electronic Door Detector Interface
 - Emergency Power
 - Hall Lantern Circuitry
 - Hoistway Access
 - Keyed Stop Switch Operation

- UIT (on board diagnostic)
- tkE Green Drive 400E (2109CD006) VVF AC Drive/Regenerative 60R
- Machine Room Wiring Package
- eMax monitoring Devices Provisions
- Tenant Security Option
- Overlay (Cars #1-3 only)
- Shaker Box

Governor:

- Governor, Rope and Tail Sheave

Machine

- Refurbish Houghton EK Geared Machine
- Retain Car/Cwt shackles & Ropes set (Cars #1-3)
- Car/Cwt shackles & Ropes set (Cars #4-5)
- AC MOTOR with Encoder
- Rebalancing Car

Car

- Toe Guard for 2000 code (48")
- Car Top railing
- Cable Strain Loadweigher
- Fan: Two Speed
- Car Top Exit Switch
- Crosshead Data Tag
- Refurbish Car Guides

Hoistway

- TAC 32T Field Friendly Wiring Package
 - Single Flat Traveling Cable with Coax
 - Hoistway Wiring
 - Interlock Connectors
 - Discrete Wiring
 - Fiber Optic Cable, Hoistway Piping
- Absolute Positioning System (APS) for TAC 32T
- Final Limit Switches, Brackets and Cams for TAC32T
- Screening

Pit

- Reuse Counterweight Derailment detector (ring and string)
- Pit Stop Switch
- Refurbish Buffers
- Refurbish Counterweight Roller Guides

Cab

- Remodel Interior of Five (5) Cabs

- Consultant shall present various options to KSHA
- KCHA to furnish and install flooring for Cab upgrades
- Cab Door (SS#4)

Door Equipment

- LD-16 Plus Door Operator with Complete Carside Equipment Includes Car Top Inspection Station
- Micro Light (Front)

Closer

- Interlocks & pick Up Rollers
- Hoistway Hanger/Hanger Rollers/Gibs

Car Fixtures

- Main Car Station (COP)

Hall Fixtures

- Jamb Braille (Pairs)
- Car Identification Plate for Main Egress Floor (Pair)
- Hoistway Access
- Hal Lantern
- Hall Stations (1 station per floor)

Miscellaneous

- OSHPD Engineering Calculations & Drawings
- Design and Construction shall include Electrical and Fire Life Safety via the use of sub-contractors Scope of work as defined here:
- JTS Construction for 5 elevators to:
 - supply and install luminaries LED's in elevator pit and in the elevator room, GFI receptacles,
 - rewiring controls as needed
 - supply and install (5) 100A 3P 460V shunt trip breakers next to MCC using existing conduits and wires feeding the disconnects and controllers.
 - Disconnect power on existing controllers and motors and connect to new controllers and motors provided by others
 - Install (5) 20A GFCI HG Red receptacles in the elevator pit.
 - Conduit and back boxes only for F/A devices in elevator room and conduit from FACP to elevator room (wire and devices by Johnson Control).
 - Includes electrical design but excludes fire alarm design.
- Excludes cutting, patching, fire alarm (conduit and back boxes only), plans/design, (except electrical) and anything not mentioned above.
- Johnson Control (JCI) Fire Life Safety:
 - Furnish shop drawings, submittal's with PE Stamp for OSHPD. Submittal to OSHPD shall be provided by others. JCI shall also provide new devices (10x PHOTO SENSOR, 10x HEAT SENSOR, 20x SENSOR BASE, 7x RELAY IAM, DP SVCS (PERMITS/FEES/BONDS), CAD LABOR, DESIGN LABOR, PROJECT/CONSTRUCTION MGMT, INSTALLATION LABOR, TECHNICAL LABOR), program the new devices to the building existing fire alarm control panel and perform final test to the acceptance of the AHJ. This scope of work is based upon no smoke or heat detection work in the elevator shaft

- Installation and wiring - including all device installation, wiring, terminations and wire pulls is included.
- Any work/materials other than which have been outlined above will be considered outside the scope of work and will be addressed with a change order. Our quotation includes all shop drawings, submittals and technical labor required for the system in accordance with quantities listed.
- Johnson Controls qualifies the following:
 - All work shall take place during Johnson Controls' normal working hours from 8am to 5pm, Monday to Friday.
 - Johnson Controls shall not mobilize until a signed contract or PO is issued and a full construction schedule has been provided. Scheduling of technician shall be arranged and presented upon receipt of the construction schedule.
 - Johnson Controls shall only terminate fire alarm circuits in the fire panels and fire alarm terminal cans. All other terminations by others.
 - CAD backgrounds/As built will be furnished to Johnson Controls at no additional charge.
 - As-built drawings shall be provided to the customer at the completion of the project.
 - Johnson Controls will need the following items to proceed with design, material order and programming (preliminary timelines/durations provided below):
 - a) Signed proposal, contract and/or PO
 - b) CAD files/backgrounds of area of work
 - c) Project schedule
- Exclusions:
 - a) Cutting, coring, painting and/or patching
 - b) AC power including AC power terminations
 - c) Fire watch
 - d) All necessary conduit with pull strings, back boxes
 - e) Submit to OSHPD
 - f) Overtime or off hours
- Johnson Control (JCI) Sprinklers:
 - Remove And cap sprinkler heads and remove pipe at top of elevator shaft. Proposal is for 5 elevator shafts JCI will have access to exposed pipe.
- If any other work is required, a change order will be provided detailing additional required scope and pricing.
- Consultant includes one mobilization to the jobsite. A mobilization fee of \$2,500.00 per crew per occurrence will be charged for pulling off the job or for any delays caused by others once material has been delivered and work has commenced.
- Working Hours: All work specified herein, including testing, painting, as well as inspections, will be performed from 6:00 AM to 2:30 PM, except scheduled union holidays ("regular working hours of regular working days") – Monday through Friday. If, after the execution of the project agreement, overtime is mutually agreed upon, an additional charge at Thyssenkrupp Elevator's usual rates for such work shall be added to the price of the project.
- Parking: Purchaser shall provide a minimum of two (2) parking spaces capable of accommodating standard work trucks at no cost to Thyssenkrupp Elevator

- Purchaser agrees to provide unobstructed tractor-trailer access and roll-able access from the unloading area to the elevator or escalator hoistways or wellways (as applicable).
- Storage: The Purchaser agrees to provide adequate secure area for Thyssenkrupp to take in a 20' x 8' connex box on site including adequate ingress and egress to the area. Any relocation of the equipment as directed by the Purchaser after its initial delivery will be at Purchaser's expense.
- Thyssenkrupp Elevator will furnish and install all equipment in accordance with the terms, conditions, scope and equipment nomenclature as noted herein. Requested changes or modifications to such provisions will require a written change order issued on the Purchaser's letterhead and accepted by Thyssenkrupp in writing prior to the execution of such work. This change order shall detail the current contract price, the amount of the change, and new contract value.
- This Proposal does not include a schedule for the work described and any such schedule shall be mutually agreed upon by an authorized representative of both Thyssenkrupp and Purchaser in writing before becoming effective.
- In the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the jobsite, Purchaser shall monitor Thyssenkrupp's work place and prior to and during Thyssenkrupp's manning of the job, Purchaser shall certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event Thyssenkrupp's employees or those of Thyssenkrupp's subcontractors are exposed to an asbestos hazard, PCP's, lead or other hazardous substances, Purchaser agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Thyssenkrupp harmless from all damages, claims, suits, expenses, and payments resulting from such exposure. Identification, notification, removal and disposal of asbestos containing material, PCP's lead or other hazardous substances are the responsibility of the Purchaser.

Geared Machines

- Clean the exterior, drain, flush and refill bearings, replace seals, repaint, drain oil and replace.
- Replace break lining, check break coil and replace as needed.
- Retain all sheaves
- Install rope gripper in the machine room without modifications to machine. Twenty-four (24) hours have been included in the base price for the installation of the rope gripper in the machine room without modifying the existing machine. If any additional work required beyond this scope, including required engineered modifications of the machine to accommodate the rope gripper, a change order will be provided detailing additional required scope and pricing.
- For Cars #1-3: Lubricate hoist cables and examine for break and wear. Possible replacement to be completed under maintenance agreement.
- Install new hoist cable for Cars#4-5
- If any other work is required, a change order will be provided detailing additional required scope and pricing.

Existing Equipment and Clarifications

Retained equipment shall remain as-is and will not be reconditioned or modified unless required by a Change Order or Amendment to this Agreement.

Consultant shall paint machines, governors and buffers.

Prior to the design of the cab modernization each cab shall be weighed. If the existing cabs are 5% of the allowable weight and contracted capacity as noted on the original crosshead data tag and/or the elevators are out of balance, any additional scope of work to make code compliant shall be determined on an elevator-by-elevator case basis and a Change Order or Amendment shall be issued. It is noted that Consultant shall not be responsible for any building structural items due to elevator exceeding the 5% allowable weight nor the under-sizing of the equipment proposed using the crosshead data tag information. Should additional or higher-rated equipment be required due to a discrepancy in the actual weight being greater than the car top crosshead data tag, additional cost may apply and will be provided via change order.

Consultant assumes counterweights are properly weighted for current elevator conditions. Variations shall be addressed as a Change Order or Amendment to the Agreement.

Software provisions will be provided for Emergency Power only. and the Regenerative function of the controller will not be bypassed. Should the stand-by power load not be capable of absorbing the regenerative energy from the motor-drive/inverter, any modification to the control device, function, etc. shall be performed addressed through the Change Order process.

Construction & OSHPD Inspections:

Consultant shall inform the OSHPD, Inspector of Record (IOR), of all construction related activities. Consultant shall schedule all OSHPD and third-party inspections with IOR no less than three (3) working days in advance.

Project Timelines and Phasing

Consultant shall begin each Sub-Project and phase upon written authorization to proceed from KCHA, Project Manager.

Sub-Project 1 (Cars #1, 2 & 3)

Design Phase: 16 Weeks from Notice to Proceed

OSHPD Review: Consultant shall respond to all OSHPD/governing agency reviews within 10 working days from receipt of correspondence.

Material: 15 Weeks from Notice to Proceed

Fabrication & Construction: 50 Weeks from Notice to Proceed

Close Out: 4 Weeks after project acceptance from KCHA

Sub-Project 2 (Cars #4 & 5)

Design Phase: 16 Weeks from Notice to Proceed

OSHPD Review: Consultant shall respond to all OSHPD/governing agency reviews within 10 working days from receipt of correspondence.

Material: 15 Weeks from Notice to Proceed

Fabrication &
Construction: 35 Weeks from Notice to Proceed

Close Out: 4 Weeks after project acceptance from KCHA

Close Out Documents

Upon sub-project completion, Consultant shall provide all Warranty's, As-built Drawings, Owner's Manuals, Submittals, Calculations and project documentation in PDF format to KCHA, no later than two weeks after project Notice of Completion is issued. Upon receipt of Close Out Documents, KCHA will complete Consultants Final Acceptance Form.

Warranty

Consultant warrants any equipment installed as described in the Agreement and/or the OSHPD approved Construction Documents against defects in material and workmanship for a period of one (1) year from the date of KCHA final acceptance and issuance of the Notice of Completion of each sub-project. This warranty is in lieu of any other warranty or liability for defects. Consultant makes no warranty of merchantability and no warranties which extend beyond the description in this Agreement, nor are there any other warranties, expressed or implied, by operation of law or otherwise. Like any piece of fine machinery, the equipment installed as a result of this Agreement should be periodically inspected, lubricated, and adjusted by competent personnel. This warranty is not intended to supplant normal maintenance service and shall not be construed to mean that Consultant will provide free service for periodic examination, lubrication, or adjustment, nor will Consultant correct, without a charge, breakage, maladjustments, or other trouble arising from normal wear and tear or abuse, misuse, improper or inadequate maintenance, or any other causes other than defective material or workmanship. KCHA shall provide Consultant with prompt written notification, to the contact and email address outlined in the Close Out documents, and provided all payments due under the terms of this Agreement and any mutually agreed to written change orders/Amendments have been made in full, Consultant shall, at its own expense, correct any proven defect by repair or replacement within three (3) calendar days of receipt of written/emailed warranty request. Consultant will not be responsible for reimbursements for costs of work done by others, nor will Consultant be responsible for the performance of any equipment that had been the subject of service, repair, replacement, revisions or alterations by others. This Warranty applies separately to each unit as accepted. This warranty only applies if KCHA has a manufacturer approved preventative maintenance program in effect during the warranty period.

Preventative Maintenance

This Agreement does not include maintenance, interim maintenance, service, repair or replacement, of the modernized equipment or any other work not expressly outlined in this Agreement. All maintenance will be completed under a separate service agreement.

Subcontractor

Consultant shall enter into separate agreement with Johnson Controls and JTS Construction to complete all electrical and fire alarm work as required to complete the project with OSHPD approved plans.

Owner Provided/ Owner Responsible

During the Design Phase, Consultant shall fully inspect the hoistways and pits accompanied by IOR and provide KCHA with a list of potential deficiencies or construction related tasks so the following items are in place prior to construction on the elevator system:

A dry legal hoistway, properly framed and enclosed, and including a pit of proper depth and overhead. Pit shall have steel safety beam, inspection or access platforms, access doors, sump pump, lights, waterproofing and venting as required; dewatering of pit(s) and required permanent screening.

A legal machine/control room, adequate for the elevator equipment, including floors, trap doors, gratings, access platforms, ladders, railings, foundations, lighting, and proper ventilation sized per Consultants shop drawings. KCHA shall maintain machine/control room temperature between 55 and 90 degrees Fahrenheit, with relative humidity less than 95% non-condensing at all times.

Adequate bracing of entrance frames to prevent distortion during wall construction.

KCHA shall complete/provide all grouting, fire caulking, cutting, X ray and removal of walls, floors, patching, coring, setting of sleeves/knockouts, penetrations and painting (except as specified) and removal of obstructions required for elevator work outside of original scope of work to be performed by Consultant.

Full width of the hoistway at each landing is fully supported for anchoring or welding Consultants sill supports, steel angles, sill recesses.

Maintain the required fire rating of elevator hoistway walls, including the penetration of firewall by elevator fixture boxes.

Ensure the elevator hoistways and pits are dewatered, cleaned and properly waterproofed prior to all construction activities.

KCHA shall secure outside construction to provide opening at roof for craned materials to be delivered and set inside the elevator room. Upon completion of the project, KCHA will secure outside services to close the roof opening and patch roofing material.

Electrical and Fire Life Safety

All Electrical and Fire Life Safety work outlined in in miscellaneous paragraph shall be included in this Agreement with Consultant and shall be directed and scheduled by Consultant. Any additional electrical or fire life safety needs shall be addressed as a Change Order or Amendment to this Agreement.

Governing Agency Inspections, Fees and Close Out

Consultant shall be responsible for all required inspection fees, unless failed inspections are due to deficiencies responsible by the hospital.

Upon notice from Consultant that a sub-project is complete, KCHA shall arrange a punch list job walk with the Consultant, AOR, Project Manager, IOR and appropriate KCHA staff to conduct an inspection and generate a final punch list. Consultant shall complete all punch list items within ten-working days from the date of the job walk. Upon notice from Consultant that punch list items are complete, KCHA will arrange a second job walk to clear all punch list items. Upon completion of all punch list items, the

Notice of Completion will be issued. Upon receipt and acceptance of all Close Out Documents, KCHA will complete Consultants Final Acceptance Form.

Upon final completion and acceptance of the work, Consultant shall remove all materials and debris from the project site and leave work area clean and free of debris, as acceptable to KCHA Project Manager.

Upon completion and acceptance of the project, Consultant shall conduct a live demonstration of equipment's owner-controlled features.

Exhibit B

Payment Terms

During the design phase, consultant shall provide progress drawings and or written update as required by KCHA with each progress invoice.

Consultant may be required to submit proof of material orders and receipt of good with each invoice during the material phase of each sub-project. Upon Consultants receipt and invoice submission for materials stored and/or fabricated off site, contractor may be required to submit Property Insurance for stored location, listing the Kern County Hospital Authority as Loss Payee in an amount equal to \$319,600.

Prior to the issuance of the Notice to Proceed for the Construction Phase, Consultant shall submit for review and approval a Construction Schedule of Values. Schedule of Values shall be broken down by trade and phasing for percentage complete billings. All Construction Invoices will be paid for in place construction.

All Close out documents, OSHPD and other governing agency approvals and finals must be in place prior to submission and authorization of final payment.

Authority agrees to pay for all approved services rendered as outlined below:

Sub-Project 1 (Cars #1, 2 & 3) – Total value of \$1,353,400.00

- Consultant shall invoice monthly for services rendered during the design phase, in an amount totaling \$370,736 (27.39%) of total the contract amount for sub-project #1.
- Consultant shall invoice \$12,784 (0.94%), of the total contract amount for sub-project #1, upon KCHA receipt of OSHPD approved Construction Documents.
- Consultant shall invoice \$159,800 (11.81%), of the total contract amount for sub-project #1, upon KCHA written authorization to purchase materials.
- Consultant shall invoice \$159,800 (11.81%), of the total contract amount for sub-project #1, upon Consultants receipt of materials.
- Consultant shall invoice monthly, for percentage complete, during the construction phase, in an amount totaling \$ 586,360 (43.32%), of the total contract amount for sub-project #1.
- Consultant shall invoice \$63,920 (4.73%), of the total contract amount for sub-project #1, upon project completion and final acceptance of all services and receipt of all Close Out Documents by KCHA.
- Final payment shall be made within thirty (30) days of KCHA's acceptance of Consultant's work.

Sub-Project 2 (Cars #4 & 5) – Total value of \$972,483.00

- Consultant shall invoice monthly for services rendered during the design phase, in an amount totaling \$266,323 (27.39%) of total the contract amount for sub-project #2.
- Consultant shall invoice \$9,079 (0.94%), of the total contract amount for sub-project #2, upon KCHA receipt of OSHPD approved Construction Documents.
- Consultant shall invoice \$114,887 (11.81%), of the total contract amount for sub-project #2, upon KCHA written authorization to purchase materials.
- Consultant shall invoice \$114,887 (11.81%), of the total contract amount for sub-project #2, upon Consultants receipt of materials.

- Consultant shall invoice monthly, for percentage complete, during the construction phase, in an amount totaling \$ 421,213 (43.32%), of the total contract amount for sub-project #2.
- Consultant shall invoice \$46,094 (4.73%), of the total contract amount for sub-project #2, upon project completion and final acceptance of all services and receipt of all Close Out Documents by KCHA.
- Final payment shall be made within thirty (30) days of KCHA's acceptance of Consultant's work.

Close Out Documents

Upon project completion, Consultant shall provide all Warranty's, As-built Drawings, Owners Manuel's, Submittals, Calculations and project documentation in PDF format to KCHA, no later than five working days after project Notice of Completion is issued. Upon receipt of Close Out Documents, KCHA will complete Consultants Final Acceptance Form.

EXHIBIT "C"
INSURANCE

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its sub-contractors, 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. Consultant shall furnish its standard manuscript endorsement in lieu of any required additional insured endorsement. 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 sub-contractors.
- (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: \$5,000,000 per Occurrence; \$10,000,000 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) Consultant's deductible/self-insured retention will not exceed \$1,000,000 for any required coverage and needs not be evidenced on the certificate of insurance. A deductible/self-insured retention in excess of \$1,000,000 is subject to prior approval by KCHA's Risk Manager. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between KCHA and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

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

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

5. Additional Insured Wording: "Kern County Hospital Authority, its officers, officials, employees and volunteers" are to be named as Additional Insureds as per each section where noted above. The required parties shall be added to Consultant's

general liability insurance policy as an additional insured, subject to the limitations as hereafter set forth. Such additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by Consultant's acts, actions, omissions or neglects, including those from its' subcontractor(s), and shall not apply to the extent caused by the additional insured's own acts, actions, omissions, or neglects, or for bare allegations.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
 - (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least three (3) 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 *three (3) years* after completion of the contract work. Consultant's Certificate of Insurance only contains standard ACORD cancellation language and is hereby accepted.

7. Documentation:
 - (a) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (b) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
 - (c) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (d) Consultant shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (e) Upon written request, certified copies of required insurance policies must be provided to KCHA within 30 days.

8. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

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

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

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

December 9, 2020

Subject: Proposed Quote with CDW Logistics, Inc. and Enterprise Agreement with Microsoft for a third-party Microsoft Volume Licensing Program

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Quote with CDW Logistics, Inc. (CDW) and Enterprise Agreement with Microsoft for CDW to act as the Microsoft affiliate to provide access to subscription licensing and support of Microsoft products to Kern Medical.

Currently, Kern Medical partners with Dell, Inc. for access to Microsoft licenses, which will expire on December 31, 2020. When deciding whether to renew the Dell agreement, pricing requests were sent to four vendors and multiple options for access to Microsoft products were considered. After reviewing the market value, contract lengths, and available options, Kern Medical has decided the current partnership with Dell should not be renewed, and a recommendation has been made to contract with CDW Logistics, Inc. as Kern Medical’s new Microsoft affiliate.

The three-year cost for the subscription and support will not exceed \$1,745,000, plus any associated taxes or fees, as referenced by the attached quote. This represents an approximate savings of \$436,000 from the previous agreement.

| Category | Product(s) | Prev 3-Year Cost | New 3-Year Cost | Difference |
|---------------------------|-------------------------------------|------------------|-----------------|------------|
| Operating Systems | Windows 10, Server | \$473,451 | \$ 296,960 | -\$176,491 |
| Databases | SQL Server | \$157,551 | \$128,136 | -\$29,415 |
| Security | Defender Advanced Threat Protection | \$783,969 | \$895,510 | +\$111,541 |
| Office 365 | Outlook, Office, Teams | \$728,535 | \$393,396 | -\$335,139 |
| Audio Conferencing | Teams Audio Dial-In | \$37,800 | \$31,680 | -\$6,120 |
| Totals | | \$2,181,306 | \$1,744,682 | -\$436,624 |

Both the Quote and Enterprise Agreement contains nonstandard terms and conditions and cannot be approved as to form by Counsel due to: no indemnification by CDW; all third party content will be governed by third party terms and conditions; no warranty of services or goods; CDW has no liability for product failures, claims of infringement or intellectual property rights in the use of the product; CDW's total liability is limited to \$50,000; interest may accrue on late payments; we must reimburse for travel and living expenses at unknown reimbursement rates; early termination fees; CDW may amend the terms and conditions at any time and without notice; binding arbitration with waiver of jury trial; and Illinois governing law and venue.

Due to these non-standard terms and conditions, staff worked diligently to find another vendor that maintained a comparable product that would work within our current system and our budget, but was unsuccessful.

Therefore, it is recommended that your Board approve the proposed Quote with CDW Logistics, Inc. and Enterprise Agreement with Microsoft for a third-party Microsoft Volume Licensing Program for the purchase of product licenses and support for a three-year term commencing January 1, 2021 through December 31, 2023, with a cost of \$1,745,000, plus any associated taxes or fees (estimated at 10% of the overall quote), and authorize the Chairman to sign.



CDW Government, LLC
Microsoft Enterprise 6.6 Agreement Pricing

Date 12/1/20
Account Manager Jamie Prisco

**Enterprise Quote
for**

VSL Specialist Brent Cameron
Channel Price Sheet Month Nov

Kern Medical Center

Unless otherwise noted, All Quotes expire upon current month's end

EA Renewal Quote
Customer to make three annual payments to CDW-G

| Microsoft Part # | Description | Level | Quantity | Year 1 | | Year 2 | | Year 3 | |
|------------------|--|-------|----------|-------------|---------------|-------------|---------------|-------------|---------------|
| | | | | Price | Extended | Price | Extended | Price | Extended |
| U4S-00002 | O365GCCE1 ShrdSvr ALNG SubsVL MVL PerUsr | D | 1000 | \$ 75.94 | \$ 75,940.00 | \$ 75.94 | \$ 75,940.00 | \$ 75.94 | \$ 75,940.00 |
| MQX-00001 | EntMobandSecE5fromSAGCC ShrdSvr ALNG SubsVL MVL PerUsr | D | 1000 | \$ 134.87 | \$ 134,870.00 | \$ 134.87 | \$ 134,870.00 | \$ 134.87 | \$ 134,870.00 |
| 3KS-00001 | O365GCCF3 ShrdSvr ALNG SubsVL MVL PerUsr | D | 2000 | \$ 32.93 | \$ 65,860.00 | \$ 32.93 | \$ 65,860.00 | \$ 32.93 | \$ 65,860.00 |
| MQZ-00001 | EntMobandSecE5FullKGCC ShrdSvr ALNG SubsVL MVL PerUsr | D | 2000 | \$ 81.65 | \$ 163,300.00 | \$ 81.65 | \$ 163,300.00 | \$ 81.65 | \$ 163,300.00 |
| LK3-00001 | AudioConfGCC ShrdSvr ALNG SubsVL MVL PerUsr | D | 250 | \$ 42.24 | \$ 10,560.00 | \$ 42.24 | \$ 10,560.00 | \$ 42.24 | \$ 10,560.00 |
| D86-01253 | VisioStd ALNG SA MVL | D | 50 | \$ 51.64 | \$ 2,582.00 | \$ 51.64 | \$ 2,582.00 | \$ 51.64 | \$ 2,582.00 |
| 7JQ-00343 | SQLSvrEntCore ALNG SA MVL 2Lic CoreLic | D | 19 | \$ 2,247.99 | \$ 42,711.81 | \$ 2,247.99 | \$ 42,711.81 | \$ 2,247.99 | \$ 42,711.81 |
| 9EA-00278 | WinSvrDCCore ALNG SA MVL 2Lic CoreLic | D | 16 | \$ 125.87 | \$ 2,013.92 | \$ 125.87 | \$ 2,013.92 | \$ 125.87 | \$ 2,013.92 |
| 9EM-00270 | WinSvrSTDCore ALNG SA MVL 2Lic CoreLic | D | 32 | \$ 17.74 | \$ 567.68 | \$ 17.74 | \$ 567.68 | \$ 17.74 | \$ 567.68 |
| KV3-00368 | WINENTperDVC ALNG SA MVL | D | 1500 | \$ 44.35 | \$ 66,525.00 | \$ 44.35 | \$ 66,525.00 | \$ 44.35 | \$ 66,525.00 |

Total \$ 564,930.41

Total \$ 564,930.41

Total \$ 564,930.41

Three Year Total \$ 1,694,791.23

Notes

No Tax Referenced
Riverside Contract: PSA-000152

Terms and Conditions of sales and services projects are governed by the terms at:
<http://www.cdwg.com/content/terms-conditions/product-sales.aspx>

Program Signature Form

MBA/MBSA number

| |
|--|
| Agreement number 8084445 |
|--|

| |
|------------------------|
| 5-0000006279642 |
|------------------------|

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

| Contract Document | Number or Code |
|---------------------------------------|---------------------|
| Enterprise Enrollment (Indirect) | X20-10635 |
| Enterprise Amendment | M97,M626,M591 (New) |
| Product Selection Form | 1016149.007 (New) |
| Discount Transparency Disclosure Form | 1016149.007 (DTF) |

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

| Customer |
|--|
| Name of Entity (must be legal entity name)* Kern Medical Center Signature* _____ Printed First and Last Name* _____ Printed Title _____ Signature Date* _____ |
| Tax ID _____ |

** indicates required field*

| Microsoft Affiliate |
|---|
| Microsoft Corporation |
| Signature _____ Printed First and Last Name _____ Printed Title _____ Signature Date _____ <small>(date Microsoft Affiliate countersigns)</small> |
| Agreement Effective Date _____ <small>(may be different than Microsoft's signature date)</small> |

Optional 2nd Customer signature or Outsourcer signature (if applicable)

| Customer |
|--|
| Name of Entity (must be legal entity name)* |
| Signature* _____ |
| Printed First and Last Name* |
| Printed Title |
| Signature Date* |

** indicates required field*

| Outsourcer |
|--|
| Name of Entity (must be legal entity name)* |
| Signature* _____ |
| Printed First and Last Name* |
| Printed Title |
| Signature Date* |

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
Dept. 551, Volume Licensing
6880 Sierra Center Parkway
Reno, Nevada 89511
USA

Microsoft | Volume Licensing

Discount Transparency Disclosure Form

Date: 12/2/2020
Program: Enterprise 6
Enrollment Number: Renewal
Quote Number: 1016149.007
Partner Name: CDW Logistics, Inc.
Reseller Address: 200 N. Milwaukee Avenue
Vernon Hills, IL, United States, 60061

Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

Ordered Products

| Currency | Maximum Resale Price |
|-----------|----------------------|
| US Dollar | 2,090,934 |

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

"Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

"Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

Partner: CDW Logistics, Inc.
Customer: Kern Medical Center
Signature of Customer's authorized representative: _____
Printed name: _____
Printed title: _____
Date: _____

Proposal ID

1016149.007

Enrollment Number

Language: English (United States)

| Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order: | | | | | |
|--|-------------------|-----------------|---------------------|-----------------------------|---------------------|
| Profile | Qualified Devices | Qualified Users | Device / User Ratio | Enterprise Product Platform | CAL Licensing Model |
| Enterprise | 1,500 | 1,000 | 1.5 | No | User Licenses |

| Products | Enterprise Quantity |
|---|---------------------|
| Windows Desktop | |
| Windows Enterprise OS Upgrade | 1,500 |
| Enterprise Mobility and Security (EMS) | |
| Enterprise Mobility and Security E5 GOV | 1,000 |
| Office 365 Plans | |
| O365 GCC E1 | 1,000 |

| Enrolled Affiliate's Product Quantities: | | | | |
|--|---|---|---|--|
| Price Group | 1 | 2 | 3 | 4 |
| Enterprise Products | Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise | Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise | Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise | Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise |
| Quantity | 0 | 1000 | 1000 | 1500 |

| Enrolled Affiliate's Price Level: | |
|--|-------------|
| Product Offering / Pool | Price Level |
| Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4. | D |
| Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1. | D |
| Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3. | D |
| Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4. | D |

| NOTES | |
|--|-------------|
| <p>Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:</p> | |
| Quantity of Licenses and Software Assurance | Price Level |
| 2,399 and below | A |
| 2,400 to 5,999 | B |
| 6,000 to 14,999 | C |
| 15,000 and above | D |
| <p>Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.</p> | |
| <p>Note 2: Enrolled Affiliate acknowledges that in order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that it has acquired qualifying operating system licenses. The requirement applies to Windows Enterprise OS Upgrade. See Product Terms for details.</p> | |
| <p>Note 3: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.</p> | |

Enterprise Enrollment

State and Local

| | | | |
|--|----------|--|--|
| Enterprise Enrollment number <i>(Microsoft to complete)</i> | 63978787 | Framework ID <i>(if applicable)</i> | |
| Previous Enrollment number <i>(Reseller to complete)</i> | 7192285 | | |

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. Order requirements.

