



## **AGENDA**

### **KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS**

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

Regular Meeting  
Wednesday, December 14, 2022

11:30 A.M.

#### **BOARD TO RECONVENE**

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

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

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on November 16, 2022 –  
APPROVE

CA

- 5) Report on 2022 Community Health Needs Assessment for Kern Medical Center –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Personal/Professional Services Agreement with ITW Food Equipment Group, LLC, doing business as Hobart Service, an independent contractor, containing nonstandard terms and conditions, for maintenance and repair of kitchen equipment from December 14, 2022 through December 13, 2025, in an amount not to exceed \$20,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Service Agreement with OEC Medical System, Inc., a GE Healthcare business, an independent contractor, to provide maintenance and repair for three OEC C-Arm machines, effective January 14, 2023, in an amount not to exceed \$300,000 for a seven-year term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Product Agreement and Service Agreement with Ortho-Clinical Diagnostics, Inc., an independent contractor, for two blood bank analyzers and related services from December 14, 2022 through December 13, 2028, in an amount not to exceed \$144,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Amendment No. 5 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through December 31, 2022, extending the term for one month through January 31, 2023, and increasing the maximum payable by \$40,000, from \$1,580,000 to \$1,620,000, to cover the extended term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

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

CA

- 11) Proposed Amendment No. 2 to Agreement 26121 with Bryant A. Nachtigall, D.P.M., a contract employee, for professional medical services in the Department of Surgery, for the period July 17, 2021 through July 16, 2024, extending the term from July 17, 2024 through December 31, 2025, and increasing the maximum payable by \$800,000, from \$1,000,000 to \$1,800,000, to cover the extended term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Amendment No. 1 to the Software License and Services Agreement 036-2018 with Corepoint Health, LLC doing business as Lyniate, an independent contractor, for the purchase of Web Service licenses and support, with a one-time cost of \$30,000 and annual support fees of \$6,000, increasing the maximum annual payable by \$6,000, from \$140,511 to \$146,511, effective December 14, 2022, renewing each year for a one-year term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Change Order No. 6 to Agreement 006-2021 with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for additional construction management services related to the 4th Floor Pediatric and Postpartum Renovation project, increasing the maximum payable by \$95,012, from \$1,863,962 to \$1,958,974 –  
MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$1,958,974

- CA  
14) Proposed Purchase Agreement with OEC Medical Systems, Inc., a GE Healthcare business, an independent contractor, for purchase of an Elite Vascular C-Arm and MedRad Injector and associated Service Agreement, containing nonstandard terms, for maintenance and repair services, in an amount not to exceed \$452,326 plus applicable tax, effective December 14, 2022, for a seven-year term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
15) Proposed Service Agreement with OEC Medical Systems, Inc., a GE Healthcare business, an independent contractor, containing nonstandard terms and conditions, for maintenance and repair services for the Stille vascular imaging table, in an amount not to exceed \$19,950, effective December 14, 2022, for a seven-year term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
16) Proposed Purchase Order Agreement with Millennium Surgical, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of fiberoptic retractors for complex breast reconstructive surgical procedures, effective December 14, 2022, in an amount not to exceed \$4,560 plus taxes and shipping, if applicable –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
17) Proposed Amendment No. 2 to Agreement 05514 for Personal/Professional Services with Outpatient Services Group, Inc., formally known as Diversified Data Processing and Consulting, Inc., an independent contractor, containing nonstandard terms and conditions, for services related to processing of patient payments, extending the term for six months for May 11, 2023 through August 10, 2023, and increasing the maximum payable by \$11,000, from \$168,000 to \$179,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
18) Proposed Report of Independent Auditors from Moss Adams LLP regarding the audit of the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees as of December 31, 2020, 2019, 2018, 2017 and 2016 –  
RECEIVE AND FILE
- CA  
19) Miscellaneous Correspondence  
RECEIVE AND FILE
- CA  
20) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVE AND FILE
- CA  
21) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVE AND FILE

CA

- 22) Monthly report on What's Happening at Kern Medical Center –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 23) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) –
- 24) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –
- 25) CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC –
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –
- 29) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 30) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) –
- 31) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JANUARY 18, 2023 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.



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

December 14, 2022

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

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

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

**Discussion:**

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

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

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

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

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

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

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

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



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

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In the matter of:

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

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

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 14th day of December, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

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

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

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

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

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

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

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

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

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

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

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

5. This Resolution shall take effect immediately upon its adoption and remain in effect until December 31, 2022.

6. Resolution No. 2022-023, adopted by the Board of Governors on November 16, 2022, is hereby repealed and superseded by this Resolution.

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

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

Members, Board of Governors  
Chief Executive Officer  
Legal Services Department



## SUMMARY OF PROCEEDINGS

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting  
Wednesday, November 16, 2022

11:30 A.M.

BOARD RECONVENED

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

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

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

BOARD ACTION SHOWN IN CAPS

NOTE: AGENDA ITEM 7 WAS TAKEN OFF THE CONSENT AGENDA

#### PUBLIC PRESENTATIONS

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

**CORRESPONDENCE RECEIVED NOVEMBER 15, 2022, FROM SYDNEE GALUSHA CONCERNING COMMENTS AND QUESTIONS FOR THE NOVEMBER 16, 2022 BOARD MEETING, A COPY OF WHICH MAY BE OBTAINED UPON REQUEST BY CONTACTING THE AUTHORITY BOARD COORDINATOR AT (661) 326-2000**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

**DIRECTOR BERJIS REPORTED ON RECRUITMENT EFFORTS FOR RESIDENCY AND FELLOWSHIP PROGRAMS FOR THE NEXT ACADEMIC YEAR**

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Joshua Plunkett, CPhT-Adv, upon his receipt of the California Society of Health-System Pharmacists 2022 Technician Achievement Award –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; JEFF JOLLIFF, DIRECTOR OF PHARMACY PROGRAMS AND EDUCATION, HEARD

ITEMS FOR CONSIDERATION

CA

- 4) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –  
APPROVED; ADOPTED RESOLUTION 2022-023  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on October 19, 2022 –  
APPROVED  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 6) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for one Kern Medical Center employee to attend California Hospital Association's "2022 Behavioral Health Care Symposium" and "Emergency Services Forum" from December 5-7, 2022, in Riverside, California –  
APPROVED; ADOPTED RESOLUTION 2022-024  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

7)

- Proposed appointment of Mohammad A. S. Molla, M.D., as Joint Chair and Director of the Department of Psychiatry for Kern Medical Center and Kern County Behavioral Health and Recovery Services, effective November 16, 2022 –  
DIRECTOR BERJIS AND RUSSELL V. JUDD HEARD; RATIFIED APPOINTMENT  
**Berjis-Pelz: 6 Ayes; 1 Absent - Kitchen**

CA

- 8) Proposed Amendment No. 2 to Master Services Agreement 002-2019 with CIOX Health, LLC, an independent contractor, for medical record reproduction services, for the period January 16, 2019 through January 15, 2023, extending the term for three years from January 16, 2023 through January 15, 2026, in an amount not to exceed \$375,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 129-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 9) Proposed Purchase Agreement with GE Precision Healthcare, LLC, a GE Healthcare business, an independent contractor, for purchase of an Optima 660 CT Scanner, effective November 16, 2022, in an amount not to exceed \$373,540, plus applicable taxes –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 130-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 10) Proposed Amendment No. 2 to Agreement 073-2019 with Arman G. Froush, D.O., a contract employee, for professional medical and administrative services in the Department of Radiology, for the period December 11, 2019 through December 10, 2022, extending the term through January 31, 2023, and increasing the maximum payable by \$150,000, from \$3,150,000 to \$3,300,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 131-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 11) Proposed Cloud Services Agreement and Business Associate Agreement with Qualtrics, LLC, an SAP America Inc. company, an independent contractor, containing nonstandard terms and conditions, for patient experience services from November 16, 2022 through November 15, 2025, in an amount not to exceed \$200,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 132-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 12) Proposed Agreement with Igor Garcia-Pacheco, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine from December 2, 2022 through December 1, 2025, in an amount not to exceed \$1,860,000, plus applicable benefits –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 133-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

CA

- 13) Proposed Amendment No. 2 to Agreement 43819 with Helen A. Davis, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period December 2, 2019 through December 1, 2022, extending the term two years from December 2, 2022 through December 1, 2024, and increasing the maximum payable by \$925,000, from \$1,365,000 to \$2,290,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 134-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

- CA  
14) Proposed Amendment No. 5 to Agreement 07020 for Personal/Professional Services with American Incorporated dba MD Concrete Cutting & Demolition, an independent contractor, for maintenance and repair of HVAC units and air handlers, for the period December 2, 2019 through December 1, 2022, extending the term three years from December 2, 2022 through December 1, 2025, at no additional cost –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 135-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
15) Proposed Renewal of Agreement 012-2020 with Advanced Technologies Group, Inc., an independent contractor, for subscription services to the Environment of Care Rounding Solution, for the period January 1, 2020 through December 31, 2022, extending the term for three years from January 1, 2023 through December 31, 2025, and increasing the maximum payable by \$20,000, from \$12,000 to \$32,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 136-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
16) Proposed Agreement for Personal/Professional Services with Mesa Energy Systems, Inc., dba Emcor Services Hillcrest, an independent contractor, for labor, materials and equipment for HVAC repairs and maintenance, controls and new installation from December 2, 2022 through December 1, 2025, in an amount not to exceed \$1,000,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 137-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
17) Proposed Amendment No. 2 to Agreement 56219 for Personal/Professional Services with R.F. MacDonald Co., Inc., an independent contractor, for boiler system maintenance and repair, for the period December 13, 2019 through December 12, 2022, extending the term for three years from December 13, 2022 through December 12, 2025, and increasing the maximum payable by \$600,000, from \$400,000 to \$1,000,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 138-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
18) Proposed Amendment No. 3 to Memorandum of Understanding 61320 with Kern Health Systems, an independent contractor, for translation services for Kern Medical Center patients, for the period December 14, 2020 through December 31, 2022, extending the term for one year from January 1, 2023 through December 31, 2023, and increasing the maximum payable by \$600,000, from \$1,025,000 to \$1,625,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 139-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
19) Proposed Cerner Sales Order OPT-0352599 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for the purchase of professional and shared computing laboratory services from November 16, 2022 through November 15, 2027, in an amount not to exceed \$15,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 140-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

- CA  
20) Proposed Amendment No. 2 to Agreement 041-2021 with Jeffrey L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period July 31, 2021 through July 30, 2026, reducing the annual compensation by \$300,000, from \$750,000 to \$450,000, effective November 16, 2022 –  
WITHDRAWN
- CA  
21) Proposed Agreement with QCERA, Inc., an independent contractor, containing nonstandard terms and conditions, for access to LeaveSource® SaaS Software for employee leave and absence administration, effective November 16, 2022, in an amount not to exceed \$40,220 during the initial term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 141-2022  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
22) Public hearing regarding proposed closure of the pediatric clinic at 6001 Truxtun Avenue, Suite 210-B, Bakersfield, and relocation of pediatrics services from 6001 Truxtun Avenue, Suite 210-B to 9330 Stockdale Highway, Suite 500, Bakersfield –  
OPENED HEARING; RECEIVED PUBLIC COMMENT; CLOSED HEARING; APPROVED CLOSURE OF PEDIATRIC CLINIC AT 6001 TRUXTUN AVENUE, SUITE 210-B, BAKERSFIELD; DIRECTED STAFF TO RELOCATE PEDIATRIC SERVICES FROM 6001 TRUXTUN AVENUE, SUITE 210-B, BAKERSFIELD TO 9330 STOCKDALE HIGHWAY, SUITE 500, BAKERSFIELD  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
23) Proposed Resolution regarding acceptance of grant funds from California Department of Health Care Access and Information in the amount of \$2,915,162.60 –  
APPROVED; ADOPTED RESOLUTION 2022-025  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- 24) Kern County Hospital Authority Chief Financial Officer report –  
CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED  
**Berjis-Pelz: 6 Ayes; 1 Absent - Kitchen**
- 25) Kern County Hospital Authority Chief Executive Officer report –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; RECEIVED AND FILED  
**McLaughlin-Berjis: 6 Ayes; 1 Absent - Kitchen**
- CA  
26) Monthly report on What's Happening at Kern Medical Center –  
RECEIVED AND FILED  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**
- CA  
27) Claims and Lawsuits Filed as of October 31, 2022 –  
RECEIVED AND FILED  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Kitchen**

ADJOURNED TO CLOSED SESSION  
**Pelz-Berjis**

CLOSED SESSION

- 28) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) – SEE RESULTS BELOW
- 29) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 30) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9, subdivision (d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 31) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC – SEE RESULTS BELOW
- 32) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 33) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – SEE RESULTS BELOW
- 34) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION  
**Alsop-Pelz**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 28 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR MCLAUGHLIN, SECOND BY DIRECTOR PELZ; 1 ABSTENTION - BERJIS; 1 ABSENT - KITCHEN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, VOLUNTARY



RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 29 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – THIS MATTER WAS NOT HEARD

Item No. 30 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9, subdivision (d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – THIS MATTER WAS NOT HEARD

Item No. 31 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC – THIS MATTER WAS NOT HEARD

Item No. 32 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – THIS MATTER WAS NOT HEARD

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

Item No. 34 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, DECEMBER 14, 2022 AT 11:30 A.M.

**Berjis**

/s/ Mona A. Allen  
Authority Board Coordinator

/s/ Russell E. Bigler  
Chairman, Board of Governors  
Kern County Hospital Authority



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

**Date:** December 14, 2022

**Subject:** Community Health Needs Assessment

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

**Summary:**

Kern Medical requests the Board of Governors to approve and adopt the 2022 Community Health Needs Assessment (CHNA). The purpose of the Community Health Needs Assessment is to identify and prioritize significant health needs of the community Kern Medical serves. The health needs identified in this report help guide our focus for grant funding and Kern Medical's organizational initiatives.

Early this year we partnered with Adventist Health to conduct the Community Health Needs Assessment. This assessment collected primary and secondary data from focus groups and key informant interviews conducted between October 2021 – January 2022. The Steering Committee reviewed data and prioritized community health needs over the course of three meetings (data collection planning, data review and needs prioritization). The goal of the CHNA is to leverage community stakeholders and data to identify and maximize resources and to focus on meeting the most significant health needs of our community over the next three years.

Members of the CHNA Steering Committee – comprised of healthcare, civic, public, and business leaders – led the process of identifying and addressing health needs for a healthier community. These members took a deep look at where people live, learn, work and play to discover areas of opportunity that, through collaboration, could be strengthened and lead to a healthier, stronger and safer community.

The 2022 CHNA involved community focus groups and key informant interviews representing the broad interests of the community, including healthcare, agricultural, and education leaders, local public health officials, community-based organizations, medical providers, students, parents, and members of selected underserved, low-income and minority populations. We intentionally prioritized understanding the social and health needs of uninsured or underinsured, low-income and minority persons in Kern County by conducting a community survey to help gather additional public data. Through this process, we learned about our community members' current state of health and listened to their greatest concerns for their friends and family.

There were 11 significant health needs identified through this in-depth analysis and discussion that focused on the social determinants of health. These needs were access to care, community safety, community vitality, COVID, education, financial stability, food security, health conditions, health risk

behaviors, housing and mental health. The Steering Committee then selected high priority needs based on severity and prevalence, intentional alignment around common goals, feasibility of potential interventions, and opportunities to maximize available resources over a three-year period.

This group determined the following final community health priority areas:

**Access to Care**  
**Financial Stability**  
**Health Conditions**  
**Health Risk Behaviors**  
**Mental Health**

Please copy and paste the link below into your web browser to access this report:

[https://www.dropbox.com/s/37pzkohq586joc0/CHNA\\_2022\\_Final.pdf?dl=0](https://www.dropbox.com/s/37pzkohq586joc0/CHNA_2022_Final.pdf?dl=0)

Once approved, this report will be widely available on Kern Medical's website at KernMedical.com.



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

December 14, 2022

**SUBJECT:** Proposed Personal/Professional Services Agreement with ITW Food Equipment Group, LLC dba Hobart Service

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

**Summary:**

Kern Medical requests your Board approve the Personal/Professional Services Agreement with ITW Food Equipment Group, LLC dba Hobart Service, which provides maintenance and repair to kitchen equipment in the Kern Medical cafeteria. The technical components of this equipment are unable to be repaired by Kern Medical staff and require specialty services.

The term of the Agreement is three years, effective December 14, 2022, with a total maximum payable not to exceed \$20,000.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) limitations on liability; and (2) inability to provide subrogation coverage to Kern Medical. Efforts were made to negotiate these nonstandard terms to no avail. These services provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Personal/Professional Services Agreement with ITW Food Equipment Group, LLC dba Hobart Service, effective December 14, 2022, with a maximum payable not to exceed \$20,000 for the three-year term, and authorize the Chairman to sign.

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

THIS SCHEDULE shall be effective on: December 14, 2022 ("Effective Date") and shall terminate no later than December 13, 2025.

Kern County Hospital Authority Department: Nutrition Services ("Responsible KCHA Department")

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

Service Provider: ITW Food Equipment Group, LLC dba Hobart Service

("Consultant") Located at: 155 Harlem Avenue, Glenview, Illinois 60025

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

Consultant shall provide those services described in Exhibit "A" at a rate described in Exhibit "B", which are 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 \$20,000. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.  
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department.

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

Workers' Compensation: As required by California Labor Code Section 3700  
 Commercial General Liability (\$1,000,000/Occurrence & \$2,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Automobile Liability (\$1,000,000/Occurrence) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Professional Liability (\$1,000,000/Occurrence & 3,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_

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

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

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

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**  
Responsible KCHA Department

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

By \_\_\_\_\_  
Tyler Whitezell, Chief Operating Officer

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

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

**ITW FOOD EQUIPMENT GROUP, LLC  
dba HOBART SERVICE**

**REVIEWED ONLY; NOT APPROVED AS TO FORM :**  
Legal Services Department

By Winford Wilson

By Jamie  
Hospital Counsel, Kern County Hospital Authority

Name: WINFORD WILSON  
Title: DISTRICT MANAGER  
Consultant

Date: 12/6/22

Date: 12/6/2022

**EXHIBIT A  
SERVICES**

Consultant shall provide kitchen equipment repair services at Kern Medical and affiliated facilities.

**EXHIBIT A-1**

**IRS FORM W-9**

**Request for Taxpayer  
 Identification Number and Certification**

Give Form to the  
 requester. Do not  
 send to the IRS.

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**ITW Food Equipment Group LLC**

2 Business name/disregarded entity name, if different from above  
**Hobart Service**

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.  
 Individual/sole proprietor or single-member LLC  
 C Corporation  
 S Corporation  
 Partnership  
 Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ **P**  
 \*Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  
 Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  
 Exempt payee code (if any) **5**  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_  
*(Applies to accounts maintained outside the U.S.)*

5 Address (number, street, and apt. or suite no.) See instructions.  
**PO Box 2517**

6 City, state, and ZIP code  
**Carol Stream, IL 60132-2517**

7 List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-					
or									
Employer identification number									
2	6	-	0	0	2	8	4	0	6

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here** Signature of U.S. person ▶  Date ▶ **01/01/2022**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)  
 Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.  
*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



**EXHIBIT "B"**  
**Fee Schedule**

## EXHIBIT "C" Insurance

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

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

### 1. Workers' Compensation and Employers Liability Insurance:

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

### 2. General Liability Insurance:

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

### 3. Automobile Liability Insurance:

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

### 4. Professional Liability Insurance (Errors and Omissions):

- (a) INTENTIONALLY OMITTED
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
6. Additional Insured Wording: "Kern County Hospital Authority, its officers, officials, employees and volunteers" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
  - (b) Insurance must be maintained and evidence of insurance must be provided *for at least one (1) year 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 *one (1) year* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services – Master Facility Plan.**"
  - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
  - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
  - (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
  - (e) Consultant shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
  - (f) Upon written request, certified copies of required insurance policies must be provided to KCHA within 30 days.
9. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
11. Waiver of Subrogation: INTENTIONALLY OMITTED
12. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

[Intentionally left blank]

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

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

**RECITALS**

- A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in Exhibit A.
- C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.
- D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

**AGREEMENT**

1. **Services to be Rendered.** Consultant shall provide the services and products described in Exhibit A ("Services").
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.
7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.
8. **Indemnification.**
  - a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("KCHA Indemnified Parties") from any third-party losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including reasonable and documented attorneys' fees of in-house and outside counsel, expert fees, costs of staff time, and investigation costs) ("Claims") to the extent directly resulting from any

negligent act or willful misconduct 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. NEITHER PARTY WILL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON A PARTY'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL ANY PARTY'S LIABILITY EXCEED THREE TIMES THE VALUE OF GOODS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

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.** INTENTIONALLY OMITTED

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

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

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

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

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

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

15. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("**Applicable Law**"), each of which is made a part of this Agreement. While on KCHA property, Consultant will also follow all applicable policies and any direction of staff.

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

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

18. **Cooperation with KCHA Compliance Obligations.** Consultant shall cooperate with the compliance program maintained by KCHA and KMC (the "**Compliance Program**") to the extent that such requirements are (i) applicable to the operation of KCHA or KMC and Consultant's provision of services under this Agreement, (ii) consistent with applicable industry standards and laws, and (iii) communicated to Consultant, so that KCHA may meet all requirements imposed by laws and any governing or advisory body having authority to set standards governing the operation of KCHA and KMC.

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

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

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

21. **Health Insurance Portability and Accountability Act-HITECH.** Consultant understands that KCHA is a Covered Entity that provides medical and mental health services and that Consultant has no authorization to obtain access to any Protected Health Information ("PHI") in any form while performing services for KCHA. If, in the course of performing services, Consultant sees or hears any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from KCHA. The privacy and confidentiality of KCHA's patients are protected by KCHA policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Consultant agrees to execute a business associate agreement with KCHA to supplement this Agreement if requested, to be incorporated herein as Exhibit D if so required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. **Exhibits.** The below exhibits attached to this Agreement are incorporated into this Agreement by reference.  
Exhibit A: Services  
Exhibit A-1: IRS Form W-9  
Exhibit B: Fee Schedule  
Exhibit C: Insurance  
Exhibit D: Intentionally Omitted  
Exhibit E: Intentionally Omitted





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

December 14, 2022

**SUBJECT:** Proposed Service Agreement with OEC Medical System, Inc., a GE Healthcare business (“GE Healthcare”)

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

**Summary:**

Kern Medical requests your Board approve the Service Agreement with GE Healthcare, to provide maintenance and repair for three OEC C-Arm machines. As the machines are proprietary, GE Healthcare is the only entity able to provide maintenance and repair to these machines.

The term of the Service Agreement is seven years, effective January 14, 2023, with a total maximum payable not to exceed \$300,000. Kern Medical is able to secure the most advantageous pricing through a seven-year term, saving 13.4% annually compared to a shorter-term service agreement.

The Service Agreement contains nonstandard terms and cannot be approved as to from by Counsel due to the inability to terminate without cause, however, if a machine is sold or traded, the service may be cancelled with 60 days’ notice, which provides financial protection if Kern Medical were to replace the equipment. As long as the equipment is in service, there would be no operational need to end the Service Agreement, and therefore Kern Medical believes the benefit outweighs the risk of moving forward with the Service Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Service Agreement with OEC Medical System, Inc., a GE Healthcare business, effective January 14, 2023, with a maximum payable not to exceed \$300,000, for the seven-year term, and authorize the Chairman to sign.



# Addendum to Agreement

## GE Healthcare

This Addendum to Agreement ("Addendum") is made by Kern County Hospital Authority County Hospital Authority with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and OEC Medical Systems, Inc. with an address at 384 Wright Brothers Drive, Salt Lake City, UT 84116 ("OEC or GE Healthcare"), parties to Quotation # KMC11022022DCG dated November 3, 2022 ("Quotation", attached as Exhibit A) for the products and/or services listed on the Quotation in accordance with the terms and conditions identified in the Quotation ("Agreement").

The Agreement is amended as follows:

1. Section 18.1 ("Binding Arbitration") of the GE Healthcare Service Terms and Conditions ("GE Healthcare Service Terms") is deleted in its entirety and replaced with the following:

"Dispute Resolution. The parties will first attempt to resolve in good faith any disputes related to this Agreement. Violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm for which the award of money damages alone is inadequate. GE Healthcare may: (i) seek injunctive relief and any other available remedies; (ii) immediately terminate the license grant and require Customer to cease use of and return the Software and Third Party Software; and/or (iii) terminate Customer access to the SaaS or remote hosted Software. Other than these violations or collection matters, unresolved disputes will be submitted to mediation prior to initiation of other means of dispute resolution."

2. The Agreement is further amended by adding the following new Sections:

**"Application of Business Associates Agreement.** The parties agree that the Business Associate Agreement executed by the parties as of February 16, 2022, a copy of which is attached as Exhibit B, will apply to this Agreement."

**"No-Cause Termination.** Pricing for the Agreement is based on the term of the Agreement. Customer may, however, terminate this agreement without cause after the third (3rd) anniversary date of this Agreement, and on the anniversary date of each subsequent year; provided, however, that written notice is given to GE Healthcare at least sixty (60) days before the desired termination date. Upon termination, neither party shall have any further obligations under this Agreement except for (i) payment obligations arising prior to the date of termination and (ii) obligations, promises or covenants contained in this Agreement which by their terms must extend beyond the termination date."

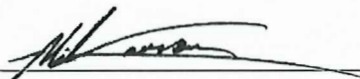
3. Except as set forth in this Addendum, the Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and the Agreement or any other earlier amendment, the terms of this Addendum will prevail. Except as otherwise expressly provided in this Addendum, the parties agree that all provisions of the Agreement are hereby ratified and agreed to be in full force and effect and are incorporated herein by reference. This Addendum and the Agreement contain the entire agreement among the parties relating to the subject matter herein and all prior proposals, discussions and writings by and among the parties and relating to the subject matter herein are superseded hereby and thereby.

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

### Kern County Hospital Authority

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

### GE Healthcare

Signature:   
Print Name: Michael Larsen  
Title: Healthcare Service Account Manager  
Date: November 15, 2022

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department

**Exhibit A**

Quotation # KMC11022022DCG dated November 3, 2022

Please see attached

## Exhibit B

### Business Associate Agreement

#### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("Covered Entity") and GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("GE Healthcare" or "Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the underlying Agreement (the "Effective Date").

#### RECITALS

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

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

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

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

#### AGREEMENT

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

#### ARTICLE I DEFINITIONS

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

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

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III OBLIGATIONS OF COVERED ENTITY

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### ARTICLE IV TERM AND TERMINATION

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

#### 4.2 Termination of Underlying Agreement.

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

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



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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

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

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

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

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

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

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

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

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

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

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

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

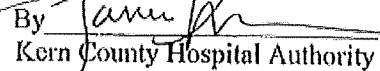
**COVERED ENTITY:**  
The Kern County Hospital Authority

\_\_\_\_\_  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC

*Catherine Kaphingst*  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022


APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority



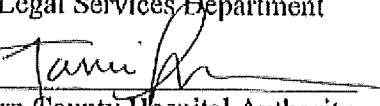
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The Parties hereto have executed this BAA as of the Effective Date.

**COVERED ENTITY:**  
The Kern County Hospital Authority  
  
\_\_\_\_\_  
Title: Chief Executive Officer  
Date: 02/16/2022

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC  
Catherina Kaphingot  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022

APPROVED AS TO FORM  
Legal Services Department

By   
\_\_\_\_\_  
Kern County Hospital Authority



GE Healthcare Service Quotation

Mike Larsen
West Zone Contract Manager
801-231-1553

Please fax to: 801-459-4063

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

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

Table with columns: Quotation Date, Quotation #, Serial Number, Product Covered, PO Number, Bill To ID, Site ID, Contract #, State Registration, Effective Date, End Date.

DeluxeCare with Glass includes:

- Travel and Labor 8am-5pm M-F excluding holidays
95% uptime guarantee
Priority parts delivery
Includes glass (x-ray tube and image intensifier)
Parts coverage excluding items listed in this Agreement (includes batteries)
Annual multi-point manufacturer planned maintenance inspection, performed by GE Healthcare-certified Field Engineer
Preferred rates outside coverage hours
8am-5pm telephone support
Operating system/hardware reliability updates
Service Management Reports
10% discount on consumables (excluding NAV)

Please mark contract terms below:

7 year contract with multi discount
E2-0172 is payable at \$12,218 per year
E2-2229 is payable at \$12,218 per year
82-0060 is payable at \$11,330 per year

Fee Schedule:

Payment Terms are Net 30 days, to be billed Annually unless otherwise indicated below:
Annual Payments ( )
Quarterly Payments ( )
Monthly Payments ( )
The price(s) identified in this Quotation are good for 20 days from the Quotation Date identified above.

This Agreement is by and between the "Customer" and the GE Healthcare business ("GE Healthcare"), each as identified below, for the sale and purchase of the Services identified in this Quotation, together with any applicable schedules referred to herein ("Quotation"). "Agreement" is defined as the GE Healthcare: (1) Quotation; (2) Statement of Service Deliverables; and (3) Service Terms & Conditions, that apply to the Products and/or Service identified on this Quotation. In the event of conflict, the order of precedence is as listed.

Product sold, traded-in or upgraded by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted as set forth in this Agreement. All other removals of Product from this Agreement prior to the Agreement expiration date will be subject to a cancellation fee of 15% of the remaining Agreement value.

GE Healthcare can withdraw this Quotation at any time before "Quotation Acceptance", which occurs on the later of: (a) the Effective Date identified above or (b) Customer's signature date. The "Agreement Start Date" begins on: (a) the above effective date if customer signs and returns this Agreement within 30 calendar days of that date if previously under contract or warranty; or (b) the date of signature if customer does not sign & return this Agreement within 30 calendar days of the above date. On Quotation Acceptance, this Agreement is the complete and final agreement of the parties relating to the Services identified in this Quotation. There is no reliance on any terms other than those expressly stated or incorporated by reference in this Agreement and, except as permitted in this Agreement, no attempt to modify will be binding unless agreed to in writing by the parties. Modifications may result in additional fees and cannot be made without GE Healthcare's prior written consent. Handwritten or electronic modifications on this Agreement (except signatures on the signature blocks below) are void. This Agreement is not part of an umbrella or other group purchasing agreement unless otherwise indicated.

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

OEC Medical Systems, Inc., a GE Healthcare business

Customer

Signature: [Signature]

Signature: \_\_\_\_\_

Print Name: Michael Larsen

Print Name: Russell Bigler

Title: Healthcare Service Account Manager

Title: Chairman, Board of Governors

Date: November 15, 2022

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

PLEASE SIGN AND RETURN TO: OEC Medical Systems, Inc., a GE Healthcare business

By [Signature]
Legal Services Department



- 1. Definitions.** As identified in this Agreement, "Equipment" is hardware and embedded software that is licensed with the purchase of the hardware delivered to Customer in GE Healthcare's packaging and with its labeling; "Software" is software developed by GE Healthcare and/or delivered to Customer in GE Healthcare's packaging and with its labeling, and Documentation associated with the software; "Third Party Software" and "Third Party Equipment" are respectively software developed by a third party, and hardware and embedded software that is licensed with the purchase of the hardware, that is delivered to Customer in the third party's packaging and with its labeling (collectively, "Third Party Product"); "Product" is Equipment, Software and Third Party Product; "Services" are Product support or professional services; and "Subscription" is a limited-term, non-transferable license to access and use a Product (except Healthcare Digital Products), including any associated Services. "Healthcare Digital Products" are: (i) Software identified in the Quotation as "Centricity"; (ii) Third Party Software licensed for use in connection with Centricity Software; (iii) hardware used to operate Centricity or Third Party Software; (iv) Services provided for implementation, installation or support and maintenance of Centricity or Third Party Software licensed for use in connection with Centricity Software; and/or (v) any Product or Service that is identified in a Healthcare Digital Quotation. "Specifications" are GE Healthcare's written specifications and manuals as of the date the Equipment shipped. "Documentation" is the online help functions, user instructions and manuals regarding the installation and operation of the Product as made available by GE Healthcare to Customer.
- 2. Term and Termination.** Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate this Agreement. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination.
- 3. Inventory.** GE Healthcare will complete an inventory of Products and provide an updated Product schedule ("Product Schedule"). Products must be in safe, normal operating condition and comply with original equipment manufacturer ("OEM") specifications in order to be added to the Product Schedule, and GE Healthcare is not liable or responsible for any preexisting defect, malfunction or necessary repairs.
- 4. Product Removal.** Product sold (excluding an assignment of this Agreement) or scrapped by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted on the later of the end of the notice period or the date the Product is sold or scrapped. Customer has no right to remove a Product at its convenience.
- 5. Warranty.** GE Healthcare warrants that its Service will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will re-perform non-conforming Service as long as Customer provides prompt written notice to GE Healthcare. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. DOCUMENTATION IS PROVIDED "AS IS".
- 6. Loaner Units.** GE Healthcare may provide a loaner unit during extended periods of Service. If a loaner unit is provided: (i) it is for Customer's temporary use at the location identified in the Quotation; (ii) it will be returned to GE Healthcare within 5 days after the Product is returned to Customer, and if it is not, GE Healthcare may repossess it or invoice Customer for its full list price; (iii) it, and all programs and information pertaining to it, remain GE Healthcare property; (iv) risk of loss is with Customer during its possession; (v) Customer will maintain and return it in proper condition, normal wear and tear excepted, in accordance with GE Healthcare's instructions; (vi) it will not be repaired except by GE Healthcare; (vii) GE Healthcare will be given reasonable access to it; (viii) Customer is not paying for its use, and Customer will ensure charges or claims submitted to a government healthcare program or patient are submitted accordingly; and (ix) prior to returning it to GE Healthcare, Customer will delete all information, including PHI, from it and its accessories, in compliance with industry standards and instructions provided by GE Healthcare.
- 7. License Registration.** Online registration as a licensee may be required for receipt of Software and Documentation.
- 8. Customer Responsibilities.** Customer must: (i) maintain power quality, grounding, temperature, humidity and repairs due to power anomalies, all as necessary for Products to operate within OEM specifications; (ii) ensure labeling complies with regulations; (iii) provide Third Party Product warranty and operating and maintenance manuals, maintenance and service requirements (e.g., software, tools, phantoms), or pay GE Healthcare for acquiring these materials; (iv) repair accessories unless the item is identified on the Product Schedule; (v) replace accessories, supplies and consumables; (vi) dispose of accessories, supplies and consumables unless GE Healthcare is legally required to take the item back; (vii) update Third Party Product; (viii) maintain licenses, permits and other approvals required to receive or use radioactive sources and provide the sources needed for calibration and performance checks; (ix) provide access to Products during Service coverage hours; and (x) if required by GE Healthcare, sign an agency authorization letter to provide Services. Service for Products not maintained to OEM specifications may result in additional charges. Customer cannot stockpile replacement parts.
- 9. End of Support.** If GE Healthcare determines that: (i) a Product or component thereof has been declared end of life/support by the OEM; (ii) its ability to Service or maintain a Product or component thereof is hindered due to the unavailability of parts or trained personnel; or (iii) it can no longer Service or maintain the Product in a safe or effective manner, then GE Healthcare may, upon notice: (a) remove the item from this Agreement and adjust fees without otherwise affecting this Agreement, or (b) move the item to "end of service life" coverage.
- 10. Return for Repair.** Prior to shipping Product to GE Healthcare for repair, Customer will back up and remove data stored on the Product. Customer is responsible for damage during shipment to GE Healthcare. GE Healthcare may remove data stored on the Product prior to sending it back to Customer and will provide standard shipping.
- 11. Exclusions.** Unless identified on the Product Schedule, this Agreement does not cover: (i) tubes, detectors, probes, chillers, crystals, batteries, accessories, consumables, user-replaceable items, supplies, cosmetic upgrades or parts used to correct/enhance Product appearance; (ii) a defect, deficiency or repairs due to improper storage or handling, failure to maintain Product according to OEM instructions/specifications, inadequate



backup or virus protection, cyber-attacks, or any cause external to the Product or beyond GE Healthcare's control; (iii) payment/reimbursement of facility costs arising from repair/replacement of Product; (iv) adjustment, alignment, calibration, or planned maintenance; (v) Third Party Product that was not commercially available from the OEM on the date the item was installed; (vi) OEM warranty service or recalls; (vii) Product upgrades, certification surveys and relocations; (viii) consultation, training or assistance with use, development, or modification of items/materials (e.g., software and protocols); (ix) installation and reusing existing facilities for testing, training and other purposes; (x) MR-related defect from failure of a Customer water chiller system or service to water chiller system; (xi) Healthcare Digital Products; and (xii) non-GE Healthcare network/antenna installations/troubleshooting.

**12. Existing Service Arrangements.** This Agreement does not apply to Products covered by arrangements/warranties from other vendors until the end or termination of those arrangements/warranties. If Products covered by another arrangement/warranty are added to this Agreement, they will be added on the day following the end or termination of the other arrangement/warranty.

**13. Hourly Billed Services.** Services not covered by this Agreement are hourly-billed services and may have a 2-hour minimum charge.

**14. Inflation.** After the first year of this Agreement, but no more than annually and with 60 days' prior notice, GE Healthcare may increase fees by an amount no more than the prior 12-month increase in the U.S. Bureau of Labor Statistics ("BLS") Employment Cost Index for "Service-providing industries: Natural resources, construction, and maintenance (not seasonally adjusted, total compensation)" or any replacement index as determined by BLS, capped at 5% annually.

**15. Product Specific Service Terms.**

**15.1. Tube Support (Excluding C-Arms).** If tube support/coverage is identified on the Product Schedule, GE Healthcare will provide tubes, on an exchange basis, to replace failed tubes. Customer will: (i) maintain a Product maintenance and repair program, including tube warm up, in accordance with GE Healthcare planned maintenance and repair requirements; (ii) repair the Product with repair parts that meet OEM specifications; and (iii) protect Product configuration against alteration except as authorized by GE Healthcare. Product must have an operational tube on the Agreement Start Date (as defined in the Quotation). No credit will be provided to Customer for the tube.

**15.2. Magnetic Resonance ("MR").**

**15.2.1. Magnet Maintenance.**

**15.2.1.1.** If magnet maintenance for MR systems with Lhe/Ln and shield cooler-configured magnets and condenser-configured magnets (K4 technology) is identified on the Product Schedule, GE Healthcare will: (i) adjust, repair, or replace covered components (i.e., MR magnet, cryostat, coldhead, cryo-cooler compressor, shim coils); (ii) monitor cryogen levels within the magnet cryostat, based on Customer cryostat meter readings; and (iii) perform magnetic field homogeneity adjustments to the extent required by magnet ramping or covered component adjustment, repair or replacement. Customer will ensure that the Product's cryo-cooler system and water chiller system used with the cryo-cooler system (including in vans or trailers in transit) are operational at all times and maintained, and immediately notify GE Healthcare if it is not.

**15.2.1.2.** If magnet maintenance for MR systems with permanent magnets is identified on the Product Schedule, GE Healthcare will perform magnetic field homogeneity adjustments to the extent required by a covered component adjustment, repair or replacement.

**15.2.2. Remote Magnet Monitoring for non-GE Healthcare Systems.** If remote magnet monitoring for non-GE Healthcare systems is identified on the Product Schedule, GE Healthcare will: (i) remotely monitor operating parameters of the MR magnet refrigeration system; (ii) oversee installation of remote monitoring hardware; and (iii) maintain the hardware. Customer will provide power, access and remote connectivity as needed for remote magnet monitoring.

**15.2.3. Cryogen Coverage.** If cryogen coverage for GE Healthcare MR systems is identified on the Product Schedule, GE Healthcare will provide: (i) monitoring of cryogen levels; and (ii) cryogen delivery and transfill service Monday-Friday, between 9pm-6am local time (excluding GE Healthcare holidays), to replenish cryogen losses resulting from (a) the normal operation of the Equipment in accordance with Specifications, or (b) GE Healthcare's failure to maintain the Equipment in accordance with Specifications. Notwithstanding the foregoing, if Customer's failure to maintain or use the Equipment in accordance with Specifications results in cryogen loss, Customer will be billed for cryogen delivery and transfill service at GE Healthcare's then-current rates. GE Healthcare is not liable for cryogen loss or transfer efficiency during transfer to the cryostat. Customer will inform GE Healthcare of its authorized cryogen representative who will provide GE Healthcare accurate cryostat meter readings and receive notifications relative to cryogen quantity and delivery schedules (for Lhe/Ln and shield cooler configured magnets only); and provide a delivery dock and storage facility.

**15.2.4. Cryogen Cost Increases.** If GE Healthcare's cryogen cost increases by more than 12%, as measured against its cost as of the Agreement Start Date (as defined in the Quotation) or its cost on the date of the most recent adjustment, GE Healthcare may increase Service fees in an amount equal to such cost increase.

**15.3. Cyclotron.** GE Healthcare will work in accordance with its health and safety rules and applicable radiation and radioactive materials safety laws and regulations, whichever is more stringent, including assessment and management of radiation dose in accordance with the As Low As Reasonably Achievable ("ALARA") standard. Customer will follow all ALARA guidelines to maintain and control the radiation exposures as far below the dose limits as possible. Customer will: (i) if requested by GE Healthcare, remove targets prior to Service; (ii) place targets in an appropriately shielded area/container during Service; (iii) replace targets following Service; (iv) provide at least 24 hours of Product downtime prior to planned maintenance; (v) provide GE Healthcare with Customer's emergency and site-specific safety procedures; (vi) ensure that a Customer representative is available in the work area during Service; (vii) confirm that GE Healthcare personnel and their tools and accessories are free from contamination prior to leaving Customer's facility; and (viii) store and dispose of waste generated by Service in compliance with applicable laws and regulations. GE Healthcare reserves the right not to enter areas with dose rates in excess of 2 mSv/hour. Other radiation exposure limits may apply to Service, including daily or personal cumulative dose limits, and local requirements, which could prevent Service of the cyclotron until radiation levels are

reduced.

## 16. General Terms.

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

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

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

16.4. Assignment; Use of Subcontractors. Rights and obligations under this Agreement cannot be assigned without the other party's prior written consent, unless: (i) it is to an entity (except to a GE Healthcare competitor) that (a) is an affiliate or parent of the party or (b) acquires substantially all of the stock or assets of such party's applicable business, Product line or Service thereof; and (ii) the assignee agrees in writing to be bound by this Agreement, including payment of outstanding fees. GE Healthcare may hire subcontractors to perform work under this Agreement but will remain responsible for its obligations.

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

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

## 17. Compliance.

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

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

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

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

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

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

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

## 17.8. Use of Data.

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

17.8.2. Data Rights. GE Healthcare may collect, prepare derivatives from and otherwise use non-PHI data related to Products and/or Services for such things as training, demonstration, research, development, benchmarking, continuous improvement and facilitating the provision of its

products, software and services. GE Healthcare will own all intellectual property and other rights that could result from this collection, preparation and use. The non-PHI data will not be used to identify Customer or sold by GE Healthcare without Customer's consent.

