



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, September 21, 2022 ~~October 19, 2022~~ *CORRECTED*

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Infectious Disease Fellowship Program –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

- CA
4) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVE; ADOPT RESOLUTION
- CA
5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on September 21, 2022 –
APPROVE
- CA
6) Proposed Resolution establishing regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2023 –
APPROVE; ADOPT RESOLUTION
- CA
7) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for two Kern Medical Center employees to attend HCCA's virtual "Healthcare Enforcement Compliance Conference" from November 7-9, 2022 –
APPROVE; ADOPT RESOLUTION

CA

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

CA

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

CA

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

CA

- 11) Proposed Amendment No. 3 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., an independent contractor, for professional medical services in the Department of Anesthesiology, for the period November 9, 2016 through November 8, 2022, extending the term for three years from November 9, 2022 through November 8, 2025, for a new maximum payable of \$22,806,681 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Agreement with M. Brandon Freeman, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery from October 22, 2022 through October 21, 2025, in an amount not to exceed \$2,100,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Agreement with Tung Thanh Trang, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery from November 13, 2022 through November 12, 2025, in an amount not to exceed \$2,300,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Agreement with Soroush Bazargani, M.D., a contract employee, for professional medical services in the Department of Surgery from August 1, 2023 through September 30, 2028, in an amount not to exceed \$4,000,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Amendment No. 3 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, adding compensation for the performance of FAA flight physicals, and increasing the maximum payable by \$108,442, from \$9,441,558 to \$9,550,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

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

CA

- 17) Proposed Amendment No. 1 to Agreement 08420 for Personal/Professional Services with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction services for new fire panel upgrades, for the period December 2, 2019 through December 1, 2022, extending the term through December 1, 2025, and increasing the maximum payable by \$600,000, from \$150,000 to \$750,000, to cover the extended term –
MAKE A FINDING 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 THE CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$750,000

CA

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

CA

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

CA

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

CA

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

CA

- 22) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for construction services and installation of perimeter fencing of Kern Medical Center, effective October 19, 2022, in an amount not to exceed \$66,839 – MAKE A FINDING 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 THE CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$66,839

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

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

CA

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

CA

- 26) Claims and Lawsuits Filed as of September 30, 2022 – RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

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

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

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

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, NOVEMBER 19, 2022 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

26) CLAIMS AND LAWSUITS FILED AS OF SEPTEMBER 30, 2022 –
RECEIVE AND FILE

- A) Summons and Complaint in the matter of Karla Crimmins, individually and on behalf of all others similarly situated v. Kern County Hospital Authority, Kern Medical Center Foundation, Kern Medical Auxiliary, and DOES 1-25, inclusive, Kern County Superior Court Case No. BCV-22-102366



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

October 19, 2022

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

Recommended Action: Approve; Adopt Resolution

Summary:

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

Discussion:

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

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

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

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

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

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

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

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

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

In the matter of:

Resolution No. 2022-____

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

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 19th day of October, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

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

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

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

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

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

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

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

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

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

5. This Resolution shall take effect immediately upon its adoption and remain in effect until November 16, 2022.

6. This Board shall reevaluate the above findings on November 16, 2022, and every 30 days thereafter.

7. Resolution No. 2022-017, adopted by the Board of Governors on September 21, 2022, is hereby repealed and superseded by this Resolution.

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

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

Members, Board of Governors
Chief Executive Officer
Legal Services Department



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, September 21, 2022

11:30 A.M.

BOARD RECONVENED

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

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

CORRESPONDENCE DATED SEPTEMBER 20, 2022, RECEIVED FROM SYDNEE GALUSHA CONCERNING COMMENTS AND QUESTIONS FOR THE SEPTEMBER 21, 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 ANNOUNCED THAT THE INFECTIOUS DISEASE FELLOWSHIP PROGRAM RECEIVED CONTINUED ACCREDITATION AND HAS BEEN APPROVED FOR TWO FELLOWS

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Kern Medical Center nurses Cathy Badgley, Brock Beeney, Jemma Clouden, Laura Cunanan, Eva Flanigan, Dawn C. LeRoy and Shalom Sakowski for their hard work and dedication –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –
APPROVED; ADOPTED RESOLUTION 2022-017
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 5) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on August 17, 2022 and Board of Governors special meeting on August 31, 2022 –
APPROVED
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

- 6) Proposed updated Conflict of Interest Policy and Conflict of Interest Code for the Kern County Hospital Authority –
CORRESPONDENCE DATED SEPTEMBER 20, 2022, RECEIVED FROM SYDNEE GALUSHA CONCERNING COMMENTS AND QUESTIONS RELATED TO ITEM 6 WERE PRESENTED TO THE BOARD DURING MEETING, A COPY OF WHICH MAY BE OBTAINED UPON REQUEST BY CONTACTING THE AUTHORITY BOARD COORDINATOR AT (661) 326-2000; KAREN S. BARNES, VICE PRESIDENT & GENERAL COUNSEL, KERN COUNTY HOSPITAL AUTHORITY, HEARD; APPROVED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 7) Letter from Moss Adams LLP, an independent contractor, regarding the Kern Medical Center financial statement audit for the fiscal year ended June 30, 2022 –
RECEIVED AND FILED
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 8) Proposed retroactive Agreement with Trans-West Security Services, Inc., an independent contractor, for security services from July 1, 2022 through June 30, 2025, in an amount not to exceed \$9,818,826 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 100-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 9) Proposed Amendment No. 4 to Agreement 06816 with Health Advocates, LLC, an independent contractor, for accounts receivable and financial services for the period July 1, 2016 through September 30, 2022, extending the term for three years from October 1, 2022 through September 30, 2025, increasing the maximum payable by \$10,800,000, from \$15,850,000 to \$26,650,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 101-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 10) Proposed Amendment No. 10 to Agreement 947-2008 with Toyon Associates, Inc., an independent contractor, for third-party reimbursement services, for the period October 14, 2008 through October 13, 2022, extending the term for two years from October 14, 2022 through October 13, 2024, updating the service pricing, and increasing the maximum payable by \$950,000, from \$4,290,000 to \$5,240,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 102-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 11) Proposed Agreement with Jack C. Hou, M.D., a contract employee, for professional medical services in the Department of Surgery from September 22, 2022 through September 21, 2023, in an amount not to exceed \$890,000, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 103-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 12) Proposed Amendment No. 4 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 September 30, 2022, extending the term for 90 days from October 1, 2022 through December 31, 2022, and increasing the maximum payable by \$115,000, from \$1,465,000 to \$1,580,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 104-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 13) Proposed Amendment No. 2 to Agreement 055-2019 with United Neuroscience, Inc., an independent contractor, for professional medical services in the Department of Medicine, for the period October 1, 2019 through September 30, 2022, extending the term for two years from October 1, 2022 through September 30, 2024, and increasing the maximum payable by \$2,250,000, from \$3,040,000 to \$5,290,000, to cover the extended term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 105-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 14) Proposed Lease Schedule with Presidio Technology Capital, LLC, an independent contractor, containing nonstandard terms and conditions, for the lease of equipment, software and services for radiological information technology infrastructure for a term of 36 months, in an amount not to exceed \$289,894, plus applicable taxes – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 106-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN RECEIPT FOR EQUIPMENT UPON DELIVERY
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 15) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for construction services for construction of a new isolation and anteroom in the Emergency Department, effective September 21, 2022, in an amount not to exceed \$498,500 – MADE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 107-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$498,500
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 16) Proposed Amendment No. 4 to Agreement 27716 with Hill-Rom Company, Inc., an independent contractor, for software upgrades and additional materials related to the 2nd Floor and 4th Floor C wing nurse call system project, for the period November 17, 2016 until project completion, with total project costs not to \$420,078, effective September 21, 2022 – MADE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 108-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 17) Proposed Agreement with Rajinder P. Singh, M.D., an independent contractor, for professional medical services in the Department of Radiology from October 7, 2022 through October 6, 2023, in an amount not to exceed \$500,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 109-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 18) Proposed Agreement with Naheedy and Zarandy Medical Group, Inc., an independent contractor, for professional medical services in the Department of Radiology from November 1, 2022 through October 31, 2024, in an amount not to exceed \$800,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 110-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 19) Proposed Amendment No. 1 to Agreement 073-2019 with Arman G. Froush, D.O., a contract employee, for professional medical services in the Department of Radiology, for the period December 11, 2019 through December 10, 2022, increasing the maximum payable by \$300,000, from \$2,850,000 to \$3,150,000, to cover the term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 111-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 20) Proposed Amendment No. 2 to Agreement 23316 with The Board of Trustees of the Leland Stanford Junior University, on behalf of California Maternal Quality Care Collaborative, for participation in the Maternal Data Center, for the period October 1, 2016 through September 30, 2022, extending the term for three years from October 1, 2022 through September 30, 2025, and increasing the maximum payable by \$35,000, from \$70,000 to \$105,000, to cover the extended term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 112-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 21) Proposed acceptance of donation of travel and related expenses from Cerner Corporation for up to seven Kern Medical Center employees to attend the “Oracle Cerner Annual Health Conference” in Kansas City, Missouri, from October 17-19, 2022 – APPROVED; ADOPTED RESOLUTION 2022-018
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 22) Proposed First Amendment to Agreement 074-2021 with Adventist Health Physicians Network, an independent contractor, for professional medical services of Kern Medical Center physicians, for the period January 1, 2022 through December 31, 2031, adding the specialties of urology and plastic surgery and compensation for the professional services provided by Kern Medical physicians effective September 21, 2022 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 113-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 23) Proposed Resolution in the matter of revising the extension of excess medical professional liability coverage for Kern Medical Center employed and independent contractor physicians, effective September 21, 2022 – APPROVED; ADOPTED RESOLUTION 2022-019
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 24) Proposed retroactive Master Service Agreement with Signature Performance, Inc., doing business as Signature Performance Healthcare LLC, an independent contractor, for medical records coding services from September 1, 2022 through August 31, 2023, in an amount not to exceed \$5,490,000 –
APPROVED; AUTHORIZEE CHAIRMAN TO SIGN AGREEMENT 114-2022
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

- 25) Response to Board referral for a trending analysis report of Kern Medical Center births (from August 17, 2022) –
RECEIVED AND FILED
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Brar

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

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

CA

- 28) Monthly report on What's Happening at Kern Medical Center –
RECEIVED AND FILED
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 29) Proposed correction to minutes for Kern County Hospital Authority Board of Governors regular meeting on July 20, 2022 –
APPROVE
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

CA

- 30) Claims and Lawsuits Filed as of August 31, 2022 –
RECEIVE AND FILE
Pelz-McLaughlin: 5 Ayes; 2 Absent - Alsop, Brar

ADJOURNED TO CLOSED SESSION
Pelz-Berjis

CLOSED SESSION

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

- 33) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Patricia Smith v. Kern Medical Center, and DOES 1 through 10, Kern County Superior Court Case No. BCV-18-101315 – SEE RESULTS BELOW
- 34) 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
- 35) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – SEE RESULTS BELOW
- 36) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Berjis-McLaughlin

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 31 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR BERJIS; 2 ABSENT - ALSOP, BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, AND VOLUNTARY RESIGNATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 32 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 33 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Patricia Smith v. Kern Medical Center, and DOES 1 through 10, Kern County Superior Court Case No. BCV-18-101315 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 34 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 35 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 36 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, OCTOBER 19, 2022 AT 11:30 A.M.

Pelz

/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**

October 19, 2022

SUBJECT: Establish Regular Meeting Dates of the Kern County Hospital Authority Board of Governors for Calendar Year 2023

Recommended Action: Approve; Adopt Resolution

Summary:

The conduct of your Board is subject to the provisions of the Ralph M. Brown Act (“Brown Act”; Gov. Code, § 54950 et seq.). Specifically, section 54954, subd. (a) of the Brown Act requires that your Board shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.

Therefore, it is recommended that your Board establish its schedule of regular meetings for calendar year 2023 in compliance with the Brown Act by adopting the attached Resolution.

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

In the matter of:

Resolution No. 2022-____

**ESTABLISHING THE REGULAR
MEETING DATES OF THE KERN
COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS FOR
CALENDAR YEAR 2023**

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 19th day of October, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The Brown Act (Gov. Code, § 54954, subd. (a)) requires that the legislative body of a local agency shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings; and

(b) Section 2.170.060 of the Ordinance Code of the County of Kern (“Ordinance”) provides for a governing body, which shall be known as the Kern County Hospital Authority Board of Governors; and

(c) Section 2.170.030 of the Ordinance provides that the Brown Act shall apply to the Kern County Hospital Authority; and

(d) The Kern County Hospital Authority Board of Governors desires to establish its schedule of regular meetings for calendar year 2023 in compliance with the Brown Act.

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

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

2. Except as provided in paragraph 4 of this Resolution, the calendar year 2023 regular meetings of the Board of Governors shall be held as follows:

Wednesday, January 18, 2022	Regular Meeting
Wednesday, February 15, 2022	Regular Meeting
Wednesday, March 15, 2022	Regular Meeting
Wednesday, April 19, 2022	Regular Meeting
Wednesday, May 17, 2022	Regular Meeting
Wednesday, June 21, 2022	Regular Meeting
Wednesday, July 19, 2022	Regular Meeting
Wednesday, August 16, 2022	Regular Meeting
Wednesday, September 20, 2022	Regular Meeting
Wednesday, October 18, 2022	Regular Meeting
Wednesday, November 15, 2022	Regular Meeting
Wednesday, December 13, 2022	Regular Meeting

3. All meetings shall be held at Kern Medical Center, which is located at 1700 Mount Vernon Avenue, Bakersfield, California 93306. All meetings shall commence at the hour of 11:30 a.m., unless a different time is posted by the Authority Board Coordinator. Meetings so commenced may be continued from time to time until the disposition of all business before the Board of Governors.

4. Regular meetings shall be canceled or rescheduled whenever the Board of Governors unanimously finds good cause otherwise exists for cancellation, rescheduling, or scheduling of a regular meeting.

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

Members, Board of Governors
Kern Medical Center
Legal Services Department
Medical Staff of Kern Medical Center
County Administrative Office
Clerk of the Board of Supervisors

2023



Kern County Hospital Authority
Board of Governors'
Meeting Calendar
11:30am – 1:30pm

JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
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29	30	31				

FEBRUARY

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MARCH

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JUNE

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OCTOBER

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DECEMBER

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31						

KERN MEDICAL

1700 Mt. Vernon Ave., Bakersfield, CA 93306 | KernMedical.com



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

August 17, 2022

Subject: Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for HCCA’s virtual “Healthcare Enforcement Compliance Conference”

Recommended Action: Approve; Adopt Resolution

Summary:

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

Safety National covers the Authority’s workers’ compensation program; MedPro provides Hospital Professional Excess Liability insurance to the Authority. Safety National and MedPro have offered to donate to the Authority all travel and related expenses (conference fees only as the conference is virtual this year) for two Kern Medical employees to attend HCCA’s virtual “Healthcare Enforcement Compliance Conference,” from November 7-9, 2022. This training session is necessary in connection with official Authority business.

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

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

In the matter of:

Resolution No. 2022-____

**ACCEPTANCE OF DONATION OF TRAVEL
AND RELATED EXPENSES FOR THE HCCA
“HEALTHCARE ENFORCEMENT COMPLIANCE
CONFERENCE”**

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 19th day of October, 2022, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

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

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

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

(d) Safety National and MedPro have offered to donate to the Authority all travel and related expenses (conference fees only) for two Authority employees to attend HCCA's virtual "Healthcare Enforcement Compliance Conference," from November 7-9, 2022; and

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

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

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

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

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

2. This Board hereby accepts from Safety National and MedPro the donation of travel and related expenses to cover all costs for two Authority employees to attend HCCA's virtual "Healthcare Enforcement Compliance Conference," from November 7-9, 2022.

3. This Board authorizes the Chief Executive Officer to designate two Authority employees to attend HCCA's virtual "Healthcare Enforcement Compliance Conference," from November 7-9, 2022.

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

Chief Financial Officer
Legal Services Department
Human Resources Department



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

October 19, 2022

SUBJECT: Proposed Amendment No. 1 to Agreement No. 064-2021 for Personal/Professional Services with Vision y Compromiso

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve proposed Amendment No. 1 to the Personal/Professional Services Agreement with Vision y Compromiso, which provides community outreach and education initiative to Medi-Cal Managed Care beneficiaries assigned to Kern Medical.

The Agreement term is from October 20, 2021 through October 19, 2022 and Amendment No. 1, effective October 19, 2022, extends the term by one year through October 19, 2023, and increases the maximum payable by \$505,000, from \$504,000 to \$1,009,000, to cover the term.

Therefore, it is recommended that your Board approve Amendment No. 1 to the Personal/Professional Services Agreement with Vision y Compromiso, effective, October 19, 2022, extending the term one year from October 19, 2022 to October 19, 2023, and increasing the maximum payable by \$505,000 from \$504,000 to \$1,009,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority – Vision y Compromiso)**

THIS AMENDMENT TO AGREEMENT, effective October 19, 2022, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Vision y Compromiso ("Consultant") with its principal place of business located at 2536 Edward Avenue, El Cerrito, California 94530.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement, effective October 20, 2021 (HA Agmt. # 064-2021) ("Agreement"), for the period October 20, 2021 through October 19, 2022; and

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

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

- Term.** The Agreement shall be extended from October 19, 2022 to October 19, 2023, unless sooner terminated as provided for in the Agreement.
- Fees** payable by KCHA under the Agreement shall increase by \$505,000, from \$504,000 to \$1,009,000.

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

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

By _____
Scott Thygeron, Chief Executive Officer

Date: _____.

Date: _____.

VISION Y COMPROMISO

APPROVED AS TO FORM:
Legal Services Department

By DocuSigned by:
Maria Lemus _____
Maria Lemus, Executive Director
"Consultant"

By *Jamie A. Mason* _____
Hospital Counsel

Date: 10/12/2022 _____.

Date: 10/13/2022 _____.



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

October 19, 2022

SUBJECT: Proposed retroactive Amendment No. 1 to Agreement 554-2021 with the County of Kern for Health Care Services at Kern Justice Facility

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board retroactively approve the proposed Amendment No. 1 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of health care services to adult inmates detained in the Kern Justice Facility.

This agreement requires the consent of the California Department of Corrections and Rehabilitation (CDCR) due to the Facility Sublease between the CDCR and the County and the County's certificate of the Tax Certification referenced therein. Although the terms of the amendment were agreed to in April this year, well in advance of the effective date of the amendment, consent was not provided by the CDCR until this month. As the services are critical to the health of inmates in the Kern Justice Facility, and both the County and Hospital Authority had agreed to the provisions of the amendment, services have been continued without interruption while seeking approval from the CDCR.

In order to allow for additional time in the coming years, the proposed amendment extends the terms of the agreement for a period of two years through June 30, 2024. This will allow sufficient time for future amendments to obtain approval prior to the termination date of the agreement. Compensation for the provision of services provided by Kern Medical is established by an annual budget each fiscal year, as agreed upon by Kern Medical and the County

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to Agreement 554-2021 for the provision of health care services to the County of Kern at Kern Justice Facility from July 1, 2022 through June 30, 2024, and authorize Chairman to sign.

**AMENDMENT NO. 1
TO
KERN COUNTY JUSTICE FACILITY MEDICAL SERVICES AGREEMENT
(County of Kern – Kern County Hospital Authority)**

This Amendment No. 1 to the Kern County Justice Facility Medical Services Agreement is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority (“Authority”), a local unit of government, which owns and operates Kern Medical Center (“KMC”), and County of Kern, a political subdivision of the state of California (“County”), on behalf of County Administrative Office (“CAO”) and Kern County Sheriff’s Office (“Sheriff”).

RECITALS

(a) County and Authority have heretofore entered into the Kern County Justice Facility Medical Services Agreement (Kern County Agt. #554-2021, dated September 14, 2021), for the period July 1, 2021 through June 30, 2022, whereby Authority through KMC provides health care services to in-custody adult inmates housed in the Kern County Justice Facility (“Facility”); and

(b) The Agreement relates solely to services provided by KMC to in-custody adult inmates housed in Facility; and

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

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

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

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

“1.1 Term of Agreement. This Agreement will be effective as of July 1, 2021, and remain in effect through June 30, 2024, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates under the responsibility of Sheriff.”

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

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

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

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

[Signatures follow on next page]

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

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Supervisors

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Ryan J. Alsop
Chief Administrative Officer

By _____
Scott Thygerson
Chief Executive Officer

SHERIFF'S OFFICE

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Donny Youngblood
Sheriff

By _____
Vice President & General Counsel
Kern County Hospital Authority

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

CONSENTED TO (Pursuant to a Facility Sublease Dated April 1, 2018, between the Department of Corrections and Rehabilitation of the state of California and the County of Kern and the County certificate to the Tax Certification referenced therein)

STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA

By _____
Koreen H. van Ravenhorst
Deputy Director

DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA

By _____
Chris Lief
Deputy Director



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

October 19, 2022

Subject: Proposed Amendment No. 1 to Agreement 057-2018 with Acute Care Surgery Medical Group, Inc., for trauma and general surgery hospitalist coverage services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 1 with Acute Care Surgery Medical Group, Inc., an independent contractor, for trauma and general surgery hospitalist coverage services in the Department of Surgery. The group has provided experienced physicians specializing in trauma and general surgery hospitalist services to meet the needs of Kern Medical and its patients since November 5, 2018.

The Agreement expires on October 31, 2022. The Amendment extends the term of the Agreement for three years from November 1, 2022 through October 31, 2025, provides for a two percent increase in the monthly stipend commencing November 1, 2022, and each November 1 thereafter, and increases the maximum payable by \$16,638,682, from \$20,510,331 to \$37,149,013, to cover the extended term. The Amendment is effective November 1, 2022.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 057-2018 with Acute Care Surgery Medical Group, Inc., for trauma and general surgery hospitalist coverage services, for the period November 5, 2018 through October 31, 2022, extending the term for three years from November 1, 2022 through October 31, 2025, increasing the maximum payable by \$16,638,682, from \$20,510,331 to \$37,149,013, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 1 TO
TRAUMA AND GENERAL SURGERY HOSPITALIST COVERAGE SERVICES AND
MEDICAL DIRECTOR AGREEMENT**

This Amendment No. 1 to Trauma and General Surgery Hospitalist Coverage Services and Medical Director Agreement (“Amendment” or “Amendment No. 1”) is entered into effective as of November 1, 2022, by and between **Kern County Hospital Authority** (“Authority”), and **Acute Care Surgery Medical Group, Inc.** (“Medical Group”).

RECITALS

A. Authority and Medical Group entered in that certain Trauma and General Surgery Hospitalist Coverage Services and Medical Director Agreement (“Agreement”) which became effective as of November 5, 2018.

B. The parties now desire to amend the Agreement in order to extend the term of the Agreement, and to adjust the compensation paid to Medical Group.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Section 1.2.** Section 1.2 of the Agreement shall be replaced in its entirety with the following: 10/31/25

“**1.1. Expiration Date.** This Agreement shall expire on October 31, 2025.”

2. **Section 5.1(a).** Section 5.1(a)(1) of the Agreement shall be replaced in its entirety with the following Sections 5.1(a)(1)(i) and 5.1(a)(1)(ii):

“[5.1(a)(1)(i)] During the first four (4) years of the term of this Agreement, in exchange for the performance of the Coverage Services and Administrative Services described in this Agreement, and to assure the availability of professional services in the Specialty, Hospital shall pay to Medical Group the sum of **Four Million Eight Hundred Sixty-Nine Thousand Sixty Dollars (\$4,869,060.00)** per year, payable as **Four Hundred Five Thousand Seven Hundred Fifty-Five Dollars (\$405,755.00)** per month, subject to pro-ration for partial months (the “Monthly Stipend”). On the first three (3) anniversaries of the Effective Date, the Monthly Stipend shall be increased by Three Percent (3%) for the subsequent year. Monthly Stipends shall be due and payable upon Hospital’s receipt of a completed and signed on-call invoice (the “On-Call Invoice”).

[5.1(a)(1)(ii)] Beginning on November 1, 2022, in exchange for the performance of the Coverage Services and Administrative Services described in this Agreement, and to assure the availability of professional services in the Specialty, Hospital shall pay to Medical Group the sum of **Five Million Four Hundred Twenty-Six Thousand Nine Hundred Sixty-Four Dollars and Thirty-Nine Cents (\$5,426,964.39)** per year, payable as **Four Hundred Fifty-Two Thousand Two Hundred Forty-Seven**

Dollars and Three Cents (\$452,247.03) per month, subject to pro-ration for partial months (the “Monthly Stipend”). On each anniversary of the Effective Date of Amendment No. 1 to this Agreement, the Monthly Stipend shall be increased by Two Percent (2%) for the subsequent year. Monthly Stipends shall be due and payable upon Hospital’s receipt of a completed and signed on-call invoice (the “On-Call Invoice”).”

3. **Section 5.2.** Section 5.2 of the Agreement shall be replaced in its entirety with the following:

“5.2 **Travel and Expense Reimbursement.** Medical Group shall be reimbursed for all pre-approved travel and related expenses, which approval will not be unreasonably withheld, incurred by Medical Director or Physicians on behalf of Hospital, to attend professional meetings or to attend to such outside professional duties in the healthcare field as may be mutually agreed upon between Medical Group and Hospital, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) per year over the seven-year term of this Agreement. Reimbursement of travel expenses will include the following: actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by Hospital. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within thirty (30) days of receipt and approval of each invoice by Hospital.”

4. **Section 5.10.** Section 5.10 of the Agreement shall be replaced in its entirety with the following:

“5.10 **Maximum Payable.** The maximum payable under this Agreement shall not exceed Thirty-Seven Million One Hundred Forty-Nine Thousand Twelve Dollars and Seventy-One Cents (\$37,149,012.71) over the seven-year term of this Agreement.”

5. **Section 6.1.** Section 6.1 of the Agreement shall be replaced in its entirety with the following:

“6.1. **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of seven (7) years unless terminated earlier pursuant to this section. This Agreement shall automatically renew for one (1) additional term of one (1) year, but only upon mutual written agreement of the parties, unless either party gives the other party written notice of its intention not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the initial seven-year term.”

6. **Same Terms and Conditions.** All other terms and conditions of the Agreement shall remain unchanged, and except as expressly modified by this Amendment, the Agreement shall remain in full force and effect. This Amendment may be executed by the parties in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

7. **Effective Date.** This Amendment shall be effective as of November 1, 2022.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

AUTHORITY:

MEDICAL GROUP:

Kern County Hospital Authority

Acute Care Surgery Medical Group, Inc.

By: _____

By:  _____

Name: Russell E. Bigler
Title: Chairman, Board of Governors

Name: Lynette A. Scherer, M.D.
Title: President and CEO

Date: _____

Date: _____

APPROVED AS TO CONTENT:

By: _____

Name: Scott Thygerson
Title: Chief Executive Officer

Date: _____

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____

Name: Karen S. Barnes
Title: Vice President & General Counsel

Date: _____



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

October 19, 2022

Subject: Proposed Amendment No. 3 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., for professional medical services in the Department of Anesthesiology

Recommended Action: Approve, Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 3 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., an independent contractor, for professional medical services in the Department of Anesthesiology. The group has provided comprehensive anesthesia services at Kern Medical since 2016.

The proposed amendment is extending the term of the Agreement for three years from November 9, 2022 through November 8, 2025. The group will receive a monthly payment of \$633,517 for a maximum payable per year of \$7,602,227. The maximum payable under the Agreement for the three-year extension will not exceed \$22,806,681.

Therefore, it is recommended that your Board approve Amendment No. 3 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., for professional medical services in the Department of Anesthesiology, extending the term for three years from November 9, 2022 through November 8, 2025, in an amount not to exceed \$22,806,681, and authorize the Chairman to sign.

**AMENDMENT NO. 3
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Regional Anesthesia Associates, Inc.)**

This Amendment No. 3 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2022, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Regional Anesthesia Associates, Inc., a California professional medical corporation (“Contractor”), with its principal place of business located at 7370 N. Palm Avenue, Suite 102, Fresno, California 93711. Authority and Contractor are sometimes referred to herein, individually, as a “Party” and collectively, as the “Parties.”

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #2016-066, dated August 17, 2016), Amendment No. 1 (Agt. 2016-070, dated October 19, 2016), and Amendment No. 2 (Agt. #053-2019, dated September 18, 2019) (collectively, the “Agreement”), for the period November 9, 2016 through November 8, 2022, for professional medical services in the Department of Anesthesiology at KMC; and

(b) It is the intent of the Parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Contractor; and

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

(d) The Agreement is amended effective November 9, 2022;

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

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

“1. Term. This Agreement shall be effective and the term shall commence as of November 9, 2016 (the “Effective Date”), and shall end November 8, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4, Payment for Services, paragraph 4.6, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.6 Maximum Payable. The maximum payable under this Agreement will not exceed \$22,806,681 for the period November 9, 2022 through November 8, 2025.”

3. Section 4, Payment for Services, paragraph 4.8, Managed Care Organizations, shall be deleted in its entirety and replaced with the following:

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

4. Section 4, Payment for Services, paragraph 4.1, Annual Compensation, paragraph 4.1.1, Meet and Confer, shall be made part of the Agreement as follows:

“4.1.1 Meet and Confer. In the 120-day period prior to November 8, 2023, and each subsequent November 8, the Parties shall meet and confer in good faith regarding the annual compensation paid to Contractor hereunder. If the Parties are unable to reach an agreement concerning the annual compensation before the applicable anniversary date, the annual compensation currently in effect will remain in effect until an agreement is reached, subject to possible retroactive adjustment as may be mutually agreed. Any adjustment in the annual compensation shall be in writing and signed by both Parties through a formal amendment to this Agreement.”

5. Section 35, Termination, paragraph 35.2, Termination without Cause, shall be deleted in its entirety and replaced with the following:

“35.3 Termination without Cause. Either Party may terminate this Agreement, without cause, upon 120 days’ prior written notice to the other Party.”

6. Section 35, Termination, paragraph 35.3, Immediate Termination, shall be deleted in its entirety and replaced with the following:

“35.3 Immediate Termination. Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;

- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

6. Amendment No. 2 to Exhibit "A," Description of Services, shall be deleted in its entirety and replaced with Amendment No. 3 to Exhibit "A," Description of Services, attached hereto and incorporated herein by this reference.

7. Amendment No. 2 to Exhibit "B," Fee Schedule - Annual Compensation, shall be deleted in its entirety and replaced with Amendment No. 3 to Exhibit "B," Fee Schedule - Annual Compensation, attached hereto and incorporated herein by this reference.

8. Amendment No. 1 to Exhibit "C," Fee Schedule - Additional Compensation, shall be deleted in its entirety and replaced with Amendment No. 2 to Exhibit "C," Fee Schedule - Additional Compensation, attached hereto and incorporated herein by this reference.

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

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

11. 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.

12. 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. 3 as of the day and year first written above.

REGIONAL ANESTHESIA ASSOCIATES, INC.

By _____
Oji A. Oji, M.D.
Its President

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

**AMENDMENT NO. 3
TO
EXHIBIT “A”
Description of Services
Regional Anesthesia Associates, Inc.
(Effective November 9, 2022 – November 8, 2025)**

1. Contractor shall adhere to the following operating room (“OR”) coverage schedule:

Coverage	# of OR suites	Hours per day	OR hours	Total annual coverage hours
Monday - Friday (CRNA)	2	8	7 AM - 3 PM	4,160
Monday - Thursday (CRNA)	3	12	7 AM - 7 PM	7,488
Friday (CRNA)	2	12	7 AM - 7 PM	1,248
Monday - Thursday (MD)	1	8	7 AM - 3 PM	1,664
Dedicated OR (CRNA)	1	24	7 AM – 7AM	8,760
Sunday - Sunday				
Dedicated OB (CRNA)	1	24	7 AM – 7AM	8,760
Sunday - Sunday				
Dedicated Trauma (MD)	1	24	7 AM – 7AM	8,760
Sunday - Sunday				
Medical Director Services				250
Total Hours				41,090

2. Contractor shall use a combination of physicians and CRNA to staff the Department in accordance with coverage schedule set forth herein. Contractor shall meet or exceed a coverage ratio of one (1) full-time physician to every four (4) CRNA.

3. Contractor shall provide epidural anesthesia 24-hours per day through the use of dedicated provider around the clock. The dedicated provider will be responsible for placement and management of labor epidurals and for providing anesthesia care for elective and emergent caesarian sections.

4. Contractor shall provide in-house call coverage for the emergency department, critical care and trauma.

5. Contractor will take an active role in the management of pediatric and adult intensive care and direct observation patients. Contractor shall provide Group Physicians who are competent pediatric providers. Such Group Physicians shall be paneled with California Children’s Services.

6. Contractor shall use its best efforts to minimize the after-hours caseload to avoid holding patients through the weekend while waiting for elective or nonemergency cases to be performed.
7. Contractor shall minimally comply with the performance standards, guidelines, and practice parameters, as established by the American Society of Anesthesiologists.
8. Contractor shall assist KMC with marketing efforts to educate the public on the availability of programs developed by KMC and Contractor.
9. Contractor shall undertake strategic planning with KMC to identify a unique service line every 18 to 24 months, and lead the effort in, with and for KMC to achieve this designation for a given service line.
10. Contractor shall maintain pain management protocols for patients with acute and chronic pain issues. At the request of KMC, Contractor shall develop a pain management clinic for patients with acute and chronic pain issues. Contractor shall staff the pain clinic with a physician at a mutually agreed upon cost before the service is provided.
11. Contractor shall continue to lead the perioperative medical management program, to reduce case cancellations by 3% to 5% each year over the term of the Agreement and to lower the current 15% rate to 5% during the term of the Agreement.

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**AMENDMENT NO. 3
TO
EXHIBIT "B"
Fee Schedule
Annual Compensation
Regional Anesthesia Associates, Inc.
(Effective November 9, 2022 – November 8, 2025)**

As consideration for the services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth below, as follows:

A. Year 1

Maximum payable per year:	\$7,602,227
Monthly payment:	\$633,519

B. Year 2

Maximum payable per year:	\$7,602,227
Monthly payment:	\$633,519

C. Year 3

Maximum payable per year:	\$7,602,227
Monthly payment:	\$633,519

Payment will be made in accordance with paragraph 4.5 of the Agreement. All services are payable in arrears.

[Intentionally left blank]

**AMENDMENT NO. 2
TO
EXHIBIT “C”
Fee Schedule
Additional Compensation
Regional Anesthesia Associates, Inc.
(Effective November 9, 2022 – November 8, 2025)**

As consideration for any additional services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth below, as follows:

Additional Service	Hourly Rate
CRNA – OR coverage	\$180
MD – OR coverage	\$260
MD – Dedicated OR trauma	\$250
CRNA – Dedicated OR	\$180
CRNA – Dedicated OB	\$180
Medical Director Services	\$225

Payment will be made in accordance with paragraph 4.5 of the Agreement. All services are payable in arrears.

[Intentionally left blank]



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

October 19, 2022

Subject: Proposed Agreement with M. Brandon Freeman, M.D., for professional medical and administrative services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Agreement with M. Brandon Freeman, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery, for the period October 22, 2022 through October 21, 2025. Dr. Freeman, a board-certified plastic surgeon, has been employed by Kern Medical Center since 2008, and serves as the Chief, Division of Plastic Surgery.

The proposed Agreement is for a term of three years from October 22, 2022 through October 21, 2025. Dr. Freeman will have a base salary of \$560,000 and will be eligible to earn an additional 30% of cash collections for all elective cosmetic procedures that are excluded from third-party payer reimbursement. In addition to his compensation package, Dr. Freeman will continue to receive the standard complement of benefits offered to all Kern Medical physicians. The maximum payable will not to exceed \$2,100,000 over the three-year term of the Agreement.

Therefore, it is recommended that your Board approve the Agreement with M. Brandon Freeman, M.D., for professional medical and administrative services in the Department of Surgery from October 22, 2022 through October 21, 2025, in an amount not to exceed \$2,100,000 over the three-year term, and authorize the Chairman to sign.