- a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. Adding Products.**
 - (i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1)** For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2)** For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3)** For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.
- i. Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. Pricing.

- a. Price Levels.** For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level “D” throughout the term of the Enrollment.
- b. Setting Prices.** Enrolled Affiliate’s prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft’s prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft’s prices to Resellers are reestablished at the beginning of the renewal term.

4. Payment terms.

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate’s Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft’s acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. End of Enrollment term and termination.

- a. General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month (“Extended Term”) is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate’s license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

b. All terms and conditions applicable to non-Government Community Cloud Services also apply

to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:
- Enrolled Affiliate only
 - Enrolled Affiliate and all Affiliates
 - Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

 - Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:
- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* Kern Medical Center

Contact name* First Craig Last Witmer

Contact email address* Craig.Witmer@kernmedical.com

Street address* 1700 Mount Vernon Ave.

City* Bakersfield

State* CA

Postal code* 93306-4018-

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 661-326-5108

Tax ID

** indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Craig Last Witmer
Contact email address* Craig.Witmer@kernmedical.com
Street address* 1700 Mount Vernon Ave.
City* Bakersfield
State* CA
Postal code* 93306-4018-
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 661-326-5108

Language preference. Choose the language for notices. English
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
** indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Last
Contact email address*
Phone*

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
** indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* CDW Logistics, Inc.
Street address (PO boxes will not be accepted)* 200 N. Milwaukee Avenue
City* Vernon Hills
State* IL
Postal code* 60061
Country* United States
Contact name* Brent Cameron
Phone* 847-465-6000
Contact email address* brenecam@cdw.com
** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

| |
|---|
| <p>Signature* _____</p> <p>Printed name*</p> <p>Printed title*</p> <p>Date*</p> |
|---|

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
 - (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. *Financing elections.*

Is a purchase under this Enrollment being financed through MS Financing? Yes, No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Physically Submitted

Amendment to Contract Documents

Enrollment Number

5-0000006279642

These amendments are entered into between the parties identified on the attached program signature form. They amend the Enrollment or Agreement identified above. All terms used but not defined in these amendments will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment (Indirect) Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate's Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate's Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate's Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

| SKU Number | SKU Description | Existing Quantity | Incremental quantities |
|------------|---|-------------------|------------------------|
| MQX-00001 | EntMobandSecE5fromSAGCC ShrdSvr ALNG SubsVL MVL PerUsr | | 1000 |
| U4S-00002 | O365GCCE1 ShrdSvr ALNG SubsVL MVL PerUsr | 150 | 850 |
| LK3-00001 | AudioConfGCC ShrdSvr ALNG SubsVL MVL PerUsr | 150 | 100 |
| MRC-00001 | AzureATPUsersGCC ShrdSvr ALNG SubsVL MVL AddOn toEMSE5GCC | | 1000 |
| MRA-00001 | CloudAppSecGCC ShrdSvr ALNG SubsVL MVL AddOn toEMSE5GCC | | 1000 |
| MQZ-00001 | EntMobandSecE5FullKGCC ShrdSvr ALNG SubsVL MVL PerUsr | | 2000 |
| 3KS-00001 | O365GCCF3 ShrdSvr ALNG SubsVL MVL PerUsr | | 2000 |
| | | | |
| | | | |
| | | | |



Enterprise Enrollment MCAS, MDATP in GCC US SLG Amendment ID M626

The parties agree that the Enrollment is amended to add the following terms that shall apply when Government Partner or Enrolled Affiliate Reseller orders the components listed below for an Enrolled Affiliate that is a member of the Community:

1. **The following new Section is added to the Enrollment:**

Applicable Terms. Microsoft Cloud App Security (MCAS) and Azure Advanced Threat Protection (AATP) are commercial products and therefore are subject to commercial terms and conditions. These services (the relevant skus of which are listed in the table below) will be provisioned in the public commercial cloud whether or not such components have “GCC” in the sku number and/or service name. While these services can be accessed from an Office 365 Government Community Cloud (“GCC”) tenant, the security controls and data commitments related to these services are described in the current System Security Plan (SSP) for the Azure Commercial FedRAMP High ATO and in the Online Services Terms, and not in the SSP for the Office 365 GCC FedRAMP ATO. If your GCC tenant is provisioned in the United States, Customer Data will be stored at rest in the United States. These services do not meet all of the other Office 365 GCC compliance attributes (e.g., access by U.S. screened personnel, and support for CJIS and IRS 1075).

| Product | SKU |
|---|-----------|
| AzureATPUsersGCC ShrdSvr ALNG SubsVL MVL AddOn toEMSE5GCC | MRC-00001 |
| CloudAppSecGCC ShrdSvr ALNG SubsVL MVL AddOn toEMSE5GCC | MRA-00001 |

Enterprise Enrollment

Special Pricing for use of Firstline Worker Scenario

Amendment ID M591

The parties agree that the following new sections are added to the Enrollment:

This amendment allows Enrolled Affiliate to purchase the SKUs listed in the table below for their licensed users who qualify as the Firstline Workers as defined in Microsoft Product Terms.

| SKU | Item Name | Product Family |
|-----------|---|------------------------------------|
| MQZ-00001 | EntMobandSecE5FullKGCC ShrdSvr ALNG SubsVL MVL PerUsr | Ent Mob and Security E5 Full K GCC |
| | | |
| | | |
| | | |

Except for changes made by these amendments, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in these amendments and any provision in the Enrollment or Agreement identified above, these amendments shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

| | | | |
|--|--|------|---|
| (M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(WW)(ENG)(Oct2020)(IU).docx | | M97 | B |
| (M626)EnrAmend(MCAS,MDATPinGCCUSSLG)(WW)(ENG)(Oct2019)(IU).docx | | M626 | B |
| (M591)EnrAmend(SpecialPricingforuseofFirstlineWorkerScenario)(WW)(ENG)(Nov2020)(IU).docx | | M591 | B |



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

December 9, 2020

Subject: Proposed service agreement with Siemens Medical Solutions USA, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

In 2010, Kern Medical entered into the original service agreement with Siemens Medical Solutions USA, Inc. (Siemens) to provide service including preventive maintenance and repairs for its Siemens MRI machine. In 2014, the term of the agreement was extended through December 15, 2020 and services including preventative maintenance and repairs for the Siemens CT machine was added to the agreement at that time. As the recent extension is set to expire it is recommended that we extend coverage through the remaining life of each piece of equipment.

The agreement extends service coverage on the CT machine through December 31, 2023, at which time Siemens considers the equipment end of life and will no longer provide services. The agreement also extends service coverage on the MRI machine through December 31, 2024, at which time Siemens considers the equipment end of life and will no longer provide services. The cost of the agreement is \$282,358 for the first three years and will decrease to \$117,091 in the year four after service expires for the CT machine. These annual amounts are subject to increase due to inflation after each 12-month period and the maximum payable of \$1,050,000 reflects those potential increases through the extended term of the agreement of December 31, 2024.

In addition to preventive maintenance and repairs, the agreement provides for parts and labor associated with repairs and establishes coverage time frames, response thresholds and allows for remote monitoring troubleshooting through VPN connection. As the equipment is nearing end of life the need for service calls has increased and this service helps to protect against extended downtime or unanticipated repairs.

Therefore, it is recommended that your Board approve the proposed service agreement with Siemens Medical Solutions, Inc. in an amount not to exceed \$1,050,000 through December 31, 2024.



District / Sales Office

SIEMENS MEDICAL SOLUTIONS USA, INC.
725 Potter Street
Berkeley, CA 94710

Attn: Sean Carter
Phone: (916) 788-2946
Fax: (916) 788-2948
Email: sean.carter@siemens-healthineers.com

Sold To

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

Bill To

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

Payer

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

Siemens Medical Solutions USA, Inc. is pleased to submit the following proposal for service and maintenance described herein at the stated prices and terms. Subject to your acceptance of the terms and conditions on the face and general terms and conditions Document hereof.

| Item # | System Name | Functional Location | Service Agreement | Contract Duration | Warranty Period Price | Partial Year Price | Annual Price |
|--------|-------------------------|---------------------|-------------------|-------------------------|-----------------------|--------------------|--------------|
| 1 | SOMATOM Sensation 64 | 400-177034 | Select contract | 12/16/2020 - 12/31/2023 | \$0 | \$6,950 | \$156,384 |
| 2 | syngo Multimodality WP | 400-300248 | Gold contract | 12/16/2020 - 12/31/2023 | \$0 | \$395 | \$8,883 |
| 3 | MAGNETOM Symphony syngo | 400-176885 | Select contract | 12/16/2020 - 12/31/2024 | \$0 | \$5,204 | \$117,091 |

Proactive Service Plans: (Pinnacle, Select, Essential) Notwithstanding anything to the contrary contained in this Agreement, remote access to the Equipment identified above will be established through a broadband internet-based connection to the Siemens teamplay network. The Equipment must remain connected to the teamplay network for the Contract Duration. Failure to maintain such connection will result in increased fees in accordance with the terms and conditions below.

Includes:
Parts and/or Labor to the extent shown in Exhibit A.
System Updates.
Access to Siemens Customer Care Center for technical telephone support (remote diagnostics, if available to the site and the equipment).

Excludes:
Parts defective due to "acts of God", abuse, misuse, neglect, thermal and shock. Specialty components, including, but not limited to: Glassware, Flat Detectors, Consumables, Transducers, MRI coils, SPECT and PET sources (unless purchased as an option). Non-Siemens components and accessories (such as VCR, injector, laser printer, MR surface coils, tables/table tops, chiller, UPS, etc.) unless specifically identified in Exhibit A.

Notes:
The chilled water supply is an integral part of the MR Equipment covered by this Agreement and is critical for the proper operation of the Equipment and for minimizing the loss of cryogenes and preventing damage to the MR and its components. Servicing of the chiller by vendors contracted and certified by Siemens is the recommended path for reducing downtime, potential cryogen losses and damage to the MR and its components. Cryogenes lost on the associated MR Equipment and any other damages caused to the MR and any of its components due to issues with chillers not serviced by Siemens under a Siemens service contract or due to other excluded causes (e.g., interruption of power, force majeure occurrences, Customer misuse or negligence, etc.) are not covered under this Agreement and will be replaced and/or repaired at the Customer's sole cost and expense at the current negotiated rate for Siemens "Service By Request" (Time and Materials) customers.

Terms of payment: Net 30 days from invoice date..



Proposal # 1-UBVCWA

Customer's Acceptance

Siemens Medical Solutions USA, Inc.

(By) (Signature)

(By) (Signature)

Name and Title

Sean Carter Service Sales Executive

Name and Title

Acceptance Date _____

Customer P.O. # _____ (enter P.O. # for contract billing; if not provided, Siemens will invoice without P.O.)
_____ (Initial if P.O. is required but will be issued prior to warranty expiration)
Standing P.O. # _____ (for T&M charges outside of the contract)

This service agreement proposal is valid for 30 days. Agreement becomes effective upon customer signature and Siemens acceptance. Customer's acceptance acknowledges receipt and agreement to Terms and Conditions set forth on all pages of this proposal.

APPROVED AS TO FORM
Legal Services Department

By Kevin S. James
Kern County Hospital Authority

Exhibit A

Item #1:

| | | | |
|--|--|------------------------------------|--------------------------------------|
| Equipment: | SOMATOM Sensation 64 | | |
| Equipment Location: | KERN MEDICAL CENTER | | |
| Address: | 1700 MT VERNON AVE, BAKERSFIELD, CA 93306 | | |
| Functional Location: 400-177034 | Service Quote Nr: 1-T4C4Z0 Rev 2 | Equipment Quote Nr: | Payment Frequency: Monthly |
| Service Agreement: Select contract | Contract Start: 12/16/2020 | Contract End: 12/31/2023 | Annual Price: \$156,384 |

(See Glossary pages for detailed description of items listed below.)

| Coverage applies during the Contract Period as indicated: | Contract Period |
|---|-----------------------|
| Principal Coverage Period | 08:00am - 10:00pm M-F |
| Annual Exam Allowance | Unlimited |
| Uptime Guarantee | 98% |
| Phone Response | 30 min |
| On-Site Response | 4 hours |
| Parts Order Requirement | noon |
| Parts Delivery | Same Day |
| X-Ray Tube Coverage Unlimited | ✓ |
| Real Time Monitoring M-F 7am-10pm ET | ✓ |
| Guardian PRO CT | ✓ |
| CT Detector Coverage | ✓ |
| Safety Checks | ✓ |
| Planned Maintenance | ✓ |
| Quality Assurance | ✓ |
| Updates | ✓ |
| Technical Phone Support | ✓ |
| Labor | ✓ |
| Travel | ✓ |
| Smart Remote Services | ✓ |
| General Spare Parts Coverage | ✓ |
| Application Hotline Phone Support | ✓ |
| LifeNet Access | ✓ |
| No Consumable Coverage | ✓ |
| Enhanced Virtual Learning Sub | Qty 1 |
| Accredited Self Study Program | Qty 1 |
| PM's performed outside PCP weekdays | ✓ |
| teampay Basic | ✓ |
| Continuous Effort | ✓ |

The Options or Alternatives listed below will be included in the contract as indicated, only if initialed:

| Opt/Alt | Option / Alternative | Add to Contract Annual Price | Initial |
|---------|----------------------|------------------------------|---------|
| Opt | Consumable Coverage | \$2,750 | |

This pricing is only valid if signed prior to the expiration of your existing service contract.

No further Options or Alternatives are included in the above listed equipment.



Item #2:

| | | | |
|--|--|------------------------------------|--------------------------------------|
| Equipment: | syngo Multimodality WP | | |
| Equipment Location: | KERN MEDICAL CENTER | | |
| Address: | 1830 FLOWER ST, BAKERSFIELD, CA 93305 | | |
| Functional Location: 400-300248 | Service Quote Nr: 1-T4C4Z0 Rev 2 | Equipment Quote Nr: | Payment Frequency: Monthly |
| Service Agreement: Gold contract | Contract Start: 12/16/2020 | Contract End: 12/31/2023 | Annual Price: \$8,883 |

(See Glossary pages for detailed description of items listed below.)

| Coverage applies during the Contract Period as indicated: | Contract Period |
|---|-----------------------|
| Principal Coverage Period | 08:00am - 06:00pm M-F |
| Uptime Guarantee | 97% |
| Phone Response | 30 min |
| On-Site Response | 4 hours |
| Parts Order Requirement | noon |
| Parts Delivery | Same Day |
| Updates | ✓ |
| Technical Phone Support | ✓ |
| Labor | ✓ |
| Travel | ✓ |
| LifeNet Access | ✓ |
| Safety Checks | ✓ |
| Planned Maintenance | ✓ |
| Quality Assurance | ✓ |
| Application Hotline Phone Support | ✓ |
| Smart Remote Services | ✓ |
| General Spare Parts Coverage | ✓ |

This pricing is only valid if signed prior to the expiration of your existing service contract.

No further Options or Alternatives are included in the above listed equipment.



Item #3:

| | | | |
|--|--|------------------------------------|--------------------------------------|
| Equipment: | MAGNETOM Symphony syngo | | |
| Equipment Location: | KERN MEDICAL CENTER | | |
| Address: | 1830 FLOWER ST, BAKERSFIELD, CA 93305 | | |
| Functional Location: 400-176885 | Service Quote Nr: 1-T4C4Z0 Rev 2 | Equipment Quote Nr: | Payment Frequency: Monthly |
| Service Agreement: Select contract | Contract Start: 12/16/2020 | Contract End: 12/31/2024 | Annual Price: \$117,091 |

(See Glossary pages for detailed description of items listed below.)

| Coverage applies during the Contract Period as indicated: | Contract Period |
|---|---|
| Principal Coverage Period | 08:00am - 10:00pm M-F |
| Annual Exam Allowance | 2,500 exams per year/Overage Charge / \$44 per exam |
| Uptime Guarantee | 98% |
| Phone Response | 30 min |
| On-Site Response | 4 hours |
| Parts Order Requirement | noon |
| Parts Delivery | Same Day |
| Mobile site Fixed Location | ✓ |
| Safety Checks | ✓ |
| Planned Maintenance | ✓ |
| Quality Assurance | ✓ |
| Updates | ✓ |
| Labor | ✓ |
| Smart Remote Services | ✓ |
| Travel | ✓ |
| LifeNet Access | ✓ |
| Application Hotline Phone Support | ✓ |
| Technical Phone Support | ✓ |
| teampay Basic | ✓ |
| ACR Support Package MR | ✓ |
| Accredited Self Study Program | Qty 1 |
| Enhanced Virtual Learning Sub | Qty 1 |
| Real Time Monitoring M-F 7am-10pm ET | ✓ |
| Guardian Pro MR | ✓ |
| Continuous Effort | ✓ |
| General Spare Parts Coverage | ✓ |
| No Consumable Coverage | ✓ |
| PM's performed outside PCP weekdays | ✓ |
| Coil Coverage | ✓ |
| MMA and Helium | ✓ |
| No Chiller Coverage | ✓ |

Exam definition: An "Exam" is a range of measurements pertaining to a specific clinical question, generally as part of a referral. An Exam includes all series for one specific part of the patient's body.

Calculation of Exams and Overage Fees will be based on a utilization report from teampay. The unit of measure will be based on the number of patient Exams as set forth in the teampay utilization report. A 3% allowable Exam overage is permitted before Customer will incur any overage fees, to allow for Exam count differences. Siemens shall invoice Customer at the end of each annual period for any overage Exam fees in accordance with the Exam Rate charge set forth in this Agreement. Payments are due net 30 days from the invoice date. The Equipment must remain connected to the teampay network for the Contract Duration. Should Customer fail to maintain such connection, other than as a result of a Force Majeure occurrence, at any time during the Contract Duration, [pricing will be increased to Siemens' then-current pricing for unlimited exams.]



Terms:

Allowance Option. If Customer chooses the Allowance Option, then Customer may increase the Exam Allowance threshold to the next higher tier and increase the annual charge by the amount indicated in the Option/Alternative items by notifying Siemens in writing at least thirty (30) days before the start of each annual period. Siemens will then adjust the Annual Agreement Price accordingly. Should Customer elect to increase the Exam Allowance to this Option/Alternative at any time other than the start of a new annual period, the adjustment shall be retroactive to the start of the current annual period, and Siemens shall invoice Customer for the difference in the Annual Agreement Price for the previous months in the current annual period and adjust the Annual Agreement Price for the remaining months in the current annual period. Invoices for retroactive adjustments shall be due net 30 days from the invoice date. The Exam Allowance for a period of less than one year will be calculated by dividing the contracted annual Exam Allowance (e.g., 1800 exams) by 360 days and then multiplying by the number of days from period start date until contract expiration.

Pay Per Exam Option. If Customer chooses the Pay Per Exam option, then Siemens shall calculate the number of Exams performed during each month and shall invoice Customer on a monthly basis in accordance with the price per Exam charge set forth in this Agreement. To allow for Exam count differences, Customer shall not be billed for a 3% overage of the total monthly Exam count as calculated by Siemens. Payments are due net 30 days from the invoice date.

The Options or Alternatives listed below will be included in the contract as indicated, only if initialed:

| Opt/ Alt | Option / Alternative | Add to Contract Annual Price | Initial |
|-------------|---|---------------------------------|---------|
| Alt | 3,000 exams per year/Overage Charge / \$37 per exam | \$15,915 | |
| Alt | Unlimited Exams | \$23,735 | |
| Opt | Consumable Coverage | \$2,250 | |

Exam Allowance Periods:

| Period: | Start Date: | End Date: |
|---------|-------------|------------|
| 1 | 12/16/2020 | 12/15/2021 |
| 2 | 12/16/2021 | 12/15/2022 |
| 3 | 12/16/2022 | 12/15/2023 |
| 4 | 12/16/2023 | 12/15/2024 |
| 5* | 12/16/2024 | 12/31/2024 |

This pricing is only valid if signed prior to the expiration of your existing service contract.

No further Options or Alternatives are included in the above listed equipment.

Glossary

| Deliverables | Description |
|--|---|
| \$37 per exam <i>(Alternative)</i> | With an Exam Allowance contract, this is the rate that each exam over the allowance will be billed at. For the Pay Per Exam contract, this is the rate that each exam is billed at. |
| \$44 per exam | With an Exam Allowance contract, this is the rate that each exam over the allowance will be billed at. For the Pay Per Exam contract, this is the rate that each exam is billed at. |
| 2,500 exams per year/Overage Charge | Up to 2,500 exams per year are included in this contract. Exam overage fees will be incurred at the rate described in Exhibit A once 2,500 is exceeded. |
| 3,000 exams per year/Overage Charge <i>(Alternative)</i> | Coverage includes up to 3,000 patient exams per year in this contract. Exam overage fees will be incurred at the rate described in Exhibit A once 3,000 is exceeded. |
| Accredited Self Study Program | This accredited self-study program provides the latest trends in imaging. These hot topic review articles will be mailed directly to your institution and will provide up to 24 Category A Continuing Education Credits fully recognized by ARRT and NMTCB. A comprehensive study guide accompanies each article to help ensure focus on technologist-relevant information. |
| ACR Support Package MR | This ACR accreditation assistance package includes a remotely executed pre-submission system quality check to evaluate the readiness of one applicable Siemens system to acquire images for ACR accreditation. Supporting deliverables include an accreditation eBook aligned to the applicable Siemens system and Siemens operating system nomenclature, workflow templates and/or phantom acquisition protocols containing imaging acquisition tips relative to the ACR accreditation process. Additionally, unlimited technical and clinical applications phone support pertaining to the system readiness and deliverables described above, performed by the Customer Care Center during normal hours of operation M-F 8-8PM EST during the term of this engagement agreement. Customer is responsible for applying for accreditation, and all tasks and costs related to the application and acquiring the ACR phantom, collecting images, working with and communicating with the ACR. Numerous factors determine whether a site receives ACR accreditation. Therefore, Siemens does not guarantee a site will receive ACR accreditation. |
| Application Hotline Phone Support | Siemens Customer Care Center Clinical Applications Phone Support is provided with this contract during modality specified hours, call 1-800-888-7436 with your questions and to receive direct access to a Clinical Education Specialist |
| Coil Coverage | Covers the repair and replacement of Siemens coils (Third Party coils are not covered, i.e. Invivo 4 Channel wrist array, lower extremity, knee array, 7-channel Breast, 4 ch. Small Extremity coil, 8-channel Shoulder) If your service contract has a parts allowance, the coils will be deducted from the parts allowance. If you do not have parts coverage, repair or replacement of a coil will be a billable charge. |
| Consumable Coverage <i>(Optional)</i> | Siemens will supply at its own expense, consumables; such as but not limited to, batteries, leads, padding, storage media, cassettes, etc. Full list of consumables covered can be found on teamplay Fleet customer portal: fleet.siemens-healthineers.com Excludes parts defective due to "acts of God", abuse, misuse, neglect, thermal and shock. Excludes specialty components, including, but not limited to: Glassware, Flat Detectors, Transducers, MRI coils, SPECT and PET sources (unless purchased as an option). Excludes non-Siemens components and accessories (such as VCR, injector, laser printer, MR surface coils, tables/table tops, chiller, UPS, etc.) unless specifically identified in Exhibit A. |
| Continuous Effort | In room-down/system-down situations, on-site work will continue past the contract PCP, 7 days a week, at no additional charge until the system is repaired, by not later than 1:00 a.m. local time. Continuous Effort applies only when a CSE has been on-site for at least one (1) hour prior to the end of the PCP. In such a case, Continuous Effort shall begin at the end of the PCP and end at 1 a.m. the following calendar day. Continuous Effort shall resume no sooner than seven (7) hours later, and may resume at a later time with the consent of the Customer. |
| CT Detector Coverage | Repair and maintenance coverage of UFC (Ultra Fast Ceramic) multislice spiral CT Detector. |
| Enhanced Virtual Learning Sub | This 12 month multi-modality subscription provides access for imaging professionals to receive additional educational content. This high-value content includes step-by-step performance-enhancing videos, a minimum of 6 one-hour on-demand webinars covering current clinical and industry topics, and access for up to 24 CEUs via your PEPconnect Virtual Wallet. The on-demand webinars are recorded and posted on a regular basis over the term of the subscription and are available for unlimited viewing once posted. Imaging professionals must be logged into PEPconnect (Siemens' online learning platform) to be eligible to receive the CEUs. PEPconnect provides access to all online and virtual training with a wide variety of product-specific, clinical and job-relevant courses. This educational offering must be completed 12 months from purchase date. If training is not completed within the applicable time period, Siemens obligation to provide the training will expire without refund. |
| General Spare Parts Coverage | Replacement of standard spare parts. Excludes high-vacuum components, consumables, Shock wave components, Transducers, TEE's and Specialty Probes, Flat Panel Detectors, MMLC, and Waveguides. Excludes non-Siemens parts unless specifically identified in Exhibit A. |

| Deliverables | Description |
|--------------------------------------|--|
| Guardian PRO CT | Remote, proactive monitoring of system performance from the Customer Care Center, for the purpose of resolving abnormalities before malfunctions occur. Includes evaluation and telephone response to critical situations within 15 minutes. Requires SRS. See Exhibit A for a complete list of deliverables. |
| Guardian Pro MR | Remote, proactive monitoring of system performance from the Customer Care Center, for the purpose of resolving abnormalities before malfunctions occur. Includes evaluation and telephone response to critical situations within 15 minutes. Requires SRS. See Exhibit A for a complete list of deliverables. |
| Labor | Unlimited coverage of on-site labor during the Principal Coverage Period indicated. Preferred labor rates for billable service outside of Principal Coverage Period (at current prevailing tiered rates). |
| LifeNet Access | teamplay Fleet portal provides most relevant equipment information, including contract duration and service level agreement across your entire institution and multiple locations. Access includes documents, online training courses provided by PEPconnect and smart connection to other teamplay applications across any of Siemens Healthineers imaging, laboratory and software solutions. |
| MMA and Helium | <p>Covers parts and labor associated with maintaining the magnet refrigeration system (CryoCare) and ancillary magnet parts. Included:</p> <ul style="list-style-type: none"> - Coverage of burst disc, vent kit, valves, MSUP, Adsorber, helium compressor, high pressure gas lines and cold head. - Performance of the Emergency Run Down Unit (ERDU) test in accordance with OEM specifications. - The supply of cryogenics (liquid helium) and labor to maintain magnet levels according to OEM guidelines. <p>If the magnet refrigeration system shuts down due to issues with power quality, chilled water, or other external factors, then cryogen usage will increase and additional charges may apply for cryogen refills and any resulting damages caused to system components. Cryogen fills to recover from a customer caused quench will be chargeable. Customer initiated helium fills that exceed factory recommended target levels for operation are also excluded, as are any expedited fees for short notice fills if required by the customer.</p> <p>Excluded: Magnet system replacement.</p> |
| Mobile site Fixed Location | Mobile site Fixed Location Coverage. |
| No Chiller Coverage | Upon selection not to purchase chiller coverage for the associated MR equipment covered by this Agreement, the Customer agrees that all repair costs for service and maintenance of the chiller will be the Customer's responsibility, as well as any service, maintenance, or cryogen refills for the MR equipment due to issues with the chiller. |
| No Consumable Coverage | Upon selection to not have consumable coverage, customer agrees to supply at his/her own expense consumables, such as but not limited to, batteries, leads, padding, storage media, cassettes, etc. Full list of consumables covered can be found on teamplay Fleet customer portal: fleet.siemens-healthineers.com . |
| On-Site Response | Siemens guarantees on-site CSE arrival within a specific time period (see Exhibit A) after a call for service has been placed with the Siemens Customer Care Center. This on-site response applies in system/room down situations only. (See Response Time Guarantee in General Terms and Conditions for additional information) |
| Parts Delivery | Spare parts arrival for on-site repair of room-down/system-down is typically the Same Day following the time the parts order is submitted. |
| Parts Order Requirement | Parts order must be placed with Siemens by noon (Customer's local time) in order to receive Parts Delivery commitment as specified. |
| Phone Response | A representative from Siemens Healthineers will follow up with the customer within this timeframe to discuss the status of the initial notification. |
| Planned Maintenance | Preventive services carried out in accordance with the equipment's specific maintenance plan. This includes: tracking and scheduling of required maintenance tasks; exchange of wear and tear parts according to maintenance plan; care measures; adjustments to factory specifications; verification of specified performance and functionality; documentation and detailed protocol of system condition. |
| PM's performed outside PCP weekdays | Siemens will coordinate planned maintenance in accordance with the manufacturer's recommendations outside the PCP hours indicated in Exhibit A, on Weekdays only, between the hours of 6AM to 2AM Local Time. |
| Principal Coverage Period | Hours defined in Exhibit A during which agreed-upon services are provided. |
| Quality Assurance | Regular quality assurance tasks and image quality inspections to achieve consistent, high-quality images, are performed to keep the system within the quality specifications as issued by the factory. |
| Real Time Monitoring M-F 7am-10pm ET | Real time event monitoring of a system by a Siemens engineer. Customers will be notified of critical events and action for resolution within 15 minutes of event occurring. Events of non-critical nature will be stored for trending purposes enabling predictive analysis for potential future failures. Siemens will respond to trends and schedule service accordingly. |