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

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

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

## 18. Disputes and Arbitration.

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

## 19. Liability and Indemnity.

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

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

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

### 19.4. General Indemnification.

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

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

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

## 20. Payment and Finance.

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

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

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



## Statement of Service Deliverables DeluxeCare

- Optional Equipment and Accessories.** This Agreement excludes loaners, optional equipment and accessories and consumables (e.g., printers, MDR boxes, Table side control (Elite), laser aimers and wireless hand/foot switches).
- Uptime Guarantee.** GE Healthcare guarantees at least 95% uptime performance for the Equipment. Should the Equipment fail to meet the 95% uptime performance guarantee in any 12-month period due to GE Healthcare's design, manufacturing, or service defects, GE Healthcare will provide an extension of the term of this Agreement with respect to that Equipment at no additional charge as according to the table below. Uptime is calculated at Customer's request.

Uptime Percentage	Extension
95-100	0
94	2 weeks
90-93	4 weeks
<90	6 weeks

Equipment will be considered inoperable and out of Service under the uptime performance guarantee if, due to GE Healthcare's design, manufacturing, material or service defects, the Equipment is unavailable for diagnosing images on the Equipment display console or operator's console. Peripheral equipment such as remote console, hard copy devices, multi-format or laser cameras are excluded from the terms of the uptime performance guarantee. Repair and adjustment required for anything other than Equipment failure, and damage or inoperability due to any cause other than GE Healthcare's design, manufacturing, material or service defects will be excluded from the uptime performance guarantee calculation, including, but not limited to damage through misuse, operator error, inadequate environmental or air conditioning protection or failure, power failure, and acts of God. Planned maintenance time will not be included in the calculation of downtime. If GE Healthcare's responding service representative agrees that the Equipment is inoperable due to GE Healthcare's design, manufacturing, material or service defects, the Equipment will be considered out of Service from the time the request for Service was received at the designated facility until the Equipment is once again turned over to Customer for operation. Should Customer fail to give GE Healthcare immediate and unencumbered access to the Equipment or continue to use the Equipment after notifying GE Healthcare of any Equipment failure, the Equipment will be considered in Service.



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

December 14, 2022

**SUBJECT:** Proposed Product Agreement and Service Agreement with Ortho-Clinical Diagnostics, Inc.

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

**Summary:**

Kern Medical requests your Board approve the Product Agreement and Service Agreement with Ortho-Clinical Diagnostics, Inc. for the use of two blood bank analyzers and related service to that equipment. Ortho-Clinical Diagnostics, Inc. will provide the analyzers at no cost, a combined retail value of \$180,000, as well as \$15,000 in reagent credit.

The Product Agreement and Service Agreement are effective December 14, 2022 with a maximum payable not to exceed \$144,000, for the service to the analyzers, over a six-year term. The Agreements also provide for termination with 30 days' notice, however, if the Agreements are terminated early, Kern Medical would be required to repay a portion of the equipment retail value of \$180,000, based upon the time remaining on the Agreements.

Therefore, it is recommended that your Board approve the Product Agreement and Service Agreement with Ortho-Clinical Diagnostics, Inc., effective December 14, 2022, with a total maximum payable not to exceed \$144,000, for a six-year term, and authorize the Chairman to sign.

## GPO PRODUCT AGREEMENT

This GPO Product Agreement ("GPOPA" or "Agreement") is between Ortho-Clinical Diagnostics, Inc., a New York Corporation doing business at 1001 US Route 202, Raritan, NJ 08869 (the "Company"), and KERN COUNTY HOSPITAL AUTHORITY, doing business at 1700 MOUNT VERNON AVE, BAKERSFIELD, CA 93306 (the "Customer"), dated August 25, 2022.

The Company and the Customer are parties to a GPO Agreement (HPG #80) and HEALTHTRUST PURCHASING GROUP) dated September 1, 2011 (the "GPO Master Agreement"; all defined terms used but not defined in this GPOPA have the meaning given those terms in the GPO Master Agreement). The GPO Master Agreement anticipates the parties entering into one or more Agreements describing available Price Concessions, as may be disclosed in Schedule A, Discount Disclosure, attached hereto as ("Schedule A").

The parties wish to enter into one such GPOPA with respect to products that as of the Effective Date, as defined in Section 18 below, fall within the product categories listed in Schedule A, Products and Pricing (each, a "Product").

The parties therefore agree as follows:

The following terms and conditions apply to Products in the following categories: IDMTS & Traditional IH.

1. Product List Prices. List Prices at the product code level may be obtained by calling the Company's Customer Service at 1-800-828-6316. List Prices are subject to change without notice.
2. Purchase Commitment. With respect to each Product purchased, pricing provided in Schedule A is conditioned on the Customer meeting the Commitments outlined in Schedule A.
3. Price Adjustment. Shall be per the terms and conditions of the GPO Master Agreement, or as otherwise specified in this GPOPA.
4. Performance Commitment and Compliance. The Customer is obligated to utilize a minimum of 90% of its annual testing with MTS Gel cards for ABO Rh, Donor Unit Retypes, Antibody Screens and Antibody Identifications from Company each Year because it is the basis for the Equipment utilization being extended to Customer over the Term of this Agreement. ("Annual Performance Commitment"). The Customer is required to connect to e-Connectivity in order to track utilization of MTS Gel cards for the aforementioned tests as well as provide the Company initially with their current use of the same. The Company will review the Customer's Annual utilization of MTS cards and associated reagents annually within 30 days of the Agreement's annual anniversary date ("Compliance Audit"), to determine the Customer's compliance. If during the Compliance Audit, Customer has not met the Annual Performance Commitment, then the Customer will be billed \$12,000 per piece of Equipment, per annual shortfall found ("Shortfall Payment"). This Shortfall Payment amount is equal to 1/5 of the price of the Equipment (Equipment pricing tied to Agreement #3000013334 between the Customer and Company) that the Company is placing at the Customer site. The Company will invoice, and the Customer will pay the Shortfall Payment within 30 days of the invoice date. If Customer's payment is not received within 30 days of the invoice date, then the Customer will be in Default, as per Section 8 and 18 herein.
5. Adding or Removing Products. The Company may at its discretion add or remove Products from the product codes listed in the table in Schedule A.
6. Definitions. For purposes of this GPOPA, the following terms have the following meanings:

THIS DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS OF THE COMPANY.  
ITS CONTENTS MAY NOT BE DISCLOSED BY AN AUTHORIZED RECIPIENT WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT.

"List Price" means the price in effect at the time of sale of any Product, as published by the Company.

"Year" means each twelve-month period of this GPOPA, beginning on the Effective Date or anniversary thereof.

"Semi-Annual" means each six-month period of this GPOPA, beginning on the Effective Date or each six (6) month anniversary thereof.

7. Warranties. Unless superseded by a Warranties Section in this GPOPA, the Company warrants the Products will meet or exceed relevant safety standards and accepted industry standards for similar products. In addition, Customer and the Participants shall have the benefit of the warranties implied by the laws of the State of New York governing the sale of goods. EXCEPT AS SPECIFICALLY OTHERWISE STATED IN THIS PROVISION, THERE IS NO EXPRESS OR IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ON THE PRODUCTS INCLUDED IN THIS AGREEMENT. This Warranties Section shall survive the termination or expiration of this GPOPA.

8. Default and Remedies. An event of default shall have occurred if the Customer (a) fails to make any payment within fifteen (15) days of its due date unless specified otherwise herein, (b) fails to perform any other obligation under this GPOPA within ten (10) days of notification unless specified otherwise herein or (c) becomes insolvent and enters into any bankruptcy or reorganization proceeding. Upon any event of default remaining uncured within thirty (30) days of occurrence, the Company shall be entitled to (a) declare the sum of all obligations hereunder due and payable, (b) terminate this Agreement and take immediate possession of the Products or (c) avail itself of any other remedy provided by statute or law. These remedies shall be cumulative.

9. Taxes. The Customer shall be responsible for all applicable taxes and fees relating to this GPOPA, including assessment of personal property, use, rent, operation, purchase and ownership of the Equipment, including any interest or penalties, except those taxes on or measured by the gross income of the Company. The Company shall bill the Customer for reimbursement of any Personal Property taxes assessed directly to the Company as owner of the Equipment.

10. Risk and Cancelability. The Customer shall bear the entire risk of all loss, theft, damage, destruction, condemnation, requisition, taking by eminent domain or other interruption or termination of use of the Equipment ("occurrences"). No such occurrences shall relieve the Customer of any obligation hereunder. These obligations are absolute, unconditional, and irrevocable. THIS IS A NON-CANCELABLE AGREEMENT.

11. Insurance. The Customer agrees, at its own expense, to maintain and provide evidence of physical damage and liability insurance on the Equipment, equal to its full replacement cost, naming the Company and its assigns as loss payee and additional insured throughout the term of this GPOPA. The Customer annually will provide the Company with a certificate of insurance evidencing the foregoing.

12. Form W-9. Customer agrees to provide an executed Form W-9 to the Company promptly upon execution of this GPOPA.

13. Assignment. Notwithstanding anything to the contrary in the GPO Master Agreement or any other agreement, the Customer shall not assign, sell, transfer or subrent the Equipment or its interest in this GPOPA Agreement without the Company's prior written consent. The Company shall have the right to assign or sell all or part of its right, title and interest in the Equipment and this GPOPA to Leasing Associates of Barrington, Inc., without notification.

14. Security Interest. The Customer grants to the Company, as owner of the Equipment, a first priority security interest in the Equipment and agrees to keep the Equipment free from all liens and encumbrances, except those of the Company and its assigns, throughout the term of this Agreement. The Customer authorizes the Company to execute and file UCC financing statements to protect the Company's interests.

15. Part of GPO Master Agreement. This GPOPA constitutes part of the GPO Master Agreement and is subject to all its terms and is not valid unless the GPO Master Agreement has been signed by all the parties. In regard to the provision and rental of Equipment, defined as "Equipment" under Schedule B, and all the Company and the Customer obligations relating thereto, the terms of this GPOPA shall prevail over any conflict or inconsistency contained in the GPO Master Agreement. In all other aspects, in the event of any conflict or inconsistency between the terms of this GPOPA and the GPO Master Agreement, the terms of the GPO Master Agreement shall control.

16. GPO Master Agreement. The Customer or Participant is no longer entitled to purchase the Product under the GPO Master Agreement (a "GPO Termination"), 45 days after the GPO Termination. The Customer or Participant will no longer be entitled to the pricing for the Product set forth in the applicable Product Supplement. At such time and throughout the remainder of the term of this GPOPA, the price of the Product will be the price that the Customer or Participant would be eligible for under a direct agreement with the Company based on the volume commitment set forth on the applicable Product Supplement, subject to an increase in the price of the Product annually.

17. Offer Expiration. Until fully executed, this GPOPA constitutes an offer that is valid until **November 23, 2022**. If the Customer does not sign this GPOPA by that date or if the Customer modifies the terms of this GPOPA before signing it, the Company may withdraw or modify this offer. This GPOPA is not valid until it has been signed by both parties.

18. Term and Termination. The term of this GPOPA is 6.0 years and begins on December 14, 2022 (the "Effective Date") and terminates on December 13, 2028 (the "End Date"). The Company shall determine the Effective Date based on price-loading requirements, and once this GPOPA has been signed by both parties the Company shall insert the Effective Date and the End Date by hand on the signed copies. This GPOPA shall remain effective until the GPOPA End Date and, as between the Customer and the Company, the terms of the GPO Master Agreement shall be deemed to be in full force and effect until such date.

If the Customer terminates or is found to be in default of this GPOPA prior to the End Date then a termination payment will be assessed. The termination payment is equal to the Equipment's remaining straight-line book value at the time of Termination or default and is based on the \$60,000 Equipment value as set forth in Agreement #3000013334 between the Customer and Company. ("Termination Payment"). Additionally, any outstanding invoices, applicable tax and outstanding service invoices would be due. The Company will provide written notification and the Termination Payment invoice to the Customer. The Termination Payment is due and payable by the Customer within thirty (30) days of the date of invoice.

Upon the End Date of this GPOPA, the Equipment must be returned within thirty (30) days or be subject to a monthly fee; however, at the End Date should the Customer and Company mutually acknowledge that they are in the process of negotiating the terms of a new agreement, the Company and the Customer hereby agree to extend and continue the Term of the GPOPA for a period of ninety (90) days or until such times as a new agreement is signed, and to be bound by the terms and conditions thereof, including, without limitation, the pricing as set forth in this GPOPA.

19. Entire Agreement. All exhibits, schedules, attached hereto and referenced herein are made a part of this GPOPA. This GPOPA constitutes the entire agreement between the parties concerning the subject matter of this GPOPA and supersedes all prior negotiations and agreements between the parties concerning the subject matter of this GPOPA. The terms of any purchase order,



invoice, or similar document used to implement this GPOPA shall be subject to and shall not modify this GPOPA. This GPOPA may only be amended by written agreement of the parties.

20. Notices. Notices under this GPOPA must be in writing, signed by the sending party, and sent to the address set forth below, by way of one of the following methods: personal delivery; registered or certified mail, in each case return receipt requested and postage prepaid; nationally recognized overnight courier, with all fees prepaid; or facsimile. A notice under this GPOPA is effective upon receipt or refusal of delivery by the other party.

If to Company to the Company address set forth in paragraph 1,  
Attn: Manager of Contract Management with copy to General Counsel

If to Customer to the Customer address set forth in paragraph 1,  
Attn: \_\_\_\_\_

21. Warranty of Authority. The Customer represents and warrants to the Company that it is duly authorized to execute this GPOPA and that it has authority to legally bind the Customer to the terms of this GPOPA.

Each party is signing this GPO Product Agreement as of the date stated below its signature.

The Company:

The Customer:

ORTHO-CLINICAL DIAGNOSTICS, INC.

KERN COUNTY HOSPITAL AUTHORITY

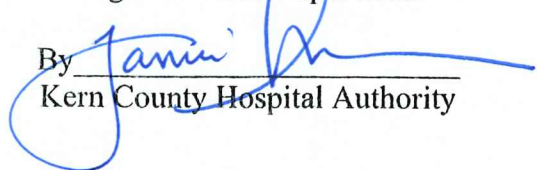
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By: \_\_\_\_\_  
Printed Name: Russell Bigler  
Title: Chairman, Board of Governors

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

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

APPROVED AS TO FORM  
Legal Services Department

By:   
Kern County Hospital Authority

THIS DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS OF THE COMPANY.  
ITS CONTENTS MAY NOT BE DISCLOSED BY AN AUTHORIZED RECIPIENT WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT.

**SCHEDULE A – PRODUCTS AND PRICING**

**Order Method:** Direct through Company: **X** OR Through Authorized Distributor: \_\_\_\_\_

EQUIPMENT						
Qty.	Product Code	Item	Rental Type	List Price	Offer Price	Term in Months
2	6904577	ORTHO VISION Swift Analyzer Gel	Equipment Usage	\$90,000.00 ea.	\$0.00	72

ACCESSORIES						
Qty.	Product Code	Item	List Price	Offer Price	Term in Months	
2	6904701	ORTHO VISION Table	\$1,500.00 ea.	Included	72	

OTHER PRODUCTS						
Qty.	Product Code	Item	List Price	Offer Price	Term in Months	
2	6902036	Equipment Transportation	\$1,500.00 ea.	Included	72	
2	OTH-MTS-LIS	LIS Interface	\$7,500.00 ea.	Included	72	

**ADDITIONAL TERMS AND CONDITIONS**

Acceptance of any Agreement and/or Purchase Order is contingent upon Customer's successful completion of Ortho-Clinical Diagnostic's credit review process. Product pricing and Terms are per Quorum Health Purchasing Agreement # 3000013334 effective July 19, 2022.

This offer is valid until **November 23, 2022**. Company reserves the right to withdraw or modify this offer at its sole discretion.

**Customer is responsible for ongoing service for the entire Term of the Agreement.**

The customer is eligible to receive six (6) sample racks per ORTHO Vision analyzer at no charge. The racks must be selected at the time of order.

The Placed Instrument program includes the cost of table, UPS and shipping

**LIS:** For Equipment only, subject to the terms of the Agreement, Customer is eligible to receive a credit not to exceed \$7,500.00 per ORTHO Vision Swift analyzer, if Customer purchases or upgrades its Laboratory Information System Interface (the "LIS"). The Supplier will issue credit upon receipt of proof of purchase of such LIS satisfactory to Supplier. To the extent required by law, the Customer will allocate and disclose this Discount.

**Training:** Equipment comes with two (2) Key Operator Training slots per ORTHO Vision Swift Analyzer. Equipment training must be conducted within 18 months of system shipment.

Company offers remote diagnostics at no additional charge

## GPO SERVICE AGREEMENT

This GPO Service Agreement ("GPOSA" or "Agreement") is between Ortho-Clinical Diagnostics, Inc., a New York Corporation doing business at 1001 US Route 202, Raritan, NJ 08869 (the "Company"), and KERN COUNTY HOSPITAL AUTHORITY, doing business at 1700 MOUNT VERNON AVE, BAKERSFIELD, CA 93306 (the "Customer").

The Company and the Customer are parties to a GPO Master Agreement (HPG80, HEALTHTRUST PURCHASING GROUP) dated September 1, 2011 (the "GPO Master Agreement"; all defined terms used but not defined in this GPOSA have the meaning given those terms in the GPO Master Agreement). The GPO Master Agreement anticipates the parties entering into one or more Service Agreements describing available Price Concessions

The parties wish to enter into one such GPOSA with respect to services that as of the Effective Date fall within the services listed in Schedule A, Service Coverage for Equipment (each, a "Service").

The parties therefore agree as follows:

1. Service and Pricing. This is an Agreement for Company's provision of Services as defined in Schedule A attached hereto at the prices set forth in the Service Agreement Supplement(s). The pricing set forth in the Service Agreement Supplement includes certain discounts at the time of sale (a "Price Concession") for Services purchased by the Customer over the term of the GPOSA and is subject to any additional pricing terms as may be outlined in the Additional Terms and Conditions herein. Only Services set forth in the Service Agreement Supplement and purchased under this GPOSA are eligible for Price Concessions. The Company has the right to increase Service pricing each calendar year on the anniversary of the GPOSA.

2. Property Rights. Any ideas, concepts, know-how, or techniques that the Company may develop during the performance of this GPOSA shall be the sole and exclusive property of the Company. The Customer agrees to use reasonable efforts to assist the Company in the registration of any such ideas, concepts, know-how, or techniques upon the Company's request. The Company shall be responsible for the actual costs and expenses incurred by the Customer in connection with any such registration. Any maintenance materials, tools, documentation, diagnostics and test equipment provided by the Company will remain the exclusive property of the Company.

3. Access to Books and Records. To the extent required by 42 C.F.R. §§ 420.300-304, until the expiration of four years after the expiration or early termination of a Statement of Work, the Company will maintain a copy of this GPOSA and the books, documents and records related to the Services provided under that Statement of Work if the value or cost of the services is \$10,000 or more within a 12-month period. The Company will provide the Comptroller General of the United States, the United States Department of Health and Human Services, and their respective duly authorized representatives, access to the foregoing to the extent required by 42 C.F.R. §§ 420.300-304.

4. Access to Equipment. The Customer will provide the Company, without charge, reasonable working and storage space and utility services at the Customer's facilities and with access to the Customer's personnel, files, and equipment as the Company reasonably deems necessary to fulfill the Company's obligations under this GPOSA.

5. Service Warranty. The Company represents that it will perform the Services in a good and workmanlike manner. Any warranties, whether express or implied, provided by the Company with respect to the equipment are as described in the documentation accompanying that equipment on purchase. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FOREGOING INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Offer Expiration. Until fully executed, this GPOSA constitutes an offer that is valid until **November 23, 2022**. If there are any changes to this GPOSA or if the Customer does not sign it by that date, then the Company reserves the right to withdraw or modify this offer in its sole discretion. This GPOSA is not valid until all signatures required below have been made.

7. Part of Master Agreement. This GPOSA constitutes part of the GPO Master Agreement and is subject to all its terms and is not valid unless the GPO Master Agreement has been signed by all the parties.

8. GPO Master Agreement. The Customer or Participant is no longer entitled to purchase the Service under the GPO Master Agreement (a "GPO Termination"), forty-five (45) days after the GPO Termination. The Customer or Participant will no longer be entitled to the pricing for the Service set forth in the applicable Service Agreement Product Supplement. At such time and throughout the remainder of the term of this GPOSA, the price of the Service will be the price that the Customer or Participant would be eligible for under a direct agreement and the Company has the right to increase service pricing on or about April 1 of each calendar year by up to 5%.

9. Term and Termination. The term of this GPOSA is six (6) years and begins on December 14, 2022 (the "Effective Date") and terminates on December 13, 2028 (the "End Date"). Either party may terminate this GPOSA at any time by giving 30 days' advance notice to the other party. The Effective Date and the End Date will be determined by the Company based upon price loading requirements. The Company will complete this section upon final execution of this GPOSA. This General Provisions Article, along with any accrued rights and responsibilities, will survive termination or expiration of this GPOSA.

(a) Either party may terminate this GPOSA at any time by giving thirty (30) days' advance notice to the other party.

(b) If this GPOSA is terminated by the Customer in accordance with subsection (a) above in order to upgrade a piece of Company's equipment, any unused amounts of service coverage (determined by chronological proration) for which the Customer has prepaid will be credited against the price of any new service GPOSA associated with the upgrade equipment purchased by the Customer under the then current service pricing strategies.

(c) If this GPOSA is terminated by the Customer in accordance with subsection (a) above, for any other reason than in (b) above, the Customer will not be provided credit for any unused prepaid amount, and if the Customer has purchased but not completely paid for a multi-year term, the Customer will be invoiced, and the Customer agrees to pay within 60 days of being invoiced, an amount equal to any difference between the amount prepaid by the termination date and the amount still owed to the Company for the remaining multi-year term.

10. Entire Agreement. All exhibits, schedules, attached hereto and referenced herein are made a part of this GPOSA. This GPOSA constitutes the entire agreement between the parties concerning the subject matter of this GPOSA and supersedes all prior negotiations and agreements between the parties concerning the subject matter of this GPOSA. The terms of any purchase order, invoice, or similar document used to implement this GPOSA shall be subject to and shall not modify this GPOSA.

11. How to Obtain Service. Customer can reach Company's Customer Support Center by calling (800) 421-3311.

12. Billing and Terms of Payment. Commercial billings are in advance and prices will vary dependent upon billing arrangements (multi-year, semi-annual, annual, or quarterly as specified in the attached Service Agreement Product Supplement). All payments are due and payable within thirty (30) days of invoice date, except for renewals, which are due by the renewal date. Customer is liable for the agreed date to annual charge beginning on the contract Effective Date.

13. Renewal. Company will provide for renewal, at the prices and terms then in effect, as long as a service agreement is available.

14. Notices. Notices under this GPOSA must be in writing, signed by the sending party, and sent to the address set forth in Paragraph one, by way of one of the following methods: personal delivery; registered or certified mail, in each case return receipt requested and postage prepaid; nationally recognized overnight courier, with all fees prepaid; or facsimile. A notice under this GPOSA is effective upon receipt or refusal of delivery by the other party.

If to Company to the Company address set forth in paragraph one,

Attn: Manager of Contract Management with copy to General Counsel

If to Customer to the Customer address set forth in paragraph one,

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

15. Assignment. Except as provided in this section, neither party may assign any of its rights or obligations under this GPOSA, either voluntarily or involuntarily (whether by merger, consolidation, dissolution, operation of law, or otherwise), without the prior written consent of the other party. If the Company or any of its affiliates divests itself of any product or service, then the Company may assign to the person or entity acquiring that product or service any of the Company's rights under this GPOSA relating to that product or service, on the condition that the assignee will also assume the Company's obligations under this agreement relating to that product or service. Any purported assignment in violation of this section will be void.

16. Warranty of Authority. The Customer represents and warrants to the Company that it is duly authorized to execute this GPOSA and that it has authority to legally bind the Customer to the terms of this GPOSA.

Each party is signing this GPO Service Agreement as of the date stated below its signature.

The Company:

The Customer:

ORTHO-CLINICAL DIAGNOSTICS, INC.

KERN COUNTY HOSPITAL AUTHORITY

By: Erica Turkovitz  
Printed Name: Erica Turkovitz  
Title: Customer Data Analyst  
12/2/2022

By: \_\_\_\_\_  
Printed Name: Russell Bigler  
Title: Chairman, Board of Governors

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

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

APPROVED AS TO FORM  
Legal Services Department

By: [Signature]  
Kern County Hospital Authority

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ITS CONTENTS MAY NOT BE DISCLOSED BY AN AUTHORIZED RECIPIENT WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT.

**SCHEDULE A – SERVICE COVERAGE FOR EQUIPMENT**

1. Scope of Services. The service coverage specified for each item of equipment set forth in the Service Agreement Product Supplement shall consist of the following:

- (a) Telephone Assistance from the Company's hotline ("ORTHO Hotline"), available seven days per week and twenty-four hours per day.
- (b) When ORTHO Hotline determines that the Customer has a problem that cannot be resolved with telephone assistance a Field Engineer will be dispatched.
- (c) On-Site service performed by Field Engineers during contract coverage hours.
- (d) Recommended PMs on covered equipment. These are periodic maintenance calls performed by Company to clean, test and maintain covered equipment. This includes all labor and parts used during the PM. The number of recommended PM calls per year is model specific and are specified in the Company's Service Manual for each model. These calls will only be made between the hours of 8:00am and 5:00pm local time, Monday through Friday, excluding Federal and local holidays.
- (e) Health and Safety related Modification Kits. This includes all labor and parts used in the installation that are required to implement the modification. These calls will be made between the hours of 8:00am and 5:00pm local time, Monday through Friday, excluding Federal and local holidays.
- (f) Replacement parts. Replacement of all worn-out or defective non-consumable parts ("Replacement Parts") on covered equipment replaced during an on-site service visit will be at no charge. Consumable parts are not covered by this GPOSA and are the responsibility of the Customer. Replacement Parts may be new or reconditioned to perform as new. Parts removed from equipment and replaced, unless previously agreed, shall, at Company's discretion, become the property of Company. All parts replaced at no charge must be returned to Company within thirty (30) days after replacement when the Replacement Part(s) are shipped directly to Customer. The Customer may also order certain replacement, non-consumable parts directly from Company. The cost of standard shipping is included. A charge for Premium shipping (NFO, Next Day) will be billed if this is requested by the Customer. All consumable parts will be charged to Customer.

2. Service Availability.

- (a) The hours during which Company will provide on-site service for each item of covered equipment are as indicated on the Service Agreement Product Supplement of this GPOSA. On-site service provided outside the service hours indicated on the Service Agreement Product Supplement of this GPOSA is not covered. On-site service shall be billed at prevailing labor rates and trip charges based on time of day, day of week and geographic zone.
- (b) Company's on-site response time will vary depending on the geographic zone in which the Customer resides. It is Company's objective to respond to requests for on-site service by the next covered business day.

3. Service Restrictions.

- (a) During the term of this GPOSA, Customer shall be responsible for providing routine maintenance, as specified in the Operator's Manual provided by Company, on all

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equipment covered hereunder. Failure to follow such routine maintenance procedures may result in service charges to repair the equipment or to otherwise bring the equipment back into compliance with Company' specifications for such equipment or, at Company's discretion, may void all service obligations of Company hereunder. Please reference appropriate procedure manual for a detailed list of procedures to be performed.

- (b) Service Coverage. If there are multiple items of equipment at Customer's site that are the same model/type (e.g. two VITROS® 5600 Integrated Analyzers), then in order for any one item of equipment to be eligible for coverage under this GPOSA, all such items on-site must be covered under either a standard warranty, a rental service agreement with Company or a separate service agreement. If there are multiple items of ORTHO VISION™ Analyzers at Customer's site, all such items on-site must be covered under a standard warranty, a rental service agreement with Company OR a separate service agreement of the same service level.
- (c) Customer agrees that neither it nor its employees or agents will alter or modify any part of the equipment or software, unless such action is expressly authorized in writing by Company. Any modification of or damage to any part of the equipment or software, whether by misuse, negligence, unauthorized repair or relocation, improper site preparation, unauthorized or improper integration with other products, accident, act of nature or otherwise (unless attributable to Company's negligence), may result in service charges to repair the equipment or software or to otherwise bring the equipment back into compliance with Company's specifications for such equipment or software or, at Company's discretion, may void all service obligations of Company hereunder.
- (d) Customer shall notify Company prior to relocating any equipment. Any such relocation made without the express prior written approval of Company shall void all service obligations hereunder. Charges associated with the relocation and setup at a new location are not covered under this GPOSA.
- (e) This GPOSA does not cover the following: circumstances beyond Company's control (such as overriding, bypassing, defeating interlock switches on equipment or devices sold by Company); problems due to failure of Customer to conform to Company site specifications; service or parts for any attachments, accessories, alterations or software not marketed by Company, nor to correct problems resulting from their use; rebuilding or reconditioning of equipment; service issues caused by Customer misuse or abuse; failure to follow Company's operating instructions; supply items.
- (f) The Company will make available technical support, for a period of seven (7) years after sale or end of active production, whichever is less. Our support applies equally to hardware/instruments sold to an end customer, a TPI (Third Party Intermediary), or as a device used as a Company asset.
- (g) ORTHO® Analyzers are designed to minimize footprint in the lab. It is necessary to provide adequate permanent clearance for airflow and operational/ maintenance access on all sides, according to the site specification. Failure to comply may result in void of service obligation and/or additional service charges.
- (h) eConnectivity™ is technology developed to assist in troubleshooting. All eConnectivity-capable analyzers must be eConnected. Failure to comply may result in void of service obligation and/or additional service charges.

# Ortho Clinical Diagnostics

## PRODUCT SUPPLEMENT: SERVICE AGREEMENT

CUSTOMER INFORMATION			
<b>Group Purchasing Organization:</b>	HEALTHTRUST PURCHASING GROUP	<b>Agreement Reference:</b>	C000018163
<b>Charge to:</b>		<b>Address:</b>	
<b>Customer Number:</b>	0000005767	<b>Customer Number:</b>	0000005767
<b>Name:</b>	KERN COUNTY HOSPITAL AUTHORITY	<b>Name:</b>	KERN COUNTY HOSPITAL AUTHORITY
<b>Address:</b>	1700 MOUNT VERNON AVE	<b>Address:</b>	1700 MOUNT VERNON AVE
<b>City, State, Zip:</b>	BAKERSFIELD CA 93306	<b>City, State, Zip:</b>	BAKERSFIELD CA 93306

**Purchase Order #:** \_\_\_\_\_

Material Description	Annual Price	Offer Price	Term Frequency	J #	Serial#	Cont. Start date	Cont. End date
CPrem MF 8-5 Vision	\$ 12,000.00	\$ 12,000.00					
CPrem MF 8-5 Vision	\$ 12,000.00	\$ 12,000.00					

\*Sales, use, or other taxes measured by sales or receipts are not included in these prices

Payment Option

Service Agreements are invoiced annually. However, the options to pay semi-annually, quarterly, or monthly are available. Please place a checkmark next to your selected payment option.

Options	Selection
Annual	
Semi-Annual	
Quarterly	
Monthly	

\*Sales, use, or other taxes measured by sales or receipts are not included in these prices

### ADDITIONAL TERMS AND CONDITIONS

This GPO Service Agreement will become effective when the entire unaltered signed Terms and Conditions and accompanying PO are received and signed by Ortho Service Sales. PO must indicate Service Agreement number, term of service and J #.

Service is required for the Term of GPO Product Agreement # \_\_\_\_\_.

This offer is valid until November 23, 2022. If not returned by this date, Company reserves the right to withdraw or modify this offer at its sole discretion. In addition, Company reserves the right to adjust the Service Agreement's written service coverage effective dates to reflect the date of receipt of a fully signed and executable Service Agreement and Purchase Order. Service coverage would be effective as of the adjusted coverage effective dates. If a signed Service Agreement and/or a Purchase Order are returned late, then the Customer is responsible for all service charges incurred before the implementation of the signed Service Agreement and Purchase Order

Ortho Care™ Premium Service, M-F, 8am-5pm: Premium service level for customers who need full-service support from Ortho, all service tasks are performed by Ortho Field Engineers. Ortho Care customers and key operators are not required or responsible for any basic service tasks. Ortho Field Engineers will travel to the laboratory to make all repairs as needed. Service offers on-site support including labor and travel, from M-F, 8am-5pm, excluding holidays. Our objective is for service to be scheduled the next covered business day.

THIS DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS OF THE COMPANY.  
ITS CONTENTS MAY NOT BE DISCLOSED BY AN AUTHORIZED RECIPIENT WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT.





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

December 14, 2022

**Subject:** Proposed Amendment No. 5 to Agreement 20119 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology

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

**Summary:**

Kern Medical requests your Board approve Amendment No. 5 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through December 31, 2022. Dr. Lopez, a board-certified obstetrician and gynecologist, has been employed by Kern Medical Center since 2004. Currently he serves as Chair of the Department.

The proposed Amendment is extending the term of the Agreement by one month from January 1, 2023 through January 31, 2023, during which time a new agreement will be negotiated with Dr. Lopez. The Amendment increases the maximum payable by \$40,000, from \$1,580,000 to \$1,640,000, to cover the extended term.

Therefore, it is recommended that your Board approve Amendment No. 5 to Agreement 20119 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology, extending the term for one month from January 1, 2023 through January 31, 2023, increasing the maximum payable by \$40,000, from \$1,580,000 to \$1,640,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 5  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Juan M. Lopez, M.D.)**

This Amendment No. 5 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Juan M. Lopez, M.D. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #20119, dated May 30, 2019), Amendment No. 1 (Agt. #55319, dated November 26, 2019), Amendment No. 2 (Agt. #05321, dated February 15, 2022), Amendment No. 3 (Agt. #074-2022, dated July 20, 2022), and Amendment No. 4 (Agt. #074-2022, dated July 20, 2022) (the “Agreement”), for the period July 1, 2019 through December 31, 2022, whereby Physician provides professional medical and administrative services in the Department of Obstetrics and Gynecology at KMC; and

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

(c) The Agreement is amended effective January 1, 2023;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The term of this Agreement shall commence as of July 1, 2019 (the “Commencement Date”), and shall end January 31, 2023 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement date and each annual period thereafter.”

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

“5.8 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$1,620,000 over the Term of this Agreement.”

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

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 5 as of the day and year first written above.

PHYSICIAN

By  \_\_\_\_\_  
Juan M. Lopez, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

Amend5.Lopez.112822



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

December 14, 2022

**Subject:** Proposed Amendment No. 2 to Agreement 041-2021 with Jeffry L. Huffman, M.D., for professional medical services in the Department of Surgery

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

**Summary:**

Kern Medical requests your Board approve the proposed Amendment No. 2 with Jeffry L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Huffman, a fellowship trained urologist, has been employed by Kern Medical since July 31, 2021.

The proposed Amendment modifies Dr Huffman's annual compensation from \$750,000 per year to \$450,000 per year.

Therefore, it is recommended that your Board approve Amendment No. 2 to Agreement 041-2021 with Jeffry L. Huffman, M.D., for professional medical services in the Department of Surgery, for the period July 31, 2021 through July 30, 2026, modifying his annual compensation from \$750,000 per year to \$450,000 per year, and authorize the Chairman to sign.

**AMENDMENT NO. 2  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Jeffry L. Huffman, M.D.)**

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

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #041-2021, dated July 14, 2021) and Amendment No. 1 (Agt. #075-2022, dated July 20, 2022) (the “Agreement”), for the period July 31, 2021 through July 30, 2026, whereby Physician provides professional medical services in the Department of Surgery at KMC; and

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

(c) The Agreement is amended effective October 19, 2022;

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

1. Section 5, Compensation Package, paragraph 5.1, Annual Compensation, shall be deleted in its entirety and replaced with the following:

“5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$450,000 per year, to be paid as follows: Physician shall be paid \$17,307.69 biweekly not to exceed \$450,000 annually. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey”) for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units (“Worked RVU”) based on the current MGMA Survey and fulfill all the duties set forth in Exhibit “A” during the Initial Term of this Agreement.”

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

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

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

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

[Intentionally left blank]

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

PHYSICIAN

By \_\_\_\_\_  
Jeffry L. Huffman, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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





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

December 14, 2022

**Subject:** Proposed Amendment No. 2 to Agreement 26121 with Bryant A. Nachtigall, D.P.M., for professional medical services in the Department of Surgery

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

**Summary:**

Kern Medical requests your Board approve Amendment No. 2 to the Agreement for Professional Services with Bryant Nachtigall, D.P.M., a contract employee, for professional medical services in the Department of Surgery. Dr. Nachtigall, who is a fellowship trained podiatrist, specializing in foot and ankle surgery, has been employed by Kern Medical since 2021.

The proposed Amendment, which is effective January 1, 2023, converts Dr. Nachtigall to a productivity driven compensation structure for the remainder of his employment term, which has been extended through December 31, 2025. Dr. Nachtigall's compensation structure is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided by Dr. Nachtigall.

The proposed Amendment is extending the term of the Agreement from July 17, 2024 through December 31, 2025. The Amendment increases the maximum payable by \$800,000, from \$1,000,000 to \$1,800,000, to cover the extended term. Dr. Nachtigall will continue to receive the standard complement of benefits offered to all physicians employed by Kern Medical.

Therefore, it is recommended that your Board approve the Amendment No. 2 to Agreement 26121 with Bryant A. Nachtigall, D.P.M., for professional medical services in the Department of Surgery, for the period July 17, 2021 through July 16, 2024, extending the term from July 17, 2024 through December 31, 2025, increasing the maximum payable by \$800,000, from \$1,000,000 to \$1,800,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 2  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Bryant A. Nachtigall, D.P.M.)**

This Amendment No. 2 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Bryant A. Nachtigall, D.P.M. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #26121, dated July 16, 2021) and Amendment No. 1 (Agt. #27021, dated July 23, 2021), for the period July 17, 2021 through July 16, 2024, for professional medical services in the Department of Surgery at KMC; and

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

(c) The Agreement is amended effective January 1, 2023;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The initial term of this Agreement (“Initial Term”) shall commence as of July 17, 2021 (the “Commencement Date”), and shall end December 31, 2025. At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.”

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

“5. **Compensation Package.**

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

5.1.1 Compensation Methodology. Authority shall pay Physician an Annual Salary comprised of the following: (i) a Base Salary for teaching and administrative services in the amount of \$26,000 per year; and (ii) payment for care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey with more than one year in the specialty for all physicians section. This section is divided into four categories: 25th percentile, median, 75th percentile and 90th percentile. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit (“Worked RVU”) in that category. Physician will be compensated for each Worked RVU by multiplying the Worked RVU by the median conversion factor for each KMC patient (“RVU Effort”). Physician’s RVU Effort will be calculated by using the average of the median number for “Compensation to Work RVUs Ratio” for “All Practices” and “Geographic Section – Western”.

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

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

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

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

5.2 Retention Bonus.

5.2.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$30,000, less all applicable federal and state taxes and withholdings, payable within thirty (30) days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on January 1, 2024, for the previous Employment Year, and each January 1 thereafter.

5.2.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$30,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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

5.3 Professional Fee Billing.

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

5.3.2 Remittance of Professional Fee Charges. Physician shall remit all professional fee charges to KMC within forty-five (45) days of the date direct

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

5.4 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,800,000 over the Initial Term of this Agreement.”

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

[Signatures follow on next page]

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

PHYSICIAN

By \_\_\_\_\_  
Bryant A. Nachtigall, D.P.M.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

Amend2.Nachtigall.120622



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

December 14, 2022

**Subject:** Proposed Amendment No. 1 to the Software License and Services Agreement (036-2018) with Corepoint Health, LLC d.b.a. Lyniate for the purchase of Web Service licenses and support, including training.

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

**Summary:**

Kern Medical requests that your Board approve the proposed Amendment No. 1 with Corepoint Health, LLC d.b.a. Lyniate for the purchase of Web Services licenses and support fees along with training and professional services for a one-time fee of \$30,000 and support fees of \$6,000 per year of the existing contract term.

Corepoint Health, LLC d.b.a. Lyniate will grant Web Service licenses for the use of FHIR, API, and SOAP interoperability tools which will allow Kern Medical to integrate with outside providers and applications. Kern Medical does not currently have any applications or tools to allow for custom integration between outside parties except using the standard interface protocol. These new tools will allow Kern Medical to accelerate and enhance interoperability efforts and support Kern Medical's strategic initiative of strengthening community partnerships.

These Web Service licenses would also accelerate interoperability efforts allowing Kern Medical to customize its data sharing using new protocols without relying upon other vendor application development.

Therefore, it is recommended that your Board approve the proposed Amendment No. 1 with Corepoint, LLC d.b.a. Lyniate for the purchase of Web Services licenses, support, and training, with a one-time cost of \$30,000 and increasing the maximum yearly payable by \$6,000 from \$140,511 to \$146,511 effective December 14, 2022 and renewing each year for a one (1) year term, and authorize the Chairman to sign.

**Amendment No. 1 to  
Software License and Services Agreement (Contract No. 1086)  
between Kern County Hospital Authority and Corepoint Health, LLC d.b.a. Lyniate**

This Amendment No. 1 is dated as of \_\_\_\_\_ (the "Amendment Effective Date"). It supplements or modifies the Software License and Services Agreement (Contract No. 1086) entered into by and between Kern County Hospital Authority ("Customer") and Corepoint Health, LLC d.b.a. Lyniate ("Lyniate") with an effective date of June 20, 2018 (the "Agreement"). Capitalized terms used in this Amendment and not otherwise defined will have the meanings set forth in the Agreement.

**RECITALS**

**WHEREAS**, Customer seeks to purchase a new Lyniate Software product under the Agreement and Lyniate agrees to sell such Software product pursuant to the terms of this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Web Services License. Subject to the terms of the Agreement as amended herein, Lyniate grants to Customer a license to the Web Services Software product. Upon such purchase, Customer will have access to Web Services on its license to the Software.

2. License and Support Fees. In consideration of the Web Services license set forth above, Customer shall pay Lyniate the following fees:

License Fee:

- \$30,000.00 one-time fee, payable by Customer on the Amendment Effective Date.

Support Fee:

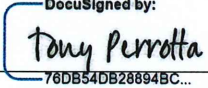
- \$6,000.00 per year, payable annually in advance. Support Services for additional licenses to the Software purchased during a Support Period will be prorated to co-terminate with the end date of the Support Period in which the licenses were purchased.

3. General. Except as modified by this Amendment, the Agreement shall remain in full force and effect and shall be enforceable in accordance with its terms. In the event that the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have executed this Amendment through their duly authorized representatives on the dates indicated below.

**"Lyniate"**

**Corepoint Health, LLC d.b.a. Lyniate**

By:   
Print Name: Tony Perrotta  
Title: EVP, Finance  
Date: 05 December 2022

**"Customer"**

**Kern County Hospital Authority**

By: \_\_\_\_\_  
Print Name: Russell Bigler  
Title: Chairman  
Date: \_\_\_\_\_

**APPROVED AS TO FORM  
Legal Services Department**

By:   
Kern County Hospital Authority





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

December 14, 2022

**Subject:** Proposed Change Order No. 6 to Agreement 006-2021 with James E. Thompson, Inc., doing business as JTS Construction.

**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; authorize Chairman to sign; and authorize Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$1,958,974.