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

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

**I.
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #032-2019, dated June 19, 2019), for the period July 17, 2019 through October 21, 2022; and

(e) Each party expressly understands and agrees that Agt. #032-2019 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of October 22, 2022 (the “Commencement Date”), and shall end October 21, 2025 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

4.3.2 Board Certification. Physician shall be board certified by the American Board of Plastic Surgery in plastic surgery-general and maintain such certification at all times during the Term of this Agreement.

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

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

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

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

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

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

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

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

4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide similar services to other organizations, directly or indirectly, during the Term of this Agreement or any extensions thereof. Notwithstanding the foregoing or the exclusivity provision set forth in paragraph 4.1, effective January 1, 2023, Authority agrees that Physician shall be permitted to provide plastic surgery services as M. Brandon Freeman, M.D., Ph.D., PC ("Corporation") to Adventist Health Bakersfield ("Adventist") at Adventist Health Bakersfield including its Affiliates² no more than one (1) day per week during the Term of this Agreement (collectively, the "Adventist Sites"), it being understood that such services shall be provided at the sole request and on behalf of Adventist and not Authority. Physician understands and agrees that he shall not provide services to Adventist at the Adventist Sites if the provision of such services interferes with Authority workdays and job duties or at any time when Physician has not completed his pre-determined clinic and work schedule assignments for Authority. Physician acknowledges that he is not covered by the professional liability insurance provided by Authority under this Agreement while providing services to Adventist at the Adventist Sites or engaged in services or activities outside the scope of this Agreement, and Authority shall have no duty or obligation to indemnify, defend or hold Physician harmless for such services or activities. If Physician provides services to Adventist at the Adventist Sites or engages in services or

² For purposes of this Agreement, "Affiliate" shall mean any entity that, directly or indirectly, controls, is controlled by, or is under common control with Adventist Health Bakersfield or Authority, as applicable.

activities beyond the scope of this Agreement, Physician hereby agrees to indemnify, defend and hold harmless Authority, its Affiliates, and their respective officers, directors, members, managers, employees or agents from and against any and all liability arising therefrom, including, without limitation, any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, and awards or costs, including reasonable attorneys' fees and costs, arising out of, resulting from, or relating to: (i) the negligent operations, acts, or omissions of Physician or Corporation or any employee or agent of Physician or Corporation in the performance of Physician's or Corporation's services to Adventist at the Adventist Sites; or (ii) wages, salaries, employee benefits, income taxes, FICA, FUTA, SDI and all other payroll, employment or other taxes, withholdings and charges payable by Corporation to, or on behalf of, Physician, or any other person employed by or contracted with Physician or Corporation. Physician understands and agrees that the provision of the services to Adventist at the Adventist Sites shall be subordinate to his obligations and duties under this Agreement.

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

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$21,538.46 biweekly not to exceed \$560,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey”) for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units (“Worked RVU”) based on the current MGMA Survey and fulfill all the duties set forth in Exhibit “A” during the Term of this Agreement.

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

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

5.2 Excess Call Coverage. Authority shall pay Physician for excess call coverage (inclusive of hand, plastic and maxilla-facial trauma) as follows: (i) Physician shall be paid a fixed fee in the amount of \$750 per twenty-four (24) hour day for every weekday (Monday through Thursday) of call coverage assigned that exceeds one (1) in four (4) days per week; and (ii) Physician shall be paid a fixed fee in the amount of \$750 per twenty-four (24) hour day for every weekend (Saturday and Sunday) of call coverage that exceeds one (1) in four (4) weekends. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 Elective Cosmetic Procedures. Authority shall pay Physician a percentage of the cash collections for elective cosmetic procedures that are excluded from third-party payer reimbursement as follows: Physician shall receive thirty percent (30%) of case collections, less all applicable federal and state taxes and withholdings, for elective cosmetic procedures performed in the outpatient surgery center.

5.4 Professional Fee Billing.

5.4.1 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.

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

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,100,000 over the three (3) year Term of this Agreement.

6. **Benefits Package.**

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

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of two hundred forty (240) hours per Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of three hundred twenty (320) hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Department Chair must approve all vacation leave in advance. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate), less all applicable federal and state taxes and withholding requirements.

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. **[Reserved]**

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

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

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

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

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

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

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

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

Notice to Physician:

M. Brandon Freeman, M.D.
14009 Yokuts Lane
Bakersfield, California 93306

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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

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

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

[Signatures follow on next page]

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

PHYSICIAN

By _____
M. Brandon Freeman, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Freeman.092022

EXHIBIT “A”
JOB DESCRIPTION
M. Brandon Freeman, M.D.

Position: Chief, Division of Plastic Surgery.

Position Description: Reports to Chair, Department of Surgery; serves as the chief physician responsible for efficient, key program development, day-to-day operations and resident education within the Department for the plastic surgery division at KMC; serves as a full-time faculty member in the Department; provides no fewer than eighty (80) hours per pay period of service.

Essential Functions:

1. Clinical Responsibilities.

- Serves as attending physician in the Division of Plastic Surgery
- Supervises residents and medical students assigned to the plastic surgery service
- Supervises orthopedic and plastic surgery physician assistant activity and competency
- Provides service and improves efficiency for hand, plastic and microvascular surgery clinical activities – four (4) days per week
- Provides a minimum of two (2) half-day outpatient clinics per week, to meet the needs of the plastic surgery service³
- Provides a minimum of 1:2 dual hospital call coverage at KMC and Adventist Health (including affiliated transfer facilities) for a singular call schedule consisting of hand, plastic and maxilla-facial trauma services
- Provides service and improves efficiency for hand and plastic surgery cases
- Provides faculty call coverage for hand, plastic and maxilla-facial trauma
- Provides services to all patients regardless of their payer status (e.g., health insurance), physical or mental disability, medical condition, or designated Practice Sites
- Provides services to correctional medicine patients at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion

2. Administrative Responsibilities.

- Serves as Chief, Division of Plastic Surgery
- Leads clinical and administrative integration efforts across KMC as appropriate for hand, plastic and microvascular surgery ensuring proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize

³ To meet the needs of the plastic surgery service, Physician may be assigned additional half-days clinics per week, in the sole discretion of KMC.

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

- Supports the Department Chair with development of monitoring tools to measure financial, access, quality and satisfaction outcomes for hand, plastic and microvascular surgery

3. Teaching Responsibilities.

- Assists in resident mentoring, counseling, and evaluation, as appropriate
- Assists in resident research and scholarly activity
- Provides didactic lectures for residents and medical students, as assigned by one or more program directors

Employment Standards:

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

AND

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

AND

Certification by the American Board of Plastic Surgery in plastic surgery-general

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

Ability to: Plan, organize, direct and coordinate plastic surgery services; perform plastic surgery procedures; supervise and instruct professional and technical personnel; develop and present educational programs for interns, residents and ancillary medical staff; maintain records and prepare comprehensive reports; work effectively with staff, patients, and others.

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

[Attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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

Physician

Date



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

October 19, 2022

Subject: Proposed Agreement for Professional Medical Services with Tung Thanh Trang, M.D.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Tung Thanh Trang, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Trang has served as a full-time physician at Kern Medical since July 2009 in the role as Chief, Division of Otolaryngology in the Department of Surgery.

The proposed Agreement is for a term of three years from November 13, 2022 through November 12, 2025. The maximum payable will not to exceed \$2,300,000 over the three-year term of the Agreement.

Dr. Trang's annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided. Dr. Trang will receive an annual salary, which includes a base salary for teaching and administrative duties and payment for care of Kern Medical patients based on his productivity. He will continue to receive the same complement of benefits offered to all employed physicians.

Therefore, it is recommended that your Board approve the Agreement with Tung Thanh Trang, M.D., for professional medical services in the Department of Surgery from November 13, 2022 through November 12, 2025, in an amount not to exceed \$2,300,000 over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Tung Thanh Trang, M.D.)**

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

**I.
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #061-2019, dated October 16, 2019), for the period November 13, 2019 through November 12, 2022; and

(e) Each party expressly understands and agrees that Agt. #061-2019 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of November 13, 2022 (the “Commencement Date”), and shall end November 12, 2025 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

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

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

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

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

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

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

agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

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

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

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

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of the following: (i) a base salary for teaching and administrative services as Chief, Division of Otolaryngology in the amount of \$52,336 per year; and (ii) payment for care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") using the full-time physician compensation with more than one year in the specialty for all physicians section. 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 at the rate of \$60.04 ("RVU Effort").

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

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

5.2 Call Coverage. Authority shall pay Physician a fixed fee in the amount of \$500 per twenty-four (24) hour day, less all applicable federal and state taxes and withholdings, for call coverage that exceeds one in four (1:4) days.

5.3 Professional Fee Billing.

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

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

5.4 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,300,000 over the three (3) year Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"), a qualified defined

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

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of two hundred forty (240) hours per Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of three hundred twenty (320) hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Department Chair must approve all vacation leave in advance. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate of \$235.37 per hour, less all applicable federal and state taxes and withholding requirements.

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No

provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

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

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

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

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

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

16. **[Reserved]**

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on

behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

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

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

Notice to Physician:

Notice to Authority:

Tung Thanh Trang, M.D.
8805 Montmedy Court
Bakersfield, California 93311

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation

or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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


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

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

[Signatures follow on next page]

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

PHYSICIAN

By 
Tung Thanh Trang, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Trang.092622

EXHIBIT “A”
JOB DESCRIPTION
Tung Thang Trang, M.D.

Position: Chief, Division of Otolaryngology.

Position Description: Reports to Chair, Department of Surgery; serves as the chief physician responsible for efficient, key program development, day-to-day operations and resident education within the Department for the otolaryngology division at KMC; serves as a full-time faculty member in the Department; provides no fewer than eighty (80) hours per pay period of service.

Essential Functions:

1. Clinical Responsibilities.

- Serves as an attending physician in the Division of Otolaryngology
- Supervises residents and medical students assigned to the otolaryngology service
- Performs otolaryngology procedures
- Inpatient rounds – five (5) days per week
- ENT clinic – two (2) days per week, one (1) clinic session per day up to a maximum of forty (40) weeks
- ENT call coverage – weekday coverage, Monday through Thursday, one (1) in four (4) weekdays up to a maximum of fifty-two (52) weekday call shifts per year and weekend coverage of one (1) in four (4) weekends up to a maximum of thirteen (13) weekends per year

2. Administrative Responsibilities.

- Serves as Chief, Division of Otolaryngology
- Serves as Director, Otolaryngology Consultative Service
- Serves as Director, Otolaryngology Clinic Service
- Serves as Director, Otolaryngology Quality Program
- Determines equipment needs for the otolaryngology surgical service
- Trains ancillary personnel assigned to the otolaryngology service
- Attends and actively participates in assigned medical staff and hospital committee

3. Teaching Responsibilities.

- Serves as Director of Otolaryngology Education
- Serves as Director of Otolaryngology Research
- Prepares residents for oral boards and reviews case logs
- Assists in resident mentoring, counseling, and evaluation
- Didactic talks/lectures – a minimum of six (6) per year

Employment Standards:

One (1) year of post-residency experience in otolaryngology
AND

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

AND

Certification by the American Board of Otolaryngology in otolaryngology-general

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

Ability to: Plan, organize, direct and coordinate otolaryngology services; perform invasive otolaryngological endoscopic and surgical procedures; supervise and instruct professional and technical personnel; develop and present educational programs for interns, residents and ancillary medical staff; maintain records and prepare comprehensive reports; work effectively with staff, patients, and others.

[Intentionally left blank]

EXHIBIT "B"

AUTHORIZATION TO RELEASE INFORMATION

[Attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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



Physician

9/30/22

Date



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

October 19, 2022

Subject: Proposed Agreement for Professional Medical Services with Soroush Bazargani, M.D.

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Soroush Bazargani, M.D., for professional medical services in the Department of Surgery, for a term of five years from August 1, 2023 through July 31, 2028, in an amount not to exceed \$4,000,000. Dr. Bazargani is a fellowship trained, board certified urologist.

Dr. Bazargani's tiered annual base salary, which will start at \$690,000 for year one and max out at \$750,000 during years three through five, 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. Dr. Bazargani's compensation is comprised of (i) a base salary for teaching and administrative duties; (ii) payment for care of KMC patients; and (iii) weekday and weekend call coverage. In addition to his annual salary, Dr. Bazargani will receive a relocation reimbursement of \$25,000 and is eligible to receive incentive compensation defined as 25% of the professional fee net collections in excess of his base salary in a given year, less all applicable federal and state taxes and withholdings, per employment year. Dr. Bazargani will also receive the same complement of benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, healthcare coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$4,000,000 over the five-year term, excluding the cost of benefits.

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

Therefore, it is recommended that your Board approve the Agreement with Soroush Bazargani, M.D., for professional medical services in the Department of Surgery from August 1, 2023 through July 31, 2028, in an amount not to exceed \$4,000,000, plus applicable benefits, and authorize the Chairman to sign.

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

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

**I.
RECITALS**

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

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

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

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The initial term of this Agreement (“Initial Term”) shall be for a period of five (5) years, commencing as of August 1, 2023 (the “Commencement Date”). At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Authority hereby employs Physician for the practice of medicine in the care and treatment of patients at KMC, or at such other clinic sites as KMC may designate, including without limitation, hospital and clinic locations owned and operated by Adventist Health (collectively, “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority’s employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

4.3.2 **Board Certification.** Physician shall obtain board certification by the American Board of Urology in urology-general within twenty-four (24) months of the commencement date and maintain such certification at all times during the Term of this Agreement.

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

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

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

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

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

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

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

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

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

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

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician's own account or as an employee,

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

5. **Compensation Package.**

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

5.1.1 **Annual Salary – Effective August 1, 2023.** 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 \$690,000 per year,² to be paid as follows: Physician shall be paid \$26,538.46 biweekly not to exceed \$690,000 annually.

5.1.2 **Annual Salary – Effective August 1, 2024.** 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 \$720,000 per year,³ to be paid as follows: Physician shall be paid \$27,692.30 biweekly not to exceed \$720,000 annually.

5.1.3 **Annual Salary – Effective August 1, 2025.** Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$750,000 per year,⁴ to be paid as follows: Physician shall be paid \$28,846.15 biweekly not to exceed \$750,000 annually.

² The Annual Salary paid to Physician is comprised of a base salary for teaching and administrative duties in the amount of \$20,000 and payment for care of KMC patients in the amount of \$670,000 (MGMA 50th percentile with Worked RVU threshold of 7,518 = \$480,000; call coverage = \$190,000).

³ The Annual Salary paid to Physician is comprised of a base salary for teaching and administrative duties in the amount of \$50,000 and payment for care of KMC patients in the amount of \$670,000 (MGMA 50th percentile with Worked RVU threshold of 7,518 = \$480,000; call coverage = \$190,000).

⁴ The Annual Salary paid to Physician is comprised of a base salary for teaching and administrative duties in the amount of \$80,000 and payment for care of KMC patients in the amount of \$670,000 (MGMA 50th percentile with Worked RVU threshold of 7,518 = \$480,000; call coverage = \$190,000).

5.1.4 Compensation Methodology. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey”) for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units (“Worked RVU”) based on the current MGMA Survey and fulfill all the duties set forth in Exhibit “A” during the Initial Term of this Agreement.

5.1.5 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.

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

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

5.3 Incentive Compensation. Within thirty (30) days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the professional fee net collections (defined as actual cash received) for all professional services provided by Physician. Physician shall receive twenty-five percent (25%) of the professional fee net collections in excess of \$690,000 for year one of the Agreement; \$720,000 for year two of the Agreement; and \$750,000 each Employment Year thereafter. All incentive compensation payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.4 Professional Fee Billing.

5.4.1 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.

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

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$4,000,000 over the five (5) year Initial Term of this Agreement.

6. **Benefits Package.**

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

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

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

6.4 Vacation. Physician shall be credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of two hundred forty (240) hours per Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of three hundred twenty (320) hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Department Chair must approve all vacation leave in advance. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate), less all applicable federal and state taxes and withholding requirements.

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

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

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

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

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

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

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

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

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

6.15 **Relocation Reimbursement.** Authority shall reimburse Physician for actual relocation expenses (defined as the packing, moving and unpacking of household goods and vehicles) and travel expenses (defined as lodging, meals, mileage and incidental expenses) associated in moving to Bakersfield, California, in an amount not to exceed \$25,000, payable in arrears, in accordance with Authority policy (no later than 90 days from the Commencement Date). Reimbursement of travel expenses will include per mile reimbursement for one (1) personal vehicle at the current privately owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, meals and incidental expenses for Physician only at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by Authority. Physician shall be deemed vested in reimbursement of relocation expenses in the amount of \$416.67 per month beginning on the last day of the month in which the relocation expenses are reimbursed to Physician. In the event Physician's employment is terminated by either party, with or without cause, then, on the effective date of such termination, Physician shall repay to Authority all amounts received in which Physician has not yet become vested.⁵

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

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

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

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

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

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

⁵ By way of example only, in the event Physician terminates his employment after twelve (12) months then Physician will be vested to the extent of \$5,000 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$20,000. **In the event Physician fails to pay such amount to Authority, Physician expressly grants to Authority the right to offset any amounts owed to Authority against any payments made to Physician by Authority.**

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

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

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

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

16. **[Reserved]**

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

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

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

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

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

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

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

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

Notice to Physician:

Soroush Bazargani, M.D.
4231 Metron Drive
Jacksonville, Florida 32216-1175

Notice to Authority:

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

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

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

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

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

28. **Termination.**

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

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

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

29. **Effect of Termination.**

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

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

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

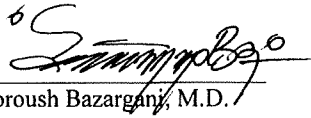
29.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Physician the right to a fair hearing or the other rights more particularly set forth in the KMC Medical Staff Bylaws.

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

[Signatures follow on next page]

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

PHYSICIAN

By  9/26/2022
Soroush Bazargani, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygeron
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Bazargani.090722

EXHIBIT “A”
JOB DESCRIPTION
Soroush Bazargani, M.D.

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

Essential Functions:

1. Clinical Responsibilities

- Performs urologic procedures
- Provides a minimum of two (2) half-day outpatient clinics per week, and may be assigned additional half-day clinics per week as KMC may designate in its sole discretion, to meet the needs of the urology service
- Provides scheduled clinics at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion
- Provides a minimum of 1:5 dual hospital call coverage at KMC and Adventist Health (including affiliated transfer facilities) when there are five (5) or more KMC full-time employed urologists who participate in call coverage
- Provides a minimum of 1:4 hospital call coverage for KMC when there are four (4) KMC full-time employed urologists or fewer who participate in call coverage
- Provides services to all patients regardless of their payer status (e.g., health insurance), physical or mental disability, medical condition, or designated Practice Sites
- Provides services to correctional medicine patients at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion

2. Teaching Responsibilities

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

3. Administrative Responsibilities

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

Employment Standards:

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

AND

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

AND

Certification by the American Board of Urology in urology-general

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

[Intentionally left blank]

**EXHIBIT “B”
DUAL HOSPITAL COVERAGE
COMPENSATION SCHEDULE
Soroush Bazargani, M.D.**

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

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

[Intentionally left blank]

EXHIBIT "C"
AUTHORIZATION TO RELEASE INFORMATION

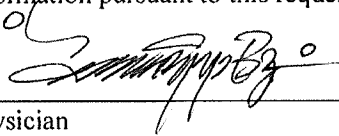
[Attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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



Physician

9/26/2022

Date



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

October 19, 2022

Subject: Proposed Amendment No. 3 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 3 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Nalesnik, a fellowship trained urologist, has been employed by Kern Medical since January 1, 2016, and serves as the Chair of the Department of Surgery.

The proposed Amendment adds compensation in the form of 30% of cash collections received for performing FAA Flight Physicals. In addition to this new line of service Dr. Nalesnik is bringing to the organization, the amendment also names Dr. Nalesnik the Director of Aviation Medicine per the updated job description. The Amendment is effective October 20, 2022.

Therefore, it is recommended that your Board approve Amendment No. 3 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, adding compensation for performing FAA Flight Physicals, increasing the maximum payable by \$108,442, from \$9,441,558 to \$9,550,000, to cover the term, and authorize the Chairman to sign.

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

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

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #873-2015, dated December 8, 2015), Amendment No. 1 (Agt. #045-2021, dated August 18, 2021), and Amendment No. 2 (Agt. #076-2022, dated July 20, 2022) (the “Agreement”), for the period January 1, 2016 through December 31, 2025, whereby Physician provides professional medical and administrative services in the Department of Surgery at KMC; and

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

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

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

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

“5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$9,550,000 over the ten (10) year Term of this Agreement.”

2. Section 5, Compensation Package, paragraph 5.8, Dual Hospital Coverage, shall be made part of the Agreement as follows:

“5.8 FAA Flight Physicals. Physician shall receive thirty percent (30%) of cash collections, less all applicable federal and state taxes and withholdings, for FAA flight physicals performed by Physician at KMC.”

3. Amendment No. 1 to Exhibit “A,” Job Description, shall be deleted in its entirety and replaced with Amendment No. 2 to Exhibit “A,” Job Description, attached hereto and incorporated herein by this reference.

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

PHYSICIAN

By 
Jeffrey G. Nalesnik, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend3.Nalesnik.101222

**AMENDMENT NO. 2
TO
EXHIBIT "A"
JOB DESCRIPTION
Jeffrey G. Nalesnik, M.D.**

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

Essential Functions:

A. Leadership and Administrative Responsibilities

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

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

B. Clinical Responsibilities

- The Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors
- Serve as Director of Aviation Medicine
- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and urologic procedures within the scope of practice for a urologic surgeon while on service
- Supervise residents and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise procedures performed by residents and mid-levels while on service
- Perform urologic surgeries in the KMC operating room or at designated ambulatory surgery centers at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other sites as KMC may designate in its sole discretion
- Provide a minimum of two (2) half-day outpatient clinics per week, and may be assigned additional half-day clinics per week as KMC may designate in its sole discretion, to meet the needs of the urology service
- Provide scheduled clinics at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion

- Provide a minimum of 1:5 dual hospital call coverage at KMC and Adventist Health (including affiliated transfer facilities) when there are five (5) or more KMC full-time employed urologists who participate in call coverage
- Provide a minimum of 1:4 hospital call coverage for KMC when there are four (4) KMC full-time employed urologists or fewer who participate in call coverage
- Provide services to all patients regardless of their payer status (e.g., health insurance), physical or mental disability, medical condition, or designated Practice Sites
- Provide services to correctional medicine patients at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion

C. Medical Education, Teaching, and Academic Responsibilities

- Serve as a faculty member providing supervision and instruction to residents and medical students
- Provide clinical mentoring to and evaluation of residents and medical students
- Establish and maintain an academic appointment at the David Geffen School of Medicine at UCLA or other major academic medical center
- Serve as a mentor to residents and medical students who desire to conduct research or other scholarly activity
- Demonstrate active involvement in continuing urology/urologic surgery education
- Demonstrate active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements
- Support the activities of the residency educational program
- Participate in the development of Department curriculum
- Attend and participate in the weekly Department didactic sessions
- Deliver urology/urologic surgery lectures as appropriate throughout the year

Employment Standards:

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

AND

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

AND

Certification by the American Board of Urology in urology-general

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

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

October 19, 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. The Amendment is effective October 20, 2022.

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 take 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**

October 19, 2022

Subject: Proposed Amendment No. 1 to Agreement 08420 for Personal/Professional Services with James E. Thompson, Inc., doing business as JTS Construction

Recommended Action: Make a finding 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 the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$750,000

Summary:

Kern Medical requests your Board approve Amendment No. 1 to the Personal/Professional Services Agreement with James E. Thompson, Inc., doing business as JTS Construction, to provide construction services for new fire panel upgrades at Kern Medical and the outside clinics.

The Agreement term is from December 2, 2019 through December 1, 2022 and Amendment No. 1, effective October 19, 2022, extends the term by three year through December 1, 2025, and increases the maximum payable by \$600,000 from \$150,000 to \$750,000, to cover the term.

Therefore, it is recommended that your Board make a finding 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 the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$750,000.

**AMENDMENT NO. 1
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority – James E. Thompson, Inc. dba JTS Construction)**

THIS AMENDMENT TO AGREEMENT, effective October 19, 2022, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and James E. Thompson, Inc. dba JTS Construction ("Consultant") with its principal place of business located at 7001 McDivitt Drive, Suite B, Bakersfield, California 93313.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement, effective December 2, 2019 (PPSA Agt. # 08420) ("Agreement"), for the period December 2, 2019 through December 1, 2022; and

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

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

- X **Term.** The Agreement shall be extended from December 1, 2022 to December 2, 2025, unless sooner terminated as provided for in the Agreement.
- X **Fees** payable by KCHA under the Agreement shall increase by \$600,000, from \$150,000 to \$750,000.
- X **Services.** Exhibit A-1, for revised services, attached hereto and incorporated herein by this reference, shall replace, in its entirety Exhibit A to the Personal/Professional Services Agreement.

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

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

KERN COUNTY HOSPITAL AUTHORITY

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

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

By _____
Scott Thygerson, Chief Executive Officer

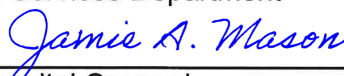
Date: _____

Date: _____

**JAMES E. THOMPSON, INC.
dba JTS Construction**

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

By 
"Consultant"

By 
Hospital Counsel

Date: 10/13/2022

Date: _____

**Exhibit A-1
Services**

Contractor shall provide the following construction services as directed by Kern Medical:

Columbus Clinic Fire Panel Upgrade – estimated cost \$200,000

Kern Medical Fire Panel – estimated Cost \$250,000



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

October 19, 2022

Subject: Proposed Subscription Renewal (Quote Q-696566) with Lansweeper Inc.

Recommended Action: Approve; Authorize Chief Executive Officer to sign a purchase order

Summary:

Kern Medical requests your Board approve the proposed Quote Q-696566 with Lansweeper Inc., a Texas corporation, for the purchase of product licenses to a software subscription in support of Information Technology Asset Management. This product is required for Kern Medical to maintain compliance with the Health Insurance Portability and Accountability Act (HIPAA) security standards outlined in 45 C.F.R. § 164.310(d). HIPAA requires entities to maintain an inventory of all assets that access or contain Electronic Protected Health Information and this product will be used to meet this requirement. The product is also critical for Information Systems staff to identify issues and resolve end user problems with equipment, as well as assist in the budgeting process for asset lifecycle.

The 1-year cost for the subscription and support will not exceed \$6,400.00 as referenced below:

A. Quote No. Q-696566:

Subscription	Costs
Lansweeper Asset quantity 8000 – 1 Year	\$6,400.00

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the possibility that Cloud services would be hosted on a public cloud (although not using cloud services at this time); indemnification by Lansweeper is for claims of infringement; Lansweeper may permanently erase content if our account becomes delinquent; we grant Lansweeper a non-exclusive license to use our aggregate content and metadata; Lansweeper has no liability for product failures in the use of the product, product is licensed as is; interest on late payments; Lansweeper’s total liability is limited to the cost of the quote; Lansweeper may amend the terms and conditions at any time; and the terms and conditions are governed by Texas law.

Due to these non-standard terms and conditions, Information Systems staff worked diligently to find another vendor that maintained a comparable product that would work within our current system and our budget, but was unsuccessful. Therefore, it is recommended that your Board approve the proposed Quote with Lansweeper Inc. for the purchase of product licenses and support for a one (1) year term beginning on December 18, 2022 through December 17, 2023, with a cost of \$6,400, and authorize the Chief Executive Officer to sign.

Prepared by: **Nate Choate**
Email: nate.choate@lansweeper.com
Quote Expires On: **12/28/2022**



Client:
Kern Medical
1700 Mount Vernon Avenue
93306 Bakersfield
California
United States

Lansweeper Inc.
11044 Research
Boulevard, Building D,
Suite D-500
78759 Austin
Texas United States

Quote Creation Date: August 18, 2022
Quote Expiration Date: December 28, 2022
Subscription Start Date: December 18, 2022
Subscription End Date: December 17, 2023

Quote Q-696566

Product	Quantity	Unit Price	Term	Subtotal	Discount*	Net Price
Lansweeper	8,000	USD 1.00	1-Y	USD 8,000.00	USD 1,600.00	USD 6,400.00

An overview of the features and functionalities entailed in your subscription plan can be found [here](#).

Total

*Applied educational discount 20%

USD 6,400.00

License fee prices are exclusive of VAT, other taxes and delivery costs but may still apply
Delivery of the Lansweeper product(s) shall happen electronically

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department

Notes:

This quote is subject to our Terms of Use (lansweeper.com/terms-of-use) and identifies the details of your Paid Subscription. The capitalized terms used in this quote will have the meaning assigned to them in our Terms of Use.
"Quantity" refers to the number of Assets for a Paid Subscription or the number of Help Desk-Agents for a Help Desk-Agent Subscription.
Please refer to our Terms of Use (lansweeper.com/terms-of-use) for our payment conditions. Payment term is NET thirty (30) days from invoice date, except if otherwise stipulated on this quote or the subsequent invoice. Lansweeper reserves the right to contract and bill the Product licenses provided herein through Lansweeper NV, Lansweeper, Inc. or Cleverbridge AG/Inc. ("Cleverbridge") based on the customer's final invoicing details. In the latter case, Cleverbridge's payment conditions shall apply.
This offer is noncommittal and does not create any agreement between you and Lansweeper, unless this offer and the Terms of Use (lansweeper.com/terms-of-use) are acknowledged and accepted by you. Purchase orders are only binding when accepted by Lansweeper. The submission of a purchase order implies the acceptance of our offer and our Terms of Use (lansweeper.com/terms-of-use). Any purchase or other conditions mentioned on your purchase order are expressly excluded and shall be null and void.
Lansweeper, Inc. is a limited liability company existing under the laws of the State of Delaware, United States, with its principal business address at 11044 Research Boulevard, Building D, Suite D-500, Austin, Texas 78759.

Version 2.0, dated 30 July 2022

1. GENERAL

1.1. These Terms of Use ("**Terms**"), together with the Order and the data processing agreement ("**DPA**") govern Customer's use of the Product (as defined below) and form a legal contract between the Lansweeper entity designated in clause 1.3 below ("**Lansweeper**") and Customer (as defined below). These Terms are accessible via Lansweeper's website.

1.2. By purchasing, installing, or otherwise using all or any portion of the Product, Customer indicates that it has read, understood, and agreed to be legally bound by these Terms.

1.3. If Customer is incorporated or has its primary place of business anywhere in the world except for the United States and any US territory, the Lansweeper entity with whom Customer will be contracting is Lansweeper NV, a limited liability company existing under Belgian law, with registered address at Belgium, 9200 Dendermonde, Zeelsebaan 83/Z, registered under enterprise number 0538.668.417. If Customer is incorporated in or has its primary place of business in any location within the United States or any US territory, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, Customer will be contracting with Lansweeper Inc., with offices at 11044 Research Blvd, Building D, Suite D-500, Austin, TX 78759.

1.4. The individual accepting the Agreement on behalf of a company or other legal entity ("**Customer**") represents and warrants that he or she has full authority to bind the Customer to this Agreement.

1.5. Customer may not accept the Agreement or use the Product if Customer or anyone it represents is barred from using the Product under the (export control) laws of the European Union, United States or any other country, and/or any applicable trade sanctions or embargoes.

2. DEFINITIONS

2.1. The terms and expressions written with a capital letter shall have the meaning given to them in this clause 2.1, unless the context in which they are used requires a different meaning.