| Deliverables | Description | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <p>Safety Checks</p> | <p>Safety Checks are performed to insure compliance with all local and federal guidelines and regulations. This service consists of</p> <ul style="list-style-type: none"> Tracking and scheduling of required tests Mechanical Safety Checks (e.g. mechanical movements etc.) Electrical Safety Checks (e.g. leakage currents, insulation etc.) Reporting of findings and results | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Smart Remote Services</p> | <p>Smart Remote Services – the efficient and comprehensive infrastructure for medical equipment-related remote services – combines high-tech medical engineering with state-of-the-art information technology. Services, which formerly required on-site visits, are now available via data transfer. SRS enables both Core Services (which are included as part of our standard service agreements), as well as optional services (called Enhanced Productivity Services - EPS). A VPN connection is required.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>teampay Basic</p> | <p>teampay is a cloud based solution that provides Customer access to certain metrics on the Equipment and other Siemens imaging systems connected to Customer's network. teampay's Basic applications require the installation of locally installed teampay receiver software with web-based analytics relating to usage data management. The teampay receiver software can be installed on Customer's hardware or virtual machines meeting the minimum hardware requirements.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Technical Phone Support</p> | <p>Access to specialists at the Siemens Customer Care Center for fast diagnosis and technical support is available during Core Modality Hours. Technical support resources will be available outside of Core Modality Hours on an on-call basis during the On-Call Hours specified by modality. Telephone response times cannot be guaranteed outside of Core Modality Hours. All modality hours are listed below (and can also be found on teampay Fleet: fleet.siemens-healthineers.com) and are subject to change.</p> <p>Modality (EST)</p> <table border="0"> <tr> <td colspan="2">AT AX</td> <td>Core Hours</td> <td>7:00a – 7:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">24 x 7 outside Core Modality Hours</td> </tr> <tr> <td colspan="2">AT SU</td> <td>Core Hours</td> <td>8:00a – 6:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">N/A</td> </tr> <tr> <td colspan="2">AT ECS</td> <td>Core Hours</td> <td>8:00a – 6:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">6:00p – 12:00a M-F</td> </tr> <tr> <td colspan="2">CT</td> <td>Core Hours</td> <td>7:00a – 1:00a M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">7:00a – 5:00p Sat – Sun</td> </tr> <tr> <td colspan="2">MI PET</td> <td></td> <td>24 x 7 outside Core Modality Hours</td> </tr> <tr> <td></td> <td>Core Hours</td> <td colspan="2">6:30a – 10:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">7:00a – 3:00p Sat – Sun</td> </tr> <tr> <td></td> <td></td> <td colspan="2">6:30a – 10:00p Holidays</td> </tr> <tr> <td colspan="2">MI SPECT</td> <td>Core Hours</td> <td>7:00a – 8:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">8:00p – 12:00a M-F</td> </tr> <tr> <td></td> <td></td> <td colspan="2">7:00a – 5:00p Sat – Sun</td> </tr> <tr> <td></td> <td></td> <td colspan="2">6:00a – 12:00a Holidays</td> </tr> <tr> <td colspan="2">MI PCL (Preclinical Systems)</td> <td>Core Hours</td> <td>8:00a – 6:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">n/a</td> </tr> <tr> <td colspan="2">MR</td> <td>Core Hours</td> <td>6:30a – 9:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">7:00a – 5:00p Sat</td> </tr> <tr> <td></td> <td></td> <td colspan="2">24 x 7 outside Core Modality Hours</td> </tr> <tr> <td colspan="2">ULT</td> <td>Core Hours</td> <td>7:30a – 8:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">8:00p – 11:00p M-F</td> </tr> <tr> <td></td> <td></td> <td colspan="2">8:00a – 8:00p Sat – Sun</td> </tr> <tr> <td colspan="2">XP RF</td> <td>Core Hours</td> <td>8:00a – 7:00p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">7:00p – 12:00a M-F</td> </tr> <tr> <td></td> <td></td> <td colspan="2">8:00a – 8:00p Sat – Sun</td> </tr> <tr> <td colspan="2">XP WH XPU XP SU</td> <td>Core Hours</td> <td>8:00a – 5:30p M-F</td> </tr> <tr> <td></td> <td>On Call Hours</td> <td colspan="2">5:30p – 12:00a M-F</td> </tr> <tr> <td></td> <td></td> <td colspan="2">8:00a – 8:00p Sat – Sun</td> </tr> </table> | AT AX | | Core Hours | 7:00a – 7:00p M-F | | On Call Hours | 24 x 7 outside Core Modality Hours | | AT SU | | Core Hours | 8:00a – 6:00p M-F | | On Call Hours | N/A | | AT ECS | | Core Hours | 8:00a – 6:00p M-F | | On Call Hours | 6:00p – 12:00a M-F | | CT | | Core Hours | 7:00a – 1:00a M-F | | On Call Hours | 7:00a – 5:00p Sat – Sun | | MI PET | | | 24 x 7 outside Core Modality Hours | | Core Hours | 6:30a – 10:00p M-F | | | On Call Hours | 7:00a – 3:00p Sat – Sun | | | | 6:30a – 10:00p Holidays | | MI SPECT | | Core Hours | 7:00a – 8:00p M-F | | On Call Hours | 8:00p – 12:00a M-F | | | | 7:00a – 5:00p Sat – Sun | | | | 6:00a – 12:00a Holidays | | MI PCL (Preclinical Systems) | | Core Hours | 8:00a – 6:00p M-F | | On Call Hours | n/a | | MR | | Core Hours | 6:30a – 9:00p M-F | | On Call Hours | 7:00a – 5:00p Sat | | | | 24 x 7 outside Core Modality Hours | | ULT | | Core Hours | 7:30a – 8:00p M-F | | On Call Hours | 8:00p – 11:00p M-F | | | | 8:00a – 8:00p Sat – Sun | | XP RF | | Core Hours | 8:00a – 7:00p M-F | | On Call Hours | 7:00p – 12:00a M-F | | | | 8:00a – 8:00p Sat – Sun | | XP WH XPU XP SU | | Core Hours | 8:00a – 5:30p M-F | | On Call Hours | 5:30p – 12:00a M-F | | | | 8:00a – 8:00p Sat – Sun | |
| AT AX | | Core Hours | 7:00a – 7:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 24 x 7 outside Core Modality Hours | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| AT SU | | Core Hours | 8:00a – 6:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| AT ECS | | Core Hours | 8:00a – 6:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 6:00p – 12:00a M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CT | | Core Hours | 7:00a – 1:00a M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 7:00a – 5:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MI PET | | | 24 x 7 outside Core Modality Hours | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Core Hours | 6:30a – 10:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 7:00a – 3:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 6:30a – 10:00p Holidays | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MI SPECT | | Core Hours | 7:00a – 8:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 8:00p – 12:00a M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 7:00a – 5:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 6:00a – 12:00a Holidays | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MI PCL (Preclinical Systems) | | Core Hours | 8:00a – 6:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | n/a | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MR | | Core Hours | 6:30a – 9:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 7:00a – 5:00p Sat | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 24 x 7 outside Core Modality Hours | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ULT | | Core Hours | 7:30a – 8:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 8:00p – 11:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 8:00a – 8:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| XP RF | | Core Hours | 8:00a – 7:00p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 7:00p – 12:00a M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 8:00a – 8:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| XP WH XPU XP SU | | Core Hours | 8:00a – 5:30p M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | On Call Hours | 5:30p – 12:00a M-F | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | 8:00a – 8:00p Sat – Sun | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Travel</p> | <p>Includes travel time for Customer Service Engineer to and from Customer's site. Subject to change to reflect currently prevailing rates, if occurring outside of the Principal Coverage Period indicated.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| Deliverables | Description |
|--------------------------------------|---|
| Unlimited Exams | Coverage includes an unlimited number of Patient Exams per year. |
| Updates | Modifications or reliability enhancements to equipment includes two types: Mandatory (safety and performance-related update instructions) and Non-mandatory (reliability-related service instructions). Labor is included during the hours of PCP. Does not include enhancements to the operating systems or additional functionality. |
| Uptime Guarantee | Siemens guarantees that the Equipment will function at the minimum Uptime Performance level as specified on Exhibit A. System availability is calculated over a 12-month period, calculated over the Principal Coverage Period. Siemens Remote Services (SRS) connection via VPN broadband is required. (See Uptime Guarantee of General Terms and Conditions for further details.) |
| X-Ray Tube Coverage Unlimited | Warranty - Unlimited tube coverage provided on all CT x-ray tubes. After warranty - Annual x-ray tube coverage is unlimited scan seconds. |

Siemens Medical Solutions USA, Inc. General Terms and Conditions

1. Scope

For the term set forth on the first page hereof under the heading "Contract Duration", Siemens will provide (i) remedial maintenance service on the equipment described on the preceding pages hereof (the "Equipment") when requested by the Customer, as well as planned maintenance inspections, when scheduled, as further described in the Glossary section attached hereto, in order to keep the Equipment operating in accordance with the manufacturer's specifications, and (ii) any training courses and/or other educational offerings described in Exhibit A and the Glossary. Siemens will make every effort to respond to service calls at a mutually agreed upon arrival time consistent with the provisions cited in Section 2. In connection with the provision of Equipment maintenance services, Siemens may take photographs or other images of the Equipment or components thereof in order to expedite the completion of repairs, provided that any such photographs shall not include any patients, employees or agents of the Customer and further provided that such photographs and images will only be used in order for Siemens to carry out its duties and responsibilities hereunder.

In the event that (i) the term of this Agreement does not include the Equipment warranty period (as indicated on the first page hereof under the heading "Contract Duration"), or (ii) the term of this Agreement does not commence immediately upon the expiration of the Siemens warranty, or (iii) the Equipment was serviced prior to commencement of the term by anyone other than Siemens or an authorized Siemens dealer or service provider, or (iv) the Equipment was moved from its original location or is not connected to its original power supply (other than portable or mobile Equipment), then the Equipment is subject to inspection by Siemens to determine if it is in good operating condition prior to the commencement of services under this Agreement. Any inspection as well as any repairs or adjustments deemed necessary by Siemens during such inspection shall be made at Siemens' per-call rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the commencement of service under this Agreement.

If this Agreement includes any training courses or other educational offerings, such training courses or other offerings may consist of on-site training or consultation at the Customer site, a Siemens training facility or via conference call or net meeting, self-study or computer based training, or other arrangements, as further described in Exhibit A and the Glossary. In some cases, tuition charges will cover travel and lodging for off-site training, and in other cases Customer will be responsible for all travel and lodging costs. Details of the training are provided on Exhibit A and the Glossary.

2. Principal Coverage Period (PCP)

Service and maintenance will be provided during the principal coverage period ("PCP") as defined on Exhibit A, excluding the following holidays: New Years Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day. If one of the foregoing holidays falls on a Saturday, then the holiday will be observed on the previous Friday, and if the holiday falls on a Sunday, the holiday will be observed on the following Monday. Unless an extended hours coverage option has been selected, labor and travel required outside the PCP will be charged at Siemens' per-call rates and terms then in effect.

3. Replacement Parts

Siemens will supply at its own expense, necessary parts, except as indicated in the Glossary section, provided replacement of the parts is required because of normal wear and tear or otherwise deemed necessary by Siemens and further provided that the Siemens-manufactured parts are available from the factory. All Parts will be new, standard parts, or used, reworked or refurbished parts that comply with applicable performance and reliability specifications. Exchange parts removed from the Equipment shall become the property of Siemens unless such exchange parts constitute "hazardous wastes", "hazardous substances", "special wastes" or other similar materials, as such terms are defined by any federal, state or local laws, rules or regulations, in which case, at the option of Siemens, the exchange parts shall remain the property of the Customer and shall be disposed of by the Customer in strict compliance with all applicable laws, rules and regulations.

4. Planned Maintenance (PM)

Planned maintenance will be carried out according to the manufacturer's recommended schedule. Planned maintenance generally includes checking mechanical and electrical safety, lubrication, functional testing and adjusting for optimum performance as specified in the detailed planned maintenance work plan.

5. Software Maintenance

Whenever the Equipment covered by this Agreement utilizes Siemens' operating system software, Siemens will provide all maintenance and commercially available updates for such operating system software as part of this Agreement. Such updates will solely enhance previously purchased capacities of the Equipment. Operating system software upgrades that provide new features or capabilities or that require hardware changes will be offered to Customer when commercially available and at purchase prices established by Siemens. In addition, some upgrades may require applications training performed by Siemens' personnel that will be offered at Siemens' rates and terms then in effect. Siemens retains the sole right to determine whether an upgrade requires such training.

Nothing in this Agreement shall in any way grant to Customer any right to or license in any diagnostic service software utilized by Siemens in servicing the Equipment. Such service software is and remains the property of Siemens and is available to Customer pursuant to the terms and conditions of a separate diagnostic materials license agreement, which may require payment of a license fee. This service software shall be disabled by Siemens upon cancellation or termination of this Agreement.

6. Equipment; Location; Remote Access

The Equipment covered under this Agreement is limited to the Siemens furnished Equipment described on the face sheet(s). The Equipment shall not be moved to another location unless Customer obtains the prior written consent of Siemens, subject to the following exceptions (i) portable Equipment (e.g., Ultrasound equipment, but not including any equipment that is housed in a mobile vehicle, van or trailer) may be moved to other locations within the same facility, so long as the Customer informs Siemens of the location of the Equipment when Siemens is scheduled to provide on-site service; (ii) if Equipment is located in a trailer, van or other form of mobile vehicle, the Equipment may be moved from the Equipment Location identified on Exhibit A, provided, however, that Siemens shall not be required to service such Equipment, and the Response Time and Uptime Performance Guarantees (if any) or Availability Commitment (if applicable) shall not apply, if either (a) the Customer does not notify Siemens at least one (1) month in advance of the Equipment's mobile route, or (b) the Equipment is moved more than 25 miles from the original Equipment Location; and (iii) if fixed Equipment is moved to any other location within the Customer's facility, then either (a) the Customer will engage Siemens to relocate the Equipment, at Siemens' then current rates and charges, or (b) if Siemens does not perform the services necessary to relocate the Equipment, then Siemens may suspend services with respect to such Equipment until Siemens performs an inspection of the Equipment, at the Customer's cost, to determine if any repairs are necessitated as a result of any such relocation (in which case the Customer shall be separately charged for such repairs, including parts and labor, at Siemens' rates and charges then in effect).

Siemens service personnel will be given full and free access to the Equipment to perform inspections and service/maintenance on the Customer's premises, and will make specific appointments for such maintenance. If the Equipment is not made available at the appointed time, waiting time beyond a reasonable allowance will be charged at Siemens' per-call rates and terms then in effect.

Customer shall provide Siemens with both on-site and remote access to the Equipment. The remote access shall be provided through the Customer network as is reasonably necessary for Siemens to provide services under this Agreement. Remote access will be established through a broadband internet based connection to either a Customer owned or Siemens provided secure end-point. The method of connection will be a Peer-to-Peer VPN IPsec tunnel (non-client based) with specific inbound and outbound port requirements.

In the event the Customer fails to provide or maintain the remote access connection for any Proactive Service Agreement (e.g., Pinnacle, Select, Essential, as identified in Exhibit A), or any Signature, Benchmark, or Balance Service Agreement with a volume-based deliverable as defined in Exhibit A, then Siemens shall have the option to terminate this Agreement. In addition, in accordance with the terms of Section 22 hereof, any Uptime Performance Guarantee or Availability Commitment (if applicable) shall be void if the remote access connection is not provided and available 24 hours per day, 7 days a week.

7. Agreement Term; Price; Payment Terms

This Agreement shall be in effect for the period stated on the first page of this Agreement.

For the basic services to be provided by Siemens under the terms of this Agreement, Siemens shall send invoices to the Customer and payments shall be made in advance based on the payment frequency shown in Exhibit A under "Payment Frequency".

Invoices for all amounts due under this Agreement shall be sent to the Customer by regular U.S. mail, postage prepaid, at the address set forth on the first page hereof under "Bill To".

After the first year of the term of the Equipment coverage period set forth in the Agreement, Siemens may increase the Annual Agreement Price no more than once every twelve (12) months based upon the percentage increase in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items ("CPI"), as published by the United States Department of Labor, Bureau of Labor Statistics. The percentage increase in the CPI shall be measured over the period since the commencement of the Agreement (in the case of the first price increase) or since the effective date of the last price increase (in the case of any subsequent price increases). Siemens shall provide the Customer with no less than thirty (30) days written notice of any price increase.

All payments to be made by Customer under this Agreement are due net thirty (30) days from the invoice date.

8. Causes for Exclusion/Separate Charges

This Agreement specifically excludes labor, parts and expenses necessary to repair Equipment:

- damaged by fire, accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 17 hereof, or by the Customer's failure to operate the Equipment in accordance with the manufacturer's instructions or to maintain the recommended operating environment and line conditions;
- defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Equipment by the Customer or any third party or due to the attachment and/or use of non-Siemens supplied parts, equipment or software without Siemens' prior written approval (and if the Customer or a third party modifies the Equipment, then Siemens may remove such Equipment from coverage under this Agreement unless the Customer restores the Equipment to the manufacturer's published specifications);
- defective due to any repair or service of the Equipment by the Customer or any third party prior to the commencement of the term of this Agreement;
- which failed due to causes from within non-Siemens supplied equipment, parts or software including, but not limited to, problems with the Customer's network;
- which is worn out and cannot be reasonably repaired due to the unavailability of spare parts from the original equipment manufacturer; or
- which is a transducer or probe and which is damaged or defective, or which failed, due to any of the foregoing causes or due to improper cleaning, disinfecting or TEE bite marks.

If Siemens is called upon to service or repair Equipment which falls under this Section 8, a separate invoice will be issued for labor, parts and expenses at Siemens' rates and terms then in effect.

This Agreement does not entitle the Customer to services related to information technology, patient and imaging workflow design and analysis, or problem diagnosis. Siemens' responsibility under this Agreement does not extend beyond the outbound or inbound sockets of the Equipment. In addition, changes, adjustments, additions or repairs required to or with respect to the Equipment resulting from issues, matters, items or concerns that are the responsibility of the Customer, such as changes related to Customer's network infrastructure, are not covered by this Agreement. This may include, but is not limited to, network IP address changes. Although the Equipment may have limited short term storage capacity, the storage of images, both patient and QA images, is the responsibility of the Customer.

If Siemens offers a Network Assistance option for the Equipment and the Customer purchases this option as indicated on Exhibit A, then Siemens shall assist the Customer in its efforts to identify the cause of any network or connectivity problems which may affect the operation of the Equipment; provided, however, that the price for this option does not include the cost of any repairs (labor, parts, etc.) to remedy such problems, which shall be the sole responsibility of the Customer. If the Customer does not purchase this option, or if this option is not offered by Siemens, then any assistance provided by Siemens to the Customer with respect to any network or connectivity issues shall require a P.O. from the Customer and shall be separately billed to the Customer at Siemens' then current rates and charges.

9. Default

Customer shall be in default under this Agreement upon: (i) a failure by Customer to make any payment due Siemens within ten (10) days of receipt of notice from Siemens that the payment was not made within the applicable payment period; (ii) a failure by Customer to perform any other obligation under this Agreement within thirty (30) days of receipt of notice from Siemens; (iii) a failure to grant Siemens access to the Equipment as set forth in Section 6 of this Agreement; (iv) a default by Customer or any affiliate of the Customer under any other obligation to or agreement with Siemens, Siemens Financial Services, Inc. or Siemens Medical Solutions Health Services Corporation, or any assignee of the foregoing (including but not limited to, a promissory note, lease, rental agreement, license agreement or purchase contract); or (v) the commencement of any insolvency, bankruptcy or similar proceedings by or against the Customer (including any assignment by Customer for the benefit of creditors). Upon the occurrence of any event of default hereunder, Siemens may, in addition to any and all other remedies available under law, elect to: (i) immediately cease providing services under this Agreement and any and all other agreements between the parties, or suspend any training courses or educational offerings provided under this Agreement, until the default is cured or corrected, (ii) terminate this Agreement, in which case Customer shall pay to Siemens (a) all amounts due under this Agreement through the effective date of termination, (b) as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under this Agreement from the date of termination through the scheduled expiration of the term of this Agreement, and (c) all costs and expenses of collection, including without limitation reasonable attorneys' fees and court costs incurred by Siemens as a result of the Customer's default, and/or (iii) commence collection actions (including court actions) for all sums due under this Agreement. All rights and remedies available to Siemens hereunder, by law or equity, shall be cumulative and there shall be no obligation for Siemens to exercise a particular remedy.

In the event that Customer cures all defaults hereunder, then prior to resumption of the Equipment maintenance services under this Agreement, Siemens may inspect the Equipment to determine if it is in good operating condition. Such inspection shall be charged to the Customer at Siemens' per-call rates and terms then in effect. Any repairs or adjustments which Siemens determines are required due to (i) the use of any non-Siemens parts, (ii) the repair or service of the Equipment by the Customer or any third party during the suspension of services by Siemens, or (iii) any of the exclusions from coverage set forth in Section 8 of this Agreement, shall be charged to the Customer at Siemens' rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the resumption of service under this Agreement.

10. Limitation of Liability

Siemens' entire liability and Customer's exclusive remedy for any direct damages incurred by the Customer from any cause whatsoever, and regardless of the form of action, whether liability in contract or in tort, arising under this Agreement or related hereto, shall not exceed, as applicable: (i) an amount equal to the Annual Agreement Price (in effect when the cause of action arose) for the specific item of Equipment under this Agreement that caused the damage or is the subject matter of, or is directly related to, the cause of action, or (ii) the amount paid by Customer to Siemens under this Agreement for the particular training course or educational offering that is the subject matter of the claim. The foregoing limitation of liability shall not apply to claims by Customer or third parties for bodily injury or damage to real property or tangible personal property (including damage to the Equipment covered by this Agreement) caused solely and directly by the gross negligence or willful misconduct of Siemens. In addition, Siemens shall have no liability hereunder to Customer to the extent that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or to the extent that the loss or damage is due to a force majeure occurrence as described in Section 17 hereof or any other cause beyond the reasonable control of Siemens.

THIS IS A SERVICE AGREEMENT. WITHOUT LIMITING THE LIMITATION OF LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH, SIEMENS EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL SIEMENS BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, LOSS OF USE OR DOWNTIME (EXCEPT AS OTHERWISE PROVIDED HEREIN), LOST DATA, OR FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

11. Notices

Except for the issuance of invoices as set forth in Section 7 hereof, all notices required to be provided hereunder shall be in writing and shall be sent by overnight delivery via a nationally recognized delivery service or by certified or registered mail, postage prepaid, to Siemens at the address set forth on the first page of this Agreement and to the Customer at the address set forth under "Bill To" on the first page of this Agreement. Notice given in compliance with this Section 11 shall be sufficient for all purposes under this Agreement, and such notice shall be effective when sent. Either party may change its notice address only if notification is sent in writing pursuant to this Section 11.

12. Governing Law; Waiver of Jury Trial

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

13. Government Access Clause

Until the expiration of four (4) years after the furnishing of any services under this Agreement, Siemens shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Siemens which are necessary to certify the nature and extent of costs incurred under this Agreement. If Siemens carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a 12 month period with a related organization, such subcontract shall include a clause to the effect that until the expiration of four (4) years after the furnishing of any services under the subcontract, the related organization shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to certify the nature and extent of costs incurred under that subcontract.

This provision shall apply if and solely to the extent that Section 1861 (v) (1) (I) of the Social Security Act applies to this Agreement.

14. Damages, Costs, And Fees

In the event that any dispute or difference is brought arising from or relating to this Agreement or the breach, termination, or validity thereof, the prevailing party shall not be entitled to recover from the other party punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees and collection agency fees incurred, together with such other expenses, costs and disbursements as may be allowed by law.

15. Severability; Headings

No provision of this Agreement which may be deemed invalid, illegal or unenforceable will in any way invalidate any other portion or provision of this Agreement. Paragraph headings are for convenience only and will have no substantive effect.

16. Waiver

No failure, and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

17. Force Majeure

Siemens will not be liable to Customer for any failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control and without its fault or negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies. In addition, in the event of any determination pursuant to the provisions of a collective bargaining agreement between the Customer and any labor union representing any employees of the Customer preventing or hindering the performance of any of the obligations of Siemens under this Agreement, or determining that the performance of any such obligations violates provisions of that collective bargaining agreement, or in the event a trade union, or unions, representing any of the employees of the Customer otherwise prevents Siemens from performing any such obligations, then Siemens shall be excused from the performance of such obligations unless the Customer makes all required arrangements with the trade union, or unions, to permit Siemens to perform the work. The Customer shall pay any additional costs incurred by Siemens that are related to any labor dispute(s) that involve the Customer.

18. Confidentiality

Siemens and the Customer shall maintain the confidentiality of any information provided or disclosed to the other party, its employees or agents (a "receiving party") relating to the business, customers and/or patients of the disclosing party, including but not limited to know-how, technical data, processes, software, techniques, developments, inventions, research products and plans for future developments, proprietary matters of a business or technical nature. Confidential Information shall also include all written materials (including correspondence, memoranda, manuals, training materials, notes and notebooks) and all computer software, models, mechanisms, devices, drawings or plans which may be disclosed or made available embodying Confidential Information. All Confidential Information shall be and remain the sole and exclusive property of the disclosing party. Each party shall use reasonable care to protect the confidentiality of the information disclosed, but no less than the degree of care it would use to protect its own confidential information, and shall only disclose the other party's confidential information to its employees and agents having a need to know this information. Confidential Information shall not include any information or data which (i) is or becomes public knowledge (through no fault of the receiving party or any of its employees or agents), (ii) is made available to the receiving party by an independent third party without any obligation of confidentiality, (iii) is already in the receiving party's possession at the time of receipt from the disclosing party (as such prior possession can be properly demonstrated by it), or (iv) is required by law to be disclosed. In addition, this confidentiality provision shall not apply to any action brought by either party to enforce the terms of this Agreement against the other party.

Any unauthorized use, disclosure or misappropriation of any Confidential Information by the receiving party in violation of the foregoing may result in irreparable and continuing damage to the disclosing party; in the event of such breach, the disclosing party shall be entitled to obtain immediate injunctive relief and any other relief or remedies to which it may be entitled. The receiving party waives any requirement that the disclosing party post a bond or other security in connection with any petition filed by the disclosing party for injunctive relief. In the event that a court of competent jurisdiction determines that the receiving party has breached this provision, then the receiving party shall reimburse the disclosing party for the costs of any court proceedings and all reasonable attorneys' fees.

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

19. End of Support Announcement

Notwithstanding anything to the contrary contained herein, in the event that Siemens makes a general announcement that it will no longer offer service agreements for an item of Equipment or components thereof, or provide a particular service agreement option or feature, whether due to the unavailability of spare parts or otherwise (an "EOS Announcement"), then upon no less than twelve (12) months prior written notice to the Customer, Siemens may remove any affected Equipment, components, options or features from coverage under this Agreement, with a corresponding adjustment of the Annual Agreement Price. In addition, at the end of this twelve (12) month period, the Customer may either remove the affected Equipment components, options or features from coverage under this Agreement or request that Siemens provide service or parts on a time and materials basis only, at Siemens' rates and

terms then in effect, for any Equipment, components, options or features subject to an EOS Announcement.

20. Removal of Equipment from Coverage

The Customer may remove Equipment from coverage under this Agreement at any time upon no less than thirty (30) days prior written notice to Siemens if the use of the Equipment is permanently discontinued and the Equipment is removed from service. There is no fee for this cancellation. Prorated credit will be issued for any advance payments made by the Customer for the period after the effective date of removal (based on the notice requirement). In addition, if the Customer sells or otherwise transfers any of the Equipment to a third party and the Equipment remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under this Agreement or enter into a new service agreement with Siemens with a term at least equal to the unexpired term of this Agreement, then the Customer may terminate this Agreement with respect to such Equipment upon no less than thirty (30) days prior written notice to Siemens, in which case the Customer shall pay to Siemens (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under this Agreement for such Equipment from the date of termination through the scheduled expiration of the term of this Agreement.

21. HIPAA

The Business Associate Addendum between the parties dated December 9, 2020 is incorporated into this Agreement as if set forth at length herein.

22. Uptime Performance Guarantee [DOES NOT APPLY TO EVERY SERVICE AGREEMENT]

For any Equipment that includes an Uptime Guarantee as specified in Exhibit A, Siemens guarantees that the Equipment will function at the minimum Uptime Performance (defined below) level set forth in Exhibit A (computed as described below).

"Uptime Performance" is defined as the capability of the Equipment to be utilized to treat or diagnose patients. The Equipment will be considered to be operational (i.e., it will not be considered to be "down"): (a) unless it cannot be utilized to treat or diagnose patients (room down); (b) if Siemens is prepared to perform maintenance services to make the Equipment operational but such service is refused by the Customer or is deferred by the Customer until a later time or date; (c) if the Equipment is not otherwise made available to Siemens' service engineers; (d) if the Equipment is down is due to, associated with, or caused by (i) misuse, negligence, or operator error, (ii) inadequate environmental conditions (not conforming with the environmental specifications provided by Siemens), including temperature and humidity, line power exceeding Siemens' requirements of voltage, frequency, impulses or transients, (iii) any of the exclusions set forth in Section 8 hereof, or (iv) acts of God or other force majeure events described in Section 17 hereof; or (e) during periods in which Siemens is performing scheduled or planned maintenance, changing high-vacuum components, and installing updates and/or upgrades. If the Equipment is not operational, then the Customer must immediately notify the Siemens Customer Care Center (24-hour Service Call Dispatch Center). Downtime will not commence until such notification is given to Siemens.

For purposes of calculating the Uptime Performance level percentage, such computation shall be made over the PCP, to include any extended coverage hours as indicated on Exhibit A. The Equipment's Uptime Performance shall be calculated to comply with the above guidelines on an annual basis. If the Equipment's Uptime Performance level is found to be less than the guaranteed percentage, as computed in accordance with the above guidelines, Siemens will extend the term of this Agreement by seven (7) calendar days (30 calendar days for Oncology Care Systems) for every percentage point (rounded to the nearest percent) below the guaranteed percentage. These days will be added at the end of the term of this Agreement. For example, if the guaranteed percentage is 97%, then 96% Uptime Performance would result in an extension of seven (7) calendar days and 95% Uptime Performance would result in an extension of fourteen (14) calendar days. The foregoing states Siemens' entire obligation and liability, and the Customer's sole remedy, for Siemens' failure to meet the Uptime Performance Guarantee.