**Summary:**

Kern Medical requests your Board approve proposed Change Order No. 6 to the Agreement with James E. Thompson doing business as JTS Construction, Inc. ("JTS Construction") in the amount of \$95,012, to provide compensation for additional renovation and upgrades to the new Pediatrics Unit at C Wing.

On February 17, 2021, your Board approved an agreement with JTS Construction in the amount of \$1,539,536, with authorization for the Chief Executive Officer to execute future change orders in an amount not to exceed the total contract price, to provide renovation to existing patient care areas and upgrade of five (5) patient rooms and private restrooms, a nurses station, playroom, treatment room, a patient tub room and the required store rooms, as well as a new staff restroom in the South corridor and a new nurse call system and television upgrades in the North and South Wings.

Change Orders pertaining to the renovation and upgrades were required and approved as authorized by your Board on February 17, 2021, as summarized below:

On August 24, 2021, Change Order No. 1 was executed in the amount of \$87,156. This change order provided compensation for the unanticipated increase in the cost of labor and materials after the project was delayed for seven (7) months;

On October 28, 2021, Change Order No. 2 was executed in the amount of \$34,231. This change order provided compensation for unanticipated costs for new doors and tiles.

On December 15, 2021, Change Order No. 3 was executed in the amount of \$34,231. This change order provided compensation for unanticipated costs associated with a temporary nurse call system, which is required to allow for the existing nurse call system to be demolished and a new one installed.

On February 04, 2022, Change Order No. 4 was executed in the amount of \$112,990. This change order provided compensation for the stainless-steel finish in the restrooms, installation of water valves, construction of the new triage room, corridor modification, door hardware, and nurse call boxes and conduits.

On November 21, 2022, Change Order No. 5 was executed in the amount of \$56,461. This change order provided compensation for paint, installation of a new damper, modifications to door hardware, and the demolition and reconstruction of a wall.

Proposed Change Order No. 6, in the amount of \$95,012, provides compensation for unanticipated costs associated with the remaining paint in the patient rooms, modifications to ceiling water lines, installation of additional electrical and data drops and black boxes and conduit for the fire alarm system. Change Order No. 6 exceeds 10% of the total contract price, increasing the contract amount from \$1,863,962 to \$1,958,974, and requires approval by your Board.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve; authorize Chairman to sign; and authorize Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$1,958,974.

## CHANGE ORDER

**PROJECT:**

4th Floor Pediatric & Postpartum Renovation Phase II  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

**PROJECT NO.:** 10075  
**CONTRACT NO.:** 006-2021

**CONTRACTOR:**

JTS Construction  
P.O. Box 41765  
Bakersfield, CA 93384

**CHANGE ORDER NO.:** Six (6) R-1

**DATE:** December 14, 2022

DESCRIPTION OF CHANGE	ADD	DEDUCT
1. Provide all labor, material and equipment to Paint Patient rooms at the S. Corridor.	\$24,016.64	
2. Compensate contractor for the 3rd Floor patient room shutdowns.	\$29,977.00	
3. Provide all labor, material and equipment to add electrical outlets and data drops in patient rooms.	\$2,124.00	
4. Provide all labor, material and equipment to install conduit and back boxes, patch and paint for the added fire alarm systems in the patient rooms at the South corridor.	\$38,894.00	
<b>CHANGE ORDER NO. 6 TOTAL (ADD)</b>	<b>\$95,011.64</b>	
<b>CHANGE ORDER NO. 5 TOTAL (ADD)</b>	<b>\$56,461.19</b>	
<b>CHANGE ORDER NO. 4 TOTAL (ADD)</b>	<b>\$112,990.03</b>	
<b>CHANGE ORDER NO. 3 TOTAL (ADD)</b>	<b>\$33,588.00</b>	
<b>CHANGE ORDER NO. 2 TOTAL (ADD)</b>	<b>\$34,230.82</b>	
<b>CHANGE ORDER NO. 1 TOTAL (ADD)</b>	<b>\$87,156.00</b>	
<b>ORIGINAL CONTRACT PRICE</b>	<b>\$1,539,536.00</b>	
<b>NEW CONTRACT AMOUNT</b>	<b>\$1,958,973.68</b>	

Original Completion Date: August 19, 2022  
Additional Working Days: 77 Days  
Revised Completion Date: November 30, 2022

<b>REASON FOR CHANGE</b>
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- 1 As we replaced TV's and Nurse Call systems in the patient rooms in the South corridor, we painted the rooms for a nice clean finish.

- 2 In order to modify water lines at the 4th Floor, we had to close patient rooms on the 3rd Floor to gain access to the ceiling. This project was bid to close the 3 Center, North Wing down for this work. Due to COVID and the influx of patients, we were only able to close one room at a time causing delays to the project.
- 3 Additional electrical and IT drops were needed at patient rooms.
- 4 The smoke heads at the South corridor patient rooms need to be updated and integrated into the new Nurse Call system to meet Code.

Funds are available in the contract budget to cover this increase in cost.

**CONFORMANCE WITH SPECIFICATIONS:**

All work shall be done in conformance with the specifications as applied to work of a similar nature.

If the contractor refuses to sign this document, the work listed herein shall be performed on a force account basis.

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**SUBMITTED BY:**

JTS Construction

BY: \_\_\_\_\_

Lee Hawkins

**APPROVED AS TO FORM:**  
Legal Services Department

BY: \_\_\_\_\_

Jamie Mason  
Hospital Counsel

**APPROVED AS TO CONTENT:**

BY: \_\_\_\_\_

Derek Holdsworth, President  
KSA Group Architects

BY: \_\_\_\_\_

Michael Fink  
Sr. Director of Facility

**KERN COUNTY HOSPITAL AUTHORITY**

BY: \_\_\_\_\_

Russell Bigler, Chairman, Board of Governors  
"KCHA"



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

December 14, 2022

**SUBJECT:** Proposed Purchase Agreement and Service Agreement with OEC Medical Systems, Inc., a GE Healthcare business (“GE Healthcare”)

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

**Summary:**

Kern Medical requests your Board approve the Purchase Agreement with GE Healthcare for the purchase of the Elite Vascular C-Arm and MedRad Injector and associated Service Agreement for maintenance and repair to this equipment. As this equipment is proprietary, GE Healthcare is the only entity able to provide maintenance and repair to this equipment.

The Purchase Agreement and Service Agreement are effective December 14, 2022 with a maximum payable of \$278,313 for the purchase of the equipment and a maximum payable of \$174,013 for the associated maintenance and repair of the equipment, over a seven-year term, for a total maximum payable not to exceed \$452,326, plus applicable taxes. Kern Medical is able to secure the most advantageous pricing through a seven-year term compared to a shorter-term service agreement.

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

Therefore, it is recommended that your Board approve the Purchase Agreement and Service Agreement with OEC Medical Systems, Inc., a GE Healthcare business, effective December 14, 2022, with a total maximum payable not to exceed \$452,326, plus applicable taxes, for a seven-year term, and authorize the Chairman to sign.



# Addendum to Agreements

## GE Healthcare

This Addendum to Agreements ("Addendum") is made by Kern Medical with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and OEC Medical Systems, Inc. with an address at 384 Wright Brothers Drive, Salt Lake City, UT 84116 ("OEC or GE Healthcare"), parties to those certain Quotations identified and attached hereto as Exhibit A (each, a "Quotation" and collectively, the "Quotations"), for the products and/or services listed on each such Quotation in accordance with the terms and conditions identified on each such Quotation (each such Quotation, an "Agreement" and collectively, the "Agreements").

1. Notwithstanding anything to the contrary in the Agreement, the following shall apply:

**"Application of Business Associates Agreement.** The parties agree that the Business Associate Agreement executed by the parties as of February 16, 2022, a copy of which is attached as Exhibit B, will apply to this Agreement."

**"Dispute Resolution.** The parties will first attempt to resolve in good faith any disputes related to this Agreement. Violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm for which the award of money damages alone is inadequate. GE Healthcare may: (i) seek injunctive relief and any other available remedies; (ii) immediately terminate the license grant and require Customer to cease use of and return the Software and Third Party Software; and/or (iii) terminate Customer access to the SaaS or remote hosted Software. Other than these violations or collection matters, unresolved disputes will be submitted to mediation prior to initiation of other means of dispute resolution."

**"Governing Agreement.** The parties understand and agree that the purchase of Products and/or Services described in the Quotation shall be governed by the terms and conditions of HPG Agreement # 500071-81549 (C-Arm) / 81550 (MiniView) / 79862 (Uroview)."

2. Customer's form of payment is:

Initial to indicate form of payment:  
 (If potential for a lease exists, GE HEF or otherwise, select lease)  
 \_\_\_\_\_ Cash\*      \_\_\_\_\_ Lease      \_\_\_\_\_ GE HEF Loan  
 If leasing please provide name of finance company below:  
 \_\_\_\_\_  
 \*Selecting cash declines option for GE HEF financing  
 \*Cash is the default option if this Addendum is signed and the form of payment is not indicated above.

Initial to indicate tax status:  
 \_\_\_\_\_ Exempt from Sales and Use Tax (Note: GEHC must have a Current Tax Exemption Certificate)  
 \_\_\_\_\_ Subject to Sales and Use Tax\*  
 \*Subject to Sales and Use Tax is the default option if this Addendum is signed and the tax status is not indicated above.

3. Except as set forth in this Addendum, each Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and any Agreement or any other earlier amendment, the terms of this Addendum will prevail.

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

**Kern County Hospital Authority**

**GE Healthcare**

Signature: \_\_\_\_\_

Signature: Steven Love

Print Name: Russell Bigler

Print Name: Steven Love

Title: Chairman, Board of Governors

Title: Sales Operations Manager

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

Date: 12/01/22

APPROVED AS TO FORM  
Legal Services Department

By Jamie [Signature]  
Kern County Hospital Authority

**Exhibit A**

<b>No.</b>	<b>Quotation No.</b>	<b>Date</b>
1	2009337446.4	October 10, 2022
2	2009337446.5	October 10, 2022

Please see attached

## Exhibit B

### Business Associate Agreement

#### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("Covered Entity") and GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("GE Healthcare" or "Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the underlying Agreement (the "Effective Date").

#### RECITALS

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

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

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

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

#### AGREEMENT

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

#### ARTICLE I DEFINITIONS

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



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

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III OBLIGATIONS OF COVERED ENTITY

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### ARTICLE IV TERM AND TERMINATION

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

#### 4.2 Termination of Underlying Agreement.

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

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

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

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

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

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

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

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

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

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

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

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

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


**COVERED ENTITY:**  
The Kern County Hospital Authority

\_\_\_\_\_  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC

*Catherine Kaphingst*  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority





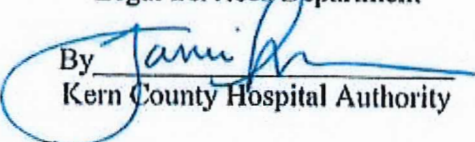
5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

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

**COVERED ENTITY:**  
The Kern County Hospital Authority  
  
\_\_\_\_\_  
Title: Chief Executive Officer  
Date: 02/16/2022

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC  
Catherine Kaphingst  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority

## Quotation Summary

GE Healthcare – OEC 384 Wright Brother Drive Salt Lake City, UT 84116  
 Payment remit to address: GE Healthcare OEC 2984 Collections Center Drive Chicago, IL 60693

To: **Sonia Gil**

Quote Expiration Date: **12/09/2022**

**Kern Medical**

1700 Mount Vernon Ave  
 Bakersfield, CA93306-4018  
 Phone:

Direct Inquiries To:

**Mark Martinez**

TIPLADY IMAGING PARTNERS, INC.  
 13 Heatherwood  
 Trabuco Canyon, CA,92679

Work Phone:

916-260-6632

Cell Phone:

9162606632

Email:

markmartinez@geoecimaging.com

Fax:

8015364812

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**OEC - HealthTrust Contract #500071-81549 (Carm)/81550 (MiniView)/79862 (Uroview)**

<i>Part Number</i>	<i>Qty</i>	<i>Product Description</i>	<i>List Price</i>	<i>Net Price</i>
S7005TK	1	OEC Elite™ CFD 31 cm Digital Mobile Super C-arm Vascular 15 MD (Vascular 15 Platform with up to 15 fps Cine) with OEC Touch	<b>\$328,800.00</b>	<b>\$246,600.00</b>
S7004NF	1	Medrad Mark 7 Arterion Injector Pedestal System	<b>\$35,000.00</b>	<b>\$25,900.00</b>
S7004NG	1	OEC Interface Cable for Medrad injectors	<b>\$1,250.00</b>	<b>\$937.50</b>
S7005MB	1	Wireless Footswitch Kit	<b>\$3,500.00</b>	<b>\$2,625.00</b>
S7006AZ	1	Wireless DICOM, Touch, Without SIM, Point of Sale Usage, OEC Elite / 3D	<b>\$3,000.00</b>	<b>\$2,250.00</b>
<b>Total Investment:</b>			<b>\$ 371,550.00</b>	<b>\$278,312.50</b>

# Quotation

GE Healthcare – OEC 384 Wright Brother Drive Salt Lake City, UT 84116  
 Payment remit to address: GE Healthcare OEC 2984 Collections Center Drive Chicago, IL 60693

To: **Sonia Gil**

Quote Expiration Date: **12/09/2022**

**Kern Medical**

1700 Mount Vernon Ave  
 Bakersfield, CA93306-4018  
 Phone:

Direct Inquiries To:

**Mark Martinez**

TIPLADY IMAGING PARTNERS, INC.  
 13 Heatherwood  
 Trabuco Canyon, CA,92679

Work Phone: 916-260-6632

Cell Phone: 9162606632

Email: markmartinez@geoecimaging.com

Fax: 8015364812

**OEC - HealthTrust Contract #500071-81549 (Carm)/81550 (MiniView)/79862 (Uroview)**

Part Number	Qty	Description	List Price	Net Price
S7005TK	1	<p><b>OEC Elite™ CFD 31 cm Digital Mobile Super C-arm Vascular 15 MD (Vascular 15 Platform with up to 15 fps Cine) with OEC Touch</b></p> <p>OEC ELITE CFD:            Vascular 15 Software Includes: Imaging profiles: Vascular; Enhanced Noise Reduction (eNR) for equivalent appearance of 30kW power; real-time digital subtraction (DSA); reference image hold; peak opacification; roadmapping; re-registration; variable landmarking; mask save/recall; digital Cine pulse mode with 15 pps; 15 fps Cine with recording/playback rates of 4, 8 and 15 fps; and frame-by-frame review</p> <p>31 cm CMOS Flat Panel Detector (CFD): High image quality at low dose with a CMOS crystalline structure flat panel detector; tri-mode imaging capabilities at 31 cm, 21 cm, and 15 cm; easily removable grid; and integrated laser aimer</p> <p>MD C-arm: Designed to enhance C-arm movement and positioning capabilities for optimal imaging: motorized adjustment of lateral rotation, cephalad/caudal tilt, and horizontal motion; 141° orbital rotation (53°</p>	\$328,800.00	\$246,600.00



Part Number	Qty	Description	List Price	Net Price
		<p>overscan and 88° underscan); 33.0" (84 cm) depth in arc; 6.0" (15 cm) horizontal travel; 18.0" (46 cm) vertical travel; cable pushers and low resistance wheels; motorized vertical lift and low-profile X-ray tube; remote user interface (RUI); 3 set position recall; and last position recall</p>		
		<p>OEC ELITE CFD STANDARD PACKAGE INCLUDES:</p>		
		<p>Imaging: OEC Touch, a 15.6" (40 cm) intuitive touchscreen operator control; Live Zoom up to 4x with no change in technique; Digital Pen; squircle image retains 100% shape when rotated; image annotation; measurement tools; SmartMetal; AutoTrak Automatic Brightness Stabilization (ABS); General-Purpose Dynamic Range Management (GDRM); Minimal Difference Spatiotemporal noise filter (MDST); noise filter with on-screen indicator; automatic and manual digital brightness and contrast control; negate mode; save/auto-save feature; swap/auto-swap feature; last image hold; 40,000 image storage; preset imaging profiles: General, General HD, Pediatric, Orthopedic, C-Spine, Spine and 9900; and multi-functional footswitch and handheld controls</p>		
		<p>Image Viewing: Incredible detail displayed with 32" (81 cm) 4K UHD color display with anti-glare and touchscreen capabilities; Viewing versatility with articulating monitor display for optimal viewing with travel of 45" (114 cm) horizontal, 17" (43 cm) vertical, 27" (67 cm) forward, and 5° up/ 5° down tilt</p>		
		<p>Workstation with Intuitive User Interface: SmartConnect start up; ergonomically designed handles and low friction wheels; multi-purpose image directory; integrated DICOM interface; room-in-use indicator interface; examination list and customized patient information  Dose Management: Selectable modes can be used alone or in combination and include standard, HLF, pulse, low dose, digital cine pulse and digital spot; on-screen PreView Collimator; Smart Window; and radiation dose structured</p>		

<i>Part Number</i>	<i>Qty</i>	<i>Description</i>	<i>List Price</i>	<i>Net Price</i>
		report (RDSR) and X-ray dose summary		
		X-ray Generator and Power Management: 15 kW power from standard wall outlet; patented generator battery buffer design; power monitoring with on-screen display; controlled shutdown process; accidental power loss protection with a 20 second battery back-up power to workstation and C-arm Connectivity: Multiple ports including: ethernet, room interface, video output, video input, USB  Security: Hardened Linux based operating system; encrypted solid state drive; password protection; blank screen function; deidentify patient information  Warranty: One-year warranty  OEC Clinical Excellence: Up to 3 days of in-service training by ARRT certified Clinical Imaging Specialists (CIS) during warranty period; entails up to 8 hours of training per day, provided from 7am to 5pm, Monday through Friday, excluding holidays; post-training skills assessment; radiographers may be eligible for CE credits approved by the ASRT; includes all CIS travel expenses; additional on-line training materials will be provided for future reference		
S7004NF	1	<b>Medrad Mark 7 Arterion Injector Pedestal System</b> Medrad Mark 7 Arterion Injector Pedestal System	\$35,000.00	\$25,900.00
S7004NG	1	<b>OEC Interface Cable for Medrad injectors</b> OEC Interface Cable (Allows Interface To Medrad)	\$1,250.00	\$937.50
S7005MB	1	<b>Wireless Footswitch Kit</b> Wireless Foot Switch	\$3,500.00	\$2,625.00
S7006AZ	1	<b>Wireless DICOM, Touch, Without SIM, Point of Sale Usage, OEC Elite / 3D</b>	\$3,000.00	\$2,250.00



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<i>Part Number</i>	<i>Qty</i>	<i>Description</i>	<i>List Price</i>	<i>Net Price</i>
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		Wireless DICOM		
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**Total Investment:**      \$371,550.00      \$278,312.50



Customer Name & Address: Kern Medical/ | 1700 Mount Vernon Ave | Bakersfield, CA 93306-4018

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

OEC 100% Uptime Guarantee: During the warranty, if the Product fails to perform for a period in excess of 24 hours (excluding inoperability due to user misuse, operator error, acts of God, planned maintenance, or other non-manufacturer defects), then OEC will extend the warranty by 1 month for each full day of downtime during the weekday period. The Product is deemed to have failed if it is out of service and unavailable for imaging patients or diagnosing images on the display console. Peripheral equipment does not fall under the 100% Uptime Guarantee.

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

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

- \*Terms of Delivery: FOB DESTINATION
- \*Billing Terms: 80% delivery or Shipment / 20% Acceptance or Installation
- \*Payment Terms: 30 Net
- \*Quotation Expiration Date: 12/09/2022
- \*Governing Agreement (GPO or SAA): OEC - HealthTrust Contract #500071-81549 (Carm)/81550 (MiniView)/79862 (Uroview) (If none, Standard GE Healthcare Terms and Conditions Apply)

- \*Preferred Delivery Date: \_\_\_\_/\_\_\_\_/\_\_\_\_
- \*Will Accept Delivery as Early as: \_\_\_\_/\_\_\_\_/\_\_\_\_ or [ ] ASAP
- \*Indicate Form of Payment (If there is potential to finance with a lease transaction, by GE Healthcare Equipment Finance ("GE HEF") or otherwise, select lease)
  - \_\_\_\_\_ Cash/Third Party Loan\*    \_\_\_\_\_ GE HEF Lease    \_\_\_\_\_ GE HEF Loan
  - \_\_\_\_\_ Third Party Lease (Please identify the finance company): \_\_\_\_\_
- \*Please select Tax status of order:
  - \_\_\_\_\_ Exempt from Sales & Use Tax (Note: GEHC must have current Tax Exemption Certificate)
  - \_\_\_\_\_ Subject to Sales & Use Tax

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

**Kern County Hospital Authority**

OEC Medical Systems, Inc., a GE Healthcare business

*Chad W. Kendell*  
2022-10-10

Authorized Customer Representative      Date  
Russell Bigler, Chairman, Board of Governors  
Print Name and Title

Authorized Representative      Date  
Chad W. Kendell, VP, Surgery Sales  
Print Name and Title

Customer Purchase Order #

APPROVED AS TO FORM  
Legal Services Department

By *Jamie*  
Kern County Hospital Authority



## Optional Financing

**Please initial to indicate interest to finance**

GE Healthcare Financial Services financing programs helps customers take advantage of the latest technology and improve clinical outcomes, all while preserving working capital and liquidity. 1 in 4 customers elect to finance through GE and 90% are approved within one business day after receiving the attached application.

Please see the options below to leverage the Flexibility, Liquidity, and Efficiency benefits of partnering with GE Healthcare Financial Services.

Finance Options	Term	Monthly Payment Amount *	Initial
FMV Lease (Fair Market Value)	60 Months	\$4,582.20	

**\* FMV monthly payment assumes applicable trade in applied to 1st payment and all monthly payments do not include applicable taxes.**

For additional financing options or questions, please reach out to your Healthcare Financial Services representative on. To proceed, please initial the preferred option above and fill out the attached Finance Application.

Financing above to be provided by GE Healthcare Financial Services, a component of GE HFS, LLC ("GEHFS"). This is not a binding commitment on the part of GEHFS or any person to provide financing and any such commitment would be in a separate written lease contract signed by GEHFS following satisfactory completion of GEHFS' due diligence, internal review and approval process (which approvals have not yet been sought or obtained). Nothing herein is to be construed as constituting tax, accounting or legal advice by GEHFS to any person. Unless and until separate financing is agreed to by the parties, the GE Healthcare payment and billing terms set forth in the Quotation will continue to apply.

All pricing is subject to final investment and credit approval. If equipment quote includes the benefit of a trade in, the proposed financing applies the trade in value as the first payment for the Fair Market Value option and nets it out for Capital Lease option. The proposed financing does not include any optional items selected, coverage for optional service, or taxes.

All monthly payments are in arrears and subject to an increase for any and all applicable taxes. The monthly payments presented above are estimates calculated, in part, using an interest rate based on our cost to acquire the funds required to purchase the equipment as of the date hereof and remain subject to change. Your lease contract will reflect any such change and we will communicate any such change to you. If a monthly payment is provided on or before December 31st of any calendar year, but the lease does not commence until on or after January 1st of the following calendar year, the monthly payments may be adjusted by GEHFS to preserve its after-tax economic yields and cash flows and you will be notified of any such adjustments. GEHFS reserves the right to syndicate this financing to a financing partner and may make available to such financing partner any information provided (including any third-party credit report(s)) provided to or obtained by GEHFS in connection with this financing. You hereby authorize GEHFS to file an initial Uniform Commercial Code financing statement that identifies the equipment or any other assets subject to this proposed financing. If for any reason the proposed financing is not approved or funded, upon your satisfaction in full of all obligations to GEHFS, GEHFS will cause the termination of such financing statements.



Transaction Overview & Business Profile

Equipment Description: \_\_\_\_\_ New Used Upgrade Vendor: \_\_\_\_\_
Term: 12 24 36 48 60 Other: \_\_\_\_\_
Purchase Option: FMV \$1 Other: \_\_\_\_\_
Legal Name: \_\_\_\_\_
Entity: Corporation LLC Partnership Sole Proprietor Professional Entity Government Other: \_\_\_\_\_
Tax Exempt: YES NO (If YES, please attach sales tax exemption certificate.)
Federal Tax ID #: \_\_\_\_\_ Date Established: \_\_\_\_\_ Registered State: \_\_\_\_\_
d/b/a Name: \_\_\_\_\_ Gross Annual Revenue: \_\_\_\_\_
Company Website: YES NO Direct Link: www.\_\_\_\_\_ # of Physicians: \_\_\_\_\_
Contact Name: \_\_\_\_\_ Contact Email: \_\_\_\_\_ Contact Phone #: \_\_\_\_\_
Business Address: \_\_\_\_\_ Phone #: \_\_\_\_\_
Equipment Site Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

Ownership Profile

Number of Principals: \_\_\_\_\_ Development Company: YES NO Management Company: YES NO
Related or Affiliated Entities: \_\_\_\_\_

Corporate Principals/Guarantors

Name: \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_ Ownership %: \_\_\_\_\_
Name: \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_ Ownership %: \_\_\_\_\_
Name: \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_ Ownership %: \_\_\_\_\_
Name: \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_ Ownership %: \_\_\_\_\_

Individual Principals/Guarantors

Name: \_\_\_\_\_ D/O/B: \_\_\_\_\_
Social Security #: \_\_\_\_\_ Ownership %: \_\_\_\_\_ Physician: YES NO Years of Industry Experience: \_\_\_\_\_
Name: \_\_\_\_\_ D/O/B: \_\_\_\_\_
Social Security #: \_\_\_\_\_ Ownership %: \_\_\_\_\_ Physician: YES NO Years of Industry Experience: \_\_\_\_\_
Name: \_\_\_\_\_ D/O/B: \_\_\_\_\_
Social Security #: \_\_\_\_\_ Ownership %: \_\_\_\_\_ Physician: YES NO Years of Industry Experience: \_\_\_\_\_
Name: \_\_\_\_\_ D/O/B: \_\_\_\_\_
Social Security #: \_\_\_\_\_ Ownership %: \_\_\_\_\_ Physician: YES NO Years of Industry Experience: \_\_\_\_\_

\*If more principals/guarantors than space allows, please attach itemized disclosure including names and ownership percentages

Applicant hereby authorizes the release of business and/or personal credit information to (1) General Electric Company, GE HFS, LLC and their affiliates, successors and assigns (individually and collectively, "GE"), from any source including credit bureau reporting agencies and Applicant's bank for the purpose of extending credit, (2) Equipment Vendor it's successors and assigns, any purchaser or potential purchaser of GE's interest in this application and any resulting agreement between Applicant and GE, and/or (3) any credit reporting agency. Applicant hereby represents all information contained in this application and authorization is true, correct and complete. A photostatic copy of this application and authorization shall be valid as the original. Signer represents and warrants that he or she is authorized to execute this authorization and release regarding credit information on behalf of the Applicant. Applicant hereby authorizes GE (or its designee, assignee or potential assignee) to execute and file any UCC financing statements in its name upon approval of the application. Applicant and any guarantor(s) expressly consent(s) to the contact by GE (or its designee, assignee or potential assignee) at the email addresses and phone numbers listed on this application.

By signing this application, the undersigned authorizes GE (or its designee, assignee or potential assignee) to require the undersigned's guarantee as a condition of the approval of this credit application as deemed necessary by GE (or its designee, assignee or potential assignee) in its sole discretion.

Authorization to Obtain Consumer Credit Report: By signing below, each undersigned individual, who is either a principal of Applicant or personal guarantor of its obligations, provides written instruction to GE or its designee (and any assignee or potential assignee thereof) authorizing review of his or her personal credit profile from a national credit bureau. Such authorization shall extend to obtaining a credit profile in considering this application and subsequently for the purposes of update, renewal or extension of such credit and for reviewing or collecting the resulting account. A photostatic or facsimile copy of this authorization shall be valid as the original.

IF MORE THAN ONE INDIVIDUAL (NON-ENTITY) LESSEE: It is our intent to apply for joint credit \_\_\_\_\_ (each individual (non-entity) Lessee to initial in space provided)

Signature: X \_\_\_\_\_ Signature: X \_\_\_\_\_
Name: \_\_\_\_\_ Date: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_
(Please Print Here) (Please Print Here)

Signature: X \_\_\_\_\_ Signature: X \_\_\_\_\_
Name: \_\_\_\_\_ Date: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_
(Please Print Here) (Please Print Here)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580. If your application for business credit is denied or conditionally approved, you have the right to a written statement of the specific reasons for the denial or the conditional approval. To obtain the statement, please send a written request to GE HFS, LLC, ATTN: Risk Manager, 9900 Innovation Drive Wauwatosa, WI 53226 within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial or condition within 30 days of receiving your request for the statement. Please save a copy of this document for future reference.

Establishing a relationship with GE: To help the United States Government fight terrorism and money laundering, it is GE's policy to request information that identifies each person or business that establishes a relationship with us. Therefore, for businesses, we will ask for your business name, street address and taxpayer identification number. For individuals, we will ask for your name, street address, date of birth and Social Security number. Thank you for your cooperation.

# Customer Information Form

## Bill to Address:

Bill to Contact Name	
Telephone	
Facility Name	
Address	
City, State Zip	

## Customer Delivery Address

Delivery Contact Name	
Telephone	
Facility Name	
Address	
City, State Zip	

## Delivery Information

Does delivery require a lift gate truck? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Does delivery require a *small* lift gate truck? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Is loading dock available? \_\_\_\_\_ Yes \_\_\_\_\_ No

## Additional Shipping Information:

--

## \*\*\*Mandatory Information if ordering Wireless Dicom

Network Contact Person: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

What Network will you be using?  Wired  Wireless

Method of Assigning IP:  DHCP (Auto)  Manual IP:

Gateway IP: \_\_\_\_\_ Subnet Mask: \_\_\_\_\_

Primary DNS: \_\_\_\_\_ Secondary DNS: \_\_\_\_\_

Enter a primary and secondary Domain Name Server if used at your site. Otherwise, leave blank.

AE Title: \_\_\_\_\_ Station Name: \_\_\_\_\_



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

**2. Term and Termination.** Software licenses, Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement and/or the Quotation that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate the respective Agreement or Quotation. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement or a Quotation. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination.

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

#### **4. Commercial Logistics**

##### **4.1 Order Cancellation and Modifications.**

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

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

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

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

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

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

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

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

##### **4.6 Acceptance.**

**4.6.1 Equipment Acceptance.** Beginning on completion of installation (not to exceed 30 days from shipment) or delivery (if installation is not required), Customer will have 5 days to determine if the Equipment operates substantially in accordance with Specifications (“Equipment Test Period”). If the Equipment fails to perform accordingly, Customer will provide to GE Healthcare: (i) written notice; (ii) access to the Equipment; and



## GE Healthcare Terms & Conditions

(iii) a reasonable time to bring the Equipment into compliance. After correction by GE Healthcare, Customer will have the remainder of the Equipment Test Period or 3 days, whichever is greater, to continue testing. Equipment is accepted on the earlier of expiration of the Equipment Test Period or the date the Equipment is first used for non-acceptance testing purposes.

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

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

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

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

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

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

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

## 5. Security Interest and Payment.

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

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

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

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

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

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

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

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

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

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



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

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

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

### 8. General Terms.

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

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

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

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

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

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

### 9. Compliance.

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

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

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



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

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

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

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

9.8. **Use of Data.**

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

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

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

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

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

### 10. Disputes and Arbitration

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

### 11. Liability and Indemnity.

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

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

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

11.4. **General Indemnification.**

11.4.1. GE Healthcare will indemnify, defend and hold Customer harmless for losses which Customer becomes legally obligated to pay arising from third party claims brought against Customer for bodily injury or damage to real or tangible personal property to the extent the damage was caused



## GE Healthcare Terms & Conditions

by GE Healthcare's: (i) design or manufacturing defect; (ii) negligent failure to warn, negligent installation or negligent Services; or (iii) material breach of this Agreement.

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

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

### 12. Payment and Finance.

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

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

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

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

### 14. Subscription Products and ViewPoint Software Maintenance Terms and Conditions.

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

#### 14.2. Scope.

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

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

14.2.3. **Definitions.** "**Error**" means any Software-related problem that: (i) materially interferes with Customer's use of the Software; and (ii) results from a failure of the Software to materially conform to the Documentation. "**Error Correction**" means: (a) modification of the Software that corrects an Error by bringing the Software into material conformity with the Documentation; or (b) a procedure that avoids the material adverse effect of the nonconformity. "**Update**" means a change that provides Error Corrections and/or enhances functionality of the Software version licensed by Customer. An Update does not involve major changes or provide significant, new functionality or applications, or changes to the software architecture or file structure. Updates retain the same license as the original Software.

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

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

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

14.2.7. **Exclusions.** GE Healthcare has no obligation to Customer for: (i) use of Products in combination with software, hardware, or services not recommended in writing by GE Healthcare; (ii) use in a manner or environment for which GE Healthcare did not design or license the Products, or in violation of GE Healthcare's recommendations or instructions; (iii) interface configuration (often referred to as HIS, PACS or EMR interfaces necessary due to changing vendors or versions); (iv) reorganization of Customer data; (v) consulting or software engineering and





## GE Healthcare Terms & Conditions

programming; (vi) support of Products outside the scope of the foregoing maintenance commitments; (vii) failure to use or install, or permit GE Healthcare to use or install, Error Corrections or Updates; (viii) failure to maintain Products within the current major release version or the immediately prior major release version; (ix) defects in products or services not made and provided by GE Healthcare; (x) any cause external to the Products or beyond GE Healthcare's control; (xi) failure of Customer's network; (xii) replacement of disposable or consumable items; (xiii) additional equipment or upgrades in connection with Products; and (xiv) migration of Software to different hardware or operating systems.

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



## GE Healthcare Warranty Statement

### 1. Warranty.

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

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

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

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

1.5. **Accessories and Supplies.** Warranties for accessories and supplies are at [www.gehealthcare.com/accessories](http://www.gehealthcare.com/accessories).

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

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

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

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

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

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

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

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

### 4. Exceptions to Standard Warranty.

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

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

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

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

**Performix 160A (MX160) Tubes:** 3 years

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

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



## GE Healthcare Warranty Statement

warranty is voided by these conditions, repair or replacement is Customer's responsibility.

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

**OEC New or Exchange Service Parts:** 120 days

**OEC Tubes and Image Intensifiers:** 1 year

**HealthNet Lan, Advantage Review — Remote Products:** 3 months

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

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

Except the following have a 1 year warranty:

Transducers: TEE Probes,

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

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

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

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

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

Except the following have a 1 year warranty:

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

Transducers: TEE Probes

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

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

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

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

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

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

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

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

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

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

**CARESCAPE V100 and VC150 Vital Signs Monitors:** 2 years

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

**Exergen:** 4 years

**Microenvironment and Phototherapy consumable components:** 1 month

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

**Corometrics® Nautilus Transducers:** 2 years

**Lullaby Phototherapy System:** 3 years on lamp assembly

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

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

**Tec 850 Vaporizers:** 3 years

**Tec 6 Plus Vaporizers:** 2 years

**CARESCAPE Gateway:** 1 year

**CARESCAPE Bridge:** 1 year

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



# Addendum to Agreements

## GE Healthcare

This Addendum to Agreements ("Addendum") is made by Kern County Hospital Authority County Hospital Authority with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and OEC Medical Systems, Inc. with an address at 384 Wright Brothers Drive, Salt Lake City, UT 84116 ("OEC or GE Healthcare"), parties to those certain Quotations identified and attached hereto as Exhibit A (each, a "Quotation" and collectively, the "Quotations"), for the products and/or services listed on each such Quotation in accordance with the terms and conditions identified on each such Quotation (each such Quotation, an "Agreement" and collectively, the "Agreements").

The Agreements are amended as follows:

1. Section 18.1 ("Binding Arbitration") of the GE Healthcare Service Terms and Conditions ("GE Healthcare Service Terms") is deleted in its entirety and replaced with the following:

"Dispute Resolution. The parties will first attempt to resolve in good faith any disputes related to this Agreement. Violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm for which the award of money damages alone is inadequate. GE Healthcare may: (i) seek injunctive relief and any other available remedies; (ii) immediately terminate the license grant and require Customer to cease use of and return the Software and Third Party Software; and/or (iii) terminate Customer access to the SaaS or remote hosted Software. Other than these violations or collection matters, unresolved disputes will be submitted to mediation prior to initiation of other means of dispute resolution."

2. The Agreements are further amended by adding the following new Sections:

**"Application of Business Associates Agreement.** The parties agree that the Business Associate Agreement executed by the parties as of February 16, 2022, a copy of which is attached as Exhibit B, will apply to this Agreement."

**"No-Cause Termination.** Pricing for the Agreement is based on the term of the Agreement. Customer may, however, terminate this agreement without cause after the third (3rd) anniversary date of this Agreement, and on the anniversary date of each subsequent year; provided, however, that written notice is given to GE Healthcare at least sixty (60) days before the desired termination date. Upon termination, neither party shall have any further obligations under this Agreement except for (i) payment obligations arising prior to the date of termination and (ii) obligations, promises or covenants contained in this Agreement which by their terms must extend beyond the termination date."

3. Except as set forth in this Addendum, each Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and any Agreement or any other earlier amendment, the terms of this Addendum will prevail.

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

### Kern County Hospital Authority

Signature: \_\_\_\_\_

Print Name: Russell Bigler

Title: Chairman, Board of Governors

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

### GE Healthcare

Signature:  \_\_\_\_\_

Print Name: Michael Larsen

Title: Healthcare Service Account Manager

Date: December 1, 2022

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By   
Legal Services Department

**Exhibit A**

<b>No.</b>	<b>Quotation No.</b>	<b>Date</b>
1	Quotation for OEC Elite 31 VAS15 MD	October 11, 2022
2	Quotation for Stille Table	October 11, 2022

Please see attached

## Exhibit B

### Business Associate Agreement

#### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("Covered Entity") and GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("GE Healthcare" or "Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the underlying Agreement (the "Effective Date").

#### RECITALS

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

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

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

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

#### AGREEMENT

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

#### ARTICLE I DEFINITIONS

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

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

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III OBLIGATIONS OF COVERED ENTITY

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### ARTICLE IV TERM AND TERMINATION

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

#### 4.2 Termination of Underlying Agreement.

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

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

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

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

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

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

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

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

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

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

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

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

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

**COVERED ENTITY:**  
The Kern County Hospital Authority

\_\_\_\_\_  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC

*Catherine Kaphingst*  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022


APPROVED AS TO FORM  
Legal Services Department

By *Jamie*  
\_\_\_\_\_  
Kern County Hospital Authority



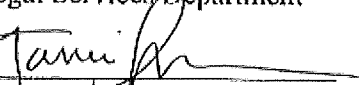
5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

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

**COVERED ENTITY:**  
The Kern County Hospital Authority  
  
\_\_\_\_\_  
Title: Chief Executive Officer  
Date: 02/16/2022

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC  
Catherine Kaphingst  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022

APPROVED AS TO FORM  
Legal Services Department

By   
\_\_\_\_\_  
Kern County Hospital Authority





GE Healthcare Service Quotation

Mike Larsen
West Service Account Manager
801-231-1553

Please fax to 801-459-4063

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

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

Table with 6 columns: Quotation Date, Service District, Serial Number, Product Covered, Effective Date, End Date. Includes rows for 10/11/22 and Bill To ID, Site ID, Contract #, State Registration, PO Number.

DeluxeCare with Glass includes:

- Travel and Labor 8am-5pm M-F excluding holidays
95% uptime guarantee
Priority parts delivery
Includes glass (x-ray tube and flat panel detector)
Parts coverage excluding items listed in this Agreement (includes batteries)
Annual multi-point manufacturer planned maintenance inspection, performed by GE Healthcare-certified Field Engineer
Preferred rates outside coverage hours
8am-5pm telephone support
Operating system/hardware reliability updates
Service Management Reports
10% discount on consumables (excluding NAV)
Annual Onsite Clinical Applications Days (consecutive): 0 days per year

Please mark contract terms below:

7 year contract with POS discount.
Contract is payable at \$24,859 per year

Fee Schedule:

Payment Terms are Net 30 days, to be billed Annually unless otherwise indicated below:
Annual Payments ( )
Quarterly Payments ( )
Monthly Payments ( )
The price(s) identified in this Quotation are good for 20 days from the Quotation Date identified above.

This Agreement is by and between the "Customer" and the GE Healthcare business ("GE Healthcare"), each as identified below, for the sale and purchase of the Services identified in this Quotation, together with any applicable schedules referred to herein ("Quotation"). "Agreement" is defined as the GE Healthcare: (1) Quotation; (2) Statement of Service Deliverables; and (3) Service Terms & Conditions, that apply to the Products and/or Service identified on this Quotation. In the event of conflict, the order of precedence is as listed.

Product sold, traded-in or upgraded by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted as set forth in this Agreement. All other removals of Product from this Agreement prior to the Agreement expiration date will be subject to a cancellation fee of 15% of the remaining Agreement value.

GE Healthcare can withdraw this Quotation at any time before "Quotation Acceptance", which occurs on the later of: (a) the Effective Date identified above or (b) Customer's signature date. The "Agreement Start Date" begins on: (a) the above effective date if customer signs and returns this Agreement within 30 calendar days of that date if previously under contract or warranty; or (b) the date of signature if customer does not sign & return this Agreement within 30 calendar days of the above date. On Quotation Acceptance, this Agreement is the complete and final agreement of the parties relating to the Services identified in this Quotation. There is no reliance on any terms other than those expressly stated or incorporated by reference in this Agreement and, except as permitted in this Agreement, no attempt to modify will be binding unless agreed to in writing by the parties. Modifications may result in additional fees and cannot be made without GE Healthcare's prior written consent. Handwritten or electronic modifications on this Agreement (except signatures on the signature blocks below) are void. This Agreement is not part of an umbrella or other group purchasing agreement unless otherwise indicated.