"Administrator" means the End-User creating a Site;

"Affiliate" means an entity that owns or controls, is owned or controlled by or is under common control or ownership with Customer or Lansweeper as applicable, where 'control' is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity through majority ownership of voting securities or otherwise;

"Agreement" means these Terms together with the Order and the DPA;

"Aggregate Data" means any data that is the result of aggregation and/or de-identification of Customer Content and Device Fingerprints or derivations thereof, and which does not or no

longer relates to an identified or identifiable natural person. Aggregate Data does not constitute Confidential Information of Customer;

"Application" means any application developed to interact with the Cloud API or otherwise interact with the Product (including the Cloud Platform);

"Asset" means (i) any IT device scanned, using the Product on Customer's local systems; (ii) any IT resource scanned by the Product in Customer's cloud environment; and (iii) any IT assets that are created by/added to the Product by Customer;

"Beta Release" means a feature of the Product on a "beta" free of charge pre-release, owned by Lansweeper and licensed and made available to Customer solely for testing purposes;

"Billing Contact Email" means the email address provided by Customer to which Lansweeper may send all billing-related information and the License Key;

"Business Day" means every day except Saturdays, Sundays and public holidays in the jurisdiction where Lansweeper is incorporated;

"Charges" means the amounts due by Customer to Lansweeper for the delivery of the Product;

"Cloud API" means an application programming interface, including updates and including any API offered by Lansweeper to its Customer through its Cloud Platform;

"Cloud API Key" means the security key Lansweeper creates and makes available to Customer, to access the Cloud API;

"Cloud Platform" means a cloud-hosted platform on a multi-tenant basis, managed by Lansweeper, which connects to Customer's Lansweeper Installation and which allows Customer to view its Customer Content available within its Lansweeper Installation(s) via its Lansweeper Account;

"Cloud Services" means cloud-based services made available through the Product;

"Confidential Information" means all information which is disclosed by one Party to the other whether before or after Effective Date, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a Party's business including its products, operations, processes, plans or intentions, developments, trade secrets, know how, design rights, market opportunities, personnel, suppliers and/or customers, all information derived from any of the above (including but not limited to these Terms) but excludes information which (i) at the Effective Date is, or becomes at any time after that date, within the public domain (other than as result of a breach of clause 12 of these Terms); (ii) is obtained, free from any restrictions as to its use or disclosure from a third party who was free to divulge it; and (iii) is developed by, or for, the receiving Party independently of any information received under the Agreement and by persons who had no access to, or knowledge of, that Confidential Information;

"Contract Year" means each twelve (12) month period beginning on the Effective Date and on each subsequent anniversary thereof during the Term;

"Customer" means the legal entity validly subscribing to the Product under the Agreement;

"Customer Content" means any data (in electronic form) collected through the Product or uploaded to the Product by Customer or its Affiliates (including their respective End-Users) for the purpose of using the Product or facilitating the Customer's use of the Product, including outputted data by the Cloud API but excluding Aggregate Data and Installation Metadata;

"Device Fingerprint" means a set of information elements obtained through network protocols used to recognize Assets;

"Documentation" means any documentation, instructions, Lansweeper's Knowledge Base or other information provided by Lansweeper in relation to the Product regardless of the manner in which it has been made available to the Customer (including via e-mail or Lansweeper's website) and as may be updated from time to time;

"DPA" means the data processing agreement available at <https://www.lansweeper.com/terms-of-use/> (or any other hyperlink Lansweeper may provide);

"Effective Date" means either (i) the date of online acceptance of the Agreement or (ii) the Effective Date as identified otherwise in the Agreement;

"End Users" means the ultimate end users (natural person) of the Product;

"Error" means any material, verifiable and reproducible failure of the Product to conform in all material respects to features and functions as described in the Documentation (excluding any nonconformity resulting from a use that is not in compliance with the Agreement and/or the Documentation);

"Feedback" means comments, information, questions, data, ideas, description of processes, or other information related to the Product and/or Beta Releases provided by Customer to Lansweeper. Feedback does not constitute Confidential Information of Customer;

"Foss Components" has the meaning given to it in clause 9.11 of these Terms;

"Force Majeure" means any event which is beyond the reasonable control of a Party and which impacts the execution of its obligations under the Agreement, including, but not limited to, natural disasters, epidemics, pandemics, extreme weather conditions, fire, riots, war and military operations, national or local emergency situations, acts or negligence of the government, economic disputes of any nature whatsoever, strikes, unannounced labour actions, fire, flooding, lightning, explosions, collapses, disruptions in traffic, the reduced or non-functioning of networks, systems or equipment of third parties as well as any act of negligence of a person or entity which is outside of the

reasonable control of a Party. For the avoidance of doubt, failure by Customer to correctly or timely pay the Charges shall not be excused by a Force Majeure event;

"Free Trial" means a free plan of the Product offered to the Customer for testing purposes at no charge for a limited period of time, with limited features and functionalities, and subject to the license metrics as determined in Lansweeper's sole discretion;

"Freeware" means a free plan of the Product offered to the Customer at no charge for an undetermined period of time, with limited features and functionalities, and subject to the license metrics as determined in Lansweeper's sole discretion;

"Help Desk" a feature of the Product that allows Customer to organize a limited first line help desk using the Lansweeper knowledge database within its organization through *inter alia* a ticketing system;

"Help Desk Agents" means those of Customer's End-Users with a Help Desk-agent subscription;

"Installation Metadata" means data retrieved by Lansweeper from Customer's Lansweeper Installation, such as but without limitation the license details, software version, IP address, email address, Install-ID, installation status, Asset count, database server type and web server type;

"Intellectual Property Rights" means (i) copyright (including software rights), patents, database rights and rights in trademarks, designs, know-how and confidential information (whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

"Invalid Support Request" means a support request from Customer which does not comply with the conditions for a Valid Support Request provided for in clause 7.4 of the Terms;

"IP Claim" has the meaning given to it in clause 15.1 of these Terms;

"IT Asset Discovery Software" means (i) the machine-readable object code of Lansweeper's software (including database software) to run on Customer's systems, developed and owned by Lansweeper and licensed to Customer under the provisions of this Agreement; (ii) the related Documentation; and (iii) any updates, supplements, modifications, enhancements, corrections, fixes and revisions thereof, as made available to Customer at Lansweeper's discretion;

"Lansweeper Account" means a unique identity tied to an email address that is used by an individual to log into the Cloud Platform. A Lansweeper Account can have access to multiple Sites, for which it is authorized through a linking process;

"Lansweeper Data" means the data and other information created, stored, processed and used by or on behalf of Lansweeper, and which may be accessible through the Product;

"Lansweeper Installation" means a single deployment of the IT Asset Discovery Software consisting out of i) a single Local Scanning Database installed on Customer's systems, (ii) a single Local Web Console installed on Customer's systems, and (iii) unless restricted by Customer's subscription plan, multiple Scanning Engines installed on the Customers and/or Customer's Affiliates systems, all connected to the same and sole Local Database;

"Lansweeper's Knowledge Base" means Lansweeper's knowledge base available at <https://www.lansweeper.com/kb/> (or any other hyperlink Lansweeper may provide);

"Lansweeper's Support Page" means Lansweeper's support page available at <https://www.lansweeper.com/contact-support/> (or any other hyperlink Lansweeper may provide);

"License Key" means a unique key-code issued to Customer by Lansweeper to activate and use the Product. For Paid Subscriptions, Lansweeper will first issue a temporary license key with a duration equal to the payment term as described in clause 3.6 of these Terms, followed by a full license key covering the remainder of the Paid Subscription Term sent upon Lansweeper's receipt of payment from Customer;

"Local Scanning Database" means either a SQL local database or a full SQL server which serves as the on-premises repository where all Customer Content is federated. Multiple Scanning Engines should connect to a single Local Scanning Database;

"Local Web Console" means a website hosted on-premises with the Customer which is used to interface with the local deployment of the Product;

"Means of Access" has the meaning given to it in clause 9.5 of these Terms;

"Order" means any purchase order or other electronic or paper ordering document accepted by Lansweeper that identifies (among others) the following order by Customer: Product, Customer's selected Paid Subscription with the features and functionalities described therein, quantity based on Lansweeper's applicable license metrics (e.g., number of Assets, number of Help Desks Agents, number of Lansweeper Installations, number of Scanning Engines, ...), Charges, and subscription Term;

"Paid Subscription" means a plan of the Product offered to the Customer for purchase against payment of Charges and as further described in an Order;

"Party" and **"Parties"** mean Lansweeper and/or Customer, as applicable;

"Preview Feature" means a feature that is not part of Customer's subscription plan but made available on a "preview" basis;

"Product" means IT Asset Discovery Software, the Cloud Platform, any Applications that interface with the Product developed and provided by Lansweeper through the Cloud Platform (excluding third-party applications developed and/or provided by third parties), and any other Lansweeper proprietary software,

software-as-a-service or tool which the Customer has subscribed to in accordance with the Agreement;

"Reseller" means a party authorized by Lansweeper to resell Paid Subscriptions to the Lansweeper Product;

"Scanning Engine" means an application that performs the agentless scanning of the Assets in Customer's network in a one-to-many fashion. Such Scanning Engines may be installed on different systems of Customer or its Affiliates, unless restricted by Customer's subscription plan;

"Second Line Support" means monitored email support services whereby Lansweeper undertakes reasonable efforts to resolving Customer's Valid Support Requests;

"Site" means a unique tenant created in the Cloud Platform which can collect Customer Content from Customer's Lansweeper instance(s), through a linking process or manually entered via the Cloud Platform;

"Support Hours" means the hours during which second and third line Support Services will be made available to Customer in accordance with the conditions set forth in clause 7 of these Terms. For hours noted in CET, Central European Summer Time (CEST) will be used during spring to summer months;

"Support Services" means reasonable advice and guidance concerning the use of the Product, and troubleshooting of the Product allowing Lansweeper to resolve issues, either by providing Customer with the possible steps to resolve the Error, or undertaking the necessary measures on Lansweeper's end and informing Customer thereupon;

"Term" has the meaning given to it in clause 17 of these Terms;

"Terms" means these Terms of Use Lansweeper; and

"Valid Support Request" means a support request from Customer in accordance with the conditions set forth in clause 7.4 of these Terms.

The terms and expressions written with a capital letter used in this Agreement but not defined above, are defined throughout this Agreement.

3. SUBSCRIPTION, AFFILIATES' USE, ORDERS, CHARGES, PAYMENT TERMS AND EXTENSION OF PAID SUBSCRIPTION

3.1. The Product can be subscribed to, based on the following different subscription plans: (i) Free Trial, (ii) Freeware, and (iii) Paid Subscription. Free Trial and Freeware subscriptions are made available for download. Paid Subscriptions are offered for purchase and can be ordered through Lansweeper's website or a Lansweeper or Reseller sales representative. The Customer's selected Paid Subscription shall be identified in the Order (for purchases through a Lansweeper sales representative) or the online order confirmation page (for purchases through Lansweeper's website).

3.2. Subject to the applicable usage limitations, Customer will be entitled to have the Product used by its Affiliates (and their End-

Users). Customer undertakes that any Affiliate using or accessing any Product hereunder, or benefitting from the Customer's use of a Product, will comply with all terms and conditions of this Agreement. The Customer will remain responsible for Customer's Affiliates' acts and omissions unless Customer's Affiliate has entered into its own agreement with Lansweeper.

3.3. The Customer's Affiliate use of the Product needs be based upon the same number Lansweeper Installations as permitted under this Agreement which have been installed at Customer. Use by the Customer's Affiliate shall not entitle the Affiliate to a separate Lansweeper Installation. It is thus understood that use by an Affiliate of the Product will be subject to the procedure set forth in clause 3.16 of these Terms, where use of the Affiliate would imply usage of the Product beyond the license metrics agreed upon with Customer.

3.4. Only the Agreement (and for the avoidance of doubt, specifically excluding any pre-printed terms on a Customer or Reseller purchase order) will have any force or effect unless a particular Order is executed by an authorized signer of Lansweeper and returned to Customer (or the applicable Reseller). If any such Order is so executed and delivered, then only those specific terms on such Order that expressly identify those portions of this Agreement that are to be superseded will prevail over any conflicting terms herein but only with respect to those Products ordered on such Order. Orders are non-cancellable. Any Order through a Reseller is subject to, and Lansweeper obligations and liabilities to Customer are governed by, this Agreement.

3.5. Lansweeper quotes are only valid when issued by a Lansweeper sales representative and are noncommittal and do not create any agreement between Customer and Lansweeper, until the quote and these Terms (which are incorporated by reference into the quote) are acknowledged and accepted by Customer. quotes are valid for thirty (30) days as of the date of the quote, unless otherwise indicated.

3.6. The Charges for the Product are published on the Lansweeper website and exclude VAT and other applicable taxes. Charges are payable within thirty (30) calendar days of the invoice date, unless otherwise specified on the Order. The available payment methods are specified on the Order (for purchases through a Lansweeper sales representative) or the online order confirmation page (for purchases through Lansweeper's website). Invoices may be sent through electronic means, via the Billing Contact Email.

3.7. All payment obligations are non-cancellable and non-creditable and all Charges paid are non-refundable except as otherwise set forth in the Agreement.

3.8. Lansweeper reserves the right to increase the Charges at the start of each Contract Year up to Lansweeper's then-current list price set out on Lansweeper's website.

3.9. In the event as described in clause 3.8 of these Terms, Lansweeper will inform Customer thereof by email at the latest forty-five (45) days before the expiry of the then-current Contract Year. In the event Customer refuses to accept such Charges, Customer should terminate the Agreement in accordance with clause 17.3 of these Terms. In the event this was not timely done, the updated Charges shall apply as from the start of the next Contract Year.

3.10. From the due date, the invoice shall automatically and without notice accrue an interest of 1% for every month commenced of the due invoiced amount. Additionally, a flat-rate indemnity of 10% of the invoice amount is due, with a minimum of 250 EUR, which shall be payable automatically and without notice, notwithstanding Lansweeper's right to claim for a higher indemnity, subject to reasonable proof provided by Lansweeper of higher incurred damages.

3.11. In the case of non-payment of an invoice on the due date, all unexpired claims on the Customer resulting from any agreement between Lansweeper and Customer become due, automatically and without notice. If instalments of payment are made or bills of exchange are signed, either subject to the Agreement or in another agreement between Lansweeper and Customer, then all amounts owed by Customer become due, automatically and without notice.

3.12. Customer must pay any applicable taxes and third-party fees (including, for example, telephone toll charges, mobile carrier fees, ISP charges, data plan charges, credit card fees, foreign exchange fees, foreign transaction fees, and bank charges). Lansweeper is not responsible for these fees. If Customer is located in a different country than Lansweeper or Lansweeper's e-commerce partner, Customer's payments will be made to a foreign entity. In the event any withholding tax (meaning any income, sales, use, gross receipts, business, occupation and other taxes and similar charges imposed by any government or other authority on Lansweeper in which Customer is required by law to withhold or deduct on the Charges payment to Lansweeper) is levied on the Charges, then Customer shall increase the sums paid to Lansweeper so the amount received by Lansweeper after the withholding tax is deducted is the full amount Lansweeper would have received if no withholding or deduction had been made. Lansweeper may apply and charge these withholding taxes back to Customer, after Customer has made the payment (*gross-up*) where withholding taxes were withheld by Customer. Notwithstanding the foregoing, Customer and Lansweeper will cooperate to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Lansweeper qualifies for a tax exemption, or a reduced treaty withholding rate, Lansweeper will provide Customer with reasonable documentary proof. However, in the event the Charges are charged via Lansweeper's e-commerce partner, their tax provisions apply and prevail.

3.13. Customer is not allowed to set off invoices unless expressly agreed otherwise in writing by Lansweeper.

3.14. Unless explicitly otherwise agreed upon, Lansweeper shall apply the currency for the Charges as provided in the Order (for purchases through a Lansweeper sales representative) or the online order confirmation page (for purchases through Lansweeper's website).

3.15. Any costs or losses incurred by Lansweeper due to Customer's payment in another currency as agreed upon, shall be borne by Customer and, as the case may be, refunded by Customer to Lansweeper.

3.16. During the Term, a Paid Subscription Customer may increase the agreed upon license metrics. In such case, Customer can request a quote through the Lansweeper website or a Lansweeper or Reseller sales representative.

3.17. At the start of the next Renewal Period, a Paid Subscription Customer may change the agreed upon license metrics. In such case, Customer should request a quote through the Lansweeper website or a Lansweeper or Reseller sales representative at least thirty (30) days before the expiry date of the current Term of Customer's subscription.

4. USE OF THE PRODUCT

4.1. The Product and the limitations associated with the Product are described in the Documentation.

4.2. Subject to full compliance with the Agreement (including timely payment of all applicable Charges to Lansweeper or where applicable, the Reseller), Lansweeper hereby grants Customer a limited, worldwide, revocable, non-transferable, non-sublicensable, non-exclusive right during the Term to (i) access and use the Product for Customer's internal business purposes on compatible devices in accordance with the agreed upon license metrics, (ii) deploy one single Lansweeper Installation, except if Customer's Paid Subscription allows for multiple Lansweeper Installations and upon the condition that those are linked to one single Site; (iii) deploy an additional Lansweeper Installation for testing purposes and to evaluate new releases, and (iv) update the Product to the latest updated version made available by Lansweeper under Customer's subscription plan. For the avoidance of doubt, Customer is not allowed to distribute or commercialize the Product. Lansweeper has the right to take all steps required in order to monitor the use of the Product and to verify whether the use is in compliance with the Terms.

4.3. Customer may solely use the Product as and in a way as expressly allowed under the Agreement and in accordance with Lansweeper's instructions. For example, but without limitation, Customer shall not (nor will allow or facilitate a third party to): (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party (except to the End Users as permitted under the Agreement) the Product or access to the Product in any way; (ii) modify, alter,

translate, tamper with or make derivative works based upon the Product; (iii) unless to the extent allowed under applicable law, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Product or access the Product in order to: (a) build a competitive product or service; (b) build a product using similar ideas, features, functions or graphics of the Product; or (c) copy any ideas, features, functions or graphics of the Product; (iv) access or use the Product in a way intended to avoid incurring Charges, exceeding license metrics, or avoiding any restrictions imposed under the Agreement; or (v) remove any titles or trademarks, copyrights or restricted rights notices in the Product.

4.4. Customer may use certain Cloud Services based on its Product configuration preferences. By using such Cloud Services, Customer acknowledges and agrees that Customer Content and/or Device Fingerprints are transmitted to Lansweeper in order to enable Lansweeper to provide such Cloud Services.

4.5. If Lansweeper provides a Beta Release of the Product, Customer acknowledges and agrees that the Beta Release is for evaluation purposes only and may contain Errors, fail, return inaccurate results, and/or be subject to other malfunctions. A Beta Release will be subject to the same license metrics as provided for in the Agreement. Lansweeper does not guarantee that a Beta Release will be commercially released and Lansweeper may change the Beta Release or terminate the Customer's use thereof at any time without prior notice. Use of the Beta Release is at Customer's own risk and Lansweeper shall not be liable for any damages resulting from Customer's use of the Beta Release.

4.6. If Lansweeper provides a Preview Feature, Customer acknowledges and agrees that the Preview Feature is for evaluation purposes only and that Lansweeper does not guarantee that the Preview Feature will remain available throughout Customer's subscription plan Term. Lansweeper may change the Preview Feature or terminate the Customer's use thereof at any time without prior notice.

4.7. In addition to any remedies Lansweeper may have by law or as specified in the Agreement, Lansweeper may exercise the following remedies, at Lansweeper's option and in Lansweeper's discretion, in case Customer does not comply with the Agreement: (i) suspend Customer's access to the Product; (ii) remove Customer's Customer Content from the Product; and/or (iii) report the concerned breach to the relevant authorities when such is required by law.

5. CLOUD PLATFORM, SIGN-UP AND ACCESS THERETO

5.1. In the Agreement, Parties may agree that Customer will be provided with access to the Cloud Platform, which constitutes a specific feature of the Product containing a set of functionalities. In addition to the other terms of the Agreement, this clause 5 shall apply to the extent Customer enjoys such access under the Agreement.

5.2. Customer's End-Users can sign up and access the Cloud Platform by creating a Lansweeper Account via app.lansweeper.com (or any other hyperlink as provided by Lansweeper).

5.3. It is Customer's sole responsibility to manage the creation of Sites by its End-Users and which End-Users can therefore become Administrator of such Site. In the event Customer deletes a Site, Customer acknowledges that it will not be able to recover the Customer Content that was available in such deleted Site.

5.4. Customer should successfully perform a linking process before being able to use the functionalities of the Cloud Platform. Specifically, to enable the proper functioning of the Cloud Platform, a minimum version of the IT Asset Discovery Software may be required. Based upon Customer's configuration preferences, certain updates to the IT Asset Discovery Software may be automatically downloaded and installed without further notice to Customer. Such automatic updates are without prejudice to the need for performing manual updates from time to time.

5.5. Lansweeper undertakes commercially reasonable efforts to make the Cloud Platform available at a monthly uptime percentage as applicable under Customer's Paid Subscription ("**Uptime Service Level**"). The uptime percentage is calculated on a monthly basis ("**Monthly Period**"), according to the following formula: $\text{Uptime Service Level} = ((\text{total hours in Monthly Period} - \text{Downtime in Monthly Period}) / \text{total hours in Monthly Period}) * 100\%$, where 'Downtime in Monthly Period' means the total number of hours outside of Scheduled Downtime (as defined below) during the Monthly Period that the Cloud Platform was unavailable and Customer was unable to access its Lansweeper Account.

5.6. In the event the Cloud Platform was unavailable due to unscheduled downtime, Customer is entitled to request a report via outagereport@lansweeper.com (or any other communication medium chosen by Lansweeper), showing how Lansweeper is performing against the Uptime Service Level in the then-current Monthly Period.

5.7. The Uptime Service Level will exclude unavailability of the Cloud Platform due to or resulting out of: (i) Customer or Customer's End-User's use in a way that is not compliant with the Agreement (including the Documentation); (ii) Customer's failure to follow the instructions resulting out of Lansweeper's Support Services (if applicable); (iii) modifications or customizations to Customer's Lansweeper Installation; (iv) incorrect use of Lansweeper's API; (v) integrations with third party software or hardware (vi) Force Majeure events; (vii) Lansweeper's cloud hosting provider failure to comply with their own applicable service levels; and (viii) routine scheduled maintenance or reasonably emergency maintenance to provide Customer with new features or fixes ("**Scheduled Downtime**").

5.8. The Uptime Service Level does not apply to: (i) Beta Releases of the Cloud Platform's functionalities; (ii) any non-public available features, whether or not in a beta free-release, within the Cloud Platform that may be made available to Customer in Lansweeper's sole discretion; and (iii) Free Trial and Freeware subscriptions.

6. CLOUD API

6.1. Subject to Customer being provided with access to the Cloud Platform per clause 5 of these Terms and Customer's full compliance with the Agreement (including timely payment of all applicable Charges to Lansweeper or where applicable, the Reseller), Lansweeper hereby grants Customer a limited, worldwide, revocable, non-transferable, non-sublicensable, non-exclusive right during the Term to access, make calls to and use the Cloud API for developing Applications that may interoperate with the Product.

6.2. To access, make calls to or use the Cloud API, through a specific Application, Customer must obtain a Cloud API Key through the process as presented in the Cloud Platform and further documented in the Documentation. Customer will be fully responsible for keeping its Cloud API Key(s) for each Application safe and secure and will not share such Cloud API Key with any third parties. Customer may replace a Cloud API Key for a specific Application at any time, with a newly generated Cloud API Key, which will irreversibly replace the original Cloud API Key. Customer will not access or otherwise use the Cloud API than through the respective Cloud API Key(s) for each Application.

6.3. Lansweeper may from time to time at its own discretion provide for rate-limitations on the use of the Cloud API, as provided in the API Documentation.

6.4. Customer may use Lansweeper developed Applications provided in Lansweeper's discretion subject to Customer's compliance with these Terms. Customer further may use Applications developed by third parties, whether or not provided through the Cloud Platform or third parties directly, provided that: (i) such use may be dependent on the acceptance of terms provided by such third parties related to the use of such third-party Applications (in which case the present Terms will prevail over the third-party terms in the event of any conflict or inconsistency), (ii) such third-party Application developers may have access to the Customer Content, (iii) Lansweeper disclaims any warranty related to such third-party Applications and their usability, whether or not 'authorized' or 'certified' by Lansweeper, (iv) Lansweeper shall not be liable for any damages Customer may incur related to its use of such third-party Applications. Customer shall not rely on the future availability of any Applications.

6.5. Customer may provide its developed Applications to third parties, whether provided directly to third parties or through the Cloud Platform, subject to Lansweeper's prior approval (as applicable). Lansweeper may disable or revoke Customer's provisioned Applications or revoke any Cloud API Key for any Application when Customer breaches its obligations under these

Terms. Customer will be solely liable for the third parties' compliance with the Agreement and the applicable legislation. Customer acknowledges that it may have access to such third parties' Asset data through providing its Applications. Customer will provide and adhere to: (i) relevant terms regulating the use of its Applications by the third parties, and (ii) relevant privacy policies to inform the third parties about which Asset data is used and in what manner.

6.6. Lansweeper hereby grants Customer a royalty-free, non-exclusive, non-transferable license to display the Lansweeper Trademarks only for attribution of Customer's use of the Cloud API and Customer's Applications. Customer acknowledges and agrees that Customer's use of the Lansweeper Trademarks will not create any right, title or interest in or to the Lansweeper Trademarks in Customer's favour and all goodwill associated with it will inure to the benefit of Lansweeper.

7. SUPPORT SERVICES

7.1. Except as expressly stated otherwise herein, all subscription plans are eligible for software support according to the following support lines:

- (a) First line support: is made available to Customer via the Documentation (available via the Lansweeper website);
- (b) Second line support: subject to the below-mentioned requirements and exclusions, second line Support Services are provided via support@lansweeper.com (or any other communication medium chosen by Lansweeper) except for Freeware Customers;
- (c) Third line support: subject to the below-mentioned requirements and exclusions third line Support Services are provided by Lansweeper via an online meeting only for (i) Paid Subscriptions if made available under Customer's selected Paid Subscription plan and (ii) Valid Support Request qualifying for the highest severity level as described on Lansweeper's Support Page.

7.2. Lansweeper only provides Support Services in relation to the Product. For the avoidance of doubt, Lansweeper does not provide Support Services in relation to (i) Customer's "custom actions" and "automated software deployment" as defined and described in Lansweeper's Knowledge Base (part of the Documentation), (ii) the Cloud API, and (iii) any Applications. Lansweeper further only provides Support Services to Free Trial Customers who provided a business email address as Billing Contact Email.

7.3. To the extent Support Services are available to the Customer under the Agreement, they will be available during the Support Hours as described on Lansweeper's Support Page.

7.4. Lansweeper will only provide the Support Services for support requests meeting all of the following conditions ("**Valid Support Request**"):

- (a) Customer uses the Product according to the Agreement (including the Documentation);
- (b) Customer has updated the Product to the latest and most current version;
- (c) Customer has not modified the Product contrary to the Agreement, the Documentation or the Product's configuration settings; and
- (d) Lansweeper received the support request in English from valid End-Users who have identified themselves by providing their Order reference number;

7.5. Subject to prior notification to Customer, Lansweeper reserves the right to invoice Customer any fees for Support Services provided by Lansweeper to Customer which, after examination of the support request by Lansweeper within a reasonable period upon provision of the Support Services to Customer, proves to be an Invalid Support Request.

7.6. Upon receipt of a Valid Support Request, Lansweeper shall determine in good faith the severity level of the request in accordance with the severity levels as described on Lansweeper's Support Page. Without prejudice to the foregoing, Customer is allowed to give an indication of the severity level Customer deems applicable to Customer's Valid Support Request, which may be taken into account by Customer when Lansweeper determines the severity level of Customer's Valid Support Request.

7.7. Lansweeper undertakes reasonable efforts to meet the initial response times as described on Lansweeper's Support Page to respond to Valid Support Requests, according to the severity levels as described on Lansweeper's Support Page and as applicable under Customer's Paid Subscription.

7.8. For clarity, support requests related to Beta Releases or coming from Free Trial Customers are handled by Lansweeper, but any initial response times provided for in the Agreement will not apply in that regard.

7.9. The initial response time starts to run, during the Support Hours, as from the moment that Customer receives an automated confirmation of receipt email from Lansweeper. Said automated email will entail: (i) first guidance on how to possibly resolve the issue; and (ii) an overview of the additional information Customer may submit to Lansweeper to facilitate the resolution of Customer's Valid Support Request.

7.10. The initial response to the concerned Valid Support Request will entail, at Lansweeper's discretion: (i) possible solutions which should allow Customer to resolve the issue; and/or (ii) a request for more information, if no possible solutions can be provided based on the information available at that point.

8. SERVICE DELIVERY

8.1. All obligations of Lansweeper under the Agreement constitute obligations of means. Lansweeper will use commercially reasonable efforts to provide the Product in material conformity

to what has been set out in the Agreement and the Documentation.

8.2. Lansweeper does not guarantee that the Product shall be without Errors and/or any other defects and shall function without interruption. Lansweeper has an obligation of means to repair Errors in the Product within a reasonable time. Lansweeper is entitled to apply problem avoiding restrictions and/or workarounds. Lansweeper does not carry any responsibility for repairing defects in software or other items that are not developed by Lansweeper or not part of the Product.

8.3. Lansweeper has the right to suspend access to the Product for security and maintenance purposes (including to issue updates to the Product).

8.4. In its own full discretion and according to its own timetable, Lansweeper may change the form and nature of the Product, including through the issuing of updates to the Product. Lansweeper reserves the right, when issuing an update to the Product, to remove existing feature or functionality from the Product and Customer has no right to demand those features or functionalities to be supported. Where such removal would have a material impact on Customer's subscription plan to the Product, Lansweeper will inform Customer thereof reasonably in advance but no later than forty-five (45) days prior to implementing the update unless where such notice would be impossible or impractical due in particular but not exclusively to legal or security requirements or performance related issues. In case Customer has reported an Error, Lansweeper can postpone repair until an update is issued. All costs associated with the implementation of updates on Customer's side, will be borne by Customer.

8.5. Lansweeper is not responsible for checking the accuracy and completeness of the (i) Customer Content and (ii) decisions made by Customer on the basis of the use of the Product.

9. CUSTOMER'S OBLIGATIONS

9.1. Customer shall be solely responsible for (i) Customer (and its Affiliate's) actions and the actions of Customer's (and its Affiliate's) End Users while using the Product; (ii) any End User's breach of the Agreement or any applicable laws; and (iii) any data, content, or resources that Customer (or its Affiliates) or its End Users create, transmit, or display.

9.2. Customer ensures that, to the extent applicable and necessary, all of its (and its Affiliate's) End Users are provided with full information of and comply with the obligations under the Agreement (including but not limited to clause 4 of these Terms). Customer agrees, and, to the extent applicable, agrees to have its End Users agree: (i) to abide by all laws applicable to the use of the Product, including but not limited to all national and international export laws and regulations that apply to the Product and the restrictions on destinations and end use set forth therein; (ii) not to upload (knowingly or by negligence) or distribute content that contains malware, viruses, malicious files or other harmful code or any other similar software or programs that may

access or damage the operation of the Product, the related systems and networks or any other computer or device, including a third party's computer or device; (iii) not to interfere with or disrupt the Product; (iv) not to attempt to gain unauthorized access to the Product; (v) not to work around any technical limitations in the Product; (vi) not to use the Product to provide any type of product to third parties, including or incorporating the Product into another product or service; (vii) not to provide Product credentials or other log-in information to any third party; (viii) not to share with any third party non-public features or content of the Product, inaccurate information about the Product, or vulnerabilities found in the Product; (ix) not to engage in web scraping or data scraping on or related to the Product, including without limitation collection of information through any software that simulates human activity or any bot or web crawler; or (x) not to use the Product, even if not prohibited by law, for gambling, prostitution, alcohol, drug, pharmaceutical or healthcare businesses or services. In case of a breach of this clause, Customer will fully assist Lansweeper, at its own cost and expense, in mitigating the effects and restoring incidental losses, without prejudice to Lansweeper's other rights and remedies in accordance with applicable law and/or this Agreement.

9.3. Customer shall duly cooperate with Lansweeper in order to enable Lansweeper to provide the Product according to the Agreement. Customer shall in particular supply Lansweeper with all information and materials required by Lansweeper to enable Lansweeper to provide the Product according to the Agreement.

9.4. Customer shall be responsible for the installation of the Product and acknowledges that Lansweeper has no further obligation with respect to the installation of the Product after delivery of the License Key.

9.5. Access to and use of the Cloud Platform requires the creation of an account, by entering the requested information and choosing a login and a password (referred to hereinafter as "**Means of Access**"). Customer is responsible for the safeguarding, confidentiality, security and appropriate use of the Means of Access and Customer undertakes to take all steps to prevent any unauthorized third party from gaining knowledge and making use thereof. Customer will notify Lansweeper immediately by email of the loss, theft, breach of confidentiality or any risk of misuse of the Means of Access. Customer undertakes to comply strictly with and to ensure the compliance by Customer's End Users with the appropriate procedures regarding access to the Product. The latter is without prejudice to the fact that Customer is responsible for all actions taken using Means of Access as well as the consequences of such actions, including any unauthorized use of the Cloud Platform or security breach. Lansweeper will not assume any liability in this respect.

9.6. Customer, and not Lansweeper, is responsible for taking all appropriate steps to back-up or otherwise secure or protect the Customer Content. For the avoidance of doubt, Customer

acknowledges and agrees that Lansweeper does not endorse any third party websites, resources, and/or content.

9.7. Customer warrants that the Customer Content, and Lansweeper's access to and processing of the Customer Content in the framework of the Agreement, do not violate any laws and/or any third party rights.

9.8. Customer will be solely responsible and liable for the accuracy of data it uploads to the Product, including without limitation Customer Content and any other data uploaded by End-Users.

9.9. By using the Cloud Platform, at Customer's discretion, Customer consents to the transmission of the Customer Content to the Cloud Platform for Lansweeper's use to provide Customer with (i) access to the Cloud Platform, (ii) the Cloud Platform functionalities (iii) Support Services for Valid Support Requests related to the Cloud Platform (subject to Customer's prior consent of that of Customer's End Users).

9.10. Customer, and not Lansweeper, is responsible for obtaining, maintaining and paying for all hardware, software and communications equipment necessary to access and use the Product and comply with the requirements as set out in the Documentation. Customer will thus also be responsible for (i) obtaining the third-party hardware and software licenses and any other systems required to run the Product; and (ii) complying with the applicable license terms of such third-party hardware and software. Lansweeper has no responsibility for issues caused by third-party hardware or software.

9.11. The Product includes free and open-source software developed by third parties ("**FOSS Components**"), of which a list can be found in the Documentation. Notwithstanding the Agreement which governs Customer's use of the Product, the license terms of the FOSS Components need to be respected by Customer.

9.12. If Customer becomes aware of a vulnerability in the Product, it will not reveal such vulnerability to third parties or the general public. Customer will disclose the discovered vulnerability to Lansweeper by contacting security@lansweeper.com and include a proof of concept, the list of tools used (including versions), and the output of the tools.

9.13. Lansweeper only supports and maintains the latest version of the Product. It is Customer's obligation to timely implement any update to a new version of the Product, and to maintain any other software and/or hardware to continue their support of the Product. If Customer does not timely update any such update, Lansweeper may no longer be able to provide the Product to Customer, which shall be without prejudice to Customer's payment obligations under the Agreement.

9.14. Customer will not, and will not permit others to: (i) combine or integrate the Cloud API with any software, technology, services or materials that have been black-listed by Lansweeper; (ii) design

or permit Applications to disable, override, or otherwise interfere with any Lansweeper implemented communications to End-Users including, without limitation, consent dialogs, End-User settings, alerts and notifications; (iii) remove, obscure, or alter any Lansweeper Terms or any links to or notices of those Terms; (iii) use the Cloud API or Applications to replicate or attempt to replace the user experience of the Product; (iv) seek to conceal Customer's or End-User's identity or the identity of the Applications when connecting with or setting up the Cloud API; (v) use the Cloud API in deviation of any other restrictions imposed by Lansweeper in the API Documentation; (vi) misrepresent the source of the ownership of the Customer Content, the Product and Lansweeper trademarks; or (vii) undertake or permit removal or alteration of any patent numbers, trademarks, (copyright) notices, or other labels of origin related to the Customer Content, the Products and Lansweeper trademarks.

9.15. Customer may choose to use, procure or enable other third party products or services in connection with the Product (including the Cloud Platform and Applications). Customer's use of any third party products or services (and the third party provider's access and use of any of the Customer Content) shall be subject to a separate agreement between Customer and the third party provider. Lansweeper disclaims all liability and responsibility for any third party products or services or for the acts or omissions of any third party providers (including the third party provider's security and privacy practices). Customer is responsible for its decision to allow the third party provider to access and use the Customer Content. Lansweeper is not a legal representative or agent of the third party provider, nor shall the third party provider have the right to create any liability or obligation on the part of Lansweeper.

10. SALES THROUGH RESELLERS

10.1. In case Customer purchases a Paid Subscription for the Product from a Reseller, this section applies and takes priority over any contrary provisions in the Agreement.

10.2. If Customer's current Reseller is no longer authorized to resell the Product, Customer has the obligation to continue purchasing via another Reseller or purchase directly from Lansweeper.

10.3. Lansweeper can suspend or terminate Customer's subscription if Customer fails to pay Reseller within the payment term as determined by Reseller.

10.4. The amount paid or payable by Customer's Reseller to Lansweeper for Customer's use of the Product, will be deemed the Charges paid or payable to Lansweeper for purposes of interpreting the limits set forth in clause 16 of these Terms.

10.5. The following must be established by Customer's Reseller: (i) prior notice terms for cancellation of Customer's Paid Subscription; (ii) delivery of License Key; and (iii) provisions regarding order placement, payment and taxes.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Lansweeper (and its licensors, where applicable) owns all right, title and interest, including all Intellectual Property Rights in and to the Product.

11.2. The Agreement does not convey any rights of ownership in or related to the Product or the Intellectual Property rights owned by Lansweeper (or its licensors, where applicable) other than the use rights explicitly provided in these Terms. Customer acknowledges that it has no rights whatsoever to access the Product in source code form. Any trademarks used by Lansweeper or its licensors within or associated with the Product, are trademarks of Lansweeper or third parties, and no right or license is granted to Customer to use them. Customer is not allowed to remove or change any Intellectual Property Rights, including logos and trademarks in the Product and Documentation.

11.3. The Customer (or its licensors in the event applicable) shall be the sole and exclusive owner of all (rights related to the) Customer Content including any modification of such Customer Content.

11.4. During and after the Term, Customer grants to Lansweeper a non-exclusive, worldwide, royalty-free, perpetual right and license to extract and use, adapt, display, process, perform and distribute any Aggregate Data and/or Installation Metadata at Lansweeper's sole discretion, for any purpose, including but not limited to (i) Lansweeper's provision of the Product and granting the Customer access thereto; (ii) verify Customer's compliance with the Agreement; (iii) provide Support Services, where applicable and (iv) improvement, modification and testing of the Product.

11.5. Where Aggregate Data relates to a specific End-User and allows for identification of that End-User, such Aggregate Data shall only be used for internal Lansweeper purposes.

11.6. Customer may choose to submit Feedback to Lansweeper which Lansweeper may, in connection with any of its products or services, freely use, copy, disclose, license, distribute and exploit in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. Nothing in this Agreement limits Lansweeper's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

12. CONFIDENTIALITY

12.1. Unless otherwise provided in the Agreement, the receiving Party shall keep the Confidential Information of the disclosing Party confidential and shall in particular (i) use the disclosing Party's Confidential Information only for the purposes of fulfilling its obligations under the Agreement; (ii) protect the confidentiality of the Confidential Information of the disclosing Party by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care; (iii) not disclose the disclosing Party's Confidential Information to any other person except as expressly

set out in the Agreement or without obtaining the disclosing Party's prior written consent; and (iv) immediately notify the disclosing Party if it suspects or becomes aware of any unauthorised access, copying use or disclosure in any form or any of the disclosing Party's Confidential Information.

12.2. Notwithstanding clause 12.1, the receiving Party may disclose Confidential Information of the disclosing Party to its employees or third parties who are directly involved in and need to know such Confidential Information for the purpose of the provision or use of the Product. The receiving Party has or agrees to put in place confidentiality terms no less onerous than those set out in the Agreement. The disclosing Party assumes full responsibility for the acts or omissions of such person or entity.