In order for the Uptime Performance Guarantee to be effective, the Customer must place all calls for service through the Siemens Customer Care Center and must accept all Technical Assistance that is offered by Siemens, including, but not limited to, telephone support and remote diagnostics. For any period of time that the Customer does not seek and accept Technical Assistance from Siemens, then the Equipment shall be considered to be operational.

The Customer agrees to allow connection to Smart Remote Service diagnostic equipment, where available, for the Equipment covered by this Agreement. Smart Remote Service (SRS) is required for SRS-capable systems. The Uptime Performance Guarantee shall be void if the SRS connection is not provided and available 24 hours per day, 7 days a week.

23. Response Time Guarantee [DOES NOT APPLY TO EVERY SERVICE AGREEMENT]

Siemens guarantees that it shall meet any on-site response time as specified in Exhibit A for system "down" situations. Response time is measured from the time that the Customer notifies the Siemens Customer Care Center that a system is down. The response time only applies during the PCP, to include any extended coverage hours (if selected by the Customer), as indicated on Exhibit A. For example, a request for

on-site service made at noon on a Monday (where the PCP is 8:00 a.m. through 5:00 p.m., Mondays through Fridays) will have a guaranteed arrival time of 4:00 p.m. on the same day for customers with a four (4) hour response time and a guaranteed arrival time of 11:00 a.m. on the next day for customers with an eight (8) hour response time guarantee. A request for on-site service made at 9:00 a.m. on a Saturday will have a guaranteed arrival time of noon on the next Monday for customers with a four (4) hour response time and 4:00 p.m. on that Monday for customers with an eight (8) hour response time guarantee. If a request for on-site service is made outside the PCP (to include extended coverage hours, if selected by the Customer), Siemens will use its best efforts to have a CSE on-site as soon as possible.

If Siemens responds to a request for on-site service during the PCP but its work to repair or service the Equipment continues after the expiration of the PCP (to include any extended coverage hours, if applicable), then any work outside the PCP will be billed to the Customer, unless any optional Continuous Effort coverage that is available for the Equipment has been purchased as part of this Agreement. Continuous Effort coverage ensures that in room/system down situations, work will continue past the contracted PCP (including any extended coverage hours, if applicable, and/or core modality specific hours, as defined in the Glossary, if applicable) at no additional charge until the system is repaired or 1:00 a.m., whichever comes first, as long as the CSE has been on-site for one hour or more before the end of the contracted PCP (including any extended coverage hours and/or core modality specific hours, if applicable).

The remedy provided by Siemens for its failure to meet the on-site response time guarantee is as follows: for each one (1) hour or portion thereof that Siemens fails to meet the on-site response time guarantee, the Customer will receive one (1) free hour of overtime after the PCP for that service event. The foregoing states Siemens' entire obligation and liability, and the Customer's sole remedy, for Siemens' failure to meet the Response Time Guarantee.

24. Tool and Test Access [DOES NOT APPLY TO EVERY SERVICE AGREEMENT]

Siemens agrees to rent to the Customer, certain tools and test equipment as determined by Siemens ("Tools") to enable Customer to service the Equipment during the Contract Duration on the terms set forth herein. Siemens shall provide Tools after verifying to its sole satisfaction that Customer's In-House Biomedical Engineers are properly trained on the Equipment and Tools.

Siemens shall notify Customer of the rental fee for the Tools at the time of the order. Customer will be charged the rental fee after shipment of the Tools to Customer. Customer agrees to pay full list price of Tools (less rental fees paid) if Customer fails to return the Tools as required herein.

Customer may use the Tools for up to two (2) weeks ("Rental Period") from the date of receipt of the Tools. Customer may, with Siemens' consent, extend the Rental Period for an additional rental fee. Customer must return the Tools within five (5) business days of the conclusion of the Rental Period ("Return Period"). If the Tools are not received by Siemens before the conclusion of the Return Period, Customer will be charged the then-current list price for the Tools. Customer may, at the conclusion of the Return Period, purchase the Tools at the then-current list price, subject to the Terms and Conditions of Sale for Spare Parts and Service. The delivery of the Tools to the Customer and return of the Tools to Siemens shall be completed by Siemens at its own expense.

Title to the Tools shall be and at all times remain with Siemens and Customer shall keep the same free and clear of any and all liens and claims. Customer (i) authorizes Siemens to execute in Customer's name and file (and Customer shall promptly execute, if requested by Siemens) and (ii) irrevocably appoints Siemens its agent and attorney-in-fact to execute in the name of Customer and file, with such authorities and at such locations as Siemens may deem appropriate, any Uniform Commercial Code financing statements evidencing Siemens' ownership of the Tools. Risk of loss shall pass to Customer upon delivery. Customer shall maintain at its expense adequate liability insurance with respect to its possession and use of the Tools and against all common risks (i.e., fire, flood, theft, Acts of God, etc.) for the full replacement value of the Tools. At the request of Siemens, Customer shall provide Siemens with an insurance certificate evidencing such insurance coverage.

Customer shall only use the Tools for their intended purpose, in the proper manner and with appropriate care, pursuant to any instructions, training and manuals provided to Customer by Siemens, Customer shall immediately report to Siemens or its designee any malfunction or defect, whatever the nature or cause. Customer shall ensure that any necessary repair, modification or service to any Tool is carried out by Siemens or Siemens' designee. Siemens agrees to use its best efforts to repair the Tools as needed in a prompt and timely fashion, following a reported malfunction or defect. Customer shall not move the Tools from the Customer's facilities identified on the front page of this Agreement. Customer shall return the Tools to Siemens in the same condition as when delivered to Customer (ordinary wear and tear excepted). Customer acknowledges the Tools constitute Confidential Information, and Customer will maintain the Tools in accordance with the Confidentiality provisions of this Agreement.

25. Non-Assignment

Customer may not assign this Agreement unless it obtains the prior written consent of Siemens, which consent shall not be unreasonably withheld or delayed. Siemens

may not assign this Agreement unless it obtains the prior written consent of the Customer, which consent shall not be unreasonably withheld or delayed, except that Siemens may assign without Customer approval to any subsidiary or affiliated company or any of its authorized dealers.

26. Teamplay Offering Terms and Conditions

Intentionally deleted.

27. Reimbursement for Training and Educational Services Upon Early Termination; Cancellation Policy

Intentionally deleted.

28. Cost Reporting

If the Customer agrees that it must fully and accurately report prices paid under this Agreement, net of all discounts, as required by applicable law and contract, including without limitation 42 CFR §1001.952(h), in all applicable Medicare, Medicaid and state agency cost reports. Customer shall retain a copy of this Agreement and all other communications regarding this Agreement, together with the invoices for purchase and permit agents of the U.S. Department of Health and Human Services or any state agency access to such records upon request.

29. Execution; Counterparts

If the Customer is a corporation or partnership, the person signing this Agreement on its behalf certifies that such person is an officer or partner thereof, that his or her action was duly authorized by appropriate corporate or partnership action, that such action does not conflict with the corporate charter or bylaws or the partnership agreement, as the case may be, or any contractual provision binding on such corporation or partnership, and that no consent of any stockholders to his or her action is required.

This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original document but all of which together shall constitute one and the same agreement.

30. Entire Agreement

This Agreement, including all exhibits and addenda attached hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous oral or written representations or communications between the parties. This Agreement may not be modified or amended, except in writing executed by the appropriate designated officers of the parties hereto. Any variation in the terms and conditions contained in this Agreement (including, but not limited to, the inclusion of Customer's own terms and conditions in any purchase order or other document issued by Customer in response to and/or referencing Siemens' quotation for service or this Agreement) shall not be deemed to be a part of this Agreement and shall not be binding upon Siemens unless set forth in writing and executed by the appropriate designated officer of Siemens. Subject to the limitations expressed herein, this Agreement will be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and permitted assigns. Notwithstanding anything to the contrary contained herein, the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 18, 21 and 27 shall survive the expiration or termination of this Agreement.

31. Liability of Customer.

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

32. Mutual Indemnification.

Each Party shall defend, indemnify, and hold harmless, the other party, and their respective officers, directors, employees, agents, members, shareholders, partners, joint ventures, affiliates, successors, and assigns from and against any and all liabilities, obligations, claims, demands, suits, losses, expenses, damages, fines, judgments, settlements, and penalties, including, without limitation, costs, expenses, and attorneys' fees incident thereto, arising out of or based upon contract damages arising from Siemens' willful misconduct, property damage, or bodily injury (including death at any time resulting therefrom) to any person, including the indemnifying party's employees, affiliates, or subcontractors, occasioned by or in connection with (1) the indemnifying party's negligent performance of (or failure to perform) the contract duties hereunder; (2) a violation of any laws or any negligent act or omission by the indemnifying party's or its affiliates, subcontractors, or employees during the performance of the contract duties hereunder; or (3) a willful breach of this Agreement by the indemnifying party or any of its affiliates, subcontractors, or employees. The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified (including reasonable attorneys' fees), from and after the time at which the party indemnified received notification (whether verbal or written) that a claim or demand is to be made or may be made. Both parties' obligations under this Section do not extend to any liability caused by the sole negligence of the other party. This Section shall survive the termination or expiration of this Agreement.



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

December 9, 2020

Subject: Proposed retroactive Administrative Service Agreement, containing nonstandard terms and conditions, and Adoption Agreement with Administrative Solutions, Inc. (ASI), for the Kern Medical Center Internal Revenue Code Section 125 Cafeteria Plan

Recommended Action: Approve; Adopt Resolution; Authorize Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve the proposed Adoption Agreement, which restates the January 1, 2017 Section 125 Cafeteria Plan, effective January 1, 2020, and Administrative Service Agreement with ASI to provide Plan administrative services for eligible Kern Medical Center employees. The Plan allows eligible employees to have health plan premiums deducted on a pre-tax basis and also allows for voluntary, pre-tax salary reductions for healthcare and dependent care expenses.

ASI was recently acquired by Navia Benefit Solutions and now operates as a division on Navia Benefit Solutions. ASI is requesting the restatement and a new agreement as a result of the change. There are no other changes to the existing terms and conditions.

Term: The Plan restatement is effective retroactive to January 1, 2020, per ASI. The service agreement is effective January 1, 2021, and will remain in effect until cancelled in writing by the Authority.

Costs associated with Agreement: There is no cost associated with the participation in the Plan. The administration costs are absorbed by Chimienti and Associates, an independent employee benefits firm that provides oversight of the Authority's voluntary employee benefits.

The service agreement contains a non-standard indemnity provision, i.e., the vendor accepts no responsibility for its acts or omissions, and the Authority agrees to indemnify the vendor for such. However, based on Counsel's understanding of the services and representations made by staff with respect to the need for the services, and the low degree of risk, Counsel has no strong objection and approves the Agreement as to form on that basis.

Therefore, it is recommended that your Board retroactively approve the proposed Adoption Agreement, effective January 1, 2020, and the Administrative Service Agreement, effective January 1, 2021, with Administrative Solutions, Inc. for flexible spending and Section 125 cafeteria plan benefits and administration, adopt the proposed Resolution adopting and approving the amended and restated Plan, and authorize the Chairman to sign.

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

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

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

In the matter of:

Resolution No. 2020-____

**AMENDMENT AND RESTATEMENT
OF THE KERN COUNTY HOSPITAL
AUTHORITY SECTION 125 PLAN**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 18th day of November, 2020, 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) Pursuant to Health and Safety Code Section 101855, subdivision (a)(6), the Board of Governors of the Kern County Hospital Authority (“Authority”) is authorized to prescribe the compensation and other terms and conditions of employment for all employees; and

(b) The Authority adopted its own flexible spending arrangement plan (also known as a cafeteria plan or Section 125 Plan) (the “Plan”), effective January 1, 2017; and

(c) The Plan is intended to qualify as a cafeteria plan under Internal Revenue Code section 125; and

(d) The Plan consists of an Adoption Agreement, its related Basic Plan Document and any related Appendix and Addendum to the Adoption Agreement; and

(e) The Authority functions as the Plan Sponsor; Administrative Solutions, Inc. serves as the Plan Administration Services Provider; and

(f) Administrative Solutions, Inc. requires that the Plan be amended and restated with respect to the following resolutions, effective January 1, 2020; and

(g) The Board of Governors desires to amend and restate the previously-adopted plan, effective January 1, 2020.

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 adopts and approves the amended and restated Plan in the form attached hereto.

3. The Chairman is hereby authorized and directed to take any and all action and execute and deliver such documents as may be deemed necessary, appropriate or convenient to effect the foregoing resolutions including, without limitation, causing to be prepared and filed such reports, documents or other information as may be required under applicable law.

4. This Board hereby directs the Human Resources Department to implement the provisions of this Resolution.

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

Kern Medical Center
Human Resources Department
Legal Services Department
Administrative Solutions, Inc.

**KERN COUNTY HOSPITAL AUTHORITY
SECTION 125 PLAN**

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**ADOPTION AGREEMENT
CAFETERIA PLAN**

The undersigned adopting employer hereby adopts this Plan. The Plan is intended to qualify as a cafeteria plan under Code section 125. The Plan shall consist of this Adoption Agreement, its related Basic Plan Document and any related Appendix and Addendum to the Adoption Agreement. Unless otherwise indicated, all Section references are to Sections in the Basic Plan Document.

COMPANY INFORMATION

1. Name of adopting employer (Plan Sponsor): Kern County Hospital Authority
2. Address: 1700 Mt. Vernon Ave.
3. City: Bakersfield
4. State: California
5. Zip: 93306
6. Phone number: 661-862-7579
7. Fax number: _____
8. Plan Sponsor EIN: 47-5618278
9. Plan Sponsor fiscal year end: 12/31
10. Entity Type:
 - a. Plan Sponsor entity type:
 - i. C Corporation
 - ii. S Corporation
 - iii. Non-Profit Organization
 - iv. Partnership
 - v. Limited Liability Company
 - vi. Limited Liability Partnership
 - vii. Sole Proprietorship
 - viii. Union
 - ix. Government Agency
 - x. Other: _____
 - xi. If "Union"(10a.viii) is selected, enter name of the representative of the parties who established or maintain the Plan: _____
11. State of organization of Plan Sponsor: California
12. **Controlled Groups/Affiliated Service Groups**
 - a. The Plan Sponsor is a member of an affiliated service group. List all members of the group (other than the Plan Sponsor): _____
13. **Controlled Groups**
 - a. The Plan Sponsor is a member of a controlled group. List all members of the group (other than the Plan Sponsor): _____

NOTE: Affiliated service group members and controlled group members may adopt the Plan with the approval of the Plan Sponsor.
NOTE: Listing affiliated service group members and controlled group members is for information purposes only and is optional.
Participating Employers in the Plan are listed in Addendum.

PLAN INFORMATION

A. GENERAL INFORMATION AND DEFINITIONS

1. **Plan Number:** 505
2. **Plan Name:**
 - a. Kern County Hospital Authority
 - b. Section 125 Plan
3. **Effective Date:** 01/01/2017

A. GENERAL INFORMATION AND DEFINITIONS

- a. Is this a restatement of a previously-adopted plan?
 - b. Effective date of Plan restatement: 01/01/2020 ("Restatement Date")
- 4. Plan Year:**
- a. Plan Years mean each 12-consecutive month period ending on 12/31 (e.g. December 31). If the Plan Year changes, any special provisions regarding a short Plan Year shall be placed in the Addendum to the Adoption Agreement.
 - b. The Plan has a short Plan Year. The short Plan Year begins _____ and ends on _____.

Plan Features

5. The following Benefits are available under the Plan:
- a. Premium Conversion Account
 - b. Health Flexible Spending Account
 - c. Limited Purpose HSA-Compatible Health Flexible Spending Account
 - d. Post-Deductible HSA-Compatible Health Flexible Spending Account
 - e. Dependent Care Assistance Plan Account
 - f. Adoption Assistance Flexible Spending Account
 - g. Health Savings Account
 - h. Flexible Benefits Credits
 - i. PTO Purchase/Sale
6. **Simple Cafeteria Plan**
- a. The Plan is intended to qualify as a simple cafeteria plan under Code section 125(j).
 - b. The Employer shall make contributions to the Plan as follows:
 - i. _____% (no less than 2%) of an Eligible Employee's Compensation for the Plan Year.
 - ii. _____% (at least 200%) of an Eligible Employee's salary reduction contribution for the Plan Year, but no less than 6% of the Eligible Employee's Compensation for the Plan Year.

B. ELIGIBILITY

Eligible Employees - Employees must meet the following requirements:

1. Minimum age requirement for an Employee to become an Eligible Employee: 18.
NOTE: If the Plan is intended to be a simple cafeteria plan under Article 12, B.1 may not exceed "21."
- 2a. An Employee must complete the following service requirements to become an Eligible Employee on the date set forth in B.2b:
- i. None
 - ii. Completion of _____ hours of service.
 - iii. Completion of 30 days of service.
 - iv. Completion of _____ months of service.
 - v. Completion of _____ years of service.
- NOTE: If the Plan is a simple cafeteria plan under Article 12, B.2 may not exceed 1,000 hours of service or one year of service.*
- 2b. Effective Date of Eligibility. An Employee will become an Eligible Employee on the date below upon completing the age and service requirements in B.1 and B.2a:
- i. An Employee shall become an Eligible Employee immediately upon completing the age and service requirements in B.1 and B.2a.
 - ii. first day of each calendar month.
 - iii. first day of each plan quarter.
 - iv. first day of the first month and seventh month of the Plan Year.
 - v. first day of the Plan Year.
- 2c. If eligibility is not immediate after meeting age and service requirements, an Employee shall become an Eligible Employee on the Eligibility Date in B.1 and B.2b that is:
- i. coincident with or next following the period in B.2b
 - ii. following the completion of the period in B.2b.
3. Describe any other modifications to the eligibility rules specified in B.1 and B.2: _____

Excluded Employees

4. The term "Eligible Employee" shall not include:
- a. **Union Employees.** Any Employee who is included in a unit of Employees covered by a collective bargaining agreement, if benefits were the subject of good faith bargaining between employee representatives and the Employer, and if the collective bargaining agreement does not provide for participation in this Plan.
 - b. **Leased Employees.**
 - c. **Non-Resident Aliens.** Any Employee who is a non-resident alien described in Code section 410(b)(3)(C).
 - d. **Part-time Employees.** Any Employee who is expected to work fewer than 20 hours per week.
 - e. **Other.** _____ (any exclusion must satisfy Code section 125(g) and the requirements under Article 13).
- NOTE: If the Plan is intended to be a simple cafeteria plan, B.4b, B.4d and B.4e may be selected only to the extent that the provisions do not violate the requirements on Code section 125(j).*
5. Describe any modifications to the definition of the term "Eligible Employee" for the specified Plan Benefit: _____

Leave of Absence under FMLA

6. If a Participant takes an unpaid leave of absence under FMLA, the Participant may elect the following with respect to the health Benefits under the Plan (i.e., Premium Conversion Account, Health FSA, and Limited Purpose Health FSA) (**select at least one**):
- a. Revoke coverage, which will be reinstated under the same terms upon the Participant's return from the FMLA leave of absence.
 - b. Continue coverage but discontinue payment of his or her contribution for the period of the FMLA leave of absence.
7. If B.6b. is selected, the Employer may recover the Participant's suspended contributions when the Participant returns to work from the FMLA leave of absence.
8. A Participant on leave of absence under FMLA (select only one):
- a. may continue coverage for all Benefits for which he is eligible when on FMLA leave, including non-health Benefits.
 - b. may only continue coverage for Premium Conversion Accounts, Health FSA, and Limited Purpose Health FSA, as applicable.
9. A Participant who continues coverage for Benefits while on FMLA leave of absence may make contributions for such Benefits as follows (select at least one):
- a. pre-pay on a pre-tax (to the extent permissible under Code section 125) or after-tax basis, prior to commencement of the FMLA leave of absence period, the contributions due for the FMLA leave of absence period
 - b. pay on an after-tax basis the same schedule as payments would have been made if the Participant were not on a leave of absence or if contributions were being made under COBRA
 - c. to the extent agreed in advance, the Participant will repay amounts advanced by the Employer to the Plan on behalf of the Participant upon the Participant's return from the FMLA leave of absence
- NOTE: B.9a may only be elected together with B.9.b or B.9c.*
NOTE: B.9b must be elected if available for non-FMLA leaves of absence.
NOTE: B.9c may only be elected together with B.9a and/or B.9b unless it is the only option available to Participants on a non-FMLA leave of absence.

Non-FMLA

10. A Participant may elect to continue coverage of Benefits when on unpaid non-FMLA leave of absence.

Termination of Participation

11. If a Participant remains an Employee but is no longer an Eligible Employee, his or her participation in the Plan shall terminate:
- a. on the last day of employment during which the Participant ceases to be an Eligible Employee
 - b. on the last day of the payroll period during which the Participant ceases to be an Eligible Employee
 - c. on the last day of the month during which the Participant ceases to be an Eligible Employee
 - d. on the last day of the Plan Year during which the Participant ceases to be an Eligible Employee
 - e. Other _____

Reemployment

- 12. If an Eligible Employee has a Termination of Employment and is subsequently reemployed by the Employer as an Eligible Employee within 30 days after Termination:
 - a. the Plan Administrator shall automatically reinstate the Benefit elections in effect at the time of Termination
 - b. the Eligible Employee shall not resume or become a Participant until the first day of the subsequent Plan Year
- 13. If an Eligible Employee has a Termination of Employment and is subsequently reemployed by the Employer as an Eligible Employee more than 30 days after Termination:
 - a. the Plan Administrator shall automatically reinstate the Benefit elections in effect at the time of Termination
 - b. the Eligible Employee shall not resume or become a Participant until the first day of the subsequent Plan Year
 - c. the Eligible Employee may elect to reinstate the Benefit election in effect at the time of Termination or make a new election under the Plan

C. PARTICIPATION ELECTIONS

Failure to Elect (Default Elections)

- 1. The election for the immediately preceding Plan Year relating to the following Benefits will apply to the applicable Plan Year:
 - a. Premium Conversion Account (Non-Employer-sponsored Contracts)
 - b. Health Flexible Spending Account
 - c. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSAs)
 - d. Dependent Care Assistance Plan Account
 - e. Health Savings Account
 - f. Adoption Assistance Flexible Spending Account

NOTE: If a Benefit is not selected, an Eligible Employee who does not make an affirmative election under the Plan for a Plan Year will be deemed to have elected not to participate in that Benefit for the Plan Year.

Change in Status

- 2. An Eligible Employee may change his or her election upon the following Change in Status events:
 - a. None
 - b. Any event described in Treas. Reg. section 1.125-4 and other events permitted by IRS guidance
 - c. Pursuant to written Plan Administrative Procedures, which are incorporated herein by reference
 - d. Other: _____

D. PREMIUM CONVERSION ACCOUNT

Contracts for Reimbursement

NOTE: If Premium Conversion Account is not a selected Benefit under A.5a, Section D is disregarded.

- 1. If Premium Conversion Accounts are allowed under the Plan, select the types of Contracts with respect to which a Participant may contribute under Section 5.04:
 - a. Employer Health
 - b. Employer Dental
 - c. Employer Vision
 - d. Employer Short-Term Disability
 - e. Employer Long-Term Disability
 - f. Employer Group Term Life
 - g. Employer Accidental Death & Dismemberment
 - h. Individually-Owned Dental

- i. Individually-Owned Vision
- j. Individually-Owned Disability
- k. COBRA continuation coverage under the Employer group health plan
- l. Other: Cancer, Short Term Disability, and Accident

Enrollment

- 2. All Employees will automatically be enrolled in the Premium Conversion Account upon their date of hire and will be deemed to have elected to contribute the entire amount of any premiums payable by the Employee during the Plan Year for participation in Employer-sponsored Contract(s).

NOTE: If D.2 is not selected, Eligible Employees may only elect to participate in the Premium Conversion Account pursuant to Section 4.02(b), 4.02(c) and Section 4.03 of the Plan.

Contributions

- 3. **Participant elections** will be automatically adjusted for changes in the cost of Employer-sponsored Contracts pursuant to the terms of Treas. Reg. 1.125-4(f)(2)(i).

E. FLEXIBLE SPENDING ACCOUNTS

NOTE: If Flexible Spending Accounts are not a permitted Benefit under A.5b, Section E is disregarded.

Employer Contributions

- 1. **Matching Contributions.** The Plan permits Employer matching contributions to the applicable Benefits as follows:
 - a. **Health FSA:**
 - i. None
 - ii. Discretionary
 - iii. _____% of the Participant's Health FSA contribution up to _____% of the Participant's Compensation
 - iv. _____% of the Participant's Health FSA contribution up to \$_____
 - v. Other: _____
 - b. **Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA)**
 - i. None
 - ii. Discretionary
 - iii. _____% of the Participant's HSA-Compatible Health FSA contribution up to _____% of the Participant's Compensation
 - iv. _____% of the Participant's HSA-Compatible Health FSA contribution up to \$_____
 - v. Other: _____
 - c. **Dependent Care Assistance Plan Account:**
 - i. None
 - ii. Discretionary
 - iii. _____% of the Participant's DCAP Account contribution up to _____% of the Participant's Compensation
 - iv. _____% of the Participant's DCAP Account contribution up to \$_____
 - v. Other: _____
 - d. **Adoption Assistance Flexible Spending Account:**
 - i. None
 - ii. Discretionary
 - iii. _____% of the Participant's Adoption Assistance FSA contribution up to _____% of the Participant's Compensation
 - iv. _____% of the Participant's Adoption Assistance FSA contribution up to \$_____
 - v. Other: _____

NOTE: If there are no Employer matching contributions to the Plan, questions under E.1 are disregarded.

NOTE: Only one contribution formula is permitted for each applicable Benefit.

NOTE: If the Plan is intended to be a simple cafeteria plan, the matching contributions in this section will apply in addition to the contributions at A.6b.

2. **Non-Elective Employer Contributions.** The Plan permits Employer contributions to the applicable Benefits as follows:

a. **Health Flexible Spending Account:**

- i. None
- ii. Discretionary
- iii. _____% of the Participant's Compensation
- iv. \$_____ per Eligible Employee
- v. Other: _____

b. **Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA):**

- i. None
- ii. Discretionary
- iii. _____% of the Participant's Compensation
- iv. \$_____ per Eligible Employee
- v. Other: _____

c. **Dependent Care Assistance Plan Account:**

- i. None
- ii. Discretionary
- iii. _____% of the Participant's Compensation
- iv. \$_____ per Eligible Employee
- v. Other: _____

d. **Adoption Assistance Flexible Spending Account:**

- i. None
- ii. Discretionary
- iii. _____% of the Participant's Compensation
- iv. \$_____ per Eligible Employee
- v. Other: _____

NOTE: If there are no non-elective Employer contributions, questions under E.2 are disregarded.

NOTE: Employer matching and non-elective contributions shall not exceed the limits set forth in the BPD including: Health FSA, Section 6.04(b); HSA-Compatible FSA Section 7.04; Dependent Care Assistance Plan Account Section 8.04; and Adoption Assistance Flexible Spending Account, Section 10.04.

NOTE: If the Plan is intended to be a simple cafeteria plan, the Employer non-elective contributions in this section will apply in addition to the contributions at A.6b.

3. **Contribution Limits.** Select the maximum allowable Participant contribution to the applicable FSA in any Plan Year:

- a. The maximum amount permitted under Code section 125(i), 129(a)(2) and/or 137(b)(1)
- b. Other amounts
 - i. Health Flexible Spending Account: _____
 - ii. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA): _____
 - iii. Dependent Care Assistance Plan Account: _____
 - iv. Adoption Assistance Flexible Spending Account: _____

NOTE: Other amounts for Health Flexible Spending Account in E.3bi and Limited Purpose/Post-Deductible Health Flexible Spending Account in E.3ii cannot exceed the Code section 125(i) maximum. Other amounts in E.3b.iii for Dependent Care Assistance Plan Account cannot exceed Code 129(a)(2) amounts and E.3b(iv) cannot exceed Code section 137(b)(1) maximum.