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

OEC Medical Systems, Inc., a GE Healthcare business
Signature: [Signature]
Print Name: Michael Larsen
Title: Healthcare Service Account Manager
Date: December 1, 2022

Customer
Signature: \_\_\_\_\_
Print Name: Russell Bigler
Title: Chairman, Board of Governors
Date: \_\_\_\_\_

PLEASE SIGN AND RETURN TO: OEC Medical Systems, Inc., a GE Healthcare business

[Signature]
Legal Services Department



- 1. Definitions.** As identified in this Agreement, "Equipment" is hardware and embedded software that is licensed with the purchase of the hardware delivered to Customer in GE Healthcare's packaging and with its labeling; "Software" is software developed by GE Healthcare and/or delivered to Customer in GE Healthcare's packaging and with its labeling, and Documentation associated with the software; "Third Party Software" and "Third Party Equipment" are respectively software developed by a third party, and hardware and embedded software that is licensed with the purchase of the hardware, that is delivered to Customer in the third party's packaging and with its labeling (collectively, "Third Party Product"); "Product" is Equipment, Software and Third Party Product; "Services" are Product support or professional services; and "Subscription" is a limited-term, non-transferable license to access and use a Product (except Healthcare Digital Products), including any associated Services. "Healthcare Digital Products" are: (i) Software identified in the Quotation as "Centricity"; (ii) Third Party Software licensed for use in connection with Centricity Software; (iii) hardware used to operate Centricity or Third Party Software; (iv) Services provided for implementation, installation or support and maintenance of Centricity or Third Party Software licensed for use in connection with Centricity Software; and/or (v) any Product or Service that is identified in a Healthcare Digital Quotation. "Specifications" are GE Healthcare's written specifications and manuals as of the date the Equipment shipped. "Documentation" is the online help functions, user instructions and manuals regarding the installation and operation of the Product as made available by GE Healthcare to Customer.
- 2. Term and Termination.** Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate this Agreement. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination.
- 3. Inventory.** GE Healthcare will complete an inventory of Products and provide an updated Product schedule ("Product Schedule"). Products must be in safe, normal operating condition and comply with original equipment manufacturer ("OEM") specifications in order to be added to the Product Schedule, and GE Healthcare is not liable or responsible for any preexisting defect, malfunction or necessary repairs.
- 4. Product Removal.** Product sold (excluding an assignment of this Agreement) or scrapped by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted on the later of the end of the notice period or the date the Product is sold or scrapped. Customer has no right to remove a Product at its convenience.
- 5. Warranty.** GE Healthcare warrants that its Service will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will re-perform non-conforming Service as long as Customer provides prompt written notice to GE Healthcare. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. DOCUMENTATION IS PROVIDED "AS IS".
- 6. Loaner Units.** GE Healthcare may provide a loaner unit during extended periods of Service. If a loaner unit is provided: (i) it is for Customer's temporary use at the location identified in the Quotation; (ii) it will be returned to GE Healthcare within 5 days after the Product is returned to Customer, and if it is not, GE Healthcare may repossess it or invoice Customer for its full list price; (iii) it, and all programs and information pertaining to it, remain GE Healthcare property; (iv) risk of loss is with Customer during its possession; (v) Customer will maintain and return it in proper condition, normal wear and tear excepted, in accordance with GE Healthcare's instructions; (vi) it will not be repaired except by GE Healthcare; (vii) GE Healthcare will be given reasonable access to it; (viii) Customer is not paying for its use, and Customer will ensure charges or claims submitted to a government healthcare program or patient are submitted accordingly; and (ix) prior to returning it to GE Healthcare, Customer will delete all information, including PHI, from it and its accessories, in compliance with industry standards and instructions provided by GE Healthcare.
- 7. License Registration.** Online registration as a licensee may be required for receipt of Software and Documentation.
- 8. Customer Responsibilities.** Customer must: (i) maintain power quality, grounding, temperature, humidity and repairs due to power anomalies, all as necessary for Products to operate within OEM specifications; (ii) ensure labeling complies with regulations; (iii) provide Third Party Product warranty and operating and maintenance manuals, maintenance and service requirements (e.g., software, tools, phantoms), or pay GE Healthcare for acquiring these materials; (iv) repair accessories unless the item is identified on the Product Schedule; (v) replace accessories, supplies and consumables; (vi) dispose of accessories, supplies and consumables unless GE Healthcare is legally required to take the item back; (vii) update Third Party Product; (viii) maintain licenses, permits and other approvals required to receive or use radioactive sources and provide the sources needed for calibration and performance checks; (ix) provide access to Products during Service coverage hours; and (x) if required by GE Healthcare, sign an agency authorization letter to provide Services. Service for Products not maintained to OEM specifications may result in additional charges. Customer cannot stockpile replacement parts.
- 9. End of Support.** If GE Healthcare determines that: (i) a Product or component thereof has been declared end of life/support by the OEM; (ii) its ability to Service or maintain a Product or component thereof is hindered due to the unavailability of parts or trained personnel; or (iii) it can no longer Service or maintain the Product in a safe or effective manner, then GE Healthcare may, upon notice: (a) remove the item from this Agreement and adjust fees without otherwise affecting this Agreement, or (b) move the item to "end of service life" coverage.
- 10. Return for Repair.** Prior to shipping Product to GE Healthcare for repair, Customer will back up and remove data stored on the Product. Customer is responsible for damage during shipment to GE Healthcare. GE Healthcare may remove data stored on the Product prior to sending it back to Customer and will provide standard shipping.
- 11. Exclusions.** Unless identified on the Product Schedule, this Agreement does not cover: (i) tubes, detectors, probes, chillers, crystals, batteries, accessories, consumables, user-replaceable items, supplies, cosmetic upgrades or parts used to correct/enhance Product appearance; (ii) a defect, deficiency or repairs due to improper storage or handling, failure to maintain Product according to OEM instructions/specifications, inadequate

backup or virus protection, cyber-attacks, or any cause external to the Product or beyond GE Healthcare's control; (iii) payment/reimbursement of facility costs arising from repair/replacement of Product; (iv) adjustment, alignment, calibration, or planned maintenance; (v) Third Party Product that was not commercially available from the OEM on the date the item was installed; (vi) OEM warranty service or recalls; (vii) Product upgrades, certification surveys and relocations; (viii) consultation, training or assistance with use, development, or modification of items/materials (e.g., software and protocols); (ix) installation and reusing existing facilities for testing, training and other purposes; (x) MR-related defect from failure of a Customer water chiller system or service to water chiller system; (xi) Healthcare Digital Products; and (xii) non-GE Healthcare network/antenna installations/troubleshooting.

**12. Existing Service Arrangements.** This Agreement does not apply to Products covered by arrangements/warranties from other vendors until the end or termination of those arrangements/warranties. If Products covered by another arrangement/warranty are added to this Agreement, they will be added on the day following the end or termination of the other arrangement/warranty.

**13. Hourly Billed Services.** Services not covered by this Agreement are hourly-billed services and may have a 2-hour minimum charge.

**14. Inflation.** After the first year of this Agreement, but no more than annually and with 60 days' prior notice, GE Healthcare may increase fees by an amount no more than the prior 12-month increase in the U.S. Bureau of Labor Statistics ("BLS") Employment Cost Index for "Service-providing industries: Natural resources, construction, and maintenance (not seasonally adjusted, total compensation)" or any replacement index as determined by BLS, capped at 5% annually.

**15. Product Specific Service Terms.**

**15.1. Tube Support (Excluding C-Arms).** If tube support/coverage is identified on the Product Schedule, GE Healthcare will provide tubes, on an exchange basis, to replace failed tubes. Customer will: (i) maintain a Product maintenance and repair program, including tube warm up, in accordance with GE Healthcare planned maintenance and repair requirements; (ii) repair the Product with repair parts that meet OEM specifications; and (iii) protect Product configuration against alteration except as authorized by GE Healthcare. Product must have an operational tube on the Agreement Start Date (as defined in the Quotation). No credit will be provided to Customer for the tube.

**15.2. Magnetic Resonance ("MR").**

**15.2.1. Magnet Maintenance.**

**15.2.1.1.** If magnet maintenance for MR systems with Lhe/Ln and shield cooler-configured magnets and condenser-configured magnets (K4 technology) is identified on the Product Schedule, GE Healthcare will: (i) adjust, repair, or replace covered components (i.e., MR magnet, cryostat, coldhead, cryo-cooler compressor, shim coils); (ii) monitor cryogen levels within the magnet cryostat, based on Customer cryostat meter readings; and (iii) perform magnetic field homogeneity adjustments to the extent required by magnet ramping or covered component adjustment, repair or replacement. Customer will ensure that the Product's cryo-cooler system and water chiller system used with the cryo-cooler system (including in vans or trailers in transit) are operational at all times and maintained, and immediately notify GE Healthcare if it is not.

**15.2.1.2.** If magnet maintenance for MR systems with permanent magnets is identified on the Product Schedule, GE Healthcare will perform magnetic field homogeneity adjustments to the extent required by a covered component adjustment, repair or replacement.

**15.2.2. Remote Magnet Monitoring for non-GE Healthcare Systems.** If remote magnet monitoring for non-GE Healthcare systems is identified on the Product Schedule, GE Healthcare will: (i) remotely monitor operating parameters of the MR magnet refrigeration system; (ii) oversee installation of remote monitoring hardware; and (iii) maintain the hardware. Customer will provide power, access and remote connectivity as needed for remote magnet monitoring.

**15.2.3. Cryogen Coverage.** If cryogen coverage for GE Healthcare MR systems is identified on the Product Schedule, GE Healthcare will provide: (i) monitoring of cryogen levels; and (ii) cryogen delivery and transfill service Monday-Friday, between 9pm-6am local time (excluding GE Healthcare holidays), to replenish cryogen losses resulting from (a) the normal operation of the Equipment in accordance with Specifications, or (b) GE Healthcare's failure to maintain the Equipment in accordance with Specifications. Notwithstanding the foregoing, if Customer's failure to maintain or use the Equipment in accordance with Specifications results in cryogen loss, Customer will be billed for cryogen delivery and transfill service at GE Healthcare's then-current rates. GE Healthcare is not liable for cryogen loss or transfer efficiency during transfer to the cryostat. Customer will inform GE Healthcare of its authorized cryogen representative who will provide GE Healthcare accurate cryostat meter readings and receive notifications relative to cryogen quantity and delivery schedules (for Lhe/Ln and shield cooler configured magnets only); and provide a delivery dock and storage facility.

**15.2.4. Cryogen Cost Increases.** If GE Healthcare's cryogen cost increases by more than 12%, as measured against its cost as of the Agreement Start Date (as defined in the Quotation) or its cost on the date of the most recent adjustment, GE Healthcare may increase Service fees in an amount equal to such cost increase.

**15.3. Cyclotron.** GE Healthcare will work in accordance with its health and safety rules and applicable radiation and radioactive materials safety laws and regulations, whichever is more stringent, including assessment and management of radiation dose in accordance with the As Low As Reasonably Achievable ("ALARA") standard. Customer will follow all ALARA guidelines to maintain and control the radiation exposures as far below the dose limits as possible. Customer will: (i) if requested by GE Healthcare, remove targets prior to Service; (ii) place targets in an appropriately shielded area/container during Service; (iii) replace targets following Service; (iv) provide at least 24 hours of Product downtime prior to planned maintenance; (v) provide GE Healthcare with Customer's emergency and site-specific safety procedures; (vi) ensure that a Customer representative is available in the work area during Service; (vii) confirm that GE Healthcare personnel and their tools and accessories are free from contamination prior to leaving Customer's facility; and (viii) store and dispose of waste generated by Service in compliance with applicable laws and regulations. GE Healthcare reserves the right not to enter areas with dose rates in excess of 2 mSv/hour. Other radiation exposure limits may apply to Service, including daily or personal cumulative dose limits, and local requirements, which could prevent Service of the cyclotron until radiation levels are

reduced.

## 16. General Terms.

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

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

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

16.4. Assignment; Use of Subcontractors. Rights and obligations under this Agreement cannot be assigned without the other party's prior written consent, unless: (i) it is to an entity (except to a GE Healthcare competitor) that (a) is an affiliate or parent of the party or (b) acquires substantially all of the stock or assets of such party's applicable business, Product line or Service thereof; and (ii) the assignee agrees in writing to be bound by this Agreement, including payment of outstanding fees. GE Healthcare may hire subcontractors to perform work under this Agreement but will remain responsible for its obligations.

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

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

## 17. Compliance.

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

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

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

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

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

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

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

## 17.8. Use of Data.

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

17.8.2. Data Rights. GE Healthcare may collect, prepare derivatives from and otherwise use non-PHI data related to Products and/or Services for such things as training, demonstration, research, development, benchmarking, continuous improvement and facilitating the provision of its

products, software and services. GE Healthcare will own all intellectual property and other rights that could result from this collection, preparation and use. The non-PHI data will not be used to identify Customer or sold by GE Healthcare without Customer's consent.

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

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

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

## 18. Disputes and Arbitration.

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

## 19. Liability and Indemnity.

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

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

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

### 19.4. General Indemnification.

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

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

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

## 20. Payment and Finance.

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

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

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



## Statement of Service Deliverables DeluxeCare

- Optional Equipment and Accessories.** This Agreement excludes loaners, optional equipment and accessories and consumables (e.g., printers, MDR boxes, Table side control (Elite), laser aimers and wireless hand/foot switches).
- Uptime Guarantee.** GE Healthcare guarantees at least 95% uptime performance for the Equipment. Should the Equipment fail to meet the 95% uptime performance guarantee in any 12-month period due to GE Healthcare's design, manufacturing, or service defects, GE Healthcare will provide an extension of the term of this Agreement with respect to that Equipment at no additional charge as according to the table below. Uptime is calculated at Customer's request.

Uptime Percentage	Extension
95-100	0
94	2 weeks
90-93	4 weeks
<90	6 weeks

Equipment will be considered inoperable and out of Service under the uptime performance guarantee if, due to GE Healthcare's design, manufacturing, material or service defects, the Equipment is unavailable for diagnosing images on the Equipment display console or operator's console. Peripheral equipment such as remote console, hard copy devices, multi-format or laser cameras are excluded from the terms of the uptime performance guarantee. Repair and adjustment required for anything other than Equipment failure, and damage or inoperability due to any cause other than GE Healthcare's design, manufacturing, material or service defects will be excluded from the uptime performance guarantee calculation, including, but not limited to damage through misuse, operator error, inadequate environmental or air conditioning protection or failure, power failure, and acts of God. Planned maintenance time will not be included in the calculation of downtime. If GE Healthcare's responding service representative agrees that the Equipment is inoperable due to GE Healthcare's design, manufacturing, material or service defects, the Equipment will be considered out of Service from the time the request for Service was received at the designated facility until the Equipment is once again turned over to Customer for operation. Should Customer fail to give GE Healthcare immediate and unencumbered access to the Equipment or continue to use the Equipment after notifying GE Healthcare of any Equipment failure, the Equipment will be considered in Service.



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

December 14, 2022

**SUBJECT:** Proposed Service Agreement with OEC Medical Systems, Inc., a GE Healthcare business (“GE Healthcare”)

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

**Summary:**

Kern Medical requests your Board approve the Service Agreement with GE Healthcare, to provide maintenance and repair to the Stille vascular imaging table. As this equipment is proprietary, GE Healthcare is the only entity able to provide maintenance and repair to this equipment.

The term of this Service Agreement is seven years, effective December 14, 2022, with a total maximum payable not to exceed \$19,950. Kern Medical is able to secure the most advantageous pricing through a seven-year term compared to a shorter-term service agreement.

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

Therefore, it is recommended that your Board approve the Service Agreement with OEC Medical System, Inc., a GE Healthcare business, effective December 14, 2022, with a maximum payable not to exceed \$19,950, for the seven-year term, and authorize the Chairman to sign.



# Addendum to Agreements

## GE Healthcare

This Addendum to Agreements ("Addendum") is made by Kern County Hospital Authority County Hospital Authority with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and OEC Medical Systems, Inc. with an address at 384 Wright Brothers Drive, Salt Lake City, UT 84116 ("OEC or GE Healthcare"), parties to those certain Quotations identified and attached hereto as Exhibit A (each, a "Quotation" and collectively, the "Quotations"), for the products and/or services listed on each such Quotation in accordance with the terms and conditions identified on each such Quotation (each such Quotation, an "Agreement" and collectively, the "Agreements").

The Agreements are amended as follows:

1. Section 18.1 ("Binding Arbitration") of the GE Healthcare Service Terms and Conditions ("GE Healthcare Service Terms") is deleted in its entirety and replaced with the following:

"Dispute Resolution. The parties will first attempt to resolve in good faith any disputes related to this Agreement. Violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm for which the award of money damages alone is inadequate. GE Healthcare may: (i) seek injunctive relief and any other available remedies; (ii) immediately terminate the license grant and require Customer to cease use of and return the Software and Third Party Software; and/or (iii) terminate Customer access to the SaaS or remote hosted Software. Other than these violations or collection matters, unresolved disputes will be submitted to mediation prior to initiation of other means of dispute resolution."

2. The Agreements are further amended by adding the following new Sections:

**"Application of Business Associates Agreement.** The parties agree that the Business Associate Agreement executed by the parties as of February 16, 2022, a copy of which is attached as Exhibit B, will apply to this Agreement."

**"No-Cause Termination.** Pricing for the Agreement is based on the term of the Agreement. Customer may, however, terminate this agreement without cause after the third (3rd) anniversary date of this Agreement, and on the anniversary date of each subsequent year; provided, however, that written notice is given to GE Healthcare at least sixty (60) days before the desired termination date. Upon termination, neither party shall have any further obligations under this Agreement except for (i) payment obligations arising prior to the date of termination and (ii) obligations, promises or covenants contained in this Agreement which by their terms must extend beyond the termination date."

3. Except as set forth in this Addendum, each Agreement is unaffected and continues in full force in accordance with its terms. If there is a conflict between this Addendum and any Agreement or any other earlier amendment, the terms of this Addendum will prevail.

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

### Kern County Hospital Authority

Signature: \_\_\_\_\_

Print Name: Russell Bigler

Title: Chairman, Board of Governors

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

### GE Healthcare

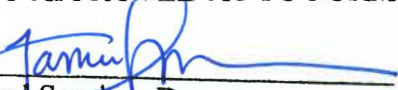
Signature:  \_\_\_\_\_

Print Name: Michael Larsen

Title: Healthcare Service Account Manager

Date: December 1, 2022

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department



**Exhibit A**

<b>No.</b>	<b>Quotation No.</b>	<b>Date</b>
1	Quotation for OEC Elite 31 VAS15 MD	October 11, 2022
2	Quotation for Stille Table	October 11, 2022

Please see attached

**Exhibit B**

**Business Associate Agreement**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("BAA") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("Covered Entity") and GE Healthcare through its affiliates including but not limited to GE Precision Healthcare LLC, GE Medical Systems, Ultrasound & Primary Care Diagnostics, LLC, GE Medical Systems Information Technologies, Inc., Datex-Ohmeda, Inc., OEC Medical Systems, Inc., GE Healthcare IITS USA Corp., GE Healthcare Inc., Medi-Physics Inc. and GE Healthcare Bio-Sciences Corp., ("GE Healthcare" or "Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the underlying Agreement (the "Effective Date").

**RECITALS**

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

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

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

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

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III OBLIGATIONS OF COVERED ENTITY

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### ARTICLE IV TERM AND TERMINATION

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

#### 4.2 Termination of Underlying Agreement.

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

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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



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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

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

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

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

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

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

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

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

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

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

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

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

**COVERED ENTITY:**  
The Kern County Hospital Authority

\_\_\_\_\_  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC

*Catherine Kaphingst*  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022


APPROVED AS TO FORM  
Legal Services Department

By  \_\_\_\_\_  
Kern County Hospital Authority




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

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

**COVERED ENTITY:**  
The Kern County Hospital Authority  
  
\_\_\_\_\_  
Title: Chief Executive Officer  
Date: 02/16/2022

**BUSINESS ASSOCIATE:**  
GE Precision Healthcare, LLC  
Catherine Kaphingot  
\_\_\_\_\_  
Title: Commercial Legal Operations Specialist  
Date: January 12, 2022

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority



GE Healthcare Service Quotation

Michael Larsen
West Service Account Manager
801-231-1553

Please fax to 801-459-4063

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

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

Table with 6 columns: Quotation Date, Service District, Serial Number, Product Covered, PO Number, and End Date. Includes rows for dates like 10/11/22 and contract terms like 'After Warranty'.

UltimaCare Table with Planned Maintenance Includes:

- Travel and Labor 8am-5pm M-F excluding holidays
98% uptime guarantee
Priority parts delivery
Annual multi-point manufacturer planned maintenance ("PM") inspection, performed by GE Healthcare-certified Field Engineer
Parts coverage including items listed in this Agreement
Preferred rates outside coverage hours
24x7 telephone support
Service Management Reports
10% discount on consumables (excluding NAV)

Annual Onsite Clinical Applications Days (consecutive):
0 days per year

Please mark contract terms below:

7 year contract with POS discount
Contract is payable at \$2,850 per year

Fee Schedule:

Payment Terms are Net 30 days, to be billed Annually unless otherwise indicated below:
Annual Payments ( )
Quarterly Payments ( )
Monthly Payments ( )

The price(s) identified in this Quotation are good for 20 days from the Quotation Date identified above.

This Agreement is by and between the "Customer" and the GE Healthcare business ("GE Healthcare"), each as identified below, for the sale and purchase of the Services identified in this Quotation, together with any applicable schedules referred to herein ("Quotation"). "Agreement" is defined as the GE Healthcare: (1) Quotation; (2) Statement of Service Deliverables; and (3) Service Terms & Conditions, that apply to the Products and/or Service identified on this Quotation. In the event of conflict, the order of precedence is as listed.

Product sold, traded-in or upgraded by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted as set forth in this Agreement. All other removals of Product from this Agreement prior to the Agreement expiration date will be subject to a cancellation fee of 15% of the remaining Agreement value.

GE Healthcare can withdraw this Quotation at any time before "Quotation Acceptance", which occurs on the later of: (a) the Effective Date identified above or (b) Customer's signature date. The "Agreement Start Date" begins on: (a) the above effective date if customer signs and returns this Agreement within 30 calendar days of that date if previously under contract or warranty; or (b) the date of signature if customer does not sign & return this Agreement within 30 calendar days of the above date. On Quotation Acceptance, this Agreement is the complete and final agreement of the parties relating to the Services identified in this Quotation. There is no reliance on any terms other than those expressly stated or incorporated by reference in this Agreement and, except as permitted in this Agreement, no attempt to modify will be binding unless agreed to in writing by the parties. Modifications may result in additional fees and cannot be made without GE Healthcare's prior written consent. Handwritten or electronic modifications on this Agreement (except signatures on the signature blocks below) are void. This Agreement is not part of an umbrella or other group purchasing agreement unless otherwise indicated.

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

OEC Medical Systems, Inc., a GE Healthcare business
Signature: [Signature]
Print Name: Michael Larsen
Title: Healthcare Service Account Manager
Date: December 1, 2022

Customer
Signature: [Signature]
Print Name: Russell Bigler
Title: Chairman, Board of Governors
Date: [Blank]

PLEASE SIGN AND RETURN TO: OEC Medical Systems, Inc., a GE Healthcare business

REVIEWED ONLY
NOT APPROVED AS TO FORM

By [Signature]
Legal Services Department



- 1. Definitions.** As identified in this Agreement, "Equipment" is hardware and embedded software that is licensed with the purchase of the hardware delivered to Customer in GE Healthcare's packaging and with its labeling; "Software" is software developed by GE Healthcare and/or delivered to Customer in GE Healthcare's packaging and with its labeling, and Documentation associated with the software; "Third Party Software" and "Third Party Equipment" are respectively software developed by a third party, and hardware and embedded software that is licensed with the purchase of the hardware, that is delivered to Customer in the third party's packaging and with its labeling (collectively, "Third Party Product"); "Product" is Equipment, Software and Third Party Product; "Services" are Product support or professional services; and "Subscription" is a limited-term, non-transferable license to access and use a Product (except Healthcare Digital Products), including any associated Services. "Healthcare Digital Products" are: (i) Software identified in the Quotation as "Centricity"; (ii) Third Party Software licensed for use in connection with Centricity Software; (iii) hardware used to operate Centricity or Third Party Software; (iv) Services provided for implementation, installation or support and maintenance of Centricity or Third Party Software licensed for use in connection with Centricity Software; and/or (v) any Product or Service that is identified in a Healthcare Digital Quotation. "Specifications" are GE Healthcare's written specifications and manuals as of the date the Equipment shipped. "Documentation" is the online help functions, user instructions and manuals regarding the installation and operation of the Product as made available by GE Healthcare to Customer.
- 2. Term and Termination.** Services and/or Subscriptions will have individual term lengths identified in the Quotation. If there is a material breach of this Agreement that is not cured by the breaching party within 60 days from receipt of written notice, the non-breaching party can terminate this Agreement. Other than as set forth in this Agreement, neither party can unilaterally terminate this Agreement. Any remaining undisputed, unpaid fees become immediately due and payable on expiration or termination.
- 3. Inventory.** GE Healthcare will complete an inventory of Products and provide an updated Product schedule ("Product Schedule"). Products must be in safe, normal operating condition and comply with original equipment manufacturer ("OEM") specifications in order to be added to the Product Schedule, and GE Healthcare is not liable or responsible for any preexisting defect, malfunction or necessary repairs.
- 4. Product Removal.** Product sold (excluding an assignment of this Agreement) or scrapped by Customer may be removed from this Agreement with 60 days' prior written notice to GE Healthcare, and fees will be adjusted on the later of the end of the notice period or the date the Product is sold or scrapped. Customer has no right to remove a Product at its convenience.
- 5. Warranty.** GE Healthcare warrants that its Service will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will re-perform non-conforming Service as long as Customer provides prompt written notice to GE Healthcare. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL APPLY. DOCUMENTATION IS PROVIDED "AS IS".
- 6. Loaner Units.** GE Healthcare may provide a loaner unit during extended periods of Service. If a loaner unit is provided: (i) it is for Customer's temporary use at the location identified in the Quotation; (ii) it will be returned to GE Healthcare within 5 days after the Product is returned to Customer, and if it is not, GE Healthcare may repossess it or invoice Customer for its full list price; (iii) it, and all programs and information pertaining to it, remain GE Healthcare property; (iv) risk of loss is with Customer during its possession; (v) Customer will maintain and return it in proper condition, normal wear and tear excepted, in accordance with GE Healthcare's instructions; (vi) it will not be repaired except by GE Healthcare; (vii) GE Healthcare will be given reasonable access to it; (viii) Customer is not paying for its use, and Customer will ensure charges or claims submitted to a government healthcare program or patient are submitted accordingly; and (ix) prior to returning it to GE Healthcare, Customer will delete all information, including PHI, from it and its accessories, in compliance with industry standards and instructions provided by GE Healthcare.
- 7. License Registration.** Online registration as a licensee may be required for receipt of Software and Documentation.
- 8. Customer Responsibilities.** Customer must: (i) maintain power quality, grounding, temperature, humidity and repairs due to power anomalies, all as necessary for Products to operate within OEM specifications; (ii) ensure labeling complies with regulations; (iii) provide Third Party Product warranty and operating and maintenance manuals, maintenance and service requirements (e.g., software, tools, phantoms), or pay GE Healthcare for acquiring these materials; (iv) repair accessories unless the item is identified on the Product Schedule; (v) replace accessories, supplies and consumables; (vi) dispose of accessories, supplies and consumables unless GE Healthcare is legally required to take the item back; (vii) update Third Party Product; (viii) maintain licenses, permits and other approvals required to receive or use radioactive sources and provide the sources needed for calibration and performance checks; (ix) provide access to Products during Service coverage hours; and (x) if required by GE Healthcare, sign an agency authorization letter to provide Services. Service for Products not maintained to OEM specifications may result in additional charges. Customer cannot stockpile replacement parts.
- 9. End of Support.** If GE Healthcare determines that: (i) a Product or component thereof has been declared end of life/support by the OEM; (ii) its ability to Service or maintain a Product or component thereof is hindered due to the unavailability of parts or trained personnel; or (iii) it can no longer Service or maintain the Product in a safe or effective manner, then GE Healthcare may, upon notice: (a) remove the item from this Agreement and adjust fees without otherwise affecting this Agreement, or (b) move the item to "end of service life" coverage.
- 10. Return for Repair.** Prior to shipping Product to GE Healthcare for repair, Customer will back up and remove data stored on the Product. Customer is responsible for damage during shipment to GE Healthcare. GE Healthcare may remove data stored on the Product prior to sending it back to Customer and will provide standard shipping.
- 11. Exclusions.** Unless identified on the Product Schedule, this Agreement does not cover: (i) tubes, detectors, probes, chillers, crystals, batteries, accessories, consumables, user-replaceable items, supplies, cosmetic upgrades or parts used to correct/enhance Product appearance; (ii) a defect, deficiency or repairs due to improper storage or handling, failure to maintain Product according to OEM instructions/specifications, inadequate

backup or virus protection, cyber-attacks, or any cause external to the Product or beyond GE Healthcare's control; (iii) payment/reimbursement of facility costs arising from repair/replacement of Product; (iv) adjustment, alignment, calibration, or planned maintenance; (v) Third Party Product that was not commercially available from the OEM on the date the item was installed; (vi) OEM warranty service or recalls; (vii) Product upgrades, certification surveys and relocations; (viii) consultation, training or assistance with use, development, or modification of items/materials (e.g., software and protocols); (ix) installation and reusing existing facilities for testing, training and other purposes; (x) MR-related defect from failure of a Customer water chiller system or service to water chiller system; (xi) Healthcare Digital Products; and (xii) non-GE Healthcare network/antenna installations/troubleshooting.

**12. Existing Service Arrangements.** This Agreement does not apply to Products covered by arrangements/warranties from other vendors until the end or termination of those arrangements/warranties. If Products covered by another arrangement/warranty are added to this Agreement, they will be added on the day following the end or termination of the other arrangement/warranty.

**13. Hourly Billed Services.** Services not covered by this Agreement are hourly-billed services and may have a 2-hour minimum charge.

**14. Inflation.** After the first year of this Agreement, but no more than annually and with 60 days' prior notice, GE Healthcare may increase fees by an amount no more than the prior 12-month increase in the U.S. Bureau of Labor Statistics ("BLS") Employment Cost Index for "Service-providing industries: Natural resources, construction, and maintenance (not seasonally adjusted, total compensation)" or any replacement index as determined by BLS, capped at 5% annually.

**15. Product Specific Service Terms.**

**15.1. Tube Support (Excluding C-Arms).** If tube support/coverage is identified on the Product Schedule, GE Healthcare will provide tubes, on an exchange basis, to replace failed tubes. Customer will: (i) maintain a Product maintenance and repair program, including tube warm up, in accordance with GE Healthcare planned maintenance and repair requirements; (ii) repair the Product with repair parts that meet OEM specifications; and (iii) protect Product configuration against alteration except as authorized by GE Healthcare. Product must have an operational tube on the Agreement Start Date (as defined in the Quotation). No credit will be provided to Customer for the tube.

**15.2. Magnetic Resonance ("MR").**

**15.2.1. Magnet Maintenance.**

**15.2.1.1.** If magnet maintenance for MR systems with Lhe/Ln and shield cooler-configured magnets and condenser-configured magnets (K4 technology) is identified on the Product Schedule, GE Healthcare will: (i) adjust, repair, or replace covered components (i.e., MR magnet, cryostat, coldhead, cryo-cooler compressor, shim coils); (ii) monitor cryogen levels within the magnet cryostat, based on Customer cryostat meter readings; and (iii) perform magnetic field homogeneity adjustments to the extent required by magnet ramping or covered component adjustment, repair or replacement. Customer will ensure that the Product's cryo-cooler system and water chiller system used with the cryo-cooler system (including in vans or trailers in transit) are operational at all times and maintained, and immediately notify GE Healthcare if it is not.

**15.2.1.2.** If magnet maintenance for MR systems with permanent magnets is identified on the Product Schedule, GE Healthcare will perform magnetic field homogeneity adjustments to the extent required by a covered component adjustment, repair or replacement.

**15.2.2. Remote Magnet Monitoring for non-GE Healthcare Systems.** If remote magnet monitoring for non-GE Healthcare systems is identified on the Product Schedule, GE Healthcare will: (i) remotely monitor operating parameters of the MR magnet refrigeration system; (ii) oversee installation of remote monitoring hardware; and (iii) maintain the hardware. Customer will provide power, access and remote connectivity as needed for remote magnet monitoring.

**15.2.3. Cryogen Coverage.** If cryogen coverage for GE Healthcare MR systems is identified on the Product Schedule, GE Healthcare will provide: (i) monitoring of cryogen levels; and (ii) cryogen delivery and transfill service Monday-Friday, between 9pm-6am local time (excluding GE Healthcare holidays), to replenish cryogen losses resulting from (a) the normal operation of the Equipment in accordance with Specifications, or (b) GE Healthcare's failure to maintain the Equipment in accordance with Specifications. Notwithstanding the foregoing, if Customer's failure to maintain or use the Equipment in accordance with Specifications results in cryogen loss, Customer will be billed for cryogen delivery and transfill service at GE Healthcare's then-current rates. GE Healthcare is not liable for cryogen loss or transfer efficiency during transfer to the cryostat. Customer will inform GE Healthcare of its authorized cryogen representative who will provide GE Healthcare accurate cryostat meter readings and receive notifications relative to cryogen quantity and delivery schedules (for Lhe/Ln and shield cooler configured magnets only); and provide a delivery dock and storage facility.

**15.2.4. Cryogen Cost Increases.** If GE Healthcare's cryogen cost increases by more than 12%, as measured against its cost as of the Agreement Start Date (as defined in the Quotation) or its cost on the date of the most recent adjustment, GE Healthcare may increase Service fees in an amount equal to such cost increase.

**15.3. Cyclotron.** GE Healthcare will work in accordance with its health and safety rules and applicable radiation and radioactive materials safety laws and regulations, whichever is more stringent, including assessment and management of radiation dose in accordance with the As Low As Reasonably Achievable ("ALARA") standard. Customer will follow all ALARA guidelines to maintain and control the radiation exposures as far below the dose limits as possible. Customer will: (i) if requested by GE Healthcare, remove targets prior to Service; (ii) place targets in an appropriately shielded area/container during Service; (iii) replace targets following Service; (iv) provide at least 24 hours of Product downtime prior to planned maintenance; (v) provide GE Healthcare with Customer's emergency and site-specific safety procedures; (vi) ensure that a Customer representative is available in the work area during Service; (vii) confirm that GE Healthcare personnel and their tools and accessories are free from contamination prior to leaving Customer's facility; and (viii) store and dispose of waste generated by Service in compliance with applicable laws and regulations. GE Healthcare reserves the right not to enter areas with dose rates in excess of 2 mSv/hour. Other radiation exposure limits may apply to Service, including daily or personal cumulative dose limits, and local requirements, which could prevent Service of the cyclotron until radiation levels are

reduced.

## 16. General Terms.

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

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

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

16.4. Assignment; Use of Subcontractors. Rights and obligations under this Agreement cannot be assigned without the other party's prior written consent, unless: (i) it is to an entity (except to a GE Healthcare competitor) that (a) is an affiliate or parent of the party or (b) acquires substantially all of the stock or assets of such party's applicable business, Product line or Service thereof; and (ii) the assignee agrees in writing to be bound by this Agreement, including payment of outstanding fees. GE Healthcare may hire subcontractors to perform work under this Agreement but will remain responsible for its obligations.

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

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

## 17. Compliance.

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

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

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

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

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

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

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

## 17.8. Use of Data.

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

17.8.2. Data Rights. GE Healthcare may collect, prepare derivatives from and otherwise use non-PHI data related to Products and/or Services for such things as training, demonstration, research, development, benchmarking, continuous improvement and facilitating the provision of its



products, software and services. GE Healthcare will own all intellectual property and other rights that could result from this collection, preparation and use. The non-PHI data will not be used to identify Customer or sold by GE Healthcare without Customer's consent.

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

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

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

## 18. Disputes and Arbitration.

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

## 19. Liability and Indemnity.

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

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

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

### 19.4. General Indemnification.

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

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

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

## 20. Payment and Finance.

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

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

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



## Statement of Service Deliverables UltimaCare Table with Planned Maintenance

**1. GE Healthcare Responsibilities.** GE Healthcare provides onsite response time within 6 hours of determination that an onsite resource is necessary. Only fully qualified GE Healthcare employees specializing in the service of GE Healthcare Equipment, and the execution of GE Healthcare's quality system will service the Equipment. GE Healthcare will, at installation or acceptance of this Agreement, conduct a power quality audit. Power quality issues will be addressed appropriately to enable the best Equipment function. Power quality recommendations may include additional power sources to be supplied by Customer. GE Healthcare's power quality audit is for informational purposes only, and GE Healthcare assumes no liability or responsibility for certifying or ensuring that Customer has sufficient power for GE Healthcare Equipment or any other equipment.

**2. Uptime Guarantee.** GE Healthcare guarantees at least 98% uptime performance for the Equipment. Should the Equipment fail to meet the 98% uptime performance guarantee in any 12-month period due to GE Healthcare's design, manufacturing, or service defects, GE Healthcare will provide an extension of the term of this Agreement with respect to that Equipment at no additional charge as according to the table below. Uptime is calculated at Customer's request.

Uptime Percentage	Extension
98-100	0
95-98	2 weeks
90-95	4 weeks
<90	6 weeks

Equipment will be considered inoperable and out of Service under the uptime performance guarantee if, due to GE Healthcare's design, manufacturing, material or service defects, the Equipment is unavailable for diagnosing images on the Equipment display console or operator's console. Peripheral equipment such as remote console, hard copy devices, multi-format or laser cameras are excluded from the terms of the uptime performance guarantee. Repair and adjustment required for anything other than Equipment failure, and damage or inoperability due to any cause other than GE Healthcare's design, manufacturing, material or service defects will be excluded from the uptime performance guarantee calculation, including, but not limited to damage through misuse, operator error, inadequate environmental or air conditioning protection or failure, power failure, and acts of God. Planned maintenance time will not be included in the calculation of downtime. If GE Healthcare's responding service representative agrees that the Equipment is inoperable due to GE Healthcare's design, manufacturing, material or service defects, the Equipment will be considered out of Service from the time the request for Service was received at the designated facility until the Equipment is once again turned over to Customer for operation. Should Customer fail to give GE Healthcare immediate and unencumbered access to the Equipment or continue to use the Equipment after notifying GE Healthcare of any Equipment failure, the Equipment will be considered in Service.



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

December 14, 2022

**SUBJECT:** Proposed Purchase Order Agreement with Millennium Surgical, LLC

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

**Summary:**

Kern Medical requests your Board approve the Purchase Order Agreement with Millennium Surgical, LLC for the purchase of fiberoptic retractors for complex breast reconstruction surgery. The Agreement is effective on December 14, 2022 with a maximum payable not to exceed \$4,560, plus taxes and shipping, if applicable.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) the inability to terminate the agreement without cause; and (2) the absence of indemnification by Millennium Surgical, LLC. Efforts were made to negotiate these nonstandard terms to no avail. This product provides a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Purchase Order Agreement with Millennium Surgical, LLC, effective December 14, 2022, with a maximum payable not to exceed \$4,560, plus taxes and shipping, if applicable, and authorize the Chairman to sign.

**KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS**  
**(Kern County Hospital Authority – Millennium Surgical, LLC)**

This Purchase Order Terms & Conditions (this "Agreement") is entered into this 14<sup>th</sup> day of December 2022 ("Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA") and Millennium Surgical, LLC ("Vendor"), with its principal place of business at 40 Monument Road, Suite 205, Bala Cynwyd, Pennsylvania 19004.

The following conditions shall apply to any order awarded pursuant to this Agreement:

These terms are in addition to the Avallign Technologies, Inc. General Terms and Conditions of Sale (the "Sale T&Cs"), a copy of which are attached to Vendor's quote. To the extent of any conflict between this Agreement and the Sale T&Cs, the Sale T&Cs shall control.

**Obligations of Vendor**

1. Vendor shall provide products/services as set forth in purchase order, Exhibit A, attached hereto (the "Purchase Order"). Such order(s) may be modified by mutual agreement, by a written Purchase Order Amendment
2. Vendor shall provide products/services at the pricing identified in the Purchase Order. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the products involved herein at the time of delivery to KCHA.
4. Unless stated otherwise on the Purchase Order, all products provided by the Vendor shall be new, unused, in original manufacturer packaging and labeling, and shall conform to the specifications provided herein.
5. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:
  - (a) Workers' Compensation Insurance in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.
  - (b) Commercial General Liability Insurance in the minimum amounts indicated below, including, but not limited to, Contractual Liability Insurance, Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.
  - (c) Professional Liability (Errors and Omissions) Insurance for liability arising out of, or in connection with the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate.

All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by KCHA. Any exception to these requirements must be approved by KCHA's Risk Manager. All insurance coverage requirements shall be maintained by Vendor until completion of all of Vendor's obligations to KCHA.

6. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, applicable to it in its performance under this Agreement.

**Obligations of KCHA**

7. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.
8. KCHA shall notify Vendor of any discrepancies in products shipped or services rendered, be the quantity, condition, or otherwise, promptly upon completion of the receiving inspection

**Delivery, Invoicing, and Payment**

9. Unless stated otherwise on the Purchase Order, all goods and services shall be delivered EXW (Incoterms 2010) Vendor's loading dock, and title and risk of loss will pass in accordance therewith.
10. As consideration for the products provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Purchase Order. KCHA's finance office pays claims and Purchase Orders each week. The maximum payable of this Agreement is \$4,560.00 plus taxes and shipping, if applicable.
11. Invoices for payment shall be submitted in a form approved by KCHA and list each good ordered and received. Invoices shall be sent to KCHA for review and processing within 60 days of receipt of goods. Payment shall be made to Vendor within 30 days of receipt and approval of each invoice by KCHA.
12. 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. If either Party terminates this Agreement as provided in this Section 12, KCHA shall pay Vendor for all goods shipped by Vendor prior to the effective date of the notice of termination in an amount not to exceed the maximum dollar amount shown on the Schedule.
13. 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.

General Provisions

14. This Agreement, including any attachments hereto, and the Sale T&Cs contain the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing this Agreement, each party agrees that in the event there is any inconsistency or conflict between this Agreement and the Sales T&Cs, the Sales T&Cs shall control.

15. KCHA and Vendor agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California, and that venue of any action relating thereto shall be in the Superior Court of and for Kern County.

16. Disqualified Persons. Vendor 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. Vendor 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"), Vendor shall immediately notify KMC and such individual shall be immediately removed by Vendor from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to KMC patients; provided, however, that if Vendor is directly involved in the Enforcement Action, any agreement between KCHA and Vendor shall terminate immediately.


17. Non-collusion Covenant. Vendor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Agreement from KCHA.

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

KERN COUNTY HOSPITAL AUTHORITY

MILLENNIUM SURGICAL, LLC

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

By   
Bill Kearns (Print Name)  
Dir of Sales (Title)

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

Date: 12/7/22

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Dawn C. LeRoy  
Chief Nursing Officer

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

By   
Jamie A. Mason  
Hospital Counsel

**AVALIGN TECHNOLOGIES, INC.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

1. Definitions.

(a) “**Buyer**” means the other contracting party to a Sales Confirmation that is purchasing the Product.

(b) “**Governmental Authority**” means any applicable international, domestic federal, state, municipal, local, territorial or other governmental department, regulatory authority, judicial or administrative body.

(c) “**Product**” means each product to be supplied by Seller pursuant to a Sales Confirmation.

(d) “**Sales Confirmation**” means the quotation, confirmation of sale, acknowledgment, invoice or other document to which these Terms are attached or incorporated by reference, including by reference to a URL where these Terms are made available.

(e) “**Seller**” means Avalign Technologies, Inc. or its affiliate that provides and is identified on the applicable Sales Confirmation.

(f) “**Specification**” means the design specification(s) for a Product as identified on the applicable Sales Confirmation or as otherwise agreed upon by the parties.

2. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the Products by Seller to Buyer. Notwithstanding anything herein to the contrary, if a written supply agreement, quality agreement or other contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Sales Confirmation and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Buyer’s payment for any Product, receipt of any Product or failure to reject these Terms within five days after they are provided by Seller, whichever comes first, shall constitute Buyer’s acceptance of these Terms. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms, and Seller expressly rejects all such terms and conditions offered by Buyer. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

3. Shipment and Delivery.

(a) Seller shall deliver all Products to Buyer as set forth in the applicable Sales Confirmation, subject to the terms and conditions of this Agreement. All identified delivery dates are estimated only and Seller shall not be liable for any early delivery or delay in delivery. All shipments will be EXW (Incoterms 2010) Seller’s loading dock, and title and risk of loss will pass in accordance therewith. Buyer will

pay freight based on normal course of business freight shipments. Seller shall not be liable for any delays, loss or damage in transit.