12.3. Notwithstanding clause 12.1, the receiving Party may also disclose Confidential Information to individuals who are subject to professional or statutory obligations of confidentiality for the purpose of the Agreement.

12.4. Neither Party shall be in breach of clause 12.1 where it is required to disclose the other Party's Confidential Information by law or by a court or regulatory authority of competent jurisdiction. Where a Party is so required to make such a disclosure, it shall, where practicable and/or permissible, consult with the disclosing Party as to the terms, content or timing of the disclosure, and shall use reasonable endeavours to limit the scope of the required disclosure.

12.5. This clause 12 shall survive five (5) years after the termination or expiry of the Agreement.

13. PERSONAL DATA

13.1. The Parties agree that to the extent the GDPR applies to personal data processed under the Agreement they will comply with their obligations with respect to the processing of personal data as set out in the DPA.

14. WARRANTIES

14.1. Other than as provided in the Agreement, the Product (including the Lansweeper Data) are provided "as is" and Lansweeper makes no representations or warranties, express or implied, of any kind whatsoever (including, without limitation, satisfactory quality, fitness for a particular purpose, accuracy, correctness, security, completeness, non-infringing nature, title, custom or usage in trade). Lansweeper further makes no representations or warranties regarding, without limitation, the security, integrity, efficiency or capabilities of the Product. The Product is not personalized or customized to fit Customer's particular needs and Lansweeper may not be able to respond to or resolve all of Customer's issues, and makes no promises, guarantees or assurances to that extent. There is no warranty that the Product will be free of Error, that access will be continuous or uninterrupted, that any information provided or used with the Product will be secure, accurate, complete or timely, or that any content will be preserved or maintained without loss.

Lansweeper's exclusive remedy for damage or loss arising from breach of the warranty as set out in this clause shall be, at Lansweeper's option, (i) the replacement of the Product (or part thereof) concerned at no cost to Customer; (ii) a workaround and/or update to address the Error in a manner that provides Customer with reasonably equivalent functionality as provided in the Documentation, at no cost to Customer or (iii) in the event Lansweeper is unable to replace or correct such failure by exercising commercially reasonable efforts within a reasonable period of time, Lansweeper may terminate the Agreement and Customer's sole additional remedy shall be for Lansweeper to provide a *pro-rata* refund of any pre-paid Charges for periods after the effective date of termination.

14.2. The Product does not qualify as a firewall, antivirus, VPN, 'password manager', a SCAP compliant tool, or other product that may be used to enhance Customer's information security. Customer is solely responsible for maintaining its information security systems, to prevent unauthorized access to its network, computers, and applications.

15. INDEMNITIES

15.1. Lansweeper shall indemnify, defend and hold Customer harmless in accordance with the provisions of this clause 15 from and against any third-party claim asserted against it that the Product (when used in accordance with the Agreement) directly infringes or misappropriates the Intellectual Property Rights of such claimant (an "**IP Claim**"). Lansweeper will pay those costs and damages finally awarded or settled (upon terms acceptable to Lansweeper) against Customer based on such IP Claim, within the limits set forth in clause 16 and provided that: (i) Customer promptly notifies Lansweeper in writing of such IP Claim; (ii) Lansweeper has sole control of the IP Claim; (iii) Customer reasonably cooperates in all respects in the defence of each such IP Claim and all related settlement negotiations and Customer does not make any admission or disclosure or otherwise take any action prejudicial to Lansweeper; and (iv) such IP Claim does not relate to any act by Customer, including (without limitation) a change by Customer to the Product, a non-compliance with the Agreement or Lansweeper's instructions (including the Documentation), a combination of the Product (with or the addition of the Product to products or other software which has not been developed and supplied by Lansweeper, or failure to install an update where installation would have removed the cause of the infringement, or any breach of the Agreement by Customer.

15.2. If a final judgment is entered against Customer on any such IP Claim, or if in Lansweeper's reasonable opinion Customer is likely to become subject to a successful IP Claim, then Customer shall permit Lansweeper, at Lansweeper's option and expense, either: (i) to procure the right to continue using the Product; (ii) to replace or modify the same so that it becomes non-infringing, with functionality essentially being equal; or (iii) to terminate the

Agreement and provide a *pro-rata* refund of any pre-paid Charges for periods after the effective date of termination of the Agreement.

15.3. The foregoing provisions of this clause 15 set forth the entire and exclusive liability of Lansweeper with respect to any IP Claim.

15.4. Without prejudice to Lansweeper's other rights and remedies under applicable law and the Agreement, Customer will indemnify, defend and hold harmless Lansweeper from any claims, demands, actions and losses arising from or created by (i) any of Customer's acts or omissions and/or Customer's End Users' acts or omissions related to the access or use of the Product; and (ii) any Applications developed by Customer (and third parties' use thereof).

16. RISK ALLOCATION

16.1. Except in case of Lansweeper's fraud or wilful default, Lansweeper is only liable for a breach of its obligations under the Agreement if Customer notifies Lansweeper in writing through a notice of default with observance of a reasonable period for remedy of at least ten (10) Business Days calculated as from the breach and Lansweeper fails to remedy the breach within a reasonable period. The notice must contain a complete and detailed description of the breach in order to allow Lansweeper to act adequately.

16.2. Without prejudice to clause 16.1, Lansweeper's liability for a failure to comply with an obligation under the Agreement which is imputable to Lansweeper, is limited to compensation of proven direct losses in accordance with the following principles, which apply cumulatively: (i) the cumulative total aggregate liability of Lansweeper per Contract Year is limited to the greater of (a) the Charges paid by Customer in such Contract Year or (b) one (1) hundred euros (EUR 100); and (ii) without prejudice to clause 16.1, Lansweeper is not liable for any indirect damage and/or consequential damage, such as but not limited to loss of profit, loss of income, loss of revenue, loss of anticipated savings, loss of opportunity, loss of customers, claims of third parties, damage as a result of loss and/or corruption of data, loss of goodwill and reputational damage.

16.3. Without prejudice to clause 16.1, Lansweeper shall have no liability or responsibility for problems in the Product caused by misuse, misuse of Means of Access, the alteration or modification of the Product by Customer, for problems arising out of the malfunction of Customer's (internal or external) hardware, firewalls, network services, Errors caused by third party software or hardware or other infrastructure, or the configuration of such items, or for any (management) decisions that Customer or the End Users takes on the basis of the Product or for the consequences of such decisions.

16.4. Lansweeper shall not be liable due to delay or failure to comply with its obligations under the Agreement, if this delay or failure was the result of Force Majeure. In such a case, Lansweeper may suspend or terminate Customer's access to the Product by

giving Customer a prior written reasonable notice to the extent possible. In such case, Charges for Product features delivered until the termination date will be due on a pro rata basis.

17. TERM, SUSPENSION AND TERMINATION OF THE PRODUCT SUBSCRIPTION

17.1. Free Trial subscriptions are entered into for a period defined in Lansweeper's sole discretion. The Free Trial will automatically expire and not be renewed upon expiry of that period, in which case Customer's Free Trial subscription shall revert to Freeware.

17.2. Freeware is offered to Customer for an undetermined period and can be terminated by either Party by notifying the other Party at any time and for any reason without liability to Customer and Lansweeper.

17.3. Paid Subscriptions are subscribed to for an initial term of one (1) Contract Year as of the delivery of the License Key to the Billing Contact Email, which shall be automatically extended for additional Contract Years ("**Renewal Period**") unless a Party has notified the other Party by e-mail at least thirty (30) days before the end of the then-current Contract Year ("**Term**") that it does not wish to extend the subscription to the Product, in which case Customer's Paid Subscription shall revert to Freeware. For each subsequent Renewal Period, a new License Key will be delivered to Customer, starting from the Renewal Period start date.

17.4. Without prejudice to Lansweeper's other rights and remedies under applicable law and under the Agreement, in the event of a breach by Customer of the Agreement, Lansweeper shall have the right, without compensation being due, to (i) immediately suspend without prior notice a part or all of the Customer's use and access to the Product; (ii) terminate the Agreement without court intervention in case such breach has not been cured within ten (10) Business Days following Lansweeper's notice; and/or (iii) subject to a termination notice immediately terminate the Agreement in case of an irremediable breach. Without excluding any other events being considered a breach of the Agreement, the Parties agree that the following examples of events shall be considered as an irremediable material breach by Customer: (i) any form of misuse of the Product; (ii) any non-compliance with limitations on the use of the Product as stated in the Agreement or under applicable laws; (iii) any infringements on Lansweeper's Intellectual Property Rights; (iv) Customer has become insolvent or declared bankrupt, has been dissolved or entered into liquidation, or has filed a voluntary petition for proceedings in temporary relief (or composition) of creditors, provided, however, in the latter case, that Customer has not confirmed within thirty (30) days following a request by Lansweeper to that effect, that it will continue the Agreement and honor all of its obligations hereunder; or (v) Customer's subscription is restricted, suspended or terminated (whether pursuant to applicable law or core dependencies on third parties) and/or (vi) any non-compliance with Customer's payment obligations.

17.5. Subject to a notice period of forty-five (45) days Lansweeper has the right to terminate or suspend, at its sole option, the Agreement without termination compensation in the event Lansweeper ceases or is unable to offer the Product or the Customer's subscription thereto.

17.6. In the event of expiry or termination of the Agreement, the right of use granted to Customer (and its Affiliates) in respect of the Product hereunder shall immediately cease and Customer shall, upon the effective date of such expiry or termination: (i) cease using the Product; (ii) at Lansweeper's discretion, immediately return to Lansweeper or destroy all copies of the Documentation, the Product features and Confidential Information in Customer's possession, custody or control; and (iii) immediately pay any Charges outstanding at the time of termination. The Customer's License Key will be disabled as of the expiry date of the current Term or termination of this Agreement. Where the Agreement, in case of a Paid Subscription, is terminated under clause 17.5 of these Terms, Customer is entitled to receive a pro-rated refund based on the unused portion of Customer's Paid Subscription, unless such termination happened with a prior notice of forty-five (45) days prior to the expiry date of Customer's Paid Subscription Term.

17.7. Lansweeper shall delete the Customer Content that is stored within the Cloud Platform within sixty (60) days following termination. It is Customer's obligation to export its Customer Content before termination, by making use of the export functionalities available in the Cloud Platform during Customers subscription plan Term.

18. AUDIT

18.1. Lansweeper and/or its appointed third party auditor has the right to audit Customer's compliance with the Agreement. In connection with such verification, Lansweeper shall have access to all requested documents, equipment, information and personnel which are reasonably required in order to verify Customer's compliance.

18.2. Customer shall reasonably maintain the data which provides details on Customer's installation and use of the Product and this for a period of at least one (1) year following Customer's cessation of the use of the Product.

18.3. Without prejudice to Lansweeper's other rights and remedies in accordance with applicable law and/or the Agreement, if such verification or audit would reveal a non-compliance, Lansweeper has the right to invoice Customer for the costs of the audit as well as the (prior) unlicensed use of the Product during the Term of Customer's subscription.

19. MISCELLANEOUS

19.1. Lansweeper reserves the right to subcontract the execution of any part of the Agreement to third parties, without prior notice or information.

19.2. Customer may only transfer its rights and obligations under the Agreement to another entity upon prior written agreement from Lansweeper. Lansweeper is entitled to transfer its rights and obligations under the Agreement to third parties subject to informing Customer.

19.3. Lansweeper may provide complementary third-party products under Customer's subscription plan. Such complementary products may be the subject matter of a separate license agreement between Customer and the third party, detailing the license conditions subject to which the complementary product is licensed.

19.4. If a Party fails to insist that the other Party performs any of its obligations under the Agreement, or if a Party does not enforce its rights against the other Party, or if a Party delays in doing so, that will not mean that this Party has waived its rights against the other Party and will not mean that this Party does not have to comply with those obligations. If a Party does waive a default by the other Party, this Party will only do so in writing, and that will not mean that this Party will automatically waive any other later default by the other Party.

19.5. If the Agreement is concluded with Lansweeper Inc., notices are to be sent by registered mail to 11044 Research Blvd, Suite 500, Austin, TX 78759 or by e-mail to legal@lansweeper.com and if the Agreement is concluded with Lansweeper NV, notices are to be sent by registered mail to 9200 Dendermonde, Zeelsebaan 83/Z, Belgium or by email to legal@lansweeper.com. Notices by e-mail will be deemed received after Lansweeper's confirmation of receipt by Lansweeper via email. All communications and notices to be made or given pursuant to the Agreement shall be in the English language.

19.6. The provision of the Product by Lansweeper shall be governed exclusively by the Agreement and the data processing agreement. For the avoidance of doubt, the application of Customer's own terms and conditions is expressly rejected.

19.7. Termination or expiry of the Agreement, however caused, shall not affect any provision of the Agreement which is expressly or by implication intended to come into or remain in effect on or after termination or expiry including the following clauses: 11.1, 11.4, 11.6, 12, 15.3, 16, 17.6, 18, 19.7, 19.8 and 19.9.

19.8. If the Agreement is concluded with Lansweeper Inc, the Agreement is exclusively governed by the laws of Texas, USA, without regard to its conflicts of laws rules or principles. If the Agreement is concluded with Lansweeper NV, the Agreement is exclusively governed by Belgian law, without regard to its conflicts of laws rules or principles.

19.9. In the event of any dispute, Customer agrees to first try to resolve the dispute informally with Lansweeper. In the event of failure to resolve a dispute: (i) if the Agreement is concluded with Lansweeper Inc., the courts of the State of Texas, Williamson County are competent; (ii) if the Agreement is concluded with

Lansweeper NV, the courts of Lansweeper NV's registered seat are competent. The Parties agree that the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to the Agreement or to any dispute or transaction arising out of the Agreement. The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement.

19.10. These Terms are in English language. Other language versions, if provided, shall be for Customer's convenience only and shall not be binding. In case of conflict between any translation of these Terms and the English version of these Terms, the latter shall prevail.

19.11. Except where explicitly provided otherwise herein, Lansweeper may update or modify the Agreement from time to time, for specific reasons, including but not limited to (i) applicable law; (ii) changes to the Product; (iii) technical reasons; (iv) operational requirements; or (v) changes that are advantageous to Customer. If a revision meaningfully reduces Customer's rights, Lansweeper will use reasonable efforts to notify Customer (by, for example sending an email to the Customer, posting on Lansweeper's blog or in the Product itself). Customer must notify Lansweeper within fifteen (15) days of Lansweeper's notice of the modifications that Customer does not agree with such changes, and Lansweeper (at Lansweeper's option and as Customer's exclusive remedy) may either: (i) permit Customer to continue under the prior version of the Agreement until Customer's next Paid Subscription (after which the modified Agreement will apply) or (ii) allow Customer to terminate the Agreement and receive a pro-rated refund based on the unused portion of the Term of Customer's subscription.

19.12. Lansweeper may identify Customer as Lansweeper user in Lansweeper's promotional materials. Customer may at any time request via legal@lansweeper.com that Lansweeper stops doing so.

19.13. If any provision of the Agreement is or becomes illegal, invalid or unenforceable, in any respect it shall not affect or impair the legality, validity or enforceability of any other provision of the Agreement; and if such provision would be legal, valid or enforceable to the extent some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.

LANSWEEPER DATA PROCESSING ADDENDUM

This Data Processing Addendum hereinafter set forth, as amended from time to time, shall form a part of the Terms of Use between Licensee and Lansweeper and are hereby incorporated by reference into the Terms of Use, without the need for further action. In case of conflict between the Provisions of the Terms of Use and this DPA, the provisions of the DPA shall prevail.

1 Definitions and Interpretation

- 1.1 Capitalized terms used, but not defined, in this Data Processing Addendum are defined in the Agreement (as defined below), the other capitalized terms used in this Data Processing Addendum shall have the following meaning:
- 1.1.1 **"Agreement"** means the Lansweeper [Terms of Use](#) and any other specific agreement between the Licensee and Lansweeper and/or its Affiliates relating to the Services.
- 1.1.2 **"Applicable Data Protection Legislation"** means as applicable (i) laws applicable to the processing of personal data in the United States and each State of the United States including, without limitation, the CCPA; (ii) the GDPR, the Swiss Federal Act on Data Protection, and applicable data privacy laws of the United Kingdom, and each member state of the European Union and European Economic Area, and (iii) applicable data privacy laws of other jurisdictions that the parties have expressly identified in the Agreement as applicable to the processing activities of Lansweeper.
- 1.1.3 **"CCPA"** means the California Consumer Privacy Act of 2018, as amended.
- 1.1.4 **"DPA"** means this Lansweeper Data Processing Addendum together with its annexes, which shall be an integral part of the Agreement between the Parties.
- 1.1.5 **"International Data Transfer"** means any transfer of Licensee Personal Data from the EEA, Switzerland or the United Kingdom to an international organization or to a country outside of the EEA, Switzerland and the United Kingdom.
- 1.1.6 **"Personal Data"** means any information about a natural person that is identified or identifiable to the natural person, either alone or in combination with other information, that Lansweeper will process or have access to as part of providing the Services, including any such information that is created by means of the Services. Personal Data includes "personal data" as that term is defined in the GDPR and "personal information" as that term is defined in the CCPA;
- 1.1.7 **"Services"** means the services related to provision of the Product by Lansweeper.
- 1.1.8 **"Standard Contractual Clauses"** means the clauses annexed to the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.
- 1.1.9 **"Sub-processor"** means any Processor (including any third party excluding a person working under the authority of Lansweeper) appointed by or on behalf of Lansweeper, or its Sub-processor, to Process Personal Data on behalf of Lansweeper in connection with the Agreement.

2 Object of this DPA

- 2.1 This DPA is added to the Agreement in order to comply with Applicable Data Protection Legislation, and the provisions of the Agreement shall apply to this DPA. The different Schedules to this DPA are applicable to the extent required by relevant Applicable Data Protection Legislation and address compliance therewith.
- 2.2 Parties shall comply with the Applicable Data Protection Legislation, for their own account and sole responsibility, unless otherwise set out herein.
- 2.3 For the purposes of this DPA End-Users, Billing Contacts and Help Desk-Agents as detailed in the Agreement shall be considered to form an integral part of the Licensee and Licensee shall be responsible for their compliance with this DPA.

3 Duration and Termination

- 3.1 The duration of the Processing is set out in the Agreement.

- 3.2 Upon termination or expiry of this DPA, or at any earlier moment if the Processing of Personal Data is no longer relevant for the delivery of the Services, Lansweeper shall delete the Personal Data unless a law or regulation requires storage of the Personal Data. Notwithstanding the foregoing, we will only store LsAgent data in the Cloud Service relay for a maximum period of one (1) month.
- 3.3 Notwithstanding the foregoing, articles 3 and 5 of this DPA shall survive the termination of this DPA.

4 Measures

- 4.1 Lansweeper will, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account in particular the risk of accidental or unlawful destruction, loss, alteration or unauthorised disclosure of or access to the Personal Data. A description of the Lansweeper requirements are further detailed on our [Security page](#) (or such other URL as specified by Lansweeper).. Such requirements and measures may be updated by Lansweeper, from time to time. Licensee shall be solely responsible for its own means of accessing the Services (e.g. through proxies) and providing adequate measures to ensure an appropriate level of security.

5 Privacy Statement

- 5.1 Without prejudice to Section 2.1, Lansweeper may Process certain Personal Data for its own purposes (e.g. execution of the Agreement), such Processing shall not be subject to this DPA. In such cases Lansweeper shall be considered a controller, for more information please refer to our privacy policy: <https://www.lansweeper.com/privacy-policy/>.

List of Schedules:

- Schedule 1: GDPR
- Schedule 2: CCPA

List of Annexes:

- *Annex I: Details of Processing*
- *Annex II: Sub-processors*

Schedule 1: GDPR

1 Object of this Schedule 1

- 1.1 This Schedule applies to the extent that (i) GDPR, the Swiss Federal Act on Data Protection, and applicable data privacy laws of the United Kingdom, and each member state of the European Union and European Economic Area applies to the Processing, and (ii) Lansweeper Processes Personal Data, on behalf of the Licensee through providing the Product.
- 1.2 This Schedule sets out the subject-matter and duration of the Processing, the nature and purpose(s) of the Processing, the types of Personal Data and categories of Data Subjects and the obligations and rights of the Licensee and Lansweeper in relation to the Services as further detailed in **Annex I** (*Details of Processing*).

2 Data Protection

- 2.1 Where Personal Data is Processed by Lansweeper in relation to the performance of this Schedule, the Agreement and the Services, Lansweeper shall:

- 2.1.1 **Instructions** - process the Personal Data only on documented instructions from Licensee as solely provided herein, unless required to do so by applicable laws and regulations to which Lansweeper is subject. In such a case, Lansweeper shall inform Licensee of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. Parties agree that this DPA makes up the entire instruction of Licensee to Lansweeper, any other instructions have to be agreed to in writing by Lansweeper, reserving its rights to charge additional costs for compliance with such instructions;
- 2.1.2 **Need-to-know** - provide Personal Data only to authorised persons (which shall include employees, agents, resellers, distributors, partners, Sub-processors and subcontractors) on a need-to-know basis and ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 2.1.3 **Sub-processors** - based on the general authorisation to use Sub-processors hereby provided by Licensee, inform Licensee of any addition or replacement of Sub-processors, thereby giving Licensee the opportunity to object to such changes on reasonable grounds during a period of thirty (30) calendar days, after which such Sub-processors shall be deemed to have been accepted. A description of the Lansweeper Sub-Processors is further detailed in **Annex II** (*Sub-processors*). Sub-processors engaged by Lansweeper prior to entering into this DPA are accepted by Licensee. In case Licensee objects to a new Sub-processor and such objection is based on reasonable grounds, Lansweeper shall employ reasonable efforts to resolve the issue.

Where Lansweeper engages a Sub-processor for carrying out specific Processing activities on its behalf, reasonably equivalent data protection obligations as set out in this DPA shall be imposed on that Sub-processor. Where that Sub-processor fails to fulfil its obligations under the Applicable Data Protection Legislation, Lansweeper shall remain fully liable to Licensee in accordance with the terms set out in this DPA;

- 2.1.4 **Assistance** - taking into account the nature of the processing, reasonably assist Licensee by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Licensee's obligation to respond to requests for exercising Data Subject's rights, without prejudice to Lansweeper's right to charge Licensee any reasonable costs for such assistance. Lansweeper shall promptly notify Licensee about any legally binding request by a Data Subject;
- 2.1.5 **Cooperation** – reasonably assist Licensee in ensuring compliance with its obligations relating to the: security of the Processing, notification of Personal Data Breaches and data protection impact assessments and prior consultations taking into account the nature of Processing and the information available to Lansweeper and without prejudice to Lansweeper's right to charge Licensee any reasonable costs for such assistance;
- 2.1.6 **Personal Data Breach** – Lansweeper shall notify the Licensee without undue delay after becoming aware of a Personal Data Breach. Such notification shall contain following information: (i) the nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned; (ii) the name and contact details of the data protection officer or other contact point where more

information can be obtained; (iii) the likely consequences of the Personal Data Breach; (iv) the measures taken or proposed to be taken by Lansweeper to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

- 2.1.6.1 The obligation to report or respond to a Personal Data Breach is not and will not be construed as an acknowledgement by Lansweeper of any fault or liability with respect to the Personal Data Breach;
- 2.1.6.2 The Licensee shall promptly notify Lansweeper with information regarding any non-compliance discovered during the course of an audit or review of provided information. The Licensee agrees to provide Lansweeper with a draft of the audit report for review. Lansweeper is entitled to propose any amendments and add management comments to this draft before Licensee establishes the final version.
- 2.1.7 **Infringement** - reasonably inform Licensee if, in its opinion, an instruction infringes Applicable Data Protection Legislation.
- 2.1.8 **Information & Audit** - make available to Licensee all information reasonably necessary to demonstrate compliance with the obligations laid down in this DPA and allow for and contribute to audits, including inspections subject to following conditions. Licensee must request an audit in writing and with prior notice of thirty (30) calendar days and may instruct acknowledged audit professionals at its own expense to execute such audit in following cases:
- once every twelve (12) months provided that such additional audit inquiries shall not unreasonably impact in an adverse manner Lansweeper' regular operations and do not prove to be incompatible with applicable legislation or with the instructions of a competent authority;
 - Where an audit is reasonably considered necessary because of genuine concerns as to Lansweeper' compliance with this DPA;
 - Where a competent data protection authority requires this under Applicable Data Protection Legislation;
 - Following a Personal Data Breach.

3 International Data Transfer

- 3.1 Personal Data Processed in the context of this Schedule may be subject to an International Data Transfer without the prior written consent of Licensee, where Lansweeper ensures that appropriate safeguards are in place for such transfer or an adequate level of protection is guaranteed.
- 3.2 Licensee and Lansweeper, on behalf of itself and relevant affiliates outside of the EEA, UK or Switzerland, shall conclude, either one or both of relevant modules Module Two: Controller to Processor of the Standard Contractual Clauses ("**Module Two**") and Module Three: Processor to Processor of the Standard Contractual Clauses ("**Module Three**"), which shall apply to such International Data Transfer.
- 3.3 As specified in the Standard Contractual Clauses, for both Module Two and Module Three, the following optional provisions are selected:
- 3.3.1 Clause 7: Docking Clause
- 3.3.2 Clause 9(a) Use of Sub-processors: Option 2 - General Written Authorization, with a notice period of 30 days has been selected.
- 3.3.3 Clause 11 Redress: The optional clause is not included.
- 3.3.4 Clause 17 Governing Law: Option 1, the governing law of Belgium.
- 3.3.5 Clause 18(b) Choice of Forum and Jurisdiction, the courts of Belgium.
- 3.4 If Lansweeper's compliance with Applicable Data Protection Law to International Data Transfers is affected by circumstances outside of Lansweeper's control, including if a legal instrument for International Data Transfer invalidated, amended, or replaced, then Parties will work together in good faith to reasonably resolve such non-compliance.

Annex I: Details of Processing

1. The duration of the Processing

The duration of the Processing is set out in this DPA.

2. The subject-matter of the Processing

The subject-matter of the Processing is set out in this DPA and relates to the Services.

3. The types of Personal Data to be Processed

All data collected by the Product, which may include without limitation: electronic identification data (such as IP-addresses), Asset data, ...

4. The categories of Data Subjects to whom the Personal Data relates

The Personal Data may relate to Licensee, End-Users and/or any other Data Subject to whom the collected data may relate.

5. The nature and purpose of the Processing

Lansweeper may Process Personal Data on behalf of Licensee through *i.a.* recording, storage, adaption, transmission & dissemination, in provision of the Services.

Annex II: Sub-processors

Sub-processor	Service Description	Incorporation Location	Storage / Transfer Location	Transfer Justification
Microsoft, Inc. (Azure)	Cloud storage for LsAgent Cloud Relay Service	United States	United States	SCC's
Amazon Web Services EMEA SARL (AWS)	- Cloud storage for Lansweeper Cloud Platform - Cloud storage for Device Fingerprints	Luxembourg	Storage: Ireland & Germany Transfer: possibly to outside the EEA	SCC's
MongoDB Limited (MongoDB)	Cloud storage services for Lansweeper Cloud Platform	United States	Outside the EEA	SCC's

Schedule 2: CCPA

1 Object of this Schedule 2

- 1.1 This Schedule 2 applies to the extent that (i) CCPA applies to the Processing, and (ii) Lansweeper receives, as a 'service provider' under CCPA, Personal Data, on behalf of the Licensee as a 'business' under CCPA, through providing the Product.

2 Service Provider obligations

- 2.1 Lansweeper will comply with the requirements stated in this Schedule 2, and any additional or more stringent requirements or restrictions applicable to service providers under CCPA.
- 2.2 Lansweeper will not "sell", as defined under CCPA, the Personal Data which is received pursuant to this Agreement.
- 2.3 Lansweeper will retain, use or disclose such Personal Data only for the specific purpose of performing the Services and within the direct business relationship with the Licensee.
- 2.4 Lansweeper shall provide reasonable assistance to Licensee in facilitating compliance with consumer rights requests, without prejudice to Lansweeper' right to charge Licensee any reasonable costs for such assistance.

* *

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

October 19, 2022

Subject: Proposed Amendment No. 25 with Cerner Corporation for the purchase of shared computing services.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 25 with Cerner Corporation for the purchase of shared computing services to update the Cerner Ignite Millennium API solution. This purchase will allow Cerner to update our current API's to align with current regulatory guidance. The update to our current API's will ensure Kern Medical remains within regulatory compliance.

This proposed Amendment No. 25 will also create a cost savings of \$28,020 over the remaining term of the Cerner Business Agreement. Currently Kern Medical is paying \$2,301 per month for Ignite and with the new purchase, the cost will fall to \$1,834 per month. The cost of this Amendment No. 25 beginning on March 1, 2022 through the term of Cerner System Schedule No. 3 (081-2017) is \$172,973. These monies have already been approved in Cerner Amendment No. 18 (45721) dated December 2, 2020.

****There are no initial or additional costs associated with this Sales Order and there will be a decrease in our current monthly payment for these services. ****

Therefore, it is recommended that your Board approve the proposed Amendment No. 25 with Cerner Corporation for the purchase of shared computing services (Cerner Ignite Millennium API solution), beginning on March 1, 2022 to run concurrent with the Cerner Business Agreement, for a cost of \$172,973, although no monies will be added to the overall Cerner Business Agreement, and authorize the Chairman to sign.



AMENDMENT NO. 25

THIS AMENDMENT NO. 25 to the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36) (the "Agreement") dated July 01, 2016 between Cerner Corporation ("Cerner"), a Delaware corporation with its principal place of business at 2800 Rock Creek Parkway, Kansas City, Missouri, 64117 and Kern County Hospital Authority ("Client"), a local unit of government, having its principal place of business at 1700 Mount Vernon Ave, Bakersfield, CA, 93306-4018, is entered into as of October 19, 2022 ("Amendment No. 25 Entered Date").

WITNESSETH:

WHEREAS, the parties hereto wish to amend Cerner System Schedule No. 3 and Amendment No. 22, in certain respects,

NOW, THEREFORE, in consideration of the premises, the parties hereto do hereby covenant and agree as follows:

- 1. Cerner and Client hereby agree to terminate the line item set forth below from Cerner System Schedule No. 3 on October 1, 2022 (Amendment No. 25 Effective Date).

Table with 2 columns: Mfg. Part No. (PY-25005C), Solution Detail Description (Ignite Millennium API)

- 2. In consideration of the termination in section 1, the quarterly payment set forth in the "Payment Table" outlined in Amendment No. 18, section 2, will decrease by \$1,401, beginning on October 1, 2022 through the Term set forth in Cerner System Schedule No. 3.

- 3. The renewal table set forth in section 4 of Amendment No. 22 is hereby deleted and replaced with the following:

Table with 2 columns: Contract Element, Monthly Amount. Rows include Term Licensed Software (\$74,917), Term Licensed Software Support (\$15,404), Licensed Software Support (\$23,830), Subscriptions/Transaction Services (\$29,629), Applications Services/Shared Computing Services (\$14,193), Managed Services (\$15,000), and Total (\$172,973).

- 4. In consideration of the termination in section 1, Client agrees to purchase the solutions and services set forth in Exhibit A in accordance with the terms and conditions contained therein. Exhibit A shall be considered an "Ordering Document" which shall be governed by the Agreement.

In all other respects, Cerner System Schedule No. 3, Amendment No. 22 and the Agreement of which they are a part remain unchanged.



Kern County Hospital Authority
OPT-0307631_LA-0000330701
October 13, 2022

IN WITNESS WHEREOF, the parties hereto do hereby execute this Amendment No. 25 as of October 19, 2022.

KERN COUNTY HOSPITAL AUTHORITY


By: _____
(signature)

Russell Bigler
(type or print)

Title: _____
Chairman, Board of Governors

Purchase Order #: _____
(if applicable)

CERNER CORPORATION

By: _____


Teresa Waller

Title: _____
Senior Director, Contract Management

APPROVED AS TO FORM
Legal Services Department

By: _____

Kern County Hospital Authority



Kern County Hospital Authority
OPT-0307631_LA-0000330701
October 13, 2022

EXHIBIT A – ORDERING DOCUMENT

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SOLUTIONS		
Shared Computing Services	--	*
TOTALS:	0.00	*

*Reference the "Solutions" section for the monthly fees.

Not applicable is indicated by "--".

PAYMENT TERMS

MONTHLY RECURRING FEES		
Description	Percent (%) Of Total Due	Payment Due
Shared Computing Services	100%	Annually beginning on October 1, 2022
Shared Computing Services: Cerner Ignite APIs for Millennium with Bulk Data Access	100%	Annually beginning on January 1, 2023.

TERM AND TERMINATION

Other Services. Unless otherwise set forth herein, all other recurring Services (such as subscription services, application services, shared computing services, employer services, recurring professional services, and managed services) begin on October 1, 2022 and continue for the term set forth in the "Solutions", "Professional Services", or "Managed Services" sections.

Renewal. Unless otherwise set forth herein, at the end of the applicable term, each recurring Service will automatically renew for additional 12 month periods at the rate charged in the final period of the then-current term, unless either party provides the other party with written notification of its intent to terminate the relevant Service no less than 60 days prior to the expiration of the applicable then-current term.

FEE INCREASES

Cerner may increase the monthly fee for Support services and each recurring service (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) any time following the initial twelve (12) month period after such recurring service fees begin (but not more frequently than once in any twelve (12) month period) by giving Client sixty (60) days prior written notice of the price increase. The amount of any increase in the fees shall not exceed the previous calendar year's percentage increase in CPI plus 5%, not to exceed 10% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner's fee to the third party.

SOLUTIONS

SHARED COMPUTING SERVICES											
Mfg. Part No.	Solution Detail Description	Scope of Use Metric	Qty./ Scope of Use Limit	Term (Mo.)	Monthly Range	Extended One-Time Fees	Extended Monthly Fees	Solution Description Code	Third-Party Component(s)	Pass-Through Code	Per Unit Monthly Expansion Fees
PY-25020C	Cerner Ignite Millennium API **	Patients	1,250,538	60	1-60	--	1,250	SD100977_02	--	--	--
PY-35100C	Cerner Ignite APIs for Millennium with Bulk Data Access **	Patients	1,250,538	57	4-60	--	584	SD101263_01	--	--	--
TOTAL:						--		--	--	--	--

** This is an Interoperability Element subject to the 21st Century Cures Act. All available allowances have been applied.

SCOPE OF USE

Client will use the solutions set forth in this Ordering Document in accordance with the Documentation and subject to the scope of use limits set forth in the Solutions section. In the event Client requests additional scope beyond the limits set forth in the Solutions section and no Per Unit Expansion Fees are referenced therein, Client must execute a new Ordering Document setting forth the additional scope and fees at Cerner's then-current rates.

Scope of use will be measured periodically by Cerner's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g. FTEs or locations), Client will provide the relevant information (including records to verify the information) to Cerner at least once per year. Client agrees that if an event occurs that will affect Client's scope of use (such as the acquisition of a new hospital or other new facility), Client will notify Cerner in writing of such event no later than 30 days following the effective date of such event so that Client's scope of use can be reviewed. Any additional fees due under this Section will be payable within 60 days following Client's receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

The pricing in the Solutions section of this Ordering Document is based on the following scope of use metrics, which are defined as follows.

Scope of Use Metric	Scope of Use Definition
Patients	The total number of persons receiving or registered to receive medical treatment.

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/ Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States

The parties may add or substitute Permitted Facilities by amending this section.

SOLUTION DESCRIPTIONS

Each solution with a Solution Description has a code noted in the "Solutions" section of this Ordering Document, and that code can be entered at <https://solutiondescriptions.cerner.com> to view the Solution Description.