Eligible Expenses

4. **Individual Expenses Eligible for Reimbursement.** Participant may only be reimbursed from the applicable FSA for expenses that are incurred by:

- a. **Participant, spouse and Dependents.** The Participant, his or her spouse and all Dependents, and any child (as defined in section 152(f)(1)) of the Participant until his or her 26th birthday:
- b. **Persons covered under Employer-sponsored group health plan.** The Participant, his or her spouse and all Dependents, and any child (as defined in section 152(f)(1)) of the Participant until his or her 26th birthday, but only if such persons are also covered under an Employer-sponsored health plan:
- c. **Participants only.** No reimbursement for expenses incurred by the Participant's spouse or Dependents:
- d. **Other:** _____ (may not include anyone other than the Participant, his or her spouse and all Dependents, and any child (as defined in section 152(f)(1)) of the Participant until his or her 26th birthday)

Expenses Not Eligible for Reimbursement

5. **Expenses Not Eligible for Reimbursement.** In addition to those listed in the Basic Plan Document, the following expenses are not eligible for reimbursement from a Participant's FSA:
- a. Health Flexible Spending Account: _____
 - b. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA): _____
 - c. Dependent Care Assistance Plan Account: _____
 - d. Adoption Assistance Flexible Spending Account: _____
6. **Adult Children Coverage.** Reimbursement for adult children may be paid from the applicable FSA for claims incurred:
- a. until the date the child attains age 26
 - b. until the last day of the calendar year in which the child attains age 26

Reimbursement

7. **Amounts Available for Reimbursement.** The Plan Administrator may direct reimbursement of FSAs up to the entire annual amount elected by the Eligible Employee on the Salary Reduction Agreement for the Plan Year for the applicable FSA, less any reimbursements already disbursed from the applicable FSA for the following Benefits:
- a. Dependent Care Assistance Plan Account
 - b. Adoption Assistance Flexible Spending Account
- NOTE: If 7.a or 7.b is not selected, the Plan Administrator may direct reimbursement only up to the amount in the applicable FSA at the time the reimbursement request is received by the Plan Administrator.*

Grace Period

8. The Plan will reimburse claims incurred during a Grace Period immediately following the end of the Plan Year for the following Benefits:
- a. Health Flexible Spending Account
 - b. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA)
 - c. Dependent Care Assistance Plan Account
 - d. Adoption Assistance Flexible Spending Account
- NOTE: The Plan cannot reimburse claims incurred during a Grace Period if carryovers are permitted in Part E.12.*
9. **Last day of Grace Period:**
- a. Fifteenth day of the 3rd month following end of the Plan Year
 - b. Other _____

Run Out Period

10. If **no Grace Period** applies for the Plan Year, an active Participant must submit claims for the Plan Year for reimbursement from the applicable FSA no later than:
- a. _____ days after the end of the Plan Year
 - b. _____ (insert date, e.g., March 31) immediately following such Plan Year
11. If a **Grace Period** applies for the Plan Year, an active Participant must submit claims for the Plan Year for reimbursement from the applicable FSA no later than:
- a. 15 days after the end of the Grace Period
 - b. _____ (insert date, e.g., March 31st) immediately following such Plan Year
- NOTE: The date in E.11b should be later than the last day of the Grace Period.*

Automatic Payment of Claims

12. Eligible expenses not covered under the Employer-sponsored health plan (e.g., co-payments, co-insurance, deductibles) automatically paid from the applicable FSA.
- a. Health Flexible Spending Account

- b. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA)

Carryover

13. The Plan will carry over unused Health FSA balances at the end of the Plan Year for the following Benefits:
- a. Health Flexible Spending Account: _____ (may not exceed \$500).
 - b. Limited Purpose/Post-Deductible Health Flexible Spending Account (HSA-Compatible FSA): _____ (may not exceed \$500)
- NOTE: If carryover is selected (E.13a or E.13b is selected for the applicable FSA), the Plan may not provide for a Grace Period for the applicable FSA and the Plan may not provide for a Grace Period for the applicable FSA in the Plan Year to which the carryover amount is applied.*

Termination of Employment

14. In the event of a Termination of Employment the Participant may elect to continue to make contributions to FSAs under the Plan on an after-tax basis and reimbursements will be allowed for the remainder of the Plan Year.
- a. Yes
 - b. Yes - subject to the following limitations: _____
 - c. No
- NOTE: If E.14c is selected, then contributions shall cease upon Termination and reimbursements will be allowed only for expenses incurred prior to Termination.*
- NOTE: If applicable, any COBRA elections shall supersede this section.*
15. In the event of a Termination of Employment, a Participant may submit claims for reimbursement from the applicable FSA no later than:
- a. 90 days after a Termination of Employment.
 - b. _____ days following the Plan Year in which the Termination occurs.
- NOTE: If E.14a or E.14b is selected, then E.15b must be selected.*

Qualified Reservist Distributions

16. **Qualified Reservist Distributions are available for:**
- a. The entire amount elected for the applicable Health FSA for the Plan Year minus applicable Health FSA reimbursements received as of the date of the Qualified Reservist Distribution request.
 - b. The amount contributed to the applicable Health FSA as of the date of the Qualified Reservist Distribution request minus applicable FSA reimbursements received as of the date of the Qualified Reservist Distribution request.
 - c. Other amount (not to exceed the entire amount elected for the applicable for the Plan Year minus reimbursements): _____

F. HEALTH SAVINGS ACCOUNT (HSA Account) (Article 9)

NOTE: If HSA Account is not a permitted Benefit under A.5g, Section F is disregarded.

Employer Contributions

1. **Matching Contributions.** The Plan permits Employer matching contributions to the HSA Account as follows (not to exceed the limits in Section 9.04):
- a. None
 - b. Discretionary
 - c. _____% of the Participant's elected HSA Account contribution up to _____% of the Participant's Compensation
 - d. _____% of the Participant's elected HSA Account contribution up to \$_____
 - e. Other: _____
- NOTE: If the Plan is intended to be a simple cafeteria plan, the matching contributions in this section will apply in addition to the contributions at A.6b.*
2. **Employer Non-Elective Contributions.** The Plan permits Employer non-elective contributions to the HSA Account as follows (not to exceed the limits in Section 9.04):

- a. None
- b. Discretionary
- c. _____% of the Participant's Compensation
- d. \$_____ per Eligible Employee
- e. Other: _____

NOTE: If the Plan is intended to be a simple cafeteria plan, the Employer non-elective contributions in this section will apply in addition to the contributions at A.6b.

3. **Contribution Limits.** Select the maximum allowable contribution to a Participant's HSA Account in any Plan Year:
- a. The maximum amount permitted under Code section 223(b), reduced by any Employer contributions.
 - b. Other amount: _____ (not to exceed the Code section 223(b) maximum when combined with any Employer contributions).

G. FLEXIBLE BENEFIT CREDITS ("Flex Credits") (Section 11.01)

Health Flex Contribution

NOTE: If Flexible Benefit Credits are not permitted Benefits in A.5h, Section G is disregarded.

1. **Health Flex Contribution.** The Flex Credit is intended to qualify as a "health flex contribution" under Treas. Reg. section 1.5000A-3(e)(3)(ii)(E): The Participant may not opt to receive the Flex Credit as a cash or taxable benefit and the Participant may only use the Flex Credit for the payment of premiums applicable to health care and toward the Health FSA or HSA-Compatible Health FSA Benefits.
2. **Eligible Benefits.** Participants may elect to contribute the Flex Credits to the following benefits:
- a. All Benefits offered under the Plan
 - b. All Benefits offered under the Plan except the following: _____
 - c. Only the following Benefits: _____
 - d. Only the portion of the (i) Premium Conversion Account paid toward Employer-sponsored Health Contract premiums and/or (ii) Health FSA or HSA-Compatible Health FSA Benefits.

NOTE: If G.1 is selected, G.2d must be selected.

3. **Amount of Flex Credit.** The Employer will contribute a Flex Credit on behalf of each Eligible Employee as follows:
- a. \$_____ per Eligible Employee
 - b. A discretionary amount as determined by the Employer
 - c. Other: _____
 - d. The amount of the simple cafeteria plan contributions described in A.6b
4. **Contribution to 401(k) Plan.** An Eligible Employee may elect to contribute all or a portion of his or her Flex Credits to a Qualified Plan in accordance with the terms of the following Qualified Plan(s): _____
- NOTE: If G.4 is selected, then G.5 (cash out) must also be elected.*

Cash Outs

5. **Cash Out of Flex Credits.** A Participant may elect to receive all or a portion of his or Flex Credits in cash.
- a. Yes
 - b. Yes, subject to the following limitations: _____
 - c. No
- NOTE: If G.5a or G.5b is selected, then Flex Credits a Participant elects to contribute to a Health FSA will count toward the Code section 125(i) contribution limitation.*
- NOTE: If G.1 is selected, G.5c must be selected.*
- NOTE: If G.5.c is selected, the maximum value of Flex Credits a Participant can contribute to a Health FSA for a Plan Year is \$500.*
6. **Amount of Cash Out.** For each Flex Credit dollar that a Participant elects to receive in cash from the Plan, the Participant will receive: \$_____ (insert dollar value of each Flex Credit; if no amount is provided, the cash out value of each Flex Credit is \$1.00)
7. **Maximum Flex Credit Cash Out.** The amount of cash a Participant may receive in exchange for Flex Credits in Plan Year shall not exceed:
- a. No limit
 - b. \$_____ per calendar year
 - c. Other: _____

8. **Payment of Cash Out.** Amounts distributed in cash from the Plan pursuant to Section 11.03 shall be paid to the Participant in:
- a. Equal payroll installments
 - b. A single lump sum at the beginning of the Plan Year
 - c. A single lump sum at the end of the Plan Year
 - d. Other: _____

H. **PURCHASE AND SALE OF PAID TIME OFF (PTO) (Section 11.02)**

Purchase of PTO

1. **Maximum PTO Purchase.** A Participant can elect to purchase no more than the following periods of PTO in a Plan Year:
- a. None
 - b. _____ hours
 - c. _____ days
 - d. _____ weeks
 - e. Other: _____

NOTE: If Purchase of PTO is not a permitted Benefit in A.5i, H.1 is disregarded.

Sale of PTO

2. **Maximum PTO Sale.** A Participant can elect to sell no more than the following periods of PTO in a Plan Year:
- a. None
 - b. _____ hours
 - c. _____ days
 - d. _____ weeks
 - e. Other: _____

NOTE: If Sale of PTO is not a permitted Benefit in A.5i, H.2 is disregarded.

Carryover of PTO

3. **No Carryover of Elective PTO.** Unused elective PTO (determined as of the last day of the Plan Year) shall be paid in cash on or prior to the last day of the Plan Year.

NOTE: If Sale and/or Purchase of PTO are not permitted Benefits in A.5i, H.3 is disregarded.

NOTE: If H.3 is not selected, unused elective PTO will be forfeited as of the last day of the Plan Year.

I. **MISCELLANEOUS**

Plan Administrator Information

1. **Plan Administrator.**
- a. Plan Sponsor
 - b. Committee appointed by Plan Sponsor
 - c. Other: _____
2. **Indemnification.** Type of indemnification for the Plan Administrator:
- a. None - the Company will not indemnify the Plan Administrator.
 - b. Standard as provided in Section 14.02.
 - c. Custom. (If I.2.c. (Custom) is selected, indemnification for the Plan Administrator is provided pursuant to an Addendum to the Adoption Agreement.)
3. **Governing Law.** The following state's law shall govern the terms of the Plan to the extent not pre-empted by Federal law: California
4. **Participating Employers.** Additional participating employers may be specified in an addendum to the Adoption Agreement.
5. **State of Organization.** State of organization of Plan Sponsor: California

(If state law requires written document language regarding benefits herein, add language to Addendum.)

J. EXECUTION PAGE

Failure to properly fill out the Adoption Agreement may result in the failure of the Plan to achieve its intended tax consequences.

The Plan shall consist of this Adoption Agreement, its related Basic Plan Document #125 and any related Appendix and Addendum to the Adoption Agreement.

The undersigned agree to be bound by the terms of this Adoption Agreement and Basic Plan Document and acknowledge receipt of same. The Plan Sponsor caused this Plan to be executed this _____ day of _____, 2020.

KERN COUNTY HOSPITAL AUTHORITY:

Signature: _____

Print Name: _____

Title/Position: _____



ADMINISTRATIVE SOLUTIONS

ADMINISTRATIVE SERVICE AGREEMENT

Section 125 Flexible Spending Account

KERN COUNTY HOSPITAL AUTHORITY

ADMINISTRATIVE SOLUTIONS
CONSULTING, ENROLLMENT, AND
ADMINISTRATIVE SERVICES AGREEMENT

This agreement specifies the services to be provided to **KERN COUNTY HOSPITAL AUTHORITY**.

ADMINISTRATOR

Under the agreement, **KERN COUNTY HOSPITAL AUTHORITY** will function as the Plan Sponsor, and Administrative Solutions (ASi) as the Plan Administration Services Provider.

**ADMINISTRATIVE SERVICES TO BE PROVIDED
BY PLAN SERVICE PROVIDER FIRM**

Administrative Solutions will provide the following administrative services:

- * Prepare Plan Document, and Summary Plan Description, as necessary, or amend current Plan Documents.
- * Provide participant election forms for use during the enrollment process.
- * Provide reimbursement forms and instructions for filing claims.
- * Provide instructions for access to online portal.
- * Process enrollment/change/termination forms to facilitate the administration of The Plan.
- * Provide each participant with a New Member Informational Packet.
- * Provide forms to **KERN COUNTY HOSPITAL AUTHORITY**, to use for updating participant enrollments/changes/terminations.
- * Provide reimbursement information to **KERN COUNTY HOSPITAL AUTHORITY**, as requested.
- * If required, report data under any Federal & State compliance program.

On an on-going basis,

- (a) Provide reimbursement checks or direct deposits payable to employees.
- (b) Process payroll contributions
- (c) On an annual basis, ASi will reconcile each plan after the designated run out period.
- (d) Provide plan document amendments/restatements as required (fees may apply).

As requested, ASi will provide reports as to utilization. Special reports can also be requested.

ASi reserves the right to deactivate debit cards and/or suspend the processing of claims due to a delinquent account or misuse of the debit card.

RESPONSIBILITIES OF PLAN SPONSOR

KERN COUNTY HOSPITAL AUTHORITY will be responsible for the following activities:

- * If desired, secure legal review of the Section 125 Flexible Spending Account Plan Document and Summary Plan Description from its legal counsel.
- * Forward a copy of the executed Section 125 Flexible Spending Account Plan Document, Summary Plan Description, and Business Associate Agreement to ASi.
- * Report participant additions, terminations, and changes to ASi.
- * Complete and return annual non-discrimination worksheets to ASi for annual testing.
- * Initiate any action required if the plan(s) become discriminatory.
- * Provide management support in planning enrollment, meeting facilities, and scheduling.
- * If required, provide ASi with data necessary to comply with Federal and State mandates.
- * Provide additional funding for accounts with a negative balance. ASi reserves the right to request additional funds for overspent accounts.
- * Provide ASi with a designated HIPAA officer at the company for sending secure, private information that may relate to your employees.

REPORTS AND DATA

All reports and data remain the property of **KERN COUNTY HOSPITAL AUTHORITY**. On request, ASi will provide, **KERN COUNTY HOSPITAL AUTHORITY** all documentation used by ASi.

**ADMINISTRATIVE SOLUTIONS
TERMS AND CONDITIONS**

The undersigned Employer ("Employer") hereby retains Administrative Solutions ("ASi") to provide services for the Employer's Section 125 Flexible Spending Account(s) ("Plan") upon and subject to the following terms and conditions:

ASi shall provide, as applicable, administrative services for the Employer's Plan. The various services of ASi and the fee's ("Service Fees") charged therefore are described in the Schedule of Services and Fees ("Schedule") attached hereto and made a part hereof. Where applicable, all Service Fees shall be determined according to the Schedule. ASi shall have the right to modify the Schedule at any time, provided, however, that ASi shall give the Employer notice of the intended modification sixty (60) days prior to the date such modification shall become effective. Either party may cancel this Agreement by giving the other party written notice delivered first class registered mail at least thirty (30) days prior to the date such cancellation shall become effective. All invoices submitted by ASi are due and payable upon receipt.

The Employer shall furnish ASi with all information required by ASi to perform its services hereunder. ASi shall rely entirely and conclusively upon such information furnished by the Employer except to the extent that it may be contrary to the provisions of the Plan or applicable law. ASi shall have no duty to investigate the source or accuracy of such information or to question any action of the Employer, its Agents, or any Participants of the Plan. The Employer hereby agrees that payment of all Fees, Penalties, Interest and other costs levied by the Internal Revenue Service, Department of Labor, or any other governmental agencies resulting from the negligence, neglect or breach of this agreement by Employer are the sole responsibility of the Employer and/or Plan.

Similarly, at times ASi must report information to governmental agencies regarding group plans. As such, ASi will request data and/or documentation from the employer. It is the responsibility of the employer to submit this requested information timely and completely.

The Employer hereby agrees that ASi shall not be liable to the Employer, the Plan, any Participants of the Plan or any other person for any damages, costs or expenses resulting from any error in any administration, investment or any matter of the Plan or its Trust resulting from any act, omission, negligence or default of any other Plan Administrator, Investment Advisor, or any other Advisors. The Employer further agrees to save, defend, indemnify and hold harmless ASi and its owners, directors, agents and employees from any costs, damages, expenses and/or other losses resulting from the claims of Employer's Plan Participants or Service Providers, including without limitation all costs or attorney's fees and other costs of litigation and/or arbitration. The Employer also agrees that ASi shall not be liable to Employer, Plan, Participant of the Plan, or Service Provider for any losses, damages or other expenses, direct or indirect resulting from the negligence, neglect or breach of this agreement by Employer or Employees of the Employer.

Accepted for Administrative Solutions:

Accepted for Employer:

KERN COUNTY HOSPITAL AUTHORITY

Signature

Signature

President

Date

Date

EXHIBIT A

Section 125 Flexible Spending Account Administration

KERN COUNTY HOSPITAL AUTHORITY

Effective Date: January 1, 2021

FEE SCHEDULE

| <u>Implementation Fees (One-time Charge)</u> | |
|---|------------------------------------|
| Set-up Fee | \$300.00 |
| Plan Documents | \$300.00 |
| <u>On-going Fees</u> | |
| Annual Base Fee | \$250.00 |
| Annual Base Fee (Paper/Manual Processing Enrollments) | \$350.00 |
| -Please Note: There's an additional fee of \$4.00 per paper/manual entry enrollment at renewal | |
| Document Restatement (upon request or Federally necessary) | \$300.00 |
| Document Amendment (upon request) | \$250.00 |
| Administration Fee (per participant/per month)* | \$3.50 (Bill Chimienti) |
| Note: Minimum Monthly Administrative Charge | \$50.00 |
| Debit Card Security Deposit | 5% Deposit |
| Note: Debit cards for the medical component require a security deposit of the aggregate participant annual election amount. The deposit will be refunded to the employer within 120 days of the Plan termination. | |
| Annual Discrimination Testing & Analysis | No Charge |
| *Administration fee includes the debit card option on client banking. | |
| <u>Additional Services</u> | |
| Plan Termination for Claims Run-Out | Standard Administrative Fees Apply |
| Debit Card Replacement Fee | \$5.00 per set/per request |
| New Employee Installation | No Charge |
| Take-over of existing Plan | Quoted Separately |
| Special Project/Consulting Service | \$115.00 per hour |
| Additional Employee Presentation/Enrollment Meetings | \$100.00 per occurrence |
| Enrollment Meetings (travel outside the Fresno area) | Mileage Fees Apply |
| Requested Plan Changes (Outside of Renewal Period) | Quoted Separately |

Administrative Solutions (ASi)

P. O. Box 5809 | Fresno, CA 93755

Ph. 559.256.1320 | Fax 559.475.5787

clientservices@asibenefits.com | www.asibenefits.com



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

December 9, 2020

Subject: Proposed Sales Order OPT-0261698 to Agreement 2016-036 with Cerner Corporation for purchase of the Patient Facing Payment Estimator application

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the purchase of Cerner's Patient Facing Payment Estimator application to meet the Centers for Medicare & Medicaid Services (CMS) Hospital Price Transparency regulation requirements for hospitals to establish, update, and make public a list of their standard charges for the items and services that they provide. The consequences of not entering into this agreement could result in Kern Medical receiving a CMS action to address non-compliance which may include: a written warning of the specific violation(s); a corrective action plan (CAP); a financial penalty; and/or the publication of the hospital's noncompliance on the CMS website. The CMS requirement is effective January 1, 2021.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the inability to terminate without cause. However, due to the impending CMS requirement, it is recommended that your Board approve the proposed Sales Order OPT-0261698 with Cerner Corporation for the purchase of the Patient Facing Payment Estimator application for a maximum cost not to exceed \$183,381 from January 1, 2021 through December 31, 2023, and authorize the Chairman to sign.



CERNER SALES ORDER

This Cerner Sales Order is made on December 9, 2020 (“**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 Rockcreek Parkway
Kansas City, MO 64117, United States
Telephone: (816) 221-1024

Cerner Sales Contact: Matt Maddux
+1 816 571 6369
matt.maddux@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**”).

KERN COUNTY HOSPITAL AUTHORITY

CERNER CORPORATION

Authorized signatory: _____

(signature)

Russell Bigler

(printed name)

Title: Chairman, Board of Governors

Authorized signatory: _____

Teresa Waller

Title: Sr. Director, Contract Management

CLIENT WILL COMPLETE THE FOLLOWING UPON EXECUTION OF THIS CERNER SALES ORDER:

Client Invoice Contact: _____

Contact Phone #: _____

Contact Email Address: _____

Client’s account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

FINANCIAL OVERVIEW

| Description | One-Time Fees | Monthly Fees |
|------------------------------|------------------|-----------------|
| SOLUTIONS | | |
| Subscription Services | -- | 2,723.00 |
| PROFESSIONAL SERVICES | | |
| Fixed Fee | 20,001.00 | -- |
| TOTALS: | 20,001.00 | 2,723.00 |

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until January 26, 2021. 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 |
| Subscription Services | 100% | Annually beginning on the Effective Date. |

TERM AND TERMINATION

Other Services. All recurring Services (such as subscription services, application services, shared computing services, transaction services, employer services, recurring professional services, application management services, and managed services) begin on the Effective Date, and continue for the term set forth in the "Solutions", "Professional Services", "Application Management Services", or "Managed Services" sections. At the end of the applicable term, each Service will automatically renew for additional 12 month periods at the rate charged in the final period of the then-current term, unless either party provides the other party with written notification of its intent to terminate the relevant Service no less than 60 days prior to the expiration of the applicable then-current term.

FEE INCREASES

Cerner may increase the monthly fee for Support services and each recurring service (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) any time following the initial twelve (12) month period after such recurring service fees begin (but not more frequently than once in any twelve (12) month period) by giving Client sixty (60) days prior written notice of the price increase. The amount of any increase in the fees shall not exceed the previous calendar year's percentage increase in CPI, plus 1% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner's fee to the third party.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

SOLUTIONS

SUBSCRIPTION SERVICES

| Mfg. Part No. | Solution Detail Description | Scope of Use Metric | Qty./ Scope of Use Limit | Term (Mo.) | Monthly Range | Extended One-Time Fees | Extended Monthly Fees | Solution Description Code | Third-Party Component(s) | Pass-Through Code | Per Unit One-Time Expansion Fees | Per Unit Monthly Expansion Fees |
|---------------|----------------------------------|---------------------|--------------------------|------------|---------------|------------------------|-----------------------|---------------------------|--------------------------|-------------------|----------------------------------|---------------------------------|
| 07642155 | Patient Facing Payment Estimator | Annual Encounters | 192,000 | 36 | 1-36 | 0 | 2,723 | -- | ✓ | 100097_001 | -- | 0 |
| TOTAL: | | | | | | -- | 2,723 | -- | -- | -- | -- | -- |

PROFESSIONAL SERVICES

FIXED FEE

| Service Project Detail | Manufacturer Part No. | Solution | One-Time Fees | Third-Party Component(s) | Pass-Through Code |
|------------------------|-----------------------|----------|---------------|--------------------------|-------------------|
| <i>Custom Services</i> | | | | | |
| Patient Estimates | -- | -- | 11,765 | ✓ | -- |
| Self-Serve Estimates | -- | -- | 8,236 | ✓ | 100097_001 |
| TOTALS: | | | 20,001 | -- | -- |

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 Per Unit One-Time and/or Monthly 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.

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 |
|---------------------|--|
| Annual Encounters | The total number of annual interactions with a health care provider, where the patient receives any type of service. |

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.

PASS-THROUGH PROVISIONS

Where pass-through provisions are applicable to third-party products and services, these provisions are referenced by a pass-through code in the "Solutions", "Equipment/Sublicensed Software", "Professional Services", "Application Management Services", or "Managed Services" sections of this Cerner Sales Order, and that code can be entered at <https://passthroughprovisions.cerner.com> to view the pass-through provisions. These pass-through provisions are incorporated into this Cerner Sales Order by reference, and may also be attached as an exhibit to this Cerner Sales Order.



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

This Exhibit A defines the Service deliverables (“**Scope**”) for the Services set forth in this Cerner Sales Order.

GENERAL SCOPE

PROFESSIONAL SERVICES

The following scope applies to all implementation services set forth in this Cerner Sales Order.

Scope Considerations; Control of Scope of Work. Cerner commits to delivering, in conjunction with Client, a design, build, test, and rollout of all applicable elements set forth in this Cerner Sales Order. The build for all Licensed Software and Cerner Services will be based upon Cerner’s standard implementation processes. The project teams will reasonably accommodate design and build requests by Client, including non-Model Experience requests. Such requests may result in changes to project timelines and budget. Customization of reports, views, *MPages*, and rules are only included if specifically noted.

Client and Cerner must fulfill their responsibilities and adhere to the other requirements and descriptions set forth herein to meet the goals of an ‘on-time’ and ‘on-budget’ project. Modifications to this Scope shall be mutually agreed upon by Cerner and Client’s executive steering committee and set forth on a new Cerner Sales Order, including changes in resources, professional services fees, and project timelines.

Project Start Date. The project start date will be based on the Effective Date of this Cerner Sales Order. Cerner requires a minimum of 90 days from the Effective Date to accommodate project staffing requests. After the project start date, Cerner and Client will begin activities such as planning, staffing, and technology activities.

Travel, Lodging, Out-of-Pocket Expenses, and Per Diem Rates. The fees in this Cerner Sales Order do not include travel, lodging, per diem, or other out-of-pocket expenses. Such fees will be billed to Client per the underlying Agreement.

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

SOLUTION DETAIL SCOPE

Third-Party Services. Capitalized terms used in third-party Scope shall have the meanings ascribed to them herein, or as set forth in the applicable third party’s pass-through provisions. Where there is a conflict between the definitions in third-party Scope and the Agreement, the definitions in this Exhibit A shall control, but only with regards to the subject matter set forth herein.

PROFESSIONAL SERVICES

PATIENT FACING PAYMENT ESTIMATOR

(07642817)



Kern County Hospital Authority
OPT-0261698_Q-29948.1
November 24, 2020

**PATIENT FACING PAYMENT ESTIMATOR
(07642817)**

| | |
|----------------------------------|---|
| Supplier Responsibilities | <ul style="list-style-type: none"> • Milestone 1: <ul style="list-style-type: none"> ○ Enrollment and administrative access setup ○ Project kickoff meeting • Milestone 2: <ul style="list-style-type: none"> ○ Implementation initiation and project plan scope ○ Interface connectivity setup and testing ○ User interface ○ System configuration which includes: <ul style="list-style-type: none"> ▪ Loading Client setup template ▪ Loading Client procedure template ○ Best practice meeting ○ User acceptance testing • Milestone 3: <ul style="list-style-type: none"> ○ User training ○ Go-live ○ 30-day post go-live optimization <ul style="list-style-type: none"> ▪ Provide collection vs. opportunity report (integrated or non-integrated) |
| Client Responsibilities | <ul style="list-style-type: none"> • Assign a project manager who will organize Client resources as necessary to achieve the testing and implementation of this service • Provide the following data files and/or information: <ul style="list-style-type: none"> ○ Procedure template • Provide access to the portal or website where patient facing estimates will be housed if <i>Experian</i> patient self-service portal is not installed • Supply data and connectivity necessary for supplier to deliver these services |
| Deliverables | <ul style="list-style-type: none"> • A tool for patients to use to obtain an estimated patient portion cost for their potential services • Client setup template • Client procedure template |
| Project Assumptions | <ul style="list-style-type: none"> • Either <i>eCare NEXT</i> – Cerner Integration or <i>Passport eCare NEXT</i> Eligibility Setup for Payment Patient Estimates Only and Patient Estimates have already been implemented or are being implemented at the same time as this service. • If Patient Estimates is being implemented at the same time, it must be live for 90 days prior to bringing Patient Facing Estimates live. • Client has met its Client Responsibilities. |



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

EXPERIAN HEALTH SCOPE OF WORK – PATIENT ESTIMATES

(07642767, 07642775)

| | |
|----------------------------------|--|
| Supplier Tasks/Activities | <ul style="list-style-type: none"> • Milestone 1: <ul style="list-style-type: none"> o Enrollment and administrative set-up o Project introduction – kickoff • Milestone 2: <ul style="list-style-type: none"> o Implement initiation and project plan scope o Set up and test interface connectivity o Set up File Transfer Protocol (FTP) site for 837 claims o Configure system: <ul style="list-style-type: none"> ▪ Load Master files provided <ul style="list-style-type: none"> ▫ 1 Charge Description Master(s) (CDM) ▫ 10 payer contracts ▫ 837 files ▫ Facility logo ▪ Load Client setup template o Conduct best-practice meeting o Conduct user acceptance testing • Milestone 3: <ul style="list-style-type: none"> o User training o Optimization 30 days after go live <ul style="list-style-type: none"> ▪ Perform 30-day post go live optimization ▪ Collection versus opportunity report (integrated or non) |
| Client Tasks/Activities | <ul style="list-style-type: none"> • Assign a project manager who will organize Client resources as necessary to achieve the testing and implementation of this service. Provide the following data files and/or information <ul style="list-style-type: none"> o CDM o Insurance Master o Information for Self Pay/Prompt Pay Discount table in setup template format o Information for Changes to Standard Self Pay Disclaimer in setup template format o 12 months of 837 Claims Data o Facility logo for printing on patient estimated responsibility form o Managed care contracts o Medicare info • Supply any and all data connectivity necessary for Experian Health to deliver these services |
| Project Assumptions | <ul style="list-style-type: none"> • EN - Passport eCare NEXT - In-Process Scripting + touchless processing, EN - Passport eCare NEXT - HL7 + touchless processing, or EN - Passport eCare NEXT Eligibility Set-up for PPE only has already been implemented or is being implemented at the same time as this service • Client has met its Client responsibilities |



Kern County Hospital Authority
OPT-0261698_Q-29948.1
November 24, 2020



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

EXPERIAN HEALTH SCOPE OF WORK – PATIENT ESTIMATES (07642767, 07642775)

- Work is performed remotely unless otherwise noted or agreed upon



Kern County Hospital Authority
OPT-0261698_Q-29948.1
November 24, 2020

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

Subject: Software Delivery and Installation

Document ID: OPT-0261698

This Event Activity Report (“**EAR**”) serves as confirmation that delivery has occurred of the solutions set forth below. This delivery event does not include customization or implementation of such solutions.

| Mfg. Part Number | Solution Detail Description |
|------------------|----------------------------------|
| 07642155 | Patient Facing Payment Estimator |

I acknowledge that delivery of these solutions occurred on _____.
(Date)

The following signature represents completion of this delivery event.

**ACCEPTED FOR KERN COUNTY HOSPITAL
AUTHORITY**

By: _____

(type or print)

Title: _____

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

Invoice No: EXEC CSO No. LA-OPT-0261698
Invoice Date: November 24, 2020
Due Date: Effective Date

Remit: Via FedEx:
Cerner Corporation
 Attn: Accounts Receivable, 5th Floor
 2800 Rockcreek Parkway
 Kansas City, MO 64117

OR

Via Wire Transfer:
 ABA Routing Number: 101000187
 Bank: US Bank
 For Further Deposit to Bank Account: 5290000743

| | |
|--------------------------|-----------------|
| TOTAL AMOUNT DUE: | \$42,677 |
|--------------------------|-----------------|

Sales tax, if applicable, will be invoiced separately.

| Description | Total Amount | Percent Payable | Net Amount |
|---|--------------|-----------------|-----------------|
| Subscription Services Monthly Fees - Year 1 | \$32,676 | 100% | \$32,676 |
| Fixed Fee Professional Services Fees | \$20,001 | 50% | \$10,001 |
| GRAND TOTAL: | | | \$42,677 |



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

December 9, 2020

SUBJECT: Letter from Moss Adams LLP regarding audit planning for Fiscal Year ending June 30, 2020

Recommended Action: Receive and File

Summary:

Kern Medical Center requests your Board receive and file the attached letter from Moss Adams LLP, for the audit of Kern Medical Center's financial statements for Fiscal Year ending June 30, 2020, pursuant to Kern County Hospital Authority Agreement 024-2020.