(b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

4. Quantity. If Seller delivers to Buyer a quantity of Products of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products the price set forth in the Sales Confirmation adjusted pro rata.

5. No License. Buyer does not acquire and Seller does not grant to Buyer any license or right in any Seller names, trademarks, service marks, patents, copyrights or other intellectual property rights.

6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

7. Inspection and Rejection of Nonconforming Products.

(a) Buyer shall inspect the Products within 30 days after receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Products**” means only the following: (i) Product shipped is different than identified in Buyer’s purchase order; or (ii) Product’s label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller’s designated facility. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer’s shipment of Nonconforming Products, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Products. Buyer acknowledges and agrees that the remedies set forth in this Section 7(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Products.

(c) Other than as set forth in this Section, Buyer has no right to return Products to Seller if and unless such a return is permitted by Seller’s then-current return policy, a copy of which will be provided upon Buyer’s request. All returns must be conducted in accordance with such return policy, and may be subject to restocking and other fees and charges.

8. Price.

(a) Buyer shall purchase the Products from Seller at the prices set forth in the Sales Confirmation or, if no such price is listed in the Sales Confirmation, Seller's published price list in force as of the date that Seller accepts Buyer's purchase order.

(b) All prices listed and payments required to be made by Buyer to Seller under this Agreement are exclusive of any applicable federal, state and local taxes, fees, duties and charges. Any present or future sales, revenue, excise, withholding or other tax, fees, duties or charge of any nature, imposed by any public authority, applicable to the purchase of Products hereunder (other than value added taxes or taxes based on Seller's net income), shall be paid by Buyer unless an exemption therefrom is obtained and will hold harmless Seller from the payment of the same.

9. Payment Terms.

(a) Payment terms are net 30 days after the date of the invoice. All payments shall be made in U.S. dollars to such account(s) as designated by Seller from time to time. If Buyer has not paid any invoice when due, Seller may withhold shipment of any and all other Products until such past-due invoice has been paid in full.

(b) Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for five days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Limited Warranty.

(a) The warranty, including the applicable warranty period and exclusive remedies, provided by Seller for a Product, if any, is solely as set forth on the packaging or packaging inserts for such Product. Any such warranties made by Seller are solely for the benefit of Buyer. Nothing in this Agreement obligates Seller to accept Product returns directly from Buyer's customers or otherwise provide warranty or other services to any customer of Buyer.

(b) **EXCEPT AS SET FORTH IN SECTION 10(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("Third-Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by any warranty from Seller. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF**

**MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) Seller shall not be liable for a breach of a warranty for a Product if: (i) Buyer makes any further use of such Products becoming aware of the non-conformity; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.

(e) Subject to Section above, with respect to any Product that does not comply with its warranty, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Products to Seller. **THESE REMEDIES SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY REFERENCED IN SECTION 10(A).**

11. Indemnification by Buyer. Buyer agrees to indemnify and hold Seller harmless from all claims directly or indirectly arising from Buyer's misrepresentations of the quality, use or purpose of the Products; Buyer's negligence or other more culpable act; or Buyer's violation of any law, rule or regulation or breach of this Agreement.

12. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCT(S) THAT ARE THE CAUSE OF CLAIM SOLD UNDER THE APPLICABLE SALES CONFIRMATION.**

Notwithstanding anything to the contrary, Seller's limitations of liability shall not apply to, affect, or limit: (i) any of Seller's duties to indemnify Buyer in accordance with this agreement and/or (ii) any third party claims.

**(b) THESE LIMITATIONS WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF A LIMITED OR EXCLUSIVE REMEDY SET FORTH HEREIN.**

13. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances, including with relation to the handling, transport, storage, marketing, sale and disposition of any Product, and with the design, manufacturing, testing, marketing and sale any other product that incorporates any Product. Buyer agrees to use the Products only for lawful approved purposes in accordance with accepted medical practices. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any Governmental Authority imposes antidumping or countervailing duties or any other penalties on Products.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of Seller, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. Seller 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.

17. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Independent Contractors. In connection with this Agreement, each party is an independent contractor. This Agreement does not, and will not be construed to, create an employer-employee, agency, joint venture or partnership relationship between the parties. Neither party has any authority to act for or to bind the other party in any way.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. This Agreement is governed by and will be interpreted under the internal laws of the State of Illinois, without regard to its conflicts of law provisions.

22. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Interpretation. In this Agreement: (a) the word "person(s)" includes any legal entity(ies) as well as natural person(s); (b) the words "including," "include" and "includes" each are deemed to be followed by the term "without limitation;" and (c) the term "or" is not exclusive. All references to \$ or dollars are references to U.S. dollars. This Agreement is the joint drafting product of the parties and each provision has been subject to negotiation and agreement and will not be construed for or against any party as drafter thereof. The headings



appearing at the beginning of sections contained in this Agreement have been inserted for identification and reference purposes only and may not be used to determine the construction or interpretation of this Agreement.

25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Limitation of Liability, Compliance with Laws, Confidential Information Governing Law, Dispute Resolution and Survival.

# Millennium Surgical Corp.

40 Monument Rd, #205, Bala Cynwyd, PA 19004 • 610-771-0850

TEL: (800) 600-0428 FAX: (800) 600-0429

[www.surgicalinstruments.com](http://www.surgicalinstruments.com)

# Quote 304027

Approved by: \_\_\_\_\_

Page: 1 of 1

Print Date: September 19,

Printed By: Chris M. Hicks

**BILL TO**

KERN MEDICAL  
1700 MOUNT VERNON AVE  
Attn: OR Materials Management  
BAKERSFIELD , CA 93306  
  
Tel: 661-326-2000 M Fax:

**SHIP TO**

KERN MEDICAL  
1700 MOUNT VERNON AVE  
Attn: OR Materials Management  
BAKERSFIELD , CA 93306 USA  
  
Ship: FED 3 - FedX 2D

Quote Date	Account Number	Account Manager	Purchase Order	Ordered By
09/19/22	11267	Chris M. Hicks		Theresa Granados

Item	Your Number	Millennium Part #	Description	Qty Ord	Price Each	Extended
1		72-9830FS	Right Angle Fiber-Optic Retr. 1" W x 3.25" L Notes: w/ suction. Britetrac Retractor w/ Blue Handle	1	\$760.00	\$760.00
2		72-9833FS	Right Angle Fiber-Optic Retr. 1" W x 5" L Notes: w/ Suction Britetrac Retractor w/ Blue Handle	1	\$760.00	\$760.00
3		72-9837FS	Right Angle Fiber-Optic Retr. 1" W x 8" L Notes: W/Suction Britetrac Retractor w/ Blue Handle	1	\$760.00	\$760.00
4		72-9840FS-T	Rt Angle Tip w/ teeth Fiberoptic 1"x 3.25" Notes: w/suction	1	\$760.00	\$760.00
5		72-9842FS-T	Rt Angle Tip w/ teeth Fiberoptic 1" x 5" Notes: w/ suction Blue Silicone Handle	1	\$760.00	\$760.00
6		72-9841FS-T	Rt Angle Tip w/ teeth Fiberoptic 1.5"x 3.25" Notes: w/suction	1	\$760.00	\$760.00

Special Instructions

Handling	Tax	Discount	Total Amount
\$0.00	\$0.00	\$0.00	\$4,560.00

Quote is valid for 30 days. Quote does not include additional charges such as shipping, handling or taxes. Any returns for eligible products must be contained in its original packaging.

# Payment Terms & Returns

## TERMS

- //////// Net 30 days from invoice date.
- //////// Credit Card payments incur a 3% surcharge.
- //////// PayPal payments incur a 4% surcharge.
- //////// Past due balances subject to finance charge of 1.25% per month.

## SHIPPING

Pre-paid and added to invoice.

## RETURN POLICY

Please distribute to any staff members who have purchasing authority. We make every effort to serve our customers fairly. Please follow this policy if returns are required.

## RETURN PROCEDURE

Authorization must be obtained prior to the return of any merchandise. To obtain a return goods authorization number (RGA), please have the following when you contact us.

1. Customer name or customer number as it appears on the original invoice.
2. Your Purchase Order number or Millennium's Invoice number.
3. Item numbers and quantities of items to be returned.
4. Reason for your request to return item.

The RGA number and contact name of the person who issued the RGA number must accompany all returned products.

All products must be shipped to our office unless you are instructed otherwise. Please send to the address below.

Care must be taken when packaging and shipping a product for return. If possible please use the original shipping containers and protective packing materials. Products returned to Millennium in good condition within 30 days will be given full credit. Please see the exclusions below.

Products received in our office from 31-45 days of invoice date are subject to a 20% restocking charge.

Products received in our office from 46-60 days of invoice date are subject to a 40% restocking charge.

Product will not be accepted for return and will not be issued any credit after 60 days from invoice date.

Shipping charges will still be due in full for any returns after 30 days of invoice date or for expedited shipments.

Products will be inspected upon return. Issuance of credit will be given within 10 days of date of return except any returned scopes which will be credited only after the scope passes an inspection by the manufacturer.

The following items may be excluded from this policy: Sterile products, products with some items missing, diamond knives, I/A Tips, Bipolar Forceps, Bimanual Handpieces, K-Wire and Steinman Pins, equipment such as light sources, headlights, operation room furniture, any custom instrument or standard instrument customized in any way, and any instrument etched with customer information. Some products, like sterilization trays, will incur a restocking fee even when returned within 30 days.

Any products distributed by Millennium with the original manufacturer's name will follow the original manufacturer's return policy and procedures.

Used or refurbished equipment are not covered under this return policy. Policy guidelines will be included with the quote for such products. If not stated at time of order, please request a copy of our policy for refurbished equipment.

Please remit payment to this address:



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

**Subject:** Proposed Amendment No. 2 to Output Services Group, Inc. (including its subsidiaries and other affiliates, formally known as Diversified Data Processing and Consulting, Inc.)

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

**Summary:**

Kern Medical requests that your Board approve the proposed Amendment No. 2 (the “Amendment”), effective as of **December 14, 2022**, (“Amendment Effective Date”) which amends the Agreement for Personal/Professional Services (Agt.# 05514) between Output Services Group, Inc. (including its subsidiaries and other affiliates, formally known as Diversified Data Processing and Consulting, Inc. “Contractor”), and Kern County Hospital Authority (“Customer”) effective May 11, 2015 (the “Agreement”). Output Services Group, Inc. is the current payment solution vendor used by Kern Medical for processing patient payments in-person, via the Hospital's website, and via our early out and bad debt vendors. This Amendment extends the term so that it is current and changes the auto-renewal term from one (1) year to six (6) months in order to prepare for transition to a new patient payment vendor (Flywire) that will integrate with Oracle/Cerner and will offer digital patient payment options not currently available through Output Services Group, Inc.

<b>Agreement</b>	<b>Term</b>	<b>Payment for Services</b>	<b>Variance</b>
Agreement #05514	5/11/15 – 5/10/19	Approx. \$20,000 per year	
Amd No. 1 #11916			
Proposed Amd No. 2	5/11/19 – 5/10/23 5/11/23 – 8/10/23	Approx. \$21,000 per year Approx. \$11,000 per 6-month extension term	\$1,000

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the length of the initial term and the auto-renewal of the term.

Therefore, it is recommended that your Board approve the Amendment No. 2 to the Agreement for Personal/Professional Services with Output Services Group, Inc. (including its subsidiaries and other affiliates, formally known as Diversified Data Processing and Consulting, Inc.) to make the term of the agreement current and change the Renewal term from one (1) year to six (6) months, with no changes to the current fees, and authorize the Chairman to sign. Approval will avoid disruption with the current patient payment system, and allow Kern Medical the necessary time to transition to a new patient payment vendor (Flywire).

**AMENDMENT NO. 2 TO THE KERN COUNTY PERSONAL/PROFESSIONAL SERVICES AGREEMENT**

This Amendment No. 2 (the "Amendment") is effective as of **December 14, 2022**, ("Amendment Effective Date") and amends the Personal/Professional Services Agreement (the "Agreement") between Output Services Group, Inc. (including its subsidiaries and other affiliates, formally known as Diversified Data Processing and Consulting, Inc. "Contractor"), and Kern County Hospital Authority ("Customer") effective May 11, 2015.

**WHEREAS**, Customer and Contractor desire to amend their Agreement in the manner set forth herein;

**WHEREAS**, capitalized terms used but not otherwise defined in this amendment (the "Amendment") shall have the same meanings respectively ascribed to them in the Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements made and contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Section III. TERM AND TERMINATION shall be deleted in its entirety and replaced by the following:

"III. TERM AND TERMINATION. The Services shall commence on the date specified in Schedule A (May 11, 2015) and terminate eight (8) years later unless a party provides written notice of termination 30 days prior to the anniversary date. Upon such termination, the only sum or sums to which the Contractor shall be entitled are the fees due for Services performed to the date of termination and any custom materials ordered at Customer's request. At the end of the initial term, the Agreement shall automatically renew for successive six (6) month terms ("Renewal Term")."

2. All other terms of the Agreement, including but not limited to the current pricing, shall remain unchanged by this Amendment No. 2.

**IN WITNESS WHEREOF**, the parties have executed this Amendment No. 2 as of the Amendment Effective Date by their duly authorized representatives.

Output Services Group

Kern County Hospital Authority

By: Joseph Tetstone

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

Name: Joseph Tetstone

Name: Russell Bigler

Title: EVP Client Success

Title: Chairman, Board of Governors

Date: December 05, 2022 17:26 ET

Date: December 14, 2022

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By: [Signature]  
Legal Services Department



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

December 14, 2022

**Subject:** Proposed Report of Independent Auditors from Moss-Adams, LLP

**Recommended Action:** Receive and File

**Summary:**

Kern Medical requests your Board receive and file the Report of Independent Auditors from Moss-Adams, LLP, for the audit of the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees pursuant to Kern County Hospital Authority Agreement No. 004-2021.

The scope of the audit includes the audits of Kern County Hospital Authority Deferred Compensation Plan for Physician Employees financial statements, which comprise the statements of net assets as of December 31, 2020, 2019, 2018, 2017 and 2016 and the related statements of changes in net assets, and the related notes to the financial statements.



COMMUNICATIONS WITH THOSE  
CHARGED WITH GOVERNANCE AND  
COMMUNICATION OF INTERNAL  
CONTROL RELATED MATTERS

**KERN COUNTY PENSION PLAN FOR  
PHYSICIAN EMPLOYEES**

December 31, 2020, 2019, 2018, 2017, and 2016

## **Communications with Those Charged with Governance**

The Board of Governors  
Kern County Hospital Authority

We have audited the financial statements of Kern County Pension Plan for Physician Employees (the “Plan”) as of December 31, 2020, 2019, 2018, 2017, and 2016, and for the years ended December 31, 2020, 2019, 2018, 2017, and 2016. We have issued our report on the financial statements dated November 10, 2022.

### **Our Responsibility Under Auditing Standards Generally Accepted in the United States of America**

As stated in our engagement letter dated January 20, 2021, we are responsible for forming and expressing an opinion about whether the financial statements that have been prepared by management, with your oversight, are prepared, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). Our audit of the financial statements does not relieve you or management of your responsibilities.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS). As part of an audit conducted in accordance with U.S. GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit.

An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan’s internal control over financial reporting. Accordingly, we considered the Plan’s internal control solely for the purposes of determining our audit procedures and not to provide assurance concerning such internal control.

We are also responsible for communicating significant matters related to the financial statement audit that, in our professional judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

### **Planned Scope and Timing of the Audit**

We performed the audits according to the planned scope and timing previously communicated to you in the engagement letter dated January 20, 2021.



## **Significant Audit Findings**

### ***Qualitative Aspects of Accounting Practices***

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Plan are described in Note 2 to the financial statements.

No new accounting policies were adopted and there were no changes in the application of existing accounting policies during the years 2020, 2019, 2018, 2017, and 2016. We noted no transactions entered into by the Plan during these years for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transactions occurred.

### ***Significant Accounting Estimates***

Accounting estimates may be an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates may be particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

We did not note any significant accounting estimates in the financial statements. Significant accounting estimates are not commonly inherent in a defined contribution plan with investments that are readily marketable.

### ***Financial Statement Disclosures***

The disclosures in the financial statements are consistent, clear, and understandable. Certain financial statement disclosures may be particularly sensitive because of their significance to financial statement users. We did not note any disclosures in the financial statements that we consider sensitive to potential users.

### ***Significant Unusual Transactions***

We encountered no significant unusual transactions during our audits of the Plan's financial statements.

### ***Significant Difficulties Encountered in Performing the Audit***

Professional standards require us to inform you of any significant difficulties encountered in performing the audits. No significant difficulties were encountered during our audits of the Plan's financial statements.

### ***Disagreements with Management***

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audits.

### ***Circumstances that Affect the Form and Content of the Auditor's Report***

There may be circumstances in which we would consider it necessary to include additional information in the auditor's report in accordance with U.S. GAAS. There were no circumstances that affected the form and content of the auditor's report.

### ***Corrected and Uncorrected Misstatements***

We did not note any corrected or uncorrected misstatements in the course of the engagement.

### ***Management Representations***

We have requested certain representations from management that are included in the management representation letter dated November 10, 2022.

### ***Management Consultation with Other Independent Accountants***

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the Plan’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### ***Other Significant Audit Findings or Issues***

We are required to communicate to you other findings or issues arising from the audit that are, in our professional judgment, significant and relevant to your oversight of the financial reporting process. There are no items to report.

## **Communication of Internal Control Related Matters**

Our responsibility under auditing standards with respect to internal control is described above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Plan’s financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control was for the limited purpose described above and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The comments below include references to the plan sponsor and the Plan’s management. The plan sponsor is defined as the employer responsible for the establishment and maintenance of the Plan; Plan’s management are the personnel at the employer who have fiduciary responsibility for the Plan.

During our engagement, the following matters came to our attention that we believe are control deficiencies; however, they do not rise to the level of a significant deficiency or material weakness:

- Based on our procedures, it was noted that it takes the Plan Administration to remit contributions to the recordkeeper generally within five business days after the pay date. However, there were several instances during the years audited that exceeded the five-day remittance period, resulting in potential participant lost earnings. Refer to Appendix A.

- Management does not evidence its review of the third-party Service Organization Control (SOC) 1 reports.
- No Pension Plan Committee meeting minutes are available for the plan years 2019 and 2018.

This communication is intended solely for the information and use of management, Hospital Authority, and others within the organization and is not intended to be, and should not be, used by anyone other than these specified parties.

We were pleased to serve and be associated with the Plan as the independent auditors for the years 2020, 2019, 2018, 2017, and 2016. We provide the above information to assist you in performing your oversight responsibilities.

A handwritten signature in cursive script that reads "Moss Adams LLP".

Los Angeles, California  
November 10, 2022

**Appendix A**  
**Late Remittances 2016 – 2020**

Year	Pay Period	Pay Date	Remittance Date	Business Days Delay	Employee Contributions	Employer Contributions		
2016	2016-18	9/27/2016	9/30/2016	5	\$ 99,173	\$ 49,135		
2016	2016-26	1/17/2017	2/6/2017	14	104,634	51,827		
2017	2017-01	1/31/2017	3/8/2017	26	113,942	51,827		
2017	2017-02	2/14/2017	4/6/2017	37	108,096	51,827		
2017	2017-03	2/28/2017	4/6/2017	27	104,115	50,731		
2017	2017-04	3/14/2017	4/6/2017	17	104,115	50,731		
2017	2017-05	3/28/2017	4/6/2017	7	104,115	50,731		
2017	2017-06*	4/11/2017	5/9/2017	20	102,711	50,058		
2017	2017-07	4/25/2017	5/9/2017	10	102,711	50,058		
2017	2017-10	6/6/2017	6/13/2017	5	106,923	52,077		
2017	2017-12	7/4/2017	7/19/2017	11	104,192	51,039		
2017	2017-14	8/1/2017	8/8/2017	7	108,557	53,673		
2017	2017-17	9/12/2017	9/26/2017	12	107,153	53,000		
2017	2017-20	10/24/2017	10/27/2017	5	109,961	54,346		
2017	2017-21	11/7/2017	11/21/2017	10	111,365	55,019		
2017	2017-22	11/21/2017	11/28/2017	5	111,365	55,019		
2017	2017-23	12/5/2017	1/16/2018	30	111,365	55,019		
2017	2017-24	12/19/2017	1/16/2018	20	111,365	55,019		
2017	2017-25	1/2/2018	1/30/2018	20	112,961	54,346		
2017	2017-26	1/16/2018	1/26/2018	8	112,961	54,346		
2018	2018-01	1/30/2018	2/13/2018	10	112,961	54,346		
2018	2018-02	2/13/2018	2/21/2018	6	112,961	54,346		
2018	2018-04	3/13/2018	3/27/2018	10	111,519	53,673		
2018	2018-05	3/27/2018	4/6/2018	8	111,519	53,673		
2018	2018-07	4/24/2018	5/3/2018	7	115,769	55,385		
2018	2018-08	5/8/2018	5/21/2018	9	115,769	55,385		
2018	2018-09	5/22/2018	6/7/2018	12	115,769	55,385		
2018	2018-10	6/5/2018	6/14/2018	7	115,769	55,385		
2018	2018-14	7/31/2018	8/3/2018	5	123,057	59,058		
2018	2018-15	8/14/2018	8/29/2018	13	123,057	59,058		
2018	2018-17	9/11/2018	9/27/2018	14	127,384	61,077		
2018	2018-25	12/31/2018	1/7/2019	7	26,269	13,346		
2019	2019-03	2/26/2019	3/5/2019	5	133,576	61,808		
2019	2019-05	3/26/2019	4/5/2019	8	132,172	61,443		
2019	2019-06	4/9/2019	4/19/2019	8	132,172	61,443		
2019	2019-07	4/23/2019	4/30/2019	5	132,172	61,443		
2019	2019-11	6/18/2019	6/28/2019	8	124,845	58,385		
2019	2019-12	7/2/2019	7/18/2019	12	123,365	57,712		
2019	2019-15	8/13/2019	8/19/2019	6	130,845	61,385		
2019	2019-17	9/10/2019	9/16/2019	6	132,326	62,058		
2019	2019-18	9/24/2019	10/7/2019	11	133,807	62,731		
2019	2019-19	10/8/2019	10/14/2019	6	133,807	62,731		
2019	2019-21	11/5/2019	11/8/2019	5	132,326	62,058		
2019	2019-23	12/3/2019	12/12/2019	7	132,403	62,366		
2020	2020-03	2/25/2020	3/9/2020	9	135,903	62,673		
2020	2020-09	5/19/2020	5/29/2020	8	135,903	62,673		
2020	2020-11	6/16/2020	6/23/2020	5	135,826	62,366		
2020	2020-15	8/11/2020	8/14/2020	5	144,864	66,096		
2020	2020-17	9/8/2020	9/11/2020	5	146,384	67,077		
2020	2020-18	9/22/2020	9/25/2020	5	143,345	65,731		
2020	2020-19	10/6/2020	10/9/2020	5	143,345	65,731		
2020	2020-20	10/20/2020	10/30/2020	10	141,826	65,058		
2020	2020-21	11/3/2020	11/6/2020	5	143,345	65,731		
2020	2020-25	12/29/2020	1/8/2021	8	143,384	67,077		
2020	2020-26	1/12/2021	1/20/2021	6	147,037	66,039		
<b>Total</b>					<b>\$</b>	<b>6,598,558</b>	<b>\$</b>	<b>3,131,763</b>



REPORT OF INDEPENDENT AUDITORS  
AND FINANCIAL STATEMENTS

**KERN COUNTY PENSION PLAN FOR  
PHYSICIAN EMPLOYEES**

December 31, 2017 and 2016

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## **Report of Independent Auditors**

The Board of Governors  
Kern County Hospital Authority

### **Report on the Financial Statements**

We have audited the accompanying financial statements of Kern County Pension Plan for Physician Employees (the "Plan"), which comprise the statements of net assets available for benefits as of December 31, 2017 and 2016, and the related statements of changes in net assets available for benefits for the years then ended, and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on conducting the audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Plan's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2017 and 2016, and the changes in net assets available for benefits for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

*Moss Adams LLP*

Los Angeles, California  
November 10, 2022



**Kern County Pension Plan for Physician Employees**  
**Statements of Net Assets Available for Benefits**

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	December 31,	
	2017	2016
<b>ASSETS</b>		
Cash and cash equivalents	\$ 1,298,485	\$ 834,103
Investments, at fair value		
Registered investment companies	59,665,338	47,893,620
Group annuity contracts	13,973,847	13,336,977
Pooled separate accounts	1,976,866	1,872,328
Equities	-	1,118,102
Corporate bonds	-	128,101
Government bonds	-	10,698
	75,616,051	64,359,826
Receivables		
Employer contributions	218,732	103,654
Employee contributions	448,652	209,269
Notes receivable from participants	-	25,282
	667,384	338,205
Accrued revenue	662	1,978
	662	1,978
<b>NET ASSETS AVAILABLE FOR BENEFITS</b>	<b>\$ 77,582,582</b>	<b>\$ 65,534,112</b>

## Kern County Pension Plan for Physician Employees

### Statements of Changes in Assets Available for Benefits

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	Years Ended December 31,	
	2017	2016
ADDITIONS TO NET ASSETS ATTRIBUTED TO		
Investment income		
Net appreciation in fair value of investments	\$ 8,541,324	\$ 2,549,883
Interest and dividends	551,973	589,101
Total investment income	\$ 9,093,297	\$ 3,138,984
CONTRIBUTIONS		
Employer contributions	1,421,007	1,193,373
Employee contributions	2,805,679	2,498,165
Total contributions	4,226,686	3,691,538
Total additions	13,319,983	6,830,522
DEDUCTIONS FROM NET ASSETS ATTRIBUTED TO		
Benefits paid to participants	1,267,794	2,017,540
Administrative expenses	3,719	3,955
Total deductions	1,271,513	2,021,495
Net increase	12,048,470	4,809,027
NET ASSETS AVAILABLE FOR BENEFITS		
Beginning of year	65,534,112	60,725,085
End of year	\$ 77,582,582	\$ 65,534,112

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 1 – Description of the Plan

The following description of the Kern County Pension Plan for Physician Employees (the “Plan”) provides only general information. Participants should refer to the Plan Agreement as restated effective January 1, 2003, by the “Seventh Amendment and Restatement of the Plan,” and additional Amendments 8, 9, and 10 for a more complete description of the Plan’s provisions. Changes to the organization and administration of the Plan, as well as a description of the new pension committee were included in the Plan Restatement effective January 1, 2013.

**General** – The Plan is a defined contribution plan funded exclusively during fiscal years ended December 31, 2017 and 2016, through a combination of mandatory contributions by the County and the Kern Medical Center (KMC) physician employees through payroll withholdings and earnings on such contributions.

On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that added Chapter 2.170 to Title 2 of the Ordinance Code which created a Hospital Authority. Effective July 1, 2016, the Hospital Authority became the plan sponsor and administrator upon ownership transferred by Kern Medical, a County owned and operated public hospital. The Plan is tax-qualified, fully funded and available to the majority of physicians employed by the County for or through KMC. As a governmental plan, it is not subject to top-heavy rules within the meaning of Section 414 of the Internal Revenue Code (IRC).

### Contributions

*Full-time core physicians* – The County contributes the sum of \$17,500 for each full-time core physician for each complete plan year of service. A core physician is defined as an employee pursuant to an Agreement for Professional Services under which the employee provides professional services to KMC.

The 2017 and 2016 mandatory employee contribution for a full-time core physician is based on their total compensation in accordance with the following Annual Tier Structure:

Tier	Compensation	Contribution
1	\$1 – \$115,000	\$12,500
2	\$115,001 – \$132,000	\$18,500
3	\$132,001 – \$190,000	\$22,500
4	\$190,001 – Above	Internal Revenue Code (IRC) Section 415 limit less County contribution

*Part-time core physicians* – The County contributes the sum of \$8,000 for each part-time core physician for each complete plan year of service. The mandatory employee contribution for each part-time core physician is \$2,000 for each complete plan year.

**Participant accounts** – Each participant is credited with his or her contributions, contributions by the County of Kern, allocated earnings of the plan assets, and charged with an allocation of administrative expenses.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 1 – Description of the Plan (continued)

Assets maintained in Fund A held by Wells Fargo are increased or decreased for changes in fair market value and plan earnings as determined on the last day of each plan quarter, allocated to each participant proportionately in accordance with their balance as of the last day of the preceding plan quarter. To the extent a participant borrows a portion of his vested interest; such account is treated as a direct investment account for the purpose of allocation of income, expense, and gain or loss.

Effective January 1, 2003, all additional contributions are credited to Fund B held by the Teachers' Insurance and Annuity Association of America – College Retirement Equities Fund (TIAA) in individual self-directed accounts pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. Income, expense and gain or loss is credited to each participant's account pursuant to the terms of the participant's contract. Participant loan balances are recorded as separate investments by TIAA.

**Vesting** – Each participant is fully vested in the full amount credited to his or her account.

**Notes receivable from participants** – Participants may borrow against their vested portion in the Wells Fargo funds in accordance with the Seventh Amendment and Restatement of the Plan. Participants may borrow against the assets of the TIAA funds in accordance with the Restatement of the Plan effective January 1, 2013. Participant loans must be secured by the portion of the participant's account balance that is equal to the amount of the loan; provided, however, that no more than 50% of the account balance, as determined immediately after the origination of each loan, may be used as security for the loan. Loans must be repaid within five years (10 years in the case of a loan for the purchase of the participant's principal residence) from the date of the loan. Participant loans shall not exceed the lesser of \$50,000 or one-half of the participant's vested account balance under the Plan and all other qualified plans maintained by the Hospital Authority or an Affiliate. As of December 31, 2016, the interest rate on the outstanding loan was 7.38% maturing on January 1, 2017. There were no outstanding loans as of December 31, 2017.

**Administration** – The County, in its capacity as the plan sponsor and administrator, has appointed an Investment Advisor and Trustee to direct the investment of money in the Wells Fargo funds. Each TIAA participant is solely responsible for the results of his or her decisions with respect to the investment of such participant's account balance in the TIAA funds pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. The Wells Fargo and the TIAA participants direct the investments of their contributions into various investment options offered by the Plan.

**Payment of benefits** – The participant's account balance in the Wells Fargo funds shall be distributed in a lump-sum payment or direct rollover within an administratively reasonable time after the date of the participant's termination of employment, retirement, reaching age 70.5, death, or legal incapacity or disability in accordance with Code Section 401 of the IRC. The participant's account balance shall be determined as of the most recent valuation date coinciding with or immediately preceding the date of distribution. The participant's account balance in the TIAA funds shall be distributed according to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity and in accordance with Code Section 401 of the IRC.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### **Note 2 – Summary of Accounting Policies**

**Basis of accounting** – The financial statements of the Plan have been prepared on the accrual basis of accounting. The plan year is the twelve consecutive month period beginning January 1 and ending December 31. Plan records are maintained on that basis.

**Estimates** – The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires the plan administrator to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results may differ from those estimates.

**Investment valuation and income recognition** – If available, quoted market prices are used to value investments. The amounts shown in Note 3 for securities that have no quoted market price represent estimated fair value. Many factors are considered in arriving at fair value. See Note 3 for discussion of fair value measurements.

Purchases and sales of securities are recorded on a trade-date basis. Net appreciation includes both the Plan's realized gains and losses and unrealized appreciation and depreciation on investments bought and sold as well as held during the year. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

**Payment of benefits** – Benefits are recorded when paid.

**Notes receivable from participants** - Notes receivable from participants are measured at amortized cost, which represents unpaid principal balance plus accrued but unpaid interest. Delinquent notes receivable from participants are reclassified as distributions upon the occurrence of the distributable event, based on the terms of the Plan Document.

**Expenses** – Certain expenses of maintaining the Plan are paid directly by KMC and are excluded from these financial statements. Administrative expenses paid by the Plan may include notes receivable and distribution fees charged to participants' accounts and administrative plan fees. Investment-related expenses are included in net appreciation in fair value of investments.

**Subsequent events** – Subsequent events are events or transactions that occur after the statement of net assets available for benefits date but before the financial statements are available to be issued. The Plan recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statement of net assets available for benefits, including the estimates inherent in the process of preparing the financial statements. The Plan's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the statement of net assets available for benefits but arose after the statement of net assets available for benefits date and before the financial statements are available to be issued.

Subsequent events have been evaluated through November 10, 2022, which is the date the financial statements were issued.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 3 – Fair Value Measurements

The framework for measuring fair value provides a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy are described as follows:

**Level 1** – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities the Plan has the ability to access.

**Level 2** – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation techniques used for assets measured at fair value. There have been no changes in the techniques used at December 31, 2017 and 2016.

*Registered investment companies and the pooled separate accounts* – Valued using the market quotations or prices obtained from independent pricing services. Shares are valued at quoted market prices which represent the net asset value practical expedient (NAV practical expedient) of shares held by the Plan at year end.

*Equities* – Valued at the closing price reported on the active market on which the individual securities are traded.

*Bonds* – Valued using pricing models maximizing the use of observable inputs for similar securities, which includes basing value on yields currently available on comparable securities of issuers with similar credit ratings. When quoted prices are not available for identical or similar bonds, those corporate bonds are valued under a discounted cash flow approach that maximizes observable inputs, such as current yields or similar instruments, but includes adjustments for certain risks that may not be observable, such as credit and liquidity risks.

## Kern County Pension Plan for Physician Employees Notes to Financial Statements

### Note 3 – Fair Value Measurements (continued)

*Guaranteed annuity contracts* – The Plan has investments in non-benefit responsive TIAA Traditional Annuity Contracts, which are presented at fair value on the statements of net assets available for benefits. Transactions involving the purchases and sales of individual TIAA Traditional Annuity Contracts are not observable in a public marketplace, but contract value is a good approximation of fair value as supported by the fact that new contributions represent current transactions between willing buyers and sellers as prescribed in the relevant U.S. GAAP guidance. As these transactions continue to occur with continued participant contributions at current stated contract values, the market-observable presumption is that the contract value of current funding represents a good approximation of fair value based on the willingness of the participant to continue to contribute. For each contribution, TIAA continues to record a contractual liability for the current contribution and does not consider such liability to have any embedded gain or loss.

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables disclose the fair value hierarchy of the Plan's assets by level as of December 31, 2017 and 2016:

Fair Value Measurement at December 31, 2017				
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 59,665,338	\$ -	\$ -	\$ 59,665,338
TIAA real estate pooled separate account	1,976,866	-	-	1,976,866
Group annuity contracts	-	-	13,973,847	13,973,847
	<b>\$ 61,642,204</b>	<b>\$ -</b>	<b>\$ 13,973,847</b>	<b>\$ 75,616,051</b>

Fair Value Measurement at December 31, 2016				
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 47,893,620	\$ -	\$ -	\$ 47,893,620
TIAA real estate pooled separate account	1,872,328	-	-	1,872,328
Equities	1,118,102	-	-	1,118,102
Government bonds	10,698	-	-	10,698
Corporate bonds	-	128,101	-	128,101
Group annuity contracts	-	-	13,336,977	13,336,977
	<b>\$ 50,894,748</b>	<b>\$ 128,101</b>	<b>\$ 13,336,977</b>	<b>\$ 64,359,826</b>

## Kern County Pension Plan for Physician Employees

### Notes to Financial Statements

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#### Note 3 – Fair Value Measurements (continued)

The following table summarizes certain changes in the fair value of the Plan's Level 3 investments for the years ended December 31, 2017 and 2016:

	Traditional Non-Benefit Responsive Annuity
Beginning balance as of January 1, 2016	\$ 12,885,218
Interest income included in changes in net assets	556,499
Purchases	598,163
Sales	<u>(702,903)</u>
Ending balance as of December 31, 2016	<u>\$ 13,336,977</u>
Beginning balance as of January 1, 2017	\$ 13,336,977
Interest income included in changes in net assets	534,610
Purchases	473,808
Sales	<u>(371,548)</u>
Ending balance as of December 31, 2017	<u>\$ 13,973,847</u>

The following table presents the Plan's Level 3 investments, the valuation techniques used to measure the fair value of those instruments as of December 31, 2017 and 2016, and the significant unobservable inputs and ranges of values for those inputs:

Name	Fair Value 12/31/17	Fair Value 12/31/16	Valuation technique	Significant unobservable inputs	Interest Rate
TIAA Traditional Annuity: Non-Benefit Responsive	\$ 13,973,847	\$ 13,336,977	Discounted cash flow	Risk-adjusted discount rate applied	2017: RA - 3.25% - 4.50% 2016: RA - 3.50% - 5.00%

The availability of observable market data is monitored to assess the appropriate classification of financial instruments within the fair value hierarchy. Changes in economic conditions or model-based valuation techniques may require the transfer of financial instruments from one fair value level to another.

The plan administrator evaluates the significance of transfers between levels based upon the nature of the financial instrument and size of the transfer relative to total net assets available for benefits.

#### Note 4 – Plan Termination

Although it has not expressed any intent to do so, the KMC has the right under the Plan to terminate the Plan and discontinue contributions at any time, subject to the payment to the trustee of all amounts due under existing employment contracts. In the event of plan termination, after payment of any expenses properly chargeable against the Plan, the value of the accounts credited to each participant as of the date of such termination will be distributed to such participants in cash or kind.



## **Kern County Pension Plan for Physician Employees**

### **Notes to Financial Statements**

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#### **Note 5 – Risks and Uncertainties**

The Plan invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participant's account balances and the amounts reported in the statement of net assets available for benefits.



REPORT OF INDEPENDENT AUDITORS  
AND FINANCIAL STATEMENTS

**KERN COUNTY PENSION PLAN FOR  
PHYSICIAN EMPLOYEES**

December 31, 2018 and 2017



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## **Report of Independent Auditors**

The Board of Governors  
Kern County Hospital Authority

### **Report on the Financial Statements**

We have audited the accompanying financial statements of Kern County Pension Plan for Physician Employees (the "Plan"), which comprise the statements of net assets available for benefits as of December 31, 2018 and 2017, and the related statements of changes in net assets available for benefits for the years then ended, and the related notes to the financial statements.

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### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on conducting the audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Plan's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2018 and 2017, and the changes in net assets available for benefits for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

*Moss Adams LLP*

Los Angeles, California  
November 10, 2022

**Kern County Pension Plan for Physician Employees**  
**Statements of Net Assets Available for Benefits**

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ASSETS	December 31,	
	2018	2017
ASSETS		
Cash and cash equivalents	\$ 215,774	\$ 1,298,485
Investments, at fair value		
Registered investment companies	59,252,473	59,665,338
Group annuity contracts	15,626,169	13,973,847
Pooled separate accounts	1,926,904	1,976,866
Total investments at fair value	76,805,546	75,616,051
Receivables		
Employer contributions	73,135	218,732
Employee contributions	155,403	448,652
Total receivables	228,538	667,384
Accrued revenue	-	662
NET ASSETS AVAILABLE FOR BENEFITS	\$ 77,249,858	\$ 77,582,582

## Kern County Pension Plan for Physician Employees

### Statements of Changes in Net Assets Available for Benefits

---

	Years Ended December 31,	
	2018	2017
<b>ADDITIONS TO NET POSITION ATTRIBUTED TO</b>		
Investment income		
Net appreciation (depreciation) in fair value of investments and cash equivalents	\$ (3,242,531)	\$ 8,541,324
Interest and dividends	602,653	551,973
Other	-	-
	<u>(2,639,878)</u>	<u>9,093,297</u>
<b>CONTRIBUTIONS</b>		
Employer contributions	1,460,756	1,421,007
Employee contributions	3,055,464	2,805,679
	<u>4,516,220</u>	<u>4,226,686</u>
Total contributions		
	<u>1,876,342</u>	<u>13,319,983</u>
<b>DEDUCTIONS FROM NET POSITION ATTRIBUTED TO</b>		
Benefits paid to participants	2,208,938	1,243,446
Administrative expenses	128	3,719
	<u>2,209,066</u>	<u>1,271,513</u>
Total deductions		
	<u>(332,724)</u>	<u>12,048,470</u>
Net increase (decrease)		
<b>NET POSITION AVAILABLE FOR BENEFITS</b>		
Beginning of year	77,582,582	65,534,112
	<u>77,582,582</u>	<u>65,534,112</u>
End of year	<u>\$ 77,249,858</u>	<u>\$ 77,582,582</u>

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 1 – Description of the Plan

The following description of the Kern County Pension Plan for Physician Employees (the “Plan”) provides only general information. Participants should refer to the Plan Agreement as restated effective January 1, 2003, by the “Seventh Amendment and Restatement of the Plan,” and additional Amendments 8, 9, and 10 for a more complete description of the Plan’s provisions. Changes to the organization and administration of the Plan, as well as a description of the new pension committee were included in the Plan Restatement effective January 1, 2013.

**General** – The Plan is a defined contribution plan funded exclusively during fiscal years ended December 31, 2018 and 2017, through a combination of mandatory contributions by the County and the Kern Medical Center (KMC) physician employees through payroll withholdings and earnings on such contributions.

On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that added Chapter 2.170 to Title 2 of the Ordinance Code which created a Hospital Authority. Effective July 1, 2016, the Hospital Authority became the plan sponsor and administrator upon ownership transferred by Kern Medical, a County owned and operated public hospital. The Plan is tax-qualified, fully funded, and available to the majority of physicians employed by the KMC. As a governmental plan, it is not subject to top-heavy rules within the meaning of Section 414 of the Internal Revenue Code (IRC).

### Contributions

*Full-time core physicians* – The County contributes the sum of \$17,500 for each full-time core physician for each complete plan year of service. A core physician is defined as an employee pursuant to an Agreement for Professional Services under which the employee provides professional services to KMC.

The 2018 and 2017 mandatory employee contribution for a full-time core physician is based on their total compensation in accordance with the following Annual Tier Structure:

Tier	Compensation	Contribution
1	\$1 – \$115,000	\$12,500
2	\$115,001 – \$132,000	\$18,500
3	\$132,001 – \$190,000	\$22,500
4	\$190,001 – Above	Internal Revenue Code (IRC) Section 415 limit less County contribution

*Part-time core physicians* – The County contributes the sum of \$8,000 for each part-time core physician for each complete plan year of service. The mandatory employee contribution for each part-time core physician is \$2,000 for each complete plan year.

**Participant accounts** – Each participant is credited with his or her contributions, contributions by the County of Kern, allocated earnings of the plan assets, and charged with an allocation of administrative expenses.



## **Kern County Pension Plan for Physician Employees**

### **Notes to Financial Statements**

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#### **Note 1 – Description of the Plan (continued)**

Assets maintained in Fund A held by Wells Fargo are increased or decreased for changes in fair market value and plan earnings as determined on the last day of each plan quarter, allocated to each participant proportionately in accordance with their balance as of the last day of the preceding plan quarter. To the extent a participant borrows a portion of his vested interest; such account is treated as a direct investment account for the purpose of allocation of income, expense, and gain or loss.