ADDITIONAL TERMS AND PROVISIONS**IGNITE MILLENNIUM API**

(PW-25005, PY-25020C, PY-25004C-CW, PY-25550C)

Client may access and use the Cerner Platform for the sole purpose of executing and implementing applications (collectively, "Apps") that are configured to meet the technical specification standards with the Cerner Platform and Cerner's Application Programming Interfaces ("API") developed for this purpose. Except as may otherwise be noted in this Ordering Document, there are no Apps included with this Ordering Document. Cerner will assist Client with enabling Apps within Client's computing environment. Client understands that additional fees may be required for such implementation services and, if so, such fees would be documented under an Ordering Document.

Unless otherwise agreed in writing by Cerner, Client will contract directly with the applicable third-party developer for access to Apps. A third-party developer may choose (in its sole discretion) to join Cerner's CODE program to validate interoperability of its App with the Cerner Platform. Any validation efforts performed by Cerner for an App is in no way a representation, guarantee, or warranty by Cerner to the third-party developer or Client of ongoing interoperability of the App with the Cerner Platform, or the functionality, security, operation, user experience, or any other warranties of the underlying App.

Cerner makes no representations or warranties concerning Apps enabled within Client's computing environment. Client assumes all responsibility and liability for all Apps enabled within Client's computing environment and will defend, indemnify, and hold Cerner and its officers, directors, employees, and agents harmless from and against third-party claims, liabilities, obligations, judgments, and causes of actions and associated costs and expenses (including reasonable attorneys' fees) arising out of the use of such enabled Apps. Cerner is not responsible for any support obligations relating to any Apps and no existing service level agreements under the Agreement or any Ordering Document shall be applicable to any Apps executed within Client's computing environment.

CERNER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, AND OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE AND ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS FOR ALL APPS. CERNER DOES NOT WARRANT THAT THE CERNER PLATFORM OR ANY DATA TRANSMITTED THROUGH USE OF AN APP ENABLED ON THE CERNER PLATFORM WILL BE ERROR-FREE, UNINTERRUPTED, OR AVAILABLE IN ALL TERRITORIES, THAT ALL DEFECTS WILL BE CORRECTED, OR WILL MEET CLIENT'S OR A THIRD PARTY'S REQUIREMENTS OR NEEDS. CERNER DOES NOT REVIEW OR PROVIDE ANY WARRANTY REGARDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION ENTERED INTO OR TRANSMITTED THROUGH AN APP, THE CERNER PLATFORM, OR OTHER CERNER SOLUTIONS. CERNER DOES NOT WARRANT THAT ANY ALERTS OR OTHER INFORMATION PROVIDED THROUGH AN APP, THE CERNER PLATFORM, OR OTHER CERNER SOLUTIONS HAVE THE ABILITY TO IMPROVE THE HEALTH STATUS OF A PATIENT OR SAVE PATIENT LIVES.

If (i) there is any threat to the security of the Cerner Platform or Cerner's systems due to any Apps running within Client's computing environment, or (ii) an App is not adhering to the applicable terms and conditions of the usage of the Cerner Platform, Cerner may, upon notice to Client, disable the applicable App running within Client's computing environment (and terminate any applicable Ordering Document for such App) without liability to Client until all issues are resolved to Cerner's reasonable

IGNITE MILLENNIUM API

(PW-25005, PY-25020C, PY-25004C-CW, PY-25550C)

satisfaction. Client further acknowledges that Cerner reserves the right to limit the throughput of the Cerner Platform when Client's underlying Cerner system or Cerner's systems (i.e. *Cerner Millennium*) become at risk of degraded performance due to increased loads from one or more Apps running within Client's computing environment.

"**Cerner Platform**" means all works of authorship and any other embodiments of Intellectual Property Rights in the technologies developed, licensed, or acquired by Cerner to define how applications are launched, authorized, authenticated, registered, context is shared, service endpoints are discovered, and how standards such as the *HL7® FHIR® standard*, *SMART® Health IT*, and OAuth 2.0 are implemented, to allow API-enabled applications to interoperate with Cerner software, solutions, and technologies.

HL7® and *FHIR®* are the registered trademarks of *Health Level Seven International* and their use of these trademarks does not constitute an endorsement by *HL7*.

SHARED COMPUTING SERVICES

Client Responsibilities. Client agrees to comply with all applicable laws, rules, and regulations as they relate to its use of the Services and its provision of the Services to Users ("**Laws**"), including, but not limited to, HIPAA, state medical privacy and security laws, and state and federal laws applicable to sensitive categories of medical information, such as mental health, alcohol and drug abuse, genetic, and AIDS/HIV information. Client or its Users must obtain all appropriate and necessary authorizations and consents to access, use, and disclose any personally identifiable information in compliance with applicable Laws (including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the Telephone Consumer Protection Act) and the Agreement. Client must have security and privacy policies and procedures in place that govern its Users' ability to access information on or through the Services and to prevent unauthorized access, use, and disclosure of personally identifiable information including, but not limited to, protected health information.

Medical Record. The Services do not constitute a medical record. Client and its Users are responsible for ensuring that the information sent through the Services is incorporated into the applicable patient's medical record as necessary. Client acknowledges that the health information exchanged through the Services may not include the individual's full and complete medical or encounter record or history. Cerner may leverage a public cloud infrastructure to provide the Services.

Access to Data. Cerner may use and disclose the Data as necessary to perform, analyze and improve the Services, to the extent permitted by law. Cerner may use and disclose performance and usage data for any purpose permitted by law so long as the data does not contain protected health information as defined under HIPAA or Client-specific identifiable information. Data means data that is collected, stored, processed or generated through Client's use of the Services.

Right to Aggregate. Cerner may use or disclose protected health information, as defined by 45 C.F.R. 160.103, to provide data aggregation services as permitted by 45 C.F.R. 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law.

De-identify and Use Rights. Cerner may de-identify protected health information in accordance with the standards set forth in 45 C.F.R. 164.514(b) and may use or disclose such data unless prohibited by applicable law.

Information Management Tools. Client acknowledges and agrees that the Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Services. Client further acknowledges and agrees that the Services are not intended to

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diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.

CERNER IGNITE APIs FOR MILLENNIUM WITH BULK DATA ACCESS

(PY-35100C, PY-35101C-CW, PY-35102C)

Client understands and agrees that the Bulk Data Access Services are not yet generally available. Cerner will notify Client when it activates such Services in Client's environment. Client further acknowledges that Cerner reserves the right to limit the throughput of the Cerner Platform when Client's underlying Cerner system or Cerner's systems (i.e. *Cerner Millennium*) become at risk of degraded performance due to increased loads from one or more Apps running within Client's computing environment.



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

October 19, 2022

Subject: Proposed Customer License and Service Agreement and Business Associate Agreement (Agreement) with Novarad Corporation for the purchase of a Picture Archiving and Communications System (PACS)

Recommended Action: Approve; Authorize Chairman to sign and Authorize Chief Executive Officer to sign receipt of acceptance when delivered

Summary:

Kern Medical requests your Board approve the proposed Agreement with Novarad Corporation for the purchase of the software for the new PACS for Kern Medical. The current PACS is at end of life and services must be transitioned to a new product. Based on a review of PACS from multiple vendors, Kern Medical had selected Novarad Corporation as the preferred PACS provider moving forward.

The five-year cost of the Agreement will be \$1,262,555 plus any taxes and fees, with a yearly cost of \$192,834 plus any taxes and fees. Fee Structure as follows:

1 st Year Setup Fee and 1 st Annual Subscription Fee	\$491,219
2 nd Year Annual Subscription Fee	\$192,834
3 rd Year Annual Subscription Fee	\$192,834
4 th Year Annual Subscription Fee	\$192,834
5 th Year Annual Subscription Fee	\$192,834
Total for 5 Years	\$1,262,555

Based on our research, Novarad Corporation’s PACS solution will provide an approximate cost savings of \$800,000 over the cost of the agreement with no change in functionality.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the limitation of Novarad Corporation’s liability to the cost of one month’s fees, interest on late payments, no termination without cause during the initial term without penalty, payment of attorney fee, and split Utah/California law/venue. Counsel attempted to negotiate these terms and was unsuccessful.

Even though this Agreement contains non-standard terms and conditions, Kern Medical continues to recommend that your Board approve the Agreement with Novarad Corporation for the purchase of PACS, for a term of five years, beginning on October 19, 2022, with a total cost of \$1,262,555 plus any taxes and fees, authorize the Chairman to sign the Agreement, and authorize the Chief Executive Officer to sign for receipt of acceptance once delivered.

NOVARAD CORPORATION
CUSTOMER LICENSE AND SERVICE AGREEMENT

This Customer Agreement ("Agreement") is made effective, as of the last date set forth below ("Effective Date"), between **KERN COUNTY HOSPITAL AUTHORITY. A LOCAL UNIT OF GOVERNMENT, WHICH OWNS AND OPERATES KERN MEDICAL CENTER** having its principal place of business at 1700 Mount Vernon Avenue, Bakersfield, California 93304 ("Customer") and **NOVARAD CORPORATION**, a Utah corporation, having its principal place of business at 3152 North University Avenue, Suite 200, Provo, Utah 84604 ("Novarad"). Customer and Novarad will collectively be referred to as the ("Parties") in this Agreement.

RECITALS

Whereas, Novarad is a provider of Picture Archiving and Communications Systems ("PACS") and Radiology Information Systems ("RIS") consisting of proprietary software and viewers, servers, radiology workstations, personal computers, and associated peripheral equipment (together, "Systems");

Whereas, Customer desires to enter into this Agreement for the purpose of procuring one or more Systems from Novarad and engaging Novarad to provide ongoing support and maintenance in connection with such Systems as provided herein.

Now, therefore, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

1. **System(s).** The System or Systems acquired by Customer hereunder are described on the original Sales Order/Invoice. All Systems include the software subscription provided by Novarad, or a third party through Novarad unless otherwise specified on the Novarad "Sales Order/Invoice". Additional Systems may be acquired by Customer under the terms and conditions of this Agreement, subject to the execution of one or more Sales Orders/Invoices with System Configurations completed. Under this Agreement, Customer shall not have any rights to purchase or acquire additional Systems for resale or distribution to third parties, including downstream users and other customers ("Downstream Users") not party to this Agreement.

1.1.) "Novarad System" is defined as a solution which includes hardware and software provided by Novarad or a third party through Novarad as specified on the Sales Order/Invoice.

1.2.) "Novarad Software System" is defined as a solution in which Novarad provides only Novarad Software and/or Third Party Software which is installed on customer-owned hardware which has final approval by Novarad to meet specifications provided by Novarad.

1.3.) Designated and Dedicated Customer-Owned Hardware Definition. Customer shall designate each

customer-owned workstation & server on which Novarad Software/Licenses are installed. This hardware must be dedicated to Novarad Software System.

2. **License Grant.** Novarad hereby grants to Customer a nonexclusive, nontransferable, limited license to use the software designated as "Novarad Software" as described on the Sales Order/Invoice, provided that such use is only in connection with Customer's use of the System(s) acquired hereunder and only during the term of this Agreement. Novarad is and shall at all times remain the sole owner of all right, title and interest in and to the Novarad Software and Customer shall not obtain any right, title or interest in or to the Novarad Software under this Agreement, except to the extent of use specifically granted by the license set forth in this Section. Customer shall not have any rights to sell, rent, sublicense, sublease or otherwise distribute the Novarad Software or to create derivative works of the Novarad Software. The foregoing license shall terminate immediately upon the termination of this Agreement. Novarad and/or Customer shall promptly remove all copies of the Novarad Software from all Novarad System Hardware. Novarad shall indemnify, defend and hold harmless Customer for any damages pursuant to any claim brought against Customer alleging that the Novarad Software infringes on any third party's

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copyright or includes Third Party copyrighted matter or trade secrets, provided Customer promptly notifies Novarad in writing of any such claim and Customer grants Novarad the right to assume the defense thereof.

3. **Third Party Software Licenses.** Customer acknowledges that the System(s) may include software owned and licensed by Parties other than Novarad, specifically Windows Operating System, Server, and Database programs and anti-virus software. Customer warrants that it shall comply with all applicable Third Party Software license terms, when made aware by Novarad and shall indemnify Novarad from any and all liability that may arise from Customer's breach of such terms. Novarad has obtained all necessary consents and authorizations to allow Customer to use Third Party Software.

4. **Hardware.** Novarad hereby assigns to Customer, for the term of the Agreement, the hardware set forth on the Sales Order/Invoice (the "System Hardware"), except for the main and redundant servers, which will remain the property of Novarad, if Novarad provided hardware is part of Customer's Novarad System Solution. If Customer does not complete the Initial Term of contract, ownership of all hardware will transfer back to Novarad and Customer is required to return all hardware. Novarad maintains the hardware as needed to keep the System Hardware at an acceptable level of operation, according to the standards of the day, if hardware is provided by Novarad and Novarad's Hardware Obsolescence Program is part of the solution.

4.1.) **"Hardware Obsolescence Program".** In the event Novarad reasonably determines that Customer's System Hardware, which was provided by Novarad, needs to be updated in order for the Novarad System, including the most current version of the Novarad Software, to perform at an acceptable level of operation, Novarad shall provide to Customer updated System Hardware, if the Hardware Obsolescence Program was included as part of Customer Subscription Fee. Customer will however, be invoiced for the shipping cost of the updated equipment.

4.2.) **Novarad "Hosted Servers/Archive".** The System or Systems acquired by Customer hereunder are described on the original Sales Order/Invoice. For a Novarad hosted server/archive solution, Novarad will maintain and update the Novarad servers hosted for Customer. All servers for any Novarad solution remain the property of Novarad.

4.3.) Except for the operating system software installed on the System Hardware and the Novarad Software, Customer covenants and agrees that it shall not install or use other software on the dedicated Novarad System Hardware, whether it be Customer-Owned Hardware or Novarad Hardware. In the event Customer installs Third Party Software onto either of the Novarad System solutions without written consent and authorized certification from Novarad, the warranty will be invalidated and Novarad will charge Customer for

reinstalling the Novarad software. Customer shall not be allowed to limit Novarad's access to the System.

4.4.) Customer will maintain Customer-Owned Hardware as needed to keep the Novarad System Software at an acceptable level of operation according to the specifications provided by Novarad. In the event Novarad reasonably determines that Customer-Owned Hardware needs to be updated in order for the Novarad System, including the most current version of the Novarad Software, to perform at an acceptable level of operation, Customer shall purchase updated hardware based on the specifications provided by Novarad. Novarad may refuse to support Novarad Software System if customer-owned hardware is not equivalent to Novarad specification.

5. **Mammography.** Novarad is FDA approved for mammography. The Customer understands that they may do final diagnostic reads for mammography on the Novarad Diagnostic Workstation but only with FDA-approved monitors that are properly calibrated and of appropriate medical grade. Novarad is not responsible for Customer's failure to comply with applicable law or regulation, as such may be updated from time to time.

5.1.) NOTE: There is no Hardware Obsolescence Program replacement for medical grade 3-5 MP monitors unless specified on Sales Order/ Invoice

6. **"Archive".** The Customer's license to archive studies to the Novarad System will be based on the Image Load Analysis ("Image Load"), which details Studies Per Year ("SPY") for each modality, provided by the Customer to Novarad. Any server hardware, software, and data back-up required to accommodate image loads/SPY higher than those provided on the Sales Order/Invoice will be charged to the Customer at the then-current applicable rates.

6.1.) Novarad will review and assess the Novarad Customer studies archive size/SPY and growth periodically to determine if additional charges apply.

6.1.1.) When additional modalities and or quoted expansion sites are added to Customer's Novarad Solution, there is an additional charge based on anticipated additional Image Load/SPY. Customer will notify Novarad at least thirty (30) days prior to expansion.

6.1.2.) Licenses acquired on an unlimited subscription basis are based on SPY information provided by Customer in the Image Load Analysis. At Novarad's discretion, Customer Study Counts will be periodically reviewed. License fees will be adjusted based on periodic review.

6.2.) All images will be stored in loss-less format, for ninety (90) days. After ninety (90) days, all study types except mammography will be compressed between 7.5:1 – 15:1 depending on the source. The compression algorithm used is JPEG 2000. It is the responsibility of the radiologist to assure the image quality is sufficient to achieve a diagnostically acceptable read.

6.3.) Image Load is based on the monthly average number of studies in categories such as but not limited to: MRI, DX, Echo, Ped Echo, CT 16 or less, CT 32, CT 64,

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CT 128, US, Nuc Med, Angio, DR, CR, Mammography, Flouro, Tomo Mammography.

7. **Data Back-up.** All data backed-up by Novarad shall be kept and only accessible to authorized personnel. In the event the Customer's on-site studies archive needs to be restored from the back-up facility, there will be a reasonable charge for doing so. Upon request and at Customer's sole cost and expense, Novarad will restore Customer's on-site studies archive from the back-up facility. After contract termination, Data will be destroyed according to the information listed in termination provisions of this Agreement.

8. **Installation and Training.** On-site System installation by Novarad is included as specified on the Sales Order/Invoice. In addition, Novarad shall provide telephone support to answer installation questions and otherwise assist Customer in performing the installation. The Parties agree to schedule training at their mutual convenience and Customer agrees to provide, at its cost, an appropriate room and associated facilities in which to conduct the on-site training. Customer is responsible for the training schedules and participation of any radiologist/users that will be operating the Novarad System. Initial Customer training is included with installation. Customer will be required to pay for additional on-site and or web based training after initial installation visit, if requested by Customer. Novarad will provide thirteen (13) days of on-site training at the initial go live and provides unlimited Super User Training via the Web. Novarad will provide an onsite trainer/customer success representative for additional training help for the Radiologist, for the next twenty-four (24) months. This training will need to be scheduled.

8.1.) **Project Timelines.** Novarad System installations shall be performed in accordance with Novarad's standard installation and implementation procedures. Novarad project implementations adhere to standard project timelines. If Customer requests/requires an expedited project timeline, additional charges will apply.

8.2.) Customer must complete a Pre-Installation Checklist. Customer must sign and return this checklist to the Novarad Project Manager in addition to completing pre-work requirements prior to the arrival of the Novarad installation personnel. If the pre-work requirements are not completed by Customer or items have been altered/changed by Customer, charges will apply.

8.3.) If there is a delay in the project of more than thirty (30) days from the originally scheduled installation date due to Customer delays, Novarad will invoice and Customer shall pay any monthly fees, even though the project is not complete.

9. **Project Acceptance; Returns.** Upon Customers receipt of the System(s), and on the mutually agreed upon installation date, a Novarad representative will proceed to complete installation thereof. Customer shall provide assistance as needed and shall promptly notify Novarad of

any problems encountered during such installation. Upon completion of the installation, a project audit and product evaluation will be performed by Novarad to confirm that all System performance and product requirements are met, which establishes formal acceptance of all the deliverables for the project. Customer shall sign and deliver a signed copy of the Project Acceptance Form to Novarad no later than ten (10) days of its execution.

9.1.) If Customer shall fail to assist to complete installation of the System(s) and allow for installation of such, as reasonably determined by Novarad, Novarad may demand Customer's immediate return of the System(s), and Customer shall comply with such demand and shall forfeit the Initial Fee (as that term is defined below) as a re-stocking fee. Customer shall be liable for any damage occurring to the System(s) while in Customer's possession or in return shipping. Novarad will invoice Customer for such damages.

9.2.) Customer is responsible for the responsiveness and ultimate commitment of any vendors that are programming an HL7 interface on their behalf.

10. **Site Requirements - Customer's Responsibilities.**

10.1.) Customer is responsible for providing and maintaining a safe and appropriate operating site and infrastructure for the System(s). Without limiting the generality of the foregoing, Customer shall provide or arrange for appropriate Customer electrical and network wiring, electrical power, telephone lines, cabinetry and appropriate climate control.

10.2.) Customer is responsible to obtain sufficient bandwidth in order to accommodate the appropriate volume of PACS data transmitted on a daily basis to Novarad over the Internet at an appropriate speed. Novarad is not responsible for, and shall not make any changes to, Customer's site infrastructure or non-System computer equipment.

10.3.) Routine preventive maintenance, such as keeping the System(s) clean is the responsibility of Customer.

10.4.) Customer is responsible for all security of Customer's network including the Novarad System. This includes but is not limited to firewalls, anti-malware, system log audits, security log audits, and user access control audits.

10.5.) Customer is responsible for complying with HIPAA firewall specifications and requirements. Customer is responsible for HIPAA violations or network breaches due to negligence by Customer and will hold Novarad harmless in such an event.

10.6.) Customer must provide Internet access at all times from the Novarad Archive to the site, including modalities and Novarad workstations.

10.7.) After the initial installation, Customer must notify Novarad at least three (3) weeks prior to implementation of new modalities.

10.8.) **Super-user.** Novarad requires Customer to designate at least one Systems Administrator (the "Super-

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user") but may have unlimited people in that role. The Super-user shall be responsible for maintaining and trouble-shooting the System Hardware, Novarad Software and Third Party Software on a day-to-day basis. The Super-User will install onsite hardware replacements and interface with Novarad connection. The Super-user will also be the liaison for communications between the facility (including radiologist) and Novarad. The Administrator designated shall be capable of performing basic troubleshooting procedures on the System(s), before contacting Novarad or requesting on-site service from Novarad or a Third Party Provider, as designated by Novarad.

10.8.1.) The Super-user(s) must be identified in writing in the Project Acceptance Forms including name, email address and contact information.

10.8.2.) A Novarad Super-user is someone who is employed by the site, who has a thorough knowledge of the Novarad PACS/RIS. They manage patient and study information to keep the data clean. Super-users interface with Novarad Support on issues with the software or system hardware, train new users on how to use the system, and do basic troubleshooting. They manage the overall health of the NovaPACS and Nova RIS® at the site.

11. Support and Maintenance.

11.1.) Customer Portal. Novarad's online portal to request a support case is customer.novarad.net. Novarad may limit the users who have permissions to create a support ticket, but the reference material will be available to all users. Customer will visit the online portal and by adding the required information, will create and add details to a Support Case for their site. The portal will be used by Customer after installation is completed and the Scope of Work has been signed with Project Management. Instructional; troubleshooting; training documents and videos are available through the Customer portal.

11.2.) Novarad shall maintain a staff of trained personnel who will respond to Customer concerning the System(s) during the term of this Agreement. Outside of normal business hours, service is available for emergency situations only.

11.3.) Novarad support personnel shall at all times have the ability to remotely access the System(s) via a high-speed Internet link using Novarad remote control of choice (currently Bomgar Remote Support). Customer is not permitted to limit Novarad's access to any of the hardware under any circumstances. Any such limitation shall automatically void any warranty with respect to the System(s) set forth herein Customer is solely responsible for the installation and all costs associated with its Internet connection and service provider.

11.4.) On-site service calls by Novarad support personnel, if necessary, shall be provided at Novarad's standard on-site rate of a minimum of \$2,500 per day (fee to be calculated upon occurrence).

11.5.) Novarad shall provide from time to time, and at Novarad's sole discretion, the latest versions and bug fix releases of the Novarad Software. Novarad shall be responsible for installing such new versions. Novarad may refuse to support any prior version if not allowed or assisted, if needed, in installing the latest version to Customer. System Fees must be paid current to receive software updates.

11.6.) If Customer's Novarad System issue is a result of Customer's network, Customer's action, or activities of third party supplier, Novarad fees may apply.

11.7.) If Customer changes or updates any product that is receiving or sending HL7 interface messages to Novarad, Novarad requires a thirty (30) day notice and charges may apply if the change or updates to these other products produce any significant changes to the HL7 interface.

11.8.) In some cases, support may be provided by a third party from whom Novarad leases components of the Systems ("Third Party Providers"). In such cases, Novarad shall inform Customer regarding any special terms and conditions relating to such service and Customer shall reasonably cooperate with such Third Party Providers in resolving any System problems.

12. Exclusions. The System(s) and services provided to Customer by Novarad hereunder, and the System Fees paid therefore, specifically do not include:

12.1.) the cost of products, items, parts, accessories, or components, which are expendable in normal use or operation of the System(s), or those of limited life, unless specifically covered by express agreement, extended to the Customer by Novarad in writing; or

12.2.) products or accessories not supplied by Novarad, except as specifically extended by Novarad in writing on the Sales Order/Invoice.

13. System Fees. Customer shall pay the non-refundable Initial Fee and the first monthly Fee (together, the Initial "System Fees") specified on the Initial Sales Order/Invoice. The Initial System Fees shall be paid with Customer's System order before the servers have been shipped to the site and/or any license authorization, if servers are hosted or customer-owned. The first full Initial Monthly Fee (plus any partial Monthly Fee) shall be invoiced thirty (30) days from Initial Invoice date. If Server(s) are obtained from Novarad, the Monthly Fee shall be invoiced thirty (30) days from shipment date of the server(s). Thereafter, the Monthly Fee shall be due on or before the first day of each calendar month during the term of this Agreement. Monthly Fees for partial first and last months shall be pro-rated based on a thirty (30) day month. The pro-rated Monthly Fee for the first month and the first full month shall be due thirty (30) days from Invoice, server shipment date or license authorization. These terms are also applicable to additional orders to the Novarad System.

13.1.) Any System Fee not paid to Novarad within ten (10) days of its due date shall accrue interest from the

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due date at a rate of one and one-half percent (1½ %) per month until paid in full. System Fees must be paid current to receive updates and/or warranty replacements if Hardware Obsolescence Program was included as part of Customer Subscription Fee.

13.2.) System Fees do not include foreign and domestic governmental taxes or charges of any kind that may be applicable to the sale, possession, licensing or other use of the System(s) including, by way of illustration but not limitation, excise, sales, use or value-added taxes, personal property taxes, customs or import duties, or other taxes, tariffs or duties, but excluding taxes on the income of Novarad. Customer shall be responsible for and shall pay all such taxes and charges. If and to the extent Novarad has the legal obligation to pay or collect such taxes, such amount shall be invoiced to Customer and paid by Customer within thirty (30) days after Novarad's Invoice unless Customer provides Novarad with a valid tax exemption certificate authorized and issued by the appropriate taxing authority.

13.3.) Deleted intentionally.

13.4.) In addition, Customer shall be responsible for the following fees, charges and taxes, where applicable (collectively and together with all fees herein this Agreement, the "Fee" or "Fees"):

13.4.1.) Implementation and training fees for services performed at Customer facility by Novarad, after initial training is complete and if on-site visit is requested by Customer;

13.4.2.) If Customer changes the modalities, PACS or other data for which the System(s) is used or if Customer facilities consolidate or any change occurs in the configuration at a Customer facility, the Customer shall pay to Novarad any fees to accommodate such changes as Novarad determines,

13.4.3.) Delivery charges; and

13.4.4.) Applicable sales, use, personal property, excise or similar taxes related to Customer's use of the System(s) or equipment used in connection therewith.

13.5.) Novarad reserves the right to adjust System fees with a reasonable inflationary increase. Novarad will periodically review and assess Customer's Novarad System and growth to determine if additional charges apply.

13.6.) If there are certain project delays, Novarad may invoice Customer before completion of the project.

14. **Risk of Loss.** Risk of loss or damage to the System(s) shall pass to Customer upon delivery of the System(s) to Customer and shall remain with Customer until the System(s) are returned to Novarad's possession (but only to the extent required to be returned to Novarad hereunder). Without limiting the generality of the foregoing, Customer shall bear the risk of any loss, damage, and/or malfunction of the Systems) relating in any way to:

14.1.) unauthorized modifications by or on behalf of Customer;

14.2.) Customer operation of the System(s) other than in accordance with correct operating procedures as defined by Novarad,

14.3.) lack of routine care and maintenance by Customer;

14.4.) accident, abuse, alteration, or misuse by Customer;

14.5.) inadequate utility service, failure of electrical or other energy supplies, incorrect physical environment, or other inadequate facilities or utilities;

14.6.) Customer's use of third party software,

14.7.) service by other than Novarad approved personnel or Customer's use of other than Novarad approved parts; and

14.8.) destruction or damage by Acts of God, war, civil unrest, or other events outside the reasonable control of Novarad.

15. **Initial and Renewal Terms.**

15.1.) **Initial Term.** The term of Customer's right and license to use the System shall commence upon the Effective Date and shall extend for five (5) years thereafter.

15.2.) **Renewal of Terms.** The term of this Customer License and Support Agreement shall automatically be renewed for additional terms of two (2) years each unless either Party gives written notice to the other at least thirty (30) days prior to the end of the then-current term of its intention to not renew for an additional term.

16. **Termination.**

16.1.) **Early Termination.** Notwithstanding anything contained herein to the contrary, this Agreement may be terminated prior to the expiration of the then-current term as follows:

16.1.1.) **Termination for Breach.** Novarad may immediately terminate this Agreement by written notice to Customer in the event the System(s) have been subject to accident, abuse, alteration, or misuse by Customer, or have not been properly operated and maintained by Customer. Additionally, either Party may terminate this agreement due to a material breach by the other Party after first providing written thirty (30) days' prior written notice to the other Party stating the cause of such termination; provided that if the breaching Party cures such breach within said thirty (30) day period this Agreement shall not be terminated.

16.1.2.) **Termination for Non-Payment.** Novarad may terminate this Agreement after providing ten (10) days written prior notice to Customer for non-payment of System Fees. If Customer cures non-payment before ten (10) days, this Agreement shall not be terminated unless late payment occurs more than two (2) times during any twelve (12)-month period.

16.1.3.) **Termination without Cause during Initial Term.** Customer may terminate the agreement any

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time without cause by providing written ninety (90) days' notice, paying the monthly payment through the end of the ninety (90) days and paying the total balance of the remaining initial term monthly payments. In terminating without cause, the System must be returned immediately after the ninety (90) day notice period.

16.1.4.) **Termination without Cause during Renewal Terms.** Customer may terminate the agreement any time without cause by providing a written ninety (90) days' notice and paying the monthly payment through the end of the ninety (90) day notice period.

16.1.5.) **Termination upon Bankruptcy.** Either Party may terminate this Agreement immediately upon written notice to the other Party in the event that the other Party: (i) makes a general assignment for the benefit of creditors; (ii) appoints or has appointed a receiver to take charge of all or part of its property; (iii) admits in writing its inability, to pay its debts generally as they mature; (iv) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it; (v) otherwise substantially ceases its business operations; (vi) takes any action for the purpose of effecting any of the foregoing; or (vii) commences proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Party or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Party or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement.

16.2.) **Return of System(s).** Upon any termination or expiration of this Agreement, Customer shall cease using, executing or displaying the Novarad Software and System(s) hardware. Novarad shall be, and hereby is, irrevocably and unconditionally authorized to remotely access and disable the Novarad System at any time following the termination or expiration of this Agreement. Customer shall surrender and deliver the Novarad Software within one (1) day of the confirmed date of termination or expiration of this Agreement unless Customer communicates notice to extend date of termination to Novarad prior to termination or expiration of this Agreement. Novarad Server hardware is required to be received by Novarad within ten (10) days of termination, if Novarad owned servers reside at Customer's site. If other hardware is not required to be returned to Novarad, upon termination, Novarad and/or Customer shall promptly remove all copies of the Novarad Software from all Novarad System Hardware including

Customer owned equipment utilized for the Novarad Solution.

16.2.1.) **Procedures for Return of Novarad Servers.** Customer shall return all Novarad Servers within ten (10) days to Novarad at its sole expense. All PHI must be removed by the Customer prior to return shipment to Novarad. Server(s) and other equipment in-transit from the customer are still deemed as in the possession and ownership of the Customer. Only upon proof of delivery and Novarad's acceptance of such equipment, does Novarad assume possession of returned equipment.

16.3.) **Procedures for Equipment other than Servers.**

16.3.1.) **Initial Contract Period** – If Customer terminates before the initial five (5) year contract period is complete, ownership of all System Hardware and other equipment provided by Novarad shall automatically revert to Novarad. Customer shall return all such Novarad hardware to Novarad at its sole expense within thirty (30) days of termination.

16.3.2.) **Additional Auto Renew Period** – If Customer terminates this agreement during a two (2) year renewal period, original hardware (other than servers) not replaced under the Hardware Obsolescence Program, will remain with Customer after all fees, including termination fees, are paid. Servers are required to be returned to Novarad.

16.4.) **Equipment Replacement under the Hardware Obsolescence Program.** This section is applicable if the Hardware Obsolescence was included as part of Customer Subscription Fee.

16.4.1.) If the original hardware, required to be returned, is not returned to Novarad when replaced under the Hardware Obsolescence Program, Customer will be charged for the equipment replaced under warranty.

16.4.2.) If equipment is damaged during shipment or components are missing from the system, Customer will be invoiced for damages.

16.4.3.) System fees must be paid current to receive equipment replacement under the Hardware Obsolescence Program, where applicable.

16.4.4.) Novarad is not liable or responsible under any circumstances for any breach of PHI (Personal Health Information) contained on the Server(s) or other equipment while the Server(s) or other equipment are in the possession or ownership of the Customer. In cases of warranty replacement, all PHI must be removed by the Customer prior to return shipment to Novarad. Server(s) and other equipment in-transit from the customer are still deemed as in the possession and ownership of the Customer. Payment for return shipping, if provided by Novarad, does not constitute Novarad taking possession or ownership. Only upon proof of delivery and Novarad's acceptance of such equipment, does Novarad assume possession of returned equipment.

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Novarad Initials

Customer Initials

16.5.) **Effect of Termination.** In the event this Agreement is terminated for any reason, including non-payment of Monthly Subscription Fee, Customer’s rights to possess and/or use the Novarad System shall terminate immediately.

16.6.) **Destroying of Protected Health Information.** (“PHI”). PHI is stored electronically on Novarad’s servers. Upon any termination or expiration of this Agreement, Novarad will destroy Customer’s stored PHI three (3) months after contract termination date.

17. **Limited Warranty; Disclaimer.** Novarad warrants that the Novarad Software will perform substantially in accordance with its functional specifications, as defined by Novarad, in connection with that version of the Novarad Software and that any media on which the Novarad Software is provided will be free of material defects for the term of this Agreement. Novarad shall, and hereby does assign, transfer and pass-through to Customer all applicable manufacturer’s warranties covering the Hardware, to the extent assignable. Furthermore, Novarad warrants that the System will be operational 99.9% of the time (“Uptime Warranty” – meaning the images from the modalities will be able to be sent to at least one workstation for reading applicable only when the Novarad Software is installed on Novarad provided hardware such as servers and workstations and when the Hardware Obsolescence Program is acquired pursuant to this Agreement. The Uptime Warranty will not apply when the Novarad Software is installed on customer-owned hardware, virtual servers, or with customer monitors, or when Novarad is not maintaining or replacing the System hardware. This warranty only refers to the Novarad System and shall NOT be in force when there is a problem with the modality or Customer’s network or Customer’s Internet connection or if there is a Customer error in using the System. In the event of a breach of the Uptime Warranty for a given month, Novarad’s exclusive obligation and liability for such breach will be to provide Customer a Service Fee credit against the applicable month’s Service Fees to be calculated on Customer’s actual service downtime. The credit amount not to exceed the System Fees amount paid by Customer for the then current month. In order to receive any such service credit, Customer must notify Novarad at the time Customer becomes aware of uptime service issue. Except as otherwise expressly provided elsewhere in this Agreement, Customer accepts the System Hardware from Novarad “AS IS, WHERE IS.” Except as otherwise expressly provided elsewhere in this Agreement, NOVARAD MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, THAT THE NOVARAD SOFTWARE, THE THIRD-PARTY SOFTWARE OR THEIR OPERATION WILL BE FREE FROM BUGS, INTERRUPTIONS, ERRORS OR OTHER PROGRAM LIMITATIONS, OR ISSUES REGARDING INFRINGEMENT, TITLE OR THE LIKE. NO REPRESENTATIONS OR

WARRANTIES INCLUDING WITHOUT LIMITATION, (i) ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY, OPERATION, OR CONDITION OF THE SYSTEM, (ii) THE MERCHANTABILITY OR FITNESS OF THE SYSTEM FOR A PARTICULAR PURPOSE, (iii) THE COMPATIBILITY OR INTEROPERABILITY OF THE SYSTEM WITH OTHER PERSONAL PROPERTY, NON-NOVARAD SOFTWARE OR ACCESSORIES WHICH CUSTOMER USES WITH OR CONNECTS TO THE NOVARAD SYSTEM.