The purpose of the letter is to communicate to your Board the auditor's responsibilities regarding the financial statement audit, the planned scope of the audit, and the timing of the audit. The scope of the audit will include the audit of Kern Medical financial statements, which comprise the statement of net position as of June 30, 2020, and the related statements of revenue, expenses and changes in net position, and cash flows for the year then ended, the related notes to the financial statements, and auditee section of the OMB Data Collection Form. Representatives of Moss Adams will present the final report of the audited financials at your Board's meeting on January 20, 2021.

Therefore, it is recommended that your Board receive and file the proposed letter from Moss Adams LLP.

To the Board of Governors
Kern County Hospital Authority

In connection with our engagement to audit the financial statements of Kern County Hospital Authority (the "Company") as of and for the year ended June 30, 2020, professional standards require that we communicate with you certain items including our responsibilities with regard to the financial statement audit and the planned scope and timing of our audit. We would also appreciate the opportunity to meet with you to discuss this information further since two-way communication can provide valuable information in the audit process. It is our understanding that Andy Cantu is the appropriate person within the Company's governance structure with whom to communicate.

As stated in our engagement letter dated May 18, 2020, as amended and restated on September 21, 2020, we are responsible for conducting our audit in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards* issued by the Comptroller General of the United States, and the California Code of Regulations, Title 2, Section 1131.2, State Controller's Minimum Audit Requirements for California Special Districts for the purpose of forming and expressing an opinion about whether the financial statements that have been prepared by management, with your oversight, are presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis, to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Company's RSI in accordance with auditing standards generally accepted in the United States of America. We will not express an opinion or provide assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide assurance.

We will also provide the Company with the following non-attest services:

- Assist you in drafting the financial statements and related footnotes as of and for the year ended June 30, 2020.
- Assist you in drafting the auditee section of the OMB Data Collection Form for the year ended June 30, 2020.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

Our audit will include obtaining an understanding of the entity and its environment, including its internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or regulations that are attributable to the Company or to acts by management or employees acting on behalf of the Company. We will communicate to you at the conclusion of our audit, significant matters that we believe are relevant to your responsibilities in overseeing the financial reporting process, including any internal control related matters that are required to be communicated under professional standards.

We began our audit on approximately August 17, 2020, and expect to issue our report on approximately December 20, 2020.

During the planning of the audit, we have identified the following areas of audit emphasis:

- Information technology general controls over revenue cycle system implementation
- Revenue recognition
- Valuation of patient accounts receivables
- Valuation of third-party settlements
- Pension obligation
- Related-party transactions

Your client service team includes: Stelian Damu, Engagement Partner; Stacy Stelzriede, Concurring Review Partner; and Kimberly Sokoloff, Engagement Senior Manager.

This information is intended solely for the information and use of the Board of Governors and management of Kern County Hospital Authority and is not intended to be, and should not be, used by anyone other than these specified parties.

Respectfully,

Moss Adams LLP

Los Angeles, California
November 23, 2020



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

December 9, 2020

Subject: Kern County Hospital Authority Financial Report – October- 2020

Recommended Action: Receive and File

Summary:

COVID-19 Impact on Kern Medical Operations:

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

- Average Daily Census of 134 for October is 3 less than the October budget of 137 and 11 less than the 145 average over the last three months
- Admissions of 795 for October are 61 less than the October budget of 856 and 5 more than the 790 average over the last three months
- Total Surgeries of 543 for October are 55 more than the October budget of 488 and 61 more than the 482 average over the last three months
- Clinic Visits of 14,952 for October are 1,019 more than the October budget of 13,993 and 1,236 more than the 13,716 average over the last three months

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

The following items have budget variances for the month of October 2020:

Patient Revenue:

Gross patient revenue has a favorable budget variance for October and on a year-to-date basis mainly because of strong average daily census levels. In addition, there has been an overall increase in revenue cycle efficiency. Gross patient revenue per month has increased 6% compared to prior year.

Other Non-Operating Revenue:

COVID-19 related funding is budgeted evenly throughout FY 2021 as other non-operating revenue; however, COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Salaries Expense:

Salaries expenses are over budget for the month mainly due to higher than average expenses for registered nurses (RNs) and physicians. The increase in RNs and physicians expenses correlates with the increase in total surgeries for the month which are 11% above budget and above the current trend. It also corresponds with an increase in FTE hours in the operating room and the trauma unit for the month. In addition, it also corresponds with an increase in FTEs in the Behavioral Health unit for additional sitters needed for an increase in behavioral health patients.

Medical Fees:

Medical fees has a favorable budget variance for October due to over accruals for this expense in prior months for physicians that no longer provide services for Kern Medical. In addition, other physicians working on an as needed basis have reduced costs.

Supplies Expense:

Supplies expenses are over budget for the month mainly due to higher than average prostheses purchases for the operating room from DePuy Synthes Sales, Inc. The prostheses expenses and an increase in blood bank expenses corresponds with the increase in surgeries for the month. In addition, Cath Lab purchases of implantable defibrillators from Medtronic for Kern Medical's new pacemaker service contributed to the higher supplies expense. There was also a relatively large purchase of approximately \$100,000 for COVID-19 related supplies purchased from Medline to replenish inventory. These supplies are charged to a COVID-19 specific cost center to track the costs for various reporting purposes. On a year-to-date basis, supplies expenses are under budget primarily because of lower than expected pharmaceutical expenses.

Purchased Services:

Purchased services expenses are over budget for the month and on a year-to-date basis because of higher than average expense for Health Advocates patient financial counseling services. Health Advocates counselors work to qualify patients for Medi-Cal insurance coverage. Kern Medical realizes increased Medi-Cal reimbursement from their efforts. The large volume of patients seen at Kern Medical during the past few months corresponds with a large volume of patients counseled by Health Advocates.

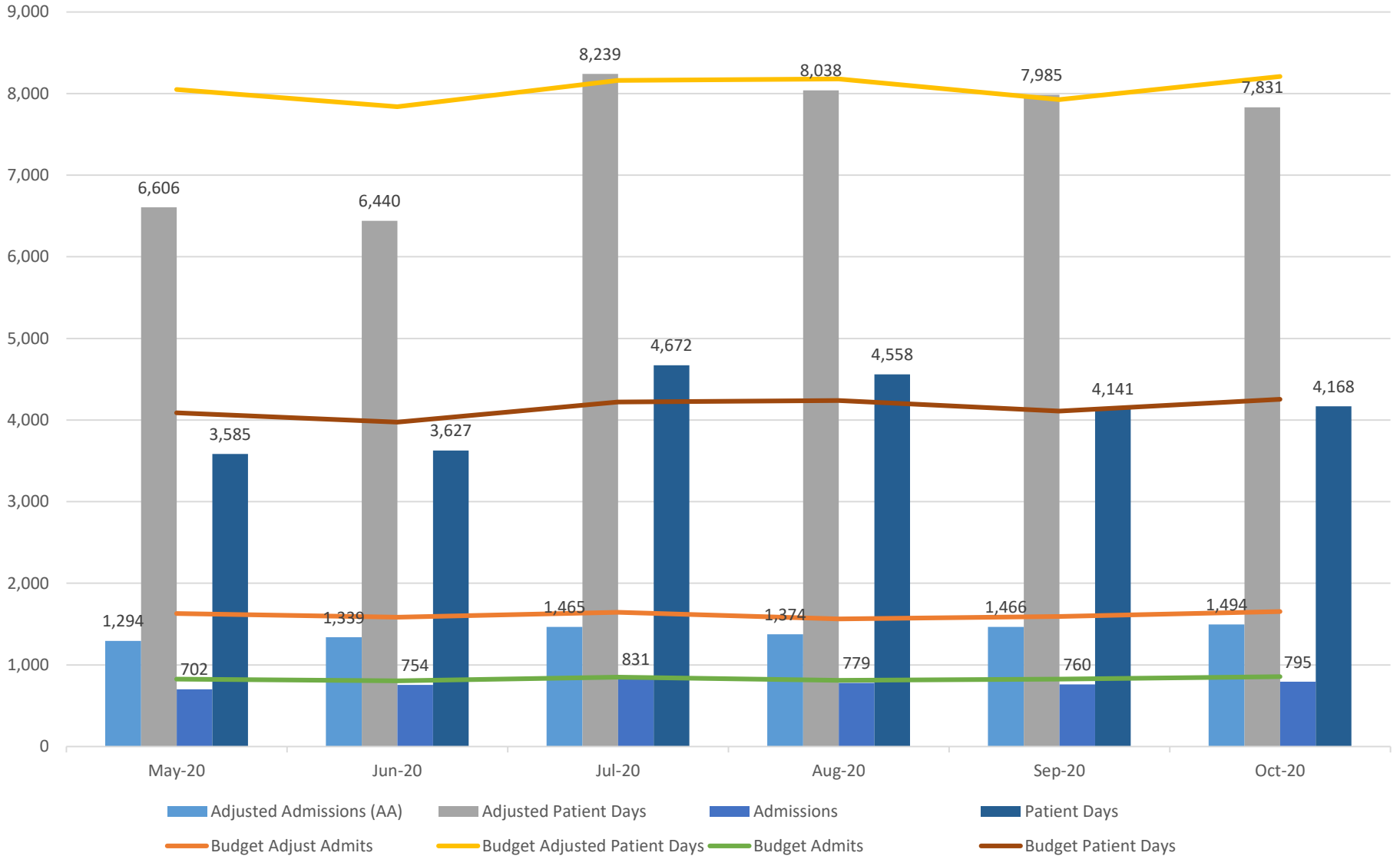
In addition, there were purchased services expenses in October for annual diagnostic testing of radiology equipment conducted by Therapy Physics, Inc. The annual diagnostic testing ensures regulatory compliance for Kern Medical's radiology equipment.



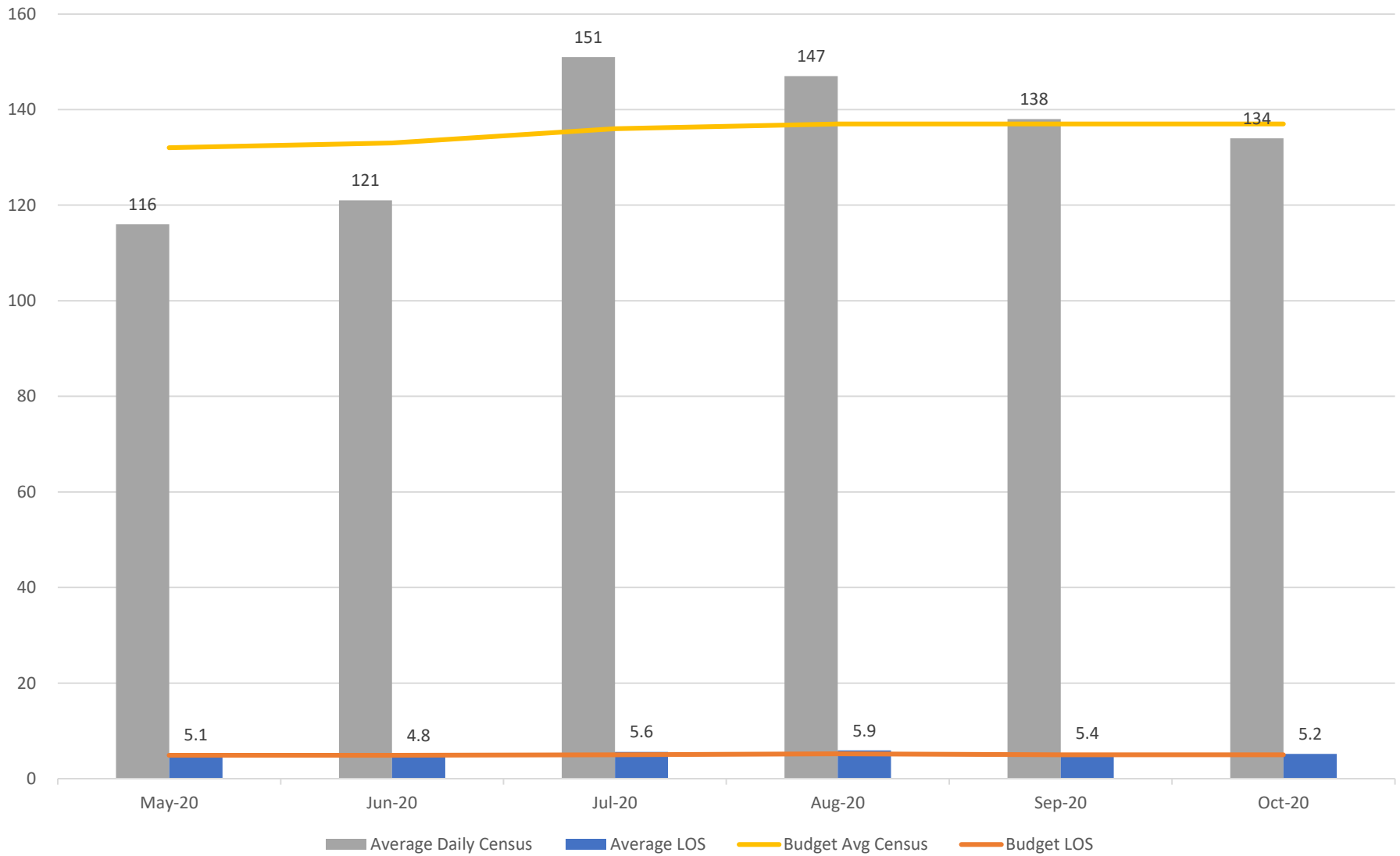
**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – OCTOBER 2020**