Effective January 1, 2003, all additional contributions are credited to Fund B held by the Teachers' Insurance and Annuity Association of America - College Retirement Equities Fund (TIAA) in individual self-directed accounts pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. Income, expense, and gain or loss is credited to each participant's account pursuant to the terms of the participant's contract. Participant loan balances are recorded as separate investments by TIAA.

**Vesting** – Each participant is fully vested in the full amount credited to his or her account.

**Notes receivable from participants** – Participants may borrow against their vested portion in the Wells Fargo funds in accordance with the Seventh Amendment and Restatement of the Plan. Participants may borrow against the assets of the TIAA funds in accordance with the Restatement of the Plan effective January 1, 2013. Participant loans must be secured by the portion of the participant's account balance that is equal to the amount of the loan; provided, however, that no more than 50% of the account balance, as determined immediately after the origination of each loan, may be used as security for the loan. Loans must be repaid within five years (10 years in the case of a loan for the purchase of the participant's principal residence) from the date of the loan. Participant loans shall not exceed the lesser of \$50,000 or one-half of the participant's vested account balance under the Plan and all other qualified plans maintained by the Hospital Authority or an Affiliate. There were no outstanding loans as of December 31, 2018 and 2017.

**Administration** – The County, in its capacity as the plan sponsor and administrator, has appointed an Investment Advisor and Trustee to direct the investment of money in the Wells Fargo funds. Each TIAA participant is solely responsible for the results of his or her decisions with respect to the investment of such participant's account balance in the TIAA funds pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. The Wells Fargo and the TIAA participants direct the investments of their contributions into various investment options offered by the Plan.

**Payment of benefits** – The participant's account balance in the Wells Fargo funds shall be distributed in a lump-sum payment or direct rollover within an administratively reasonable time after the date of the participant's termination of employment, retirement, reaching age 70.5, death, or legal incapacity or disability in accordance with Code Section 401 of the IRC. The participant's account balance shall be determined as of the most recent valuation date coinciding with or immediately preceding the date of distribution. The participant's account balance in the TIAA funds shall be distributed according to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity and in accordance with Code Section 401 of the IRC.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 2 – Summary of Accounting Policies

**Basis of accounting** – The financial statements of the Plan have been prepared on the accrual basis of accounting. The plan year is the twelve consecutive month period beginning January 1 and ending December 31. Plan records are maintained on that basis.

**Estimates** – The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires the plan administrator to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results may differ from those estimates.

**Investment valuation and income recognition** – If available, quoted market prices are used to value investments. The amounts shown in Note 3 for securities that have no quoted market price represent estimated fair value. Many factors are considered in arriving at fair value. See Note 3 for discussion of fair value measurements.

Purchases and sales of securities are recorded on a trade-date basis. Net appreciation includes both the Plan's realized gains and losses and unrealized appreciation and depreciation on investments bought and sold as well as held during the year. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

**Payment of benefits** – Benefits are recorded when paid.

**Notes receivable from participants** – Notes receivable from participants are measured at amortized cost, which represents unpaid principal balance plus accrued but unpaid interest. Delinquent notes receivable from participants are reclassified as distributions upon the occurrence of the distributable event, based on the terms of the Plan Document.

**Expenses** – Certain expenses of maintaining the Plan are paid directly by KMC and are excluded from these financial statements. Administrative expenses paid by the Plan may include notes receivable and distribution fees charged to participants' accounts and administrative plan fees. Investment-related expenses are included in net appreciation in fair value of investments.

**Subsequent events** – Subsequent events are events or transactions that occur after the statement of net assets available for benefits date but before the financial statements are available to be issued. The Plan recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statement of net assets available for benefits, including the estimates inherent in the process of preparing the financial statements. The Plan's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the statement of net assets available for benefits but arose after the statement of net assets available for benefits date and before the financial statements are available to be issued.

Subsequent events have been evaluated through November 10, 2022, which is the date the financial statements were issued.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 3 – Fair Value Measurements

The framework for measuring fair value provides a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy are described as follows:

**Level 1** – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities the Plan has the ability to access.

**Level 2** – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation techniques used for assets measured at fair value. There have been no changes in the techniques used at December 31, 2018 and 2017.

*Registered investment companies and the pooled separate accounts* – Valued using the market quotations or prices obtained from independent pricing services. Shares are valued at quoted market prices which represent the net asset value practical expedient (NAV practical expedient) of shares held by the Plan at year end.

*Guaranteed annuity contracts* – The Plan has investments in non-benefit responsive TIAA Traditional Annuity Contracts, which are presented at fair value on the statements of net assets available for benefits. Transactions involving the purchases and sales of individual TIAA Traditional Annuity Contracts are not observable in a public marketplace, but contract value is a good approximation of fair value as supported by the fact that new contributions represent current transactions between willing buyers and sellers as prescribed in the relevant U.S. GAAP guidance. As these transactions continue to occur with continued participant contributions at current stated contract values, the market-observable presumption is that the contract value of current funding represents a good approximation of fair value based on the willingness of the participant to continue to contribute. For each contribution, TIAA continues to record a contractual liability for the current contribution and does not consider such liability to have any embedded gain or loss.

## Kern County Pension Plan for Physician Employees Notes to Financial Statements

### Note 3 – Fair Value Measurements (continued)

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables disclose the fair value hierarchy of the Plan's assets by level as of December 31, 2018 and 2017:

Fair Value Measurement at December 31, 2018				
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 59,252,473	\$ -	\$ -	\$ 59,252,473
TIAA real estate pooled separate account	1,926,904	-	-	1,926,904
Group annuity contracts	-	-	15,626,169	15,626,169
Investments at fair value	\$ 61,179,377	\$ -	\$ 15,626,169	\$ 76,805,546

Fair Value Measurement at December 31, 2017				
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 59,665,338	\$ -	\$ -	\$ 59,665,338
TIAA real estate pooled separate account	1,976,866	-	-	1,976,866
Group annuity contracts	-	-	13,973,847	13,973,847
Investments at fair value	\$ 61,642,204	\$ -	\$ 13,973,847	\$ 75,616,051

The following table summarizes certain changes in the fair value of the Plan's Level 3 investments for the years ended December 31, 2018 and 2017:

	Traditional Non-Benefit Responsive Annuity
Beginning balance as of January 1, 2017	\$ 13,336,977
Interest income included in changes in net assets	534,610
Purchases	473,808
Sales	(371,548)
Ending balance as of December 31, 2017	\$ 13,973,847
Beginning balance as of January 1, 2018	\$ 13,973,847
Interest income included in changes in net assets	601,846
Purchases	1,582,780
Sales	(532,304)
Ending balance as of December 31, 2018	\$ 15,626,169

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 3 – Fair Value Measurements (continued)

The following table presents the Plan's Level 3 investment, the valuation techniques used to measure the fair value of those instruments as of December 31, 2018 and 2017, and the significant unobservable inputs and ranges of values for those inputs:

Name	Fair Value 12/31/18	Fair Value 12/31/17	Valuation technique	Significant unobservable Inputs	Interest Rate
TIAA Traditional Annuity: Non-Benefit Responsive	\$ 15,626,169	\$ 13,973,847	Discounted cash flow	Risk-adjusted discount rate applied	2018: RA - 3.25% - 4.75% 2017: RA - 3.25% - 4.50%

The availability of observable market data is monitored to assess the appropriate classification of financial instruments within the fair value hierarchy. Changes in economic conditions or model-based valuation techniques may require the transfer of financial instruments from one fair value level to another.

The plan administrator evaluates the significance of transfers between levels based upon the nature of the financial instrument and size of the transfer relative to total net assets available for benefits.

### Note 4 – Plan Termination

Although it has not expressed any intent to do so, the KMC has the right under the Plan to terminate the Plan and discontinue contributions at any time, subject to the payment to the trustee of all amounts due under existing employment contracts. In the event of plan termination, after payment of any expenses properly chargeable against the Plan, the value of the accounts credited to each participant as of the date of such termination will be distributed to such participants in cash or kind.

### Note 5 – Risks and Uncertainties

The Plan invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participants' account balances and the amounts reported in the statement of net assets available for benefits.



REPORT OF INDEPENDENT AUDITORS  
AND FINANCIAL STATEMENTS

**KERN COUNTY PENSION PLAN FOR  
PHYSICIAN EMPLOYEES**

December 31, 2019 and 2018



MOSSADAMS

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## **Report of Independent Auditors**

The Board of Governors  
Kern County Hospital Authority

### **Report on the Financial Statements**

We have audited the accompanying financial statements of Kern County Pension Plan for Physician Employees (the "Plan"), which comprise the statements of net assets available for benefits as of December 31, 2019 and 2018, and the related statements of changes in net assets available for benefits for the years then ended, and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on conducting the audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Plan's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2019 and 2018, and the changes in net assets available for benefits for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

*Moss Adams LLP*

Los Angeles, California  
November 10, 2022

**Kern County Pension Plan for Physician Employees**  
**Statements of Net Assets Available for Benefits**

---

ASSETS	December 31,	
	2019	2018
ASSETS		
Cash and cash equivalents	\$ -	\$ 215,774
Investments, at fair value		
Registered investment companies	68,353,291	59,252,473
Group annuity contracts	16,039,165	15,626,169
Pooled separate accounts	2,208,734	1,926,904
Total investments at fair value	86,601,190	76,805,546
Receivables		
Employer contributions	127,424	73,135
Employee contributions	274,229	155,403
NET ASSETS AVAILABLE FOR BENEFITS	\$ 87,002,843	\$ 77,249,858

## Kern County Pension Plan for Physician Employees

### Statements of Changes in Net Assets Available for Benefits

---

	Years Ended December 31,	
	2019	2018
ADDITIONS TO NET POSITION ATTRIBUTED TO		
Investment income		
Net appreciation (depreciation) in fair value of investments and cash equivalents	\$ 12,596,439	\$ (3,242,531)
Interest and dividends	620,574	602,653
Net investment income (loss)	13,217,013	(2,639,878)
CONTRIBUTIONS		
Employer contributions	3,411,344	1,460,756
Employee contributions	1,593,219	3,055,464
Total contributions	5,004,563	4,516,220
Total additions	18,221,576	1,876,342
DEDUCTIONS FROM NET POSITION ATTRIBUTED TO		
Benefits paid to participants	8,459,795	2,208,938
Administrative expenses	8,796	128
Total deductions	8,468,591	2,209,066
Net increase (decrease)	9,752,985	(332,724)
NET POSITION AVAILABLE FOR BENEFITS		
Beginning of year	77,249,858	77,582,582
End of year	\$ 87,002,843	\$ 77,249,858

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

---

### Note 1 – Description of the Plan

The following description of the Kern County Pension Plan for Physician Employees (the “Plan”) provides only general information. Participants should refer to the Plan Agreement as restated effective January 1, 2003, by the “Seventh Amendment and Restatement of the Plan,” and additional Amendments 8, 9, and 10 for a more complete description of the Plan’s provisions. Changes to the organization and administration of the Plan, as well as a description of the new pension committee were included in the Plan Restatement effective January 1, 2013.

**General** – The Plan is a defined contribution plan funded exclusively during fiscal years ended December 31, 2019 and 2018, through a combination of mandatory contributions by the County and the Kern Medical Center (KMC) physician employees through payroll withholdings and earnings on such contributions.

On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that added Chapter 2.170 to Title 2 of the Ordinance Code which created a Hospital Authority. Effective July 1, 2016, the Hospital Authority became the plan sponsor and administrator upon ownership transferred by Kern Medical, a County owned and operated public hospital. The Plan is tax-qualified, fully funded and available to the majority of physicians employed by the County for or through KMC. As a governmental plan, it is not subject to top-heavy rules within the meaning of Section 414 of the Internal Revenue Code (IRC).

### Contributions

*Full-time core physicians* – The County contributes the sum of \$17,500 for each full-time core physician for each complete plan year of service. A core physician is defined as an employee pursuant to an Agreement for Professional Services under which the employee provides professional services to KMC.

The 2019 and 2018 mandatory employee contribution for a full-time core physician is based on their total compensation in accordance with the following Annual Tier Structure:

Tier	Compensation	Contribution
1	\$1 – \$115,000	\$12,500
2	\$115,001 – \$132,000	\$18,500
3	\$132,001 – \$190,000	\$22,500
4	\$190,001 – Above	Internal Revenue Code (IRC) Section 415 limit less County contribution

*Part-time core physicians* – The County contributes the sum of \$8,000 for each part-time core physician for each complete plan year of service. The mandatory employee contribution for each part-time core physician is \$2,000 for each complete plan year.

**Participant accounts** – Each participant is credited with his or her contributions, contributions by the County of Kern, allocated earnings of the plan assets, and charged with an allocation of administrative expenses.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 1 – Description of the Plan (continued)

Assets maintained in Fund A held by Wells Fargo are increased or decreased for changes in fair market value and plan earnings as determined on the last day of each plan quarter, allocated to each participant proportionately in accordance with their balance as of the last day of the preceding plan quarter. To the extent a participant borrows a portion of his vested interest; such account is treated as a direct investment account for the purpose of allocation of income, expense, and gain or loss.

Effective January 1, 2003, all additional contributions are credited to Fund B held by the Teachers' Insurance and Annuity Association of America- College Retirement Equities Fund (TIAA) in individual self-directed accounts pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. Income, expense, and gain or loss is credited to each participant's account pursuant to the terms of the participant's contract. Participant loan balances are recorded as separate investments by TIAA.

Effective April 30, 2019, the Plan ceased using Wells Fargo Bank as a custodian, and all plan assets are being held by TIAA from May 1, 2019 through December 31, 2019.

**Vesting** – Each participant is fully vested in the full amount credited to his or her account.

**Notes receivable from participants** – Participants may borrow against their vested portion in the Wells Fargo funds in accordance with the Seventh Amendment and Restatement of the Plan. Participants may borrow against the assets of the TIAA funds in accordance with the Restatement of the Plan effective January 1, 2013. Participant loans must be secured by the portion of the participant's account balance that is equal to the amount of the loan; provided, however, that no more than 50% of the account balance, as determined immediately after the origination of each loan, may be used as security for the loan. Loans must be repaid within five years (10 years in the case of a loan for the purchase of the participant's principal residence) from the date of the loan. Participant loans shall not exceed the lesser of \$50,000 or one-half of the participant's vested account balance under the Plan and all other qualified plans maintained by the Hospital Authority or an Affiliate. There were no outstanding loans as of December 31, 2019 and 2018.

**Administration** – The County, in its capacity as the plan sponsor and administrator, has appointed an Investment Advisor and Trustee to direct the investment of money in the Wells Fargo funds. Each TIAA participant is solely responsible for the results of his or her decisions with respect to the investment of such participant's account balance in the TIAA funds pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. The Wells Fargo and the TIAA participants direct the investments of their contributions into various investment options offered by the Plan.

**Payment of benefits** – The participant's account balance in the Wells Fargo funds shall be distributed in a lump-sum payment or direct rollover within an administratively reasonable time after the date of the participant's termination of employment, retirement, reaching age 70.5, death, or legal incapacity or disability in accordance with Code Section 401 of the IRC. The participant's account balance shall be determined as of the most recent valuation date coinciding with or immediately preceding the date of distribution. The participant's account balance in the TIAA funds shall be distributed according to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity and in accordance with Code Section 401 of the IRC.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 2 – Summary of Accounting Policies

**Basis of accounting** – The financial statements of the Plan have been prepared on the accrual basis of accounting. The plan year is the twelve consecutive month period beginning January 1 and ending December 31. Plan records are maintained on that basis.

**Estimates** – The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires the plan administrator to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results may differ from those estimates.

**Investment valuation and income recognition** – If available, quoted market prices are used to value investments. The amounts shown in Note 3 for securities that have no quoted market price represent estimated fair value. Many factors are considered in arriving at fair value. See Note 3 for discussion of fair value measurements.

Purchases and sales of securities are recorded on a trade-date basis. Net appreciation includes both the Plan's realized gains and losses and unrealized appreciation and depreciation on investments bought and sold as well as held during the year. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

**Payment of benefits** – Benefits are recorded when paid.

**Notes receivable from participants** – Notes receivable from participants are measured at amortized cost, which represents unpaid principal balance plus accrued but unpaid interest. Delinquent notes receivable from participants are reclassified as distributions upon the occurrence of the distributable event, based on the terms of the Plan Document.

**Expenses** – Certain expenses of maintaining the Plan are paid directly by KMC and are excluded from these financial statements. Administrative expenses paid by the Plan may include notes receivable and distribution fees charged to participants' accounts and administrative plan fees. Investment-related expenses are included in net appreciation in fair value of investments.

**Subsequent events** – Subsequent events are events or transactions that occur after the statement of net assets available for benefits date but before the financial statements are available to be issued. The Plan recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statement of net assets available for benefits, including the estimates inherent in the process of preparing the financial statements. The Plan's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the statement of net assets available for benefits but arose after the statement of net assets available for benefits date and before the financial statements are available to be issued.

Subsequent events have been evaluated through November 10, 2022, which is the date the financial statements were issued.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 3 – Fair Value Measurements

The framework for measuring fair value provides a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy are described as follows:

**Level 1** – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities the Plan has the ability to access.

**Level 2** – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation techniques used for assets measured at fair value. There have been no changes in the techniques used at December 31, 2019 and 2018.

*Registered investment companies and the pooled separate accounts* – Valued using the market quotations or prices obtained from independent pricing services. Shares are valued at quoted market prices which represent the net asset value practical expedient (NAV practical expedient) of shares held by the Plan at year end.

*Guaranteed annuity contracts* – The Plan has investments in non-benefit responsive TIAA Traditional Annuity Contracts, which are presented at fair value on the statements of net assets available for benefits. Transactions involving the purchases and sales of individual TIAA Traditional Annuity Contracts are not observable in a public marketplace, but contract value is a good approximation of fair value as supported by the fact that new contributions represent current transactions between willing buyers and sellers as prescribed in the relevant U.S. GAAP guidance. As these transactions continue to occur with continued participant contributions at current stated contract values, the market-observable presumption is that the contract value of current funding represents a good approximation of fair value based on the willingness of the participant to continue to contribute. For each contribution, TIAA continues to record a contractual liability for the current contribution and does not consider such liability to have any embedded gain or loss.

## Kern County Pension Plan for Physician Employees Notes to Financial Statements

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### Note 3 – Fair Value Measurements (continued)

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables disclose the fair value hierarchy of the Plan's assets by level as of December 31, 2019 and 2018:

	Fair Value Measurement at December 31, 2019			
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 68,353,291	\$ -	\$ -	\$ 68,353,291
TIAA real estate pooled separate account	2,208,734	-	-	2,208,734
Group annuity contracts	-	-	16,039,165	16,039,165
	<u>\$ 70,562,025</u>	<u>\$ -</u>	<u>\$ 16,039,165</u>	<u>\$ 86,601,190</u>

	Fair Value Measurement at December 31, 2018			
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 59,252,473	\$ -	\$ -	\$ 59,252,473
TIAA real estate pooled separate account	1,926,904	-	-	1,926,904
Group annuity contracts	-	-	15,626,169	15,626,169
	<u>\$ 61,179,377</u>	<u>\$ -</u>	<u>\$ 15,626,169</u>	<u>\$ 76,805,546</u>



## Kern County Pension Plan for Physician Employees

### Notes to Financial Statements

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#### Note 3 – Fair Value Measurements (continued)

The following table summarizes certain changes in the fair value of the Plan's Level 3 investments for the years ended December 31, 2019 and 2018:

	Traditional Non-Benefit Responsive Annuity
Beginning balance as of January 1, 2018	\$ 13,973,847
Interest income included in changes in net assets	601,846
Purchases	1,582,780
Sales	(532,304)
	<hr/>
Ending balance as of December 31, 2018	\$ 15,626,169
	<hr/>
Beginning balance as of January 1, 2019	\$ 15,626,169
Interest income included in changes in net assets	620,295
Purchases	1,151,718
Sales	(1,359,017)
	<hr/>
Ending balance as of December 31, 2019	\$ 16,039,165
	<hr/>

The following table presents the Plan's Level 3 investment, the valuation techniques used to measure the fair value of those instruments as of December 31, 2019 and 2018, and the significant unobservable inputs and ranges of values for those inputs:

Name	Fair Value 12/31/19	Fair Value 12/31/18	Valuation technique	Significant unobservable inputs	Interest Rate
TIAA Traditional Annuity: Non-Benefit Responsive	\$ 16,039,165	\$ 15,626,169	Discounted cash flow	Risk-adjusted discount rate applied	2019: RA - 3.00% - 4.40% 2018: RA - 3.25% - 4.75%

The availability of observable market data is monitored to assess the appropriate classification of financial instruments within the fair value hierarchy. Changes in economic conditions or model-based valuation techniques may require the transfer of financial instruments from one fair value level to another.

The plan administrator evaluates the significance of transfers between levels based upon the nature of the financial instrument and size of the transfer relative to total net assets available for benefits.

## **Kern County Pension Plan for Physician Employees**

### **Notes to Financial Statements**

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#### **Note 4 – Plan Termination**

Although it has not expressed any intent to do so, the KMC has the right under the Plan to terminate the Plan and discontinue contributions at any time, subject to the payment to the trustee of all amounts due under existing employment contracts. In the event of plan termination, after payment of any expenses properly chargeable against the Plan, the value of the accounts credited to each participant as of the date of such termination will be distributed to such participants in cash or kind.

#### **Note 5 – Risks and Uncertainties**

The Plan invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participant's account balances and the amounts reported in the statement of net assets available for benefits.



REPORT OF INDEPENDENT AUDITORS  
AND FINANCIAL STATEMENTS

**KERN COUNTY PENSION PLAN FOR  
PHYSICIAN EMPLOYEES**

December 31, 2020 and 2019

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## **Report of Independent Auditors**

The Board of Governors  
Kern County Hospital Authority

### **Report on the Financial Statements**

We have audited the accompanying financial statements of Kern County Pension Plan for Physician Employees (the "Plan"), which comprise the statements of net assets available for benefits as of December 31, 2020 and 2019, and the related statements of changes in net assets available for benefits for the years then ended, and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on conducting the audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Plan's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2020 and 2019, and the changes in net assets available for benefits for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

*Moss Adams LLP*

Los Angeles, California  
November 10, 2022

**Kern County Pension Plan for Physician Employees**  
**Statements of Net Assets Available for Benefits**

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ASSETS	December 31,	
	2020	2019
ASSETS		
Investments, at fair value		
Registered investment companies	\$ 85,417,498	\$ 68,353,291
Group annuity contracts	16,388,741	16,039,165
Pooled separate accounts	1,796,412	2,208,734
Total investments at fair value	103,602,651	86,601,190
Receivables		
Employer contributions	133,116	127,424
Employee contributions	290,421	274,229
NET ASSETS AVAILABLE FOR BENEFITS	\$ 104,026,188	\$ 87,002,843

## Kern County Pension Plan for Physician Employees

### Statements of Changes in Net Assets Available for Benefits

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	Years Ended December 31,	
	2020	2019
<b>ADDITIONS TO NET POSITION ATTRIBUTED TO</b>		
Investment income		
Net appreciation in fair value of investments and cash equivalents	\$ 13,534,360	\$ 12,596,439
Interest and dividends	629,445	620,574
Net investment income	14,163,805	13,217,013
<b>CONTRIBUTIONS</b>		
Employer contributions	3,659,320	3,411,344
Employee contributions	1,679,891	1,593,219
Total contributions	5,339,211	5,004,563
Total additions	19,503,016	18,221,576
<b>DEDUCTIONS FROM NET POSITION ATTRIBUTED TO</b>		
Benefits paid to participants	2,479,671	8,459,795
Administrative expenses	-	8,796
Total deductions	2,479,671	8,468,591
Net increase	17,023,345	9,752,985
<b>NET POSITION AVAILABLE FOR BENEFITS</b>		
Beginning of year	87,002,843	77,249,858
End of year	\$ 104,026,188	\$ 87,002,843



# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 1 – Description of the Plan

The following description of the Kern County Pension Plan for Physician Employees (the “Plan”) provides only general information. Participants should refer to the Plan Agreement as restated effective January 1, 2003, by the “Seventh Amendment and Restatement of the Plan,” and additional Amendments 8, 9, and 10 for a more complete description of the Plan’s provisions. Changes to the organization and administration of the Plan, as well as a description of the new pension committee were included in the Plan Restatement effective January 1, 2013.

**General** – The Plan is a defined contribution plan funded exclusively during fiscal years ended December 31, 2020 and 2019, through a combination of mandatory contributions by the County and the Kern Medical Center (KMC) physician employees through payroll withholdings and earnings on such contributions.

On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that added Chapter 2.170 to Title 2 of the Ordinance Code which created a Hospital Authority. Effective July 1, 2016, the Hospital Authority became the plan sponsor and administrator upon ownership transferred by Kern Medical, a County owned and operated public hospital. The Plan is tax-qualified, fully funded, and available to the majority of physicians employed by the KMC. As a governmental plan, it is not subject to top-heavy rules within the meaning of Section 414 of the Internal Revenue Code (IRC).

### Contributions

*Full-time core physicians* – The County contributes the sum of \$17,500 for each full-time core physician for each complete plan year of service. A core physician is defined as an employee pursuant to an Agreement for Professional Services under which the employee provides professional services to KMC.

The 2020 and 2019 mandatory employee contribution for a full-time core physician is based on their total compensation in accordance with the following Annual Tier Structure:

Tier	Compensation	Contribution
1	\$1 – \$115,000	\$12,500
2	\$115,001 – \$132,000	\$18,500
3	\$132,001 – \$190,000	\$22,500
4	\$190,001 – Above	Internal Revenue Code (IRC) Section 415 limit less County contribution

*Part-time core physicians* – The County contributes the sum of \$8,000 for each part-time core physician for each complete plan year of service. The mandatory employee contribution for each part-time core physician is \$2,000 for each complete plan year.

**Participant accounts** – Each participant is credited with his or her contributions, contributions by the County of Kern, allocated earnings of the plan assets, and charged with an allocation of administrative expenses.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### **Note 1 – Description of the Plan (continued)**

Assets maintained in Fund A held by Wells Fargo are increased or decreased for changes in fair market value and plan earnings as determined on the last day of each plan quarter, allocated to each participant proportionately in accordance with their balance as of the last day of the preceding plan quarter. To the extent a participant borrows a portion of his vested interest; such account is treated as a direct investment account for the purpose of allocation of income, expense, and gain or loss.

Effective January 1, 2003, all additional contributions are credited to Fund B held by the Teachers' Insurance and Annuity Association of America - College Retirement Equities Fund (TIAA) in individual self-directed accounts pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. Income, expense, and gain or loss is credited to each participant's account pursuant to the terms of the participant's contract. Participant loan balances are recorded as separate investments by TIAA.

Effective April 30, 2019, the Plan ceased using Wells Fargo Bank as a custodian, and all plan assets are being held by TIAA from May 1, 2019 through December 31, 2020.

**Vesting** – Each participant is fully vested in the full amount credited to his or her account.

**Notes receivable from participants** – Participants may borrow against their vested portion in the Wells Fargo funds in accordance with the Seventh Amendment and Restatement of the Plan. Participants may borrow against the assets of the TIAA funds in accordance with the Restatement of the Plan effective January 1, 2013. Participant loans must be secured by the portion of the participant's account balance that is equal to the amount of the loan; provided, however, that no more than 50% of the account balance, as determined immediately after the origination of each loan, may be used as security for the loan. Loans must be repaid within five years (10 years in the case of a loan for the purchase of the participant's principal residence) from the date of the loan. Participant loans shall not exceed the lesser of \$50,000 or one-half of the participant's vested account balance under the Plan and all other qualified plans maintained by the Hospital Authority or an Affiliate. There were no outstanding loans as of December 31, 2020 and 2019.

**Administration** – The County, in its capacity as the plan sponsor and administrator, has appointed an Investment Advisor and Trustee to direct the investment of money in the Wells Fargo funds. Each TIAA participant is solely responsible for the results of his or her decisions with respect to the investment of such participant's account balance in the TIAA funds pursuant to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity Contract. The Wells Fargo and the TIAA participants direct the investments of their contributions into various investment options offered by the Plan.

**Payment of benefits** – The participant's account balance in the Wells Fargo funds shall be distributed in a lump-sum payment or direct rollover within an administratively reasonable time after the date of the participant's termination of employment, retirement, reaching age 70.5, death, or legal incapacity or disability in accordance with Code Section 401 of the IRC. The participant's account balance shall be determined as of the most recent valuation date coinciding with or immediately preceding the date of distribution. The participant's account balance in the TIAA funds shall be distributed according to the terms of the Group Retirement Annuity Contract or Group Retirement Unit-Annuity and in accordance with Code Section 401 of the IRC.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 2 – Summary of Accounting Policies

**Basis of accounting** – The financial statements of the Plan have been prepared on the accrual basis of accounting. The plan year is the twelve consecutive month period beginning January 1 and ending December 31. Plan records are maintained on that basis.

**Estimates** – The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires the plan administrator to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results may differ from those estimates.

**Investment valuation and income recognition** – If available, quoted market prices are used to value investments. The amounts shown in Note 3 for securities that have no quoted market price represent estimated fair value. Many factors are considered in arriving at fair value. See Note 3 for discussion of fair value measurements.

Purchases and sales of securities are recorded on a trade-date basis. Net appreciation includes both the Plan's realized gains and losses and unrealized appreciation and depreciation on investments bought and sold as well as held during the year. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

**Payment of benefits** – Benefits are recorded when paid.

**Notes receivable from participants** - Notes receivable from participants are measured at amortized cost, which represents unpaid principal balance plus accrued but unpaid interest. Delinquent notes receivable from participants are reclassified as distributions upon the occurrence of the distributable event, based on the terms of the Plan Document.

**Expenses** – Certain expenses of maintaining the Plan are paid directly by KMC and are excluded from these financial statements. Administrative expenses paid by the Plan may include notes receivable and distribution fees charged to participants' accounts and administrative plan fees. Investment related expenses are included in net appreciation in fair value of investments.

**Subsequent events** – Subsequent events are events or transactions that occur after the statement of net assets available for benefits date but before the financial statements are available to be issued. The Plan recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statement of net assets available for benefits, including the estimates inherent in the process of preparing the financial statements. The Plan's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the statement of net assets available for benefits but arose after the statement of net assets available for benefits date and before the financial statements are available to be issued.

Subsequent events have been evaluated through November 10, 2022, which is the date the financial statements were issued.

# Kern County Pension Plan for Physician Employees

## Notes to Financial Statements

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### Note 3 – Fair Value Measurements

The framework for measuring fair value provides a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy are described as follows:

**Level 1** – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities the Plan has the ability to access.

**Level 2** – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation techniques used for assets measured at fair value. There have been no changes in the techniques used at December 31, 2020 and 2019.

*Registered investment companies and the pooled separate accounts* – Valued using the market quotations or prices obtained from independent pricing services. Shares are valued at quoted market prices which represent the net asset value practical expedient (NAV practical expedient) of shares held by the Plan at year end.

*Guaranteed annuity contracts* – The Plan has investments in non-benefit responsive TIAA Traditional Annuity Contracts, which are presented at fair value on the statements of net assets available for benefits. Transactions involving the purchases and sales of individual TIAA Traditional Annuity Contracts are not observable in a public marketplace, but contract value is a good approximation of fair value as supported by the fact that new contributions represent current transactions between willing buyers and sellers as prescribed in the relevant U.S. GAAP guidance. As these transactions continue to occur with continued participant contributions at current stated contract values, the market-observable presumption is that the contract value of current funding represents a good approximation of fair value based on the willingness of the participant to continue to contribute. For each contribution, TIAA continues to record a contractual liability for the current contribution and does not consider such liability to have any embedded gain or loss.

## Kern County Pension Plan for Physician Employees Notes to Financial Statements

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### Note 3 – Fair Value Measurements (continued)

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables disclose the fair value hierarchy of the Plan's assets by level as of December 31, 2020 and 2019:

	Fair Value Measurement at December 31, 2020			
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 85,417,498	\$ -	\$ -	\$ 85,417,498
TIAA real estate pooled separate account	1,796,412	-	-	1,796,412
Group annuity contracts	-	-	16,388,741	16,388,741
	<u>\$ 87,213,910</u>	<u>\$ -</u>	<u>\$ 16,388,741</u>	<u>\$ 103,602,651</u>

	Fair Value Measurement at December 31, 2019			
	Level 1	Level 2	Level 3	Total
Registered investment companies	\$ 68,353,291	\$ -	\$ -	\$ 68,353,291
TIAA real estate pooled separate account	2,208,734	-	-	2,208,734
Group annuity contracts	-	-	16,039,165	16,039,165
	<u>\$ 70,562,025</u>	<u>\$ -</u>	<u>\$ 16,039,165</u>	<u>\$ 86,601,190</u>

## Kern County Pension Plan for Physician Employees

### Notes to Financial Statements

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#### Note 3 – Fair Value Measurements (continued)

The following table summarizes certain changes in the fair value of the Plan's Level 3 investments for the years ended December 31, 2020 and 2019:

	Traditional Non-Benefit Responsive Annuity
Beginning balance as of January 1, 2019	\$ 15,626,169
Interest income included in changes in net assets	620,295
Purchases	1,151,718
Sales	<u>(1,359,017)</u>
Ending balance as of December 31, 2019	<u>\$ 16,039,165</u>
Beginning balance as of January 1, 2020	\$ 16,039,165
Interest income included in changes in net assets	629,445
Purchases	1,522,452
Sales	<u>(1,802,321)</u>
Ending balance as of December 31, 2020	<u>\$ 16,388,741</u>

The following table presents the Plan's Level 3 investment, the valuation techniques used to measure the fair value of those instruments as of December 31, 2020 and 2019, and the significant unobservable inputs and ranges of values for those inputs:

Name	Fair Value 12/31/20	Fair Value 12/31/19	Valuation technique	Significant unobservable Inputs	Interest Rate
TIAA Traditional Annuity: Non-Benefit Responsive	\$ 16,388,741	\$ 16,039,165	Discounted cash flow	Risk-adjusted discount rate applied	2020: RA - 3.00% - 4.45% 2019: RA - 3.00% - 4.40%

The availability of observable market data is monitored to assess the appropriate classification of financial instruments within the fair value hierarchy. Changes in economic conditions or model-based valuation techniques may require the transfer of financial instruments from one fair value level to another.

The plan administrator evaluates the significance of transfers between levels based upon the nature of the financial instrument and size of the transfer relative to total net assets available for benefits.

## **Kern County Pension Plan for Physician Employees**

### **Notes to Financial Statements**

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#### **Note 4 – Plan Termination**

Although it has not expressed any intent to do so, the KMC has the right under the Plan to terminate the Plan and discontinue contributions at any time, subject to the payment to the trustee of all amounts due under existing employment contracts. In the event of plan termination, after payment of any expenses properly chargeable against the Plan, the value of the accounts credited to each participant as of the date of such termination will be distributed to such participants in cash or kind.

#### **Note 5 –Risks and Uncertainties**

The Plan invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participant's account balances and the amounts reported in the statement of net assets available for benefits.

December 6, 2022

HAND DELIVERED

Russell E. Bigler  
Chairman  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

Re: Resignation

Dear Mr. Bigler:

It is with deep regret that I am writing to inform you of my decision to resign my position on the Board of Governors of the Kern County Hospital Authority, effective December 31, 2022.

My employment commitments have become too great for me to be able to fulfill the requirements of my position on the Board of Governors, and I feel it is best for me to make room for someone with the time and energy to devote to the job.

It has been a privilege being a part of the hospital authority's Board of Governors. I am so proud of all we have accomplished since my appointment by the Board of Supervisors, and I have no doubt the Board of Governors will continue these successes in the future.

If I can be of any assistance during the time it will take to fill the position, please do not hesitate to ask.

Best Regards,

*Jacquelyn Kitchen*

Jacqui Kitchen

cc: Members, Board of Governors  
Scott Thygerson





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

December 14, 2022

**Subject:** Kern County Hospital Authority Chief Financial Officer Report – October 2022

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Operating gain of \$100,170 for October is \$3,630 more than the October budget of \$96,540 and \$270,602 less than the \$370,772 average over the last three months
- EBIDA of \$1,251,424 for October is \$84,918 more than the October budget of \$1,166,506 and \$214,542 less than the \$1,465,966 average over the last three months
- Average Daily Census of 167 for October is 18 more than the October budget of 149 and 1 less than the 168 average over the last three months
- Admissions of 968 for October are 56 less than the October budget of 1,024 and 194 more than the 774 average over the last three months
- Total Surgeries of 525 for October are 40 more than the October budget of 485 and 48 more than the 477 average over the last three months
- Clinic Visits of 16,269 for October are 837 more than the October budget of 15,432 and 829 more than the 15,440 average over the last three months. The total includes 301 COVID-19 vaccination visits

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

**Patient Revenue:**

Kern Medical operated at just slightly under the budgeted dollar amount for gross patient revenue for the month. On a year-to-date basis there is a small unfavorable budget variance of 0.4%.

**Indigent Funding Revenue:**

Indigent funding has an unfavorable budget variance for the month and on a year-to-date basis due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2023 Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), CalAIM, the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

**Other Operating Revenue:**

Other operating revenue has a favorable budget variance for the month due to the receipt of Kern Health Systems grant funding and the receipt of Proposition 56 tobacco tax funding. Revenue for items such as grants and Proposition 56 are received on a quarterly, or otherwise periodic basis. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year, but should agree with the planned budgeted dollar amount on a year-to-date basis at year-end.

**Other Non-Operating Revenue:**

Other non-operating revenue has an unfavorable budget variance for the month and on a year-to-date basis because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

**Nurse Registry Expense:**

Nurse registry expense is under budget for the month and on a year-to-date basis because Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years the staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. COVID-19 remains active and Kern Medical plans to continue its need for registry services.

**Medical Fees:**

Medical fees are over budget for the month and on a year-to-date basis because of an increase in services provided by the Acute Care Medical Surgery Group. The budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

**Other Professional Fees:**

Other professional fees are over budget for the month and on a year-to-date basis because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical. In addition, legal expenses and other various contract labor expenses are higher than average for the month and on a year-to-date basis.

**Supplies Expense:**

Supplies expense is under budget for the month and on a year-to-date basis due to lower than average costs for pharmaceuticals and for general medical supplies.

**Purchased Services:**

Purchased services are over budget for the month and on a year-to-date basis because of additional revenue cycle support services provided by Signature Performance and by Health Advocates. Health Advocates helps qualify patients for Medi-Cal coverage. Therefore, these expenses are offset by additional Medi-Cal patient revenue.

**Other Expenses:**

Other expenses are over budget for the month because of higher than average repairs and maintenance expenses. On a year-to-date basis, the unfavorable variance is primarily because of higher than average utility costs. Electricity expenses were particularly high during July and August due to extreme weather conditions.

**Interest Expense:**

Interest expense is slightly over budget for the month and on a year-to-date basis due to higher than anticipated certificate of participation (COP) bond interest.

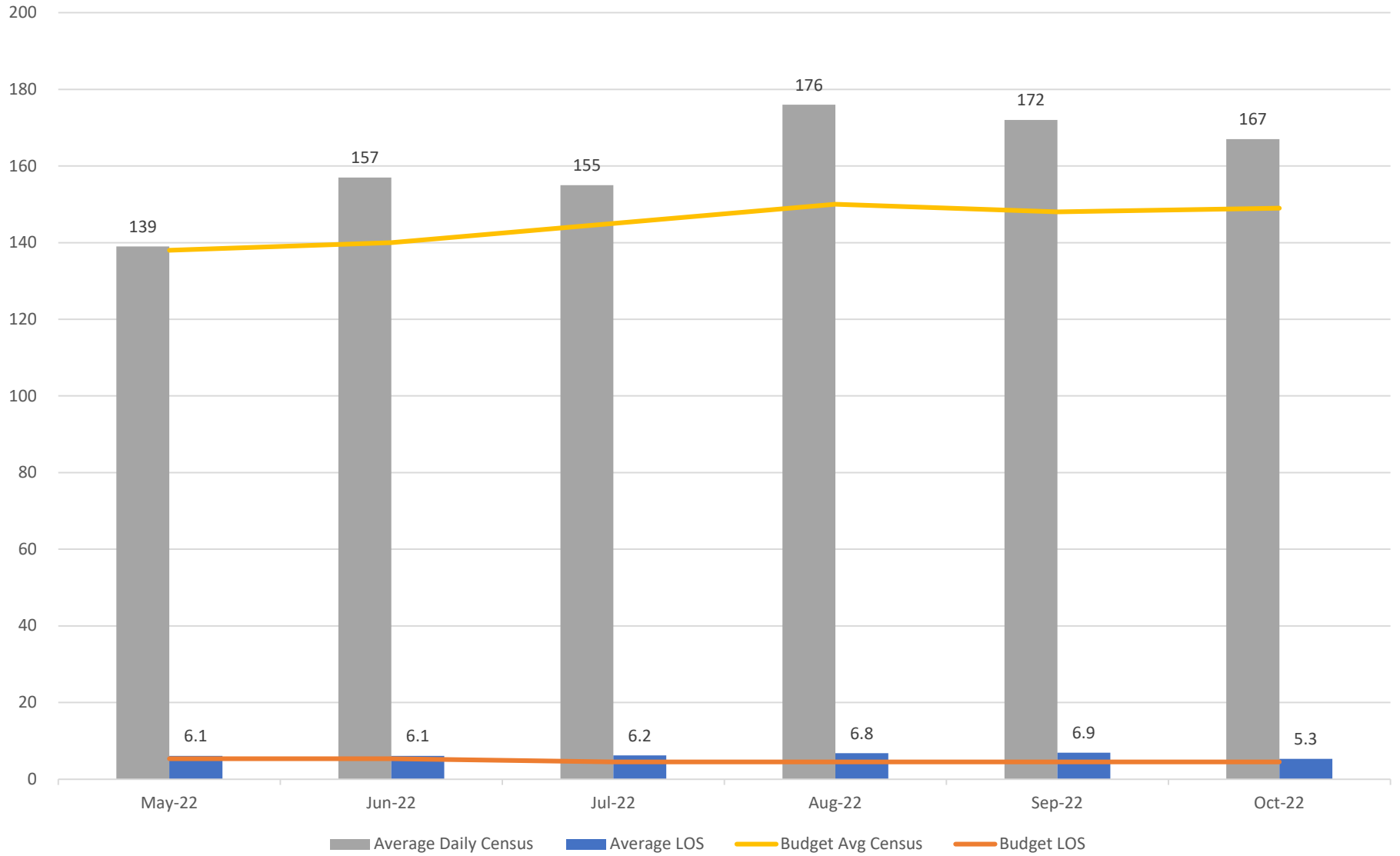
**Depreciation and Amortization Expense:**

Depreciation and amortization expense is slightly over the budgeted dollar amount for the month and on a year-to-date basis as well. This expense will fluctuate as new equipment is put in service and as capital projects are completed.