18. **Limitation of Liability.** IN NO EVENT SHALL NOVARAD BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER INDIRECT OR CONSEQUENTIAL LOSS) WHICH MAY ARISE UNDER THIS AGREEMENT, OR FROM USE OF THE SYSTEM(S), EVEN IF NOVARAD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER AGREES THAT NOVARAD’S SOLE LIABILITY, IF ANY, INCLUDING, WITHOUT LIMITATION, LIABILITY ARISING OUT OF ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY OR WHETHER GROUNDED IN CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, TORT OR WARRANTY, SHALL NOT EXCEED THE SYSTEM FEES PAID BY CUSTOMER FOR THE THEN CURRENT MONTH. IN NO EVENT SHALL NOVARAD BE LIABLE FOR MEDICAL MISDIAGNOSIS MADE WHILE USING THE SYSTEM OR AS A DIRECT OR INDIRECT RESULT OF USING THE SYSTEM.

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

19. **Intellectual Property Rights.**

19.1.) Customer unconditionally and absolutely acknowledges and agrees that this Agreement stipulates Novarad is the sole owner of all rights, titles and interests in and to all Intellectual Property Rights related to the Novarad Software or otherwise related to Novarad Systems (or any component thereof) or any improvements to Novarad Systems (or any component thereof). Unless and except to the extent expressly provided in this Agreement, this Agreement shall not be deemed, construed or interpreted as a grant, transfer or conveyance

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to Customer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use any, all, or any portion of its Intellectual Property Rights related to Novarad Systems or any Improvements thereon.

19.2.) If and to the extent that Customer makes, creates, authors, reduces to practice or otherwise develops, either alone or jointly with Novarad or one or more third parties, any such improvements, Customer covenants and agrees that:

19.2.1.) any such improvements shall be, and hereby are, owned solely, irrevocably and exclusively throughout the world by Novarad and

19.2.2.) any such improvements, to the extent consisting of works of authorship or other copyrightable subject matter, shall be, and hereby are, "works for hire" belonging solely, irrevocably and exclusively throughout the world to Novarad.

19.2.3.) "Intellectual Property Rights" means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

20. **Software Restrictions.** Customer shall not:

20.1.) Sell, transfer, assign, lease, sublease, loan, rent, offer on a "service bureau" basis, sublicense, copy, reproduce, duplicate or distribute the Novarad Software or Pre-Release Software or any rights under the Novarad Software Licenses granted hereunder;

20.2.) Create derivative works of the Novarad Software; or

20.3.) Decompile, decipher, disassemble, reverse engineer or otherwise discover the source code of all or any portion of the Novarad Software or Pre-Release Software.

21. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing. Notices shall be deemed to have been duly given on the date of service if:

21.1.) served personally on the Party to whom notice is to be given or,

21.2.) sent by electronic mail or,

21.3.) on the third day after mailing, if mailed to the Party to whom notice is to be given, by first-class, registered, certified or overnight mail, postage prepaid, and properly addressed to the address first set forth above.

21.4.) Either Party should notify the other Party in writing of a change of address.

22. **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject

matter hereof. It may not be changed orally, but only by an agreement in writing signed by the Parties. Statements made by any person, including representatives of Novarad, which are inconsistent or in conflict with the terms of the Novarad Customer Agreement, shall not be binding upon Novarad.

23. **Assignment.** Neither this Agreement nor any rights or obligations under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntarily, by operation of law (including by merger or consolidation) or change in control of a majority or more of Customer's equity securities, without prior written notice and consent of Novarad, which consent may be withheld, delayed or conditioned in the sole discretion of Novarad. This Agreement and the rights and obligations of Novarad under this Agreement may be assigned without the consent of Customer, by Novarad to (i) any subsidiary or commonly controlled affiliate of Novarad, (ii) an entity which survives a merger to which Novarad is a party, or (iii) an entity which acquires all or substantially all of the assets of Novarad or substantially all of Novarad's interests in the product suite which contains the System. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assignees following submission and approval of appropriate documentation submitted to Novarad prior to finalization of any Assignment or transfer.

24. **Section Headings.** The section headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise effect the construction of any provision herein.

25. **Severability.** In the event any section, paragraph, or portion of this Agreement shall be or be deemed to be by any court having lawful jurisdiction of the subject matter of this Agreement void, voidable, or invalid for any reason, this Agreement shall be otherwise valid and enforceable as if said void, voidable, or invalid article, section, paragraph, or portion of this Agreement had not been a part hereof in the first instance. The English language version of this Agreement shall be the governing version used when interpreting or construing this Agreement.

26. **HIPAA Compliance:** As required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the HITECH Act and as it may be further amended from time to time, Novarad agrees to execute a Novarad Business Associate Agreement with Customer in order to assure confidentiality of patient protected health information (PHI).

27. **Applicable Law; Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah and the laws of the United States, without regard to the application of conflicts of law principles. If legal action is initiated by Customer, the exclusive venue and jurisdiction for disputes arising out of or relating to



this Agreement shall be in the state or federal courts located in Salt Lake County, Utah. If legal action is initiated by Novarad, the exclusive venue and jurisdiction for disputes arising out of or relating to this Agreement shall be in the state or federal courts located in Kern County, California. Customer hereby irrevocably and unconditionally submits to the personal jurisdiction of such courts and waives any right to trial by jury and any claims, defenses, or motions, whether substantive or procedural, based upon concepts of lack of personal jurisdiction, forum non conveniens or the like.

28. **Attorneys' Fees.** In the event an action or suit is brought by any Party hereto to enforce the terms of this Agreement, the prevailing Party shall be entitled to the payment of reasonable attorneys' fees and costs, together with such other legal costs as may be authorized by law, including any of the foregoing costs incurred in connection with an appeal.

29. **Confidentiality.** Customer shall keep the terms of this Agreement and all Confidential Information about the Novarad product from others, including vendors of PACS or similar products. For purposes of this Agreement, "Confidential Information" shall include all confidential or proprietary information or material that has or could have commercial value or other utility in the business in which Novarad is engaged. Customers obligations under this Agreement do not extend to information that is: (i) publicly known at the time of disclosure or subsequently

becomes publicly known through no fault of the Customer; (ii) learned by the Customer through legitimate means other than from Novarad or Novarad representatives; or (iii) is disclosed by Customer with Novarad's written approval. Novarad 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.

30. **Press Release.** Customer gives Novarad the right to submit press releases to local and industry news agencies announcing the choice of the Customer to use Novarad products. Also included in the release may be the bed size of the Customer facility if applicable and its location.

31. **Authority to Bind.** Each person executing this Agreement hereby warrants that they have full and legal authority to execute this Agreement for and on behalf of the respective Parties, and no further approval or consent of any other person is necessary in connection therewith. Further, each person executing this Agreement covenants and represents that the execution of this Agreement is not in contravention of and shall not result in a breach of any other agreement, contract, instrument, order, judgment or decree to which such person is a party.

THIS AGREEMENT is hereby made, executed and delivered by the undersigned Parties as of the Effective Date set forth below

NOVARAD CORPORATION

KERN COUNTY HOSPITAL AUTHORITY

By: Michael Chandler
DocuSigned by:
415AE00822C1495...
Print Name: Michael Chandler, on behalf of Novarad
Title: Chief Financial Officer
Date: 10/5/2022

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

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By: [Signature]
Legal Services Department

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 Novarad Corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of effective 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 twenty-four (24) hours after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than ten (10) 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. If breach is verified that Business Associate is the sole party at fault, Business Associate will be responsible for actual costs to provide notification of affected individuals, as mutually agreed upon by both parties.

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. At this time, Novarad does not maintain a designated data set .

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, at the direction of a state or federal regulatory body, 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 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, each party hereby agrees to indemnify and hold harmless the other party 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 the other party'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 the other party to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

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

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Novarad Corporation
3152 North University Avenue, Suite 200
Provo, Utah 94604
Attn: Chief Financial Officer

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on behalf of Kern Medical Center

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Novarad Corporation

DocuSigned by:

Michael Chandler

Title: Chief Financial Officer

Date: 10/5/2022

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



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

October 19, 2022

Subject: Proposed McKesson Radiology release platforms 12.1.1 to 12.3 Retirement and Extended Maintenance Notice (Reference No. OPTY-676259) with Change Healthcare Technologies, LLC for the extension of the current Picture Archiving and Communications System (PACS) support

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Retirement and Extended Maintenance Notice with Change Healthcare Technologies, LLC to extend the current maintenance support within the original PACS agreement (276-99) and its term extension amendments (867-2013 and (087-2017) to allow for the continuation of the necessary maintenance support for our current PACS during the transition to a new PACS provider. The current PACS is no longer supported by Change Healthcare Technologies, LLC and must be upgraded or replaced. Kern Medical has decided to replace the system but there will be gap due to the time needed to deploy the new PACS provider.

Kern Medical's current PACS is no longer being supported by Change Healthcare Technologies, LLC as of September 30th, 2022. Kern Medical has already selected a new vendor to transition the PACS services. Until PACS services have been fully transitioned, Kern Medical must maintain support for the current PACS services. Change Healthcare Technologies, LLC has agreed to provide extended maintenance support for a prorated amount (\$50,304) which is 25% of our current annual service contract for a duration of six (6) months with an auto-renewal for an additional six (6) months. The anticipated timeline for transition to the new PACS vendor is anticipated to be nine (9) months. This notice of maintenance extension will not extend the current term of the PACS agreement with Change Healthcare Technologies, LLC.

The cost for the anticipated maintenance support extension is referenced below:

A. Reference No. OPTY-676259:

	Costs
Initial Service fee	\$50,304
Term Roll Over	\$50,304
Total	\$100,608

Therefore, it is recommended that your Board approve the proposed McKesson Radiology release platforms 12.1.1 to 12.3 Retirement and Extended Maintenance Notice with Change Healthcare Technologies, LLC for the extension of the current Picture Archiving and Communications System (PACS) support, for a term of one (1) year beginning on September 30, 2022 through September 30, 2023 (but not extending the overall agreement term), with a total cost of \$100,608, and authorize the Chairman to sign.

McKesson Radiology release platforms 12.1.1 to 12.3

Retirement and Extended Maintenance Notice

RE: Initial Contract Number 1-EP8CZ and all Add-On Orders (the "Agreement")

Dear Kern County Hospital Authority:

Change Healthcare provided you with notice of the discontinuation of maintenance and customer support for McKesson Radiology release platforms 12.1.1 to 12.3 ("MR 12.1.1-12.3"), effective September 30, 2022 ("Retirement Date").

In general, Change Healthcare will no longer provide support for MR 12.1.1-12.3 after the Retirement Date. In addition, effective immediately, Change Healthcare will not add new feature/functionality enhancements and platform or technology updates to the MR 12.1.1-12.3.

In recognition of our partnership with Kern County Hospital Authority and the time needed to secure internal funding for an upgrade, Change Healthcare will extend Maintenance Services for the McKesson Radiology system beyond the Retirement Date as follows:

- 1) Change Healthcare will continue to accept Kern County Hospital Authority help desk calls, troubleshoot system issues and interface-related messages, perform standard configuration changes, provide existing software updates, existing patches, existing bug fixes, existing service packs, and the like (the "Extended Support") for an initial period of 6 months from the signature date of this notice (the "Extended Support Term").

1.1) To receive Extended Support, Kern County Hospital Authority must have no overdue payments for Maintenance Services. Change Healthcare will invoice an additional 25% charge on top of the Maintenance Services fees for the Extended Support Term.

1.2) If Kern County Hospital Authority signs an upgrade contract during the Extended Support Term, Change Healthcare will provide a pro-rated credit on the 25% charge based on the effective date of the upgrade contract.

1.3) If Customer continues to use the McKesson Radiology system without a signed upgrade contract, Change Healthcare will automatically renew the Extended Support Term until September 30, 2023 (the "Renewal Support Term"). In addition to the charge in Section 1.1 above, Change Healthcare will invoice an additional 25% charge, for a total of 50% on top of the Maintenance Services fees for the Renewal Support Term.

1.4) If Kern County Hospital Authority decides to discontinue use of the McKesson Radiology system, Kern County Hospital Authority may terminate Extended Support by providing notice to Change Healthcare 30 days prior to the end of the Extended Support period.

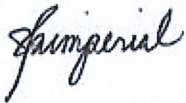
- 2) During the Extended Support Term and Renewal Support Term, Maintenance Services may be provided by Change Healthcare from any of its locations.

Change Healthcare Technologies, LLC
Imaging, Workflow & Care Solutions
#130-10711 Cambie Road
Richmond, BC
Canada V6X 3G5
800.661.5885 Tel
800.261.5432 Fax

- 3) Kern County Hospital Authority acknowledges that as of the Retirement Date, MR 12.1.1-12.3 will no longer receive any standard product maintenance such as product enhancements, bug fixes and security patches. Use of MR 12.1.1-12.3 after the Retirement Date is at Kern County Hospital Authority's own risk, regardless of being in an Extended Support Term or Extended Renewal Term beyond Retirement Date when applicable.
- 4) Change Healthcare and Kern County Hospital Authority will maintain the system as per the Change Healthcare Support Manual.

Our relationship with you is important to us and we thank you for your continued support.

Thank you.



Sonia Imperial
Senior Manager, Commercial Operations
Change Healthcare Technologies, LLC

Agreed and Signed:

Kern County Hospital Authority

By: _____

Name: Russell Bigler

Title: Chairman, Board of Governors

Date: _____

APPROVED AS TO FORM
Legal Services Department

By  _____
Kern County Hospital Authority



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

October 19, 2022

Subject: Proposed Agreement with McMurtrey Lince, Inc.

Recommended Action: Make a finding 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 the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$66,839

Summary:

Kern Medical requests your Board approve the proposed Agreement with McMurtrey Lince, Inc., in the amount of \$66,839 for the installation of perimeter fencing around the Kern Medical campus. The Agreement is effective as of October 19, 2022 and construction is anticipated to be completed within 2 months.

Therefore, it is recommended that your Board make a finding 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 the Chief Executive Officer to approve future change orders in an amount not to exceed 10% of \$66,839.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this **19th** day of **October 2022**, is by and between **McMurtrey Lince, Inc.**, whose place of business is located at **1025 Espee Street, Bakersfield, CA 93301** ("Contractor"), and the **KERN COUNTY HOSPITAL AUTHORITY**, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

WHEREAS, in consideration for the promises and payment to be made and performed by Authority, and under the conditions expressed in the incorporated Bid Proposal (Bid), bonds and related papers, Contractor agrees to do all the work and furnish all the materials at the expense of Contractor (except such as the Specifications state will be furnished by Authority) necessary to construct and complete in a good and workmanlike manner to the satisfaction of the Chief Executive Officer for the Kern County Hospital Authority all the work shown and described in the plans and specifications for the project known as:

New Site Fencing 10088

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **sixty six thousand, eight hundred thirty-nine dollars (\$66,839.00)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **30 Working Days**, as defined in Document 01422, from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner one thousand (\$1,000) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00700 (General Conditions).

ARTICLE 4 - CONTRACT DOCUMENTS

4.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00001	Title Page
Document 00100	Notice to Contractors
Document 00200	Instruction to Bidders
Document 00300	Geotechnical Data and Existing Conditions
Document 00410	Bid Form
Document 00412	Bidder Registration Form
Document 00431	Subcontractors List
Document 00452	Non-Collusion Declaration
Document 00455	Bidder Certifications
Document 00500	Agreement
Document 00501	Proposed Contract Documents Transmittal
Document 00601	Construction Performance Bond
Document 00602	Construction Labor and Material Payment Bond
Document 00603	Guaranty
Document 00590	Release of Claims
Document 00700	General Conditions
Document 00738	Apprenticeship Programs
Document 00800	Supplementary Conditions – Insurance
Master Specifications	Divisions 1 through 16
Drawings	

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

ARTICLE 5 – LIABILITY OF AUTHORITY

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

ARTICLE 6 – MISCELLANEOUS

6.01 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.

6.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

6.02 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under

Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.

6.03 This project is subject to prevailing wage laws. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.04 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Kern, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

IN WITNESS WHEREOF the parties have executed seven original Agreements on the day and year first above written.

APPROVED AS TO FORM:
Legal Services Department

KERN COUNTY HOSPITAL AUTHORITY

By Jamie A. Mason
Jamie A. Mason, Hospital Counsel

By _____
Russell E. Bigler, Chairman
"AUTHORITY"

APPROVED AS TO CONTENT:
KERN MEDICAL HOSPITAL

Contractor's Name

MEMORABLE LINK INC

Type of Entity
(corporation, partnership, sole proprietorship)

By _____
Scott Thygerson, Chief Executive Officer

By [Signature]
Signature

By Michael Fink
Michael Fink, Senior Facility Director

James Memorably
Typed Name

VP/CO
Title of Individual Executing
Document on behalf of Firm

"CONTRACTOR"

NOTICE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED



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

October 19, 2022

Subject: Kern County Hospital Authority Chief Financial Officer Report – August 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations

Kern Medical key performance indicators:

- Average Daily Census of 176 for August is 26 more than the August budget of 150 and 26 more than the 150 average over the last three months
- Admissions of 806 for August are 225 less than the August budget of 1,031 and 54 more than the 752 average over the last three months
- Total Surgeries of 501 for August are 13 more than the August budget of 488 and 44 more than the 457 average over the last three months
- Clinic Visits of 16,763 for August are 2,139 more than the August budget of 14,624 and 1,501 more than the 15,262 average over the last three months. The total includes 187 COVID-19 vaccination visits

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

Patient Revenue:

Kern Medical operated at the budgeted dollar amount for gross patient revenue for the month. On a year-to-date basis there is a small unfavorable budget variance due to temporary billing delays in certain inpatient departments in the prior month.

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 and on a year-to-date basis because of payments received from Ross University to support medical education at Kern Medical.

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month and on a year-to-date basis because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Nurse Registry Expense:

Nurse registry expense is under budget for the month because Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years the staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. The year-to-date budget variance is unfavorable because of higher than average registry usage in July as Kern Medical was in the process of lowering its usage of these services. COVID-19 remains active and Kern Medical plans to continue its need for registry services.

Medical Fees:

Medical fees are slightly 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 higher than average legal expenses. In addition, expenses include start-up fees for Universal Healthcare's Enhanced Care Management (ECM) services.

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 general medical supplies.

Purchased Services:

Purchased services are under budget for the month and on a year-to-date basis because of an over accrual in the prior month for the costs of patient care provided by out-of-network sources. In addition, there was an over accrual in the prior month for financial counseling services provided by Health Advocates.

Other Expenses:

Other expenses are over budget for the month and on a year-to-date basis, primarily because of higher than average utility costs. Electricity expenses were particularly high during July and August due to extreme weather conditions.

Interest Expense:

Interest expense is slightly over budget for the month and on a year-to-date basis due to higher than anticipated certificate of participation (COP) bond interest.

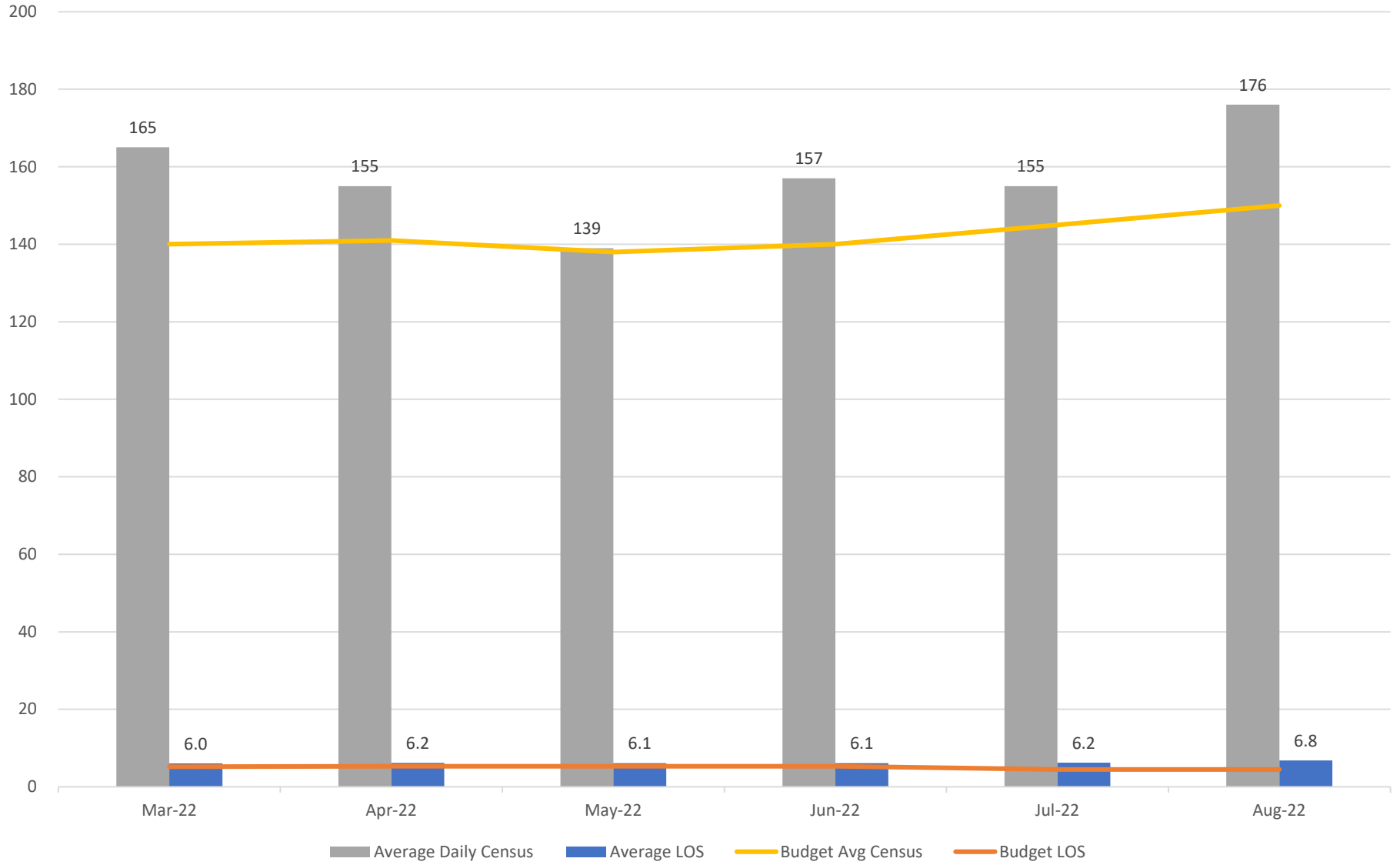
Depreciation and Amortization Expense:

Kern Medical operated at the budgeted dollar amount for depreciation and amortization expense for the month and is at the budgeted dollar amount on a year-to-date basis as well.

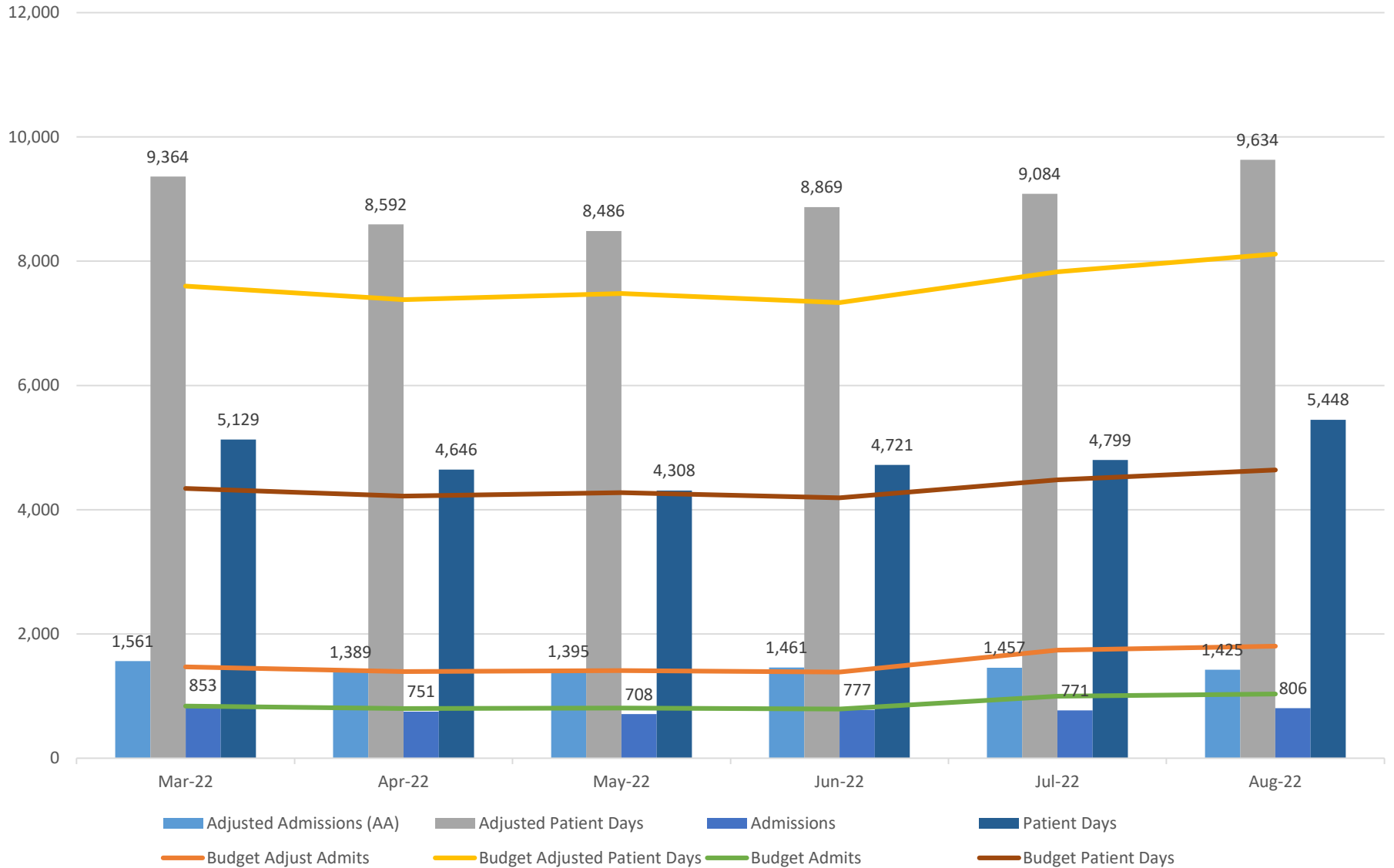


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – AUGUST 2022**

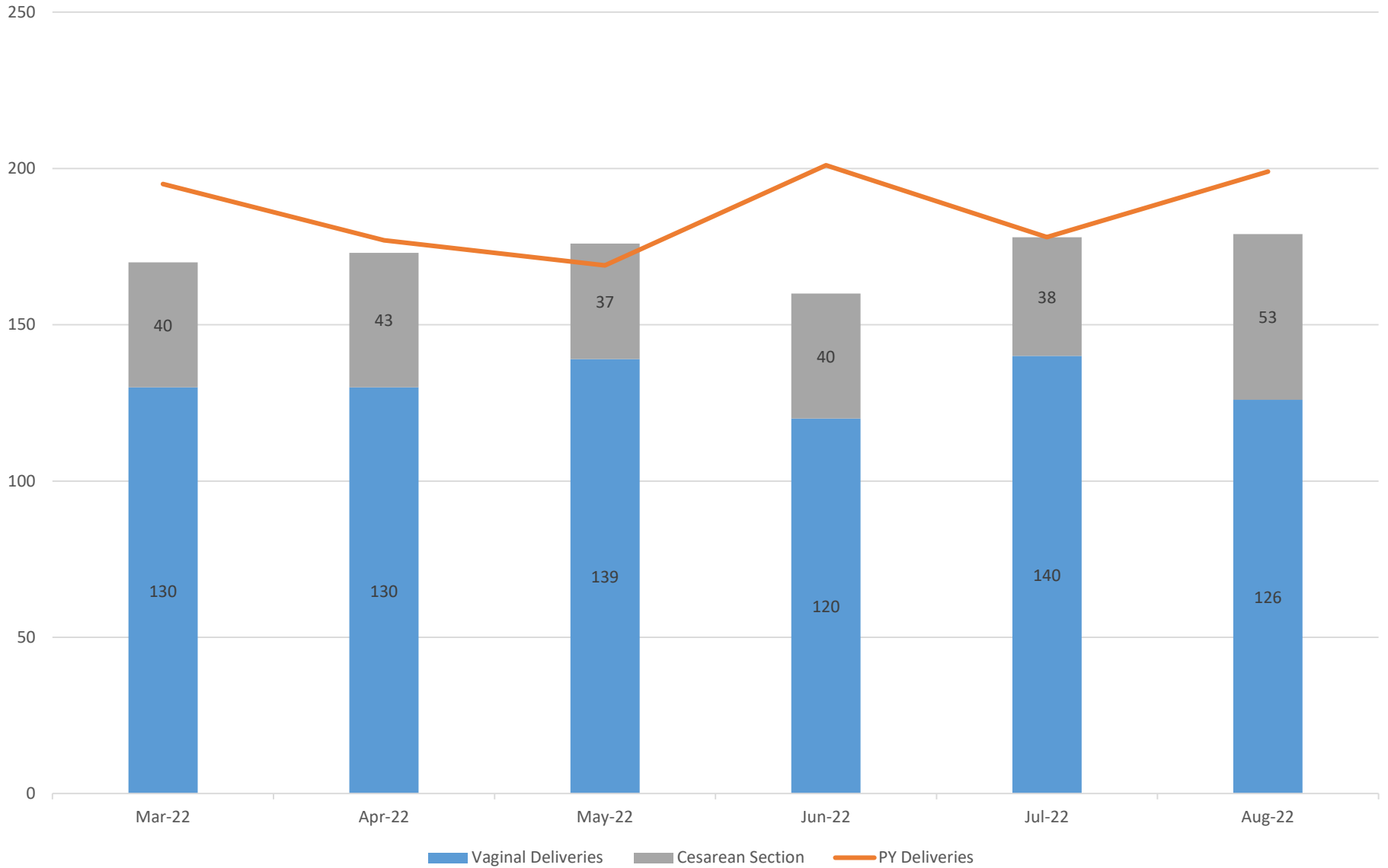
Census & ALOS



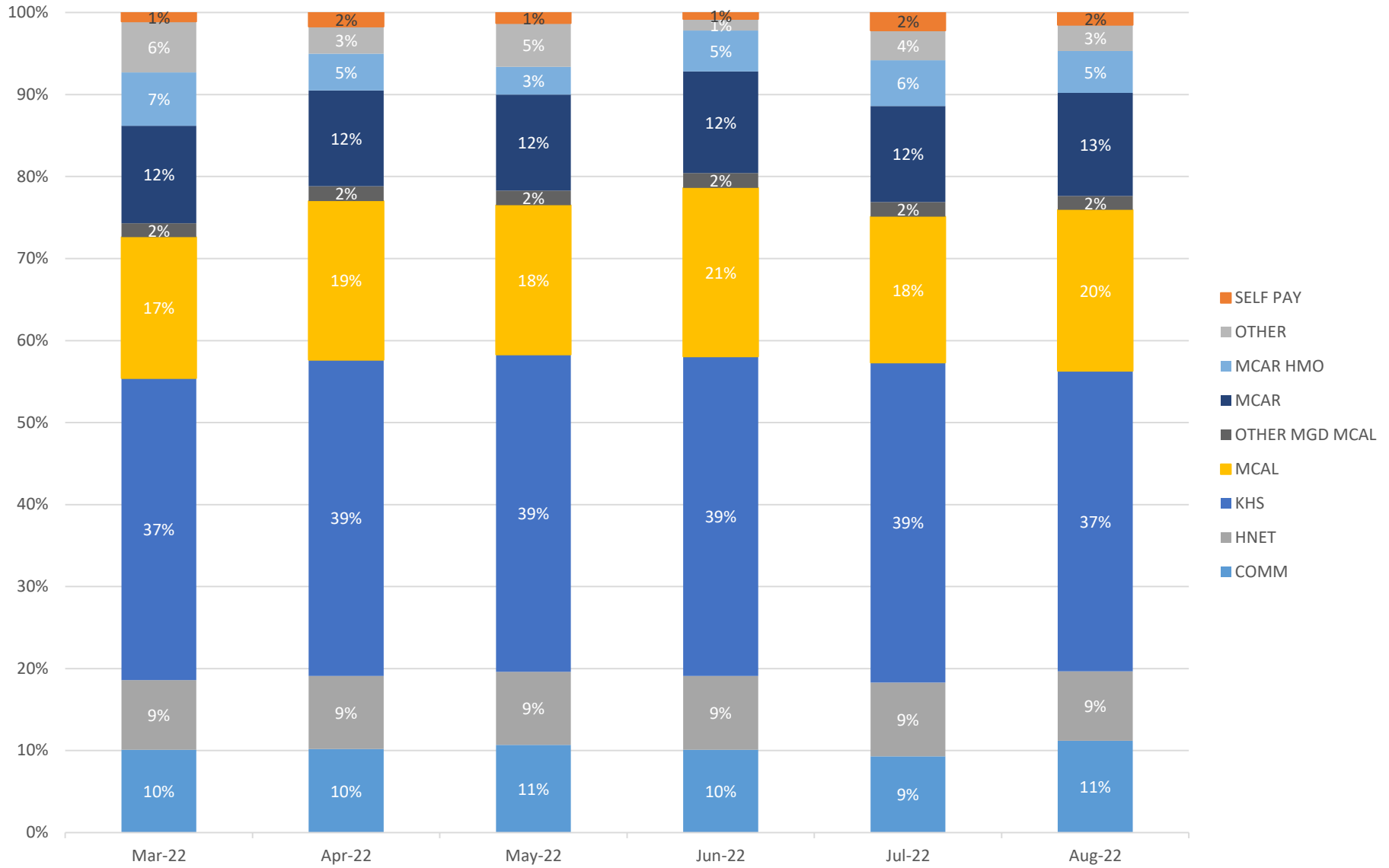
Hospital Volumes



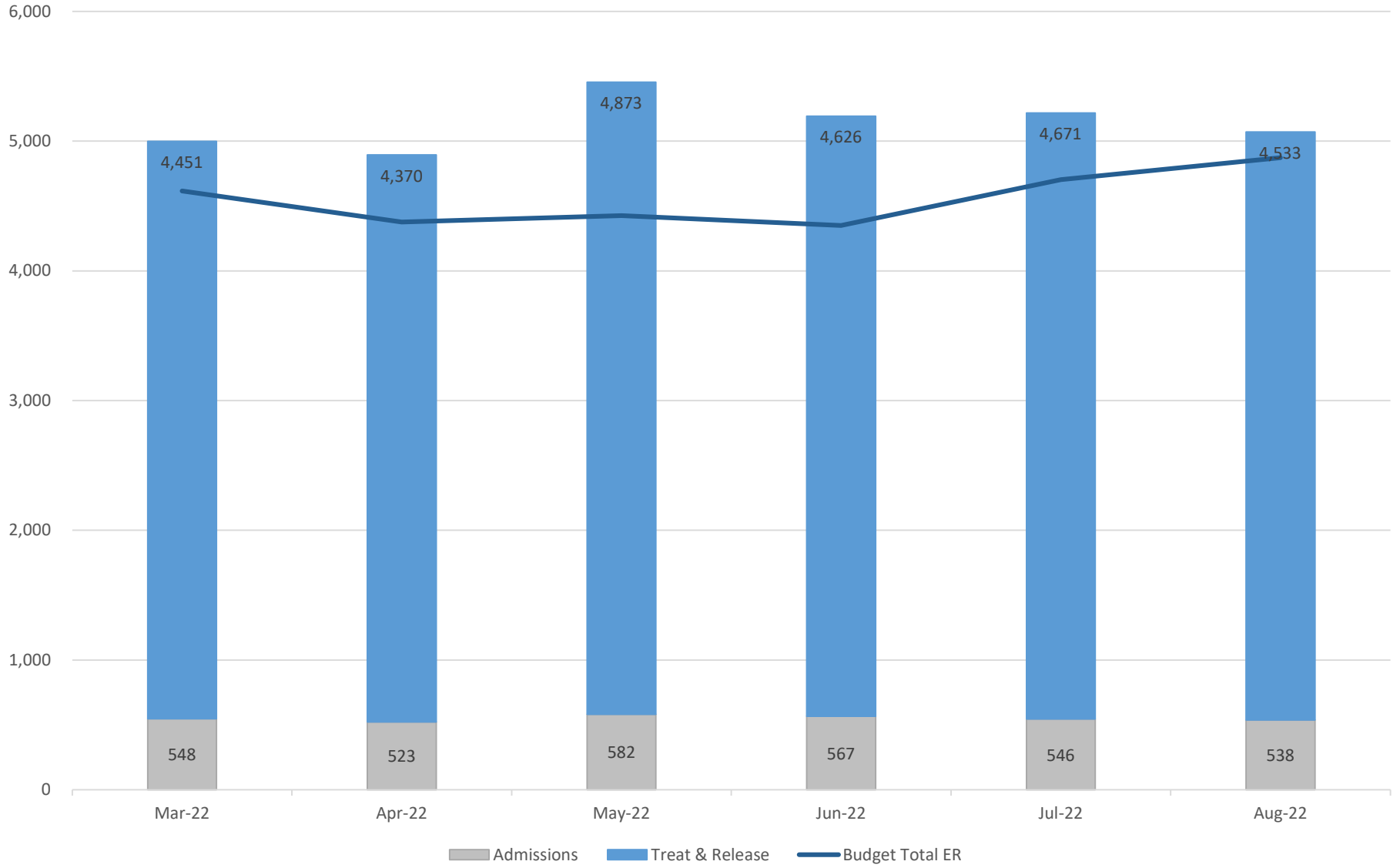
Deliveries



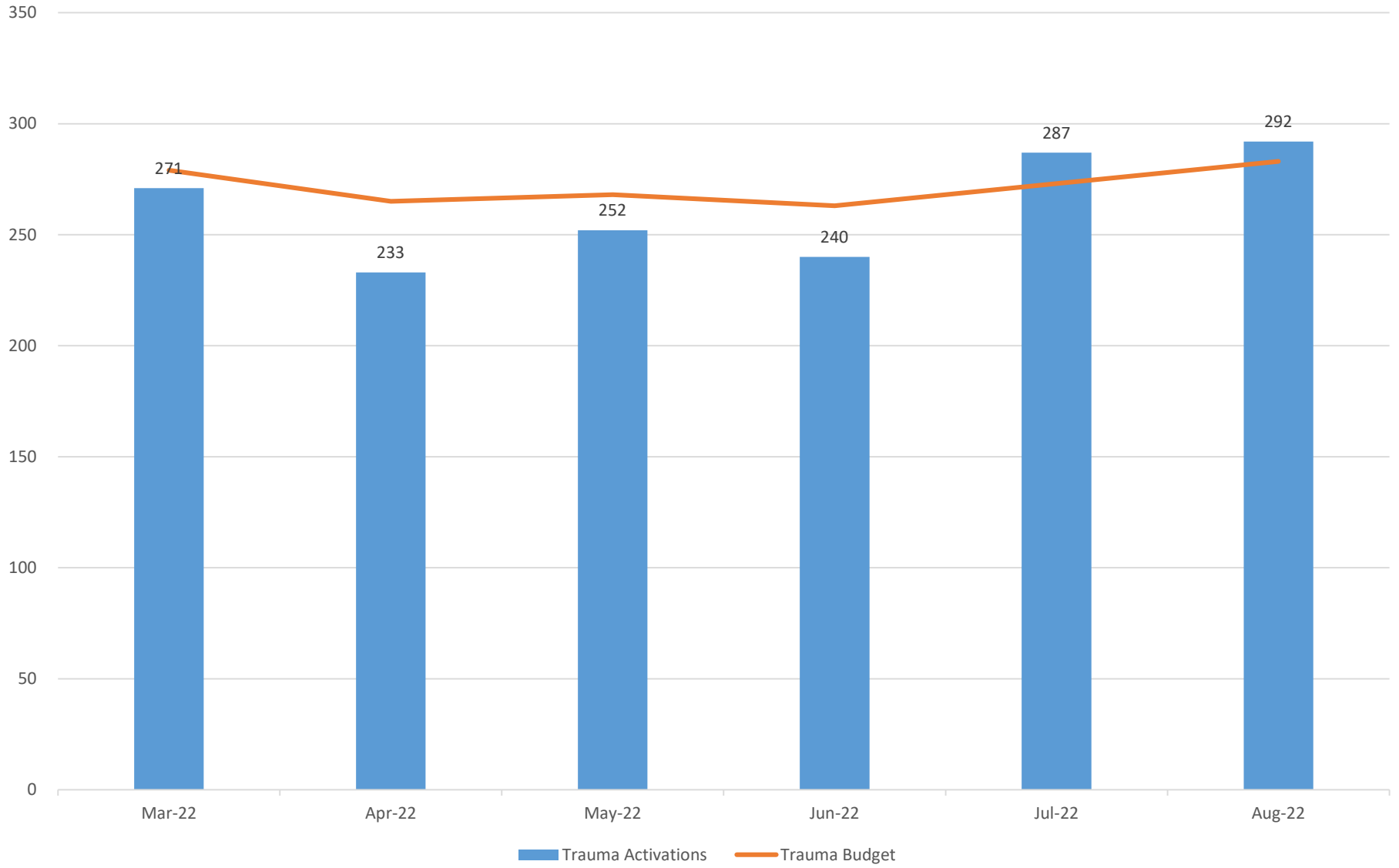
PAYER MIX



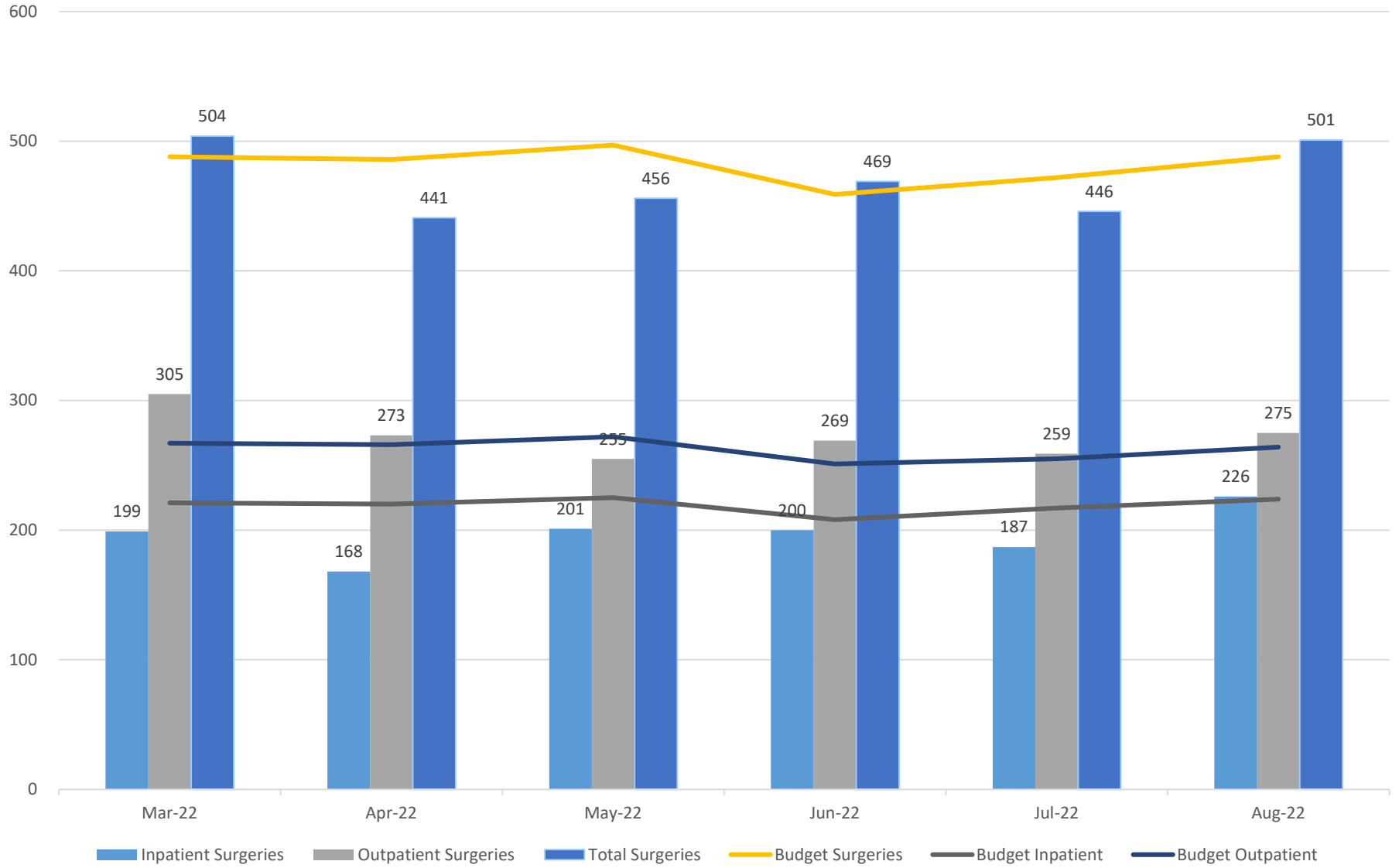
Emergency Room Volume



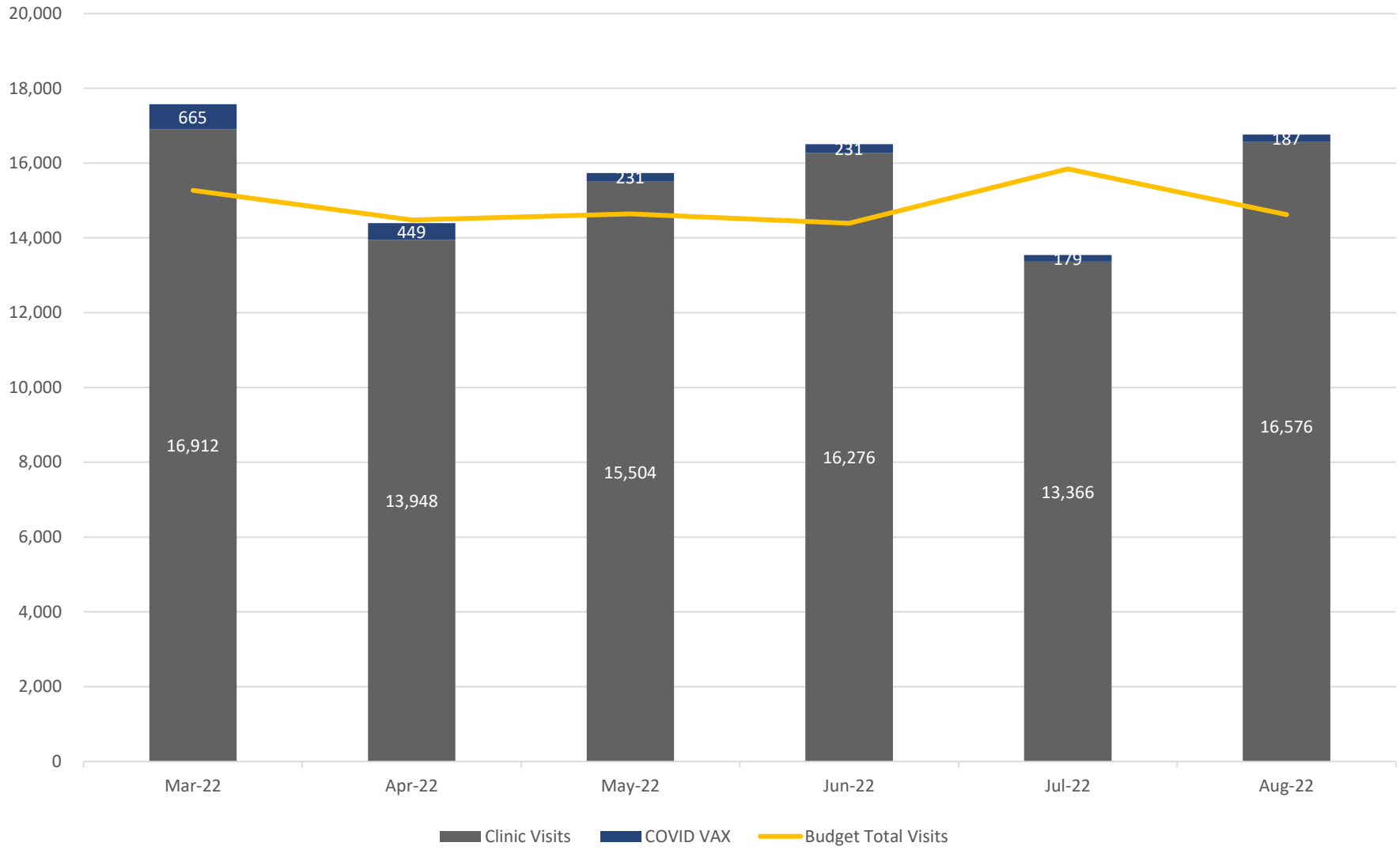
Trauma Activations



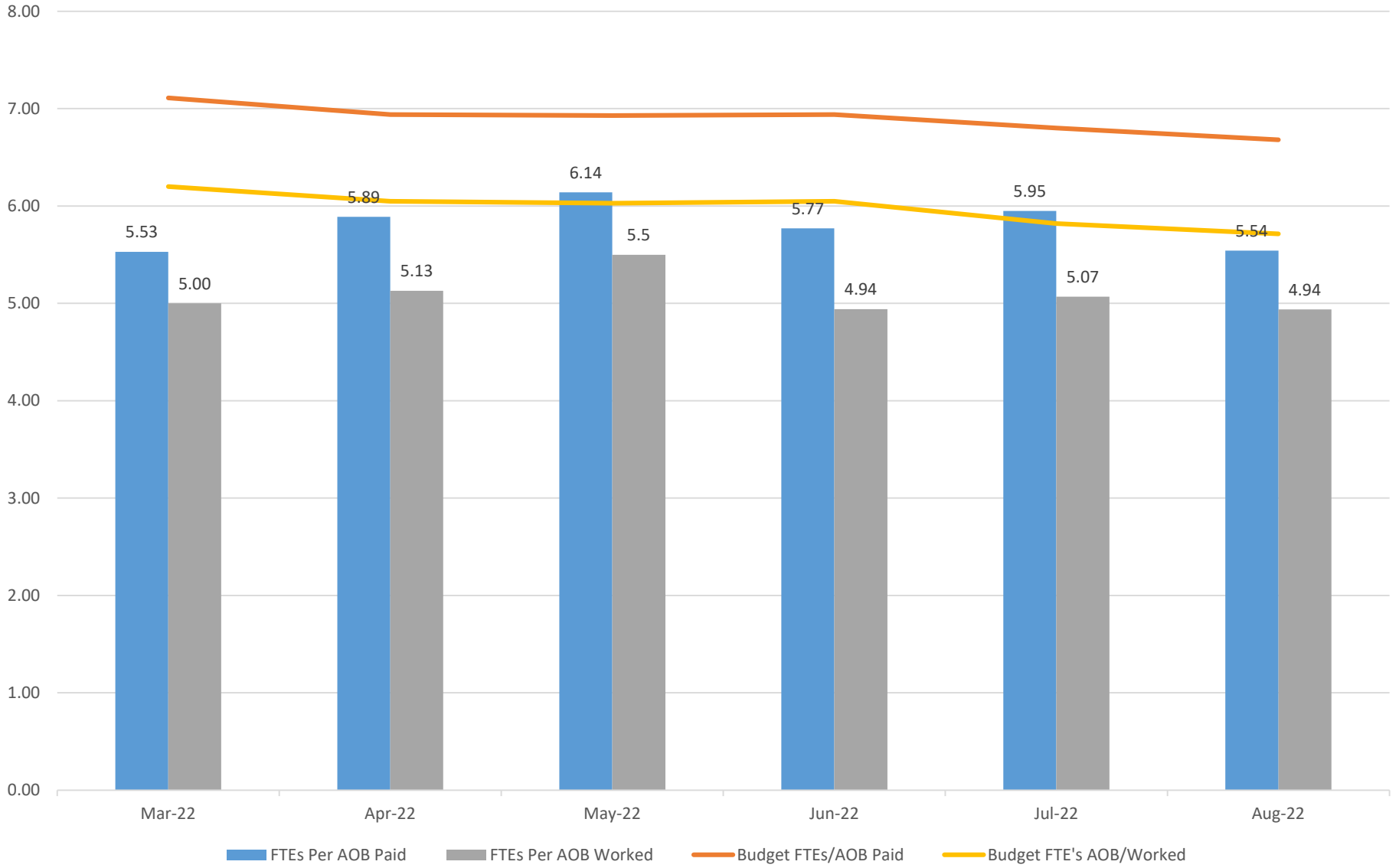
Surgical Volume



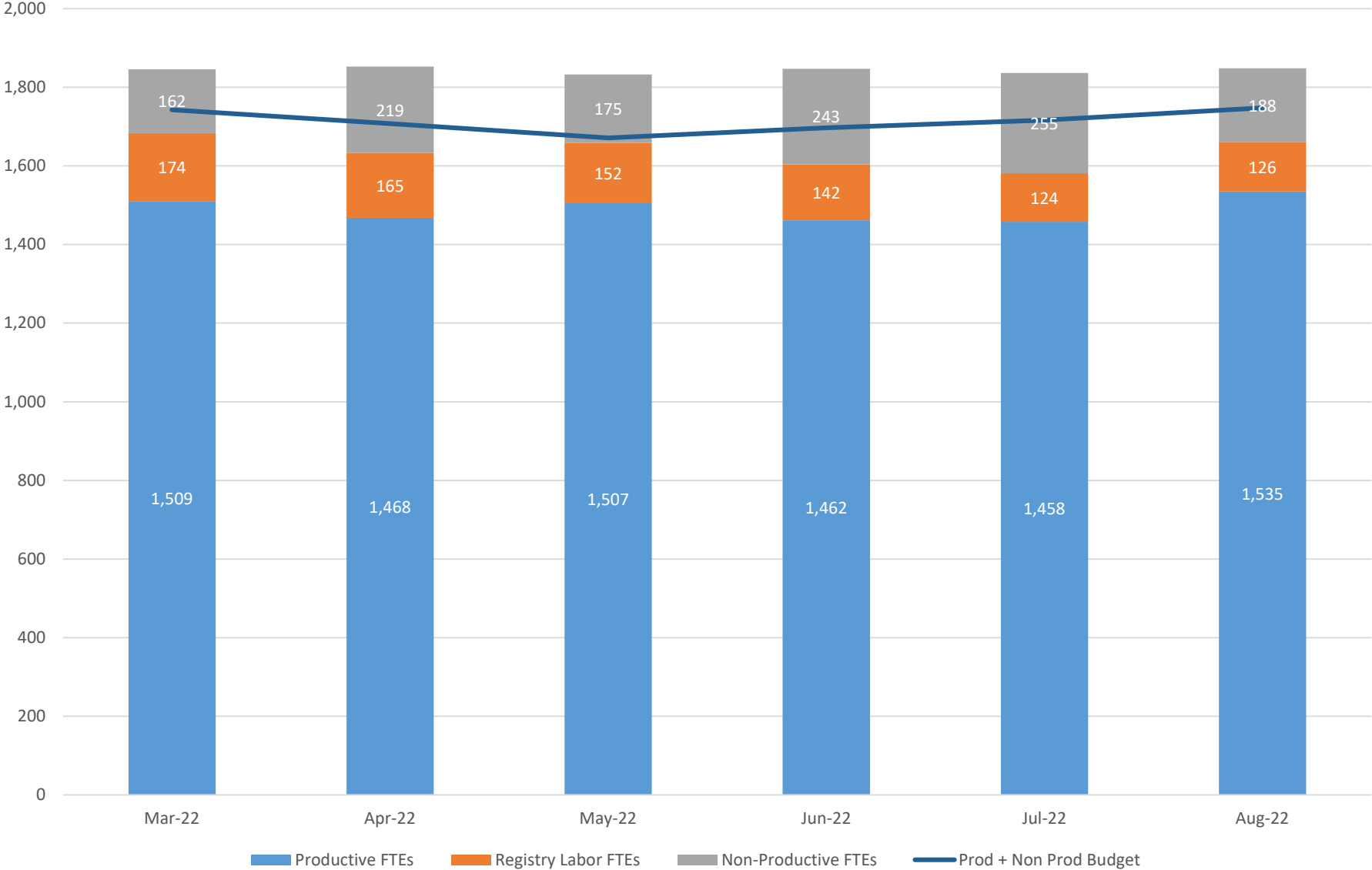
Clinic Visits



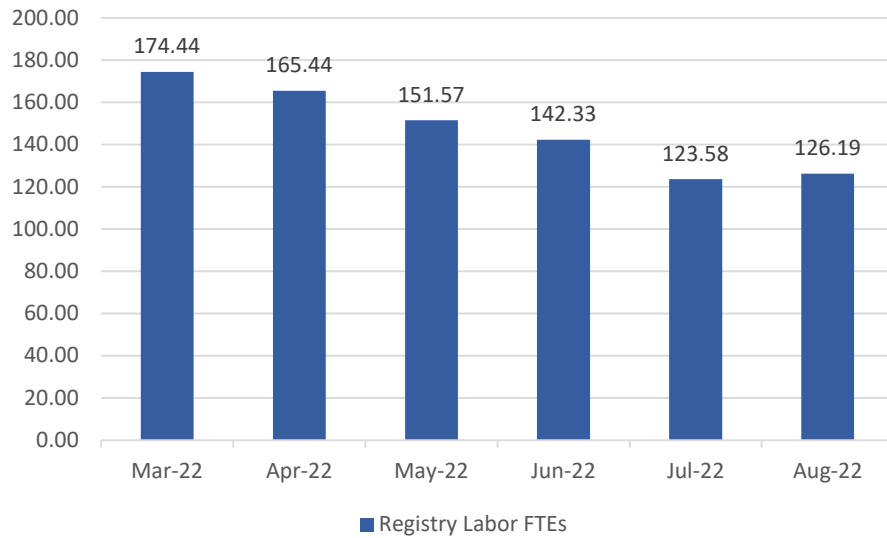
Labor Metrics



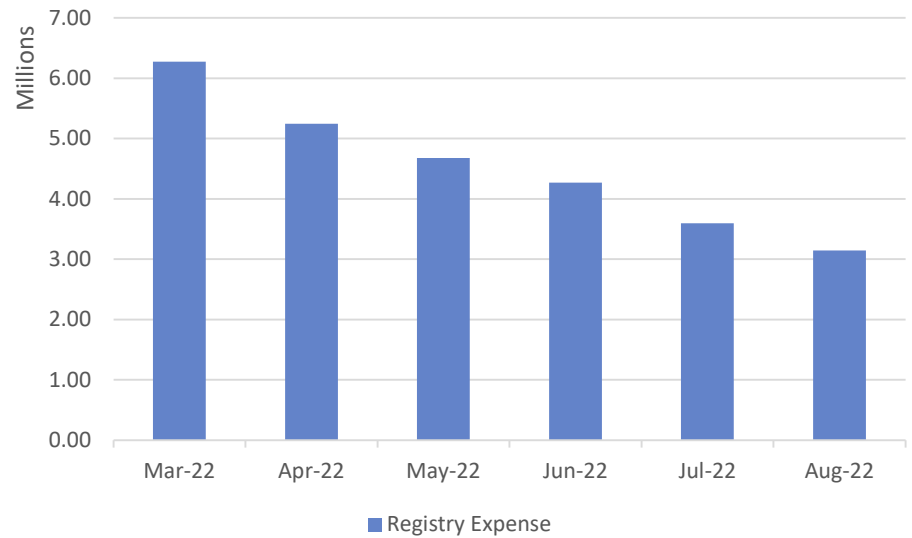
Productivity



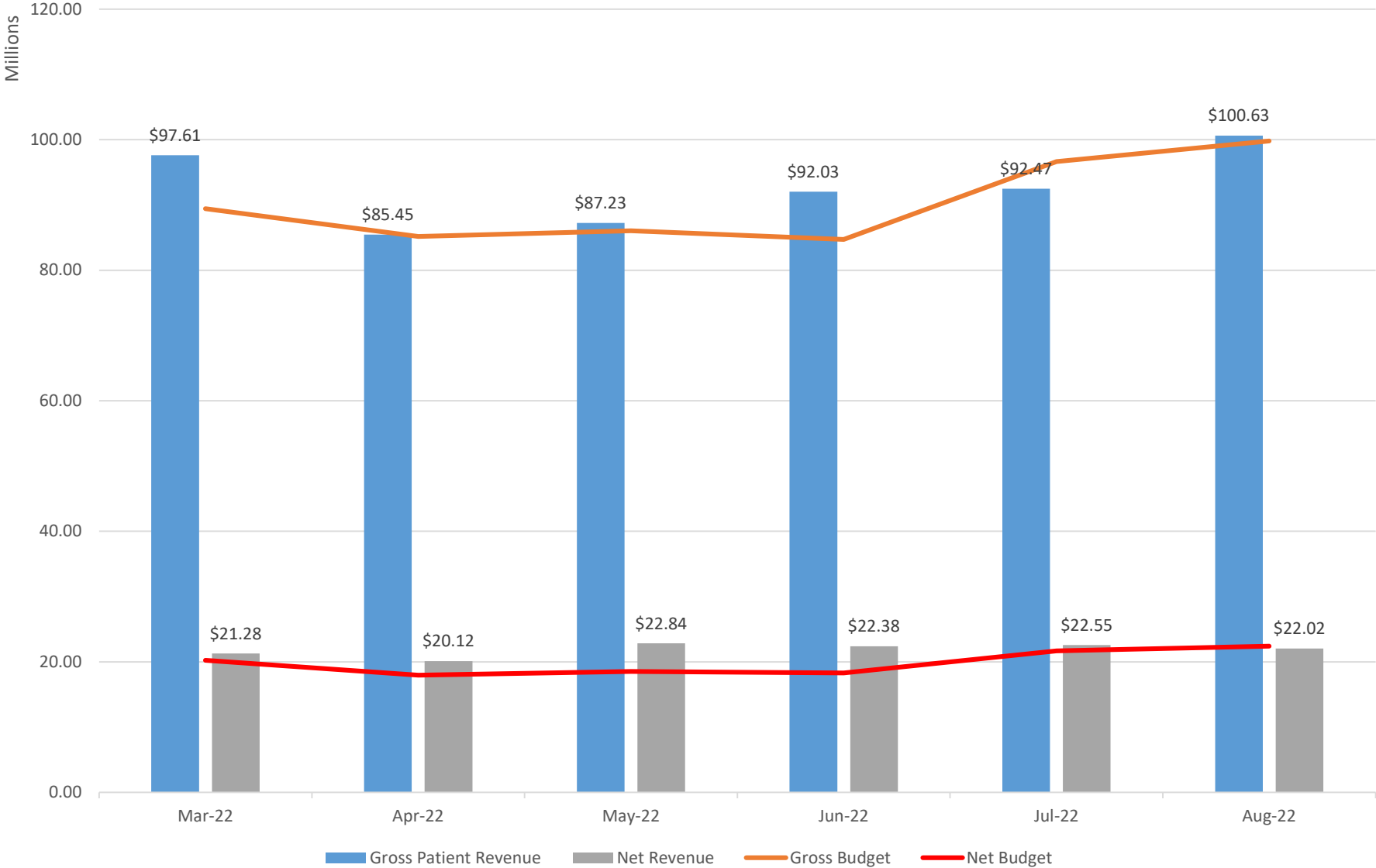
Registry FTE's



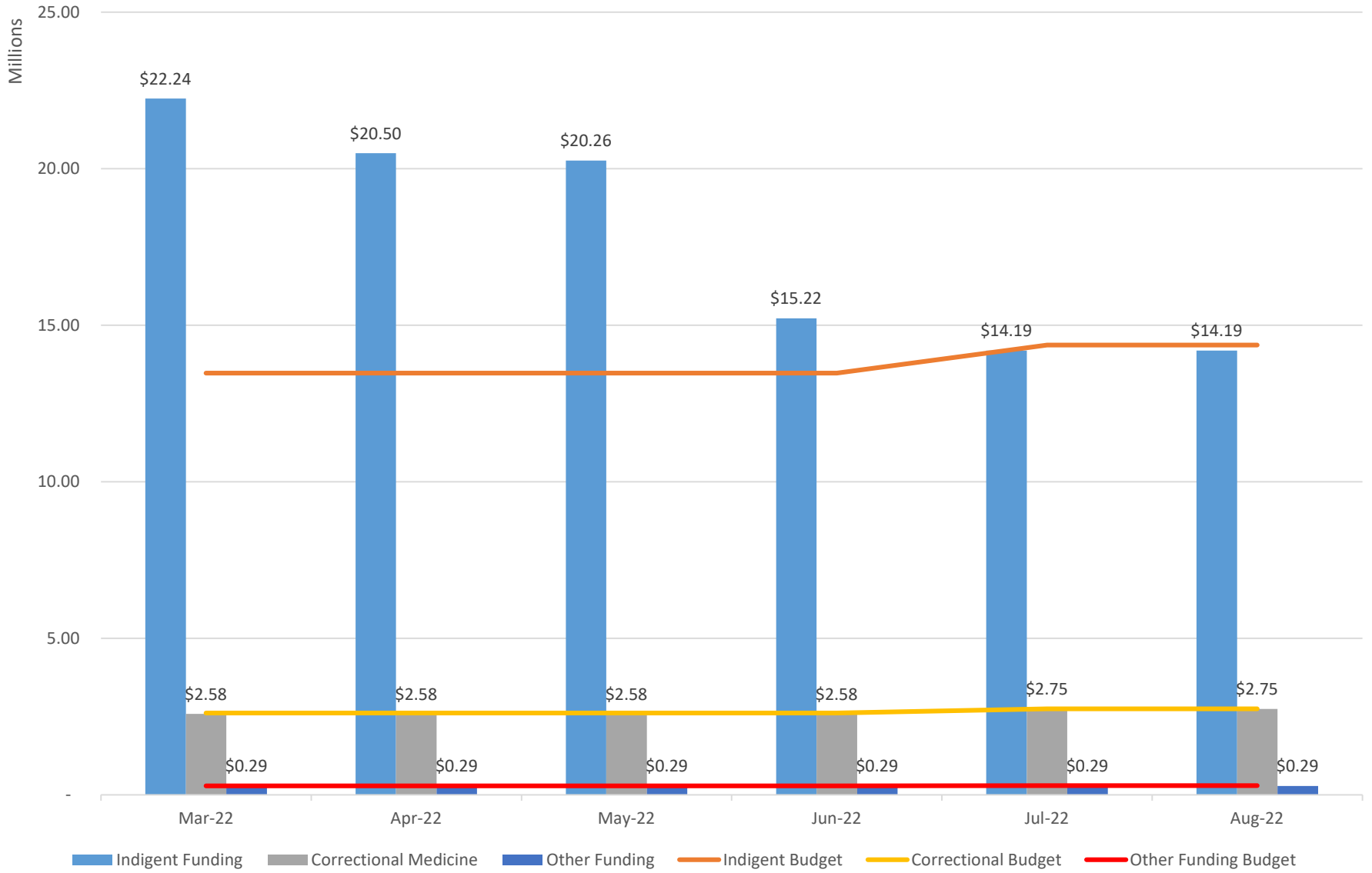
Registry Expense



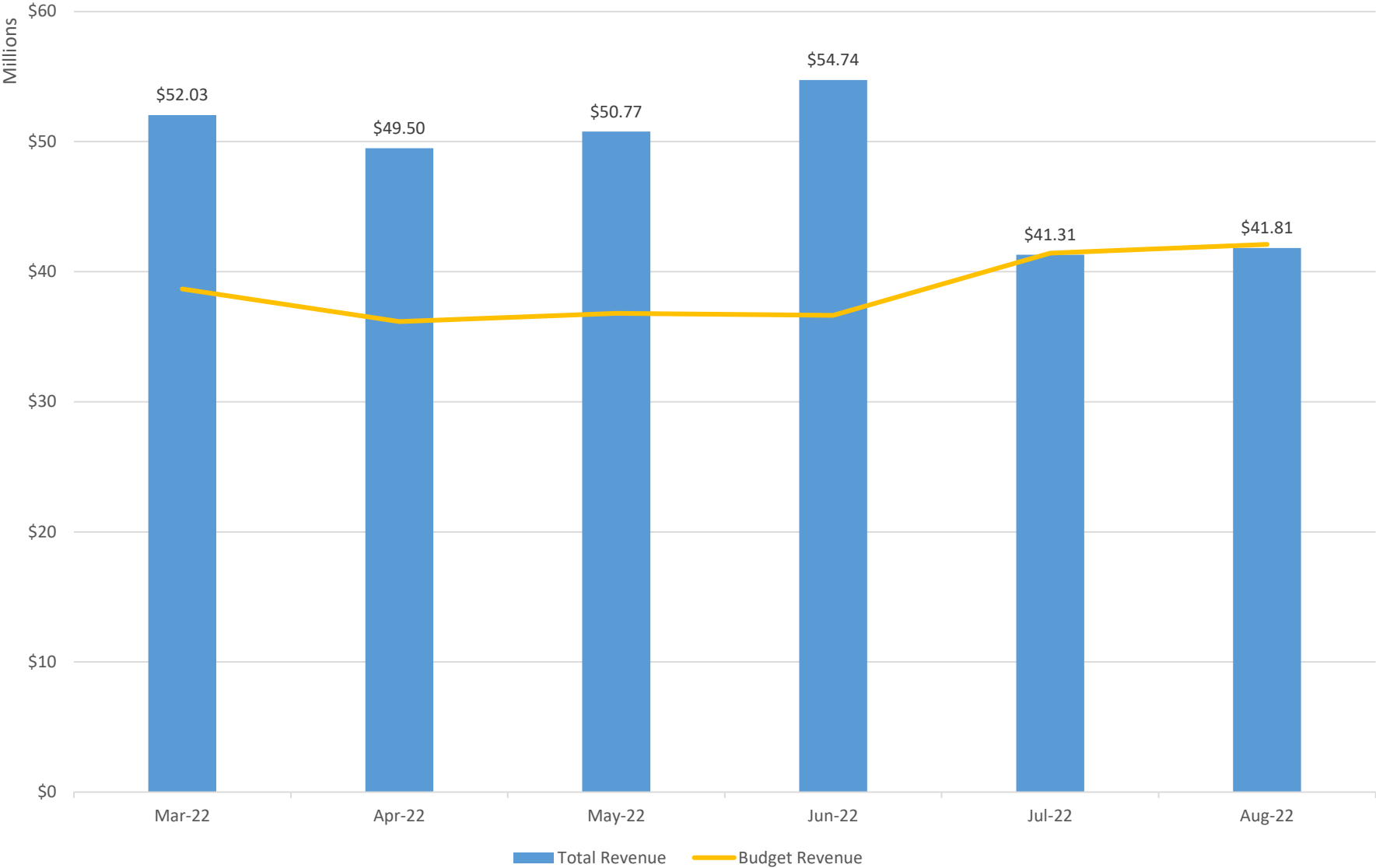
Patient Revenue



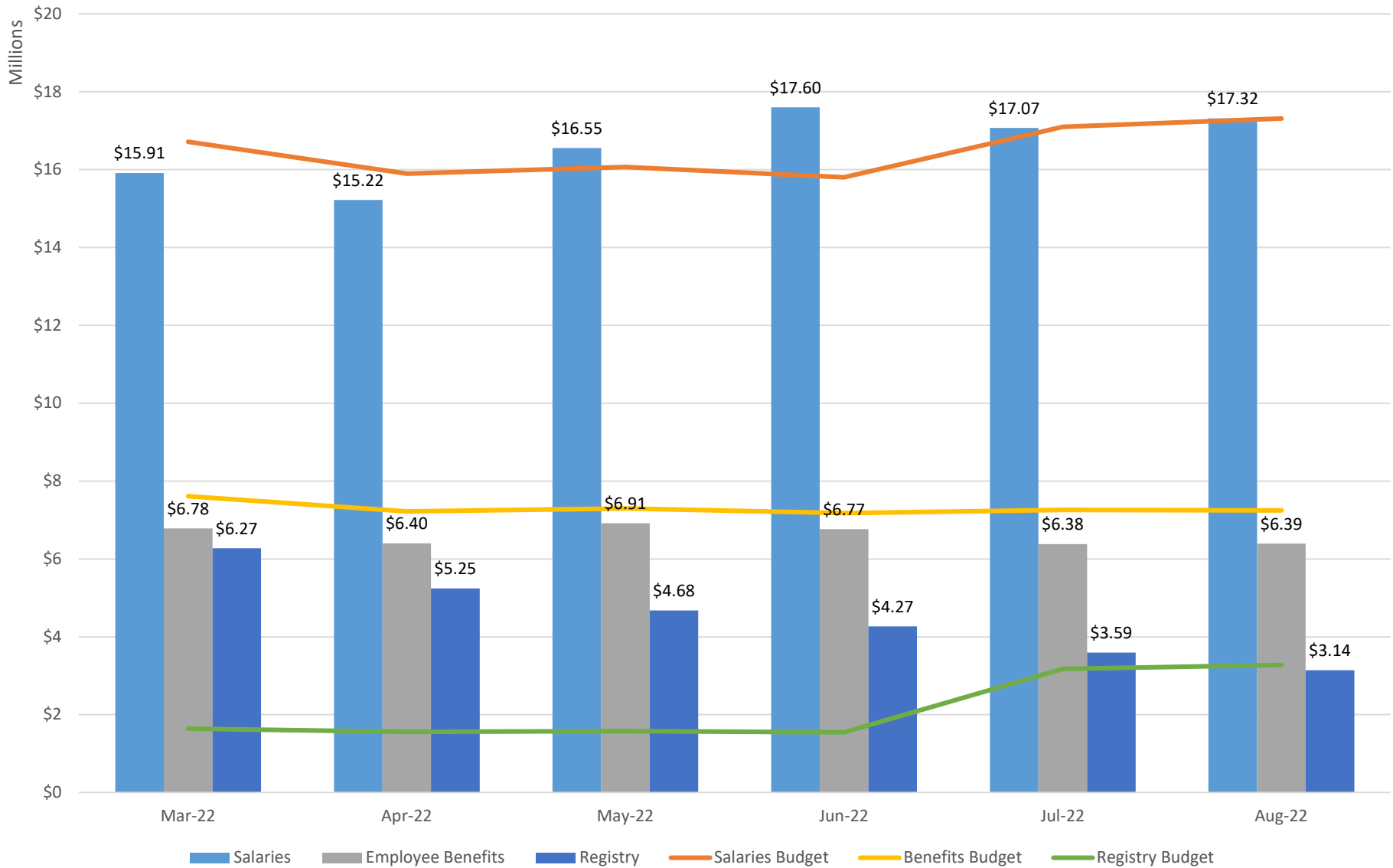
Indigent & Correctional Revenue



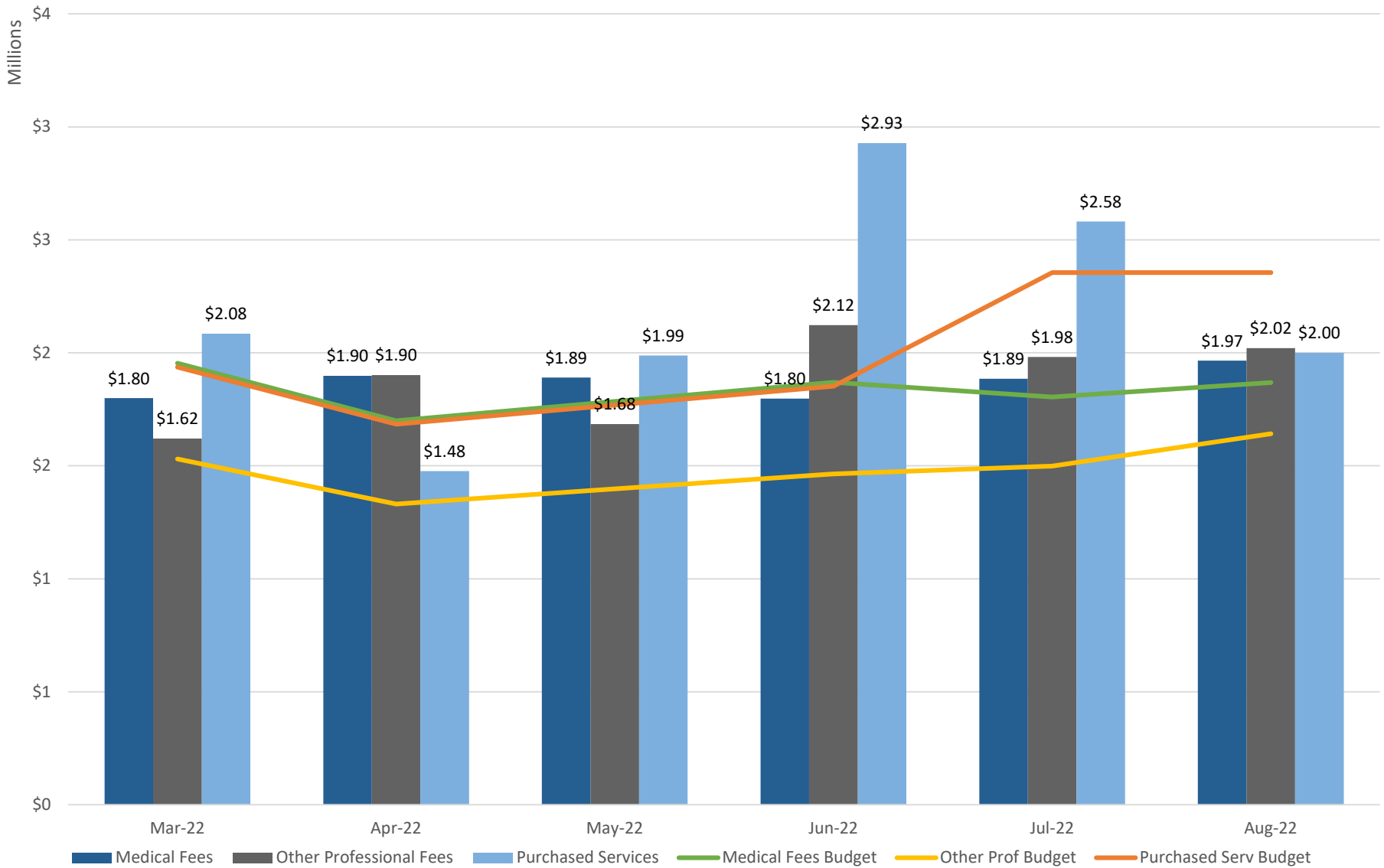
Total Revenue



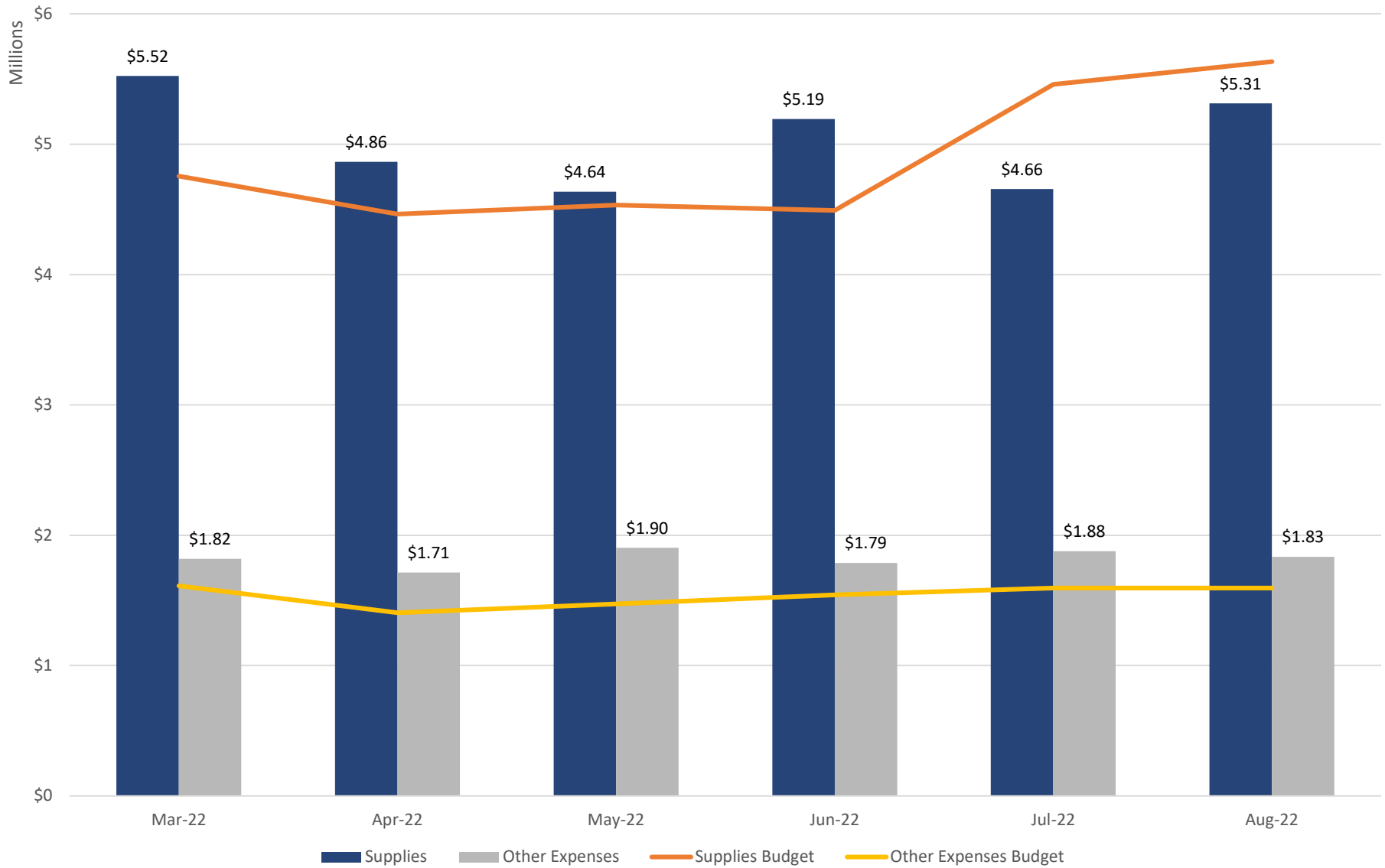
Expenses



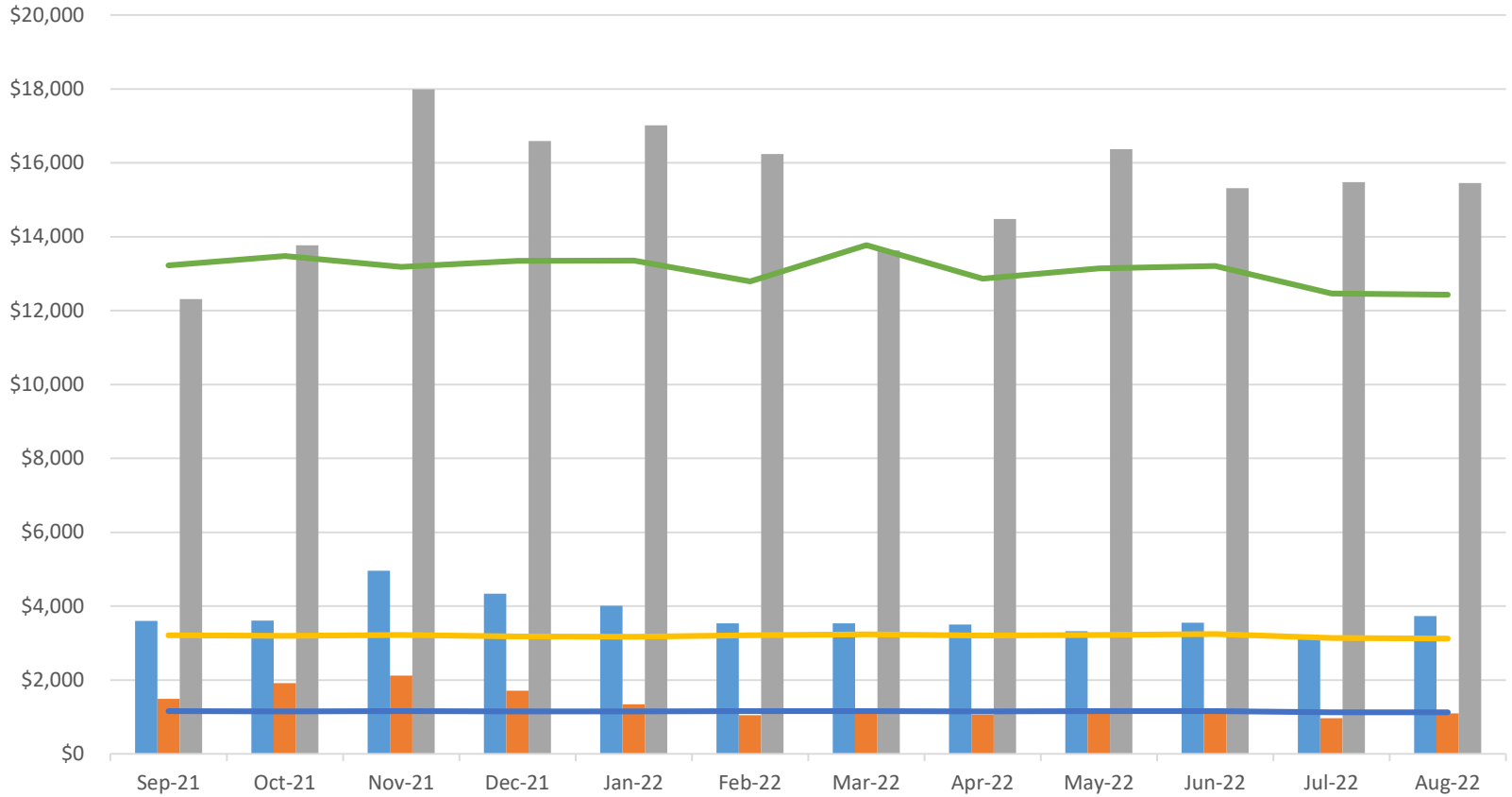
Expenses



Expenses

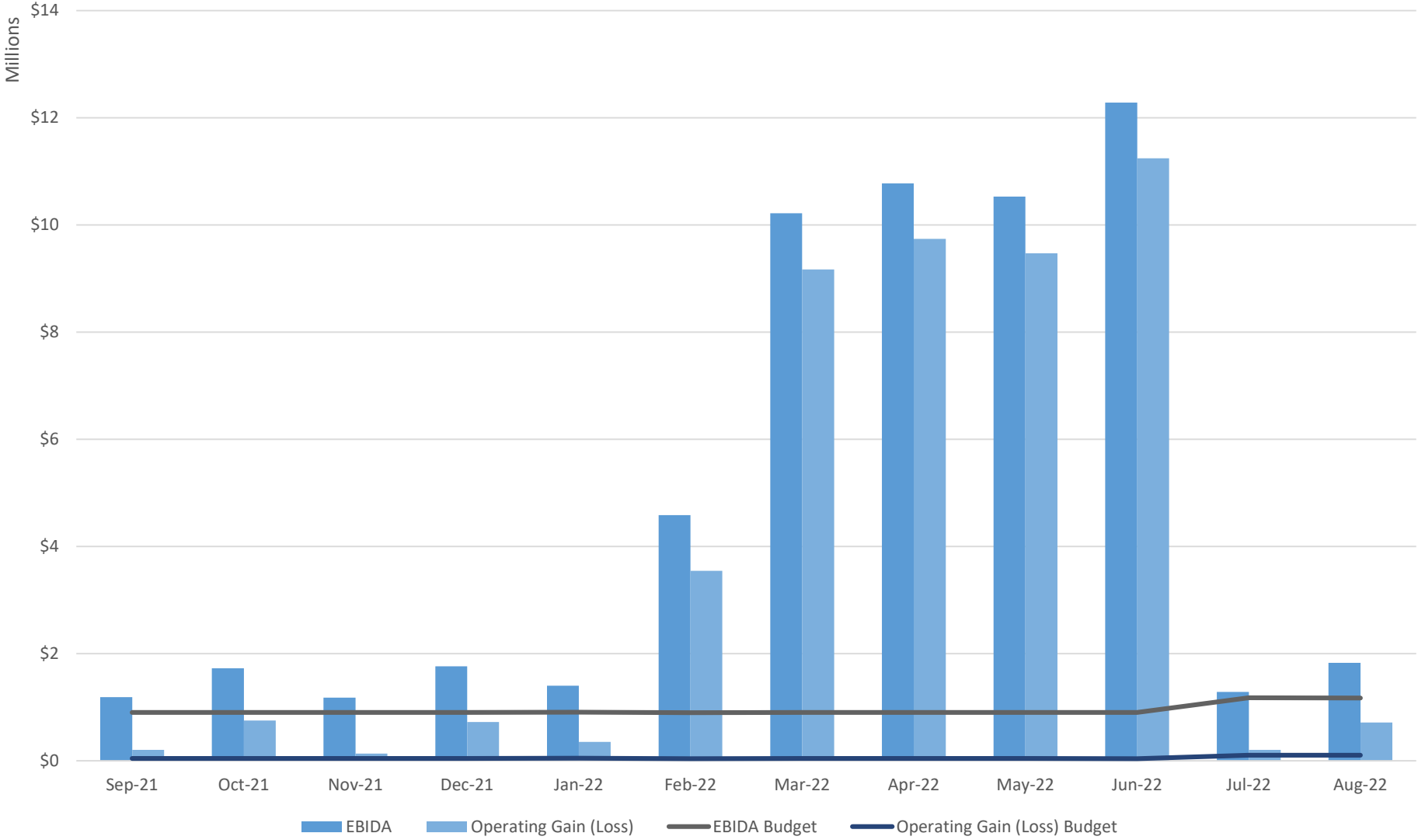


Operating Metrics

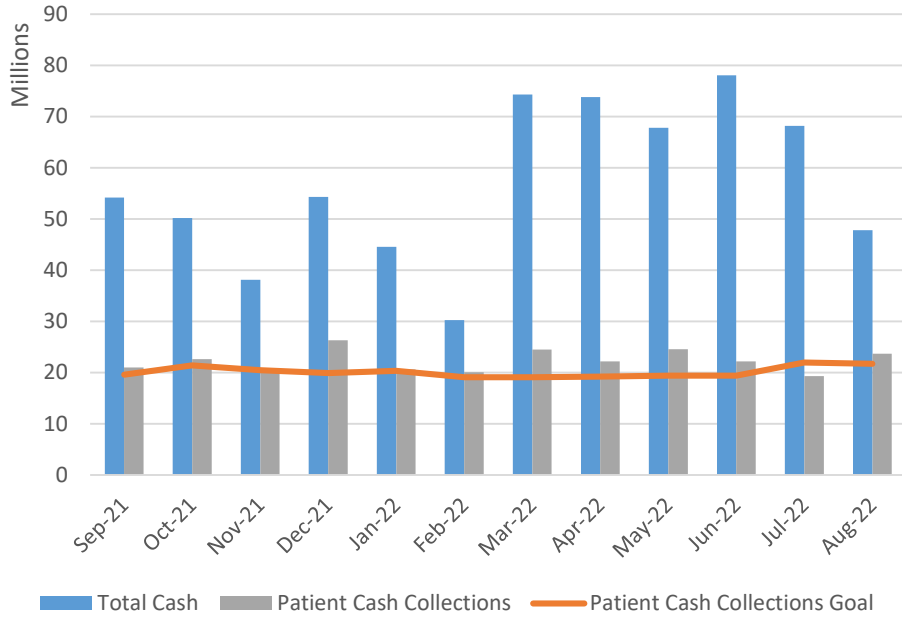


	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22
Supply Expense per AA	\$3,603	\$3,606	\$4,959	\$4,333	\$4,007	\$3,534	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728
Pharm Cost per AA	\$1,492	\$1,918	\$2,120	\$1,712	\$1,339	\$1,048	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101
Net Revenue Per AA	\$12,316	\$13,769	\$17,988	\$16,591	\$17,019	\$16,237	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451
Budget Supp/AA	\$3,214	\$3,196	\$3,217	\$3,175	\$3,174	\$3,208	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125
Budget Pharm/AA	\$1,155	\$1,154	\$1,156	\$1,153	\$1,153	\$1,154	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126
Budget Net Rev/AA	\$13,228	\$13,477	\$13,187	\$13,344	\$13,359	\$12,793	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428

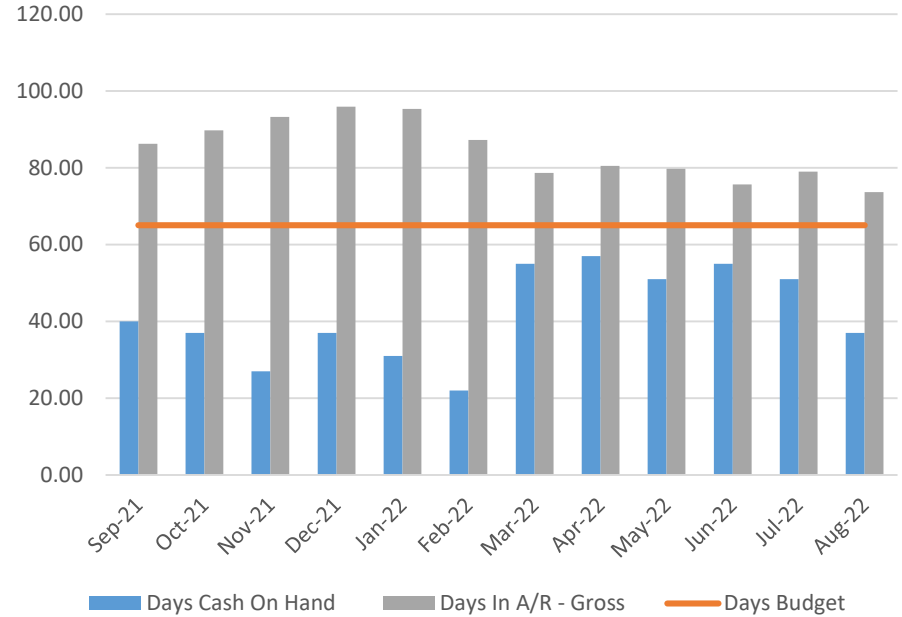
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



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

	FY 2022 JUNE	FY 2023 JULY	FY 2023 AUGUST	BUDGET AUGUST	VARIANCE POS (NEG)	PY AUGUST
Gross Patient Revenue	\$ 92,031,279	\$ 92,471,107	\$ 100,633,105	\$ 99,788,282	1%	\$ 96,350,613
Contractual Deductions	(69,654,856)	(69,920,186)	(78,610,132)	(77,385,919)	2%	(74,860,203)
Net Revenue	22,376,424	22,550,921	22,022,973	22,402,364	(2%)	21,490,410
Indigent Funding	15,221,199	14,191,888	14,191,888	14,370,622	(1%)	13,293,612
Correctional Medicine	2,583,481	2,746,855	2,746,855	2,746,855	0%	2,616,667
County Contribution	285,211	285,211	285,211	291,120	(2%)	282,894
Net Patient Revenue	40,466,315	39,774,875	39,246,927	39,810,960	(1%)	37,683,582
Other Operating Revenue	3,121,491	1,524,826	2,552,147	2,243,837	14%	1,898,278
Other Non-Operating Revenue	11,150,811	11,583	12,128	49,452	(75%)	15,365
Total Revenue	54,738,617	41,311,284	41,811,202	42,104,249	(0.7%)	39,597,226
Expenses						
Salaries	17,595,268	17,068,626	17,317,578	17,313,677	0.02%	16,465,028
Employee Benefits	6,766,110	6,384,561	6,391,119	7,249,416	(12%)	6,703,683
Registry	4,266,993	3,592,259	3,143,169	3,275,626	(4%)	2,517,340
Medical Fees	1,796,976	1,885,530	1,965,025	1,868,918	5%	1,762,641
Other Professional Fees	2,123,112	1,981,485	2,020,590	1,642,185	23%	1,536,384
Supplies	5,192,359	4,655,496	5,313,466	5,632,738	(6%)	5,831,342
Purchased Services	2,928,155	2,580,701	2,000,552	2,355,395	(15%)	1,989,885
Other Expenses	1,787,762	1,878,413	1,834,850	1,595,229	15%	1,729,296
Operating Expenses	42,456,737	40,027,072	39,986,349	40,933,182	(2%)	38,535,599
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 12,281,880	\$ 1,284,212	\$ 1,824,854	\$ 1,171,066	56%	\$ 1,061,626
EBIDA Margin	22%	3%	4%	3%	57%	3%
Interest	84,473	110,982	112,346	86,199	30%	84,590
Depreciation	659,869	674,589	703,915	682,877	3%	676,573
Amortization	294,594	294,594	294,594	300,890	(2%)	224,132
Total Expenses	43,495,674	41,107,238	41,097,204	42,003,149	(2%)	39,520,895
Operating Gain (Loss)	\$ 11,242,943	\$ 204,047	\$ 713,998	\$ 101,100	606%	\$ 76,331
Operating Margin	20.5%	0.5%	1.7%	0.24%	611%	0.19%

KERN MEDICAL
Year to Date: Revenue & Expense
August 31, 2022

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 193,104,212	\$ 196,425,500	(2%)	\$ 192,118,380	1%
Contractual Deductions	(148,530,318)	(152,329,763)	(2%)	(149,576,295)	(1%)
Net Revenue	44,573,894	44,095,738	1%	42,542,085	
Indigent Funding	28,383,777	28,741,244	(1%)	26,587,224	7%
Correctional Medicine	5,493,710	5,493,710	0%	5,233,333	5%
County Contribution	570,422	582,239	(2%)	565,787	1%
Net Patient Revenue	79,021,802	78,912,931	0%	74,928,429	5%
Other Operating Revenue	4,076,973	4,487,674	(9%)	3,714,384	10%
Other Non-Operating Revenue	23,711	98,903	(76%)	26,603	(11%)
Total Revenue	83,122,487	83,499,508	0%	78,669,416	6%
Expenses					
Salaries	34,386,204	34,411,305	(0%)	32,393,033	6%
Employee Benefits	12,775,680	14,481,462	(12%)	14,412,676	(11%)
Registry	6,735,428	6,453,091	4%	4,542,658	48%
Medical Fees	3,850,555	3,673,018	5%	3,566,065	8%
Other Professional Fees	4,002,075	3,141,570	27%	3,102,924	29%
Supplies	9,968,962	11,091,714	(10%)	11,126,666	(10%)
Purchased Services	4,581,253	4,710,790	(3%)	4,073,716	12%
Other Expenses	3,713,263	3,190,458	16%	3,111,699	19%
Operating Expenses	80,013,421	81,153,408	-1%	76,329,437	5%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 3,109,066	\$ 2,346,101	33%	\$ 2,339,979	33%
EBIDA Margin	4%	3%	33%	3%	26%
Interest	223,328	172,399	30%	169,270	32%
Depreciation	1,378,504	1,365,754	1%	1,359,357	1%
Amortization	589,189	601,779	(2.1%)	448,265	31%
Total Expenses	82,204,442	83,293,340	(1%)	78,306,328	5%
Operating Gain (Loss)	\$ 918,045	\$ 206,168	345%	\$ 363,087	153%
Operating Margin	1%	0.2%	347%	0%	139%

**KERN MEDICAL
BALANCE SHEET**

	AUGUST 2022	AUGUST 2021
ASSETS:		
<i>Total Cash</i>	\$ 47,786,154	\$ 52,499,010
Patient Receivables Subtotal	252,717,073	265,933,287
Contractual Subtotal	(206,072,172)	(227,625,541)
<i>Net Patient Receivable</i>	46,644,901	38,307,746
Total Indigent Receivable	161,294,962	140,004,522
Total Other Receivable	15,215,817	11,414,637
Total Prepaid Expenses	5,799,823	6,076,047
Total Inventory	4,165,675	4,331,180
<i>Total Current Assets</i>	280,907,332	252,633,141
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	226,081,437	213,675,922
Total Construction in Progress	7,369,085	8,980,837
<i>Total Property, Plant & Equipment</i>	233,450,522	222,656,759
Total Accumulated Depr & Amortization	(138,637,691)	(127,190,432)
<i>Net Property, Plant, and Equipment</i>	94,812,831	95,466,328
<i>Total Long Term Assets</i>	127,290,855	87,863,462