DECEMBER 2020

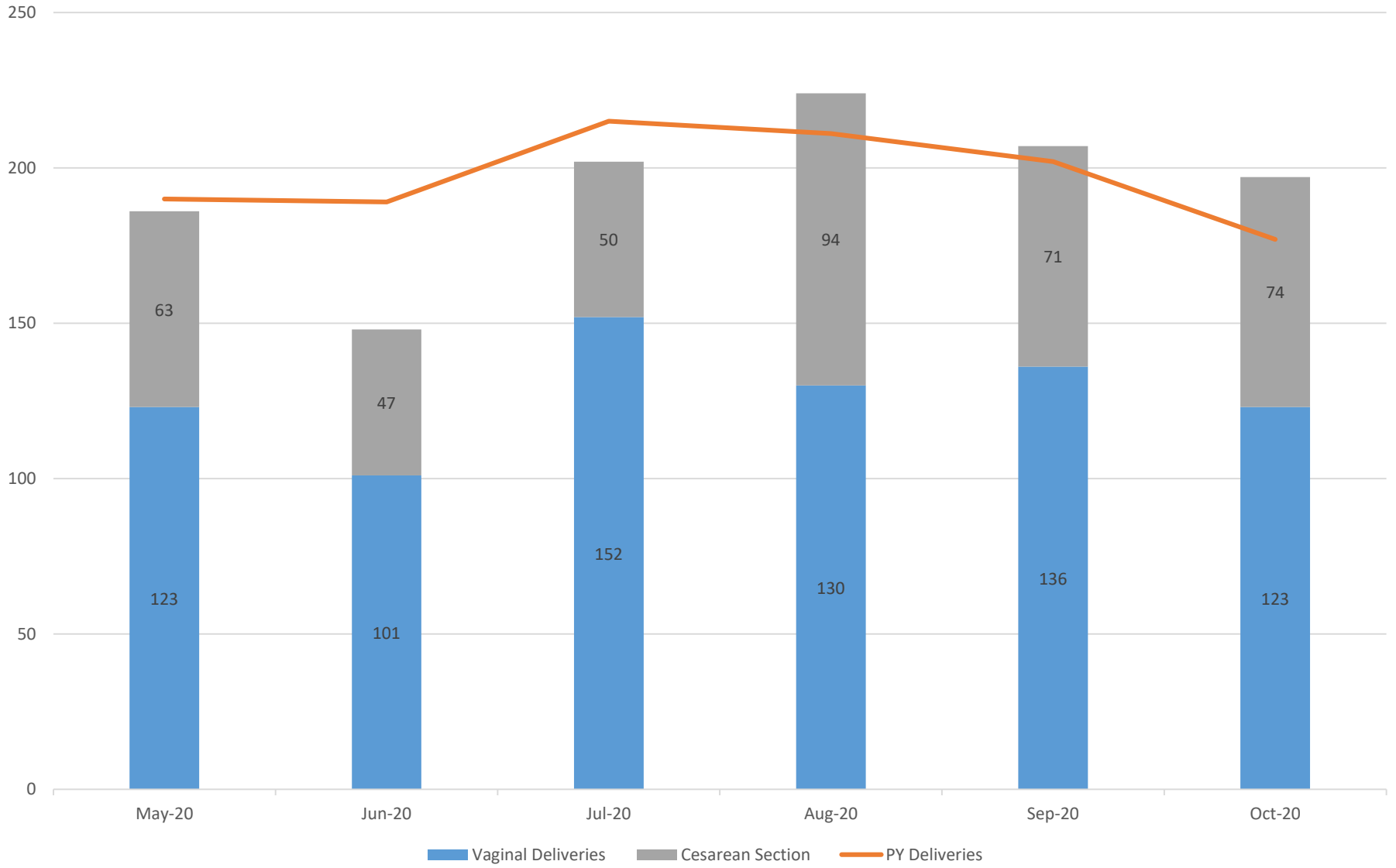
Hospital Volumes



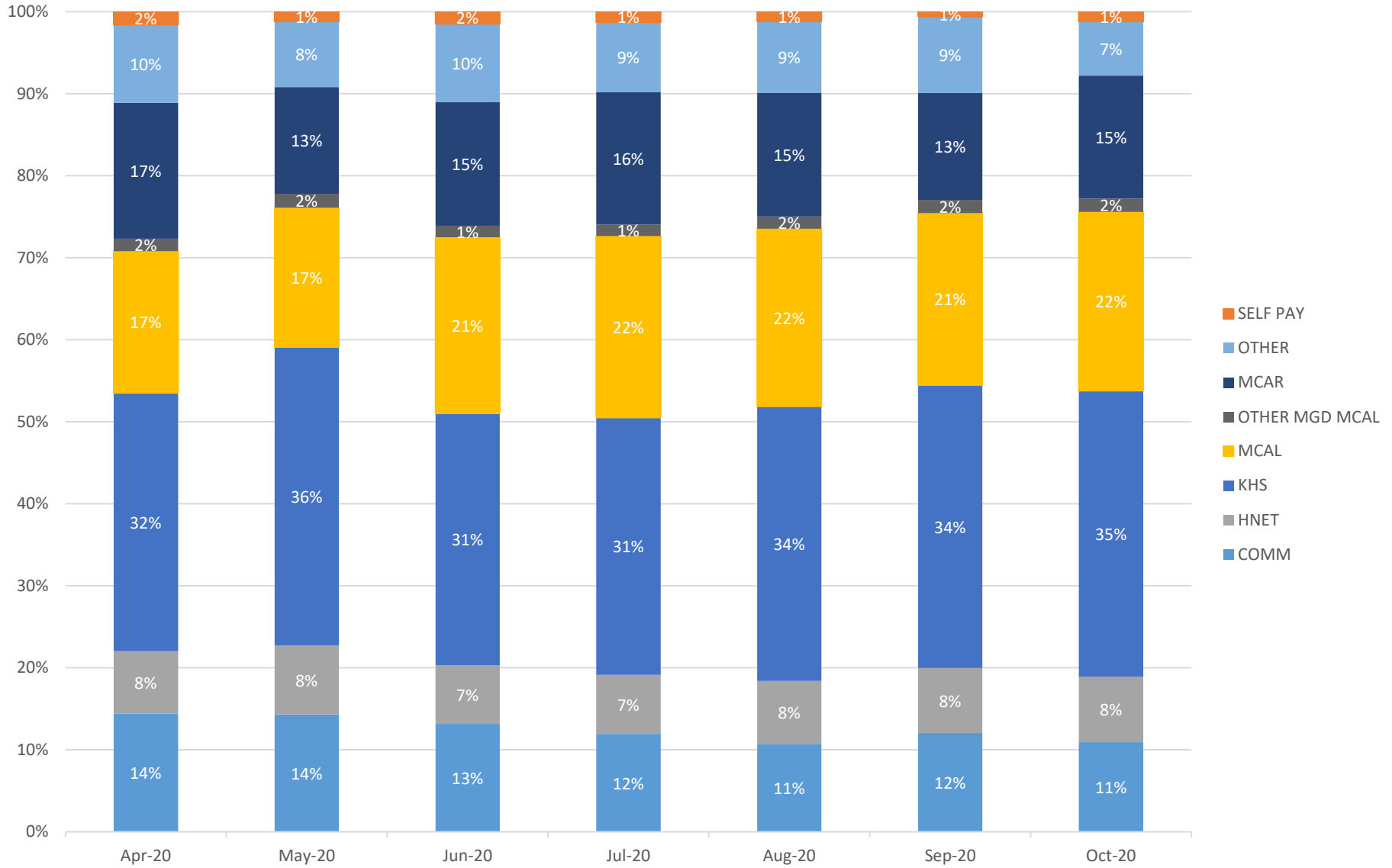
Census & ALOS



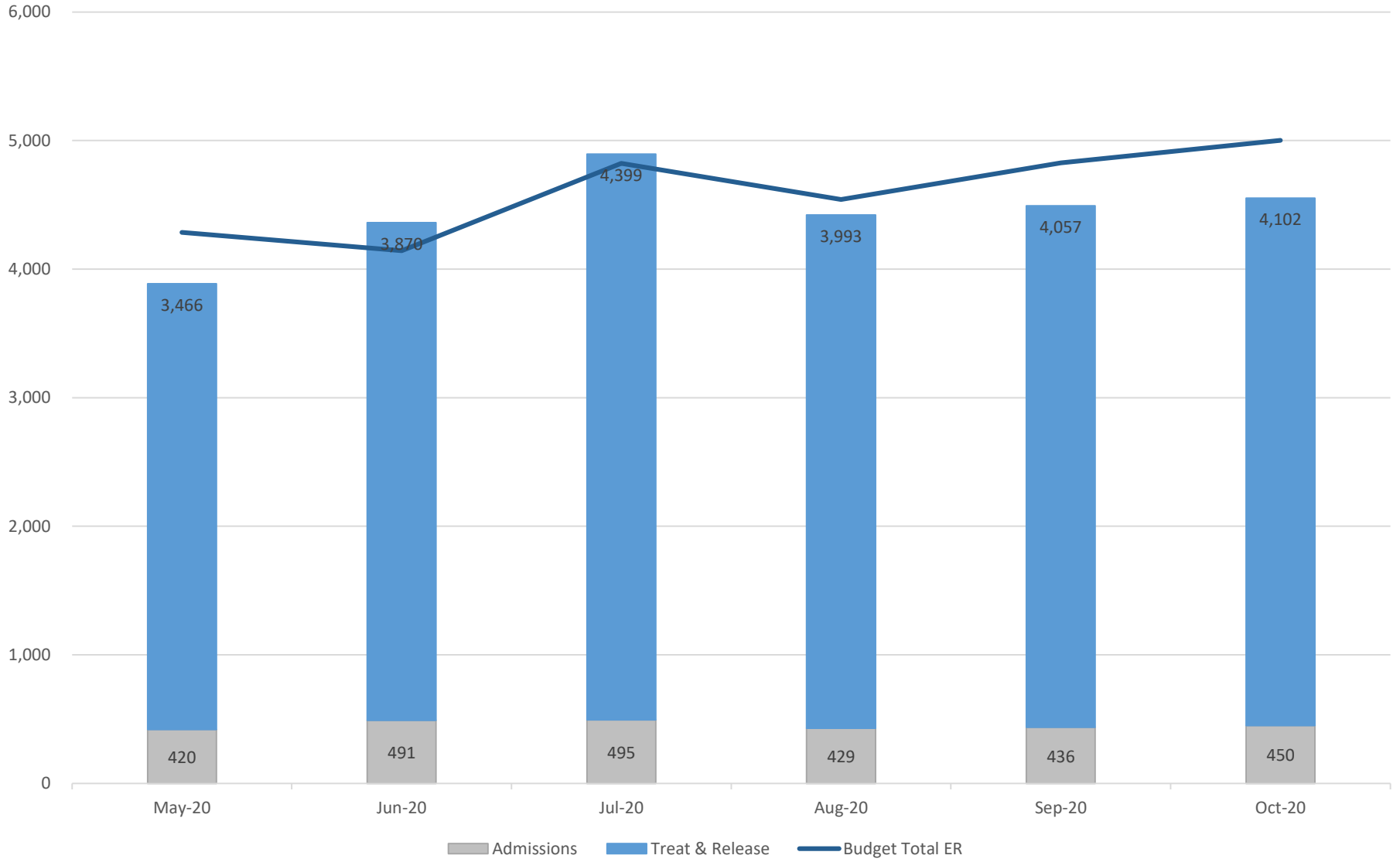
Deliveries



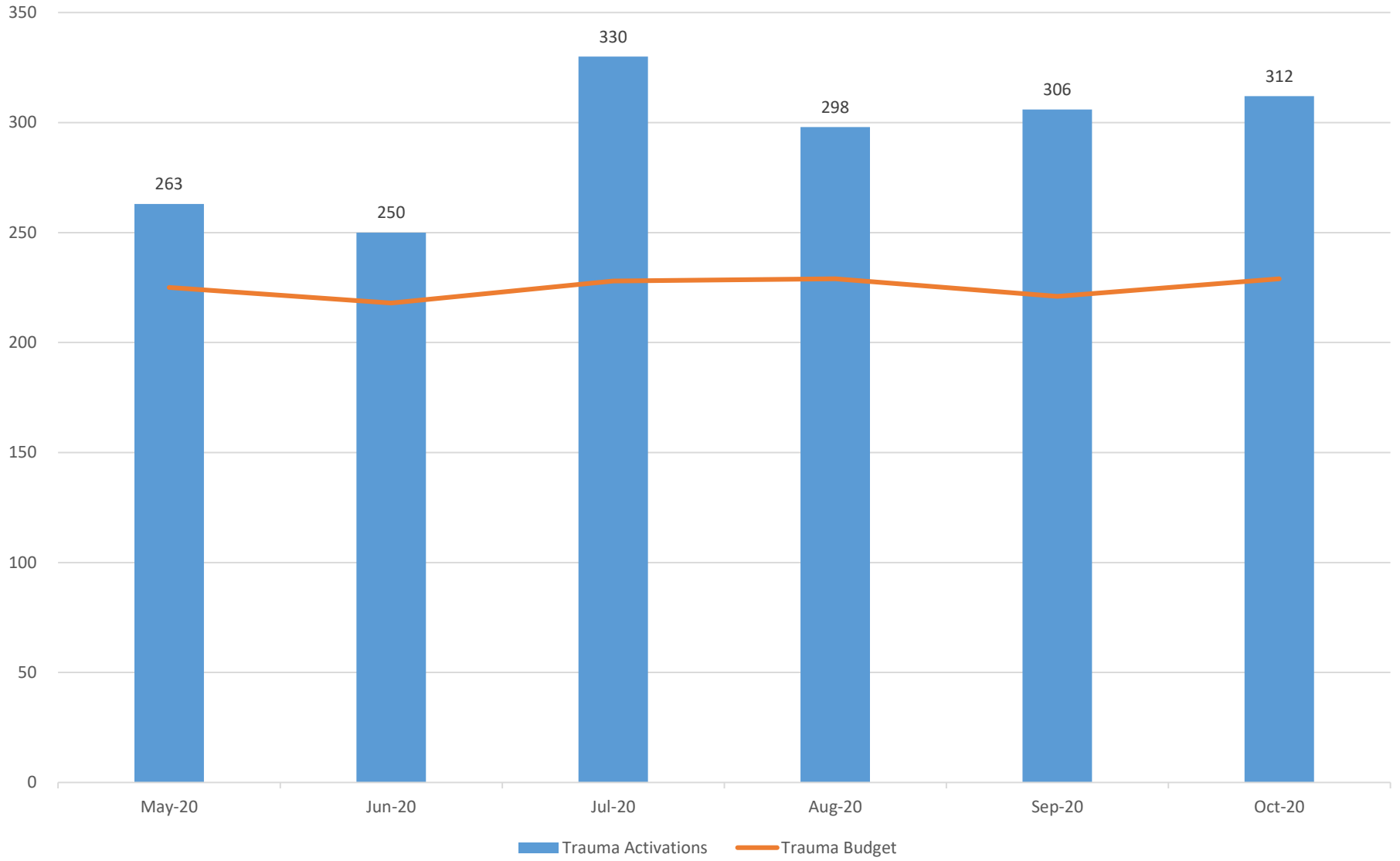
PAYER MIX



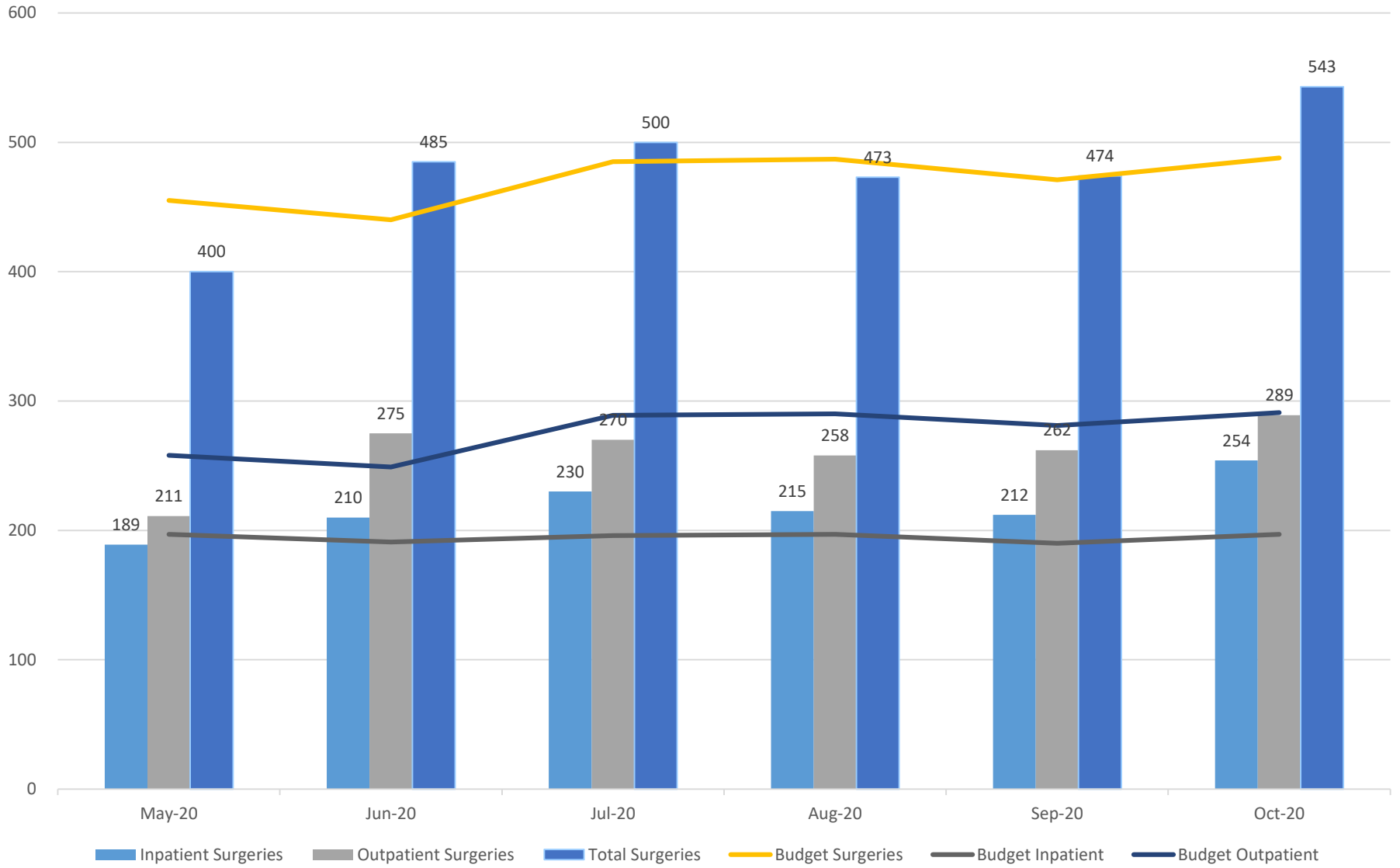
Emergency Room Volume



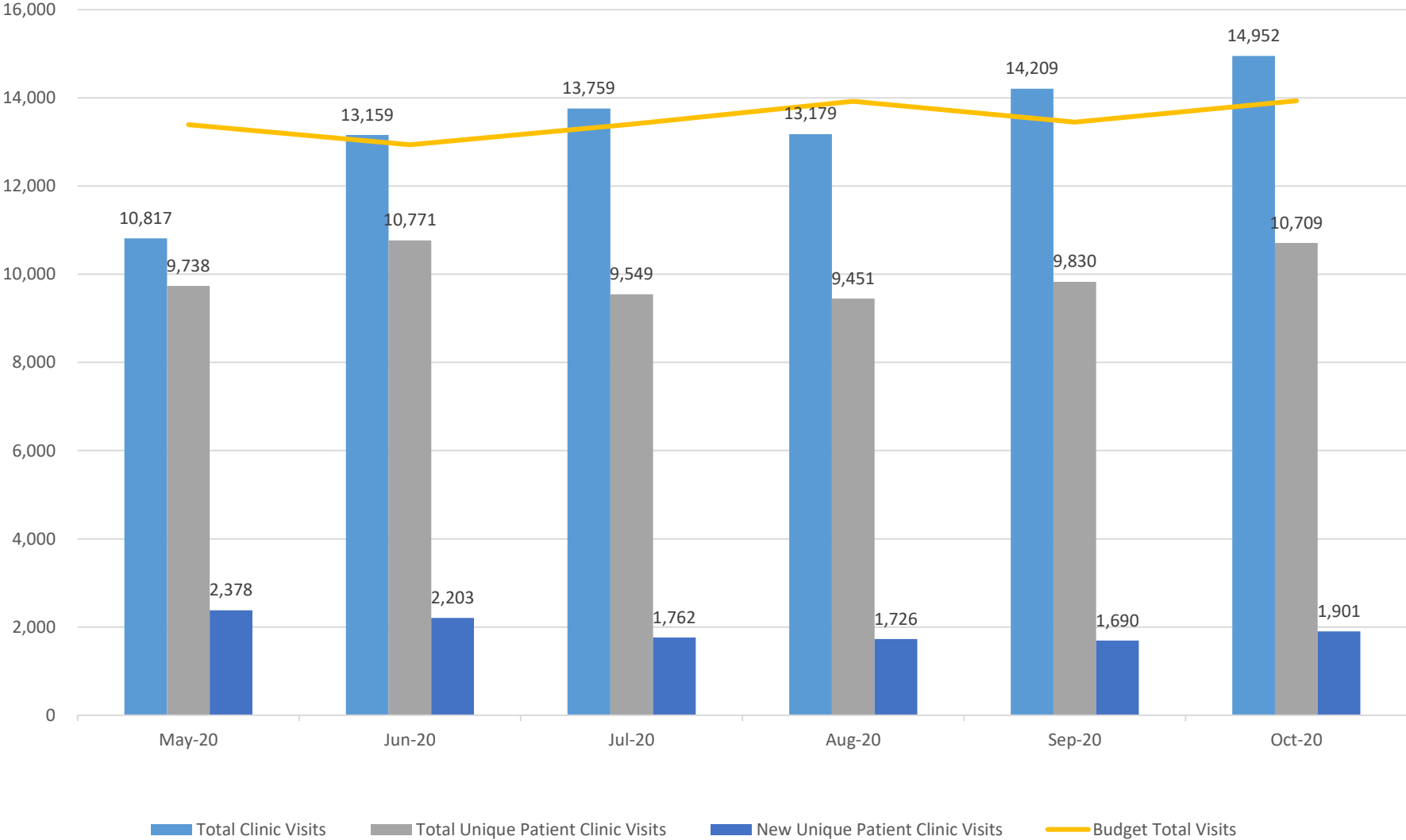
Trauma Activations



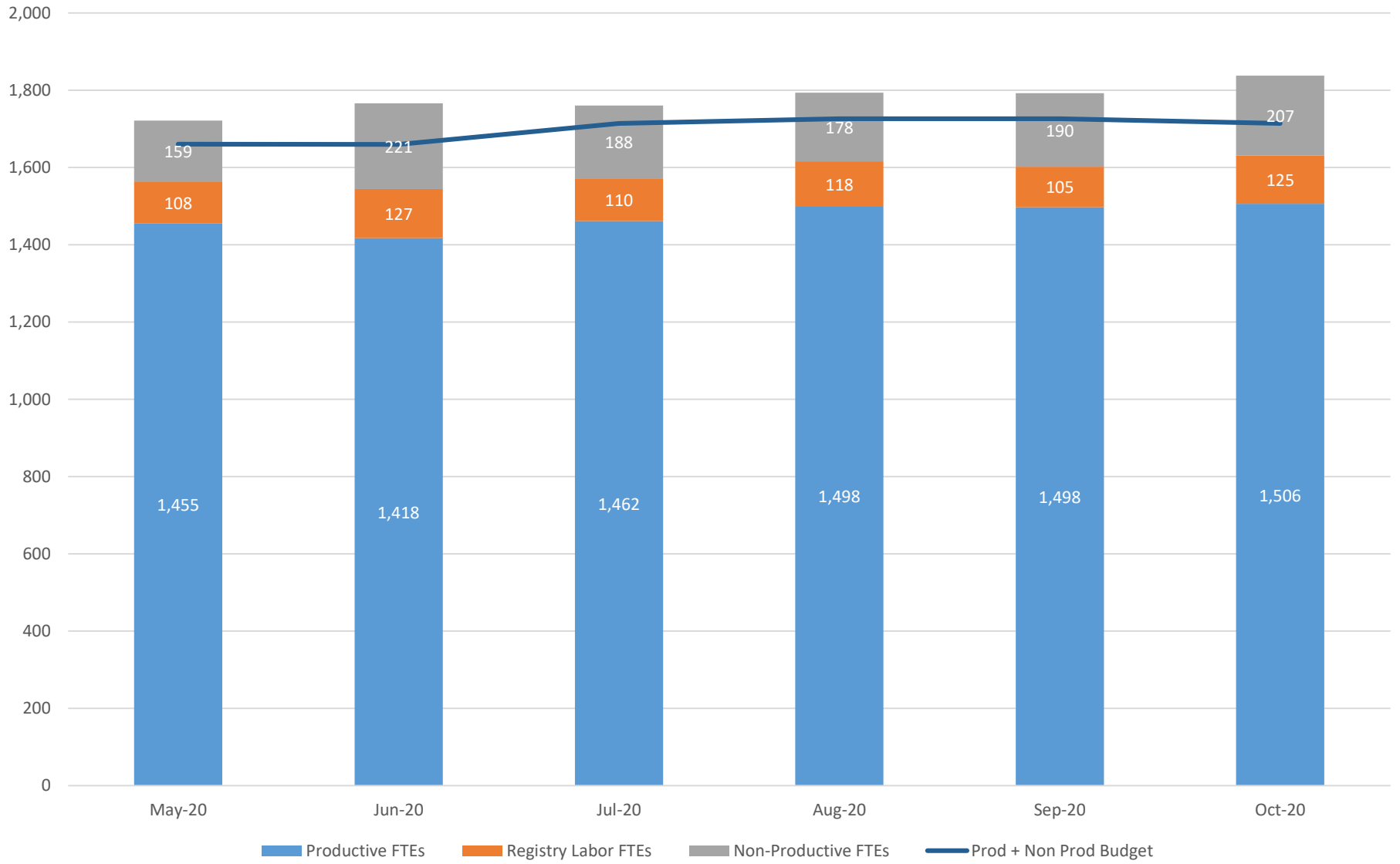
Surgical Volume



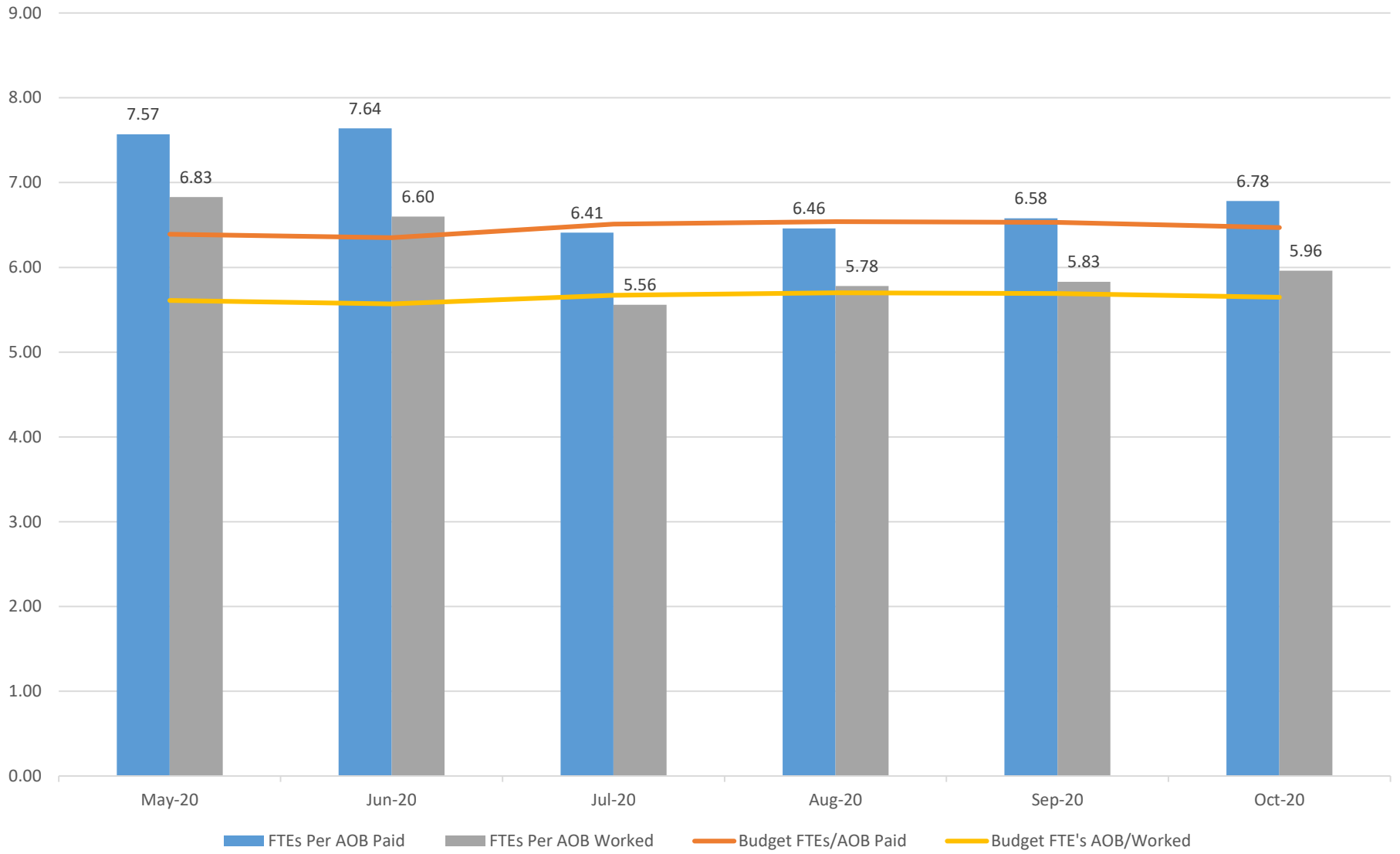
Clinic Visits



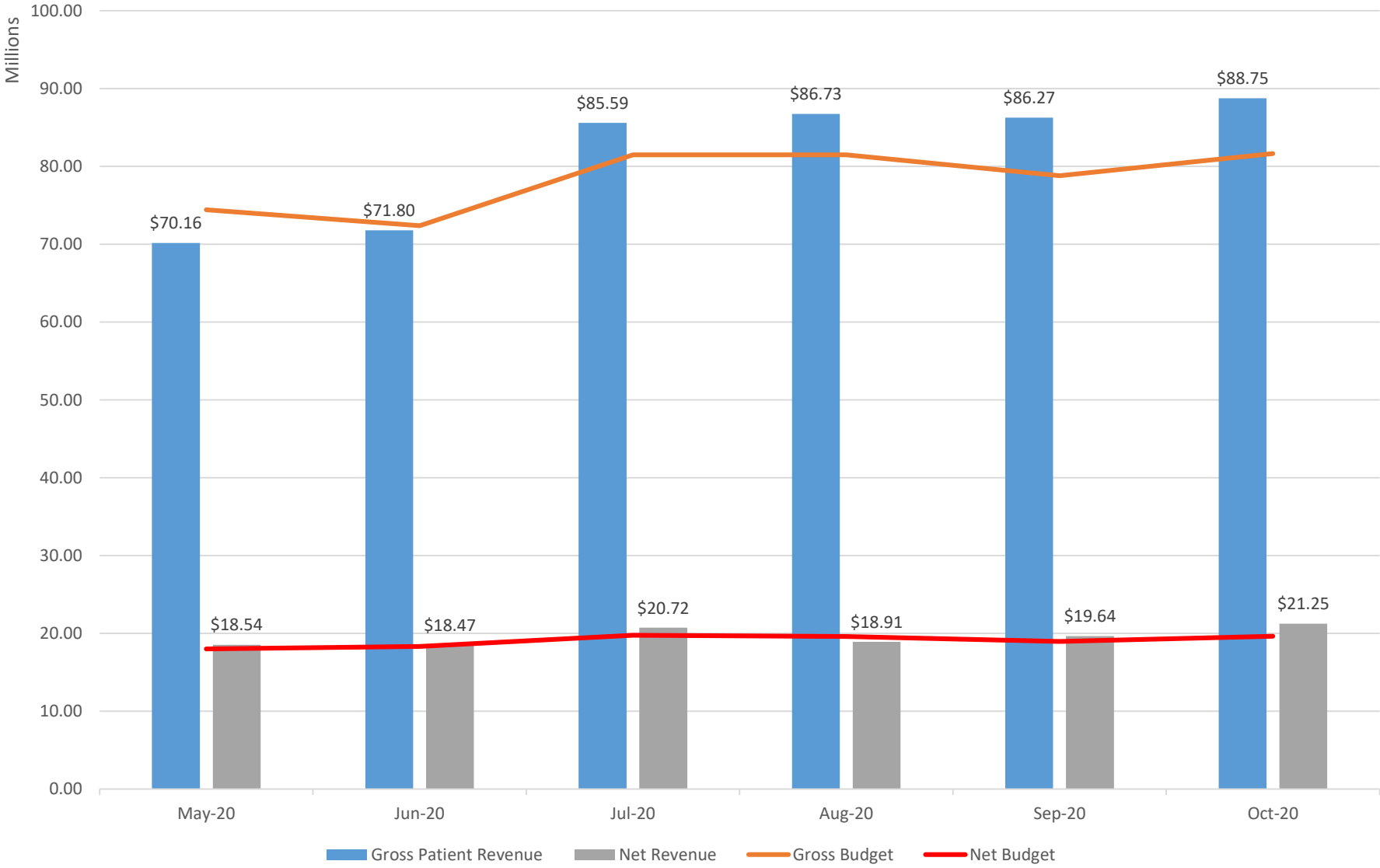
Productivity



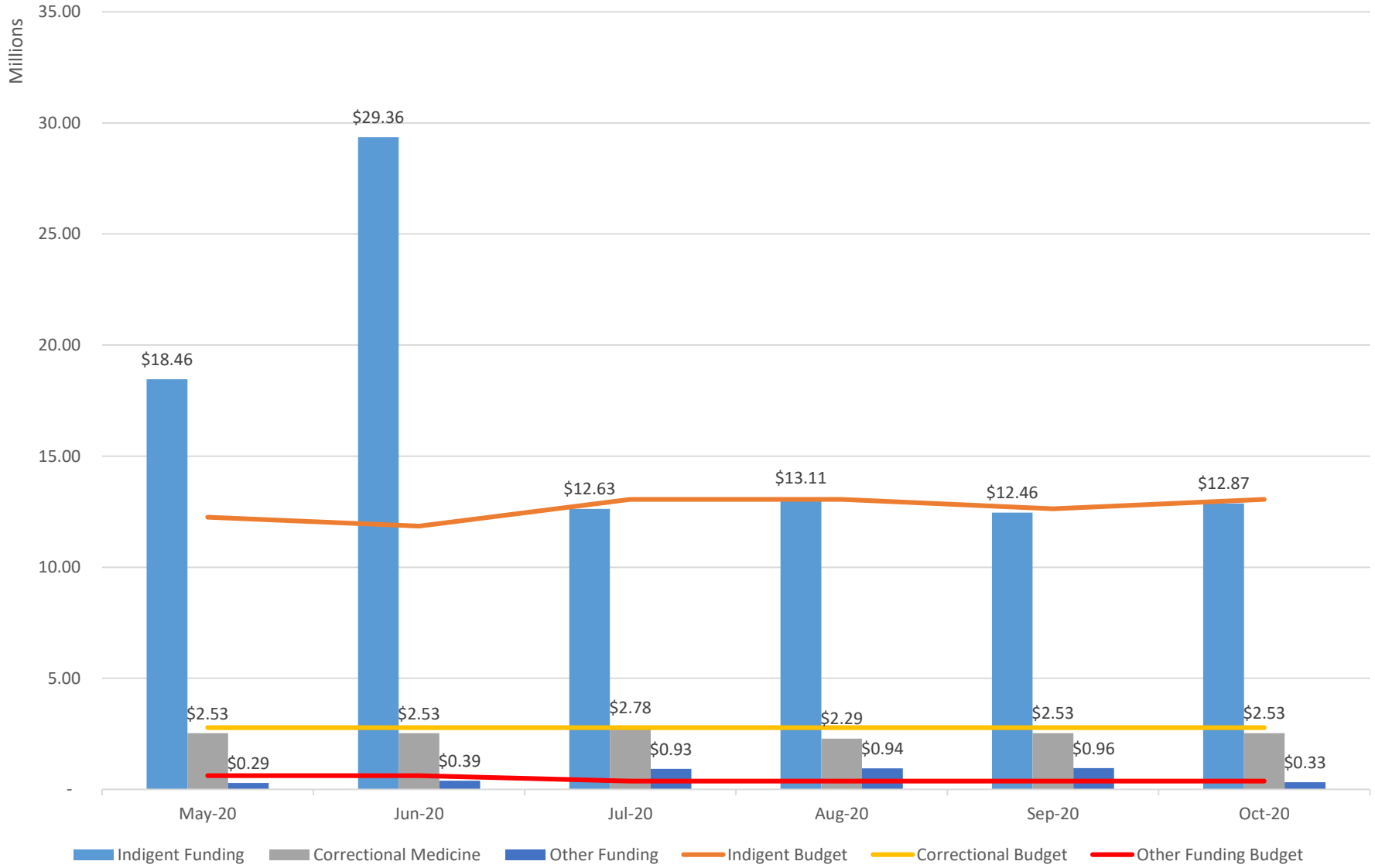
Labor Metrics



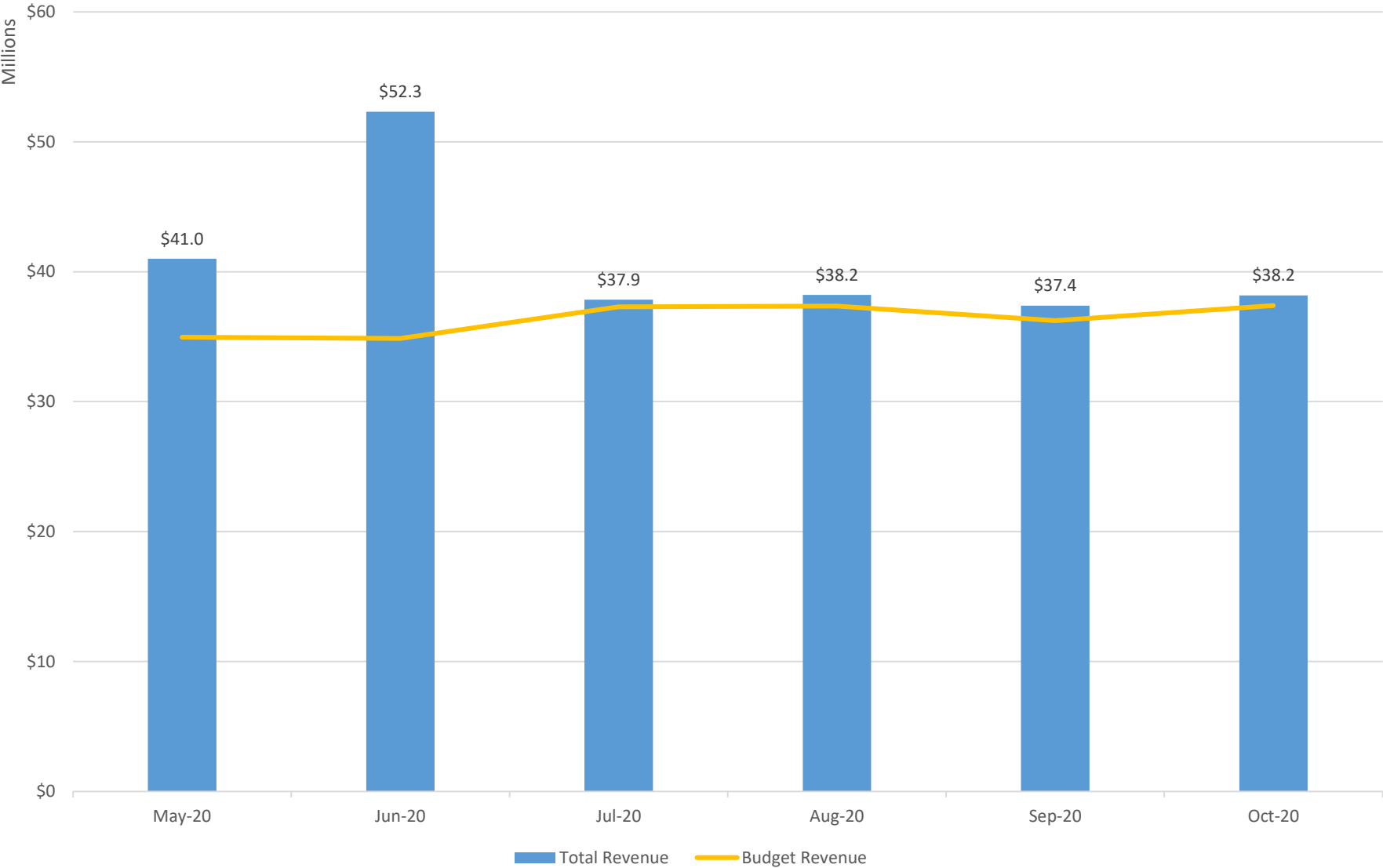
Patient Revenue



Indigent & Correctional Revenue



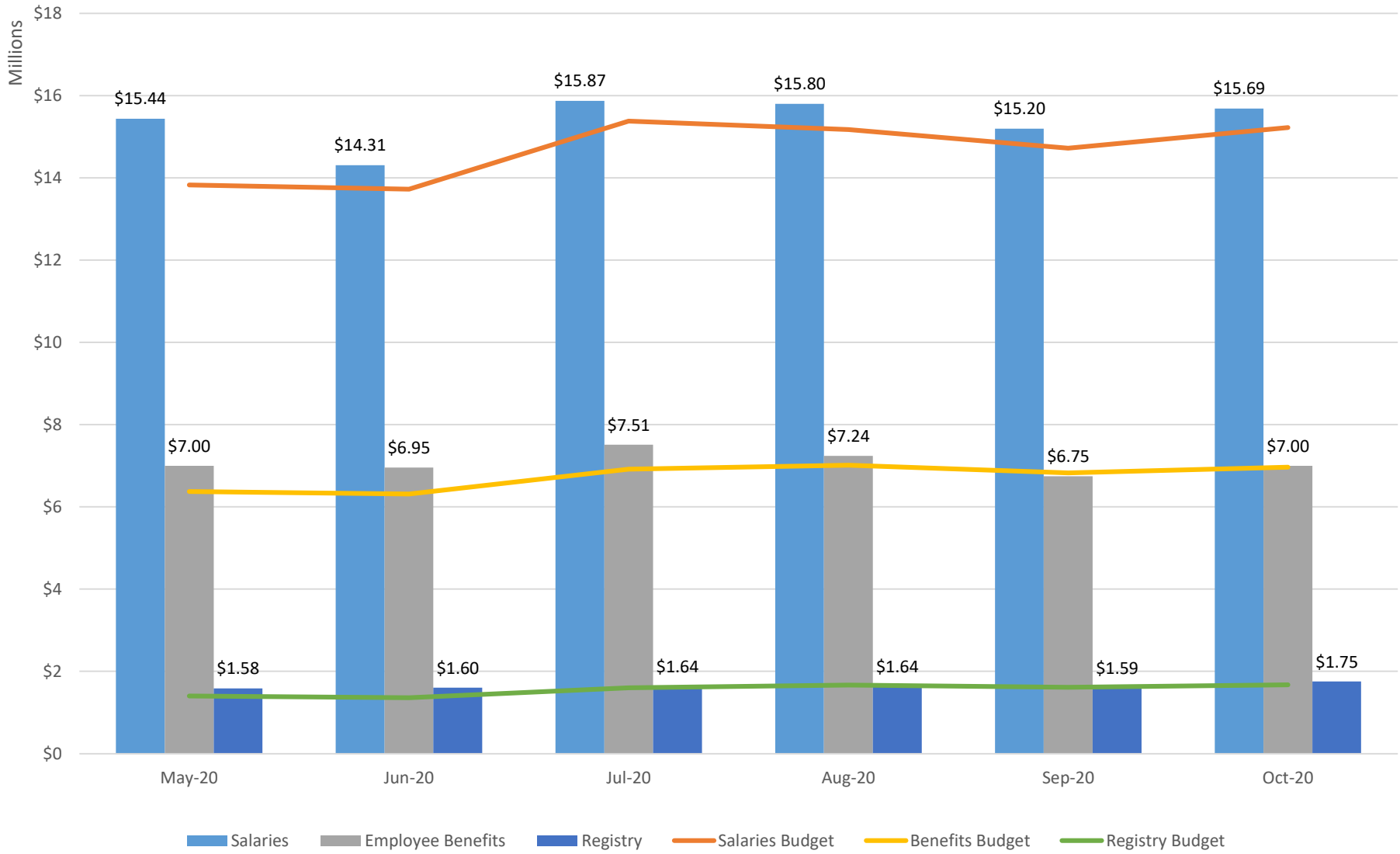
Total Revenue



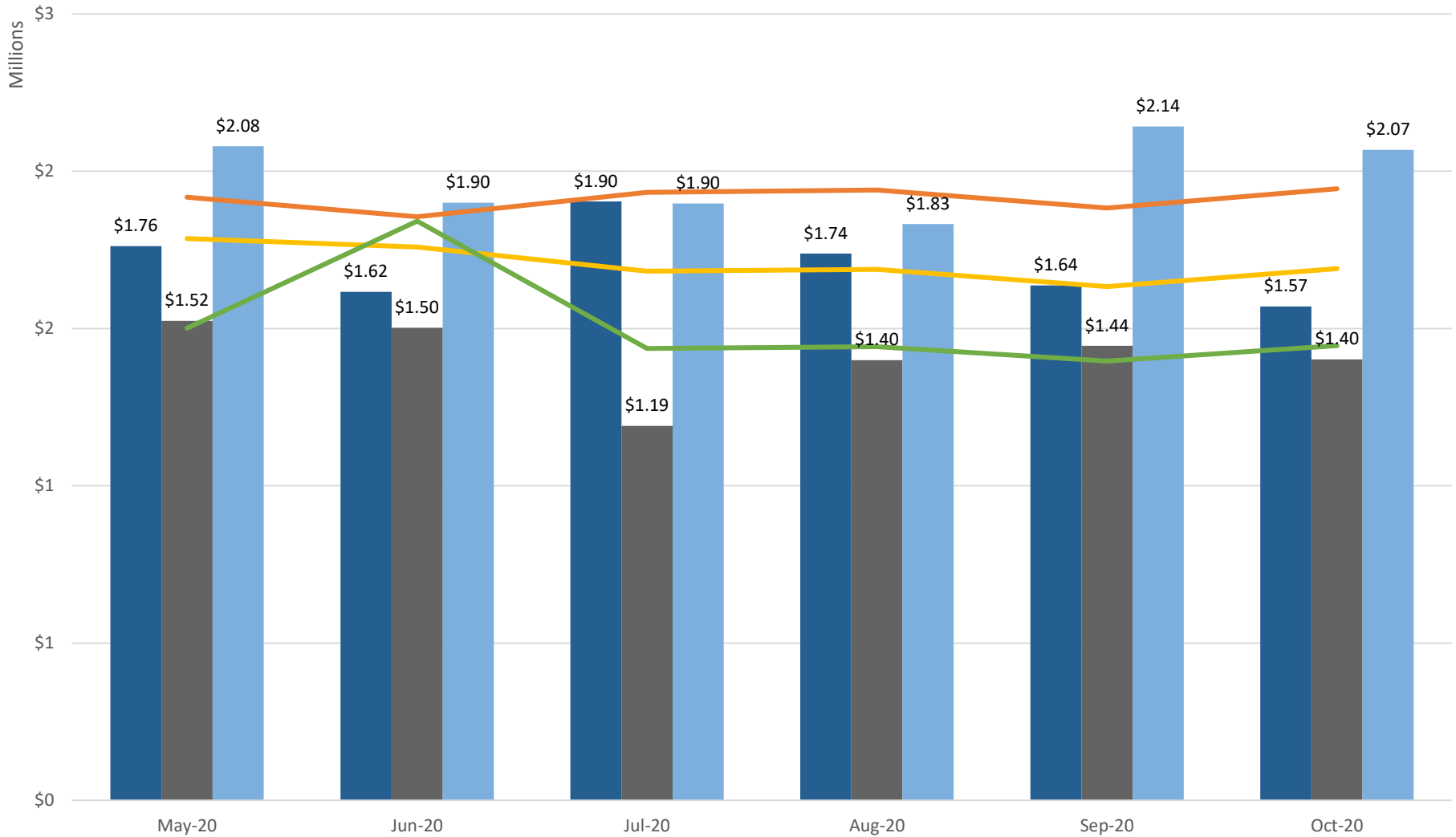
Expenses



Salaries & Benefits

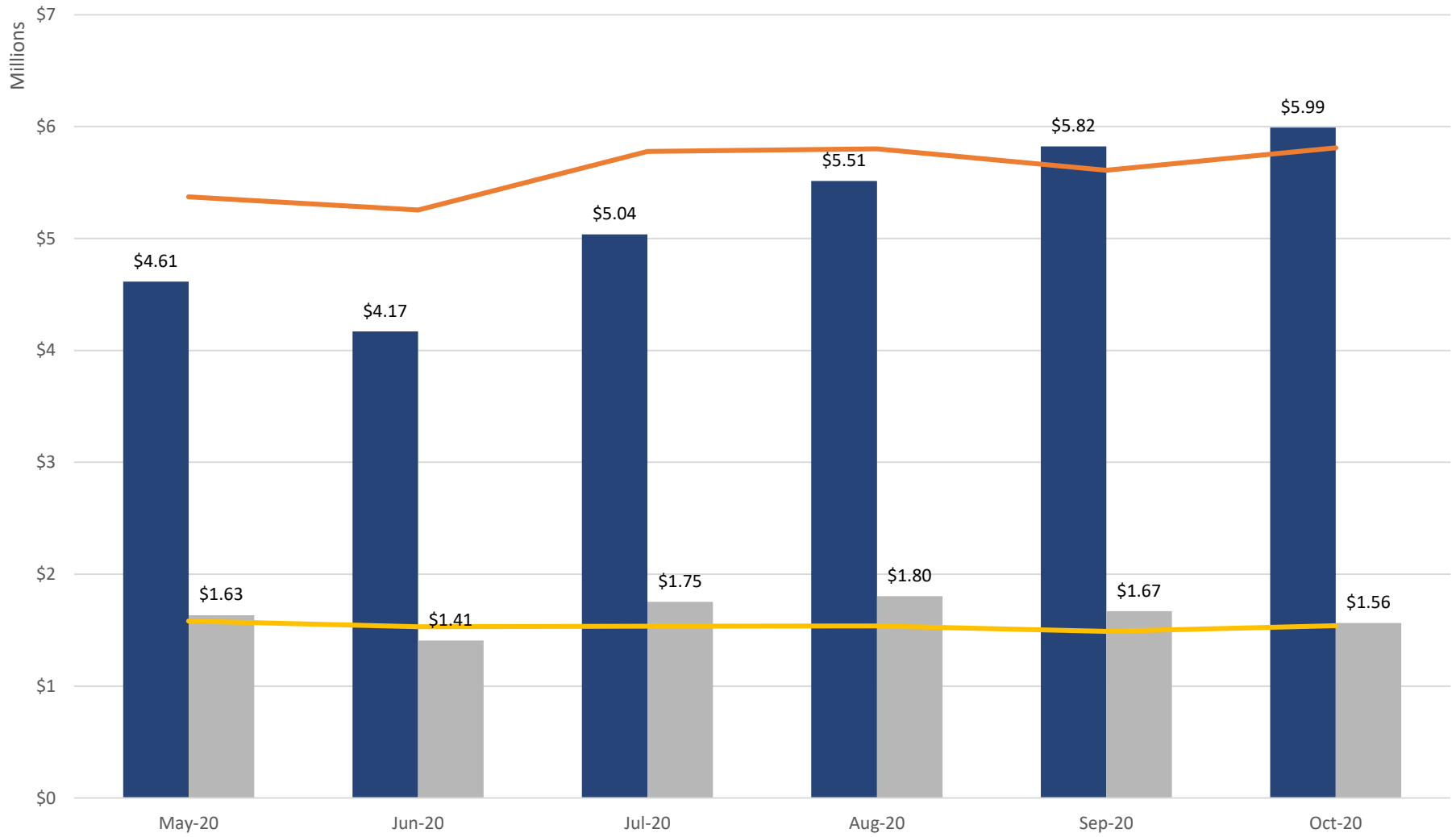


Purchased Services, Medical, & Other Prof Fees



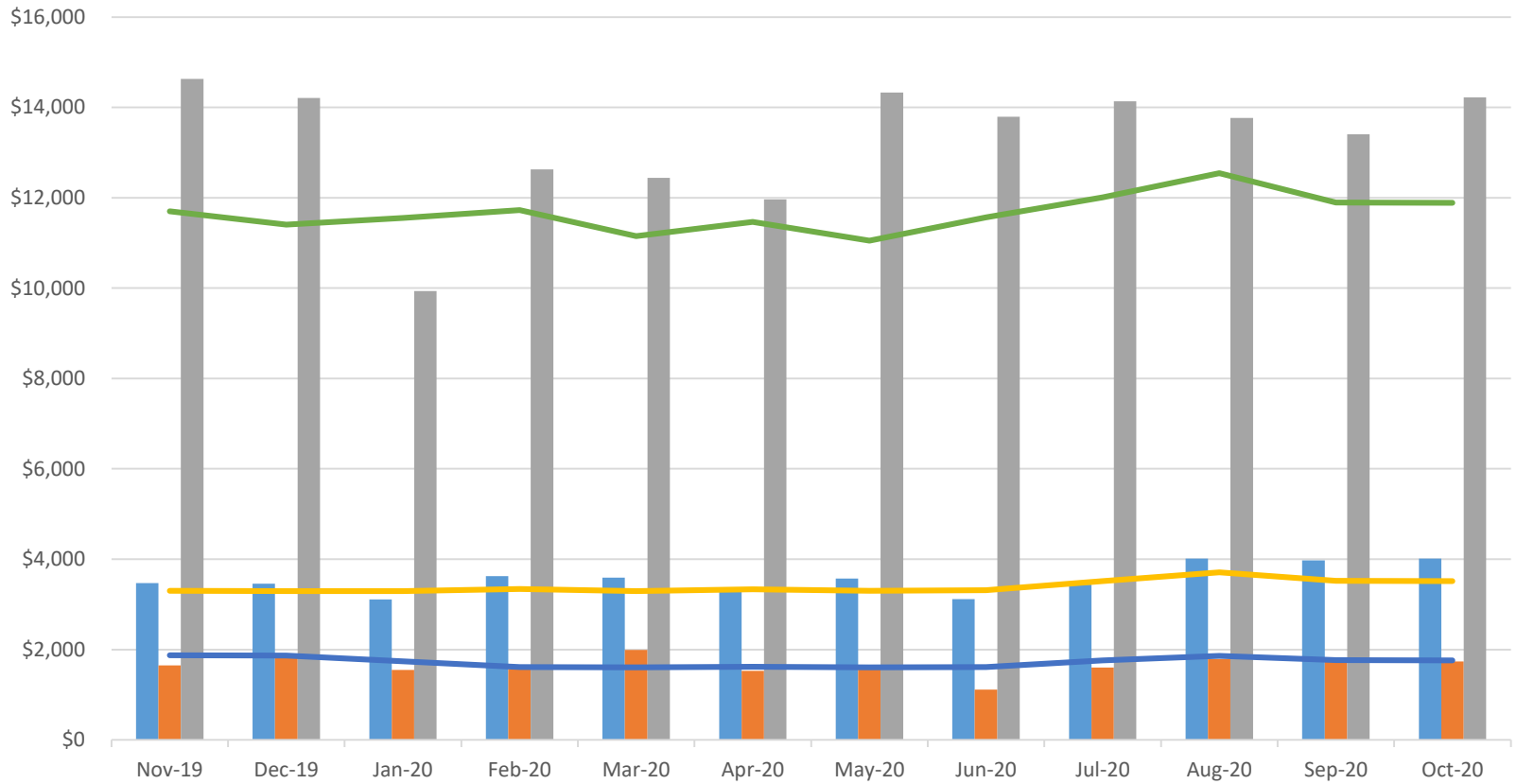
■ Medical Fees
 ■ Other Professional Fees
 ■ Purchased Services
 — Medical Fees Budget
 — Other Prof Budget
 — Purchased Serv Budget

Other Expenses & Supplies



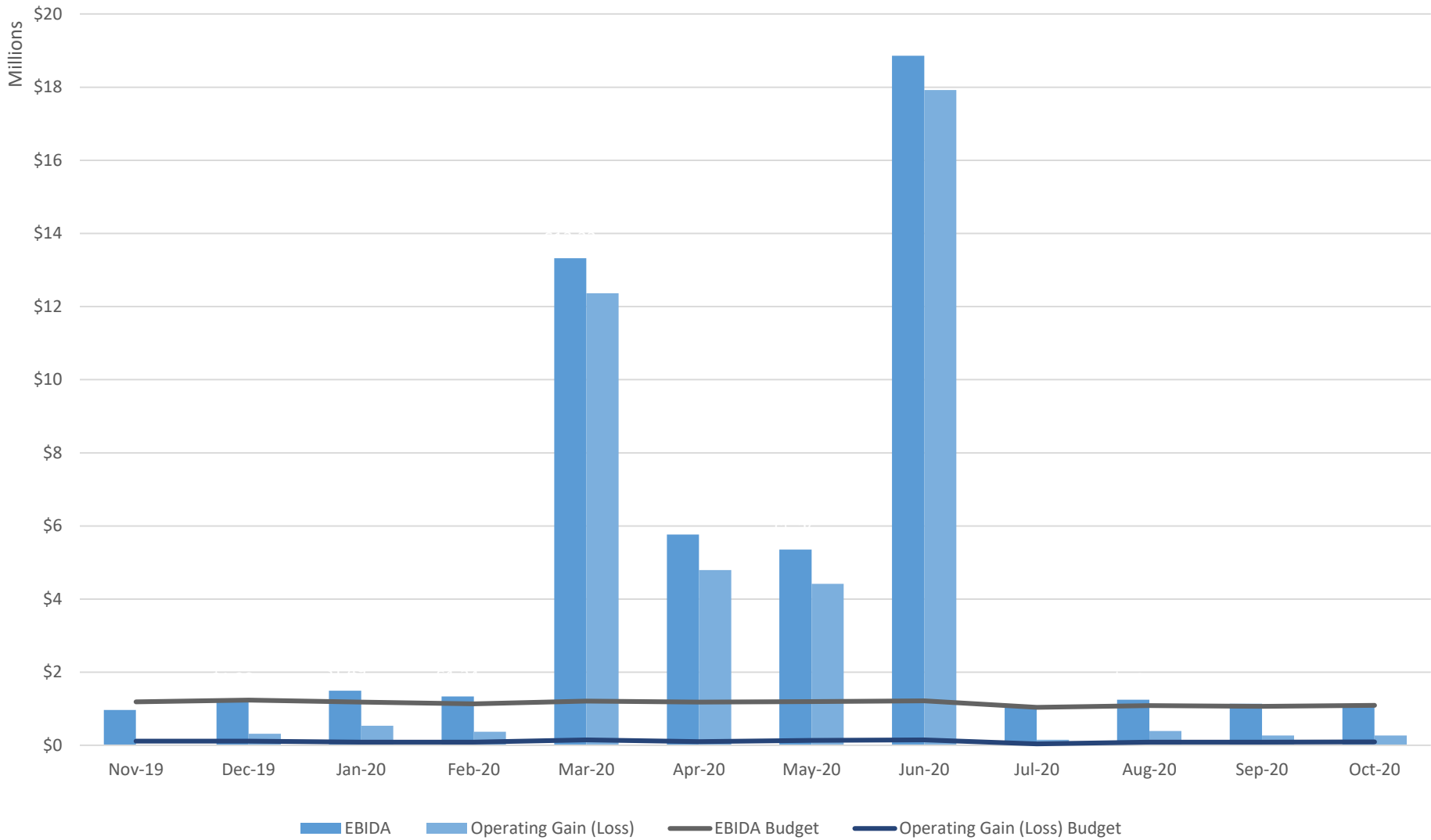
■ Supplies
 ■ Other Expenses
 — Supplies Budget
 — Other Expenses Budget

Operating Metrics

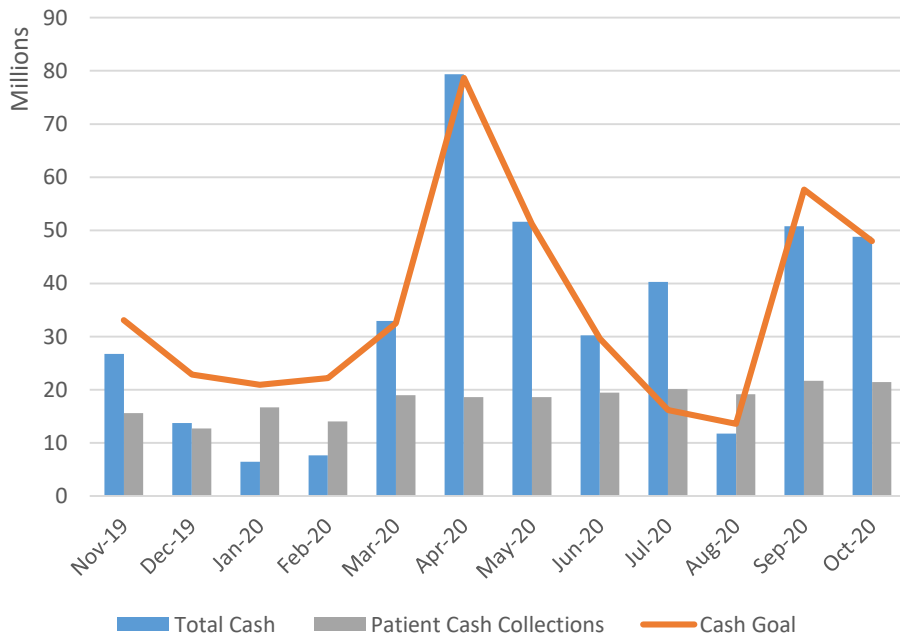


| | Nov-19 | Dec-19 | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 |
|-----------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Supply Expense per AA | \$3,474 | \$3,457 | \$3,110 | \$3,627 | \$3,592 | \$3,365 | \$3,568 | \$3,114 | \$3,436 | \$4,014 | \$3,973 | \$4,011 |
| Pharm Cost per AA | \$1,646 | \$1,905 | \$1,549 | \$1,569 | \$1,989 | \$1,530 | \$1,658 | \$1,110 | \$1,604 | \$1,787 | \$1,823 | \$1,735 |
| Net Revenue Per AA | \$14,631 | \$14,212 | \$9,934 | \$12,632 | \$12,444 | \$11,963 | \$14,333 | \$13,794 | \$14,139 | \$13,765 | \$13,403 | \$14,225 |
| Budget Supp/AA | \$3,303 | \$3,293 | \$3,291 | \$3,343 | \$3,293 | \$3,330 | \$3,298 | \$3,314 | \$3,513 | \$3,711 | \$3,520 | \$3,517 |
| Budget Pharm/AA | \$1,870 | \$1,870 | \$1,736 | \$1,614 | \$1,603 | \$1,615 | \$1,605 | \$1,612 | \$1,760 | \$1,859 | \$1,763 | \$1,762 |
| Budget Net Rev/AA | \$11,703 | \$11,409 | \$11,556 | \$11,730 | \$11,153 | \$11,464 | \$11,052 | \$11,568 | \$12,011 | \$12,543 | \$11,892 | \$11,891 |

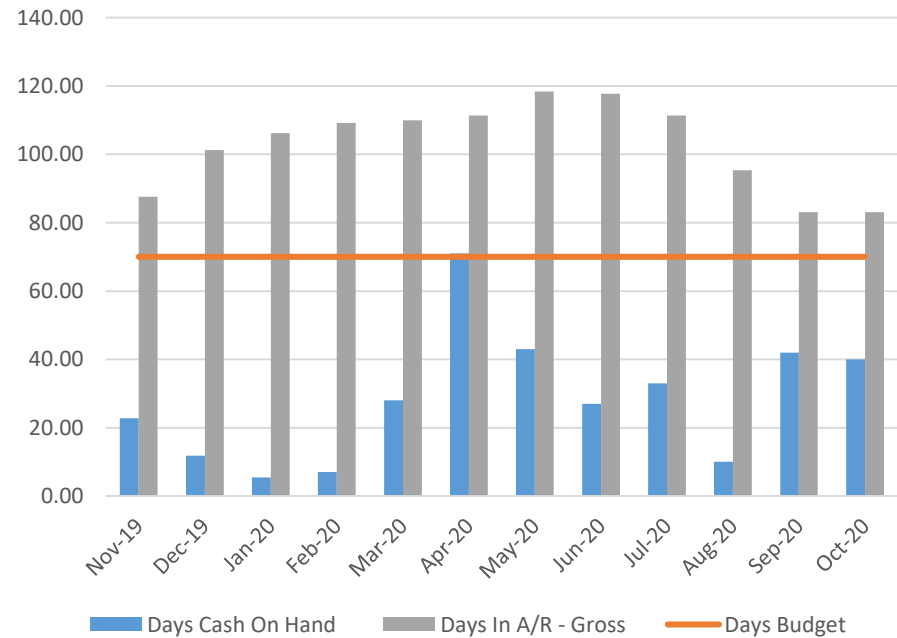
EBIDA 2020 YTD



Cash 2020 YTD



AR Days 2020 YTD



KERN MEDICAL

3-Month Trend Analysis: Revenue & Expense

October 31, 2020

| | AUGUST | SEPTEMBER | OCTOBER | BUDGET OCTOBER | VARIANCE POS (NEG) | PY OCTOBER |
|---|---------------|---------------|---------------|-------------------|-----------------------|---------------|
| Gross Patient Revenue | \$ 86,734,495 | \$ 86,273,837 | \$ 88,747,831 | \$ 81,636,471 | 9% | \$ 83,717,416 |
| Contractual Deductions | (67,824,455) | (66,630,743) | (67,501,382) | (61,996,260) | 9% | (62,813,935) |
| Net Revenue | 18,910,041 | 19,643,094 | 21,246,449 | 19,640,211 | 8% | 20,903,481 |
| Indigent Funding | 13,113,661 | 12,456,248 | 12,871,456 | 13,055,802 | (1.4%) | 12,465,202 |
| Correctional Medicine | 2,286,247 | 2,531,626 | 2,531,665 | 2,777,068 | (9%) | 2,443,735 |
| County Contribution | 285,211 | 285,211 | 285,211 | 285,211 | 0% | 284,951 |
| Incentive Funding | 658,527 | 673,767 | 41,667 | 83,333 | (50%) | 333,333 |
| Net Patient Revenue | 35,253,686 | 35,589,945 | 36,976,448 | 35,841,626 | 3% | 36,430,702 |
| Gain/(Loss) on Health-Related Entity | 0 | 0 | 0 | 0 | 0% | (105,072) |
| Other Operating Revenue | 1,514,369 | 1,218,037 | 1,180,599 | 1,268,658 | (7%) | 1,518,370 |
| Other Non-Operating Revenue | 1,445,641 | 583,564 | 14,769 | 279,021 | (95%) | (34) |
| Total Revenue | 38,213,696 | 37,391,546 | 38,171,816 | 37,389,304 | 2% | 37,843,966 |
| Expenses | | | | | | |
| Salaries | 15,802,411 | 15,195,559 | 15,688,011 | 15,225,271 | 3% | 15,555,187 |
| Employee Benefits | 7,243,299 | 6,746,980 | 6,999,601 | 6,967,985 | 0% | 6,760,144 |
| Registry | 1,635,450 | 1,591,911 | 1,753,571 | 1,671,518 | 5% | 1,934,128 |
| Medical Fees | 1,737,889 | 1,636,906 | 1,570,254 | 1,690,696 | (7%) | 1,783,119 |
| Other Professional Fees | 1,399,280 | 1,444,972 | 1,402,090 | 1,445,524 | (3%) | 1,165,662 |
| Supplies | 5,514,185 | 5,822,142 | 5,991,603 | 5,809,442 | 3% | 5,966,461 |
| Purchased Services | 1,832,223 | 2,142,540 | 2,068,039 | 1,944,016 | 6% | 2,005,479 |
| Other Expenses | 1,804,098 | 1,669,227 | 1,563,902 | 1,539,375 | 2% | 1,463,117 |
| Operating Expenses | 36,968,835 | 36,250,237 | 37,037,071 | 36,293,827 | 2% | 36,633,296 |
| Earnings Before Interest, Depreciation, and Amortization (EBIDA) | \$ 1,244,860 | \$ 1,141,309 | \$ 1,134,745 | \$ 1,095,477 | 4% | \$ 1,210,670 |
| EBIDA Margin | 3% | 3% | 3% | 3% | 1% | 3% |
| Interest | 120,096 | 141,993 | 137,992 | 233,654 | (41%) | 226,813 |
| Depreciation | 477,535 | 477,225 | 474,267 | 507,112 | (6%) | 487,004 |
| Amortization | 256,257 | 256,257 | 256,257 | 260,521 | (2%) | 76,688 |
| Total Expenses | 37,822,724 | 37,125,713 | 37,905,587 | 37,295,114 | 2% | 37,423,801 |
| Operating Gain (Loss) | \$ 390,972 | \$ 265,833 | \$ 266,229 | \$ 94,190 | 183% | \$ 420,166 |