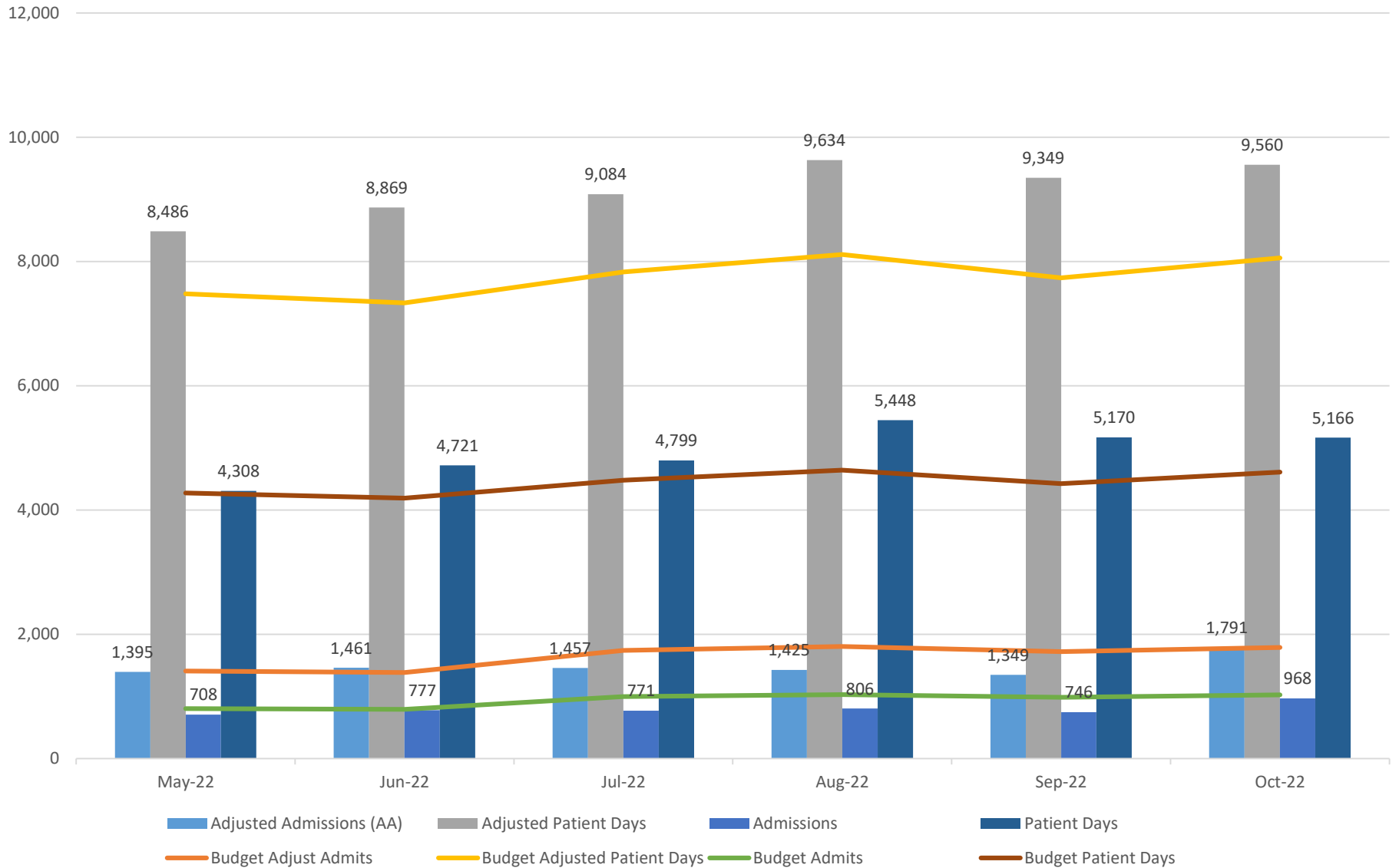


**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – OCTOBER 2022**

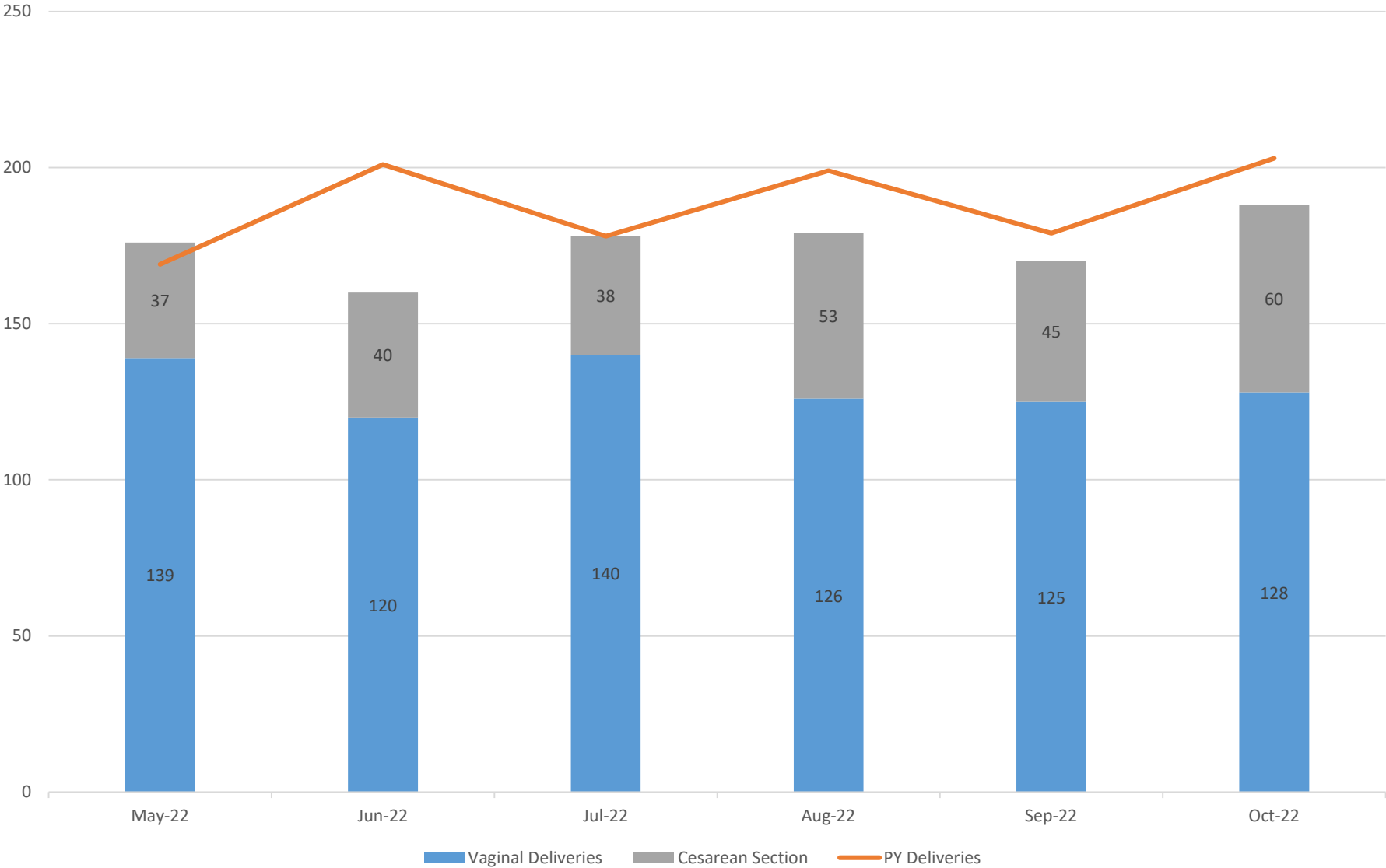
# Census & ALOS



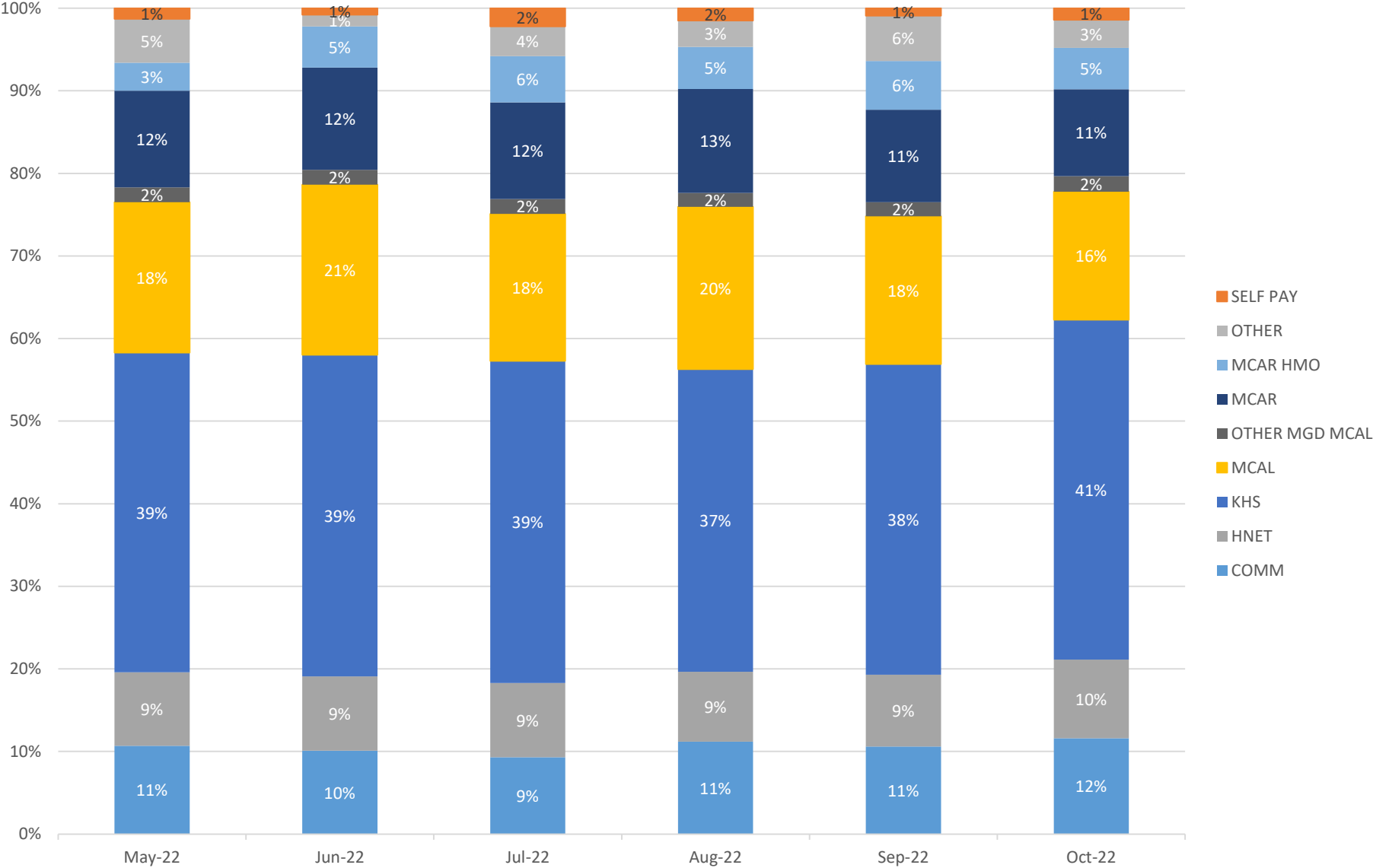
# Hospital Volumes



# Deliveries

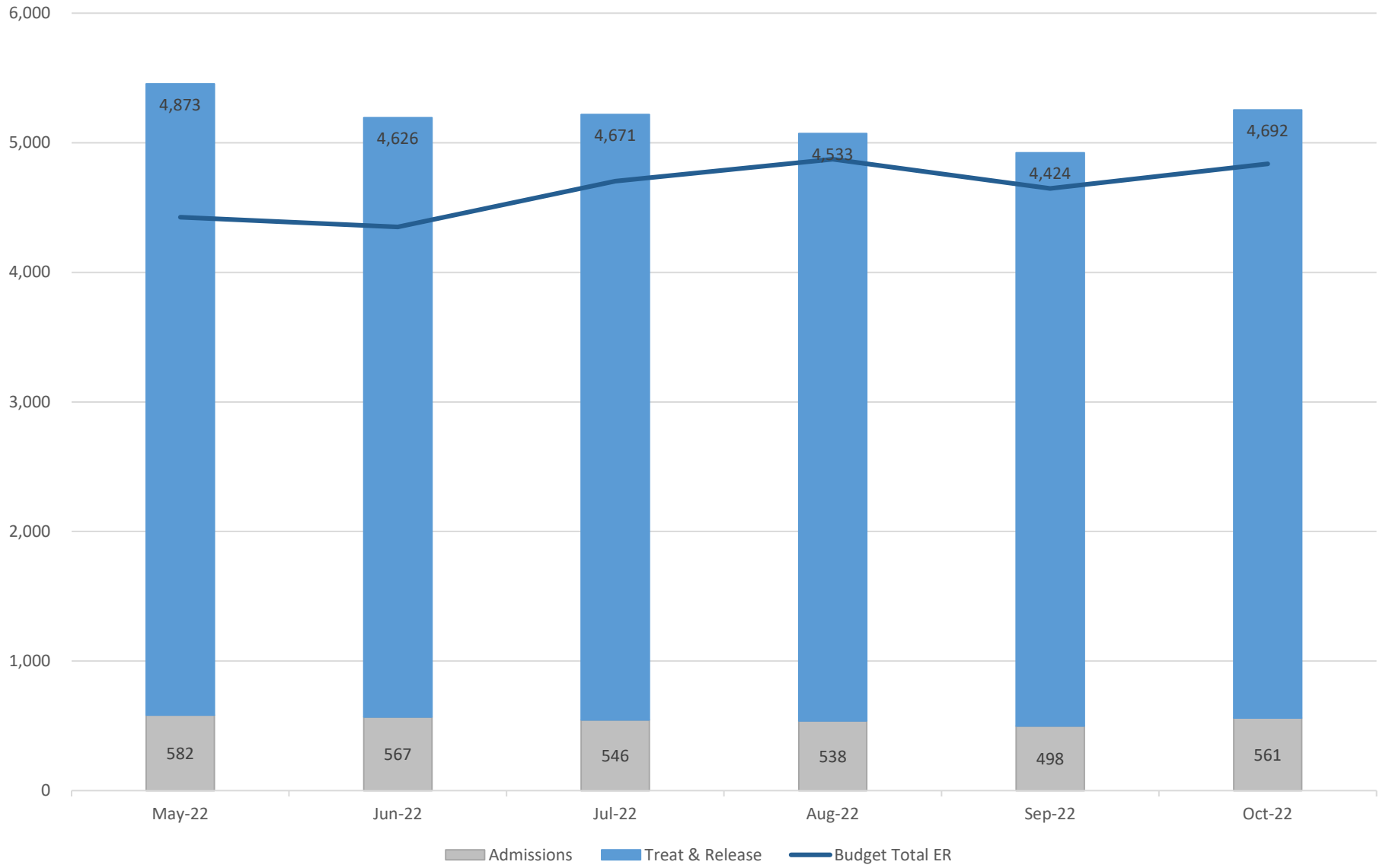


# PAYER MIX

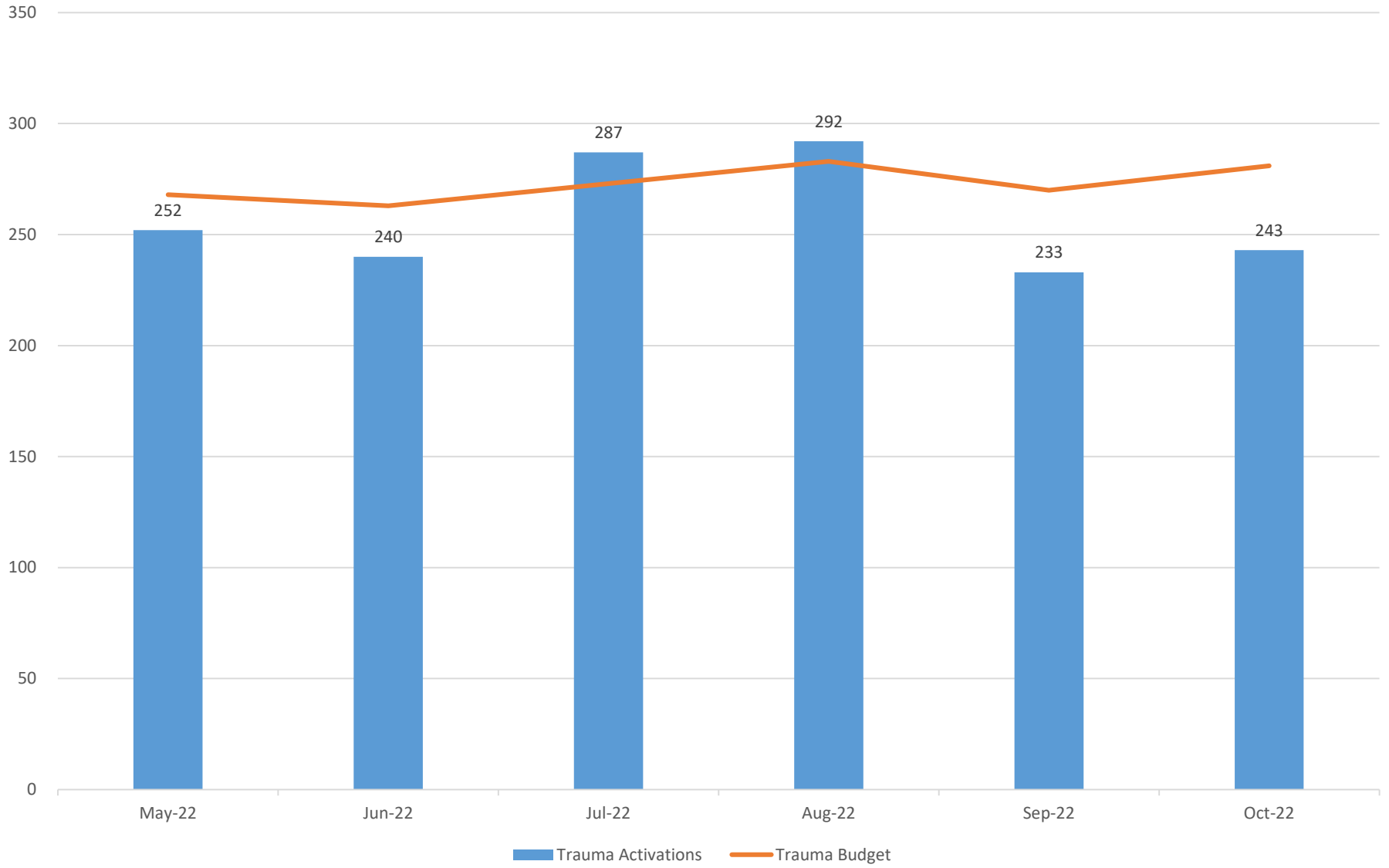




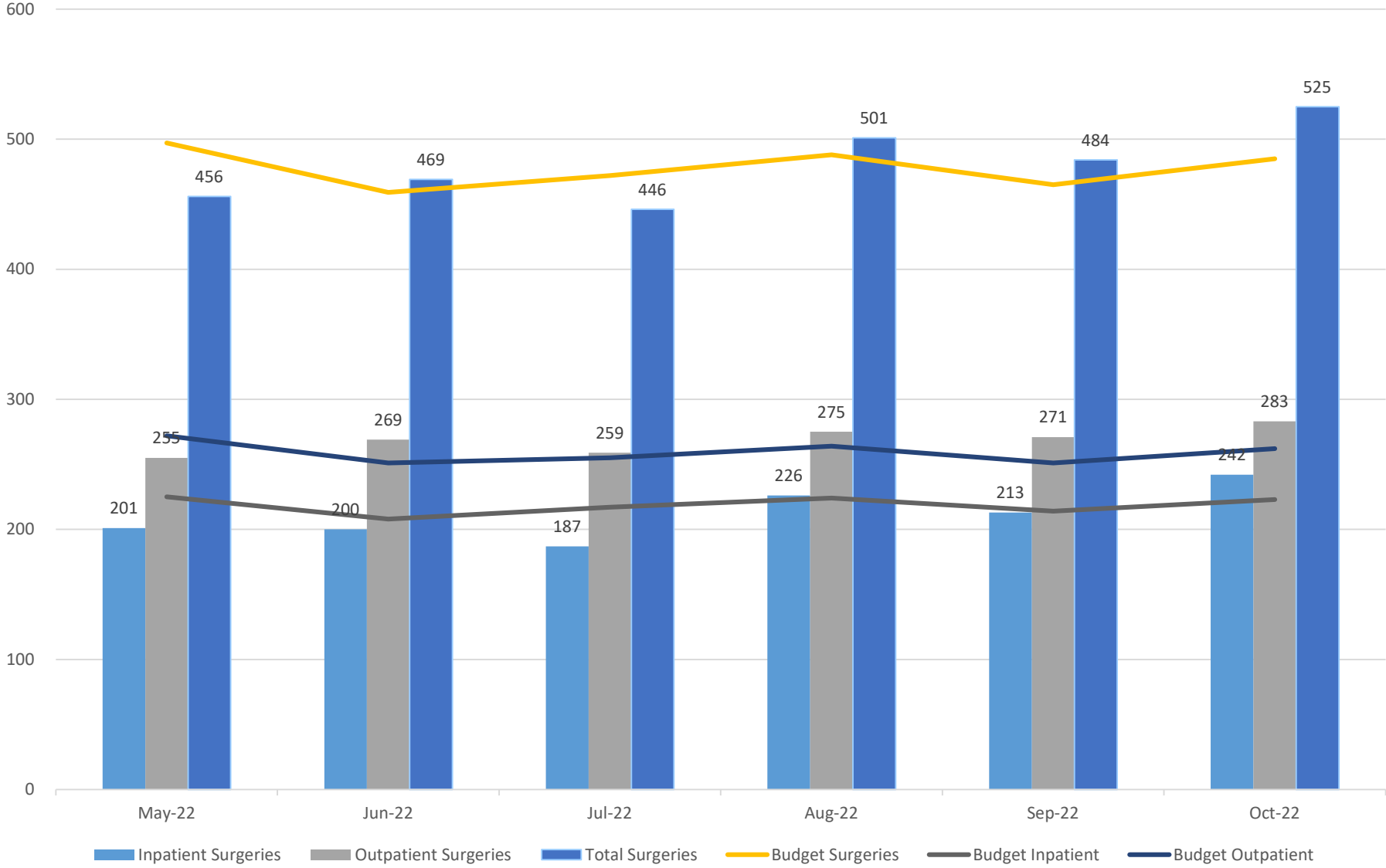
# Emergency Room Volume



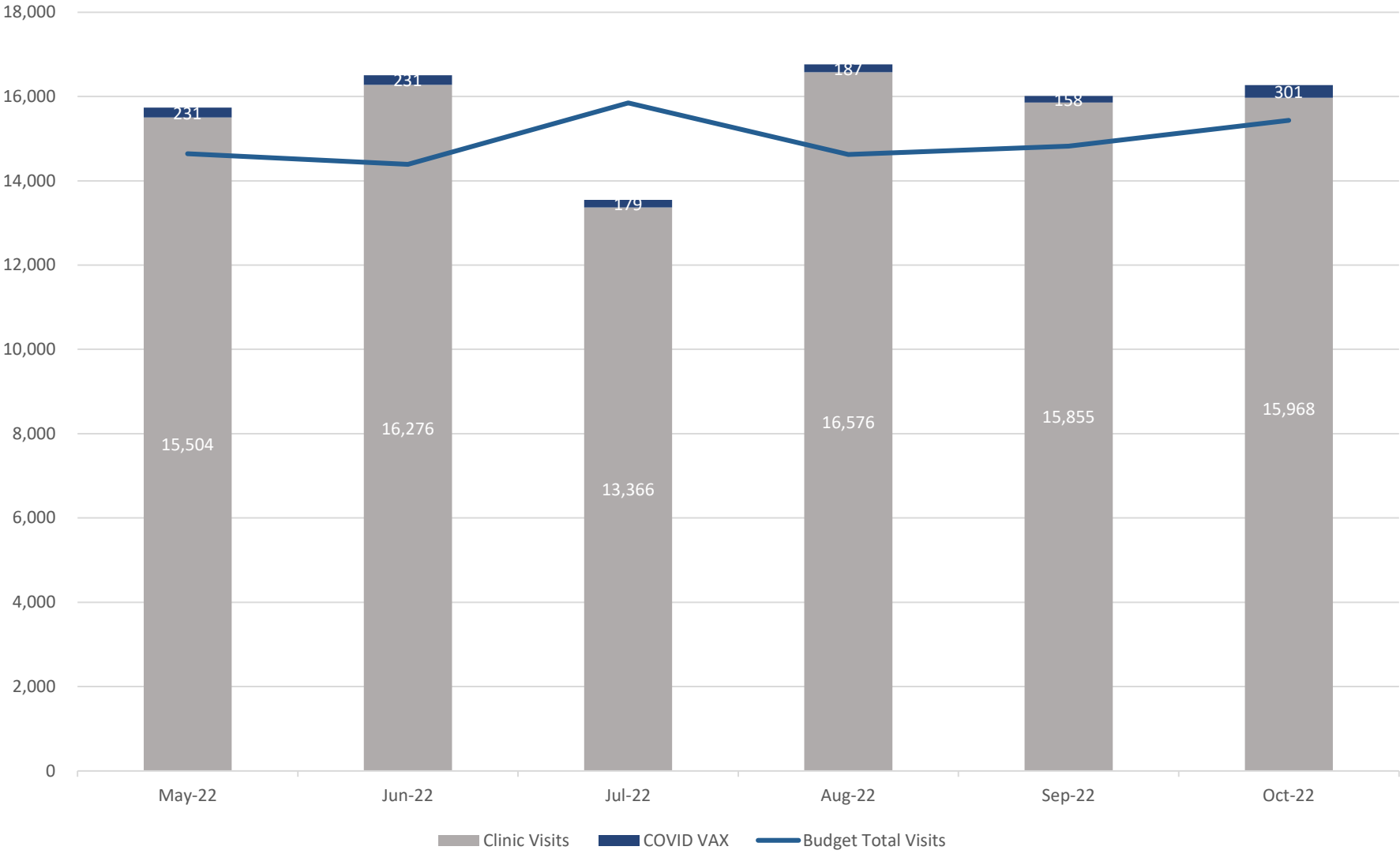
## Trauma Activations



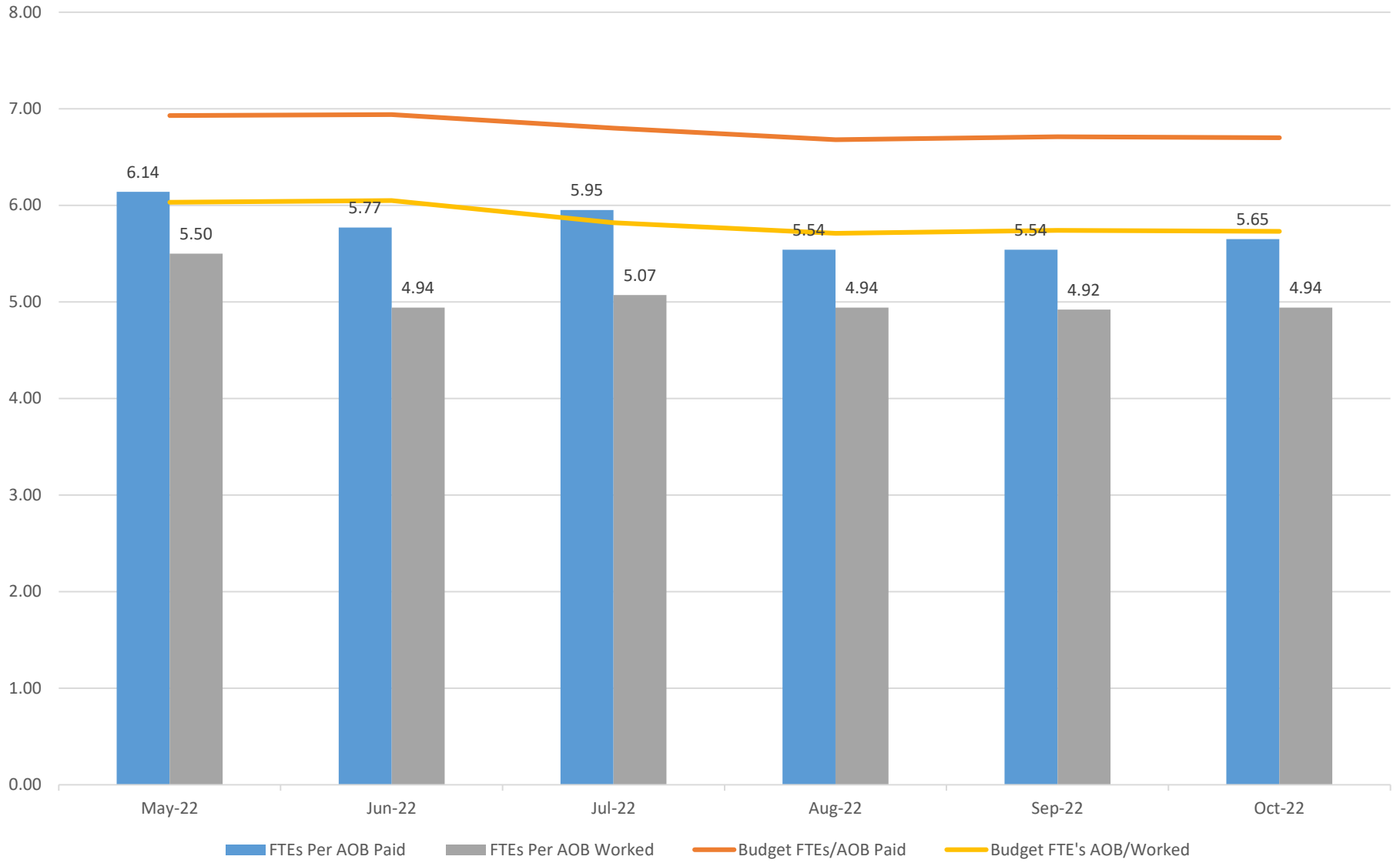
# Surgical Volume



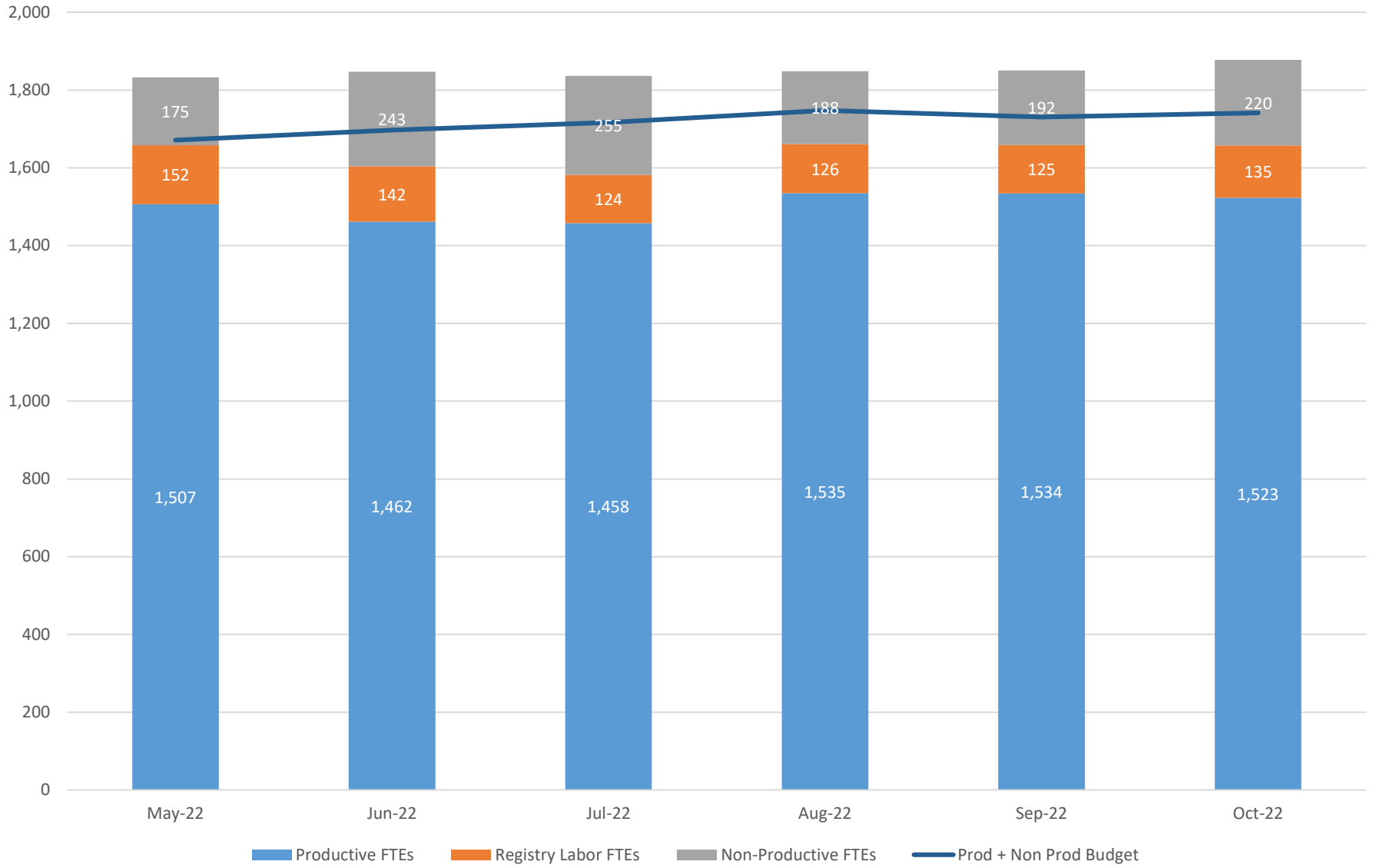
# Clinic Visits



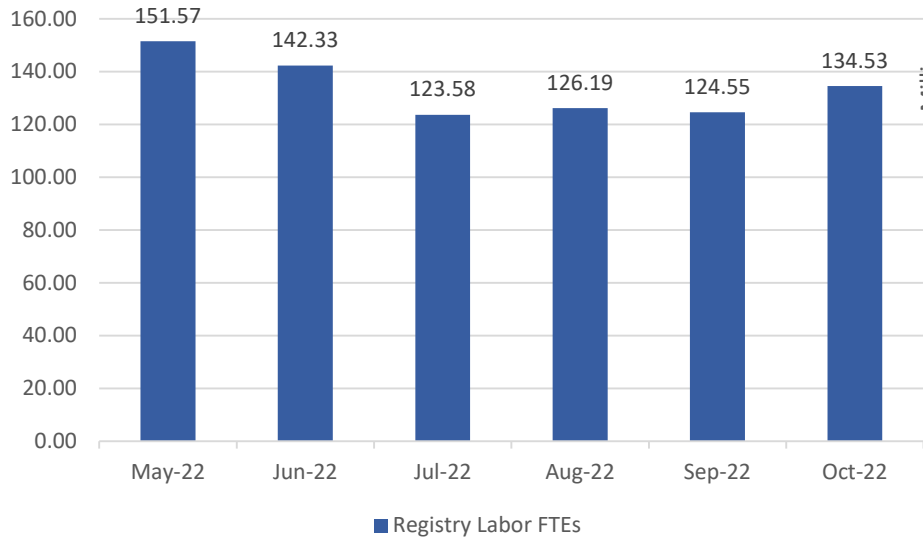
# Labor Metrics



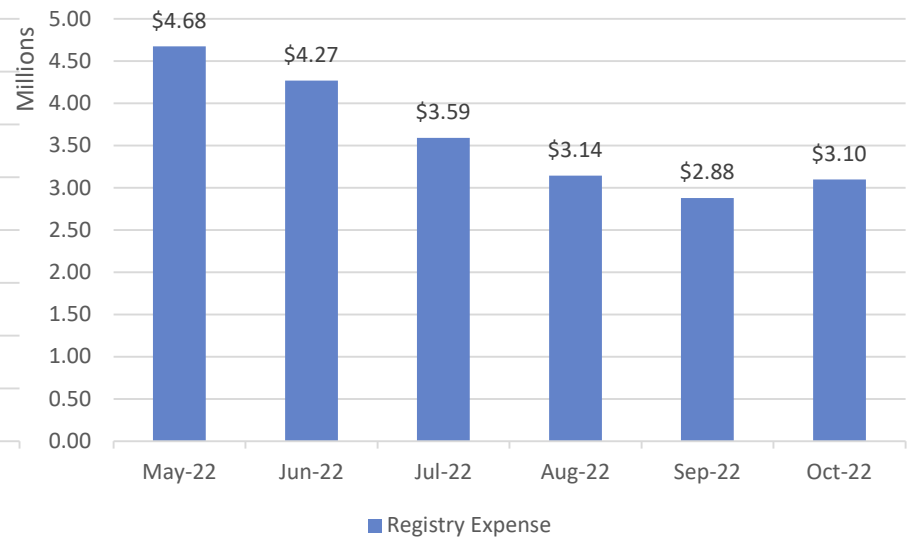
# Productivity



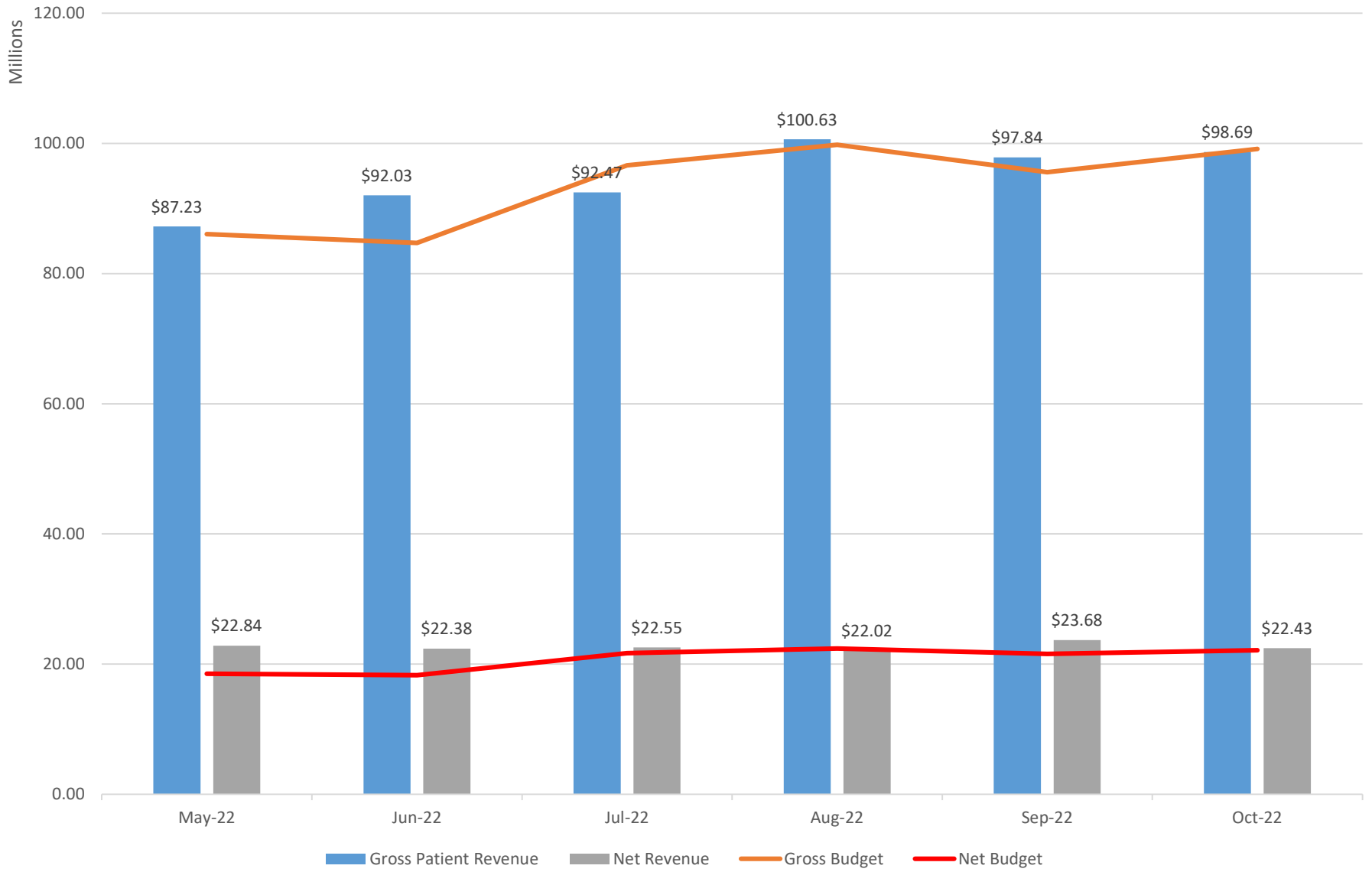
### Registry FTE's



### Registry Expense

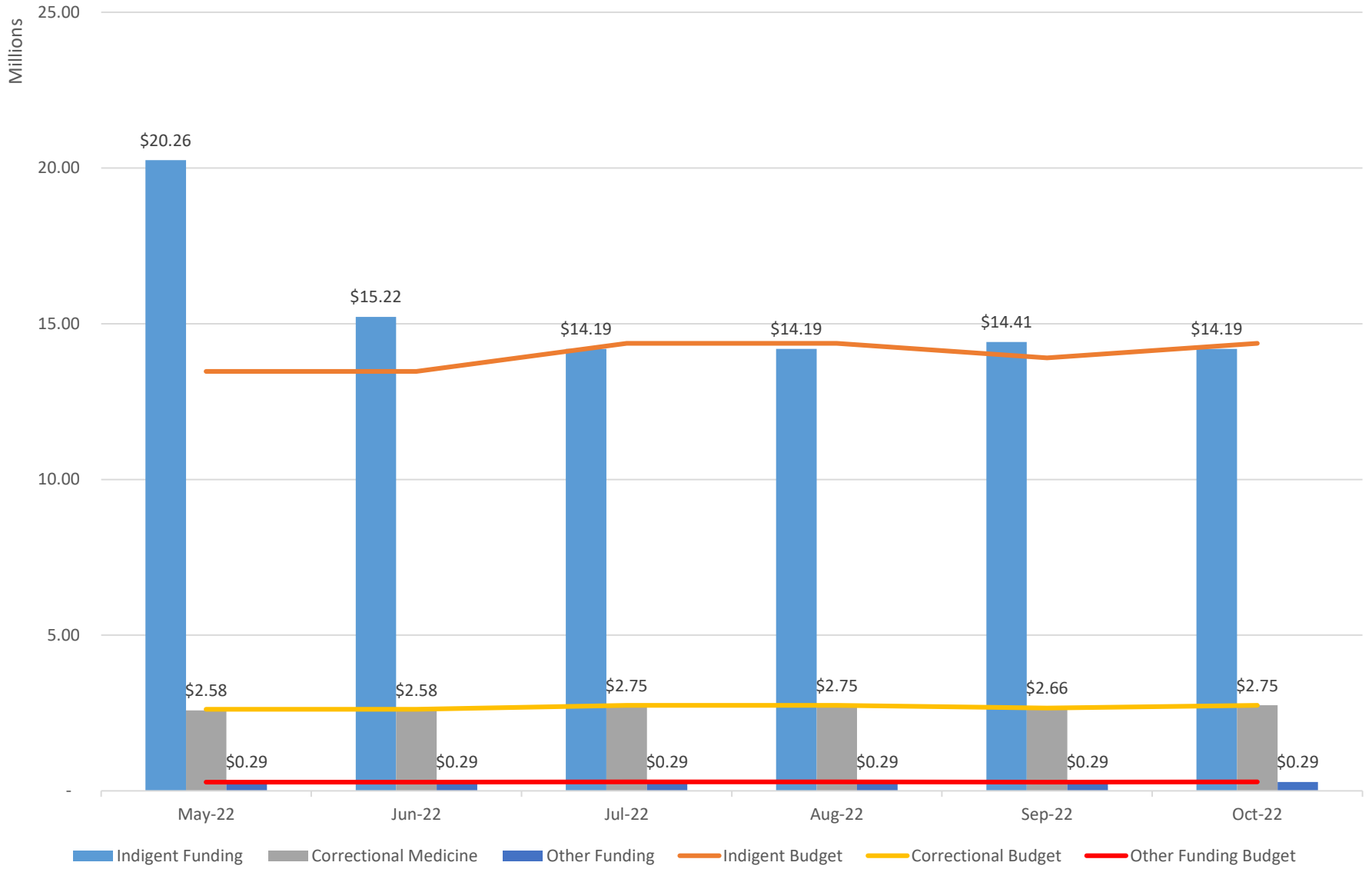


# Patient Revenue

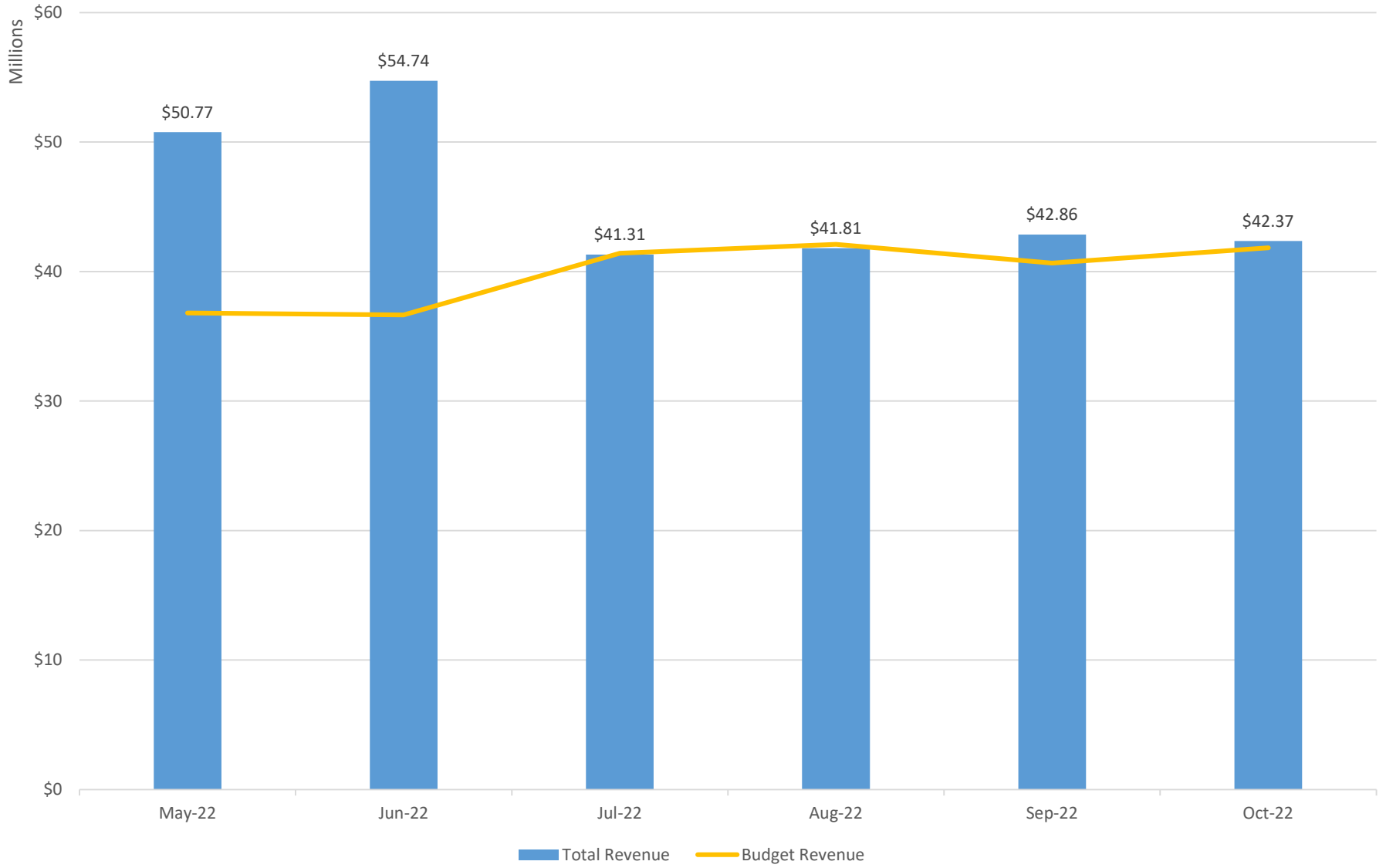




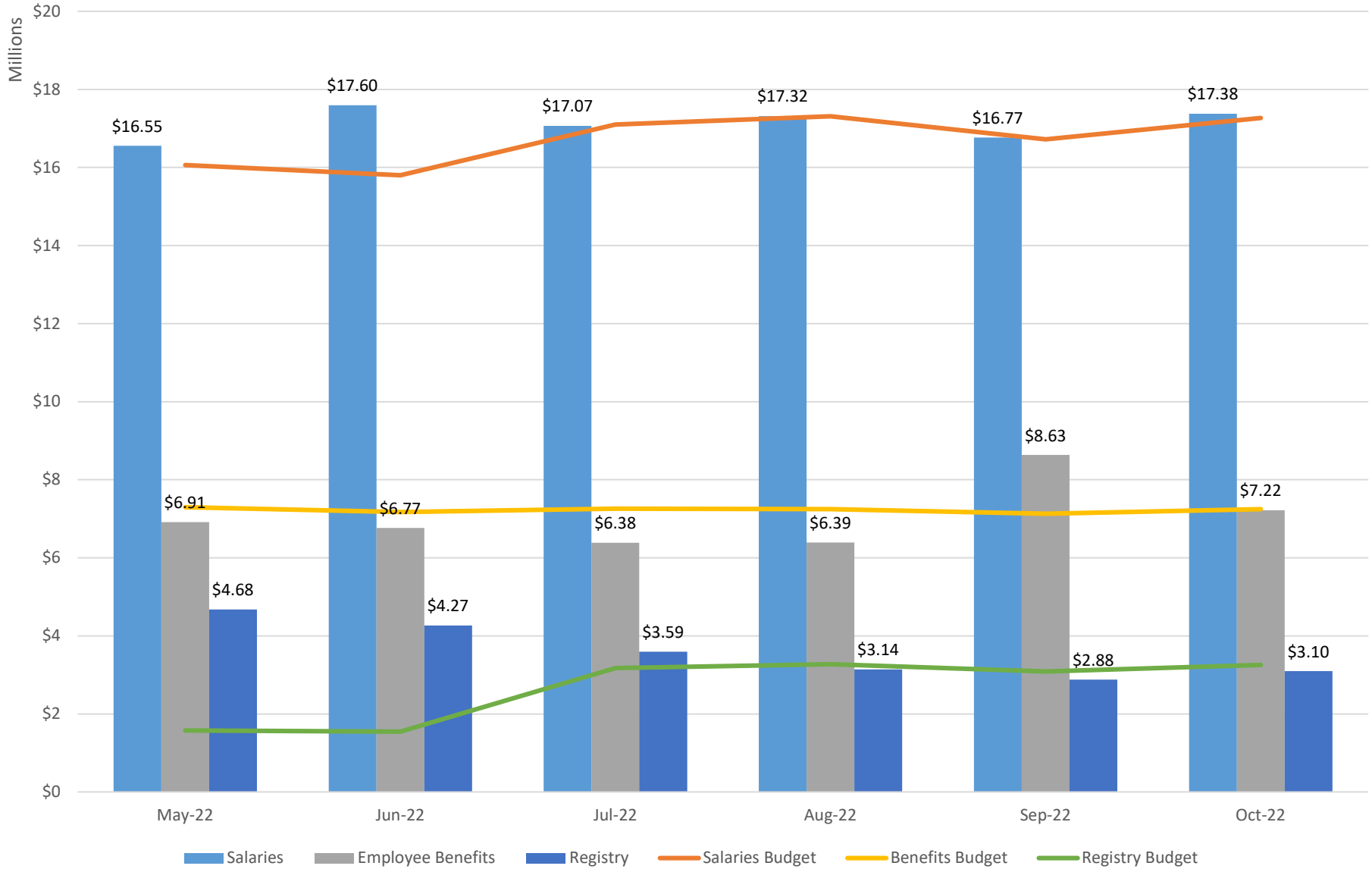
## Indigent & Correctional Revenue



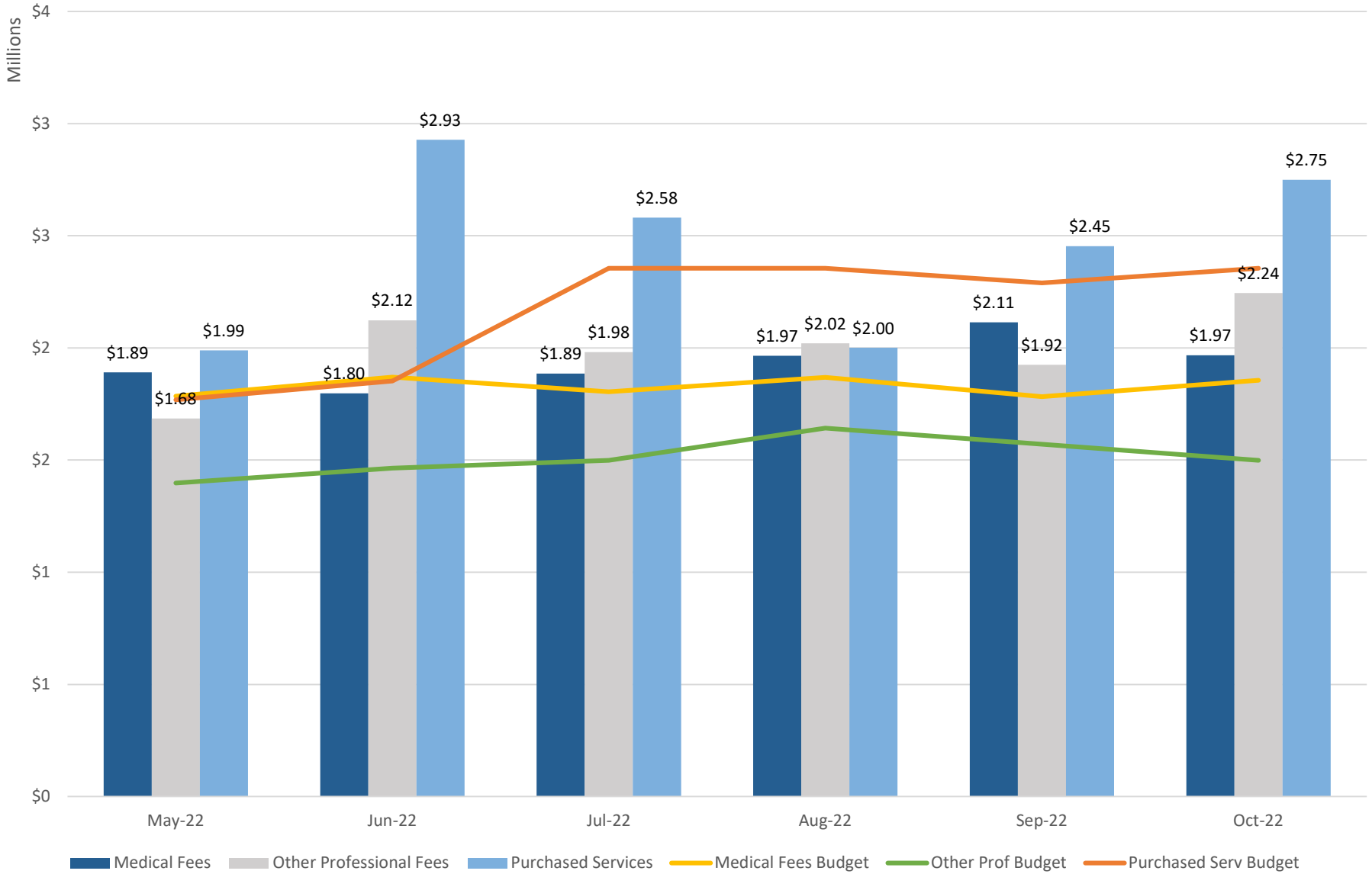
# Total Revenue



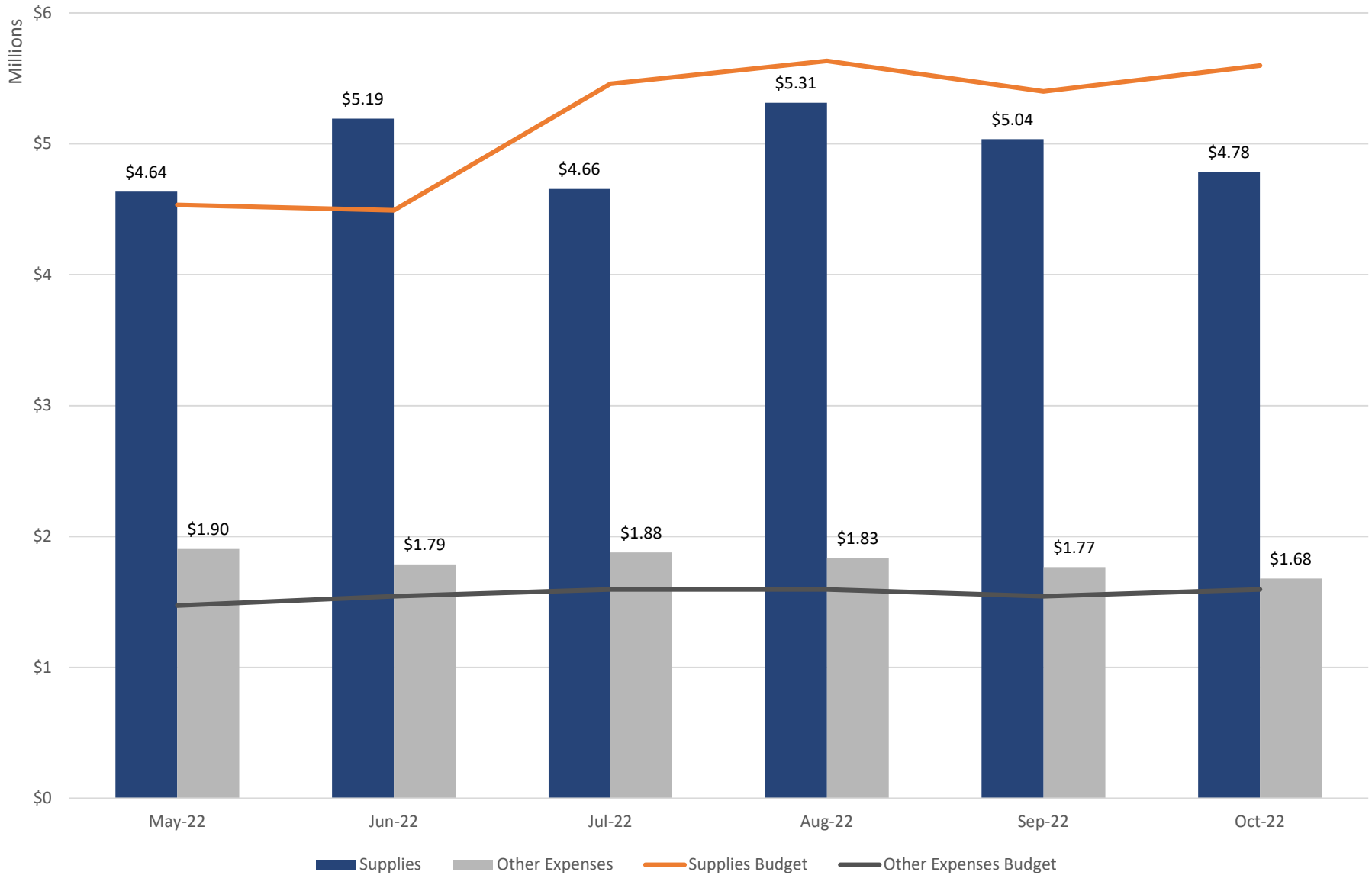
# Expenses



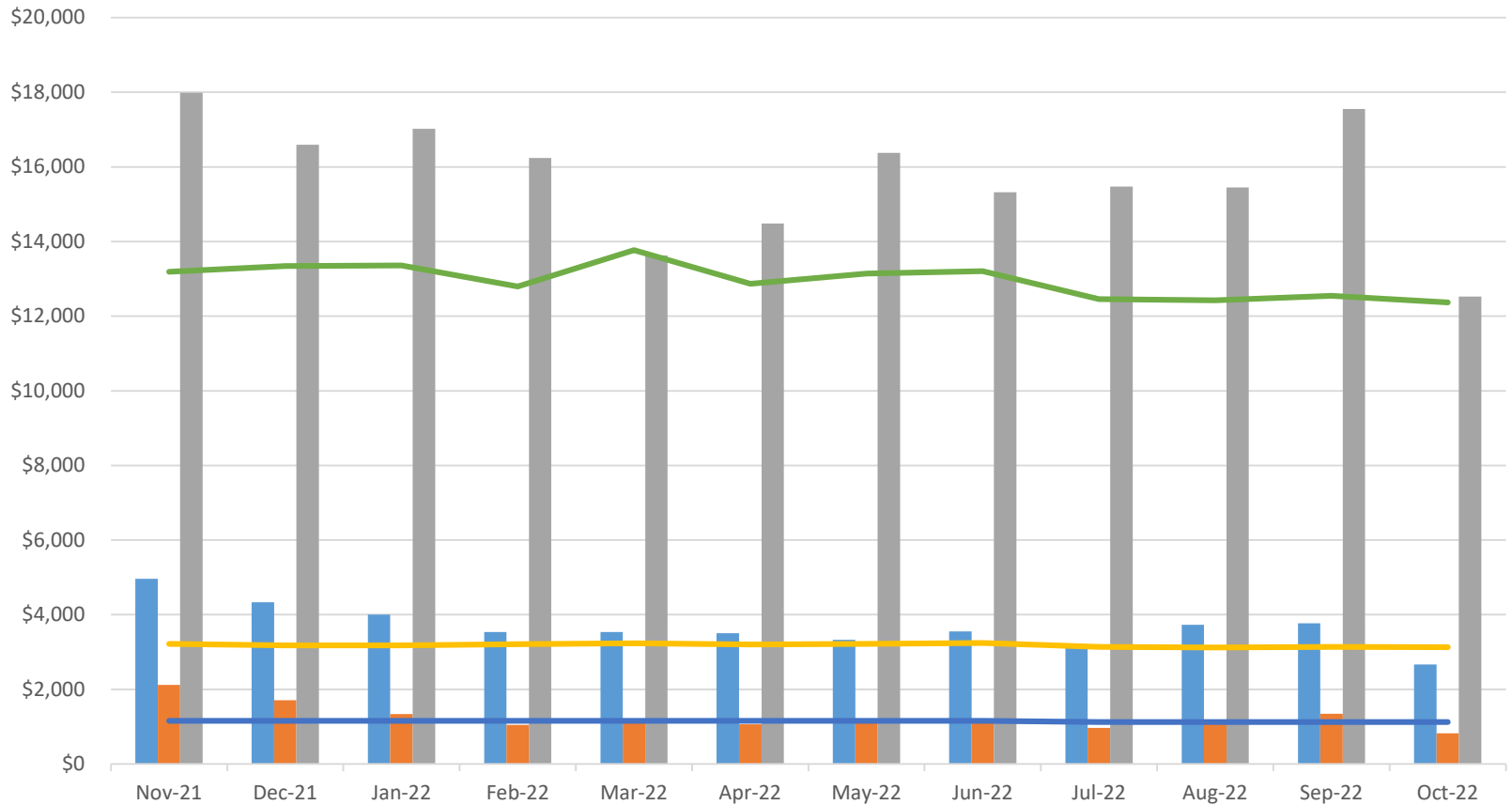
# Expenses



# Expenses

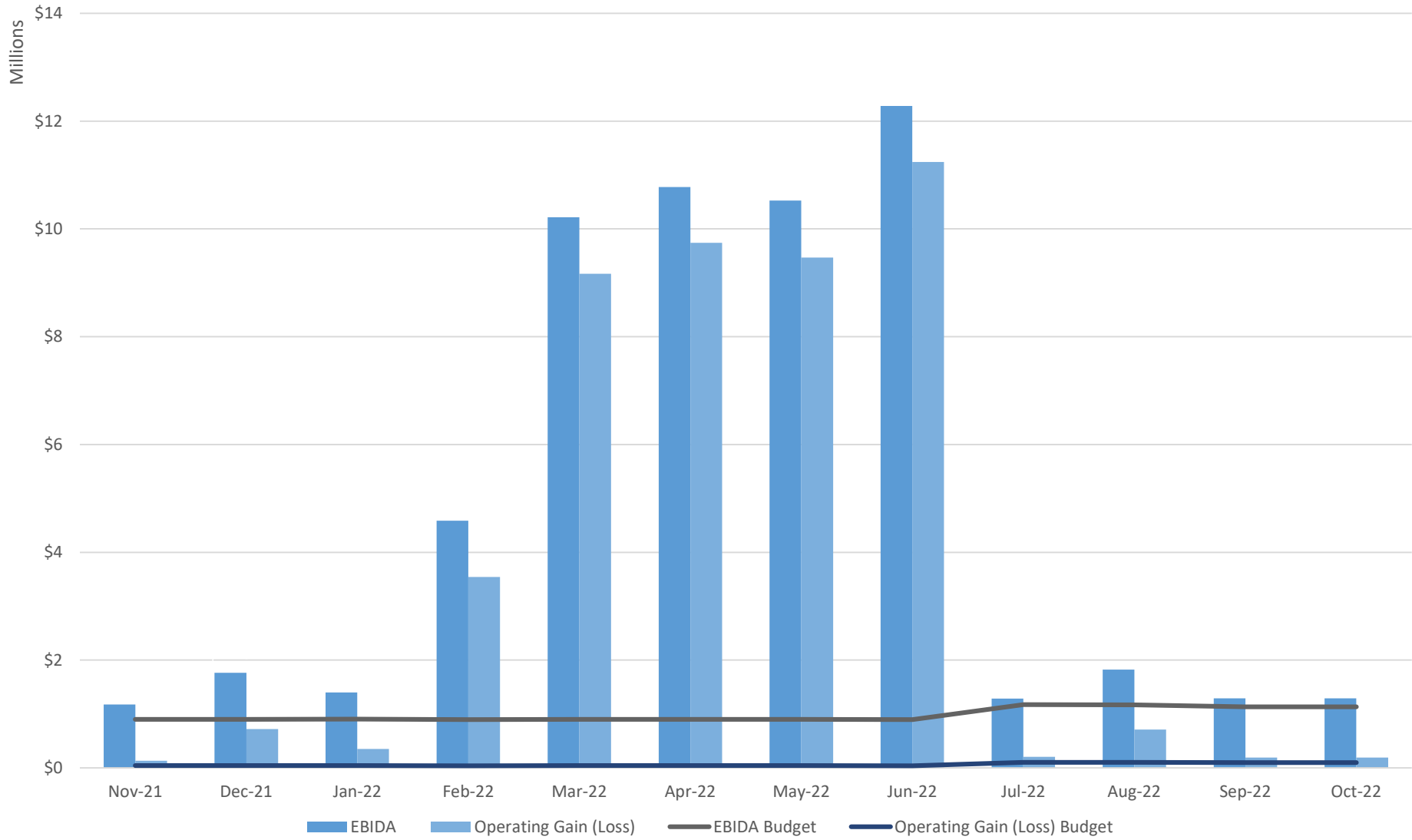


## Operating Metrics

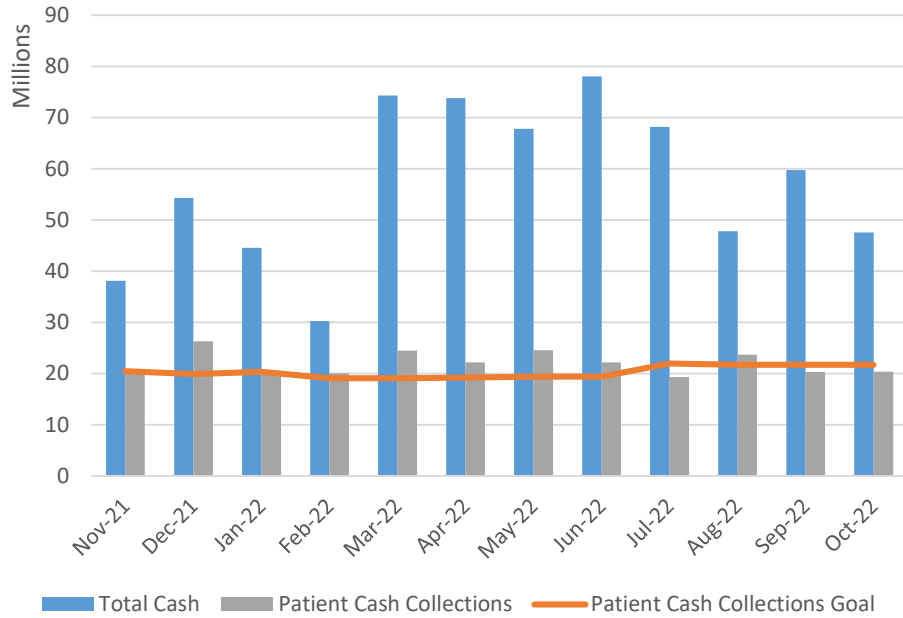


	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
Supply Expense per AA	\$4,959	\$4,333	\$4,007	\$3,534	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728	\$3,773	\$2,670
Pharm Cost per AA	\$2,120	\$1,712	\$1,339	\$1,048	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101	\$1,349	\$826
Net Revenue Per AA	\$17,988	\$16,591	\$17,019	\$16,237	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451	\$17,552	\$12,523
Budget Supp/AA	\$3,217	\$3,175	\$3,174	\$3,208	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125	\$3,140	\$3,127
Budget Pharm/AA	\$1,156	\$1,153	\$1,153	\$1,154	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126	\$1,126	\$1,126
Budget Net Rev/AA	\$13,187	\$13,344	\$13,359	\$12,793	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428	\$12,543	\$12,368

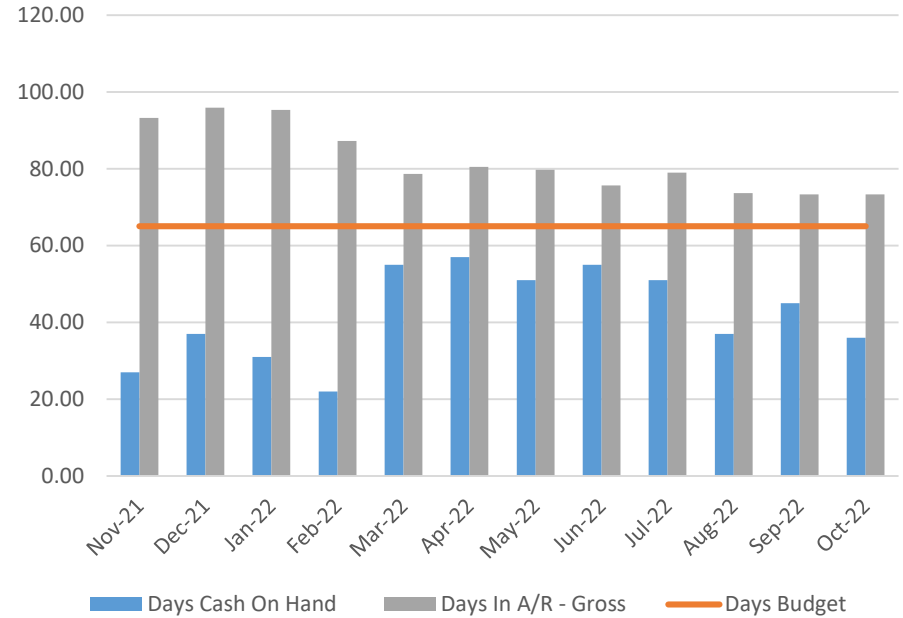
# EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year





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

	AUGUST	SEPTEMBER	OCTOBER	BUDGET OCTOBER	VARIANCE POS (NEG)	PY OCTOBER
<b>Gross Patient Revenue</b>	\$ 100,633,105	\$ 97,840,455	\$ 98,691,585	\$ 99,158,069	(0%)	\$ 101,572,680
Contractual Deductions	(78,610,132)	(74,161,703)	(76,259,264)	(77,017,504)	(1%)	(77,429,746)
<b>Net Revenue</b>	22,022,973	23,678,752	22,432,321	22,140,566	1%	24,142,935
Indigent Funding	14,191,888	14,409,710	14,191,888	14,370,622	(1%)	13,293,612
Correctional Medicine	2,746,855	2,658,247	2,746,855	2,746,855	0%	2,616,667
County Contribution	285,211	285,211	285,211	291,120	(2%)	285,211
<b>Net Patient Revenue</b>	39,246,927	41,031,920	39,656,275	39,549,163	0%	40,338,424
Other Operating Revenue	2,552,147	1,813,521	2,700,787	2,243,837	20%	2,175,678
Other Non-Operating Revenue	12,128	15,823	11,864	49,452	(76%)	12,864
<b>Total Revenue</b>	41,811,202	42,861,263	42,368,925	41,842,451	1%	42,526,966
<b>Expenses</b>						
Salaries	17,317,578	16,765,881	17,377,696	17,270,467	0.6%	16,356,020
Employee Benefits	6,391,119	8,633,534	7,220,131	7,245,535	(0%)	6,916,640
Registry	3,143,169	2,878,459	3,096,947	3,255,994	(5%)	4,582,330
Medical Fees	1,965,025	2,114,453	1,967,372	1,855,954	6%	1,749,796
Other Professional Fees	2,020,590	1,924,341	2,244,364	1,499,386	50%	1,343,747
Supplies	5,313,466	5,035,783	4,782,904	5,597,985	(15%)	6,322,164
Purchased Services	2,000,552	2,453,497	2,749,654	2,355,395	17%	1,821,639
Other Expenses	1,834,850	1,766,483	1,678,435	1,595,229	5%	1,708,635
Operating Expenses	39,986,349	41,572,431	41,117,501	40,675,945	1%	40,800,971
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,824,854	\$ 1,288,832	\$ 1,251,424	\$ 1,166,506	7%	\$ 1,725,995
EBIDA Margin	4%	3%	3%	3%	6%	4%
Interest	112,346	112,658	112,380	86,199	30%	84,468
Depreciation	703,915	687,309	751,066	682,877	10%	665,319
Amortization	294,594	294,594	287,808	300,890	(4%)	224,132
Total Expenses	41,097,204	42,666,992	42,268,755	41,745,911	1%	41,774,890
<b>Operating Gain (Loss)</b>	\$ 713,998	\$ 194,272	\$ 100,170	\$ 96,540	4%	\$ 752,076
<b>Operating Margin</b>	1.7%	0.5%	0.2%	0.2%	2.5%	1.8%

**KERN MEDICAL**  
**Year to Date: Revenue & Expense**

October 31, 2022

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Gross Patient Revenue</b>	\$ 389,636,251	\$ 391,170,434	(0.4%)	\$ 396,980,867	(2%)
Contractual Deductions	(298,951,285)	(303,362,086)	(1%)	(307,305,557)	(3%)
<b>Net Revenue</b>	90,684,966	87,808,348	3%	89,675,311	
Indigent Funding	56,985,375	57,018,920	(0.1%)	53,174,448	7%
Correctional Medicine	10,898,812	10,898,812	0%	10,466,667	4%
County Contribution	1,140,844	1,155,088	(1%)	1,140,844	(0%)
<b>Net Patient Revenue</b>	159,709,997	156,881,168	2%	154,457,269	3%
Other Operating Revenue	8,591,280	8,925,453	(4%)	8,031,273	7%
Other Non-Operating Revenue	51,398	196,211	(74%)	56,826	(10%)
<b>Total Revenue</b>	168,352,675	166,002,832	1%	162,545,368	4%
<b>Expenses</b>					
Salaries	68,529,781	68,401,246	0.19%	65,570,064	5%
Employee Benefits	28,629,345	28,857,607	(1%)	28,199,580	2%
Registry	12,710,833	12,796,657	(1%)	12,446,350	2%
Medical Fees	7,932,379	7,311,466	8%	6,905,627	15%
Other Professional Fees	8,170,780	6,211,741	32%	5,734,586	42%
Supplies	19,787,648	22,090,755	(10%)	24,174,863	(18%)
Purchased Services	9,784,404	9,355,739	4.6%	7,860,068	24%
Other Expenses	7,158,181	6,329,457	13%	6,400,933	12%
Operating Expenses	162,703,353	161,354,667	1%	157,292,071	3%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 5,649,322	\$ 4,648,165	22%	\$ 5,253,296	8%
EBIDA Margin	3%	3%	20%	3%	4%
Interest	448,366	342,017	31%	338,099	33%
Depreciation	2,816,879	2,709,480	4%	2,702,640	4%
Amortization	1,171,591	1,193,852	(1.9%)	896,529	31%
Total Expenses	167,140,189	165,600,016	1%	161,229,339	4%
<b>Operating Gain (Loss)</b>	\$ 1,212,487	\$ 402,816	201%	\$ 1,316,028	(8%)
<b>Operating Margin</b>	0.7%	0.2%	196.8%	0.8%	(11%)

**KERN MEDICAL  
BALANCE SHEET**

	OCTOBER 2022	OCTOBER 2021
<b>ASSETS:</b>		
<b>Total Cash</b>	<b>\$ 47,534,110</b>	<b>\$ 50,191,992</b>
Patient Receivables Subtotal	268,180,633	293,696,848
Contractual Subtotal	(216,402,133)	(252,541,417)
<b>Net Patient Receivable</b>	<b>51,778,500</b>	<b>41,155,431</b>
Total Indigent Receivable	154,918,132	149,142,306
Total Other Receivable	19,079,205	13,481,779
Total Prepaid Expenses	5,115,428	5,180,599
Total Inventory	4,136,118	4,424,586
<b>Total Current Assets</b>	<b>282,561,493</b>	<b>263,576,693</b>
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	227,479,445	213,875,339
Total Construction in Progress	8,346,347	9,939,127
<b>Total Property, Plant &amp; Equipment</b>	<b>235,825,792</b>	<b>223,814,466</b>
Total Accumulated Depr & Amortization	(140,658,468)	(128,981,980)
<b>Net Property, Plant, and Equipment</b>	<b>95,167,324</b>	<b>94,832,487</b>
<b>Total Long Term Assets</b>	<b>127,290,855</b>	<b>87,863,462</b>
<b>Total Assets</b>	<b>\$ 505,019,671</b>	<b>\$ 446,272,642</b>

**KERN MEDICAL  
BALANCE SHEET**

	OCTOBER 2022	OCTOBER 2021
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 15,736,521	\$ 16,708,155
Total Accrued Compensation	38,350,950	35,557,854
Total Due Government Agencies	16,899,867	35,019,068
Total Other Accrued Liabilities	20,362,617	49,789,600
<b><i>Total Current Liabilities</i></b>	<b>91,349,954</b>	<b>137,074,677</b>
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	61,859,422	80,914,207
<b><i>Total Long-Term Liabilities</i></b>	<b>443,012,233</b>	<b>403,018,004</b>
<b><i>Total Liabilities</i></b>	<b>534,362,187</b>	<b>540,092,681</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	(66,056,537)	(130,534,061)
<b><i>Total Fund Balance</i></b>	<b>(29,342,516)</b>	<b>(93,820,039)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 505,019,671</b>	<b>\$ 446,272,642</b>



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

December 14, 2022

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

**Recommended Action:** Receive and File

**Summary:**

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

Season's Greetings!

As we enter this time of year with the upcoming holidays, it affords us the chance to reflect on the many endeavors Kern Medical has to be grateful for, especially these past two and a half years going through a worldwide pandemic. We have regularly tried to share our admiration of the staff as they have heroically served here. As a stand-alone organization, we managed our resources well to serve the community during the pandemic and continue to fulfill our vital mission as Kern County's teaching hospital, trauma and specialty center, and as one of California's designated public safety net health systems.

Our clinical operations remain extremely busy across all settings. Our staff continues to spend a considerable amount of time preparing for the winter months as we expect even higher volumes from what has been called a, "Winter of Viruses."

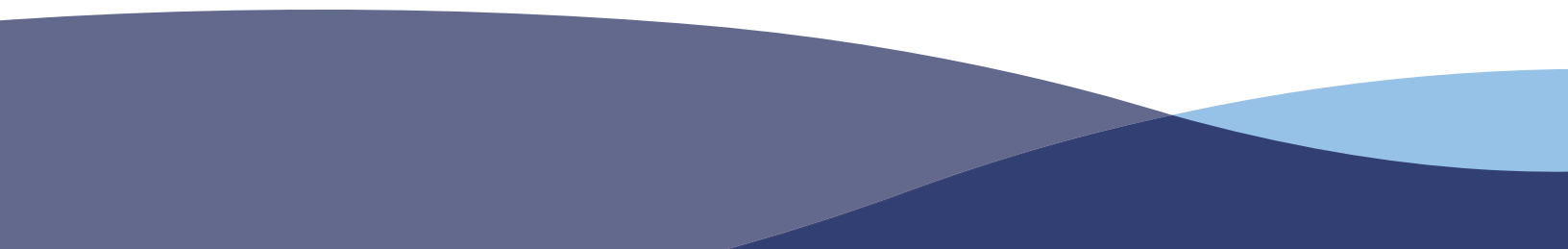
Our organization has also actively participated in community outreach as well as efforts to enhance access to our clinical services, including:

- Arvin's Healthful Harvest where we partnered with other community hospitals in health screenings, insurance enrollment, and immunizations
- Community service at *The Mission* during Thanksgiving
- The relocation of our pediatrics clinic to 9330 Stockdale Highway
- The opening of our new Q Street Imaging Center, which is focused on women's health and includes CT, mammography, and ultrasound

We are fortunate to serve not just in health care, but in an organization with such a unique mission. We look forward to a New Year and the opportunities that the future brings. We wish our staff, Board, and community all the best in 2023.



*What's Happening?*



# HEALTHFUL HARVEST





# COMMUNITY SERVICE AT THE MISSION



# PEDS NEW LOCATIONS



# THANKSGIVING GIFT



## Happy Thanksgiving

We are grateful for all that you do!

### \$20 Gift Certificate

Valid at all Flame & Skewers locations. Expires May 31, 2023.

Certificate must be used in person.

Certificate must be used in total and turned into cashier upon usage.



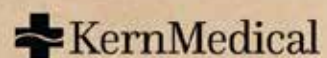
[www.flameandskewers.com](http://www.flameandskewers.com)

# CHRISTMAS LUNCH SCHEDULE

## KERN MEDICAL *Christmas* MEALS

MONDAY, DECEMBER 12	TUESDAY, DECEMBER 13	WEDNESDAY, DECEMBER 14	THURSDAY, DECEMBER 15	FRIDAY, DECEMBER 16
<b>COLUMBUS CLINIC:</b> Caesar's Deli  <b>STOCKDALE CLINIC:</b> Food Truck	<b>19TH STREET</b> F STREET 34TH STREET LEGAL CRF JUVENILE HALL: Hot Box Lunch  <b>Q STREET:</b> Food Truck	<b>OFFICE PARK:</b> Food Truck  <b>HERITAGE:</b> Food Truck	<b>MAIN CAMPUS COURTYARD:</b> Holiday Lunch  <b>M STREET:</b> Food Truck  <b>NIGHT SHIFT:</b> Caesar's Deli 6:30 pm - 8:30 pm Room 1058	<b>CORRECTIONS</b> TERDO Food Truck

ALL DAY SHIFT MEALS WILL BE SERVED FROM 11 AM - 1 PM



# OUTLAWZ TOY DRIVE



# NATIONAL RECOGNITIONS IN NOVEMBER

- National Pancreatic Cancer Awareness Month
- American Diabetes Month
- COPD Awareness Month
- National Alzheimer's Awareness Month
- Stomach Cancer Awareness Month
- Nurse Practitioner Week (Nov. 12 - 18)
- National Family Health History Day (Nov. 24)

# NATIONAL RECOGNITIONS IN DECEMBER

- World AIDS Day (Dec. 1)
- National Hand Washing Awareness Week (Dec. 2 - 8)
- National Influenza Vaccination Week (Dec. 5 - 9)

# NO SHAVE NOVEMBER

---

**MEN** <sup>WOMEN</sup>  
**76.2** **81**

**AVERAGE LIFE EXPECTANCY FOR MEN IN THE UNITED STATES IS ALMOST 5 YEARS LESS THAN WOMEN.**

---



AROUND 15 MILLION AMERICAN ADULTS (6.7% OF THE POPULATION) WILL BE DIAGNOSED WITH DEPRESSION EACH YEAR.



1 IN 2 MEN WILL BE DIAGNOSED WITH CANCER IN THEIR LIFETIME.



MORE THAN ONE THIRD OF ADULTS (34.9%) IN THE UNITED STATES ARE OBESE.

---

**12.1% OF MEN 18 YEARS AND OVER ARE IN FAIR OR POOR HEALTH.**

---

# WHY?

- Lack of awareness and understanding of the health issues men face.
- Men not openly discussing their health and how they're feeling.
- Reluctance to take action when men don't feel physically or mentally well.
- Men engaging in risky activities that threaten their health
- Stigmas surrounding mental health
- Men are 24 percent less likely than women to have visited a doctor within the past year.



# NO SHAVE NOVEMBER

The Movember Foundation aims to change this way of thinking by putting a fun twist on this serious issue.

Using the moustache as a catalyst, the idea is to bring about change and give men the opportunity and confidence to learn and talk about their health and take action when needed.

## HEALTH TIPS -TOP 5 THINGS TO KNOW & DO

1. Spend time with people who make you feel good. Stay connected. Catch up regularly, check in, and make time.
2. Talk more. You don't need to be an expert, but being there for someone and giving your time can be life-saving.
3. Know the numbers. At 50, talk to your doctor about prostate cancer. Know your numbers and know your risk.
4. Check regularly. If something doesn't feel right, go to the doctor.
5. Move more! Add more activity to your day. Do more of what makes you feel good. Take the stairs, park further away, etc.

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

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on December 14, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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BOARD OF GOVERNORS  
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Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on December 14, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521, Charging Party, v. Kern County Hospital Authority,  
Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –

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

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(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital  
Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/  
Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
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  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC –

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

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on December 14, 2022, to consider:

- X   CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

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

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 14, 2022, 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)) –



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

Government Code Section 54957.7

The Board of Governors will hold a closed session on December 14, 2022, to consider:

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

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on December 14, 2022, to consider:

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