<i>Total Assets</i>	\$ 503,011,017	\$ 435,962,931

**KERN MEDICAL
BALANCE SHEET**

	AUGUST 2022	AUGUST 2021
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 16,002,490	\$ 17,276,556
Total Accrued Compensation	32,782,445	31,175,698
Total Due Government Agencies	16,651,280	35,206,228
Total Other Accrued Liabilities	24,199,527	44,059,426
<i>Total Current Liabilities</i>	89,635,742	127,717,908
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	61,859,422	80,914,207
<i>Total Long-Term Liabilities</i>	443,012,233	403,018,004
<i>Total Liabilities</i>	532,647,975	530,735,911
Fund Balance	36,714,022	36,714,022
Retained Earnings	(66,350,979)	(131,487,002)
<i>Total Fund Balance</i>	(29,636,958)	(94,772,981)
<i>Total Liabilities and Fund Balance</i>	\$ 503,011,017	\$ 435,962,931



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

October 19, 2022

Subject: Kern County Hospital Authority Chief Executive Officer Report

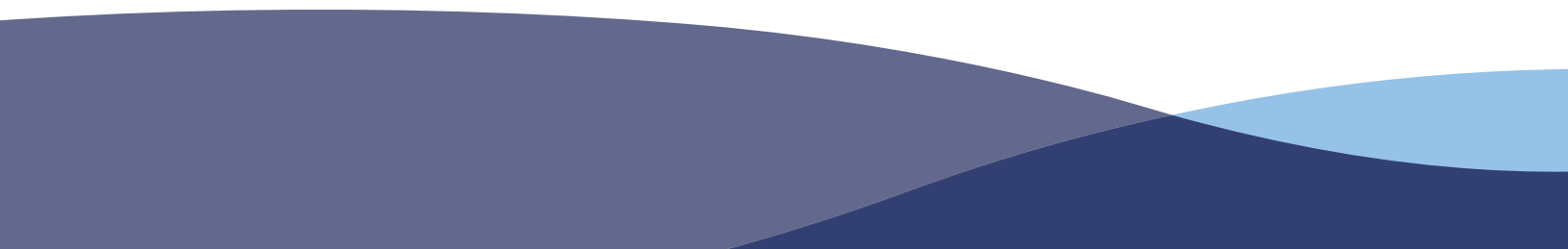
Recommended Action: Receive and File

Summary:

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



What's Happening?



INTERNATIONAL SIM VIDEO CONTEST SUBMISSION

▶ Simulation Center - Mass Casualty Incident Drill



RN RECRUITMENT EVENT

When?

Wednesday, September 28
9:00 am - 1:00 pm

Where?

① 1700 Mount Vernon Ave
D Wing - at the main entrance

- Please bring your resume
- Check-in is in the main lobby

Experienced RN Recruitment Event!

*Pre-registration preferred but not required
Register here: <http://bit.ly/exprn>



FT Nurse Referral Bonus \$1500!

KERN COUNTY FAIR - OCTOBER 1ST

SATURDAY, OCTOBER 1ST



Visit Our Booth
Inside the Main Entrance

**FREE
GIVEAWAYS
&
LEARN ABOUT**

The Simulation Center
Health Screenings | Behavioral Health
Hydration & Healthy Choices
Careers in Healthcare | Valley Fever

NAMI WALK



A United Day of Hope

Saturday, October 8, 9am - Yokuts Park

Entertainment and Martial Arts Showcase

VETERANS STAND DOWN

KERN COUNTY VETERANS STAND DOWN

**THURSDAY
OCTOBER 13, 2022**

All Veterans Welcome!

Stramler Park

3805 Chester Avenue
(Near Sam Lynn Ball park)

Veterans Court

Register with CVAF between
8/ 01/ 22 - 9/ 02/ 22
1617 30th Street
(661)455-7400

Transportation

Call (661)455-7400

Gates open from: 8:00am to 3:00pm



CALIFORNIA VETERANS ASSISTANCE FOUNDATION

BREAST CANCER AWARENESS



NATIONAL RECOGNITIONS IN SEPTEMBER

- National Clinical Nurse Specialist Recognition Week (CNS week) (Sept. 1-7)
- Vascular Nurses Week (Sept. 5-11)
- Neonatal Nurses Week (Sept. 13-19)
- National Surgical Technologists Week (Sept. 18-24)
- Nursing Professional Development Week (Sept. 20-24)
- Pain Awareness
- Childhood Cancer
- Sickle Cell Awareness

NATIONAL RECOGNITIONS IN OCTOBER

- American Pharmacist Month
- Breast Cancer Awareness Month
- National Physical Therapy Month
- World Hospice and Palliative Care Day (Oct. 13)
- Medical Assistants Recognition Week (Oct. 15-19)
- Pharmacy Technician Day (Oct. 16)
- International Infection Prevention Week (16-21)
- Medical Assistants Recognition Day (Oct. 17)
- Healthcare Quality Week (Oct. 21-27)

DID YOU KNOW

What is Sickle Cell Disease?

- A group of disorders that cause red blood cells to become misshapen and break down.
- With sickle cell disease, an inherited group of disorders, red blood cells contort into a sickle shape. The cells die early, leaving a shortage of healthy red blood cells (sickle cell anemia), and can block blood flow causing pain. (sickle cell crisis).
- It leads to clinical manifestations like pain, fatigue, damage to the heart, lungs, brain and the rest of the body.



DID YOU KNOW

Sickle Cell by the Numbers

- The life expectancy of a sickle cell patient in California is 44 years old
- Approx 1 in every 350 African Americans are affected – but it can affect any race
- Our patient ages range from 18-60
- Sickle cell patients are underserved – there are only 8 Sickle Cell Centers in the state of California, including Kern Medical.



DID YOU KNOW

Sickle Cell Center

Prior to the opening of the Sickle Cell Center, patients used to go to the Emergency Room with pain. Now, they can call the center, avoid the ER altogether, and we can manage their pain and/or symptoms in the infusion center instead.

Since the clinic opened last year, we've had more than 350 patient visits, and the frequency of hospital admissions has dropped significantly.



DID YOU KNOW

It takes a team

These complex cases require a team approach.

Once a month, patients come to the center to see their Hematologist, Primary Care Physician, Pain Specialist, Community Health Worker, Social Worker, and Nurse **all at same time.**



DID YOU KNOW

Hina Patel Foundation

We partner together to offer activities & education for patients and their families.

Sickle Cell Empowerment Group



Foundation Mission

To increase public awareness about Sickle Cell Disease through education, and to provide support through medical research, accessible services, and intervention for suffering individuals, with an ultimate goal of enhancing the well-being of those affected by Sickle Cell Disease locally and globally.

Vision

Hina Patel Foundations promotes positive outlook and lifestyle for greater well-being by equipping patients with lifetime coping by increasing the knowledge and understanding of Sickle Cell Disease as a health problem through professional standards of administration, health care, public relations and fundraising.

**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 October 19, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on October 19, 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: Patricia Smith v. Kern
Medical Center, and DOES 1 through 10, Kern County Superior Court Case No.
BCV-18-101315 –

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

Government Code Section 54956.9

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

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

Government Code Section 54956.9

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- X CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Government Code Section 54956.9, subdivisions (d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Claim of Jeffry Huffman –

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

Government Code Section 54956.9

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 X CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: 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
PUBLIC STATEMENT REGARDING CLOSED SESSION**

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on October 19, 2022, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on October 19, 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 October 19, 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) –