| Operating Margin | 1.0% | 0.7% | 0.7% | 0.25% | 177% | 1% |

KERN MEDICAL
Year-to-Date: Revenue & Expense
October 31, 2020

| | ACTUAL FYTD | BUDGET FYTD | VARIANCE POS (NEG) | PY FYTD | PY VARIANCE POS (NEG) |
|---|----------------|----------------|-----------------------|----------------|--------------------------|
| Gross Patient Revenue | \$ 347,349,675 | \$ 323,168,461 | 7% | \$ 308,280,845 | 13% |
| Contractual Deductions | (266,829,324) | (245,426,604) | 9% | (229,057,372) | 16% |
| Net Revenue | 80,520,352 | 77,741,857 | 4% | 79,223,472 | |
| Indigent Funding | 51,070,616 | 51,802,053 | (1%) | 48,976,898 | 4% |
| Correctional Medicine | 10,126,621 | 11,108,272 | (9%) | 10,274,939 | (1.4%) |
| County Contribution | 1,140,883 | 1,140,844 | 0% | 1,140,323 | 0.0% |
| Incentive Funding | 2,014,187 | 333,333 | 504% | 1,333,333 | 51% |
| Net Patient Revenue | 144,872,658 | 142,126,359 | 2% | 140,948,966 | 3% |
| Gain/(Loss) on Health-Related Entity | 0 | 0 | 0% | (302,003) | 0% |
| Other Operating Revenue | 4,681,461 | 5,033,758 | (7%) | 4,916,906 | (5%) |
| Other Non-Operating Revenue | 2,076,841 | 1,113,715 | 86% | 21,034 | 9,774% |
| Total Revenue | 151,630,960 | 148,273,833 | 2% | 145,584,903 | 4% |
| Expenses | | | | | |
| Salaries | 62,558,708 | 60,435,545 | 4% | 56,865,940 | 10% |
| Employee Benefits | 28,500,253 | 27,605,334 | 3% | 26,331,110 | 8% |
| Registry | 6,621,618 | 6,616,000 | 0% | 6,807,741 | (2.7%) |
| Medical Fees | 6,849,122 | 6,694,381 | 2% | 6,896,352 | (1%) |
| Other Professional Fees | 5,436,540 | 5,721,468 | (5%) | 6,020,629 | (10%) |
| Supplies | 22,363,617 | 23,001,681 | (3%) | 23,070,534 | (3%) |
| Purchased Services | 7,940,338 | 7,700,921 | 3% | 8,556,875 | (7%) |
| Other Expenses | 6,790,812 | 6,099,789 | 11% | 6,282,982 | 8% |
| Operating Expenses | 147,061,009 | 143,875,119 | 2% | 140,832,163 | 4% |
| Earnings Before Interest, Depreciation, and Amortization (EBIDA) | \$ 4,569,951 | \$ 4,398,713 | 4% | \$ 4,752,740 | (4%) |
| EBIDA Margin | 3% | 3% | 2% | 3% | (8%) |
| Interest | 568,728 | 927,077 | (39%) | 953,617 | (40%) |
| Depreciation | 1,897,333 | 2,017,480 | (6%) | 2,025,978 | (6%) |
| Amortization | 1,025,030 | 1,030,715 | (1%) | 306,751 | 234% |
| Total Expenses | 150,552,100 | 147,850,392 | 2% | 144,118,509 | 4% |
| Operating Gain (Loss) | \$ 1,078,861 | \$ 423,441 | 155% | \$ 1,466,394 | (26%) |
| Operating Margin | 1% | 0.3% | 149% | 1% | (29%) |

**KERN MEDICAL
BALANCE SHEET**

| | OCTOBER 2020 | OCTOBER 2019 |
|---|-----------------------|-----------------------|
| ASSETS: | | |
| <i>Total Cash</i> | \$ 48,769,169 | \$ 18,077,243 |
| Patient Receivables Subtotal | 236,324,815 | 214,825,340 |
| Contractual Subtotal | (182,433,168) | (164,549,109) |
| <i>Net Patient Receivable</i> | 53,891,647 | 50,276,231 |
| Total Indigent Receivable | 108,354,896 | 124,710,156 |
| Total Other Receivable | 9,678,061 | 10,298,627 |
| Total Prepaid Expenses | 3,671,802 | 4,701,692 |
| Total Inventory | 5,961,575 | 5,552,885 |
| <i>Total Current Assets</i> | 230,327,150 | 213,616,835 |
| Deferred Outflows of Resources | 85,573,671 | 74,485,448 |
| Investments Deposited with Trustee | 0 | 931,830 |
| Total Land, Equipment, Buildings and Intangibles | 194,588,293 | 160,077,787 |
| Total Construction in Progress | 19,979,664 | 38,638,119 |
| <i>Total Property, Plant & Equipment</i> | 214,567,957 | 198,715,905 |
| Total Accumulated Depr & Amortization | (118,603,796) | (109,747,927) |
| <i>Net Property, Plant, and Equipment</i> | 95,964,161 | 88,967,978 |
| <i>Total Long Term Assets</i> | 85,573,671 | 75,417,278 |
| <i>Total Assets</i> | \$ 411,864,982 | \$ 378,002,090 |

**KERN MEDICAL
BALANCE SHEET**

| | OCTOBER 2020 | OCTOBER 2019 |
|--|-----------------------|-----------------------|
| LIABILITIES & EQUITY: | | |
| Total Accounts Payable | \$ 10,831,128 | \$ 21,047,262 |
| Total Accrued Compensation | 38,131,781 | 27,829,438 |
| Total Due Government Agencies | 34,148,815 | 52,036,646 |
| Total Other Accrued Liabilities | 58,697,672 | 53,228,754 |
| <i>Total Current Liabilities</i> | 141,809,396 | 154,142,100 |
| Unfunded Pension Liability | 307,234,709 | 293,255,458 |
| Other Long-Term Liabilities | 103,115,962 | 124,721,867 |
| <i>Total Long-Term Liabilities</i> | 410,350,671 | 417,977,325 |
| <i>Total Liabilities</i> | 552,160,067 | 572,119,426 |
| <hr/> | | |
| Fund Balance | 36,913,884 | 36,714,021 |
| Retained Earnings | (177,208,969) | (230,831,356) |
| <i>Total Fund Balance</i> | (140,295,085) | (194,117,335) |
| <hr/> | | |
| <i>Total Liabilities and Fund Balance</i> | \$ 411,864,982 | \$ 378,002,090 |



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

December 9, 2020

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

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

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

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

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on December 9, 2020, 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**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on December 9, 2020, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 X Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –