



## **AGENDA**

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

**Kern Medical Center  
1700 Mount Vernon Avenue  
Conference Room 1058  
Bakersfield, California 93306**

Regular Meeting  
Wednesday, April 15, 2020

11:30 A.M.

#### **BOARD TO RECONVENE**

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

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

CA

- 4) Proposed reappointment of Director Amir Berjis, M.D. to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2023 –  
**REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT**

CA

- 5) Proposed reappointment of Director Stephen Pelz to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2023 –  
**REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT**

CA

- 6) Proposed Agreement with Lenovo (United States) Inc., an independent contractor, for contingency purchase of computers, hardware and or software, for a term of three years, in an amount not to exceed \$900,000, effective upon signature of all parties –  
**APPROVE; AUTHORIZE CHAIRMAN TO SIGN**

CA

- 7) Proposed Amendment No. 2 to Agreement 078-2018 with Ray A Morgan Company, an independent contractor, for lease and maintenance of printers and facsimile machines, for the period November 14, 2018 through November 13, 2023, increasing the maximum payable by \$338,294, from \$1,931,710 to \$2,270,004, to cover the term, effective April 15, 2020 –  
**APPROVE; AUTHORIZE CHAIRMAN AND CHIEF EXECUTIVE OFFICER TO SIGN**



CA

- 8) Proposed retroactive Agreement with Advanced Technologies Group, Inc., an independent contractor, containing nonstandard terms and conditions, for subscription services to the Environment of Care Rounding Solution from January 1, 2020 through December 31, 2020, in an amount not to exceed \$3,780 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed retroactive Agreement with Philips Healthcare, a division of Philips North America LLC, an independent contractor, for purchase of a CombiDiagnost R90 Fluoroscopy Machine and service agreement from March 9, 2020 through March 8, 2025, in an amount not to exceed \$689,543, plus applicable construction costs not to exceed \$598,000 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 10) Proposed retroactive Teleradiology Services Agreement and Credentialing and Privileging Agreement with Virtual Radiologic Professionals of California, P.A. (vRad), an independent contractor, for teleradiology services and delegated credentialing of practitioners from April 13, 2020 through April 12, 2021, with an option to renew for an additional one-year term, in an amount not to exceed \$910,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN TELERADIOLOGY SERVICES AGREEMENT AND CHIEF EXECUTIVE OFFICER TO SIGN CREDENTIALING AND PRIVILEGING AGREEMENT

CA

- 11) Proposed amended and restated Bylaws of the Kern Medical Auxiliary, effective April 15, 2020  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed retroactive Resolution regarding medical staff credentialing during the COVID-19 emergency, effective March 1, 2020 –  
APPROVE; ADOPT RESOLUTION

CA

- 13) Proposed retroactive Agreement with IPFS Corporation of California, an independent contractor, to finance earthquake coverage through Specialty Risk Underwriters from March 31, 2020 through March 31, 2021, in an amount not to exceed \$294,970 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN THE PREMIUM FINANCE AGREEMENT AND CERTIFICATE OF INCUMBENCY

CA

- 14) Proposed retroactive Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology from April 1, 2020 through March 31, 2021, in an amount not to exceed \$375,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 15) Kern County Hospital Authority Financial report –  
RECEIVE AND FILE

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

CA

- 17) Claims and Lawsuits Filed as of March 31, 2020 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MAY 20, 2020, 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.

17) CLAIMS AND LAWSUITS FILED AS OF MARCH 31, 2020 –  
RECEIVE AND FILE

- A) Claim in the matter of Dametrias Anderson
- B) Claim in the matter of Juana Aguilera
- C) Summons and Complaint in the matter of Maria E. Cuellar De Polanco, an Individual v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-20-100101
- D) Summons and Complaint in the matter of Isaac Salas, a minor, by and through his Guardian ad Litem Ariana Santiago v. Kern County Hospital Authority dba Kern Medical Center, et al., Kern County Superior Court Case No. BCV-20-100675



## **SUMMARY OF PROCEEDINGS**

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

**Kern Medical Center  
1700 Mount Vernon Avenue  
Conference Room 1058  
Bakersfield, California 93306**

**Regular Meeting  
Wednesday, March 18, 2020**

11:30 A.M.

#### **BOARD RECONVENED**

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Sistrunk  
ROLL CALL: 4 Present; 3 Absent - Alsop, Brar, Sistrunk

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.

#### **NON-AGENDA ITEM**

MOTION TO CONSIDER NON-AGENDA ITEM NO. 13A: MADE FINDING THAT THE NEED TO TAKE ACTION ON NON-AGENDA MATTER OCCURRED AFTER THE AGENDA WAS POSTED ON MARCH 13, 2020. ON MARCH 13, 2020, BUT AFTER THE AGENDA WAS POSTED, THE KERN COUNTY HOSPITAL AUTHORITY DETERMINED THE AGREEMENT FOR PROFESSIONAL SERVICES WITH RANDOLPH FOK, M.D., WOULD EXPIRE ON MARCH 31, 2020. THE AGREEMENT WITH DR. FOK REQUIRES APPROVAL OF THE BOARD OF GOVERNORS PRIOR TO ITS EFFECTIVE DATE OF APRIL 1, 2020. DUE TO THE IMPACT ON OPERATIONAL ISSUES AND THE ECONOMIC CONSEQUENCES OF NOT APPROVING THE AGREEMENT BEFORE ITS EFFECTIVE DATE, IT IS NECESSARY FOR THE BOARD OF GOVERNORS TO CONSIDER THE AGREEMENT AT ITS REGULAR MEETING ON MARCH 18, 2020. THE NEXT REGULAR MEETING OF THE BOARD OF GOVERNORS IS SCHEDULED FOR APRIL 15, 2020, AFTER THE APRIL 1, 2020, EFFECTIVE DATE OF THE AGREEMENT

**Pelz-Berjis: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

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!**  
**NO ONE HEARD**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

**DIRECTOR BERJIS PROVIDED AN UPDATE ON THE STATUS OF GRADUATE MEDICAL EDUCATION UNDER CIRCUMSTANCES OF COVID-19**

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing staff for exceeding "Up Sooner Safer" Safe Patient Mobility Program goals –  
**MADE PRESENTATION**

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on February 12, 2020 –  
**APPROVED**  
**Berjis-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

CA

- 5) Proposed acceptance of donations from CNA and Safety National for travel and related expenses to cover all costs for one Kern Medical Center employee to attend the American Society for Health Care Risk Management "ASHRM Academy 2020" in Atlanta, Georgia, from April 20-23, 2020 –  
**WITHDRAWN**

CA

- 6) Proposed Amendment No. 1 to Agreement 032-2019 with M. Brandon Freeman, M.D., a contract employee, for professional medical services in the Department Surgery for the period July 17, 2019 through July 16, 2022, adding services as Medical Director of the Wound Care Clinic, and increasing the maximum payable by \$60,000, from \$1,800,000 to \$1,860,000, to cover the cost of additional services, effective March 18, 2020 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 007-2020  
**Berjis-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

CA

- 7) Proposed retroactive Amendment No. 1 to Agreement 073-2018 with Naheedy and Zarandy Medical Group, Inc., an independent contractor, for professional medical services in the Department of Radiology from November 1, 2018 through October 31, 2020, revising the payment methodology for shift coverage, and increasing the maximum payable by \$20,000, from \$730,000 to \$750,000, to cover the term, effective January 1, 2020 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 008-2020  
**Berjis-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

- 8) Proposed Resolution affirming commitment of the Board of Governors to patient safety at Kern Medical Center –  
APPROVED; ADOPTED RESOLUTION 2020-004  
**Pelz-Berjis: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

- 9) Proposed renewal and binding of all-risk property insurance through CSAC-EIA, and earthquake coverage through Specialty Risk Underwriters with a total dedicated coverage limit of \$25 million, from March 31, 2020 through March 31, 2021, in an amount not to exceed \$479,178, plus administrative costs –  
APPROVED  
**McLaughlin-Pelz: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

- 10) Request to employ retired Kern County Hospital Authority employee Manuel Acosta, as Extra Help PACS Administrator, for the period ending June 30, 2020, or 960 hours, whichever occurs first, effective March 28, 2020 –  
APPROVED  
**Berjis-Pelz: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

- 11) Kern County Hospital Authority Financial report –  
RECEIVED AND FILED  
**Pelz-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**
- 12) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**Berjis-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

CA

- 13) Claims and Lawsuits Filed as of February 29, 2020 –  
RECEIVED AND FILED  
**Berjis-McLaughlin: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**
- 13A) Proposed Agreement with Randolph Fok, M.D., an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from April 1, 2020 through March 31, 2022, in an amount not to exceed \$685,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 009-2020  
**Berjis-Pelz: 4 Ayes; 3 Absent - Alsop, Brar, Sistrunk**

ADJOURNED TO CLOSED SESSION  
**McLaughlin-Pelz**

NOTE: DIRECTOR BRAR JOINED CLOSED SESSION AFTER THE MEETING  
ADJOURNED

CLOSED SESSION

- 14) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 15) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Martin L. Goldman, M.D., an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-18-100390 SDS – SEE RESULTS BELOW
- 16) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION  
**Pelz-Berjis**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 14 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 MCLAUGHLIN, SECOND BY DIRECTOR PELZ; 2 ABSENT - DIRECTORS ALSOP AND SISTRUNK), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, REQUEST FOR ADDITIONAL PRIVILEGES; VOLUNTARY RESIGNATION OF PRIVILEGES; AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 15 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Martin L. Goldman, M.D., an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-18-100390 SDS – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 16 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, APRIL 15, 2020, AT 11:30 A.M.  
**McLaughlin**

/s/ Mona A. Allen  
Authority Board Coordinator

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





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

April 15, 2020

**Subject:** Proposed reappointment of Director Amir Berjis, M.D. to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2023

**Recommended Action:** Refer to Kern County Board of Supervisors to make appointment

**Summary:**

Director Amir Berjis, M.D. was reappointed to the Board of Governors for a term of three years, expiring June 30, 2020. Members may serve an unlimited number of terms if reappointed by the Kern County Board of Supervisors.

Director Berjis, as required by the authority's Bylaws for Governance, has notified your Board Chairman in writing of his intent to seek reappointment to the Board of Governors. He is not required to submit a new application for reappointment. The Bylaws requires your Board to notify the Board of Supervisors of a member's intent to continue to serve on the Board of Governors.

Therefore, it is recommended that your Board refer this item to the Kern County Board of Supervisors to make the reappointment of Director Berjis for a three-year term expiring June 30, 2023.



April 2, 2020

**HAND DELIVERED**

Russell E. Bigler, Chairman  
Board of Governors  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

Re: Reappointment to Kern County Hospital Authority Board of Governors

Dear Mr. Bigler:

As you may know, my term of office on the Kern County Hospital Authority Board of Governors expires June 30, 2020. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2023. Such notice is provided pursuant to Section 2.05 of the Kern County Hospital Authority Bylaws for Governance. Please take appropriate measures to ensure the Kern County Board of Supervisors is notified timely of my intent to continue to serve on the Board of Governors, as required by the Bylaws for Governance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amir Berjis", with a long horizontal flourish extending to the right.

Amir Berjis, M.D.



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

April 15, 2020

**Subject:** Proposed reappointment of Director Stephen Pelz to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2023

**Recommended Action:** Refer to Kern County Board of Supervisors to make appointment

**Summary:**

Director Stephen Pelz was reappointed to the Board of Governors for a term of three years, expiring June 30, 2020. Members may serve an unlimited number of terms if reappointed by the Kern County Board of Supervisors.

Director Pelz, as required by the authority's Bylaws for Governance, has notified your Board Chairman in writing of his intent to seek reappointment to the Board of Governors. He is not required to submit a new application for reappointment. The Bylaws requires your Board to notify the Board of Supervisors of a member's intent to continue to serve on the Board of Governors.

Therefore, it is recommended that your Board refer this item to the Kern County Board of Supervisors to make the reappointment of Director Pelz for a three-year term expiring June 30, 2023.



April 2, 2020

**HAND DELIVERED**

Russell E. Bigler, Chairman  
Board of Governors  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

Re: Reappointment to Kern County Hospital Authority Board of Governors

Dear Mr. Bigler:

As you may know, my term of office on the Kern County Hospital Authority Board of Governors expires June 30, 2020. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2023. Such notice is provided pursuant to Section 2.05 of the Kern County Hospital Authority Bylaws for Governance. Please take appropriate measures to ensure the Kern County Board of Supervisors is notified timely of my intent to continue to serve on the Board of Governors, as required by the Bylaws for Governance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "S. Pelz", with a long horizontal flourish extending to the left.

Stephen Pelz



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

April 15, 2020

**Subject:** Proposed Customer Agreement with Lenovo (United States) Inc., to provide an alternative vendor for the purchase of computers and software

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

**Summary:**

Kern Medical requests your Board approve the proposed Customer Agreement with Lenovo (United States) Inc., for the possible future purchase of hardware or software that Lenovo makes available for purchase.

Lenovo will serve as a second vendor for desktops, laptops, monitors, and peripherals. This proposed Agreement will provide Kern Medical the ability to obtain IT equipment at the best possible price at the time of purchase and maintain as-needed delivery times by establishing an alternate supply chain with Lenovo. As a part of the Kern Medical 4-year lifecycle plan, we anticipate no more than 20% of the current device base will be end-of-life IT equipment. This proposed Agreement allows Kern Medical to execute the 4-year lifecycle plan with the use of two suppliers.

The Kern Medical IT Department has reached out to additional vendors and this vendor's products are comparable to our current vendor and sometimes at a lower cost.

Kern Medical is requesting that we enter into this Agreement in anticipation of purchasing equipment and software. At this time, we do not have any projected purchases, but are anticipating that if our other vendor were unable to produce necessary equipment, we would have to purchase over \$250,000 of equipment and software through this proposed Agreement.

Therefore, it is recommended that your Board approve this Customer Agreement with Lenovo (United States) Inc., effective on the date of Lenovo's signature for a term of three (3) years, with the ability to purchase up to \$300,000 of equipment and software for each year of the Agreement for a maximum payable of \$900,000, and authorize the Chairman to sign.



## Customer Agreement Personal Computers

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This Lenovo Customer Agreement ("Agreement") is made by and between Lenovo (United States) Inc., a Delaware corporation with offices at 1009 Think Place, Morrisville, North Carolina 27560 ("Lenovo"), and the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center with offices located at 1700 Mt. Vernon Ave. Bakersfield, CA 93306 ("Customer"). Customer and Lenovo may be referred to collectively in this Agreement as "parties" and individually as "party."

NOW, THEREFORE, in consideration of the mutual covenants and promises herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### 1. Definitions

**1.1 Product** means any Lenovo branded or third party hardware or software that Lenovo makes available for purchase by Customer under this Agreement. Hardware Products include personal computers and accessories. Software Products include computer software programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.

**1.2 Service** means the performance of a task; the provision of advice or assistance; or access to a resource such as an information database that Lenovo makes available to Customer under this Agreement.

### 2. Attachments and Transaction Documents

Additional terms for Products and Services may be in documents called "Attachments" and "Transaction Documents." In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to an individual transaction. There may be one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions. If there is a conflict among the terms of this Agreement, an Attachment or a Transaction Document, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

### 3. Applicability, Orders and Delivery

Customer accepts the terms in Attachments and Transaction Documents by: (i) signing the Attachments or Transaction Documents (by hand or electronically); (ii) using the Product or Service, or allowing others to do so; or (iii) making any payment for a Product or Service. A Product or Service becomes subject to this Agreement when Lenovo accepts Customer's order by sending Customer written acceptance of the order; by shipping the Product; or by otherwise making the software Product or Service available to Customer. Confirmation of Lenovo's receipt of a Customer order does not constitute Lenovo's acceptance of the order.

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For software Products that Lenovo provides to Customer in tangible form, Lenovo fulfills its shipping and delivery obligations upon the delivery of such software Products to the Lenovo-designated carrier, unless otherwise agreed to in writing by Customer and Lenovo. An Attachment or Transaction Document will be signed by both parties if requested by either party.



#### **4. Prices and Payment**

Prices for Products and Services shall be as set forth in Attachment B or as otherwise agreed by the parties in writing. If not paid in advance of shipment, all undisputed amounts are due upon receipt of invoice. Any amounts not received by Lenovo within thirty (30) days of receipt of invoice shall be overdue. Customer shall pay a late payment fee of the lesser of one and one half (1.5%) percent per month or the maximum rate permitted by applicable law on the undisputed overdue balance of the invoice amount. Customer shall pay any applicable sales, use or similar taxes, fees or duties unless Customer provides exemption documentation to Lenovo. Customer is responsible for taxes, if any, on Products and Services from the date Lenovo ships them to Customer or the date on which the Services are provided by Lenovo. No other discounts, quantity entitlements, or promotions apply unless expressly agreed in writing by Lenovo. Delivery charges, if applicable, will be specified in an invoice.

#### **5. Title and Risk of Loss**

**5.1** Lenovo transfers title to hardware Products to Customer upon delivery to Lenovo's designated carrier for shipment to Customer. Lenovo does not transfer title to Programs.

**5.2** Lenovo shall bear the risk of loss or damage to hardware Products until they are delivered to Lenovo's designated carrier for shipment to Customer. Thereafter, Customer assumes risk of loss or damage. Hardware Products will be covered by insurance, arranged and provided by Lenovo for Customer, covering the period until they are delivered to Customer. If Customer notifies Lenovo of a lost or damage shipment of hardware, Lenovo shall cure the issue with the carrier and Customer. Customer, at its option, may elect to receive replacement hardware Products in lieu of reimbursement for the price of the lost or damaged hardware Products. Customer may dispute those amounts on an invoice for lost or damaged shipments of Products.

#### **6. Warranty**

**6.1** Lenovo warrants that each Lenovo branded hardware Product purchased by Customer, for Customer's own use and not for resale, is free from defects in materials and workmanship under normal use during the warranty period. The warranty period for a hardware Product starts on the original date of purchase specified on Lenovo's invoice unless specified otherwise by Lenovo in writing. The warranty period and type of warranty service that apply to a hardware Product are specified in Attachment A: Warranty Service Information (Personal Computer Products).

**6.2** This warranty shall not apply to any hardware Product which has been subjected to misuse, accident, unauthorized modification; operated in an unsuitable physical or operating environment; subjected to natural disasters, power surges or unauthorized maintenance; to any third party hardware product, including those that Lenovo may provide or integrate into a hardware Product at Customer's request; or to software, whether provided with a hardware Product or installed subsequently. This warranty does not include any technical support, such as assistance with "how-to" questions and those regarding hardware Product set-up and installation. This warranty shall be voided by the removal or alteration of identification labels on a hardware Product or its parts. In no event shall this warranty include liability for uninterrupted or error-free operation of a hardware Product, correction of all defects; or any loss of, or damage to data by a hardware Product.

**6.3 THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ALL SOFTWARE, SERVICE, SUPPORT AND ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES TO CUSTOMER.**

## **7. General**

**7.1 Product, Part or Component Changes.** Lenovo may change components or parts of a hardware Product without notice provided that the substituted components or parts provide equal or better performance. Any such change shall be at no additional cost to Customer, and will not change Customer's rights under the Lenovo hardware Product warranty.

**7.2 Returns.** Customer may return a new, standard Product that is still in its sealed, unopened package, to Lenovo for any reason within twenty-one (21) days of the date of invoice for a refund or credit. Customers may only return the entire Product or all such Products for a refund or credit. Partial refunds or credits for Products that are not standard; or Products configured to Customer's requirements, including installation of software Product options; or quantities of Products that are not separately priced, are not available to Customers. In order to receive a credit or refund, Customer must contact its Lenovo Customer Support Representative to obtain a return-authorization form. Customer must return the new Product, including all documentation and accessories, intact and in its unopened original packaging to the location and by the date specified by Lenovo. A copy of the invoice, the return-authorization form, and the shipping label must accompany the returned Product. Shipping and handling charges will not be refunded or credited to Customer. Products returned without a Lenovo return-authorization form, or returned after the date specified by Lenovo, may be subject to a restocking fee in the amount of fifteen percent (15%) of the price paid.

Customer agrees to pay the restocking fee if charged by Lenovo. A refund or credit is not available for the return of Products which are not generally available to customers and for which Lenovo created a unique machine type model (MTM) or a part number. Returns of Products shipped as a result of a Lenovo error will be accepted by Lenovo. Lenovo will initiate a return of such Products with appropriate documentation at no charge to Customer if Lenovo is notified of the error within twenty one (21) days of the date of the invoice. If Customer acquired a software Product separate from a hardware Product, and paid a software license fee, but does not agree to the terms of the license, Customer may return the software Product within twenty one (21) days of the date of invoice and receive a refund or credit in the amount of the fee.

**7.3 Customer Sale of Products and Services.** If Customer sells Products or Services purchased from Lenovo in competition with Lenovo resellers, Lenovo may terminate this Agreement and discontinue sales to Customer.

**7.4 Customer Information.** Lenovo and its affiliates may store, use and process contact information and other information about Customer, not including protected health information, including names, phone numbers, addresses, and e-mail addresses, necessary to perform under this Agreement, including but not limited to warranty service. Such information will be processed and used in connection with this Agreement and the Products or Services. It may be transferred by Lenovo to any country where Lenovo does business; and may be provided to entities acting on Lenovo's behalf in relation to this Agreement and the Products or Services. Lenovo may also disclose such information where required by law.

### **Indemnification.**

- (a) **Customer Indemnification.** Customer agrees to indemnify, defend and hold harmless Lenovo and their members, elected and appointed officials and officers, agents, and employees from any and all claims, demands, judgments, damages, costs, expenses (including, but not limited to attorney fees), fines, liens, liabilities or losses of whatever kind or nature, which arise from, or in any way relating to, its respective acts or omissions, and the acts or omissions of its officers, agents, contractors, customers, and employees, under this Agreement. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of and/or by any person or entity.
- (b) **Lenovo Indemnification.** Lenovo agrees to indemnify, defend and hold harmless Customer and their members, elected and appointed officials and officers, agents, and employees from any and all third party claims, demands, judgments, damages, costs, expenses (including, but not limited to attorney fees), fines, liens, liabilities or losses of whatever kind or nature, which arise from, or in any way relating to, its respective acts or omissions, and the acts or omissions of its officers, agents, contractors, customers, and employees, under this Agreement to the extent such actions result in (i) bodily injury or death to any person or persons; or (ii) damage to any real or tangible personal property, regardless



of where located, in each case arising from any Product provided or Services performed pursuant to this Agreement.

## **7.5 Limitation of Liability.**

**7.5.1** In any action arising out of or related to this Agreement or any order issued hereunder, neither party nor its affiliates shall be liable to the other party or its affiliates for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: (a); (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; or (d) loss of profits, business, revenue, goodwill or anticipated savings; and

**7.5.2** The maximum cumulative liability of either party and its affiliates to the other party and its affiliates for all actions arising out of or related to this Agreement and all orders issued hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the total amount paid or payable by Customer and its affiliates to Lenovo and its affiliates for all orders issued under this Agreement.

**7.5.3** The provisions of Sections 7.5.1 and 7.5.2 shall also limit the liability of Lenovo, its subcontractors, suppliers and program developers, collectively, to Customer and its affiliates.

**7.5.4** The provisions of Sections 7.5.1 and 7.5.2 shall not apply to, affect, or limit any of the party's duties to indemnify the other party in accordance with this Agreement.

**7.5.5** 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)*.

**7.6 Intellectual Property Infringement Protection.** If a third party claims that a Lenovo branded Product provided by Lenovo to Customer under this Agreement infringes that party's patent or copyright, Lenovo will defend Customer against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved by Lenovo, provided that Customer: (i) promptly notifies Lenovo in writing of the claim; (ii) allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations; and (iii) is and remains in compliance with Customer's obligations in this Section 7.6. The foregoing is Lenovo's entire obligation to Customer and Customer's exclusive remedy regarding any claim of infringement. If such a claim is made or appears likely to be made, Customer shall permit Lenovo, in Lenovo's sole discretion, to enable Customer to continue to use the Product; to modify it; or to replace it with one that is at least functionally equivalent. If Lenovo determines that none of these alternatives is reasonably available, Customer shall promptly return the Product to Lenovo at its written request. Lenovo will then provide a credit to Customer in an amount equal to the net book value of the Product according to generally accepted accounting principles. Lenovo shall have no obligation regarding any claim based upon: (i) anything Customer or a third party on Customer's behalf provides which is incorporated into, or combined with, a Product; (ii) unauthorized modification of a Product by Customer or a third party on Customer's behalf; (iii) the combination, operation, or use of a Product with any products not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, data, apparatus or business method that Lenovo did not provide; (iv) Lenovo's compliance with Customer's specifications or requirements; or (v) infringement by a third party Product alone.

**7.7 Insurance:** Lenovo will procure and maintain in effect during the term of this Agreement appropriate insurance coverage as referenced in Attachment D.. Customer requires insurance coverages for Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation and Employers Liability, and Fidelity Bond as applicable to services/goods provided in the underlying Agreement.

**Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. Neither party shall unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, by either party to an affiliate or to a successor organization by merger or acquisition, does not require the consent of the other party. Lenovo may assign its rights to payments under this Agreement without Customer's consent.

**7.8 Governing Law.** This Agreement and all orders issued hereunder will be governed under the laws of the State of California, without regard to its conflict of law principles. Neither party may bring an action arising out of or related to this Agreement more than two (2) years after the cause of action arose.

**7.9 Survival.** Any terms of this Agreement, which by their nature survive the expiration or termination of this Agreement, including but not limited to Limitation of Liability and Intellectual Property Infringement Protection, shall survive the expiration or termination of this Agreement.

**7.10 Force Majeure.** Except for payment obligations, neither party shall be liable to the other for any failure or delay in the performance of its obligations, to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature; acts of war; terrorism, riots, civil disorders, rebellions or revolutions; epidemics, communication line or power failures; governmental laws, court orders or regulations; or any other cause beyond its reasonable control.

**7.11 Term and Termination.** The term of this Agreement shall begin on the effective date and continue for three (3) years. Either party may terminate this Agreement without cause upon thirty (30) days' prior written notice to the other party. This Agreement may be extended as agreed by the parties in writing. Either party may terminate this Agreement if the other fails to comply with any material term, provided the party alleged not to be in compliance is given written notice of the non-compliance and reasonable time to cure.

**7.12 Complete Understanding.** This Agreement is the sole and complete understanding of the parties regarding the subject matter hereof, superseding all prior or contemporaneous agreements and understandings, whether written or oral. Additional Product or Service Descriptions, Price Lists, or Statements of Work may become part of this Agreement only when added by an amendment signed by both parties. Any additional or different terms not in a writing signed by both parties and any contrary terms on a Customer purchase order shall not be a part of this Agreement.

**7.13 Customer Affiliates.** Customer affiliates identified in Attachment C may place orders with Lenovo for the purchase of Products and Services under this Agreement subject to: (a) proof of creditworthiness satisfactory to Lenovo; or (b) Lenovo's receipt of a guarantee of payment from Customer for each such Customer affiliate in the form contained in Attachment C.

**7.14 Severability.** If the whole or any part of a provision of this Agreement is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, it shall be deleted and the remainder of this Agreement shall remain in full force and effect.

**7.15 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

**7.16 Attachments.** The following documents are incorporated herein and made a part of this Agreement:

Attachment A: Warranty Service Information (Personal Computer Products)  
Attachment B: Pricing, Products and Services Descriptions  
Attachment C: Customer Affiliates and Payment Guarantee

IN WITNESS WHEREOF, each party has caused this Agreement to be signed by its authorized representative effective as of the date of the signature of Lenovo's authorized representative.

**Kern County Hospital Authority**

Customer

**Lenovo (United States) Inc.**

Lenovo

By \_\_\_\_\_

Authorized signature

Name:

(type or print)

Title: Chairman, Board of Governors

Date: 04/15/2020

Customer address:

Kern Medical Center

1700 Mt. Vernon Ave.

Bakersfield, CA 93306

Attn: Chief Executive Officer

Tel 661 326 2102

Fax 661 326 2100

E-mail address: contracts@kernmedical.com

By  \_\_\_\_\_

Authorized signature

Name: Roby Walsh

(type or print)

Title: Account Executive

Date: 04/09/2020

Lenovo address:

Lenovo

1009 Think Place

Morrisville, NC 27560

Attn: Kathy O'Neil

Tel 919 294 2862

Fax 919 294 4987

E-mail address: kaoneil@lenovo.com

APPROVED AS TO FORM

Legal Services Department

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

**Attachment A**  
**Warranty Service Information**  
**(Personal Computer Products)**

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If a defect in material or workmanship is discovered during the warranty period, warranty service may be obtained by contacting Lenovo or a Lenovo approved service provider ("Service Provider"). Repair, correction and replacement in the manner described below shall constitute fulfillment of all of Lenovo's obligations under the Lenovo limited warranty. A list of Service Providers and their telephone numbers is available at [www.lenovo.com/support/phone](http://www.lenovo.com/support/phone).

Warranty service may not be available in all locations and may differ from location to location. Charges may apply outside a Service Provider's normal service area. Contact a local Service Provider for information specific to your location.

**Customer Responsibilities for Warranty Service**

Before warranty service is provided, Customer must take the following steps:

- follow the service request procedures specified by the Service Provider
- backup or secure all programs and data contained in the product
- provide the Service Provider with all system keys or passwords
- provide the Service Provider with sufficient, free, and safe access to Customer facilities to perform service
- remove all data, including confidential information, proprietary information and personal information, from the hardware Product or, if Customer is unable to remove any such information, modify the information to prevent its access by another party or so that it is not personal data under applicable law. The Service Provider shall not be responsible for the loss or disclosure of any data, including confidential information, proprietary information, or personal information, on a hardware Product returned or accessed for warranty service
- remove all features, parts, options, alterations, and attachments not covered by the warranty
- ensure that the hardware Product or part is free of any legal restrictions that prevent its replacement
- if Customer is not the owner of a hardware Product or part, obtain authorization from the owner for the Service Provider to provide warranty service

**What the Service Provider Will Do to Correct Problems**

When Customer contacts a Service Provider, Customer must follow the specified problem determination and resolution procedures.

The Service Provider will attempt to diagnose and resolve the problem by telephone, e-mail or remote assistance. The Service Provider may direct Customer to download and install designated software updates.

Some problems may be resolved with a replacement part to be installed by Customer called a "Customer Replaceable Unit" or "CRU." If so, the Service Provider will ship the CRU to Customer for installation.

If the problem cannot be resolved over the telephone; through the application of software updates or the installation of a CRU, the Service Provider will arrange for service under the **Type of Warranty Service** designated for the hardware Product as specified in the table below.

If the Service Provider determines that it is unable to repair the hardware Product, the Service Provider will replace it with one that is at least functionally equivalent.

If the Service Provider determines that it is unable to either repair or replace the hardware Product, Customer's sole remedy under this Limited Warranty is to return the hardware Product to the place of purchase or to Lenovo for a refund of the purchase price.

**Replacement Products and Parts**

When warranty service involves the replacement of a hardware Product or part, the replaced hardware Product or part becomes Lenovo's property and the replacement hardware Product or part becomes Customer's property. Only unaltered Lenovo hardware Products and parts are eligible for replacement. The replacement hardware Product or part provided by Lenovo may not be new, but it will be in good working order and at least



functionally equivalent to the original hardware Product or part. The replacement hardware Product or part shall be warranted for the balance of the period remaining on the original hardware Product.

#### **What this Warranty Does not Cover**

This warranty does not cover the following:

- uninterrupted or error-free operation of a hardware Product
- loss of, or damage to, Customer data by a hardware Product
- any software programs, whether provided with the hardware Product or installed subsequently
- failure or damage resulting from misuse, abuse, accident, modification, unsuitable physical or operating environment, natural disasters, power surges, improper maintenance, or use not in accordance with the hardware Product information materials
- damage caused by a non-authorized service provider
- failure of, or damage caused by, any third party products, including those that Lenovo may provide or integrate into the Lenovo hardware Product at Customer's request
- any technical or other support, such as assistance with "how-to" questions and those regarding the hardware Product set-up and installation
- hardware Products or parts with an altered identification label or from which the identification label has been removed

#### **Warranty Information**

Hardware Product Type	Warranty Period	Type of Warranty Service
Notebook Battery	One (1) Year	1

(Complete the above table)

If required, the Service Provider will provide repair or exchange service depending on the type of warranty service specified for the hardware Product and the available service. Scheduling of service will depend upon the time of Customer's call, parts availability, and other factors.

#### **Types of Warranty Service**

##### **1. Customer Replaceable Unit ("CRU") Service**

Under CRU Service, a Service Provider will ship CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with the hardware Product and are available from Lenovo at any time upon request. CRUs that are easily installed by Customer are called "Self-service CRUs". "Optional-service CRUs" are CRUs that may require some technical skill and tools. Installation of Self-service CRUs is Customer's responsibility. Customer may request that a Service Provider install Optional-service CRUs under one of the other types of warranty service designated for the hardware Product. An optional service offering may be available for purchase from a Service Provider or Lenovo under which Self-service CRUs would be installed for Customer. Customer may find a list of CRUs and their designation in the publication that ships with the hardware Product or at [www.lenovo.com/CRUs](http://www.lenovo.com/CRUs). The requirement to return a defective CRU, if any, will be specified in the materials shipped with a replacement CRU. When return is required: 1) return instructions, a prepaid return shipping label, and a container will be included with the replacement CRU; and 2) Customer may be charged for the replacement CRU if the Service Provider does not receive the defective CRU within thirty (30) days of Customer's receipt of the replacement CRU.

## **2. On-Site Service**

Under On-Site Service, a Service Provider will either repair or exchange the hardware Product at Customer's location. Customer must provide a suitable working area to allow disassembly and reassembly of the hardware Product. Some repairs may need to be completed at a service center. If so, the Service Provider will send the hardware Product to the service center at its expense.

## **3. Courier or Depot Service**

Under Courier or Depot Service, the hardware Product will be repaired or exchanged at a designated service center, with shipping at the expense of the Service Provider. Customer is responsible for disconnecting the hardware Product and packing it in a shipping container provided to Customer for return of the hardware Product to a designated service center. A courier will pick up the hardware Product and deliver it to the designated service center. The service center will return the hardware Product to Customer at its expense.

## **4. Customer Carry-In Service**

Under Customer Carry-In Service, the hardware Product will be repaired or exchanged after Customer delivers it to a designated service center at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be made available for collection by Customer. Failure to collect the hardware Product may result in the Service Provider disposing of the hardware Product as it sees fit, with no liability to Customer.

## **5. Mail-In Service**

Under Mail-In Service, the hardware Product will be repaired or exchanged at a designated service center after Customer delivers it at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be returned to Customer at Lenovo's risk and expense, unless the Service Provider specifies otherwise.

## **6. Customer Two-Way Mail-In Service**

Under Customer Two-Way Mail-In Service, the hardware Product will be repaired or exchanged after Customer delivers it to a designated service center at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be made available to Customer for return shipping at Customer's risk and expense. If Customer fails to arrange return shipment, the Service Provider may dispose of the product as it sees fit, with no liability to Customer.

## **7. Product Exchange Service**

Under Product Exchange Service, Lenovo will ship a replacement hardware Product to Customer's location. Customer shall be responsible for its installation and verification of its operation. The replacement hardware Product becomes the property of Customer in exchange for the failed hardware Product, which becomes the property of Lenovo. Customer shall pack the failed hardware Product in the shipping carton used to ship the replacement hardware Product and return it to Lenovo. Transportation charges, both ways, shall be at Lenovo's expense. If Customer fails to use the carton in which the replacement hardware Product was received, Customer may be responsible for any damage to the failed hardware Product occurring during shipment. Customer may be charged for the replacement hardware Product if Lenovo does not receive the failed hardware Product within thirty (30) days of Customer's receipt of the replacement hardware Product.

**Attachment B**  
**Pricing, Products and Services Descriptions**

<b>Products /Service Description</b>	<b>Ordering Part Number or Machine Type / Model</b>	<b>Price</b>

**This Attachment B may be modified from time to time. At Lenovo's option, Lenovo may make the information on this Attachment B available to Customer by a Customer Product Catalog or Website.**

**Prices:**

1. Invoices shall be based on the lower of the prices above or the price set by Lenovo at time of Customer's order.
2. Prices are subject to change due to events outside of Lenovo's reasonable control which may necessitate a price increase. Pricing does not include taxes, fees or other charges which may be imposed by federal or state and local governments.
3. These prices or discounts may not be combined with any other discounts or promotions unless approved by Lenovo.
4. Customer may only disclose the prices or discounts to Customer employees or contractors who have a need to know. Customer may not disclose Lenovo's prices or discounts to any other third party without Lenovo's prior written approval.
5. The prices only apply to purchases directly from Lenovo.
6. Purchases from a Lenovo reseller shall be subject to the terms, conditions and prices specified by the Lenovo reseller.

**Attachment C**  
**Customer Affiliates and Payment Guarantee**

<b>Customer Affiliate Name</b>	<b>Customer Affiliate Address</b>

As provided in Section 7.13 of the Agreement, the Customer Affiliates identified above may place orders with Lenovo under this Agreement subject to: (a) proof of creditworthiness satisfactory to Lenovo; or (b) Lenovo's receipt of a signed Payment Guarantee in the form set forth below.

**Payment Guarantee**

Customer shall be responsible for and hereby guarantees all payments due Lenovo from each affiliate listed above in accordance with the payment provisions of this Agreement.

In the event a Customer affiliate shall fail to timely and unconditionally pay in full any sums due to Lenovo, Lenovo shall give written notice of demand for payment to Customer. Customer shall become immediately liable to Lenovo for such sums upon receipt of said notice. Customer shall pay in full all such sums due and unpaid within fifteen (15) days after its receipt of notice. Customer also shall pay on demand reasonable attorneys' fees and legal expenses incurred by the Lenovo, if any, to secure payment from Customer.

Any payments by Customer pursuant to this Payment Guarantee shall be made without deduction or withholding for any and all present or future taxes, duties, levies, fees, charges, withholdings or other governmental charges and all liabilities with respect thereto.

This Payment Guarantee has been duly authorized and executed by Customer and constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. Customer represents and warrants that the execution and delivery of this Payment Guarantee will not conflict with or constitute a breach of, or default under, any agreement to which Customer is a party; or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of Customer.

By \_\_\_\_\_  
Customer Authorized signature

Date:

Name:  
(type or print)

Title:



## **Attachment D Insurance**

Lenovo will maintain the following insurance in full force and effect during the full term of this Agreement thereafter:

- i. Worker's Compensation Insurance with full statutory limits;
- ii. Employers' Liability Insurance in the amount of \$500,000 per occurrence and in the aggregate;
- iii. Commercial General Liability Insurance (including contractual liability and completed operations coverage) with combined single limits of coverage for bodily injury and death and property damage in the amount of \$1,000,000 per occurrence and in the aggregate; with \$5,000,000 Umbrella Insurance for personal injury and property damage per occurrence and in the aggregate.
- iv. Automobile Liability Insurance for owned and non-owned vehicles with combined single limits of coverage for bodily injury and death and property damage in the amount of \$1,000,000 per occurrence and in the aggregate; and

### **v. ADD FIDELITY**

In the event Lenovo receives notice of cancellation of above insurance, Lenovo shall endeavor to forward such notice to Customer within thirty (30) days of receipt. Customer will be named as an additional insured on the commercial General Liability and Automobile Liability Insurance policies, but only to the extent that its interest in relation to this Agreement may appear. Prior to the commencement of the Agreement, Lenovo will provide Customer with certificates of insurance from a reputable insurance company with a Best's rating of A- or an equivalent Best's rating, showing that the required coverage is in effect during the term of this Agreement



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

April 15, 2020

**Subject:** Proposed Amendment No. 2 to State & Local Government Value Rental Lease Agreement with Ray A Morgan Company.

**Recommended Action:** Approve; Authorize Chairman and Chief Executive Officer to sign

**Summary:**

Kern Medical is requesting your Board approve the proposed Amendment No. 2 with Ray A Morgan Company to provide for an additional 36 Multi-Functional Printers (MFPs). These MFPs are needed to support the clinical operations at the offsite clinic locations.

On November 14, 2018, the Kern County Hospital Authority entered into a 5-year Lease Agreement with Ray A Morgan Company (Agt.# 078-2018) to provide the output print management and support services to meet Kern Medical needs, allowing Kern Medical to secure and manage print output.

The proposed Amendment No.2 increases the monthly spend by \$7,048, from \$32,195 to \$39,243. The proposed Amendment No.2 increases the total cost of the Lease Agreement by \$338,294; year 1 = \$386,340 and Years 2, 3, 4, 5 = \$470,916 per year

The new annual savings over the multiple previous vendors is \$75,382 per year.

Therefore, it is recommended that your Board approve the Amendment No.2 to Lease Agreement with Ray A Morgan Company for the period of April 15, 2020 through November 30, 2023, increasing the maximum payable by \$338,294, from \$1,931,710 to \$2,270,004, and authorize the Chairman to sign.

**AMENDMENT NO. 2 TO  
STATE & LOCAL GOVERNMENT VALUE RENTAL LEASE AGREEMENT  
(Kern County Hospital Authority – Ray A Morgan Company)**

This Amendment No. 2 to the State & Local Government Value Rental Lease Agreement (“Amendment No.2”) is entered into this 15<sup>th</sup> day of April, 2020, by and between Kern County Hospital Authority (“Customer”), a local unit of government which owns and operates Kern Medical Center and Ray A Morgan Company, a California Corporation Group, (“Owner”), with its principal place of business located at 3131 Esplanade, Chico, CA 95973.

**RECITALS**

A. Customer and Owner have heretofore entered into a State & Local Government Value Rental Lease Agreement (Customer Agt. #078-2018, dated November 14, 2018) and Amendment No. 1 (Customer Agt.#10619 dated March 25, 2019) (“Agreement”), beginning on the 20<sup>th</sup> day of the month following the installation date and terminating 60 months later, to provide equipment and maintenance to support print output services for Customer, as such services are unavailable from Customer resources; 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 April 15, 2020;

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. Value Rental Lease Supplement attached to Amendment No. 2, includes Schedule A-2, which is added to the Agreement and incorporated herein by this reference. The purpose of the Value Rental Lease Supplement is to combine Schedules A-1 and A-2 into one combined payment. The Value Rental Lease Supplement is a stand-alone supplement governed by the terms and conditions of the Agreement.

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

3. This Amendment No. 2 shall be governed by and construed in accordance with the laws of the state of California.

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

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

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

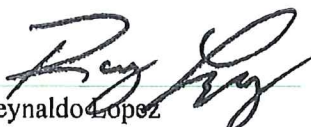
KERN COUNTY HOSPITAL AUTHORITY

RAY A MORGAN COMPANY

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

By   
Name: Clint Phillips  
Title Executive V.P.

APPROVED AS TO CONTENT:  
Kern Medical Center

By   
Reynaldo Lopez  
Chief Information Officer

APPROVED AS TO FORM:  
Legal Services Department

By   
Hospital Counsel & Acting Compliance Officer



Ray Morgan Company

Value Rental Lease  
Supplement

APPLICATION NO.

VRL AGREEMENT NO.  
500-0573785-000

SUPPLEMENT NO.

CUSTOMER INFORMATION

FULL LEGAL NAME Kern County Hospital Authority			STREET ADDRESS 1700 Mt Vernon Ave	
CITY Bakersfield	STATE CA	ZIP 93306	PHONE 661-326-2000	FAX
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	DBA	

EQUIPMENT ADDED

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
1. See Schedule A-2		
2.		
3.		

☐ See the attached Schedule A ☐ See the attached Billing Schedule

EQUIPMENT DELETED

MAKE/MODEL/ACCESSORIES	SERIAL NO.	ENDING METER
1.		
2.		

NEW CONSOLIDATED PAYMENT (Please fill out this section OR the Itemized Payment section below for the Equipment listed on this Supplement.)

The information below reflects your new CONSOLIDATED Payment and allowance.

Monthly Payment* \$ 39,243.11	B&W Images Included No Change	B&W Overages billed at* \$
*plus applicable taxes	Color Images Included No Change	Color Overages billed at* \$
	Scans Included	Scan Overages billed at* \$

OR Please check one: Meter Readings verified: ☐ Monthly ☐ Quarterly ☐ Other: (If nothing is selected, then Quarterly will be your Meter Reading option.)

ITEMIZED PAYMENT (Please fill out this section OR the New Consolidated Payment section above.)

The information below reflects your ITEMIZED Payment and allowance which is for the above-referenced Equipment only and it will be shown separately on your Invoice(s).

Monthly Payment* \$	B&W Images Included	B&W Overages billed at* \$
*plus applicable taxes	Color Images Included	Color Overages billed at* \$
	Scans Included	Scan Overages billed at* \$

TERM

Mos. Termination date of this Supplement will coincide with the termination date set forth in the Value Rental Lease Agreement and/or previous Supplement(s) (as applicable).

Mos. Termination date will not be set to coincide with any other Value Rental Lease Agreement or Supplement

TERMS AND CONDITIONS

You have requested this Supplement to the Value Rental Lease Agreement (or Supplement) as set forth above. If you choose the new consolidated payment option above, you agree that the Payment on this Supplement is the new consolidated Payment for your Agreement. Except for the specific provisions set forth above, the original terms and conditions set forth in the Value Rental Lease Agreement and any personal guaranty(s) shall remain in full force and effect and are incorporated herein by reference. If the supplier is providing maintenance and supplies to you for equipment that is not leased from us, but the charges for such maintenance and supplies are included in this Agreement, you agree that if you retire, replace and/or add new non-leased equipment to the Agreement, you grant us the ability to reflect these additions or deletions of said non-leased equipment to the Agreement and your payments under this Agreement may be adjusted accordingly.

OWNER ACCEPTANCE

Print Name: Clint Phillips	Signature: Clint Phillips	Dated: 4/9/2020
Owner: Ray A. Morgan Company		

CUSTOMER ACCEPTANCE

This is a Supplement to the Agreement identified above between Owner and Customer, all the terms and conditions of which are incorporated herein. Upon the execution of this Supplement, Customer hereby agrees to rent from Owner the Equipment described above. By signing below, you certify that you have reviewed and do agree to all terms and conditions of the Agreement and this Supplement. The Equipment and terms of this Supplement are in addition to the Equipment and terms stated in the Agreement.

Print Name: Russell Bigler	Signature: X	Title: Chairman, Board of Governors
Customer (as referenced above): Kern County Hospital Authority		Dated:

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Supplement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Supplement.

Print Name:	Signature: X
Customer (as referenced above):	Date of Delivery:





Ray Morgan Company

Schedule "A-2"

APPLICATION NO.

AGREEMENT NO.

This Schedule "A-2" is to be attached to and becomes part of the Agreement dated 11/14/18 by and between the undersigned and Ray A. Morgan Company.

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES

SERIAL NO.

STARTING METER

1 Ricoh Pro 5300

19 Ricoh IM 430FB

3 Ricoh IM C4500

5 Ricoh IM C3500

7 Ricoh SP C360FNW

1 Ricoh IM C6000

CUSTOMER ACCEPTANCE

This Schedule "A" is hereby verified as correct by the undersigned Customer, who acknowledges receipt of a copy.

Kern County Hospital Authority

X

Chairman Board of  
Governors

CUSTOMER

SIGNATURE

TITLE

DATED



Good Afternoon Rey,

We have the proposal to add the additional 36 MFP's that you requested below. You will find that we kept the pricing totaled on a single page in the same format you requested in the past for uniformity. Working with Clint we were able to put together the credit for the return of the HP printers and trays that we discussed, the total of the credit is \$23,900.00. This credit has been applied to the acquisition of the new units and has lowered the new payment by \$619.73, that provides an additional \$7,436.76 annual savings. Since the Ricoh MP 402 trays were acquired on a separate order and we show that the invoice has not been paid yet we will not be able to return them for a credit at this time.

We have put in the request for a updated quote to cover the licenses for the new equipment and have not received it back yet. The license quotes we requested are model specific however we don't anticipate it changing financial portion of our proposal however we will let you know if we hear otherwise.

Below is a list of the additional devices by location that are included in our proposal. Please let us know if you have any questions or if we need to make any adjustments/additions. Those highlighted in green are equipment reallocations not acquisitions.

LOCATION	DEPARTMENT	RECOMMENDED DEVICE
Kern Medical	Lab Registration 144D	IM 430FB
Kern Medical	Blood Bank	IM 430FB
Kern Medical	Room 2018B	IMC4500-RS
Kern Medical	3A	IMC4500-RS
Kern Medical	3G Infection Control, and Quality	IM 430FB
Kern Medical	4A	IMC4500-RS
Kern Medical	4D Nurse station	IM 430FB
Kern Medical	TRAILER 2	IMC3500-RS
Kern Medical	TRAILER 3	IMC3500-RS
Kern Medical	TRAILER 8	IMC3500-RS
Kern Medical	Materials Management	IMC3500-RS
Kern Medical	Materials Warehouse	IM 430FB
Kern Medical	Outpatient Pharmacy	IM 430FB
Kern Medical	Pathology (Rm 140D)	IMCE000
Columbus	OB/GYN Clinic	MP5035SP-RS
Columbus	W/C Trailer	SP3605FNW
Columbus	Valley Fever	IM 430FB
Columbus	Valley Fever	IM 430FB
Columbus	OB APT Desk	IM 430FB
Stockdale	9330	IM 430FB
Stockdale	9330	IM 430FB
Stockdale	9330	IM 430FB
Stockdale	9300	IM 430FB
Union	Marketing	5200 Pro
Heritage	HR (New Suite)	IMC3500-RS w/Internal Finisher
CORRECTIONS		
LERDO (Margaret Johnson)	Justice Admin (Lerdo)	SP3605FNW
LERDO (Margaret Johnson)	Justice pharmacy (Lerdo)	IM 430FB
LERDO (Margaret Johnson)	Max/Med, Corrections	IM 430FB
LERDO (Margaret Johnson)	Pre-Trial, Corrections	MP5035SP-RS
LERDO (Margaret Johnson)	Justice Clerks office	IM 430FB
DOWNTOWN JAIL (Margaret Johnson)	C-deck 3rd floor admin/clerk	MP5035SP-RS
DOWNTOWN JAIL (Margaret Johnson)	C-deck 3rd floor clerk (Dr/nursing)	IM 430FB
Probation (Jocelyn Advincula)	Crossroads	SP3605FNW
Probation (Jocelyn Advincula)	Juvenile	SP3605FNW
Probation (Jocelyn Advincula)	Camp Owens	SP3605FNW
F Ward	Kept In Reserve	IM 430FB (MFP)
F Ward	Kept In Reserve	IM 430FB (MFP)
F Ward	Kept In Reserve	SPC3605FNW
F Ward	Kept In Reserve	SPC3605FNW

Thank you,

Cody Bowling



## Financial Considerations

RMC has reviewed the current costs and options for new solutions in order to provide both the best document technology and ROI with RMC/Ricoh proposed solution.

### Financial Analysis

Costs with Previous Vendors				
	April	May	June	total
Printer Toner/Ink	\$ 16,072.45	\$ 17,435.60	\$ 7,646.41	\$ 41,154.46
Rental	\$ 9,559.00	\$ 9,506.16	\$ 9,481.00	\$ 28,546.16
Cost Per Copy	\$ 15,257.93	\$ 15,627.01	\$15,492.99	\$ 46,377.93
Toner & Printer Repairs	\$ 9,141.75	\$ 6,173.03	\$ 5,181.51	\$ 20,496.29
	Average Monthly Spend			\$ 45,524.95
	Combined Spend for 2Q 2018			\$136,574.84
	Annual Proposed Spend			\$546,299.40

Current Lease		
Managed Print Solution		
60 Month Agreement	98 New Ricoh MFP's*	610,000 B&W 78,000 Color
5 Yrs Support Included	Nuance Healthcare Bundle**	
	178 HP E60055Dn B&W Printers	500,000 B&W
	19 HP E55040dw Color Printers	35,000 Color
	Monthly Proposed Spend	\$32,195.17
	Annual Proposed Spend	\$386,342.04

With New Devices Added		
Managed Print Solution		
Co-Terminus Agreement	134 Ricoh MFP's*	610,000 B&W
		78,000 Color
Support Included	Nuance Healthcare Bundle**	
	128 HP E60055Dn B&W Printers*	500,000 B&W
	17 HP E55040dw Color Printers*	35,000 Color
	Monthly Proposed Spend	\$ 39,243.11
	Annual Proposed Spend	\$470,917.32

**Annual Increase Over Current Lease      \$84,575.28**

**Annual Savings Over Previous Vendor      \$75,382.08**

\*Additional Images Reconciled Quarterly @ \$0.0066 for B&W and \$0.06 for Color

\*\*For any additional professional services hours beyond the initial set up, installation and training of the Nuance Healthcare Bundle that do not fall under the service and support agreement or for any new projects we are engaged in RMC has a rate of \$220.00 an hour.

\*\*\*Printer Service Additional Images Reconciled Quarterly @ \$0.010 for B&W and \$0.060 for Color

New Monthly Lease Includes Addition Of The 34 MFP's (See Equipment List Below)

Total Credit for the 50 Returned Printers and 20 paper trays is \$23,900.00 – This will be applied to the purchase of new equipment for a monthly payment reduction of \$619.73. Printers and trays must be new in box.



KERN MEDICAL LOCATION				RECOMMENDED DEVICE	Monthly Cost	Total Cost Over Term
LOCATION	DEPARTMENT					
Kern Medical	Lab Registration 1440			IM 430FB		
Kern Medical	Blood Bank			IM 430FB		
Kern Medical	Room 2018B			IMC4500-RS		
Kern Medical	3A			IMC4500-RS		
Kern Medical	3G Infection Control, and Quality			IM 430FB		
Kern Medical	4A			IMC4500-RS		
Kern Medical	4D Nurse station			IM 430FB		
Kern Medical	TRAILER 2			IMC3500-RS		
Kern Medical	TRAILER 3			IMC3500-RS		
Kern Medical	TRAILER 8			IMC3500-RS		
Kern Medical	Materials Management			IMC3500-RS		
Kern Medical	Materials Warehouse			IM 430FB		
Kern Medical	Outpatient Pharmacy			IM 430FB		
Kern Medical	Pathology (Rm 1400)			IMC6000		
Columbus	OBGYN Clinic			MPS055SP-RS		
Columbus	WIC Trailer			SP3605FNNW		
Columbus	Valley Fever			IM 430FB		
Columbus	Valley Fever			IM 430FB		
Stockdale	OB APT Desk			IM 430FB		
Stockdale		9330	IM 430FB			
Stockdale		9330	IM 430FB			
Stockdale		9330	IM 430FB			
Stockdale		9300	IM 430FB			
Union	Marketing			5200 Pro		
Heritage	HR (New Suite)			IMC3500-RS w/Internal Finisher		
CORRECTIONS						
LERDO (Margaret Johnson)	Justice Admin (Lerdo)			SP3605FNNW		
LERDO (Margaret Johnson)	Justice pharmacy (Lerdo)			IM 430FB		
LERDO (Margaret Johnson)	Max/Med, Corrections			IM 430FB		
LERDO (Margaret Johnson)	Pre-Trial, Corrections			MPS055SP-RS		
LERDO (Margaret Johnson)	Justice Clerks office			IM 430FB		
DO W/TOWN JAIL (Margaret Johnson)	C-deck 3rd floor admin/clerk			MPS055SP-RS		
DOWNTOWN JAIL (Margaret Johnson)	C-deck 3rd floor clerk (Dr/nursing)			IM 430FB		
Probation (Jocelyn Advincula)	Crossroads			SP3605FNNW		
Probation (Jocelyn Advincula)	Juvenile			SP3605FNNW		
Probation (Jocelyn Advincula)	Camp Owens			SP3605FNNW		
					Total Cost	\$ -
						\$ (23,900.00)

31 new MFP printers needed

3 will be re-allocated (green)

9 large color MFP's / 5 small color MFP's

12 small blk/wht MFP's

DEVICES TO BE RETURNED FOR CREDIT				Total Credit
Model	Total to be returned	Credit per EA		
Ricoh 605S	1			
HP E6005SDW (blk/wht)	50	\$	400.00	\$ 20,000.00
HP B&W Second Tray	20	\$	195.00	\$ 3,900.00
MP402 Second Tray	4			
			\$	\$ 23,900.00

DEVICES TO BE KEPT IN RESERVE				
Model				
IM 430FB (MFP)	2			
SP3605FNNW (Color Model) MFP	2			
HP E5004D (Color Desktop)	2			

Devices will be used for hot swaps and must be configured with Nuance

Devices will be used for hot swaps and must be configured with Nuance.



# LESSEE'S GENERAL AND INCUMBENCY CERTIFICATE

**AGREEMENT #**

2609381

## GENERAL CERTIFICATE

Re: Lease Agreement # 2609381, between Kern County Hospital Authority, as Lessee ("Lessee") and Ray A Morgan Company, as Lessor.

The undersigned, being the duly elected, qualified and acting official of Lessee holding the title stated in the signature line below, does hereby certify as of the date of this Certificate and the date of the Agreement (as defined below), as follows:

1. Lessee did, at a meeting of the governing body of the Lessee, by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Lease Agreement (the "Agreement") by the undersigned.
2. The meeting(s) of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Agreement and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Lessee relating to the authorization and delivery of the Agreement have been: (a) held within the geographic boundaries of the Lessee; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Lessee, if any, and the laws of the state where Lessee is located.
3. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an event of default or a nonappropriation event exists at the date hereof with respect to this Agreement.
4. The acquisition of all of the Equipment under the Agreement has been duly authorized by the governing body of Lessee.
5. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Payments scheduled to come due during the current budget year under the Agreement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.
6. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement or of other agreements similar to the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

IN WITNESS WHEREOF, the undersigned has signed this Certificate on the date stated below.

Kern County Hospital Authority

X

Chairman, Board of Governors

Lessee

Signature of Person to Sign Agreement

Print Title of Person to Sign Agreement

Russell Bigler

Print Name of Person to Sign Agreement

Print Date that Above Person Signed this Certificate

## INCUMBENCY CERTIFICATE

Re: Lease Agreement # 2609381, between Kern County Hospital Authority, as Lessee ("Lessee") and Ray A Morgan Company, as Lessor.

The undersigned, being the duly elected, qualified and acting Secretary, Clerk, or other duly authorized official or signatory of the Lessee does hereby certify, as of the date of this Certificate and the date of the Agreement (as defined in the General Certificate above) as follows:

As of the date of the meeting(s) of the governing body of the Lessee at which the above-referenced Agreement was approved and authorized to be executed, and as of the date hereof, the below-named representative of the Lessee held and holds the office set forth below, and the signature set forth below is his/her true and correct signature.

NAME OF -PERSON SIGNING AGREEMENT	TITLE OF PERSON SIGNING AGREEMENT	SIGNATURE OF PERSON SIGNING AGREEMENT
Russell Bigler	Chairman, Board of Governors	

IN WITNESS WHEREOF, the undersigned has signed this Certificate on the date stated below.

X

Chief Executive Officer

Signature of Secretary, Clerk or other duly authorized official or signatory of Lessee (Cannot be same as Person Signing Agreement)

Print Title of Person who signed this Certificate

Russell V. Judd

Print Name of Person Signing this Certificate

Print Date that Above Person Signed this Certificate

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

## SELF-INSURED ADDENDUM (PROPERTY & LIABILITY)

AGREEMENT #

2609381

Addendum to Agreement # 2609381, between Kern County Hospital Authority, as Customer and Ray A Morgan Company, as Lessor. The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:

This Agreement imposes certain obligations on you with respect to maintaining property and liability insurance on the Equipment to cover risk of loss or damage to such Equipment and any liability caused by or in any way related to the Equipment. You have indicated to us that you will not carry property insurance or liability insurance from an insurance carrier. Rather, you will self-insure for property loss and liability by maintaining sufficient liquid assets and overall financial strength to fully cover such risks of loss, damage and/or liability caused by or in any way related to the Equipment.

You acknowledge and confirm that, notwithstanding the foregoing, you shall remain solely responsible for any and all risk of loss or damage to the Equipment and all liability caused by or in any way related to the Equipment, in accordance with the terms of this Agreement. Furthermore, upon any event of default or if we determine, at our sole discretion, that you do not have sufficient liquid assets or overall financial strength to adequately self-insure for property loss and/or liability, we reserve the right to require you to obtain: (1) a property insurance policy from an insurance carrier in an amount not less than the full replacement value of the Equipment with us named as lender's loss payee; and (2) a commercial general liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as additional insured on the policy.

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

Ray A Morgan Company

Lessor



Signature

Executive VP. 4/9/2020

Title

Date

Kern County Hospital Authority

Customer

X

Signature

Chairman, Board of Governors

Title

Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.





Ray A. Morgan Company  
3131 Esplanade  
Chico, CA 95926

Kern County Hospital Authority  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

RE: Agreement # 2609381 between Kern County Hospital Authority and Ray A Morgan Company.

Ladies and Gentlemen:

We have acted as in-house counsel to Kern County Hospital Authority ("Lessee"), in connection with Agreement #2609381, dated as of April 15, 2020, between Kern County Hospital Authority, as Lessee, and Ray A Morgan Company, as Lessor, and any amendment or addendum thereto, if any (together, the "Agreement"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

Based upon the foregoing, we are of the opinion that, under existing law:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State.
2. Lessee has all requisite power and authority to enter into the Agreement and to perform its obligations thereunder.
3. All proceedings of Lessee and its governing body relating to the authorization and approval of the Agreement, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws.
4. The Agreement has been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivisions such as the Lessee, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.
5. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

This opinion may be relied upon by Lessor, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Agreement.

Very truly yours,

By: 

Name: Shannon Hochstein

Title: Hospital Counsel & Acting Compliance Officer

Dated: 4/7/2020



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

April 15, 2020

**Subject:** Proposed retroactive EOC Subscription Agreement with Advanced Technologies Group, Inc., a JLL company ("ATG") for the continued use of regulatory environment of care rounding software

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

**Summary:**

Kern Medical requests your Board approve the proposed EOC Subscription Agreement with ATG for the continued use of software required to maintain the environmental rounding requirements set by the Joint Commission and Centers for Medicare and Medicaid Services. The rounding software is a compliance tracking tool, as well as a safety net for environmental issues and is the required software recommended by the regulatory bodies. The software guides the weekly rounding team in compliance with the seven environment of care sections in our facilities (Safety, Emergency Management, Fire Safety, Utilities, Medical Devices, Hazardous Materials, and Security).

The term of the agreement will be for one year with the option to renew for an additional one year term. The yearly cost will be \$3780, billed monthly at the rate of \$315 per month.

Counsel is unable to approve as to form due to non-standard terms, which include; our indemnification of ATG including their negligence and/or misconduct with no indemnification from ATG, limited liability to the cost of the agreement, issues with documents being confidential and requiring notice prior to production, and the non-inclusion of required statutory language. Efforts were made to negotiate the deletion of the offending provisions to no avail.

Therefore, and considering the included non-standard terms, it is recommended that your Board approve the proposed retroactive EOC Subscription Agreement with Advanced Technologies Group, Inc. to provide the use of regulatory environment of care rounding software for a one-year term in an amount not to exceed \$3,780, and authorize the Chairman to sign.



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

November 13, 2019

Mr. David Kalish  
Manager, Emergency Management  
Kern Medical Center  
1700 Mt Vernon Ave  
Bakersfield, CA 93306

RE: Renewal of the EOC Solution Subscription

Dear David,

Kern Medical Center's ongoing subscription services for the EOC Rounding Solution is set to expire on December 31, 2019. In anticipation of this, I am pleased to provide you this renewal to continue the following services as part of the monthly subscription:

- Unlimited storage of EOC Rounding Solution data on the ATG platform
- EOC Rounding Solution and Notification system application updates
- EOC Rounding Solution reports and control panel updates
- Technical support for facility staff on all EOC Rounding Solution-related matters

The ongoing monthly Subscription Services for Kern Medical Center will be **\$3,780 (\$315 per month)** for a period of 12 months starting January 1, 2020.

As an option, please see below for fees on a three-year subscription:

Year 1 - \$3,780 (\$315 per month)  
Year 2 - \$3,960 (\$330 per month)  
Year 3 - \$4,200 (\$350 per month)

Consultant shall provide access to one or more modules of Consultant's software as a service known as Active Visual Service ("AVS") and may perform related professional services (collectively, the "Services").

Services described in this proposal are subject to the Standard Terms and Conditions attached to this proposal. Consultant shall begin providing the applicable services on the commencement date set forth in the Proposal. Upon the earlier of Client's (i) acceptance of this proposal, (ii) issuance of a purchase order based on this proposal, or (iii) written authorization of Services (electronic mail being an acceptable form of "written"), the Standard Terms and Conditions and the Proposal are deemed accepted by Client. This proposal is valid for a period of sixty (60) days from submittal. After sixty (60) days, this proposal becomes null and void. The terms of any Purchase Order provided by Client will not modify or supersede any terms of this proposal and Standard Terms and Conditions.





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

If the foregoing fee for a 1 year or 3 year subscription is acceptable, please return a signed copy of this recommendation along with any necessary purchase order reference number as our notice to proceed.

Respectfully submitted:

Richard Park  
Consultant, Healthcare

Accepted for Kern County Hospital Authority:

_____	Chairman, Board of Governors	_____
Signature	Title	Date
_____		
Purchase Order #		

## Standard Terms and Conditions

### GENERAL

These Standard Terms and Conditions (the "T&C" or the "Agreement") dated November 1, 2019 (the Effective Date) are attached to and incorporated into the proposal(s) ("the "Proposal") describing the services ("Services") provided to Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("Client") by Advanced Technologies Group, Inc., a JLL company ("Consultant"). In the event of any inconsistency between the Proposal and these T&C, these T&C control. The Proposal and these T&C are referred to collectively as the "Agreement". Consultant may engage one or more subcontractors to provide the Services.

### 1. COMPENSATION; REIMBURSABLE EXPENSES; PAYMENT

1.1. Client shall pay Consultant for the Services as described in the Proposal.

1.2. Client shall reimburse Consultant for expenses incurred directly or indirectly in connection with the Services, including and without limitation a) travel and associated expenses; b) reproduction of reports; c) drawings, specifications and similar related documents; d) all state, local and service taxes; e) all delivery, express, & courier service delivery fees "Reimbursable Expenses".

1.3. Consultant will submit invoices for Services and Reimbursable Expenses on Consultant's normal thirty (30) day billing cycle, unless otherwise stated in the Proposal. Payment is due within thirty (30) days of an invoice date.

1.4. Client shall submit reasonably detailed questions regarding an invoice in writing within fourteen (14) days of an invoice date; otherwise, Client is deemed to have accepted the invoice. If Client fails to make a payment within sixty (60) days when due, Consultant may, upon giving seven (7) days prior written notice, suspend Services until all outstanding invoices are paid in full.

### 2. LICENSE GRANT AND INTELLECTUAL PROPERTY

2.1. Consultant grants Client, during the Term of this Agreement, a limited, revocable, non-transferable, non-sublicensable license to permit Users to access and utilize the AVS solely for Client's internal business purposes. Client shall not (a) copy, decompile or reverse engineer AVS, or any other Consultant intellectual property (including, without limitation, intellectual properties developed by Consultant for Client); (b) copy, sell, rent, lease, sublicense, distribute or otherwise make AVS available to any third party by time-sharing or otherwise, except for Users; (c) modify, copy, reproduce or alter AVS; (d) transfer or assign AVS to any other person or entity without Consultant's prior written consent; or (e) publish or otherwise disclose information relating to performance or quality of AVS or Services to any third party. For purposes of this Agreement, "Users" means Client employees and subcontractors that Client registers with Consultant and are permitted by Client to access the AVS. Client shall ensure that access to AVS is restricted to authorized Users. If Consultant reasonably believes that the security of any password to AVS has been compromised, Consultant may either issue a substitute password or discontinue access to AVS through such password.

2.2. Consultant disclaims any warranties, express or implied, that AVS or the Services will be free from interruptions or not inaccessible from time to time for various reasons, including, without limitation, (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Consultant may undertake from time to time; or (iii) causes beyond Consultant's control or which are not reasonably foreseeable by Consultant, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures. AVS AND THE SERVICES ARE PROVIDED "AS IS". NEITHER CONSULTANT NOR ITS LICENSORS MAKES ANY WARRANTIES, CONDITIONS, OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

2.3. Consultant is the sole owner of all rights, title and interest, including, without limitation, patent rights, copyrights, and all other intellectual property rights ("Intellectual Property Rights"), in and to AVS and the Services (including any source, object or compiled code). Consultant is the sole owner of all Intellectual Property Rights, in all materials developed by the Consultant for Client in connection with any consulting, training, implementation, configuration or any other professional services. For purposes of clarity, drawings, specifications and similar related documents relating to Client's Facilities and properties are owned by Client.

### 3. INFORMATION SUPPLIED TO CONSULTANT

3.1. Client is solely responsible for any data, information, and documents provided by Client and Client's employees, independent contractors or other agents (for the purposes of this Section 3, Client and such other parties are referred to collectively as the "Client Group") and for any data, information and documents provided by vendors or other third parties (collectively, "Client Information"). Client is responsible for independently verifying Client Information and notifying Consultant if any of it is erroneous. Consultant is entitled to rely on and utilize Client Information in performing its Services and has no duty to independently verify the accuracy of it. Client is solely responsible for errors or defects resulting or arising from: (i) Client Group's electronic or disk transmission of Client Information to Consultant, or (ii) inadequate or inaccurate Client Information provided to Consultant. Client waives all claims, demands and causes of action ("Claims") it may have against Consultant and Consultant's officers, directors, agents and employees ("Consultant Parties") for any damages, losses, costs, liabilities or expenses, including, without limitation, all expenses, attorneys' fees, costs of litigation and costs of settlement ("Losses") Client incurs arising from or related to Client Information.

3.2. Consultant may make certain recommendations to Client. Client is solely responsible for verifying such recommendations and deciding whether or how to act on such recommendations and Consultant is not liable with respect to such recommendations. Consultant is not liable and is merely suggesting recommendations.

3.3. Client will not disclose to Consultant any Protected Health Information (PHI), as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### 4. USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Consultant does not intend or represent that the data, information or other documents generated with respect to AVS and/or the Services (the "Work Product") is suitable for reference by third persons not a party to this Agreement. No party is deemed a third-party beneficiary of this Agreement. Consultant strongly recommends further field verification by Client and third persons of the present conditions of Client's Facilities and other properties. Client's reference or reuse of the Work Product is at Client's sole risk and Consultant is not responsible or liable for it. Client waives all Claims it may have against Consultant and Consultant Parties for any Losses Client incurs arising from or related to the use by Client or third parties of the Work Product.

5. **CLIENT'S RESPONSIBILITIES.** Client is responsible for complying with laws applicable to its business, including, but not limited to, building codes, and related to health, safety, and hazardous waste. Consultant will have no responsibility for Client's compliance with the so-called "Stark Laws" (in the Omnibus Budget Reconciliation Act (1989), Omnibus Budget Reconciliation Act (1993), and the Social Security Act Amendments (1994) or any provisions in the Code of Federal Regulations (C.F.R.), Title 42, Part 411, Subpart J (Financial Relationships Between Physicians and Entities Furnishing Designated Health Services)) or with any "Anti-Kickback" legislation including 42 U.S.C. §1320a-7b. Consultant will not make or be required to make any legal determinations or interpretations with respect to the Stark Laws, or laws promulgated by the state covering similar subject matter, or the conformity of any lease with such laws, all of which determinations and interpretations shall be referred by Consultant to Client's legal department for resolution. The Services do not involve the creation, receipt, maintenance, transmission, use or disclosure of PHI; any



disclosure of PHI by Client to Consultant that occurs in the performance of Consultant's duties would be incidental, limited in nature, a by-product of Consultant's duties as agreed upon by the parties, and could not be reasonably prevented; and a Business Associate Agreement (as defined by HIPAA) between Client and Consultant is not required.

#### 6. INDEMNIFICATION

Client shall indemnify, defend and hold harmless Consultant, its affiliates, licensors and each of their respective directors, officers, employees, subcontractors and agents from and against all Claims and Losses arising from or related to: (i) Client's breach of any duties or obligations under this Agreement; (ii) the accuracy of Client Information generated or provided by Client or third party acting on Client's behalf including any allegation that the Client Information infringes upon the Intellectual Property Rights of a third party; (iii) any activity on or conditions at any of Client's Facilities including any structural or latent defects in or the environmental condition of any Facilities, except to the extent such condition is caused by the gross negligence or willful misconduct of Consultant; (iv) Client's failure to comply with applicable laws; and (v) any actions, inactions or activities of Client that constitute negligence, gross negligence or willful misconduct. For purposes of this Section, the term "Client" refers to Client and its affiliates, subsidiaries, parents, successors and assigns, including each of their respective Users, directors, officers, employees, subcontractors and agents.

#### 7. LIMITATIONS ON LIABILITY

CONSULTANT, ITS LICENSORS, AND CONSULTANT PARTIES SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR DELAY, LOST OPPORTUNITY OR LOST PROFITS, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONSULTANT'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AVERAGE ANNUAL FEES PAID TO CONSULTANT UNDER THIS AGREEMENT, EXCLUSIVE OF REIMBURSABLE EXPENSES. CONSULTANT SHALL NOT BE LIABLE FOR INTERRUPTIONS IN OR FAILURE OF SERVICES RESULTING, DIRECTLY OR INDIRECTLY, FROM CAUSES BEYOND CONSULTANT'S REASONABLE CONTROL.

#### 8. CONFIDENTIALITY

8.1. "Confidential Information" means all documents, information, materials and data developed, provided by one party (the "Disclosing Party") to, or otherwise obtained by, the other party (the "Receiving Party"), under this Agreement which is (a) marked confidential, restricted or proprietary by the Disclosing Party or (b) is otherwise treated as confidential by the Disclosing Party and would reasonably be understood to be confidential. Confidential Information shall not include information that: (i) is or becomes publicly available other than as a result of a disclosure by the Receiving Party in breach of this Agreement; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source (other than the Disclosing Party) which is not prohibited from disclosing such information to the Receiving Party by any legal, contractual or fiduciary obligation; (iii) is independently developed by the Receiving Party, as demonstrated by written or documented evidence; (iv) was known by the Receiving Party prior to disclosure to the Receiving Party by the Disclosing Party, as demonstrated by written or documented material; or (v) is required to be disclosed by a valid court order or governmental agency requirement, if each party agrees to provide the other with timely written notice of any such demand for disclosure.

8.2. Client and Consultant each agree to: (a) protect the other party's Confidential Information in the same manner as it protects its own proprietary information; (b) not disclose Confidential Information except

as required to perform its obligations under this Agreement or to Receiving Party's agents if those third parties agree to keep the information confidential; (c) prevent disclosure or unauthorized use; and (e) report to the Disclosing Party any conduct that appears to be a violation of its rights as soon as reasonably possible.

#### 9. MEDIATION

The parties shall promptly attempt in good faith to resolve disputes under this Agreement by negotiation. Disputes not resolved by negotiation may be submitted to binding arbitration with the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Mediation Procedures. The parties will mutually select a single mediator, and failing that, the AAA shall select her or him. The parties will share mediation costs equally (except fees incurred by a party for professional services for the mediation). Damages shall not be an adequate remedy for breaches of a party's Confidential Information or Intellectual Property Rights, and, in addition to any other relief to which the parties are entitled, the injured party shall be entitled to seek temporary and permanent injunctive relief to restrain any such breach, threatened or actual.

#### 10. EXTENT OF AGREEMENT; PRIORITY OF TERMS; TERM AND TERMINATION.

10.1. This Agreement is the entire agreement between Client and Consultant with respect to AVS and Services and supersedes all written and oral prior negotiations, representations, or agreements, including any purchase order provided by Client.

10.2. This Agreement begins on the Effective Date and remains in effect for a period of one (1) year (the "Initial Term") and shall automatically renew at the end of the Initial Term for successive one-month periods (each, a "Renewal Term"), unless sooner terminated in accordance with this Agreement. The Initial Term and each Renewal Term will be referred to collectively as the "Term". Services shall commence on the date set forth in each applicable Proposal. The parties may not terminate this Agreement while a Proposal is in effect and/or Consultant is providing Services to the Client.

10.3 Client may terminate this Agreement without cause upon at least thirty (30) days prior written notice to Consultant. Client shall be responsible for all (a) fees incurred up to and including the effective date of termination for implementation Services rendered; and (b) Reimbursable Expenses. Upon termination of this Agreement for any reason, (a) all licenses granted by Consultant in this Agreement shall terminate; (b) Consultant may discontinue Client's access to AVS; (c) Client shall immediately return to Consultant all mobile devices provided to Client which have not been purchased by or for Client, and (d) the parties will return one another's Confidential Information to each other or destroy it. Neither party will be required to return or destroy copies of Confidential Information that: (a) are contained in an archived computer system backup that was made in accordance with such party's internal procedures; or (b) are kept by or under the control of its legal department for record-keeping, archival, or governance purposes in compliance with such party's document retention policies. Confidential Information contained in an archived computer system backup or legal archive will remain subject to this Agreement.

#### 11. MISCELLANEOUS

This Agreement is governed by and construed in accordance with the laws of the State of California, without regard to conflict of laws principles. No failure or delay by either party in exercising any right under this Agreement will operate as a waiver of any such right. If any provision of this Agreement is held to be invalid or unenforceable, it is to that extent deemed omitted and the remaining provisions of this Agreement will remain in full force and effect. Neither party may assign this Agreement without the other party's prior written consent; except to a successor by merger, consolidation, sale of stock or other equity interests, sale of substantially all assets outside of the ordinary course of business, or similar transaction. All provisions in this Agreement survive termination of this Agreement for any reason. Consultant may use the Services provided as a "case study" in its marketing and promotional materials (including its website).



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

April 15, 2020

**Subject:** Agreement with PHILIPS HEALTHCARE, A Division of Philips North America LLC, for the purchase of a CombiDiagnost R90 fluoroscopy machine, TIMS unit, 5-year service agreement and related construction costs.

**Recommended Action:** Approve; Authorize Chief Executive Officer to Sign Agreement.

**Summary:**

Kern Medical requests that the Board approve the proposed Agreement with PHILIPS HEALTHCARE, A Division of Philips North America, LLC, for the purchase of a CombiDiagnost R90 fluoroscopy machine. Kern Medical Radiology Department is down to one functioning stationary fluoroscopy unit that is end-of-life. This unit is over 30 years old, has required 10 repairs in the past 12-month period, and it has been increasingly difficult to find replacement parts for repair. The purchase of the Philips CombiDiagnost R90 fluoroscopy machine will provide improved functionality, better diagnostic capabilities, and lower radiation doses. The TIMS unit converts and compresses the video to DICOM images to send to the PACS system.

The total equipment purchase price will be \$456,262.86 for the fluoroscopy machine with TIMs unit and \$233,280.00 for the five-year service agreement, for a total cost of \$689,542.86.

The constructions costs will be \$598,000 for information technology, electrical, seismic anchoring, cement foundation, paint and flooring. The Office of Statewide Health Planning and Development (OSHPD) has approved the emergency installation of the fluoroscopy unit based on the current COVID-19 crisis. OSHPD may require additional construction in the area, which is currently estimated to be \$380,000.

The requested amount to be approved is \$689,542.86 for the fluoroscopy machine with TIMS and the five-year service agreement, as well as \$598,000 in construction, totaling \$1,287,542.86.

Therefore, it is recommended that the Board approve the proposed Agreement with PHILIPS HEALTHCARE, A Division of Philips North America LLC, authorize the Chief Executive Officer to sign the Agreement, and also approve the related construction.



PHILIPS HEALTHCARE  
222 Jacobs Street, 3<sup>rd</sup> Floor  
Cambridge, MA 02141  
Tel: (800) 934-7372  
Fax: (800) 947-3299

**PHILIPS**

**ADDENDUM  
BETWEEN  
PHILIPS HEALTHCARE A DIVISION OF PHILIPS NORTH AMERICA LLC  
and  
KERN COUNTY HOSPITAL AUTHORITY ("KCHA")  
DATED: MARCH 20, 2020**

The following provisions of Philips Quotation No. 1-2798VEQ, Rev. 2 dated March 9, 2020, are hereby amended as follows:

**QUOTE**

*Delete the following language in its entirety from the footer of the quote:*

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

*and insert in its place:*

"This quotation contains confidential and proprietary information of Philips Healthcare a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation."

**PHILIPS DIGITAL X-RAY (DXR) SYSTEMS PRODUCT WARRANTY**

*Add the following language to **Section 13 Limitation of Liability**:*

"13.3 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).

13.4 Philips shall indemnify and hold harmless Customer and its officers and employees from any claims for loss, cost, damages, expense, or liability (including reasonable attorney fees) by reason of bodily injury (including death) or tangible property damage (representing the actual cost to repair or replace physical property damage) to the extent such damages result from Philips' negligent acts or omissions, or proven product defect. This indemnification obligation will not be subject to the limitation of liability. Nothing herein is intended to limit or relieve Philips from liability for third party claims relating to personal injury, death, or tangible property damage to the extent caused by Philips' or its employees' or agents' wrongful or negligent acts or omissions."

*Delete the following language in its entirety from the bottom of page 33:*  
"Philips system specifications are subject to change without notice"



## POINT OF SALE SERVICE CONTRACT SECTION

*Delete the following language in its entirety from page 35:*

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

*and insert in its place:*

"This quotation contains confidential and proprietary information of Philips Healthcare a division of Philips North America LLC ("Philips") and is intended for use only the customer whose name appears on this quotation."

*Delete the following language in its entirety from page 38:*

"Customer Agreement as Quoted

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

*and insert in its place:*

"Customer Agreement as Quoted

Upon customer signing and acceptance by an authorized Philips representative, this document constitutes a contract and customer agrees to be bound by all terms."

## PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS

*Delete the following language in its entirety from Section 5 PAYMENT:*

"All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full."

*and insert in its place:*

"All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes are paid in full."

*Delete the following language in its entirety from Section 5.1 under Section 5 PAYMENT:*

"5.1 Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law."

*and insert in its place:*

"5.1 Customer will pay interest unless prohibited by applicable law on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law."





Delete Section 7. **TERM AND TERMINATION** in its entirety and insert in its place the following Section 7 **TERM AND TERMINATION**:

**"7. TERM AND TERMINATION"**

- 7.1. The term of this Agreement shall be set forth in the quotation and/or Attachment A attached hereto and incorporated herein ("Term").
- 7.2. This Agreement is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement. However, Customer may cancel service coverage for an individual Covered System under this Agreement upon sixty (60) days written notice to Philips representing that the Covered System is being permanently removed from the Site and that the Covered System is not being used in any other Customer site.
- 7.3. Upon sixty (60) days written notice to Philips, Customer may cancel this Agreement specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such sixty (60) day notice period.
- 7.4. In addition, if the Customer sells or otherwise transfers their business or a majority of their Covered Systems to a third party and the Covered Systems remain installed and in use at the same location, but such third party assumes the obligations of the Customer under this Agreement or enters into a new service agreement with Philips the price will be equal to the price in this Agreement and a term at least equal to the unexpired term of this Agreement
- 7.5. If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within thirty (30) days of such termination.
- 7.6. Clinical Education training and credits will expire upon termination of the Agreement.
- 7.7. Non-appropriation. Non-appropriation. Customer, as a government entity, reserves the right to terminate this Agreement in the event insufficient funds are appropriated for this Agreement in any fiscal year under the provisions of California Constitution Article 16 section 18a. Customer's fiscal year is July 1 to June 30 of each calendar year. Upon such termination, Customer will be released from any further financial obligation to Philips, 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. Philips will be given 30 days' prior written notice in the event that customer requires such an action."

Add the following language to Section 11. **LIMITATIONS OF LIABILITY AND DISCLAIMER**:

- 11.3 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).
- 11.4 Philips shall indemnify and hold harmless Customer and its officers and employees from any claims for loss, cost, damages, expense, or liability (including reasonable attorney fees) by reason of bodily injury (including death) or tangible property damage (representing the actual cost to repair or replace physical property damage) to the extent such damages result from Philips' negligent acts or omissions, or proven product defect. This indemnification obligation will not be subject to the limitation of liability. Nothing herein is intended to limit





or relieve Philips from liability for third party claims relating to personal injury, death, or tangible property damage to the extent caused by Philips' or its employees' or agents' wrongful or negligent acts or omissions."

Delete the following Section 23. SOLICITATION OF PHILIPS EMPLOYEES in its entirety:  
**"23. SOLICITATION OF PHILIPS EMPLOYEES**

For the duration of this Agreement and for one year following the expiration or termination of this Agreement, Customer and its affiliates will not directly or indirectly solicit any employee of Philips or its affiliates engaged in providing the Services."

and insert in its place:

**"23. SOLICITATION OF PHILIPS EMPLOYEES**

For the duration of this Agreement and for one year following the expiration or termination of this Agreement, Customer and its affiliates will not knowingly solicit any employee of Philips or its affiliates engaged in providing the Services."

Delete Section 24.5 Governing Law in its entirety:

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

and insert in its place:

**"24.5 Governing Law.** All transactions contemplated under this Agreement shall be governed by the laws of the state in which the Covered system is located, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act ("UCITA"), in any form."

Delete the following Exhibits from Section 24.7 Additional Terms:


"Exhibit 2: Philips Technology Maximizer  
Exhibit 3: Additional Support & Assist Coverage Terms and Conditions  
Exhibit 5: Additional Clinical Education Training Terms and Conditions  
Exhibit 6: Additional Rightfit Software Maintenance Agreement Terms and Conditions  
Exhibit 7: Rightfit Software Maintenance Agreement Hardware Support  
Exhibit 8: Additional Patient Care Services Terms and Conditions"

Philips' Quotation No. 1-2798VEQ, Rev. 2 dated March 9, 2020, including the descriptions of the items of equipment, together with this Amendment represents the entire agreement between the parties and supersedes all previous communications, representations, agreements and negotiations between the parties on this matter. Any modification, amendment or supplement shall not be

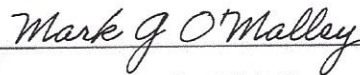


binding unless it is in writing and signed by an authorized representative of Kern County Hospital Authority and Philips Healthcare a division of Philips North America LLC. The offer to enter into this Amendment is valid 90 days from March 20, 2020.

Accepted and agreed by:  
Kern County Hospital Authority

  
Signature: \_\_\_\_\_  
Russell V. Judd  
Printed Name: \_\_\_\_\_  
Chief Executive Officer  
Title: \_\_\_\_\_  
3/26/20  
Date: \_\_\_\_\_

Philips Healthcare a division of Philips North America LLC

  
Signature: \_\_\_\_\_  
Mark G. O'Malley  
Printed Name: \_\_\_\_\_  
Senior Manager Contracts  
Title: \_\_\_\_\_  
26 March 2020  
Date: \_\_\_\_\_

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority

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

# PHILIPS

<b>Quotation #:</b> 1-2798VEQ	<b>Rev:</b> 2	<b>Effective From:</b> 09-Mar-20	<b>To:</b> 08-May-20
<b>Presented To:</b> KERN MEDICAL CENTER 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018  Tel:  <b>Alternate Address:</b>		<b>Presented By:</b> Weston Anderson <i>Account Manager</i>  Yvonne Turner <i>Regional Manager</i>  Tel: (661) 481-1349 Fax:  Tel: Fax:	
<b>Date Printed:</b> 09-Mar-20			

The Service information contained in this Quote is subject to a separate service proposal.

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

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



### Quote Solution Summary

<u>Line #</u>	<u>Product</u>	<u>Qty</u>	<u>Price</u>
	101677 CombiDiagnost R90	1	\$413,000.00
Equipment Total:			\$413,000.00

### Solution Summary Detail

<u>Product</u>	<u>Qty</u>	<u>Each</u>	<u>Monthly</u>	<u>Price</u>
101677 CombiDiagnost R90	1	\$413,000.00		\$413,000.00

SVC0130 Protection POS

\$3,887.50

The Service Information contained in this Quote is subject to a separate service proposal.

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: 500005

#### Add'l Terms:

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

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

**Payment**      **0% Down, 80% Upon Delivery, 20% Due When the Product is Available for First Patient Use, Net due 30 days from date of invoice**

## Quote Summary

101677 CombiDiagnost R90

Qty	Product
1	NNAS631 CombiDiagnost Full System.
1	NEDA023 Seismic Qualification
1	NEDA335 High Performance Room
1	NEDA305 80 kW generator with IQX
1	NEDA307 Grid-Controlled Fluoro (GCF)
1	NEDA308 Console and trolley for in-room nearby use
1	NEDA318 Ceiling suspension for two in-room monitors
1	NEDA315 Comfort Move
1	NEDA316 Digital VS vertical stand with tray for SkyPlate
1	NEDA320 Motorized tilting of the VS vertical stand
1	NRDN238 SkyFlow Plus
1	NDCC472 Dose Reporting in DICOM Structured Report format
1	NDCC221 Clinical Quality Control software
1	NDCC071 mShield
1	NRDN421 Stretch grip for the VS or VM vertical stand
1	NRDN406 Detector holder for the patient bed
1	NEDC106 Pair of leg supports
1	NEDC104 Compression belt single side pull
1	NEDC102 Side bar
1	NEDC112 Table mattress
1	989001070231 Floor plate large
1	989801256141 XR Additional Training 16 Hours OnSite
1	989801220273 Ceiling Track w/Column & Handle Ext
1	980406041009 Rad Shield w/ Arm (Contoured) 61X76
1	989801240050 Intercom system for fluoro room
1	SP019 Trade in Allowance
1	SEBLRSVNP1 Customer Note

### Options

Qty	Product
1	989801240006 TIMS2000SP Philips CombiDiagnostProxiDiagnost



## 101677 CombiDiagnost R90

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

Line #	Part #	Description	Qty
1	**NNAS631	CombiDiagnost Full System. CombiDiagnost R90	1

CombiDiagnost R90 is a remote controlled premium fluoroscopy system in combination with high-end digital radiography, designed to provide high patient throughput and efficiency through a smooth digital workflow, as well as to improve room utilization in a cost effective manner.

Thanks to its digital flat detector technology able to acquire high frame rate fluoroscopy as well as high-resolution radiography, CombiDiagnost R90 allows performing in one single room a wide range of applications that would typically require multiple conventional systems, saving space and time.

### Main benefits at a glance:

- X-ray from head to toe thanks to 193 cm (76 inch) patient coverage
- Extremely robust geometry to exam broad patient types, with maximum patient load of 284 kg (626 lbs) without limitation of movements
- Easy access to the table and comfortable work position, with height adjustment from 65 cm to 133 cm (25.6 to 52.5 inch), +/- 1.5 cm (0.6 inch)
- High flexibility through tiltable table from -90° to +90°
- Ample detector area for full diagnostic information even with large patients
- Dose reduction due to high detector quantum efficiency
- Broad range of applications possible including chest exams, thanks to source image distance adjustable from 113 cm to 183 cm (44 to 72 inch)
- Effortless table, detector and column positioning with motorized movements
- Large adjustable footrest which can be positioned at both ends of the table
- No grid manipulation necessary thanks to automatic grid selection based on exam type
- Two adjustable handgrips on tabletop, for patient safety and comfort during movements
- Optimized exposure settings through automatic adjustment according to patient thickness
- Decrease in the number of repeat exposures due to the reduction of overexposed and underexposed images
- Superb image quality due to state-of-the-art detector technology and exclusive Dynamic UNIQUE image processing
- Total radiation dose monitoring by an integrated area dose calculator
- Customizable Eleva user interface with two high quality monitors for the control room
- State-of-the-art IT security and patient privacy architecture
- Professional serviceability and remote service capabilities

## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<p>The long tabletop and wide tube column and detector travel provide great patient coverage, allowing quick and effortless positioning. Thus the patient can be completely examined and not moved during the examination. The high weight capacity enables examination of bariatric patients. The motorized height adjustment gives a total tabletop lift of 68 cm (26.9 inch) to adjust to a comfortable and safe working height. The lowest position allows loading a patient who is in a wheelchair.</p> <p>The wide size 43 x 43 cm (17 x 17 inch) integrated digital flat detector covers all relevant anatomy and offers full diagnostic information. Its Cesium Iodide (CsI) technology provides excellent quantum efficiency (DQE) and helps to reduce the required patient dose. Its ability to acquire both high frame-rate fluoroscopy sequences and high-resolution radiography images provides high flexibility in any circumstances.</p> <p>An integrated seven-field automatic exposure control chamber ensures optimum image quality at the lowest possible dose even for difficult projections, as well as the automatic adjustment of exposure kV and time parameters to be optimized to patient thickness.</p> <p>The geometry control console provides a simple and ergonomic way to trigger motorized geometry movements from the control room. Five joysticks offer intuitive and safe control of all movements, plus a touchscreen user interface allows manual overwrite of acquisition parameters.</p> <p>The innovative Eleva workspot of CombiDiagnost R90 lets you experience simplicity like never before. Designed with input from customers, it provides two high quality monitors for the control room with a clear and intuitive user interface. The main monitor being touchscreen, it is easy to learn and use and is highly configurable to adapt to particular needs and specific workflows, resulting in high room efficiency.</p> <p>The high workflow automation possible through the Advanced Eleva concept allows concentrating on patients instead of on the system. The touchscreen user interface, the integrated generator controls, and the automatic setting of exposure parameters based on patient and examination information coming from the RIS, provide quick and easy access to all functions a busy technologist needs to achieve an efficient workflow.</p> <p>Thanks to Philips outstanding Dynamic UNIQUE (UNified Image Quality Enhancement) advanced multi-resolution image processing, all radiography images and fluoroscopy sequences are always displayed fully processed in real-time. During fluoroscopy runs, Dynamic UNIQUE performs instant de-noising from the first frame onwards, avoiding the need to wait some frames before getting a stable and acceptable de-noising, resulting in time saving. Dynamic UNIQUE provides an optimal contrast harmonization with enhanced details, while the overall impression remains natural, and a comparable image impression between RF and DR images.</p> <p>An integrated area dose calculator allows radiation dose monitoring for every individual image or sequence as well as cumulated per examination, based on the examination generator and collimator settings.</p>	



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		The system includes the necessary DICOM interoperability services ensuring smooth workflow through standardized patient list management and secure storage of examinations to PACS (Worklist Management, Modality Performed Procedure Step/MPPS, Image Export and Storage Commitment, Print for radiography images).	

### Specifications:

#### Table

- Dimensions
  - Table height: 65 cm to 133.3 cm (25.6 inch to 52.5 inch), elevating, motorized
  - Elevation range: 68.3 cm (26.9 inch)
  - Elevation speed: 2.5 cm/s (1 inch/s)
- Movements
  - Tilt angle: - 90° to + 90°
  - Tilt speed: 2 speeds, 4.5°/s and 6.5°/s
  - Automatic stop in horizontal position

#### Tabletop

- Total dimensions: 73.8 cm x 235.6 cm (29 inch x 92.8 inch)
- Radiolucent area: 221.4 cm x 55.4 cm (87.2 inch x 21.8 inch)
- Tabletop to detector distance: Min. 12.5 cm (4.9 inch)
- Shape: Flat
- Material: micro sandwich of laminate, carbon and foam
- X-ray attenuation: 0.6 mm (0.02 inch) Al (at 100 kVp, HVL = 2.7 mm (0.1 inch) Al)
- Maximum patient weight without limitations in movements: 284 kg (626 lbs)
- Movements
  - Lateral: 32 cm (12.6 inch), +/- 16 cm (6.3 inch)
  - Longitudinal: only detector movements to improve patient comfort
- Movement speed
  - Lateral: 5 cm/s (1.9 inch/s), soft start and stop, Auto centering
  - Longitudinal: detector movement 3 cm/s (1.2 inch/s) to 20 cm/s (7.9 inch/s)

#### Table tube column, detector assembly

- Movements
  - Range: 148 cm (58.3 inch) longitudinal, motorized
  - Speed: Variable, slow for positioning, high for travel maximum speed from 3 cm/s to 20 cm/s (1.2 inch/s – 7.9 inch/s)
- Patient coverage: 193 cm (76 inch), without patient movement
- Angulation

# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>Movements: Motorized</li> <li>Range: +/- 40°</li> <li>Speed: 11.2°/s</li> <li>Supporting functions: automatic centering of target organ during oblique projections in fluoroscopy, and oblique exposures at both ends of tabletop possible</li> </ul>	
		<ul style="list-style-type: none"> <li>Source image distance (SID) <ul style="list-style-type: none"> <li>Range: 113 cm to 183 cm (44 inch to 72 inch)</li> </ul> </li> <li>Movements: Motorized</li> <li>Speed: 4.1 cm/s (1.6 inch/s)</li> <li>Focal spot to floor distance (in 90° position): 51.5 cm to 211.5 cm (20.3 inch to 83.3 inch) without angulation</li> <li>Tube rotation: Manual, Range - 90°/ + 180°</li> <li>Stop position: - 90°/ - 50°/ - 40°/ 0°/ + 40°/ + 50°/ + 90°/ + 180°</li> </ul>	
		<ul style="list-style-type: none"> <li>Compressor <ul style="list-style-type: none"> <li>Movements: Motorized</li> <li>Activation: Remote controlled</li> <li>Compression force: Variable, 3 kg to 15 kg (6.6 lbs to 33 lbs) in 0.5 kg (1.1 lbs) steps</li> <li>Distance to table top in use: 13.8 cm – 38.8 cm (5.4 inch to 15.3 inch)</li> <li>Compressor parking: Automatic, behind tube stand</li> <li>Cone: Removable</li> </ul> </li> </ul>	

## Eleva workspot

- Computer
  - Based on 3.9 GHz, Intel Core I7 processor
  - 16 GB RAM memory
  - 1 TB Solid State Disk (SSD)
- Monitors
  - Two high quality color LCD monitors for the control room, one with touchscreen
  - Size: 21.3 inch
  - Matrix: 1600 x 1200 pixels (2 Megapixel)
  - Pixel pitch: 0.270 mm
  - Calibrated luminance: >700 cd/m²
  - Luminance ratio: >800:1
  - Dimensions: 492 x 394 mm (19.4 x 15.5 inch)
  - DICOM calibrated for room environmental illuminance from 0 to 1000 LUX
  - DICOM illuminance compensation automatically adjusted for room illuminance

## Comprising:

- Fluoroscopy table
- Two adjustable handgrips
- Adjustable footrest
- Touchscreen geometry control console
- Double footswitch for fluoroscopy and exposure

## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"><li>• Eleva workspot computer, keyboard and mouse, cables</li><li>• Two high quality monitors for the control room</li><li>• Eleva application and examination database software and licenses</li><li>• Eleva dynamic images review software and licenses</li><li>• Windows 7 system software and licenses</li><li>• Dynamic UNIQUE advanced multi-resolution image processing</li><li>• Shutter and Image Verification tool</li><li>• Solid Core Software and license</li><li>• Dose calculation license</li><li>• DICOM Worklist Management software license</li><li>• DICOM Modality Performed Procedure Step (MPPS) software license</li><li>• DICOM Image Export and Storage Commitment software license</li><li>• DICOM Print for radiography images software license</li><li>• Instruction for use</li><li>• Quick reference guide</li><li>• User documentation</li></ul>	

### 1 Monitor in Examination Room

Monitor to be placed in examination room.

Main benefits at a glance:

- Live image feedback for nearby procedures or for the staff in the room
- Wide size, high brightness LCD technology for crystal clear and flicker-free images
- Flat design for low footprint in the examination room
- Lightweight for easy maneuverability

Specifications:

- Type: LCD color monitor IPS
- Size: 21.3 inch
- Matrix: 1600 x 1200 pixels (2 Megapixel)
- Pixel pitch: 0.270 mm
- Calibrated luminance: >700 cd/m<sup>2</sup>
- Luminance ratio: >800:1
- Dimensions: Approx. 495 x 425 mm (19.5 x 16.7 inch)
- Weight: Approx. 15.6 lbs.
- DICOM calibrated for room environmental illuminance from 0 to 1000 LUX
- DICOM illuminance compensation automatically adjusted for room illuminance

Comprising:



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		• Monitor	

### Ceiling Suspended Radiography Tube

Phillips CSM ceiling suspended radiography tube provides great flexibility in the examination room for radiographic exposures.

#### Main benefits at a glance:

- High flexibility due to the ability to place the tube almost anywhere in the room
- Very convenient for working with a vertical stand (option), or for free exposures like in a stretcher or a wheelchair
- Ergonomic handle, control buttons and release brake, as well as convenient color-coding of movements
- Wide 16.5 cm (6.5 inch) LCD display on tube head for clear information and statuses
- Integrated centering laser in the tube head for easy positioning

The CSM ceiling suspension carrying the X-ray tube gives freedom for a wide range of longitudinal and transverse movements in the room, allowing performing vertical stand examinations, as well as lateral projections and free exposures using the SkyPlate detector (option) or PCR cassettes. Thanks to a four-part telescopic column and an award-winning control handle, the system can be operated with only one hand and easily positioned close to the patient.

The clear and wide LCD information display and controls on the tube head, combined with the Eleva alternative workflow concept and automatic tube tracking, provide high projection flexibility plus quick and easy handling. A convenient room height adjustment at installation allows the system to fit almost any room height, to achieve the necessary source-image distance, and to go down to the floor for lower extremity work.

#### Specifications:

- Ceiling Suspension CSM
  - Four-part aluminum telescopic column with spring counter balanced holder for X-ray tube assembly, adaptable to individual room heights
  - Ceiling height at source-image distance 110 cm (44 inch): 2.65 m to 3.20 m (8 foot 8.3 inch to 10 foot 5.9 inch)
  - Minimum ceiling source distance: 87.1 cm (34.3 inch)
  - Possible room height adjustment: 37.5 cm (14.8 inch)
  - Lowest tube position: 30 cm (11.8 inch) measured from center of beam to the floor
  - Length of rails: base rails 4.3 m (14 foot 1.3 inch), optional rails extension 2.7 m (8 foot 10.3 inch)
  - Longitudinal travel with Comfort Track and Comfort Move: 3.44 m (11 foot 3.4 inch), 6.14 m (20 foot 1.7 inch) with rails extension option
  - Transverse travel: 1.50 m (4 foot 11 inch) with short transverse rails, 3.22 m (10 foot 6.7 inch) with long transverse rails

**101677 CombiDiagnost R90**

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"><li>• Vertical travel: 1.65 m (5 foot 5.2 inch)</li><li>• Rotation of focal spot around vertical axis of column: 360° (<math>\pm 180^\circ</math>), with rotation stop <math>+180^\circ/-165^\circ</math> and lock position every 45°</li><li>• Angulations of focal spot around horizontal axis: <math>\pm 125^\circ</math>, lock positions 0° and <math>\pm 90^\circ</math></li><li>• Control handle<ul style="list-style-type: none"><li>• Centering device in longitudinal and transversal directions</li><li>• Brake/locking controls and central three-axis brake-release at lowest position of handle</li><li>• Wide 16.5cm (6.5 inch) LCD information display and control buttons</li></ul></li><li>• Collimator<ul style="list-style-type: none"><li>• Motorized automatic collimation, manual overrule possible, with light field indicator</li><li>• Angle of aperture and rotation: 2 x 15°, <math>\pm 45^\circ</math>, depending on the collimator (see type number plate)</li><li>• Timer switch: up to 30 s</li><li>• Inherent filter value: &lt;0.3 mm at 100 kV, depending on the collimator</li><li>• Added filters: 2 mm Al or 1 mm Al + 0.1 mm Cu or 1 mm Al + 0.2 mm Cu</li><li>• Source-image distance measurement tape</li></ul></li><li>• X-ray Tube<ul style="list-style-type: none"><li>• Philips Super Rotalix high power X-ray tube SRO 33100, with dual-focus, rotating anode and ROT 380 assembly</li><li>• Two focal spots 0.6 and 1.2</li><li>• Maximum power<ul style="list-style-type: none"><li>• With focal spot 0.6: 33 kW</li><li>• With focal spot 1.2: 100 kW</li></ul></li><li>• Anode angle 13°</li><li>• Maximum tube voltage 150 kV</li><li>• Anode heat storage capacity 220 kJ (300 kHU)</li><li>• Assembly heat capacity 1.260 kJ (1.700 kHU)</li><li>• Continuous anode input power 190 W</li><li>• Minimum anode speed 8,000 to 10,000 revolutions/minute</li><li>• Build in filter 2 mm Al (5/64")</li><li>• Total filtration minimum 2.5 mm Al (105/1024")</li><li>• Double tube overload protection</li><li>• Total weight approx. 26 kg</li></ul></li></ul>	

**Comprising:**

- Four-part telescopic column
- X-ray tube assembly with collimator
- Control handle with buttons and LCD screen
- Rail system
- Installation cables and high voltage cables
- Set of markers for preferred source-image distance
- Philips Comfort Track system motorization

**CS Base Rails 14' 1.3"**



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		For longitudinal carriages of CS monitor ceiling suspension or auxiliary ceiling suspension; length 4.3 M.	

Comprising:

- 2 CS rails.
- Adjustable end/stops.
- Spacer strips.
- Fixing parts.
- Brake rails.

Compatible with:

- CS 2 CS 4.
- Monitor ceiling suspension.
- Rail extension 9890 010 01622.
- Rail for cable carrier 9890 010 02422.

### Large SkyPlate Set

Philips SkyPlate is the next generation of wireless portable detectors. It is an integrated part of the Eleva platform and defines a new dimension of flexibility and freedom within the radiography room.

Main benefits at a glance:

- DR speed and excellent image quality with the positioning flexibility of CR
- ISO compliant cassette size format (35 x 43 cm, 14 x 17 inch) to fit into standard operating room tables
- Reduced patient infection risk and easy handling thanks to the detector's cable-free design
- Easy handling for free exposures
- Flexible positioning for lateral or oblique projections
- Instant image display
- State-of-the-art Csl detector technology and UNIQUE image processing for optimal image quality at the lowest dose
- Robust shell of the detector to protect it from water drops and dust
- Easy, precise and safe positioning around the patient, even for difficult projections, provided by a rich set of dedicated accessories
- SkyPlate sharing license, to use the wireless detector on another compatible Philips X-ray system

The SkyPlate large covers all relevant anatomy with its large detector area of 35 x 43 cm (14 x 17 inch). Depending on anatomy, it can be positioned in different orientations and offers full diagnostic information even with large patients. Combined with Philips advanced UNIQUE image processing, grid-line removal algorithm and state-of-the-art Cesium Iodide (Csl) technology, it has an excellent detective quantum efficiency (DQE) and helps to reduce the required patient dose. It provides instant image display with superb image quality on the Eleva workspot for increased

## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
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diagnostic confidence.

Thanks to its cable-free design, the SkyPlate allows quick and efficient procedures with high hygienic standards. Its robust design and a rich set of optional dedicated accessories (mobile holder, bed holder, attachable grids and hygienic bags) offer easy, safe and quick positioning throughout the hospital. Special projections like laterals can easily be performed without moving the patient. Its slim design is optimized for critical environments and minimizes the risk of interfering with life supporting equipment, cables, tubes and catheters.

The detector features advanced low-power Wi-Fi connection technology and is designed according to IEC 60601-1-2. It is compliant with life supporting devices designed according to IEC 60601-1-2 and with pacemakers designed according to IEC (EN) 45502-2-1 when keeping indicated distances. The SkyPlate battery can be removed and recharged in the battery charging station. Once a battery is empty, a new one can be inserted to immediately continue working with the SkyPlate.

SkyPlate sharing allows taking the SkyPlate from the system and using it with other compatible Philips MobileDiagnost wDR, DigitalDiagnost or ProGrade systems. Thereby, SkyPlates can be used efficiently wherever needed and help driving down investment costs. Compatible systems need to carry the SkyPlate Sharing license to participate in SkyPlate sharing.

### Specifications:

- Size: 35 x 43 cm (14 x 17 inch) SkyPlate large wireless digital flat detector with Cesium Iodide (CsI) technology, active detector area 34.48 x 42.12 cm (13.6 x 16.6 inch) (2330 x 2846 pixels), pixel pitch 0.148 mm
- Image resolution: up to 3.38 line pairs per mm
- Maximum patient weight: 220 lbs. for weight-bearing examinations
- WLAN network standard: IEEE802.11 a, b, g or n (configurable)
- Encryption: default WPA2
- Optional attachable grids
  - Portrait orientation: 44/8/130: 44 lines/cm (112 lines/inch), ratio 8, focus 130 cm (51 inch)
  - Landscape orientation: 40/8/130: 40 lines/cm (100 lines/inch), ratio 8, focus 130 cm (51 inch)

### Comprising:

- SkyPlate large 35 x 43 cm (14 x 17 inch)
- Two exchangeable batteries
- Set of 100 hygienic bags
- Software licenses
- SkyPlate sharing license
- Documentation

### Compatible with:

- DigitalDiagnost Release 4.x, MobileDiagnost wDR Release 2.x, ProGrade 1.x



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		• Attachable grids for SkyPlate 35 x 43 cm (14 x 17 inch) in portrait and landscape orientation	

### SkyPlate Infrastructure Kit

The SkyPlate Infrastructure Kit is comprised of a wireless access point, a battery charger and a back-up cable.

Main benefits at a glance:

- All-in-one kit to set the customer up with the necessary parts for working with the SkyPlate
- State-of-the art components

The access point enables the wireless transmission of clinical images from the SkyPlate to the access point. The access point is hard wired to the radiography system and images are sent from there to the Eleva work station for review, editing and further distribution. The battery charger is designed to charge up to three batteries simultaneously. The back- up cable enables the transmission of clinical images in the case that there is no wireless transmission between the SkyPlate and the wireless access point possible.

Specifications:

- Wi-Fi access point
  - according to regional requirements for Wi-Fi transmissions
- SkyPlate battery charger
  - It offers a 4 bar charge status color indication per battery: 0-25%, 25-50%, 50-75%, 75-100%.
  - IP41 compliant (IEC60529).
  - Dimensions 172 x 322 x 48 mm
  - SkyPlate back- up cable

Compatible with:

- SkyPlate large 35 x 43 cm (14 x 17")
- SkyPlate small 24 x 30cm (10 x 12")

### Shoulder Support

Pair of shoulder supports that can be easily attached to the table rails. The quick set lever stop allows to mount this accessory at any position along the table rails.

Compatible with:

- Diagnostic tables with flat section rails

**101677 CombiDiagnost R90**

Line #	Part #	Description	Qty
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		X-Ray Wall box	
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13 ga steel Wall Connection Box

**CABLES F/ EASY DIAG-SCP INSTALL**

Cables for Easy Diagnostic-SCP Install

**UPS**

The UPS is included in case of a power breakdown for EasyDiagnost Eleva core components (System Controller, Remote Input/Output, Automatic Image Processing, ViewForum, Ethernet Switch, Firewall). It ensures that the completion of the last task and storage of images can be performed.

- Bridging time: 60 minutes
- Maximum charging time: 6 hours

**DXR CombiDiagnost Handover 28h Onsite**

Clinical Education Specialists will provide twenty-eight (28) hours of CombiDiagnost R90 Onsite Education for up to four (4) students, selected by customer, including technologists from night/weekend shifts if necessary. Students should attend all 28 hours. CEU credits may be available if the participant meets the guidelines provided by Philips. Please read guidelines for more information. Depending on your system configuration, the first four (4) hours onsite may be spent configuring new equipment for specific clinical needs, as well as reviewing important safety features and quality procedures. Please read guidelines for more information. Note: Site must be patient-ready. Philips personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation.

It is highly recommended that part 989801292145 Additional 16hr Onsite is purchased as a follow up training. Follow Up training should be scheduled three (3) months after initial training.

Education expires one (1) year from equipment installation date (or purchase date if sold separately).

2	**NEDA023	Seismic Qualification	1
		Seismic qualification and certification in accordance to the California Building Code (OSPHD).	
3	**NEDA335	High Performance Room	1

## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		Flexible 2-in-1 remote controlled system to perform radiography and fluoroscopy procedures in one single room with high room performance.	

### Main benefits at a glance

- Flexible table geometry movements for easy patient positioning and projections
- Adjustable table source image distance (SID) up to 183 cm (72")
- Large 43 cm x 43 cm (17" x 17") premium detector in the table to acquire high resolution radiography images as well as dynamic fluoroscopy sequences at up to 30 frames per second
- Ceiling suspended tube for exposures at vertical stand (optional), as well as for free exposures in the room using wireless SkyPlate detector
- Optional vertical stand with fixed 43 cm x 43 cm (17" x 17") detector or tray for 35 cm x 43 cm (14" x 17") wireless SkyPlate detector for any kind of radiography work including long length stitching exposures (optional)

4	**NEDA305	80 kW generator with IQX	1
		The 80 kW generator with IQX is a microprocessor-controlled X-ray generator with sophisticated high-frequency inverter technology. For pulsed fluoroscopy, the unique dose management supports standard Pulse-Controlled Fluoroscopy (PCF) and the advanced option Philips Grid-Controlled Fluoroscopy (GCF) (except for China). Moreover, the generator supports Philips Intelligent Exposure (IQX).	

### Main benefits at a glance

- Designed for a wide range of radiography and fluoroscopy applications
- Wide range of applications possible
- Intelligent Exposure IQX for optimized exposure image quality and automatic dose adjustment, independent of body thickness (in-pulse control)
- Optional Grid Controlled Fluoroscopy (GCF) (except for China) for superb fluoroscopy image quality at low dose with every single pulse
- Small footprint

The generator offers automatic and manual exposure techniques and automatic kV reduction. It includes the IQX feature, which regulates exposure settings during the exposure (in-pulse controlled).

IQX provides excellent, reliable and consistent image quality for digital exposures, both in static and dynamic fluoroscopy studies. IQX controls and adapts the exposure parameters within the X-ray pulse. The automatic and fast regulation of kV during each exposure leads to crisp image quality for all types of studies, for all patients.

### IQX highlights

- Short exposure times eliminates motion blur
- Exposure times are kept within an application-dependent customizable time range. This ensures that images are correctly exposed and free from motion blur, even with rapidly changing density
- Automatic kV-optimization
- Automatically adjusts the settings, relative to the standard kV-value. Thus the settings are optimized for the actual object density and the needs of the examination.



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"><li>Fast, in-pulse adaptation to (changes in) density, kV-adjustment takes place within the first millisecond of the exposure, enabling adaptation to sudden changes in object density (e.g. during dynamic studies)</li><li>Controlling range: customizable from -15 kV relative to a defined start value up to 125 kV</li></ul>	

### Specifications

#### Exposure output power

- 40 - 125 kV (main beam) for Rad and dynamic exposures on the table
- 40 - 150 kV (second beam with wall Bucky and free exposures)
- 1 - 1100 mA
- 1 ms - 4 s with AEC (Automatic Exposure Control)
- 1 ms - 4 s without AEC

#### Manual mode

- Two-factor technique (kV - mAs)
- Three-factor technique (kV - mA - s)

#### Automatic mode

- One factor falling load (kV)
- Two factor constant load (kV/mA)
- Automatic kV reduction
- Support of IQX Intelligent exposure

#### Fluoroscopy techniques

For enhanced image quality and dose management, the generator supports continuous fluoroscopy and the two pulsed fluoroscopy techniques with in-pulse control PCF and Philips GCF (option, except for China).

#### Fluoroscopy output with PCF

- 40 - 125 kV
- 0.2 - 30 mA with continuous fluoroscopy
- 1.5 - 60 mA with pulsed fluoroscopy

#### Fluoroscopy output with GCF

- 40 - 110 kV
- 0.2 - 30 mA with continuous fluoroscopy
- 1.5 - 200 mA with pulsed fluoroscopy

Area Dose Calculation and display and fluoroscopy entrance dose rate limitation.



Line #	Part #	Description	Qty
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Automatic mains adaptation.

Comprising

- X-ray generator

5	**NEDA307	Grid-Controlled Fluoro (GCF)	1
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Grid-Controlled Fluoroscopy (GCF) is an exclusive Philips technology of pulsed fluoroscopy for fully automatic dose management with in-pulse regulation. A special grid switch-mechanism in the GCF tube allows to create sharper radiation pulses than with the PCF tube. Therefore, unwanted soft radiation is eliminated. Additionally, the X-ray parameters kV, mA and time are controlled by a unique integrated mechanism within each single pulse (in-pulse control). The combination of sharp pulses and Philips in-pulse control results in efficient dose management at superb image quality.

Main benefits at a glance

- Philips GCF delivers only dose that contributes to the image
- Sharp pulses without step-up or tail of soft radiation being automatically adjusted in real-time in length and intensity
- For pediatric examinations, Philips GCF enables a dose rate (\*1) reduction of up to 68% (\*2) compared to PCF, depending on patient type and clinical application
- Dedicated and proprietary pediatric settings with a further decreased pulse time and an optimized kV/mA-curve
- Excellent image quality for fluoroscopy with each single pulse
- On the fly selection of three different pulse rates (user programmable between 0.5 to 30 frames per second) and continuous fluoroscopy for maximum user flexibility
- GCF lock-in mode to maintain image quality during abrupt variations in absorption e.g. bringing lead gloves in the beam to position a patient
- Adaptive measuring fields maintain a constantly high image quality even when the field of interest is limited by shutters moving

(\*1) Dose rate determined according to IEC 60601-2-54, 203.5.2.4.5.102, System set up: detector format 43 cm x 43 cm (17" x 17"), patient type children, 0.1 mm Cu + 1 mm Al filter, reduced dose and pulsed slow fluoroscopy mode with 2 pulses/s, Phantom: 5 cm (2") PMMA

(\*2) Relative difference of two reference air kerma rates between system with GCF and system with PCF

Specifications

GCF

- Pulse time: 5 to 20 ms
- Pulse frequency: 0.5 to 30 frames per second

X-ray tube

Philips High Performance Super Rotalix Metal high power X-ray tube SRM 0608, with dual-focus, rotating anode and ROT 505 GS assembly.

Main benefits at a glance

**101677 CombiDiagnost R90**

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"><li>Especially adapted to high throughput environments</li><li>Allows high continuous output thanks to high heat dissipation</li><li>Universal field of application due to optimal focal spot-output ratio</li><li>Support of Philips' exclusive Grid Controlled Fluoroscopy (GCF) pulsed fluoroscopy technology</li></ul>	

**Specifications**

- Two focal spots 0.6 and 0.8
- Nominal anode input power
  - with focal spot 0.6: 44 kW
  - with focal spot 0.8: 64 kW
- Anode angle 12°
- Nominal tube voltage 125 kV
- Anode heat storage capacity 593 kJ (800 kHU)
- Assembly heat capacity 1.700 kJ (2.300 kHU)
- Continuous anode input power 250 W
- Minimum anode speed 9,000 to 10,800 revolutions/minute
- Total filtration minimum 2.5 mm Al (IEC 60522, 75 kV)
- Double tube overload protection
- Total weight 29 kg

**Comprising**

- Grid-Controlled Fluoroscopy (GCF) generator module and license
- Philips tube SRM 0608 ROT 505 GS

6	<b>**NEDA308</b>	<b>Console and trolley for in-room nearby use</b>	<b>1</b>
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The nearby control trolley is a compact and robust movable cart, providing the full set of control functions to work right next to the patient in the examination room.

**Main benefits at a glance**

- Convenient movable trolley can be placed wherever needed in the room
- Wide trolley base for high stability even in difficult conditions
- High quality wheels for effortless and precise rolling
- Touchscreen geometry control console triggers all geometry movements and acquisition settings
- Footswitch integrated in trolley base to trigger fluoroscopy and exposures acquisitions
- Footswitch can be detached from trolley for more flexibility
- Sealed waterproof keyboard with touchpad can be easily cleaned and disinfected
- Cable reel at the back for safely wrapping cables

**Specifications**

- Trolley (including geometry control console, keyboard and footswitches)
  - Dimensions

## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>Width: approx. 555 mm (21.9 inch)</li> <li>Height: approx. 992 mm (39.1 inch)</li> <li>Depth: approx. 686 mm (27 inch)</li> <li>Weight: approx. 26 kg (57.2 lbs)</li> <li>Keyboard                             <ul style="list-style-type: none"> <li>Type: alphanumeric, including numeric keypad, function keys and touchpad</li> <li>Sealed, waterproof, protection rating IP68</li> <li>Surface: silicon rubber, 100% latex free</li> </ul> </li> </ul>	

### Comprising

- Trolley on wheels
- Touchscreen geometry control console
- Footswitch for fluoroscopy and exposure
- Sealed waterproof keyboard with touchpad
- Cable sets

7	<b>**NEDA318</b>	<b>Ceiling suspension for two in-room monitors</b>	1
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The ceiling suspension for monitors is a robust, articulated, ceiling mounted support to hold two flat panel monitors and use in the examination room.

### Main benefits at a glance

- Floor space saving thanks to the ceiling suspended concept
- Can be moved all around in the examination room depending on needs
- Mounting on ceiling rails plus two articulated arms for maximum positioning freedom
- Five high quality joints for effortless and precise positioning
- Large handle below and on both sides for intuitive movements

### Specifications (including monitors)

- Weight: approx. 93 kg (204.6 lbs)

### Comprising

- Ceiling carrier rails, articulated arms, supports and joints, mounting parts
- Monitors cable set

8	<b>**NEDA315</b>	<b>Comfort Move</b>	1
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With Philips Comfort Move, relevant parts of the system geometry are motorized to support a fast, smooth and automated workflow within the daily routine in the X-ray room. Built-in safety measures include collision detection, force limitation, break management and dead-man control to position components safely with the patient in the room. Collimation and collimation light are set automatically to further release the user from making manual adjustments for radiographic routine procedure steps with the ceiling suspension.

### Main benefits at a glance

- Automatic tube height adjustment in vertical direction (tube tracking)



# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>Automatic tube positioning for upper, centered or lower detector alignment at vertical stand (option)</li> <li>Auto-collimation of the tube, depending on the selected examination</li> <li>Automatic tube alpha rotation around the horizontal axis by +/- 125 °</li> </ul>	

For systems with optional vertical stand (VS):

The motorization of the vertical stand makes it easy to set the appropriate detector height according to patient size. The motorized tilting (option) for the VS extends the possible application range to extremities, skeletal examinations, and even under table examinations using a trolley. This capability offers additional workflow enhancements on the system by enabling the upright Bucky unit to be automatically placed in different pre-defined positions as well as individual positions from -20° to +90°. With a single click, tube and detector can be linked to keep the tube centered to the detector while simultaneously setting the correct height of the detector (tube tracking). For specific examinations, the tube can automatically be positioned off-center to align the X-ray beam with the upper or lower border of the detector.

With Philips Comfort Move, Automatic Image Stitching exams (option) can be performed at the VS fully automatically including precise tube rotation and linear detector movements.

Main benefits at a glance

- Automatic tube and detector alignment/centering
- Automatic move-to-position of detector tray into pre-defined positions
- Manual and motorized height adjustment of detector tray, from 30 cm to 180 cm (11.8 inch to 70.9 inch)
- Convenient user interfaces located on both left and right sides of the detector tray, for quick and easy adjustment of movements
- Two different speeds, plus manual operation for precise positioning
- Motorized detector tray tilting (option)

Comprising:

- Motorization of the ceiling suspension column
- Motorization of the tube alpha rotation
- Motorization of VS (if present)
- Software license and documentation

9	**NEDA316	Digital VS vertical stand with tray for SkyPlate	1
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Philips height-adjustable vertical stand (VS) has a proven and smart design that makes no compromise on robustness, quality and work efficiency, even with challenging patients and difficult examination conditions. It is optimal for X-ray departments specializing in thorax examinations. The motorized tilting option extends the possible application range to extremities, skeletal examinations, and under-table examinations using a trolley.

This vertical stand features a SkyPlate tray to insert an optional SkyPlate detector. The detector can be taken out of the tray to perform free exposures in the room.

Main benefits at a glance



# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>Vertical stand mounted on the floor, optimal for chest X-ray and all wall Bucky applications</li> <li>SkyPlate tray to place a 35 x 43 cm (14 inch x17 inch) Philips SkyPlate wireless portable detector</li> <li>Easy-to-operate tray, allowing the positioning of the wireless portable detector in portrait or landscape orientation</li> <li>Depending on room layout requirements, tray can be configured at installation to be opened from left or right side</li> <li>Motorized height adjustment from 30 cm to 180 cm (11.8 inch to 70.9 inch) with two different speeds plus manual operation for precise positioning</li> <li>Customizable pre-defined positions (move-to-position) and numerous other well-planned features that significantly reduce the physical demands placed on the technologist</li> <li>Easy patient positioning with counterbalanced large vertical movement range</li> <li>Large and ergonomic patient grips on both left and right sides of the detector for safe and comfortable patient positioning</li> <li>Optional rotatable patient stretch grip on top left or right side of the detector tray</li> <li>Convenient user interfaces on both left and right sides of the detector, for quick and easy adjustment of movements, collimation, field alignment and orientation, selection of automatic exposure control chambers, and tracking mode</li> <li>Five-field automatic exposure control chamber for optimal image quality and low dose, and positioning flexibility</li> <li>Automatic ceiling suspension (option) tube height adjustment to detector height (tube tracking)</li> <li>Automatic collimation for X-ray beam limitation to digital flat detector, according to pre-programmed examination parameters</li> <li>Optional motorized detector tilting (-20° to +90°) to support examination of patients on a stretcher, plus straightforward exams of extremities for seated or standing patients</li> <li>Removable grid for optimal image quality and low dose</li> <li>Convenient storage for two grids within the detector unit for immediate and safe storage</li> </ul>	

The motorized height adjustment from 30 cm to 180 cm (11.8 inch to 70.9 inch) measured at center of detector above the floor, gives a total lift of 150 cm (4 foot 11.1 inch) to adjust to a comfortable and safe working height with a choice of two different speeds. An integrated five-field automatic exposure control chamber ensures superb image quality at the low dose even for difficult projections, and provides positioning flexibility for various examinations without moving the patient. The removable grid can be stored conveniently and safely directly in the detector unit, behind detector tray.

When inserted in the tray, an optional SkyPlate covers all relevant anatomy with its large detector area of 35 x 43 cm (14 x 17"). It holds the detector securely in its position, avoiding the risk of accidental detector drop when opening the tray. Depending on anatomy, a wireless portable detector can be inserted in portrait or landscape orientation and offers full diagnostic information even with large patients. It is part of the Eleva platform and it defines a new dimension of freedom within the radiography room. Combined with Philips advanced UNIQUE image processing, grid-line correction algorithm and state-of-the-art Cesium Iodide (CsI) technology, it has an excellent quantum efficiency (DQE) and helps to manage the required patient dose. It provides instant image display with superb image quality on the Eleva workspace for increased diagnostic confidence.

At any time, the SkyPlate can be taken out of the vertical stand tray to perform free exposures in the room with high flexibility, even for the most challenging projections. This feature is particularly useful to perform laterals, oblique, weight bearing feet or examinations in bed or wheelchair.

# 101677 CombiDiagnost R90

Line # Part # Description Qty

## Specifications

- Counterbalanced rugged column for motorized and manual vertical movement of the detector
- Vertical movement range: 30 cm to 180 cm (11.8 inch to 70.9 inch), measured at center of detector
- Installation: floor and wall attachment, or floor only (optional)
- SkyPlate tray where an optional SkyPlate can be placed in portrait or landscape orientation
- SkyPlate tray opening can be configured at installation for left or right operation
- Detector unit: 59.6 x 57.5 cm (23.5 inch x 22.6 inch)
- Optional tilting: -20° to +90°, motorized
- Automatic Exposure Control (AEC) with 5 measuring fields
- Operating: two user interfaces (left and right)
- Removable grid 40/8/140: 40 lines/cm (100 lines/inch), ratio 8, focus 140 cm (56 inch) for use with source-image distance from 110 to 180 cm (44 inch to 71 inch). A different default grid can be chosen in order questionnaire. Additional grids are available in accessories.
- Grid storage: for up to two grids within the detector unit

## Comprising:

- VS
- Tray for SkyPlate detector
- Default grid 40/8/140. A different grid can be chosen in order questionnaire. Additional grids are available in accessories.
- Software licenses
- Documentation

10 \*\*NEDA320 Motorized tilting of the VS vertical stand 1

The motorized tilting option for vertical stand (VS) brings workflow enhancements on the system by enabling the upright Bucky unit to be automatically placed in different positions.

## Main benefits at a glance

- Extends the possible application range to extremities, skeletal examinations, and even under-table examinations using a trolley
- Reduces technologist physical involvement by providing motorized tilting movements
- Tilting by just pressing a move-to-position button or by pressing and holding a dedicated movement button (e.g. vertical movement of the Bucky unit)
- Motorized height adjustment from 30 cm to 180 cm (11.8 inch to 70.9 inch) with two different speeds, plus manual operation for precise positioning
- Convenient user interfaces on both left and right sides of the Bucky unit, for quick and easy adjustment of movements, including motorized tilting

## Specifications

- Tilt from -20° to +90° horizontal position, via 0° vertical position
- Vertical movement range: 30 cm to 180 cm (11.8 inch to 70.9 inch), measured at center of Bucky unit



# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		Comprising	
		<ul style="list-style-type: none"> <li>• Tilting mechanism between vertical stand column and Bucky unit</li> <li>• Electronic controlled motor drive</li> <li>• Set of cables</li> <li>• Software license</li> </ul>	
		Compatible with	
		<ul style="list-style-type: none"> <li>• VS</li> </ul>	
11	**NRDN238	SkyFlow Plus	1
		<p>To avoid extensive scatter radiation on images, an anti-scatter grid is sometimes used, typically for anatomies such as chest, abdomen or pelvis. With SkyFlow, Philips presents an innovative and exciting way to enhance image quality for all anatomies where grid was recommended without applying an anti-scatter grid. Such as Abdomen, Chest, Knee, Pelvis, Shoulder.</p> <p>For customers who are using a grid, SkyFlow Plus can provide an image contrast level close to grid images. This implies that no grid needs to be carried, positioned and aligned. Also, chances for potential re-takes due to grid cut-off or misalignment will be reduced.</p> <p>Customers who are not using a grid today will see an improved image impression by using the SkyFlow functionality. Even though no grid is applied and dose levels remain unchanged, image quality will improve.</p> <p>The SkyFlow functionality is especially suitable for bariatric patients. Once the license is installed at the system, it does not need a single technologist interaction and is automatically applied on images.</p>	
		Comprising	
		<ul style="list-style-type: none"> <li>• SkyFlow Plus license</li> <li>• Documentation</li> </ul>	
		Compatible with	
		<ul style="list-style-type: none"> <li>• MobileDiagnost wDR release 2.x</li> <li>• CombiDiagnost R90</li> <li>• ProxiDiagnost N90</li> </ul>	
12	**NDCC472	Dose Reporting in DICOM Structured Report format	1
		<p>This DICOM service allows exporting patient radiation dose details in the Structured Report DICOM standard format.</p> <p>Main benefits at a glance</p> <ul style="list-style-type: none"> <li>• Standard, modern and comprehensive format for exporting patient radiation exposure information</li> <li>• Exports dose information on study (accumulated) and exposure levels</li> </ul>	



## 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"><li>Allows detailed exposure dose monitoring on the PACS or dedicated dose management system</li></ul>	

Typically, one dose report is created at the end of each procedure step performed on the system. This dose report collects together all the irradiation events from the procedure step and cumulates all dose values for the procedure step as a whole.

By exporting patient radiation dose in a comprehensive, very detailed and standard format, DICOM Structured Report allows to perform precise dose monitoring and analysis on the PACS or with a dedicated dose management system. This assists institutions to ensure their policies, procedures and protocols are adequate and being followed appropriately in the department. Moreover, it can help determining how changes in techniques and protocols impact radiation dose as well as image quality, to maintain patient doses As Low As Reasonably Achievable (ALARA).

### Comprising

- Software license

### Compatible with

- DigitalDiagnost 3.1 and above
- MobileDiagnost wDR 1.1. and above (Dose Area Product Meter required)
- EasyDiagnost 5.0
- ProGrade Rel 1 and above
- CombiDiagnost R90
- ProxiDiagnost N90

13	**NDCC221	Clinical Quality Control software	1
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This powerful image statistic tool provides the advanced user with functionality to analyze rejected images regarding operators and rejection reasons. It serves as well for monitoring and analyzing general parameters. The data files can be downloaded in standard format for further usage or archiving on a PC.

It perfectly supports the quality standards of the department and teaching situations.

Buying this feature once for a system will make the functionality available on all Eleva workspots that have been purchased for this system.

Note: for Essenta DR, Essenta DR Compact, EasyUpgrade DR and PCR Eleva systems, generator data will not be reported automatically.

### Comprising

- Software license

### Compatible with

- DigitalDiagnost 2.0 and above

# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
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- DigitalDiagnost C50
- DuraDiagnost 1.0 and above
- Essenta DR 1.0 and above
- Essenta DR Compact 1.0 and above
- MobileDiagnost wDR
- EasyUpgrade DR 1.0 and above
- PCR Eleva 1.0 and above
- ProGrade Rel 1 and above
- ProGrade D70
- CombiDiagnost R90
- ProxiDiagnost N90

14	**NDCC071	mShield	1
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Philips mShield is part of an overall strategy to safeguard the data integrity of medical information systems. It protects PCR Eleva from potential malicious software attacks within the hospital network. It decouples the modality from the network and creates a secure environment. By restricting traffic to only authorized devices, mShield acts to prevent malicious activity directed from the modality to unrelated devices on your hospital network. Network communication can be restricted to DICOM communication and remote service only. Thereby channels, which hackers need for attacks or viruses need to spread become unavailable.

The total system uptime can be increased. The cycle time of required security upgrades (patches) can be elongated and synchronized with regularly maintenance activities. No valuable treatment time is lost through system downtime or staff dealing with network problems. Once installed it requires almost no maintenance or update.

Philips mShield is always recommended if the system becomes part of a hospital network.

Philips mShield's design is based on the latest recommendations of International industry standard bodies, such as NEMA, COCIR and JIRA, which recommend firewalls as an "effective and flexible tool" to safeguard the data integrity of medical information systems.

The mShield hardware is designed to fit into a professional medical environment with dedicated robustness against high temperature or high-voltage hazards. It is located between the modality and the department network.

Comprising:

- mShield hardware
- software license and documentation on CD
- dedicated modality rule types

15	**NRDN421	Stretch grip for the VS or VM vertical stand	1
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The stretch grip for vertical stand improves examination conditions and patient comfort.

Main benefits at a glance

- Allow the patient to comfortably keep his arms overhead or beside the Bucky unit by holding the grip
- Ergonomic U-shape providing different grip heights to adapt to patient size
- Can be inserted at the top left or right side of the Bucky unit, depending on the situation

# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>Convenient wall mounted holder for immediate and safe storage</li> </ul>	
		Specifications	
		<ul style="list-style-type: none"> <li>Metallic U-shape grip</li> <li>Rotatable from -90° to +90° around the vertical axis</li> </ul>	
		Comprising	
		<ul style="list-style-type: none"> <li>Stretch grip</li> <li>Storage holder to be wall mounted</li> </ul>	
		Compatible with	
		<ul style="list-style-type: none"> <li>VS and VM vertical stands</li> <li>This option is only selectable for BuckyDiagnost when the VS Advanced package is taken</li> </ul>	

16	**NRDN406	Detector holder for the patient bed	1
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The detector holder for the patient bed is designed to take full advantage of the wireless portable detector to perform free exposures at the patient bed.

## Main benefits at a glance

- Slim design for easy positioning at the patient bed, Bucky table or trolley
- Holds the wireless portable detector in a safe and precise position, in portrait or landscape orientation
- Can hold the detector in a tilted position for angulated projections
- Very easy to put the detector in and to take it out
- Can hold the wireless portable detector with or without a grid on it
- Also compatible with 35 x 43 cm (14 x 17") CR cassettes

## Specifications

- Dimensions: length 41.5 cm (16.3"), width 23 cm (9.1"), height 72 cm (28.3")
- Weight: 4 kg (8.8 lbs)

## Comprising

- Detector Holder Patient Bed

## Compatible with

- Wireless portable detector 35 x 43 cm (14 x 17")
- Large SkyPlate detector 35 x 43 cm (14 x 17")
- CR cassettes 35 x 43 cm (14 x 17")

17	**NEDC106	Pair of leg supports	1
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# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		Accessory with quick-set lever stop.	
		Compatible with:	
		<ul style="list-style-type: none"> <li>• diagnostic tables with flat section locking rails</li> </ul>	
18	**NEDC104	Compression belt single side pull	1
		Allowing better visualization of anatomy by distributing the fatty tissue more evenly. Pull mechanism at one side, transparent belt with hook at the other side. Not for fixing of a patient, not for use in vertical position.	
		Comprising:	
		<ul style="list-style-type: none"> <li>• Accessory with "quick set lever stop" compression belt 23 cm wide</li> </ul>	
19	**NEDC102	Side bar	1
		A rod to mount at the side of the table top with two quick set lever stops. To support the patient during rolling over on the tabletop in several applications.	
		Compatible with:	
		<ul style="list-style-type: none"> <li>• Diagnostic tables with flat section locking rails</li> </ul>	
20	**NEDC112	Table mattress	1
		Grey mattress for fluoroscopy systems with flat tabletop, allowing more comfortable procedures for the patient.	
		Specifications	
		<ul style="list-style-type: none"> <li>• Length: 200 cm (78.7 inch)</li> <li>• Width: 58 cm (22.8 inch)</li> <li>• Thickness: 4 cm (1.6 inch)</li> </ul>	
		The mattress is made out of foam embedded in a synthetic cover which is sealed at the side of the mattress. It can be easily cleaned due to its flat, non-textured surface.	
		Comprising	
		<ul style="list-style-type: none"> <li>• Mattress</li> </ul>	
21	**989001070231	Floor plate large	1
		Floor plate to install in the room under the system base prior to system installation. The plate can be installed in-floor or top-floor, depending on room floor requirements.	
		Specifications	
		<ul style="list-style-type: none"> <li>• Length: 191.5 cm (75.4 inch)</li> <li>• Width: 98.2 cm (38.7 inch)</li> <li>• Thickness: 2 cm (0.8 inch)</li> <li>• Approved for system installation where OSHPD seismic certification is required</li> </ul>	
		Compatible with	

**101677 CombiDiagnost R90**

Line #	Part #	Description	Qty
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- CombiDiagnost R90

## Comprising

- Floor plate
- Installation material: Screws, washers, caps

22	**989801256141	XR Additional Training 16 Hours OnSite	1
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A Philips Clinical Education Specialist will provide sixteen (16) hours of RAD or RF OnSite Education for up to four (4) students, selected by customer, including technologists from night/weekend shifts if necessary. CEU credits may be available for each participant that meets the guidelines provided by Philips.

Note: Philips personnel are not responsible for actual patient contact or operation of equipment during education sessions except to demonstrate proper equipment operation.

Education expires one (1) year from equipment installation date (or purchase date if sold separately).

23	**989801220273	Ceiling Track w/Column & Handle Ext	1
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Mavig 2.5m Ceiling Track with Ceiling trolley, 360 degree column, and brake handle extension.

24	**980406041009	Rad Shield w/ Arm (Contoured) 61X76	1
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Contoured Rad Shield with Arm rest. 61X76

25	**989801240050	Intercom system for fluoro room	1
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Vitalinq 94A-07

The Vitalinq 94A-07 Communication System is a combination intercom and music system designed for use in Cath, EP and IR labs. Unlike other communication systems, the Vitalinq was designed specifically for the uniquely active acoustic environment of a full-functioning procedure room – not adapted for it.

The result is a reliable system that provides a means for clear, highly intelligible voice communication between the operating and control room theaters of the lab. In addition to the outstanding performance of the intercom, there is an integrated stereo system to provide music in a variety of formats.

The Vitalinq 94A-07's intercom system gathers and transmits speech in a highly efficient manner. By providing continuous two-way conversation, control room operators can respond immediately to physician requests. As the control room operator monitors vital signs, the physician can receive up-to-the-moment data on the patient's condition. Physicians also appreciate not having to wear or touch any devices, leaving them free to perform the procedure unencumbered.

The music system is integrated into the console but separate from the intercom. The music system is equipped with FM radio, CD playback capability, and auxiliary and USB inputs enabling connection of devices such as MP3 players. Music can be played in both rooms or faded between the rooms to allow different listening volumes or no music at all.

## Key Features and Benefits

- Continuous two-way communication throughout diagnostic and interventional procedures
- Capable of picking up conversation in a normal tone of voice



# 101677 CombiDiagnost R90

Line #	Part #	Description	Qty
		<ul style="list-style-type: none"> <li>•Special microphones provide high voice intelligibility</li> <li>•Easily add wireless headsets for tech, scrub nurse and circulator nurse</li> <li>•Easily interface with telephone to allow seamless switching of headset between intercom and telephone</li> <li>•Provides music via separate ceiling speakers from multiple source formats</li> <li>•Special options available for EP rooms and difficult acoustic environments</li> <li>•Ease of installation</li> <li>•cETLus Listing</li> <li>•Designed and Assembled in USA</li> </ul>	
26	SP019	Trade in Allowance	1
		Customer represents and warrants that (i) Customer has, and shall have when title passes, good and marketable title to the equipment being traded in and (ii) has the authority to effect such trade in.	
		Product: 70641 DIAGNOST 56/66/76A (	
		Serial Number: 46460	
		Manufacturer: PHILIPS HEALTHCARE	
		Trade-In authorization number: 110572	
		Trade-In Value: \$15,500.00	
		De-install Date: 10/30/2020	
		Customer will be trading-in equipment that is described on the attached System Disclosure Form (the "Trade-In"), which Trade-In the parties agree (i) will be removed on the De-install Date and (ii) is currently in the condition as represented on the System Disclosure Form. In addition, the parties agree as follows:	
		<ol style="list-style-type: none"> <li>1. Customer represents and warrants that Customer has good and marketable title to the Trade-In as of the date of this Quotation and will have good and marketable title when Philips removes the Trade-In from Customer's site (the "Removal Date");</li> <li>2. Title to the Trade-In shall pass from Customer to Philips on the Removal Date, unless otherwise agreed by Philips and the Customer;</li> <li>3. Notwithstanding anything to the contrary in any Business Associate Addendum, Customer represents and warrants that as of the Removal Date all Protected Health Information will have been de-identified or removed from the Trade-In;</li> <li>4. Philips may test and inspect the Trade-In prior to de-installation. If the condition of the Trade-In is not substantially the same on the Removal Date (ordinary wear and tear excepted) as it is identified on the System Disclosure Form, then Philips may reduce the price quoted for the Trade-In;</li> <li>5. If the removal date is delayed until after the De-Install Date, unless Philips causes the delay, then Philips may reduce the price quoted for the Trade-In by six percent (6%) per month.</li> <li>6. Philips is responsible for normal de-installation costs of the Trade-In.</li> <li>7. The trade-in value will not include costs associated for any facility modifications and/or rigging required for de-installation and must be accounted for separately.</li> <li>8. Customer is responsible for all plumbing necessary to properly drain coolant from chiller system and cap the lines.</li> <li>9. Prior to the Removal Date, Customer shall remove from the room all equipment that is not being de-installed.</li> </ol>	
27	SEBLRSVNP1	Customer Note	1
		Pricing includes delivery of Windows 10 o/s at whatever time it becomes commercially available.	



101677 CombiDiagnost R90

NET PRICE

\$413,000.00

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: 500005

Add'l Terms:

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

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

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is: \_\_\_\_\_.

If you do not issue formal purchase orders indicate by initialing here \_\_\_\_\_.

Tax Status:

Taxable ☒ Tax Exempt \_\_\_\_\_

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

Delivery/Installation Address:

Invoice Address:

1700 Mt. Vernon Ave.  
Bakersfield, CA 93306

Contact Phone #:

Contact Phone #:

Purchaser approval as quoted:

Date:

Title:

C.E.O.

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

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## OPTIONS

SELECTION OF ANY OPTION WILL INCREASE THE CONTRACT PRICE BY THE AMOUNT SHOWN IN THE PRICE COLUMN. OPTIONAL EQUIPMENT PRICING VALID ONLY IF PURCHASED IN CONJUNCTION WITH EQUIPMENT QUOTED.

Line #	Part #	Description	Qty	Each	Price	Initial
1	**989801240006	TIMS2000SP Philips CombiDiagnostProxiDiagnost	1	\$8,558.47	\$8,558.47	<u>17</u> <u>JL</u>

TIMS 2000 SP Package

Includes 23" LCD monitor, standard onsite installation & training, Video Isolator, Trigger Kit, & TDRS.

The solution for recording & review of modified barium swallow (MBS) studies.

- Windows 10 Pro 64 bit workstation
- High resolution video at 30 frames per second
- Benefits of eliminating DVDs & other removable media
  - Eliminates HIPAA risk
  - Patient data secure & archived
  - Studies available on PACS/ VNA for all authorized users
- Record the entire procedure
- Record from any fluoroscopy or FEES system (or any medical video device!)
- Synced audio
- Instant access (no FF & RW necessary!)
- Remote review & analysis with TDRS (TIMS DICOM

Review Software)

- Stopwatch timer
- Extensive review & analysis tools
- Study timer
- DICOM format for compatibility with all PACS & EMR
- DMWL for automated input of patient information
- DICOM send entire studies or portions of studies
- Archive studies to CD/DVD/USB/Network, with DICOM Viewer included
- Study editing tools
- Custom annotations
- Add audio comments
- Customized workflow
- Comprehensive Support & Maintenance



## PHILIPS PRODUCT WARRANTY

### DIGITAL X-RAY (DXR) SYSTEMS PRODUCT WARRANTY

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

#### 1. Twelve (12) Month System Warranty

1.1 Philips Healthcare a division of Philips North America LLC (Philips) warrants to Customer that the Philips' Digital X-Ray System (System) will perform in substantial compliance with its performance specifications, in the documentation accompanying the System, for a period of twelve (12) months after completion of installation or availability for first patient use, whichever occurs first.

1.2 Any glassware or detectors provided with the System is subject to special warranty terms set forth below.

1.3 If the quotation is a ProGrade Solution, please refer to Section 4.

#### 2. Planned Maintenance

2.1 During the warranty period, Philips' service personnel will schedule Planned Maintenance visits, in advance, at a mutually agreeable time on weekdays, between 8:00 am and 5:00 pm local time, excluding Philips' observed holidays.

2.2 Philips shall have full, free and safe access to the System and Customer's operation, performance and maintenance records for the System, on each scheduled or requested warranty service visit. Philips shall also have access to and use of any machine, service, attachment, features or other equipment required to perform the necessary service contemplated herein at no charge to Philips. Customer waives warranty service if it does not provide such access to the System and Customer's records. Should Philips be denied access to the System and Customer's records at the agreed upon time, a charge equal to the appropriate hourly rate will be accepted by Customer for "waiting time."

#### 3. System Options, Upgrades or Accessories

3.1 Any Philips' authorized options, upgrades, or accessories for the System which are delivered and/or installed on the System during the original term of the System warranty shall be subject to the same warranty terms contained in the first paragraph of this warranty, except that such warranty shall expire on the later of:

3.1.1 upon termination of the initial twelve (12) month warranty period for the System on which the option or accessory is installed; or

3.1.2 after ninety (90) days for parts only from the date of installation.

#### 4. ProGrade Solution Warranty

4.1 New components installed as part of the ProGrade Solution shall be covered for a period of twelve (12) months after completion of installation or availability for first patient use, whichever occurs first.

4.2 The warranty does not include existing components not being replaced as part of the ProGrade Solution; including X-Ray Tubes.

#### 5. SRO X-Ray Tubes

5.1 Philips warrants to Customer that the Philips' SRO X-Ray tube (tube) will be substantially free from defects in material and manufacturing workmanship which impair performance under normal use as specified in Philips' System descriptions and specifications for the shorter of twenty-four (24) months after installation or twenty-six (26) months after date of shipment from Philips.

#### 6. SRO X-Ray Tube Warranty Exclusions

6.1 The above warranty shall not apply to SRO X-Ray tubes installed outside the United States and Canada.

6.2 Philips' obligations under the System warranty do not apply to any System defects resulting from: improper or inadequate maintenance or calibration by Customer or its agents; Customer or third party supplied software, interfaces, or supplies; use or operation of the System other than in accordance with Philips' applicable System specifications and written instructions; improper site preparation; abuse, negligence, accident, loss or damage in transit; unauthorized maintenance or modifications to the System; or, to viruses or similar software interference resulting from the connection of the System to a network.

#### 7. SRO X-Ray Tube Warranty Exclusions

7.1 If a tube is found to fail during the warranty period, and if, in the best judgment of Philips, the failure is not due to neglect, accident, improper installation, use contrary to instructions, or the exclusions stated above, Philips' tube warranty liability hereunder is limited to, at Philips' option, the repair or replacement of the tube.

7.2 Any replacement tube would have a warranty period equal to the balance of the warranty period left on the tube replaced.

#### 8. Wireless X-Ray Detector

8.1 Philips warrants its detector to be free from defects in material and workmanship for twelve (12) months.

8.2 Claims under this warranty must be made within twelve (12) months after installation and thirteen (13) months after date of shipment from Philips.

8.3 A replacement will be provided at no charge for any failure acknowledged as Philips' liability.

8.4 Unless covered by a Philips' service contract option, the Customer is responsible for replacement costs of a wireless detector damaged accidentally (e.g. dropped) during the warranty period.

8.5 All Philips' wireless detectors have internal shock sensors. Philips' service team will read these sensors to determine if a detector malfunction has been caused by mishandling. A detector will be determined to be damaged by mishandling when:

8.5.1 For a Shipplate Detector: if 1 or more heavy shock is recorded; or if 3 or more medium shocks are recorded and;

8.5.2 For a Wireless Portable Detector (WPD): if either shock sensor is tripped

8.6 Philips does not cover damage to wireless detectors caused by liquid ingress; please use detector bags to protect your detector.

8.7 Philips does not cover damage to the wireless detector if the detector is cleaned or disinfected by chemicals not recommended as instructed per the User manual that is supplied with the product.

8.8 Examination of the returned detector may necessitate its destruction, but Philips liability shall, in any case be limited to repair or replacement as aforesaid, only if in its sole opinion the detector has been properly used, installed and applied and has not been subject to neglect, accident, environmental extremes or improper installation, or use.

8.9 The packaging of the replacement detector must be reused to return the original detector.

#### 9. System Software and Software Updates

9.1 The software provided with the System will be the latest version of the standard software available for that System as of the ninetieth (90th) day prior to the date the System is delivered to Customer.

9.2 Updates to standard software for the System that do not require additional hardware or equipment modifications will be performed as a part of normal warranty service during the term of the warranty.

9.3 All software is and shall remain the sole property of Philips or its software suppliers.

9.4 Use of the software is subject to the terms of a separate Software License Agreement.

9.5 No license or other right is granted to Customer or to any other party to use the software except as set forth in the license agreements.

9.6 Any Philips maintenance or service software and documentation provided with the product, and/or located at Customer's premises, is intended solely to assist Philips and its authorized agents to install and to test the System, to assist Philips and its authorized agents to maintain and to service the System under a separate support agreement with Customer, or to permit Customer to maintain and service the System.

9.7 Customer agrees to restrict the access to such software and documentation to Philips employees, those of its authorized agents, and its authorized employees of Customer only.

#### 10. Warranty Limitations

10.1 Philips sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips option, to the repair or the replacement of the product or a portion thereof, within thirty (30) days after receipt of written notice of such material breach from Customer ("Product Warranty Cure Period") or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer upon Customer's request.

10.2 Any refund will be paid, to the Customer when the product is returned to Philips.

10.3 Warranty service outside of normal working hours (i.e. 8:00 am to 5:00 pm, Monday through Friday, excluding Philips Observed holidays), will be subject to payment by Customer at Philips standard service rates.

10.4 This warranty is subject to the following conditions: the product:

10.4.1 is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips);

10.4.2 is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips written instructions and for the purpose for which the products were intended; and

10.4.3 is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the Product.



10.5 Philips' obligations under any product warranty do not apply to any product defects resulting from: improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software running in connection with the Licensed Software without prior approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or, viruses or similar software interference resulting from connection of the product to a network.

10.6 Philips does not provide a warranty for any third party products furnished to Customer by Philips under this quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product.

10.7 The obligations of Philips described are Philips only obligations and Customer's sole and exclusive remedy for a breach of a warranty.

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

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

#### **11. Remote Services Network (RSN).**

##### **11.1 Customer will**

11.1.1 provide Philips with a secure location at Customer's premises to store one Philips Remote Services Network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips) for connection to the equipment and to Customer's network; or

11.1.2 provide Philips with outbound internet access over SSL; at all times during the warranty period provide full and free access to the equipment and the Customer network for Philips use in remote servicing of the product, remote assistance to personnel that operate the products, updating the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services).

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

11.3 Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for extended coverage.

#### **12. Transfer of System**

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

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

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

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

#### **13. Limitation of Liability**

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

13.2 THIS LIMITATION SHALL NOT APPLY TO:

(a) THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

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

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

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

#### **14. Disclaimer**

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

#### **15. FORCE MAJEURE**

15.1 Philips and Customer shall each be excused from performing its obligations arising from any delay or default caused by events beyond its reasonable control including, but not limited to: acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.

Philips system specifications are subject to change without notice



# **Non Disclosure Agreement for Philips Confidential Pricing Information**

The parties specified below agree to the following terms:

## **A. Philips**

Name	Philips Healthcare a division of Philips North America LLC ("Philips")
Address	222 Jacobs Street, 3 <sup>rd</sup> Floor, Cambridge, MA 02141 USA

## **B. Company**

Name	Kern County Hospital Authority
Address	1700 Mount Vernon Ave, Bakersfield, CA 93306-4018

## **C. Confidential Information**

Authorized Purpose	To evaluate Philips' Information relating to pricing for imaging equipment ("Pricing") in connection with the potential purchase of such imaging equipment.
Period	Begins on the date Pricing is first disclosed and continues for 5 years from date Pricing is last disclosed.

## **D. Philips Contact**

Name	Weston Anderson
Title	
Telephone	(661) 481-1349
e-mail	
Signature and Date:	

## **Company Contact**

Name	
Title	
Telephone	
e-mail	
Signature and Date:	

1. The following terms and conditions (the "Agreement") apply to Pricing disclosed by Philips and its Affiliates ("Philips") to Company and its Affiliates ("Company"), in connection with the Authorized Purpose.

(a) Subject to Philips' prior written consent, Company may disclose, or request that Philips disclose, Pricing to Company's Affiliates that need to know the Pricing for carrying out the Authorized Purpose, provided they are advised of and agree to be bound by this Agreement. Company is responsible for any breach of this Agreement by its Affiliates.

(b) An Affiliate is any corporation, company, or other entity, that: (i) is under the Control of a party hereto; or (ii) has Control of a party hereto; or (iii) is under common Control with a party hereto. For this purpose, "Control" means that more than fifty percent (50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such are owned or controlled, directly or indirectly, by the controlling entity.

(c) Philips is aware that Company 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.

2. Philips may disclose Pricing to Company with respect to the Authorized Purpose in writing, orally, or otherwise.

3. All Pricing disclosed by Philips shall remain Philips' property. Company does not, by implication, estoppel, or otherwise, acquire any Intellectual property right, title, or ownership, nor a license to any such Intellectual property right, with respect to any Pricing disclosed by Philips hereunder.

ALL PRICING IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY WHATSOEVER. PHILIPS SHALL HAVE NO LIABILITY WHATSOEVER RESULTING FROM THE USE OF THE INFORMATION PROVIDED.

4. Company shall:

- (a) not use the Pricing for any purpose other than the Authorized Purpose;
- (b) not disclose the Pricing to any third party;
- (c) protect the Pricing against disclosure in the same manner and with the same degree of care with which Company protects its own confidential information but not less than a reasonable degree of care; and
- (d) limit circulation of the Pricing to Company's employees as have a need to know in connection with the Authorized Purpose.

These obligations shall survive the termination of this Agreement. Philips may terminate this Agreement at any time by means of a written notice to Company. Company shall return to Philips, or certify destruction of, all Pricing, immediately upon termination or expiration of this Agreement.

5. Information disclosed by Philips to Company pursuant to this Agreement shall not be confidential to the extent that the information:

- (a) is or becomes part of the public domain without violation of this Agreement or any other obligation of confidentiality;
- (b) is known by Company prior to disclosure by Philips;
- (c) is lawfully obtained by Company from a third party without any breach of confidentiality or violation of law; or
- (d) is developed by Company completely independently of any such disclosure by Philips.

6. If Company is required, pursuant to administrative or judicial action or subpoena, to disclose the Pricing, Company shall use its best efforts to maintain the confidentiality of the Pricing, e.g. by asserting in such action any applicable privileges. Immediately after gaining knowledge or receiving notice of such action or subpoena, Company shall notify Philips and give Philips the opportunity to seek any other legal remedies so as to maintain such Pricing in confidence, including a reasonable protective order.

7. Company may not transfer or assign any or all of its rights and/or obligations or delegate the performance of any or all of its obligations under this Agreement, directly or indirectly, through acquisition, merger or otherwise, without the prior written consent of Philips. Any transfer, assignment or delegation in contravention of the foregoing shall be void.

8. Company shall not disclose, export or release the Pricing in contravention of any applicable laws or regulations.

9. This Agreement shall be governed and construed in accordance with the laws of the State of California, without giving effect to its conflict of laws provisions.

10. This Agreement contains the entire understanding of the parties and supersedes any previous understandings or agreements with respect to the subject matter hereof. This Agreement may be amended only in writing signed by authorized representatives of each party.

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

# PHILIPS

Quotation #: 1-2798VEQ	Rev. 2	Effective From: 03/09/2020	To: 05/08/2020
<b>Presented To:</b> KERN MEDICAL CENTER 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018  Tel:  Alternate Address:		<b>Presented By:</b> Weston Anderson <i>Account Manager</i>  Yvonne Turner <i>Regional Manager</i>  Tel: (661) 481-1349 Fax:  Tel: Fax:	
<b>Date Printed:</b> 09-Mar-20			

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

Model	Months	Qty	Service Plan
101677 CombiDiagnost R90	60	1	SVC0130 Philips RightFit Protection POS Service Agreement

Home Office Use Only		
Site #	Start Date	End Date

## POINT OF SALE SERVICE CONTRACT SECTION

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

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



## CombiDiagnost R90

Additional Equipment Covered  
CombiDiagnost Full System.

Part #  
NNAS631

Unlimited Accidental Damage/Drop Coverage for Skyplate/WPD Wireless Detector and Detector Battery

Coverage includes:

- SkyPlate/WPD detector replacements including due to accidental drops
- SkyPlate/WPD detector batteries are covered under this plan at no additional cost
- Requires purchase of 48-month RightFit service agreement (minimum RightFit Assist)
- When a 48-month service agreement is purchased at Point-of-Sale (POS), then this coverage is extended to the standard 1-year warranty period for no additional cost.

Philips does not cover intentional damage to wireless detectors or damage caused by liquid ingress. Please use detector bags to protect your detector. Philips does not cover damage to the wireless detector if the detector is cleaned or disinfected by chemicals not recommended as per the User Manual supplied with the system.

Item #	Part #	Description
1	SVC0130	<b>Philips RightFit Protection POS Service Agreement</b> Thank you for the opportunity to provide this proposed Philips RightFit Service Agreement. Our Protection Service Agreement offers you robust security, a hands-on relationship with Philips, and open communications. <b>SERVICE DELIVERY:</b>

- 98% uptime guarantee for each contract year. This provides assurance of the equipment availability to scan patients, as described in the uptime guarantee exhibit.

### LABOR:

- Labor and travel coverage for on-site service 8:00 am - 9:00 pm, Monday - Friday, excluding Philips published holidays. The warranty period is included.
- Preferential Scheduling of service calls for service contract customers.
- On-site Response. At customer's request, Philips service goal is to be on-site within 4 hours.
- Planned maintenance coverage from 8:00 am - 9:00 pm, Monday - Friday, excluding Philips published holidays. Coverage includes activities performed according to a schedule to review safety, image quality, calibrations, equipment cleaning, performance trials and any other planned service prescribed by Philips. Philips current recommendation for DXR systems is 1 -2 times per year depending on the specific product model.
- Preferred rates for labor and travel. This includes reduced hourly rates for labor and travel for corrective or planned maintenance outside of Service Agreement coverage hours.

### PARTS:

- Standard parts coverage. This provides coverage on parts used to maintain and repair the equipment, including both hardware and software items.
- Earliest next day a.m. parts delivery. This provides delivery in most areas that can be accommodated by 8:30 am to fit the urgency of your need. (Actual time depends on local shipper delivery schedule and delivery restrictions for oversized or hazardous parts).

### STRATEGIC PARTS COVERAGE:

- Coverage based on product qualification below:
  - X-ray tube(s) included on all systems except for PCR and CAD Chest systems.

## CombiDiagnost R90

- 1 Flat Detector included on Digital Radiography Single Detector system, Easy Diagnost Eleva DRF (except Rel.5), Juno, CombiDiagnost, and ProxiDiagnost. Additional coverage for second Flat detector must be purchased under Selected Option.
- 2 Flat Detectors included on Digital Diagnost Dual Detector
- Detector(s) coverage included only when it is specified under "Additional Equipment Coverage" or "Selected Option" on MobileDiagnost wDR, Digital Diagnost 3 or 4, EasyUpgrade DR, Easy Diagnost Eleva DRF Rel. 5, DuraDiagnost, ProGrade, DuraDiagnost, and ProxiDiagnost.
- Wireless Detector Battery coverage included only when it is specified under "Additional Equipment Coverage" or "Selected Option"
- Image Intensifier(s) included on R/F Systems, except for Juno, CombiDiagnost, and ProxiDiagnost

### LIFECYCLE:

- Operating system software and hardware reliability updates. This includes on-site or remote labor, travel and parts necessary to complete safety, performance and reliability modifications to existing equipment software or hardware.
- 20% discount on any items selected from Philips Life Solutions catalog, excluding power monitoring.

### CUSTOMER CARE SOLUTIONS CENTER:

- 24/7 Technical telephone support.
- Clinical telephone support from 8:00 am - 9:00 pm, Monday – Friday.
- Remote Services. This supports remote system diagnostics and monitoring. Philips equipment is connected via an Internet secure single point of access network to our solutions center as described in the Terms and Conditions exhibit. Features may vary by equipment and software release level.

### SOLUTION ENHANCEMENTS:

- Philips Service Information. This contains important service management reports through a secure Internet site. Information on equipment service status, historical service performance, engineer response time, and planned maintenance schedules is available.
- Annual customer loyalty meetings. This includes a review of current and future performance goals of Philips equipment and service.

### NOTES:

- ProGrade quotations are valid only with a contract on the BuckyDiagnost.



**CombiDiagnost R90**

Service Plan: SVC0130 Philips RightFit Protection POS Service Agreement

Quantity: 1

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

Select Payment Terms Desired:

Select Choice *	Payments Plans	Single System Net	Total Net
<input checked="" type="checkbox"/>	60 Monthly Payments at	\$3,888	\$3,888
<input type="checkbox"/>	20 Quarterly Payments at	\$11,663	\$11,663
<input type="checkbox"/>	5 Yearly Payments at	\$46,650	\$46,650
<input type="checkbox"/>	Single Payment at	\$233,250	\$233,250

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

Prices above do not include any applicable sales taxes

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

Buying Group: HEALTHTRUST PURCHASING GROUP

Contract #: 500005

**Add'l Terms:**

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

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

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

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

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

**Customer Agreement as Quoted**

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

BY: X

Customer Signature

Russell V. Judd

Printed Name

Title Chief Executive Officer

Date

**For Headquarters Use Only**

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

Signature

Title Manager, Contract Management

Date

4/10/2020



## Service Agreement Terms and Conditions

### PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS

#### 1. SERVICES PROVIDED

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

#### 2. EXCLUSIONS

The Services do not include:

2.1 Servicing or replacing components of the system other than those systems or components listed in the quote, attachments and exhibits, as applicable (the "Covered System") that is at the listed system location ("Site");

2.2 Servicing Covered System if contaminated with blood or other potentially infectious substances;

2.3 Any service necessary due to:

(i) a design, specification or instruction provided by Customer or Customer representative;

(ii) the failure of anyone to comply with Philips' written instructions or recommendations;

(iii) any combining of the Covered System with other manufacturers product or software other than those recommended by Philips;

(iv) any alteration or improper storage, handling, use or maintenance of the Covered System by anyone other than Philips' subcontractor or Philips;

(v) damage caused by an external source, regardless of nature;

(vi) any removal or relocation of the Covered System; or

(vii) neglect or misuse of the Covered System;

2.4 Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors.

2.5 Batteries are not included in coverage for any purpose, system, or modality, including, but not limited to, Biomedical Equipment or uninterruptible power supply (UPS) systems of any size or type.

#### 3. CUSTOMER RESPONSIBILITIES

During the term of this Agreement, Customer will:

3.1 Ensure that the Site is maintained in a clean and sanitary condition; and that the Covered System, product or part is decontaminated prior to service, shipping or trade-in as per the published manufacturer's operating instructions;

3.2 Dispose of hazardous or biological waste generated;

3.3 Maintain operating environment within Philips specifications for the Site (including temperature and humidity control, incoming power quality (including but not limited to voltage spikes, brownouts and outages), incoming water quality, and fire protection system);

3.3.1 For customers choosing not to use a Philips approved UPS, Philips reserves the right to insert a power monitor at any time during the contracted period to collect power quality statistics. Should results show that power quality negatively impacted system performance and resulted in additional Philips cost to maintain the system, Philips reserves the right to bill for service events related to poor power quality.

3.4 Use the Covered System in accordance with the published manufacturer's operating instructions.

#### 4. SYSTEM AND BIOMEDICAL EQUIPMENT AVAILABILITY

4.1 System Availability. If Customer schedules service and the Covered System is not available at the agreed upon time, then Philips may cancel the service or charge the Customer at Philips then current labor and travel rate for all time spent by Philips service personnel waiting for access to the Covered System.

4.2. Biomedical Equipment Availability. In order to achieve the contracted planned maintenance (PM) compliance, Customer agrees to make the Biomedical Equipment available for PM service during normal business hours (Monday through Friday, 8am to 5pm, excluding Philips recognized holidays) starting 2 weeks before the month in which PM's are due and ending on the last day of the actual month in which PM's are due. If the Biomedical Equipment is unavailable during the month in which PM's are due and this results in Philips having to perform service, of more than 25% of the PM volume due that month, in the last week of the month that PM's are due, Philips will charge the Customer at Philips then current labor rates (and travel, if required) for all overtime incurred as a result of the Biomedical Equipment not being available. For the purposes of this Agreement, Biomedical Equipment means clinical equipment that is mobile and not in a fixed location. It does not include diagnostic imaging equipment that is non-mobile.

5. **PAYMENT** All payments under this Agreement are due thirty (30) days from the date of Philips' Invoice until the Agreement amount and all applicable taxes and interest are paid in full.

5.1 Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.

5.2 If the quotation indicates net prices that are each associated with a payment method, then Philips will invoice Customer, and Customer will pay, the net price that corresponds to Customer's elected payment method.

#### 6. EXCUSABLE DELAYS

Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, acts of third parties, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or mandatory direction, request, shortage of labor, materials or manufacturing facilities.

#### 7. TERM AND TERMINATION

7.1 The term of this Agreement shall be set forth in the quotation and/or Attachment A attached hereto and incorporated herein ("Term").

7.2 This Agreement is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement. However, Customer may cancel service coverage for an individual Covered System under this Agreement upon sixty (60) days written notice to Philips representing that the Covered System is being permanently removed from use and that the Covered System is not being used in any other Customer site.

7.3 Upon sixty (60) days written notice to Philips, Customer may cancel this Agreement specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such sixty (60) day notice period.

7.4 In addition, if the Customer sells or otherwise transfers their business or a majority of their Covered Systems to a third party and the Covered Systems remains installed and in use at the same location, but such third party assumes the obligations of the Customer under this Agreement or enters into a new service agreement with Philips the price will be equal to the price in this Agreement and a term at least equal to the unexpired term of this Agreement. If such third party does not assume the obligations of the Customer under this Agreement, then the Customer may terminate this Agreement with respect to such Covered Systems upon no less than thirty (30) days prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 30% of the remaining payments due under this Agreement for such Covered System from the date of termination through the scheduled expiration of the term of this Agreement.

7.5 If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within thirty (30) days of such termination.

7.6 Clinical Education training and credits will expire upon termination of the Agreement.

#### 8. DEFAULT

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

#### 9. END OF LIFE

AFTER THE END OF LIFE DATE, PHILIPS WILL CONTINUE TO USE COMMERCIALLY REASONABLE EFFORTS TO REPAIR SYSTEMS, BASED ON PARTS AND TRAINED ENGINEER AVAILABILITY, BUT WITH NO UPTIME GUARANTEE. AFTER THE END OF LIFE DATE, PHILIPS WILL NOT CREATE OR TEST BUG FIXES, PATCHES, OR ENHANCEMENTS TO THE SYSTEM HARDWARE OR SOFTWARE. If Philips determines that its ability to provide the service coverage is hindered due to the unavailability of parts or trained personnel, or that the Covered System can no longer be maintained in a safe or effective manner as determined by Philips, then Philips may terminate this Agreement with respect to such Covered System upon written notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of service coverage not already completed.

#### 10. WARRANTY DISCLAIMER

Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no additional warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY



PHILIPS' SUBCONTRACTOR OR PHILIPS.

#### **11. LIMITATIONS OF LIABILITY AND DISCLAIMER**

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

- (a) THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE;
- (b) CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT;
- (c) OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI, AS DEFINED BY HIPAA; and,
- (d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY; ANY SUCH FINES OR PENALTIES CONSTITUTING DIRECT DAMAGES.

PHILIPS WILL HAVE NO NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.

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

#### **12. PROPRIETARY SERVICE MATERIALS**

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

#### **13. THIRD PARTY MANAGEMENT**

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

#### **14. TAXES**

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

#### **15. INDEPENDENT CONTRACTOR**

Philips is Customer's independent contractor, not Customer's employee, agent, joint venture, or partner. Philips' employees and Philips subcontractors are under Philips' exclusive direction and control. Philips has no liability or responsibility for and does not warrant Customer's or Customer's employees' act or omissions related to any services that are performed by Customer's employees under this Agreement.

#### **16. RECORD RETENTION AND ACCESS**

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

#### **17. COMPLIANCE**

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

17.2 Upon Customer request Philips will provide a mutually agreeable Business Associates Agreement.

17.3 In the course of providing the Services to Customer, hereunder, it may be necessary for Philips to have access to, view, and/or download computer files from the Covered System that might contain Personal Data. Personal Data includes information relating to an individual, from which that individual can be directly or indirectly identified ("Personal Data"). Personal Data means information about an identifiable individual, and includes any information that is "personal information" or "personal health information" within the meaning of any applicable privacy law.

Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e., date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its Service obligations under this Agreement. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer may, in Philips' discretion, be recorded.

#### **18. CONFIDENTIALITY**

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

#### **19. SUBCONTRACTS AND ASSIGNMENTS**

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

#### **20. INSURANCE**

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



## **21. RULES AND REGULATIONS**

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

## **22. EXCLUDED PROVIDER**

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

## **23. SOLICITATION OF PHILIPS EMPLOYEES**

For the duration of this Agreement and for one year following the expiration or termination of this Agreement, Customer and its affiliates will not directly or indirectly solicit any employee of Philips or its affiliates engaged in providing the Services.

## **24. GENERAL TERMS**

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

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

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

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

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

**24.6 ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and/or Attachment A, and supersedes any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation and/or Attachment A. No additional terms, conditions, consents, waivers, alterations, or modifications will be binding unless in writing and signed by the parties.

Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement.

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

Exhibit 1: Additional Imaging System Service Terms and Conditions

Exhibit 2: Philips Technology Maximizer

Exhibit 3: Additional Support & Assist Coverage Terms and Conditions

Exhibit 4: Uptime Guarantee

Exhibit 5: Additional Clinical Education Training Terms and Conditions

Exhibit 6: Additional Rightfit Software Maintenance Agreement Terms and Conditions

Exhibit 7: Rightfit Software Maintenance Agreement Hardware Support

Exhibit 8: Additional Patient Care Services Terms and Conditions

Addendum Between Philips Healthcare a Division of Philips North America LLC and Kern County Hospital Authority ("KCHA") Dated March 20, 2020

## **25. AUTHORITY TO EXECUTE**

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

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# ADDITIONAL IMAGING SYSTEM SERVICE TERMS AND CONDITIONS

## Exhibit 1

### (for Philips and/or Non-Philips Equipment)

#### 1. SERVICES PROVIDED

- 1.1. Initial Covered System Inspection. Within ninety (90) days after the effective date, Philips will inspect the Covered System not previously serviced by Philips and notify Customer of any Covered System that does not meet manufacturer's specification. Philips will provide Customer a written estimate for repairs necessary to bring any of the covered system within proper manufacturers specifications. Upon Customer's request, Philips will provide necessary repairs at Philips' then current labor and travel rates. If Customer elects not to have Covered System repaired, then Philips may remove such system from coverage under this Agreement.
- 1.2. Repair Service. Commencing on the effective date and subject to the repair limitation below, Philips or Philips' subcontractors will provide repair services for Covered System. Philips will provide all replacement parts, which may be refurbished, and labor necessary to repair Covered System, unless excluded in section 3 herein. All components used are subject to Philips inspection and quality control procedures, and shall be warranted to the same extent that a non-refurbished component is warranted. Parts removed for replacement become the property of Philips and Philips will remove parts from the Covered System Site ("Exchange Basis"). Philips may increase its contract price if the Covered System is upgraded or reconfigured.
- 1.3. Planned Maintenance Service. Philips will provide Customer a planned maintenance schedule for the Covered System. Philips will provide such planned maintenance during the Service Coverage hours (as defined in the Agreement) at a time that is mutually agreed upon. Customer will make the Covered System available in accordance with this Exhibit. Philips or its subcontractors will provide planned maintenance on the Covered System at scheduled intervals. If Philips cannot locate Covered System, or Covered System was not made available for planned maintenance when scheduled, Philips will notify the Customer that Customer has ninety (90) days to make available Covered System for planned maintenance, otherwise customer waives right to service and Philips may delete Covered System from this contract.
- 1.4. Software Updates. Philips will install operating system software updates provided by the Original Equipment Manufacturer (OEM) for Covered System. Software updates mean revisions to OEM proprietary operating system software that enhance existing Covered System functions and operation without hardware changes, but will not install operating system software upgrades to new software platforms or software options offered separately for sale by the OEM.

#### 2. CONTRACT ADMINISTRATION

- 2.1. System Additions and Deletions. After completing the inspection, Customer may add a System to the Covered System list by contacting Philips. Customer and Philips will agree on a mutually-agreeable price and contract start date. The Covered System will be added to this Agreement after receipt of the signed inventory modification form. Customer may delete Covered System only if: (i) Customer permanently removes it from operation or (ii) it is no longer under Customer's exclusive ownership or control and Customer notifies Philips in writing. The Covered System will be deleted from the contract pursuant to Section 7 of the Service Agreement Terms and Conditions.
- 2.2. Management and Staffing. If on-site staffing is provided, Philips will determine and provide the management and service staff necessary to provide the Services under this Exhibit. Philips will pay all salaries, payroll and other employment taxes or fees, worker's compensation insurance, and other charges or insurance levied or required by any federal, state, or local statutes, relating to its employees.
- 2.3. If applicable, Customer shall execute the Subcontracting Confirmation and Agency Authorization Agreement as required by Philips to perform certain duties and responsibilities.

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

- 3.1. Any rigging or structural alteration incident to the Services;
- 3.2. Consumable items and supplies (as defined below) ("Consumables"), cryogenics, PET calibration sources, film, batteries, cassettes;
- 3.2.1 Consumables include, but are not limited to, the following: Biomedical Equipment batteries and battery chargers; biomedical laser tubes; patient use pads; filters; light bulbs and light sources; line cords and power cords; external cables and hoses; patient leads and cables; SpO2 sensors and O2 sensors; Probes (TOCO, Doppler, Biomed Ultrasound, Pencil, Bladder Scan, Temp probe, etc); BP hose/cuff; foot pedestals; hand pieces; scopes (laryngoscope, baton, endoscope, etc); defibrillator cables; paddles and test plugs; or table accessories.
- 3.3. Cosmetic repairs;
- 3.4. The cost of factory reconditioning, rebuilds, or overhauls if repairs cannot maintain the equipment in satisfactory operating condition;
- 3.5. Disposing hazardous, infectious, or biomedical waste or materials;
- 3.6. Providing service to any system under a current service agreement between Customer and another vendor until such agreements expire or are terminated by Customer. Philips is not liable for any cancellation penalty or cost associated with Customer's termination of any such agreement;
- 3.7. Unless otherwise specified in the quote, maintaining or repairing Philips and/or third-party products including but not limited to nuclear camera detector crystals, CT Tubes and radiation therapy tubes, x-ray tubes, flat panel detectors, image intensifiers magnet replacement, magnet refrigeration system (coldhead, compressor, chillers), MR RF rooms, surface coils HVAC systems, power conditioners, uninterruptible power supplies, special ultrasound transducers (probes) (accessory or attach), TEE probes, TV camera pick-up tubes, photo multiplier tubes, accelerator center beam lines, piped medical gases (up to the wall outlets), copier drums, electron guns, fiber optic bundles, footboard controls (switches, accessory, or attachment), klystrons and thyatrons, magnetrons, plumbicons, waveguides, and attachments.
- 3.8. If this Agreement includes coverage for biomedical services: the following are not included in the definition of Biomedical Equipment: arthroscopy instruments, blood pressure cuffs (accessory or attachment), fume hoods, high-end lab analyzers, lead aprons/shields, nurse call, and surgical robots, electronic thermometer probes, electrosurgical instruments (pencils & pads), general or surgical instruments, laboratory glass, laser tubes, phaco hand pieces (cataract extraction units, accessory or attachment), non-electrical surgical equipment, rigid & semi-rigid scopes.

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

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

#### 6. CUSTOMER RESPONSIBILITIES During the term of this Agreement Customer will

- 6.1 If applicable, attend a start-up meeting at Customer's facility, prior to the Effective Date of this Agreement, so Philips can explain the Services to the Customer's management and selected staff;
- 6.2 Provide a secure dedicated space within Customer's main facility and at each additional facility or location as necessary for the resident Philips staff.
- 6.3 Provide Philips with broadband internet or Wi-Fi access for business purposes.
- 6.4 Provide Philips with the Covered System service manuals for any non-Philips System;
- 6.5 Maintain all software licenses applicable to the Covered System.
- 6.6 For Philips use in remote servicing of the System, provide Philips a secure location for hardware to connect System to Philips Remote Service (PRS).
- 6.6.1 The PRS hardware remain Philips' property and is only provided during the term of this Agreement;
- 6.6.2 Provide Philips and its vendors full and free access to the PRS hardware to enable Philips to remotely access the Covered System or non-Philips System;
- 6.6.3 Provide Philips at each Covered System Site, at all times during the term of this Agreement, a dedicated broadband Internet access node, including public and private interface access, suitable to establish a successful connection to the Covered System through the PRS and Customer network.
- 6.6.4 If the Covered System cannot be connected to the PRS, and Customer fails to provide the access described in Section 6, then Customer waives its rights to Services under this Agreement and any uptime guarantee.

#### 7. Helium Replenishment (Applies only to MRI Service)

- 7.1 If Helium Replenishment Service is included in this Agreement, Customer shall report any magnet cooling system (cold-head, compressor, or chiller) malfunction within twenty four (24) hours. If Customer fails to report any malfunctions or provide continuous chilled water or power to the MRI System, then Customer is responsible for any additional Helium expenses.
- 7.2 Customer shall provide access to the MRI system to perform helium replenishment, cryorefrigeration system and chiller services during contract hours of corrective and/or planned maintenance services.
- 7.3 If the Covered System is not connected to the PRS, then Customer shall report Helium level readings weekly for all systems covered by this Agreement into the Philips Helium Reading Registration System at: <https://heliumreg.onephilipsmdc.com>
- 7.4 During the term of the Agreement Customer will immediately inform Philips upon the happening of any of the following:
- 7.4.1. an on-screen message appears on the Covered System computer that Helium refill is required; or
- 7.4.2. the liquid helium level is below the minimum operating helium level as indicated in the Instructions for Use. (In such case an on-screen message may also appear on the system computer indicating that scanning will be prohibited within certain days or immediately. In both cases Customer shall immediately inform Philips and in the latter case Customer

shall also immediately cease to operate the MRI Equipment);

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

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

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

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

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

7.8 Customer will inform Philips of any planned power outages.



## UPTIME GUARANTEE

### Exhibit 4

**1 GENERAL.** Philips shall provide to Customer the uptime guarantee specified below ("Uptime Guarantee") on the Covered System listed in the quote and/or Attachment A as having uptime as an entitlement ("Uptime System"). Uptime System does not include peripherals, such as external printers, archiving devices, external display monitors, or attached cameras. If Customer does not meet its responsibilities described in Section 6 of Exhibit 1, then Customer is not entitled to the benefits of this Uptime Guarantee.

If an item of Uptime System fails to achieve the Uptime Percentage (as defined below) set forth on Schedule 3(a) below, then Customer, as its sole and exclusive remedy, will receive a discount of future Agreement payment(s), as described in Section 3 below.

### 2. DEFINITIONS.

- a) Measurement Period: The measurement period for determining Uptime Percentage is twelve (12) months beginning on the effective date of this Agreement and thereafter on the anniversary date of the effective date.
- b) Base Hours shall mean the hours/day and days/week over which Uptime Hours and Downtime will be calculated during the Measurement Period. The Base Hours will be the contracted hours of coverage provided for under this Agreement for each Uptime System.
- c) Downtime shall mean the time that the Uptime System is unable to produce diagnostic images during the Base Hours of any given Measurement Period solely due to Philips' design, manufacturing, materials, or Service performance failure. Measurement of Downtime commences when the Customer notifies the Philips Customer Care Solutions Center that the Uptime System is unable to produce diagnostic images. Downtime does not include time due to planned maintenance service, cryogen replenishment, installation of upgrades and updates, x-ray tube replacement, or an occurrence or condition excluded under this Agreement. Philips may verify Downtime and adjust calculations accordingly.
- d) Uptime Hours are determined by subtracting the total Downtime from the Base Hours for a particular piece of Uptime System [Uptime Hours = Base Hours - Downtime].
- e) Uptime Percentage is determined by dividing the Uptime Hours by the Base Hours, and multiplying the result by 100 [Uptime Percentage = (Uptime Hours/Base Hours) x 100].

**3. ADJUSTMENT SCHEDULE.** If the Uptime Percentage specified in Schedule 3(a) is not achieved for Uptime System then the specified discount will be applied to all payments due during the next Uptime Measurement Period for the Uptime System that did not achieve the Uptime Percentage

Schedule 3(a): Agreement Payment Adjustment Schedule for Uptime System

99% Uptime Guarantee		98% Uptime Guarantee		96% Uptime Guarantee	
Uptime Percentage	Discount	Uptime Percentage	Discount	Uptime Percentage	Discount
99% - 100%	None	98% - 100%	None	96% - 100%	None
96% - 98.9%	5%	95% - 97.9%	5%	91% - 95.9%	5%
93% - 95.9%	10%	92% - 94.9%	10%	<90.9%	10% *
<92.9%	15% *	<91.9%	15% *		

\* Maximum adjustment available

**4. UPTIME PERCENTAGE DETERMINATION.** The Uptime Percentage is determined according to the following formula: Uptime Percentage = (Uptime Hours/Base Hours) x 100. Below are examples of how Uptime Percentage is determined:

**a. MEASUREMENT EXAMPLE # 1:**  
 Base Hours = 8 AM to 5 PM Monday through Friday over the 12 month Measurement Period.  
 9 hours x 5 days x 52 weeks = 2,340 Base Hours  
 2,340 Base Hours - 60 Downtime hours = 2,280 Uptime Hours  
 (2280 / 2340) \* 100 = 97.4% Uptime Percentage

**b. MEASUREMENT EXAMPLE # 2:**  
 Base Hours = 8 AM to 9 PM Monday through Friday over the 12 month Measurement Period.  
 13 hours x 5 days x 52 weeks = 3,380 Base Hours  
 3,380 Base Hours - 60 Downtime hours = 3,320 Uptime Hours  
 (3320 / 3380) \* 100 = 98.2% Uptime Percentage



**5. REPORTS.** Uptime Percentage performance reports will be provided at the Customer's request for any Measurement Period while this Uptime Guarantee remains in effect. To receive any applicable discount, Customer must notify Philips in writing that the Uptime Percentage was not achieved for a particular Uptime System within sixty (60) days after the end of a Measurement Period.

**6. WARRANTY DISCLAIMER.** Philips full Uptime Guarantee obligations to Customer are described in this Exhibit. Philips provides no warranties under this Uptime Guarantee. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO THIS UPTIME GUARANTEE.

**7. LIMITATIONS OF REMEDIES AND DAMAGES.** Philips total liability, if any, and Customer's exclusive remedy with respect to this Uptime Guarantee and Philips performance hereunder is limited to the remedies stated herein.

21594h v1 (rev042116)



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

April 15, 2020

**Subject:** Proposed retroactive Teleradiology Services Agreement and Credentialing and Privileging Agreement with Virtual Radiologic Professionals of California, P.A. (vRad), for teleradiology services and delegated credentialing of practitioners

**Recommended Action:** Approve; Authorize Chairman to sign Teleradiology Services Agreement; Authorize Chief Executive Officer to sign Credentialing and Privileging Agreement

**Summary:**

Kern Medical requests that your Board approve two agreements with Virtual Radiologic Professionals of California, P.A. (vRad). The first is the Teleradiology Services Agreement for remote radiology services for after-hours preliminary interpretation of radiologic images. The second is the Credentialing and Privileging Agreement to delegate the credentialing of the vRad radiologists who will be performing the teleradiology services to vRad. Delegated credentialing is the process by which a provider such as Kern Medical agrees to turn over a portion of their credentialing review process to a qualified entity, in this case vRad. The medical staff office will continue to verify the original source of a specific credential (e.g., licensure, National Practitioner Data Bank, etc.) to determine the accuracy of the qualifications of each vRad radiologist.

The term of each agreement is one-year, effective April 13, 2020, with auto-renewal periods of one year each, unless notice is provided. The cost of the Teleradiology Services Agreement for the first year is \$453,200 with a maximum cost to the Authority not to exceed \$910,000 for the first two years of the agreement, assuming we allow it to auto-renew.

Therefore, it is recommended that your Board retroactively approve the proposed Teleradiology Services Agreement and Credentialing and Privileging Agreement, effective April 13, 2020, and authorize the Chairman to sign the Teleradiology Services Agreement and the Chief Executive Officer to sign the Credentialing and Privileging Agreement.



### TELERADIOLOGY SERVICES AGREEMENT

This Teleradiology Services Agreement (the **Agreement**), inclusive of Schedules A-C, made effective as of the latter of the dates signed below (the **Effective Date**), is by and between **Virtual Radiologic Professionals of California, P.A.**, a California professional corporation (**vRad**), and **Kern County Hospital Authority**, local unit of government, which owns and operates Kern Medical Center (**Client**) (each a **Party** and collectively the **Parties**).

#### Virtual Radiologic Professionals of California, PA

Signed Ben Strong MD  
DocuSigned by: 5A551C76AF0245B...  
 By Benjamin Strong, MD - President  
 Date April 8, 2020

11995 Singletree Lane, #500  
 Eden Prairie, MN 55344

(Address for Notice)

#### Kern Medical Hospital Authority

Signed \_\_\_\_\_  
 By/Title Russell E. Bigler – Chairman, Board of Governors  
 Date \_\_\_\_\_

1700 Mount Vernon Avenue  
 Bakersfield, CA 93306

(Address for Notice)

#### Approved as to form:

#### Virtual Radiologic Corporation

Signed Gerald M. Fitterer  
DocuSigned by: 025187059B1415...  
 By Gerald Fitterer - Chief Financial Officer  
 Date April 8, 2020

APPROVED AS TO FORM  
 Legal Services Department

By Jammi Pearson  
 Kern County Hospital Authority

[For vRad: 1.4(i); 3; 4; 5.1; 5.2; 6(a); 8.1-8.3; 8.5; 9.3; 10; 11; 12; 13; 15.4; 15.7 ]



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## TERMS AND CONDITIONS

### Section 1. **Engagement and Interpretation Services Overview**

- 1.1 Client hereby engages vRad to provide and vRad hereby agrees to provide the Interpretation Services (as defined below), as requested by Client, for Studies performed at Facility during the Coverage Periods on the terms and conditions set forth in this Agreement.
- 1.2 vRad, directly or through an Affiliate, will provide Interpretation Services, subject to the terms and conditions of this Agreement. Annually, the Parties shall conduct a business review to assess Interpretation Services, including then-current volumes for purposes of capacity planning, pricing, workflows, quality, and opportunities for improvement or further collaboration.
- 1.3 Each Party shall be fully responsible for all acts and omissions of its respective Affiliate(s) and their respective personnel and agents.
- 1.4 Key Definitions
  - (a) **Affiliate** with respect to vRad means Virtual Radiologic Professionals, LLC and Virtual Radiologic Services, LLC. **Affiliate** with respect to Client means (i) a parent or subsidiary corporation, and any corporation or other entity controlling, controlled by, or under common control with Client and (ii) any department or division of any of the foregoing.
  - (b) **Clinically appropriate urgency** refers to the necessity of the Interpretation due to a patient's physical status.
  - (c) **Default Billing Rate** means the commercially reasonable fee per Study vRad has established as a wholesale list price for Interpretations, subject to reasonable adjustment from time to time, and applicable in circumstances where the Agreement is otherwise silent on the fee per Study that shall apply to a procedure.
  - (d) **Facility** means a site anticipated to request Interpretations and that is listed on Schedule A.
  - (e) **Full Service Commencement Date (Go-Live or FSCD)**. The FSCD for Interpretation Services means the last date upon which all the following have occurred:
    - i. vRad and Client have established and successfully tested all electronic connections and communications necessary to submit Orders and receive Interpretations, as needed.
    - ii. All electronic connections and communications necessary to submit/receive Patient Information (defined below) have been established.

- iii. Client fulfills, and continues to fulfill, Operational Requirements.
- (f) **Interpretation** means a written radiology report issued for a Study provided pursuant to this Agreement
- (g) **Interpretation Services** means remote diagnostic radiology interpretations by Physicians via a secure network connection of Orders (defined below) submitted by Facility during the Coverage Periods shown on Schedule A, for the Studies and Report types shown in Schedule B.
- (h) **Official Interpretation** means an emergent or non-emergent final and definitive written report containing a Physician's assessment of one or more Studies for diagnostic purposes. May be referred to as a "final."
- (i) Operational Requirements means:
  - i. Maintaining an emergency privileging process such that, should there for any reason be a gap in coverage with the established roster of Physicians, additional or substitute qualified Physicians may receive Facility temporary privileges promptly, to avoid or mitigate such gap;
  - ii. Unless prohibited by its Medical Staff Bylaws, rules, regulations, and/or policies, executing with vRad an agreement materially like vRad's standard Credentialing Agreement, which vRad shall provide Client, and timely grant clinical privileges to qualified Physicians for whom vRad submits applications and supporting documentation;
  - iii. Enabling automated query-receive (**AQR**) for prior images, if any, located among the records of Facility from the local picture archiving and communication system (**PACS**);
  - iv. Providing vRad with a .csv or Excel file of Facility's ordering and/or referring physicians, including first name, last name, and direct phone number for each. vRad shall use this data to connect critical finding calls from vRad's Physicians to the local provider.
- (j) **Order** means an electronic request for an Interpretation delivered to vRad's PACS consisting of:
  - i. one diagnostic-quality image set;
  - ii. validated image count;
  - iii. all Patient Information (defined below)
  - iv. referring physician's first and last name and phone number; and



- v. accurate DICOM and/or HL7 information.
- (k) **Patient Information** (or **PI**) means all relevant reasonably available clinical information related to a patient and necessary to fulfill quality reporting requirements, including location of patient, detailed reason for exam (**RFE**) or comparable ICD code, prior relevant images and radiology reports, demographic data, ordering/referring physician contact information, and information required to meet Medicare, state or federal regulations (as applicable).
- (l) **Physician** means a vRad-employed and/or contracted teleradiologist who satisfies each of the qualifications herein.
- (m) **Postponed Order** means a procedure that was imaged more than 20 minutes before transmission to vRad as an Order.
- (n) **Preliminary Interpretation** means a written report containing a Physician's assessment of one or more Studies, used for diagnostic purposes in an emergent care setting, and not intended to be a definitive assessment of all possible non-emergent conditions. May be referred to as a "wet read" or a "prelim." Preliminary Interpretations are limited to Interpretations performed for Emergent Studies.
- (o) **Radiology Platform and Systems** (or the **Platform**) means all vRad owned or managed hardware and infrastructure, including vRad's radiology information system (**RIS**) and PACS.
- (p) **Reporting Time** means the interval between an Order's arrival in vRad's PACS and delivery of the Result, as determined in both cases by the automated time entries in vRad's Platform.
- (q) **Result** means an electronically signed Interpretation posted on vRad's RIS.
- (r) **Study** means an image or image set and clinical indication for the smallest body segment imaged immediately before being transmitted to vRad. For example, a radiology report concerning a patient's transvaginal US procedure and transabdominal US procedure is equivalent to 2 Studies.

## Section 2. **Coverage and Workflows**

### 2.1 Basis for Coverage Model

- (a) vRad assigns Physician coverage according to the estimated complement and work effort of Physicians necessary to provide Interpretation Services, and the projected demand for Interpretation Services anticipated during the Coverage Periods defined in Schedule A.

- (b) vRad shall use reasonable efforts to provide an Interpretation if it is not included in the pricing table shown in Schedule B or if it is outside of the Coverage Periods (each a **Non-Covered Interpretation**) if there is a qualified Physician readily available to provide the Interpretation. vRad makes no assurance with respect to Non-Covered Interpretation Reporting Time. vRad's then current Default Billing Rate shall apply to Non-Covered Interpretations, provided that the rate is reasonable under the circumstances and generally consistent with the billing rates for other services identified on Schedule B when compared to applicable market rates. Client may request a pricing review within thirty (30) days of receiving the invoice that includes a charge for a Non-Covered Interpretation.

## 2.2 Delivery of Results

- (a) Client shall use vRad's Platform for ordering and receiving the Interpretation Services, including any addenda reasonably necessary for patient care.
- (b) vRad shall use reasonable efforts to deliver initial Results in the following time frame (the **Reporting Time**), on average (as measured for Orders made during Coverage Periods each calendar month). Reporting Time is calculated only after receipt of all pertinent images.
  - i. Preliminary Interpretation. 30 minutes or less, except for Stroke (see below);
  - ii. Stroke (Non-Contrast Head CT only): 20 minutes or less if ordered using the "Stroke" urgency in the Exam Information section of the order management component of the Platform (**OMS**).<sup>1</sup> The interpreting Physician will immediately call the physician ordering the Study or delegated representative at the location or phone number designated in the Order in the event of positive findings.

## 2.3 Exceptions to Reporting Time

- (a) General Exceptions
  - i. Reporting Time for any type of Interpretation may be adversely affected by factors outside of vRad's or its Physicians' control, including incomplete image transmission, lack of pertinent history or pertinent prior Studies, and Studies with more than 1,000 images.
  - ii. vRad and Physicians are not responsible for delivering Results for any Order that, in the reasonable professional opinion of a Physician, includes current

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<sup>1</sup> This OMS validation step is required even if Facility is configured to auto-validate via HL7.

images of inadequate quality or is missing key supporting clinical information available to the Facility (such as prior images and reports). In such event, vRad shall deliver the Result promptly after correction or, at the Physician's option, render a Report for which Facility is responsible for furnishing as supplemental imaging or information is available.

- iii. Client shall ensure that Facility workflows do not result in routine transmission of Postponed Orders. If Client is aware of and requires that multiple Postponed Orders be read during any Coverage Period, Client shall contact vRad so adjustments to vRad workflow may be made, if necessary. If vRad receives multiple Postponed Orders, Reporting Time on such Orders may be significantly delayed and shall not be included in calculation of average Reporting Time.

- (b) Specialty Study Exceptions  
These procedures, if included in Schedule B, are available only on a *non-emergent* basis.

Cardiac CTA                      PET and PET/CT  
MR Cardiac                      CT Colonography                      MR MSK  
Breast Imaging (48 non-holiday weekday hours)

## 2.4 Restricted Procedures List

Certain procedures are not available via teleradiology and are shown in the Restricted Procedures list available at the link below. The list may be revised from time to time without prior notice. However, vRad will not unilaterally remove a procedure from Schedule B. [https://info.vrad.com/hubfs/vRad\\_Restricted\\_Procedures.pdf](https://info.vrad.com/hubfs/vRad_Restricted_Procedures.pdf)

## 2.5 Clinically Appropriate Urgency

Client is engaging vRad to provide emergent interpretations. Client shall use reasonable efforts to ensure that technologists request Interpretations according to clinically appropriate urgencies described here.

Urgency in OMS	Description
Emergent	A potentially life-threatening condition other than Trauma or Stroke.  <b>Note:</b> may be limited to subspecialty radiologists before being distributed to off-specialty radiologists.
Trauma	An Emergent condition involving multiple procedures or areas of the body.
Stroke	An Emergent condition reserved for a CT head without contrast exam, to rule out stroke or bleeding in the event of a stroke.
Not all urgencies are available for all procedures. See 2.3(b).	



## 2.6 Critical Findings

- (a) In all cases, vRad shall ensure that Physicians immediately provide a verbal communication with an attending physician and/or the physician ordering the Study (or delegated representative) at the location or phone number designated in the Study Order if any Report identifies conditions requiring immediate medical attention or clinically significant unexpected findings that may alter immediate treatment of a patient, consistent with ACR Practice Parameters.
- (b) vRad shall cause Physicians or Medical Directors, who shall at all times satisfy the qualifications for Physicians at Section 9.1 (By vRad – Physician Qualifications and Telemedicine), to be available remotely to respond to telephone calls from Client or the physician who ordered such Study, as applicable and upon request, to consult with respect to Study Results and for reasonably contemporaneous consultation regarding non-critical findings related to Orders and Interpretations.

## Section 3. **Conditions Required for Deployment and Ongoing Use of Services**

### 3.1 Implementation

- (a) After execution of this Agreement but prior to the FSCD, (the **Implementation Phase**), vRad will assign Client, as applicable, a Client Implementation Manager (**CIM**). The CIM will manage implementation of Interpretation Services, to ensure interoperability between Client's clinical and imaging management systems and vRad, and, as needed, privileging, payer contracting and enrollment (if applicable), hardening clinical and operational workflows, and other support tasks.
- (b) Client engagement with the Implementation Phase is required. Upon completion of the Implementation Phase, the CIM will transfer responsibility for resolving any support issues that may arise to an Account Manager assigned by vRad.
- (c) vRad will remotely train Facility technicians in the use of OMS, as reasonably requested by Facility.

### 3.2 After "Go-Live"

- (a) Client understands that Interpretation Services may be delayed or suspended if Operational Requirements are routinely not met, or if any of the following do not occur and such non-occurrence could negatively impact patient care or vRad's billing for Interpretation Services:
  - i. Client provides vRad with updates to information previously provided during Implementation Phase.

- ii. Client adheres to reasonable and customary workflows, including:
  - 1) reasonably ensuring that radiology procedures requiring supervision, the professional component of which are provided by vRad, are in fact supervised at the appropriate level by a Client-provided physician; and
  - 2) making an on-site treating physician available to receive critical findings calls and US technologists available to receive Physician calls concerning active US Studies. Client shall ensure there is an escalation process if such physician or technologist is unavailable.
- iii. Client places Orders using a clinically appropriate urgency and does not routinely transmit Postponed Orders. Urgency information is also available to the technologist via OMS.
- iv. Client provides RFE that supports the medical necessity of the exam based on local or national coverage determination, either as an ICD-10 code via HL7 or as relevant clinical information and specific location and symptoms in OMS.
- v. Client makes available all PI contemporaneously with Orders, either through an import of prior reports to vRad during Implementation Phase and HL7 automation or by using the tools provided in vRad's OMS.
- vi. Client cooperates with vRad in exploring, deploying, and testing reasonable quality or workflow improvement initiatives likely to benefit quality and/or speed of care of patients receiving Interpretations because of this Agreement.
- vii. Client reasonably ensures image quality and accurate count of images within each separate Study.
- viii. Client provides patients with any legally required notices and receives appropriate patient informed consents.
- ix. Client manages own OMS password resets.

## Section 4. **Physician Assignment and Quality**

### 4.1 Credentialing

- (a) Each Physician shall be appointed to each Facility's Medical Staff, with clinical privileges to carry out the duties described herein (together, such medical staff appointment and clinical privileges are referred to as **Clinical Privileges**) before beginning Interpretation Services. Client agrees to facilitate the timely

processing of such applications, subject to and in accordance with the bylaws, rules, regulations, standards, criteria, policies, and procedures of each Facility's Medical Staff (collectively, **Facility Policies**).

- (b) The respective duties and responsibilities of the Parties are outlined in the Credentialing and Privileging Agreement executed by the Parties and incorporated herein by reference.
- (c) Client shall waive or be responsible for any application fees, renewal fees, medical staff dues and other Costs (defined below). The waiver or reimbursement of Costs has been incorporated into vRad's determination of its fees to Client.
  - (i) **Costs** for these purposes include expenses incurred due to Facility's bylaws, excluding professional liability insurance (e.g. expenses for obtaining tuberculosis testing; specific continuing medical education, except as may be a condition of focused professional performance evaluation; and fingerprinting) or Payers (e.g. credentialing or enrollment fees).
- (d) Termination of Physician. If a Physician is no longer eligible to provide radiology services at Facility pursuant to and as contemplated by this Agreement, the medical staff membership and clinical privileges of the Physician shall automatically terminate concurrently with the loss of Physician's eligibility to provide such services. In such circumstances, Physician's medical staff membership and clinical privileges shall automatically terminate without the necessity of Facility following the procedures set forth in the medical staff bylaws, and the Physician shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws; provided, however, in the event any action or proposed action by Facility results or would result, if taken, in a report to the Medical Board of California or the National Practitioner Data Bank as an adverse professional review action against one or more Physicians, then Facility shall comply with the procedural requirements set forth in the medical staff bylaws, including the provisions regarding the conduct of investigations, hearings and appeals.
- (e) Termination of Contract. In the event of the termination or expiration of this Agreement, the medical staff membership and clinical privileges of all Physicians providing radiology services pursuant to this Agreement shall automatically terminate concurrently with the termination or expiration of this Agreement. In such circumstances, the medical staff membership and clinical privileges of each Physician shall terminate without the necessity of Facility following the procedures set forth in the medical staff bylaws, and Physicians



shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws.

#### 4.2 Physician Assignment

vRad may assign Orders to any Physician who has current Clinical Privileges from the Facility (where required) to perform Interpretation Services for such Study. Client shall cooperate with vRad in facilitating reasonable adjustments in Physician assignment as may be necessary from time to time.

#### 4.3 Quality Assurance

- (a) Client shall use the Quality Assurance Client Portal (also referred to as the **QA Portal**) to submit all radiology report quality issues to vRad. vRad's Quality Assurance Committee and the interpreting Physician will promptly review each quality issue reported, will provide a prompt response in connection therewith, and vRad and Physician shall promptly take follow-up action as may be appropriate.
- (b) vRad will provide Client written materials describing its then-current quality improvement program upon request. vRad will make available to those individuals designated by Client or Facility(ies) confidential quality data relating to Interpretations via the QA Portal.
- (c) vRad will remove a Physician from the roster after Client provides reasonable data or communication regarding quality issues to vRad's Chief Medical Officer or vRad's Quality Assurance leadership.
- (d) Client shall periodically evaluate whether vRad and its Physicians are providing the Interpretative Services safely and effectively, using at least the following quality indicators:
  - i. Average reporting time are within contractually indicated ranges; and
  - ii. Major discrepancies remain within clinically acceptable ranges.
- (e) Calls to or from vRad's Operation Center may be recorded for quality assurance purposes. vRad does not record calls with a Physician.
- (f) To the extent permissible under Applicable Laws, the Parties agree to exchange information with each other's appropriate committees regarding the quality of Interpretation Services and credentialing matters. This subsection does not require either Party to release information that would compromise its or its employees' or physicians' peer review protections, patient safety privilege, attorney-client privilege, or other legal immunities, privileges or defenses to release of such information. Such information is to be used for credentialing,

quality improvement, and peer review activities only. The Parties intend all such activities and communications to be afforded protection under all applicable peer review confidentiality laws. The Parties shall treat all quality-related information shared pursuant to this Section as privileged and confidential. Each Party shall ensure that no portion of any materials or information received from the other Party are disclosed by it or its agents to any employee or third party for reasons unrelated to evaluating the Physician's quality and credentials to provide the Interpretation Services, except as required by Applicable Laws.

#### 4.4 Compliance Programs

- (a) Each Party has a Compliance Program designed to ensure, among other things, that all billing, coding and similar services are performed in compliance with all Applicable Laws, rules and regulations, including regulations and guidelines of the Centers for Medicare and Medicaid Services (**CMS**). The Parties shall (and with respect to vRad, shall cause the Physicians to) cooperate with, participate in and abide by their respective Compliance Program in all respects.
- (b) The Parties shall reasonably cooperate with respect to all quality assurance, performance improvement, risk management, and utilization review programs related to the Interpretation Services, including providing information that assists in meeting accreditation standards established by The Joint Commission, Medicare Conditions of Participation, and other regulatory agency rules and regulations applicable to acute care healthcare facilities, cooperating in producing any information requested by an accreditation and/or regulatory agency, and cooperating with each Party's Compliance Department upon request.

### Section 5. **Compensation Terms**

#### 5.1 Payment Terms

- (a) As compensation for the Interpretation Services rendered hereunder, Client shall remit to vRad the fees specified on the Compensation Schedule attached as Schedule B. Direct payments to:

Virtual Radiologic Professionals of California, PA  
25983 Network Place  
Chicago, IL 60673-1259

If overnighting payment, please contact vRad for a different address.

- (b) vRad will submit to Client monthly invoices in arrears, by the tenth (10<sup>th</sup>) calendar day of each month, which shall include supporting detail containing patient's names, dates of service and Studies performed during the previous

month. Within ten (10) business days of receiving a vRad invoice, Client shall notify vRad of any errors. vRad and Client will reconcile and agree on any adjustments to the invoice that may be necessary. To the extent that either Party is entitled to an adjustment, each Party agrees to remit payment to the Party entitled to such adjustment within thirty (30) days of such reconciliation. Client waives all claims and defenses to payment of an invoice that was not disputed within 60 days of the error being reasonably identifiable.

- (c) Invoices not subject to a good faith, timely dispute, must be paid within 30 days of receipt of the invoice or they will incur a 1.0% late fee on the unpaid portion, per month, unless otherwise prohibited by law. vRad may also suspend performance of this Agreement upon ten (10) days' prior written notice until vRad has received payment on all past-due invoices.
- (d) Fees are exclusive of all Taxes. Client is responsible for remittance and payment of any Taxes Client owes to a Governmental Authority.
  - i. **Governmental Authority** means any entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of, or pertaining to, government.
  - ii. **Taxes** means all sales, use, gross receipts, environmental, ad valorem, or excise tax or any other similar taxes, fees, duties, or charges of any kind imposed by any Governmental Authority on any amounts payable by Client under this Agreement and which vRad is legally responsible for collecting from Client. "Taxes" do not include any direct assessments imposed on vRad's income or capital that are solely vRad's responsibility. vRad agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. vRad agrees to indemnify and hold Client harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Client is audited for compliance regarding any withholding or other applicable taxes, vRad agrees to furnish Client with proof of payment of taxes on these earnings.

## 5.2 Material Changes

- (a) The number and identity of Physicians assigned to provide Interpretation Services and the fees herein were established by vRad based upon the complement and work effort of Physicians necessary to provide Interpretation Services relative to the estimated demand and modality mix shown on Schedule B. If actual demand or modality mix is materially different (for this purpose more than ten (10%) percent deviation, a **Material Decrease** or



**Material Increase**, as applicable) from that shown on Schedule B (the **Baseline Mix**) for a period of at least 30 continuous days, then vRad may provide Client with a **Change Notice** and the Parties shall negotiate in good faith to develop a pricing schedule that accounts for the change and amend Schedule B. No more than one Change Notice shall be issued per year, and all such new pricing shall be on a prospective basis.

- (b) If the Parties are unable to agree on a new pricing schedule within 15 business days of such Change Notice, then vRad may terminate this Agreement by providing Client at least 90 days' prior written notice.
- (c) Beginning on or after the first anniversary and annually thereafter, all fees may increase by the percentage equal to the annual percentage increase in CPI measured during the prior or current calendar quarter, up to a maximum increase of 3%. **CPI** means the Consumer Price Index for all Urban Consumers All Cities Average, For All Items (1982-1984=100) published by the US Bureau of Labor Statistics.
- (d) vRad Physicians will not addend a radiology interpretation solely because (a) the RFE was not sufficiently detailed when the Order was placed, unless addenda is necessary for patient care, (b) MIPS detail was not provided at the time of Order in OMS, and/or (c) to account for contrast or technical supplies that were not referenced in the Order. Data provided in a manner other than OMS or HL7 message file will not be accounted for.

## Section 6. **Records**

- (a) Client shall own and maintain all patient records, including consents, images, and Interpretations, and all other records associated with the performance of the Studies.
- (b) All images for the Studies that Client transmits to vRad will be copies of the images created and maintained by Client. The images created and maintained by Client will be the original patient records.
- (c) Upon written request by vRad or a Physician for reasonable business purposes and as necessary to fulfill any legal obligations to which vRad or a Physician may be subject to prosecute or defend legal actions, to conduct compliance or other audit activities or for patient treatment hereunder, or quality assurance activities, Client shall provide to vRad or a Physician or its authorized agents reasonable access to and copies of such records at no charge.
- (d) Each Party shall maintain all pertinent records ordinarily kept in their business in a form and for the period required by Applicable Laws.

- (e) Each Party shall comply with all Applicable Laws pertaining to confidentiality of patient medical and personal records and specifically acknowledge the strict confidentiality restrictions placed on each of them pursuant to the Health Information Technology for Economic and Clinical Health (**HITECH**) Act contained in Public Law 111-005 and the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d (**HIPAA**) (collectively referred to herein as **HIPAA Requirements**), as may be modified or amended, including future issuance of regulations and guidance by HHS and all other applicable federal and State laws and regulations governing the confidentiality and privacy of patient health information. Without limiting the foregoing, Client shall prohibit Client users from sharing OMS or other Platform log-in credentials.
- (f) To the extent required by law, upon the written request of the Secretary of Health and Human Services, Comptroller General, or their duly authorized representatives, vRad shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement, and as required for determining compliance with HIPAA Requirements. Such inspection shall be available for up to four (4) years after the rendering of such services. If vRad carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 over a 12-month period with a related individual or organization, vRad shall include this requirement in any such subcontract. This section is included pursuant to and as governed by the requirements of 42 USC Section 1395X (v)(I) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Client or vRad by this Agreement.

## Section 7. **Technology / Flow of Study Data**

### 7.1 Local Technology

Client shall maintain all its hardware and infrastructure necessary to send DICOM-based Orders including (i) a broadband internet connection (minimum of T1, business-type cable or business-type digital subscriber line) and (ii) internet-connected computer workstations. Client shall work with vRad to ensure that Facility internet connections are of adequate quality and capacity for actual Order volume.

### 7.2 The Platform

- (a) With reasonable assistance from Client, vRad shall maintain the Platform and related systems, including:
  - i. VPN connectivity securing bi-directional data transport;

- ii. DICOM integration with existing PACS and/or modalities; and
- iii. HL7 ORU interface with RIS/PACS systems for Interpretation results and HL7 ORM interface with RIS/PACS systems for Interpretations orders.

**VPN** refers to a virtual private network across the internet that connects Client's local area network (**LAN**) to vRad's LAN.

**DICOM** refers to the Digital Imaging and Communications in Medicine standard for handling, storing, printing, and transmitting information in medical imaging.

**HL7** refers to HL7 Standards that define how information is packaged and communicated from one health care entity to another, setting the language, structure and data types required for seamless integration between systems, as established by Health Level Seven International.

**ORM** refers to a general "ORM-001" message used to transmit information about a request for service, including, for example, demographic updates, appropriate use criteria, patient visit information, and guarantor data.

**ORU** refers to messages within the HL7 standard that provide structured clinical data between systems and are used to link orders and results.

- (b) vRad, Client and Facility, as applicable, shall evaluate the existing IT infrastructure to determine whether it is enough to support HL7 interfaces with the Platform. vRad is not responsible for any upgrade or installation expenses incurred by Client or charged by a third party. Client shall use reasonable efforts to ensure each Facility provides the necessary resources and cooperation to collaborate in the development, testing, and deployment of an HL7 interface.
- (c) vRad shall provide all reasonable remote technical support for the Platform, which excludes support relating to Client's or Facility's own equipment.

### 7.3 Automated Query-Receive (**AQR**)

Client shall cooperate with deployment and configuration of AQR. After deployment of AQR, vRad will query the Facility PACS, based on matching patient identifiers, and receive any recent and relevant procedures (i.e., images and reports if technically feasible).

### 7.4 Flow of Study Data

- (a) Study-related data shall be acquired and transmitted as follows:



- i. Patient Registration. With respect to patients who present for Studies at the Facility and for whom a vRad Physician performs Interpretation Services hereunder, and upon receipt of the Study image from Client (as further set forth below), the Facility technologist shall register the patient in the Platform, using a method that allows identification of the diagnostic images transmitted from the Facility to vRad for interpretation by the Physicians.
  - ii. Transmission of Study Images. Client shall configure its imaging modalities to transmit a complete and quality copy of each diagnostic, source and reconstructed image (as applicable) for Studies to the Platform.
  - iii. Reports. vRad shall cause Physicians to transcribe Reports for all Studies using vRad's speech recognition system and will submit a Report to Facility via OMS (and via HL7 data exchange, where enabled).
- (b) Client Responsibilities
- i. Client, through Client personnel, shall perform the following administrative functions:
    - 1) advise vRad of any specific Facility personnel that require train-the-trainer education on use of OMS or standard Facility-vRad workflows;
    - 2) provide initial response or, where appropriate, escalate to vRad's designated information technology personnel (**vRad IT Personnel**) of issues arising with respect to access to and use of the vRad Radiology Platform and Systems; and
    - 3) address data exceptions with respect to Study data that are capable of resolution at transmitting Facility.
- (c) vRad Responsibilities
- i. vRad will provide Client with use of the vRad Radiology Platform and Systems for transmitting Study images via the connectivity maintained by Client pursuant to Section 7.1 above. vRad (or its designee) retains all rights in and title to the Platform.
  - ii. vRad shall cause there to be configured and maintained any vRad managed firewall, any site-to-site VPN data transmission pathway and other electronic connection required to permit secure communications between Client's systems and vRad's Platform.
  - iii. vRad shall:
    - 1) provide training for Client personnel on the use of OMS;

- 2) provide second-line (i.e., escalation) response for issues arising with respect to transmission of and access to the Study data hereunder; and
- 3) address data exceptions with respect to Study data issues that can be resolved by vRad and/or cannot be resolved by Client.

(d) Data Security

- i. vRad shall identify in writing and provide to Client the TCP-IP addresses from vRad's network that will have access to Client's systems, as well as all specific network ports that will be open between the Client's systems and vRad. This information shall be updated and provided to Client throughout the Term of the Agreement upon reasonable request of Client. vRad will deactivate any remote access when vRad is no longer using remote access or if Client terminates this Agreement.
  - ii. Each Party shall ensure that all their respective personnel that must use the other Party's systems do so solely in a manner consistent with the purposes and requirements of this Agreement and comply with all customary security controls, policies and standards as part of the log-on and access procedures.
  - iii. Neither Party will directly or through its personnel (i) knowingly introduce any virus or disabling code into the other Party's systems (i.e., through the VPN); (ii) allow third parties to have access to the other Party's systems, hardware or software; (iii) attempt to access any portion of the other Party's systems, hardware, or software that are not required for performance or receipt of Interpretation Services hereunder; or (iv) modify any configurations on the other Party's systems.
- (e) vRad shall notify Client of scheduled maintenance of the Radiology Platform and Systems through the Client Access Portal.
- (f) Each Party shall implement, maintain and comply with an industry standard business continuity plan (**Business Continuity Plan** or **BCP**) designed to reasonably ensure the continuation of its core operations related to the transmission of Studies and the provision of the Interpretation Services, if an incident (event, act or omission) impairs or disrupts the delivery of such items. Each Party shall revise and update the BCP to properly accommodate the scope and nature of the services and systems on an ongoing basis.

## Section 8. Term and Termination

### 8.1 Initial and Renewal Terms

Subject to earlier termination as provided in this section, this Agreement has an initial term expiring 1 year from the Effective Date (**Initial Term**). The Agreement shall

automatically renew for successive one-year periods (each a **Renewal Term**) unless a Party provides to the other Party a written notice of its intent not to renew at least 90 days prior to the end of the then-current term. Together the Initial term and all Renewal Terms are the **Term**.

#### 8.2 Termination Without Cause

After the first year, either party may terminate this Agreement without cause on at least 90 days' prior written notice to the other party.

#### 8.3 Termination upon Material Breach. A non-breaching party may terminate this Agreement for cause at any time upon 30 days' prior written notice of intent to terminate. If the defaulting party cures such default within such 30-day notice period, the non-breaching party may elect, at its discretion, to rescind the termination notice in writing, in which case this Agreement shall continue in full force and effect.

#### 8.4 Termination for Other Reasons

Either Party may terminate this Agreement immediately upon the occurrence of any of the following:

- (a) If Facility is not "live" with Interpretation Services by the 6<sup>th</sup> month following the Effective Date, either party may terminate this Agreement;
- (b) If the other Party (A) has been required to pay a civil monetary penalty under 42 U.S.C. § 1320a-7a or § 1320a-8, or (B) becomes a Sanctioned Person; or
- (c) If the other Party makes an assignment for the benefit of creditors.
- (d)

#### 8.5 Termination Due to Change in Change in Law

- (a) Notwithstanding any other provision of this Agreement, if during the Term hereof any Change of Law (defined below) results in an Adverse Consequence (defined below), the Parties shall have thirty (30) days within which to renegotiate reasonable revisions to this Agreement to the minimum degree necessary in order to enable the Agreement, as revised, to fulfill, the maximum extent possible, the legitimate expectations of the Parties. If the Parties cannot agree to such revisions within such thirty (30)-day period, then either Party may terminate the Agreement on thirty(30 days' written notice to the other Party.
- (b) **Change of Law** means (i) any new legislation enacted by the federal or any state government (ii) any new rule, regulation, guideline or interpretation issued or promulgated by any governmental agency or third-party payer,



(iii) any judicial or administrative order or decree, or (iv) any inquiry or investigation of or related to the Parties conducted or made by any governmental agency.

- (c) **Adverse Consequence** means any material prohibition, restriction, limitation or other material adverse effect on a Party's rights or obligations hereunder that frustrates, or can reasonably be expected to frustrate, the purpose of the Agreement or otherwise makes it desirable to restructure the relationship established hereunder.

#### 8.6 Other Termination Events/Matters

Except as otherwise specifically provided herein, upon non-renewal or termination of this Agreement, neither Party shall have any further rights or obligations hereunder except for rights and obligations accruing prior to the date of termination, rights and obligations that expressly extend beyond the term of this Agreement, or those arising because of any breach or termination of this Agreement.

### Section 9. Representations & Warranties

#### 9.1 By vRad – Physician Qualifications and Telemedicine

- (a) vRad represents, warrants and covenants that each Physician while providing Interpretation Services under this Agreement shall:
- i. be fluent in written and spoken English;
  - ii. be competently and adequately trained to perform his/her duties hereunder, and be certified by the American Board of Radiology or the American Osteopathic Association, or Board-eligible;
  - iii. be qualified and possess a valid and unrestricted license to practice medicine in the state where the Study is interpreted and the state where the relevant Facility is located;
  - iv. not be excluded from any federally funded health care program and not a "Sanctioned Person" (as defined herein); and
  - v. be appointed to the Facility's medical staff (the **Medical Staff**) with clinical privileges to carry out the duties described herein (together, such Medical Staff appointment and clinical privileges are referred to as **Clinical Privileges**). Notwithstanding the foregoing, Physicians shall not be required to maintain DEA registration, as Physicians are not prescribers, nor be required to meet any special training, certification, or other qualifications unless specifically to herein.

- (b) vRad shall furnish Interpretation Services in a manner that permits Facility and Client, as applicable, to comply with CMS Conditions of Participation, including the applicable requirements of 42 CFR 482.12(a)(1) through (a)(9) and 42 CFR 482.22, with respect to those physicians at its distant site who furnish Interpretation Services via teleradiology under the Agreement. vRad uses a medical staff credentialing and privileging process that is accredited by The Joint Commission. Parties acknowledge that Facility independently credential all physician-applicants supplied by vRad in accordance with each Facility's own credentialing policies and procedures and relies upon its own medical staff recommendations and process for approval. vRad will provide to Facility a current list of all physicians providing Interpretation Services pursuant to this Agreement and documentation supporting their individual licensure and privileges.
- (c) The Parties shall conduct their operations in accordance with generally accepted professional standards of medical practice, applicable accreditation standards, applicable provisions of federal, state, local and other laws or regulations (**Applicable Laws**).

9.2 By Client – Non-Exclusive Radiology Service Provider

vRad understands and agrees that Client will utilize the services of vRad pursuant to the terms of this Agreement on a non-exclusive basis. vRad further agrees that Client shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion, provided that the other organization does not provide such services remotely via such vRad's own RIS or RIS/PACS.

9.3 By Client – Non-Solicitation of Physicians

Client shall not, during the term of this Agreement and for 12 months following termination of this Agreement for any reason, knowingly, engage, hire or retain (in any capacity), the professional services of any physician engaged by vRad. Employment advertisements, employment agency referrals, mass e-mail, internet postings, requests for proposals or other recruitment solicitations) not targeting such person or entity shall not be deemed a breach of this section.

9.4 By Both Parties – Organization and Contract

Each Party represents and warrants that:

- (a) it is duly organized and validly existing under the laws of its state of incorporation and has the corporate power and authority to execute and deliver this Agreement, and to carry out its provisions;

- (b) this Agreement is a legal and valid obligation binding upon it, enforceable in accordance with its terms; and
- (c) the execution, delivery, and performance of this Agreement does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound and that none of such Party's contractors or employees involved in the performance of its duties under this Agreement is bound by any contract, agreement, instrument, judgment, decree, or other restriction of any nature whatsoever limiting such Party's right or ability to enter into this Agreement or to carry out its terms.

#### 9.5 By Both Parties – Compliance with Law

- (a) Each Party represents and warrants that they shall, in the performance of their responsibilities under this Agreement, comply with all Applicable Laws of governmental authorities and accrediting bodies having jurisdiction over it. Without limiting the foregoing, each Party represents there has been no offer or provision of any remuneration or discount intended as an inducement to generate referrals or billable services that would violate the Anti-Kickback Statute (42 USC § 1320a-7b (b) or the Physician Self-Referral Statute (42 USC § 1395nn)).
- (b) Each Party warrants that neither it nor its employees or contractors involved in the performance of duties under this Agreement is or has been determined to be a "sanctioned entity" or "sanctioned individual" (as those terms are defined in 42 U.S.C. § 1320a-7 and, together, a **Sanctioned Person**). Moreover, should either Party or any of its employees become a Sanctioned Person during the term of this Agreement, such Party shall promptly notify the other Party.

### Section 10. Insurance

#### 10.1 vRad Insurance

- (a) vRad shall maintain Employer's Liability insurance with limits of \$1,000,000 for bodily injury or disease. vRad shall be responsible for maintaining any workers' compensation required by the provisions of section 3700 of the California Labor Code, and submitting proof of such insurance (if applicable).
- (b) vRad shall be responsible for obtaining and maintaining throughout the Term professional and general liability insurance for vRad and any of its employees, Physicians or contractors involved in the provision of services hereunder, at no expense to Client, with coverage limits in statutorily-required amounts, but in no event less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate.



- (c) If any of the required insurance coverage is obtained on a "claims made" basis, vRad agrees on its behalf and on behalf of its employees and the Physicians, to obtain extended reporting period (i.e., "tail") coverage insurance that provides coverage for claims reported after the termination date of the policy but arising out of acts/omissions committed during the policy period or, at vRad's election, evidence that the new policy of insurance provides prior acts coverage relative to claims occurring prior to the commencement date of such new policy of insurance back to the Effective Date, at monetary limits no less than the limits set forth in this Section 10.1. Further, upon a termination of this Agreement, vRad and the Physicians shall, for a three-year period, continue to maintain comparable insurance coverage for occurrences arising before such termination back to the Effective Date.

## 10.2 Client Insurance

- (a) Client shall be responsible for obtaining and maintaining throughout the Term, professional and general liability insurance for Client, at Client's sole cost and expense, with coverage in the minimum amounts of One Million Dollars (\$1,000,000) per professional occurrence and Three Million Dollars (\$3,000,000) annual aggregate for all claims. In addition, Client shall be responsible for maintaining throughout the Term of this Agreement, professional liability insurance of at least One Million Dollars (\$1,000,000) per professional occurrence and Three Million Dollars (\$3,000,000) annual aggregate for all professional liability claims.
- (b) If such insurance is obtained on a "claims made" basis, Client agrees on its behalf and on behalf of its physicians to obtain, at Client's sole expense, "tail" coverage insurance applicable upon a discontinuation of such claims made coverage or, at Client's election, Client may provide vRad with reasonable evidence that the new policy of insurance provides prior acts coverage relative to claims occurring prior to the commencement date of such new policy of insurance back to the Effective Date, at monetary limits comparable to the limits set forth in this Section 10.2. Further, upon a termination of this Agreement, Client shall, for a 3-year period, continue to maintain comparable insurance coverage for occurrences arising before such termination back to the Effective Date.
- (c) Client self-insures as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Client, upon request of vRad, shall forward documentation to vRad to demonstrate that Client self-insures as a matter of normal business practice.

**Section 11. Liability of Client**

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

**Section 12. Limitation on Damages**

- (a) No Party will be liable to the other for, nor will any measure of damages include, indirect, incidental, special, exemplary, punitive, or consequential damages, or amounts for loss of data arising out of or relating to its performance or failure to perform under this Agreement, even if the Party against whom liability is sought to be imposed has been advised of the possibility of such damages or loss.
- (b) THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO CLAIMS RELATED TO: (1) NEGLIGENCE OR INTENTIONAL MISCONDUCT BY EITHER PARTY; (2) A BREACH OF THE PARTIES' CONFIDENTIALITY OBLIGATIONS; (3) FINES, CIVIL MONEY PENALTIES, OR OTHER ASSESSMENTS LEVIED AGAINST A PARTY ARISING FROM A VIOLATION OF LAW BY THE OTHER PARTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, vRAD's LIMITATIONS OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT: (i) ANY OF vRAD's DUTIES TO INDEMNIFY CLIENT IN ACCORDANCE WITH THIS AGREEMENT AND/OR (ii) ANY THIRD PARTY CLAIMS.

**Section 13. Indemnification**

vRad agrees to indemnify, defend and hold harmless Client and Client's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of counsel retained by Client, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of vRad or vRad's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of Client; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of vRad by any person or entity. This section shall survive the termination or expiration of this Agreement.

## Section 14. Confidentiality

### 14.1 Responsibilities

- (a) **Confidential Information** means all information, including without limitation, business, financial, strategic, business models, actual or potential business partners or investors, business opportunities, technical and other information owned by or in possession of one Party (the **Disclosing Party**), but excluding PHI, which shall be treated in accordance with Section 6 (Records), disclosed to, or received by, the other Party (the **Receiving Party**), whether in oral, written, electronic form or through observation. vRad is aware that Client is a government entity and is subject to the California Public Records Act, *Cal. Gov. Code § 6250 et seq.*, the Brown Act, *Cal. Gov. Code § 54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed 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.
- (b) Notwithstanding the foregoing, nothing shall be included in Confidential Information that:
- i. is in the public domain prior to its disclosure to, or receipt by, the Receiving Party;
  - ii. is lawfully in the Receiving Party's possession prior to such disclosure or receipt;
  - iii. becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the Receiving Party or its employees or agents;
  - iv. is disclosed to the Receiving Party by a third party without breach by such third party of any obligation of confidentiality owed to the Disclosing Party; or
  - v. is independently developed by employee(s), independent contractor(s) or agent(s) of the Receiving Party with no access to the Confidential Information of the Disclosing Party.

### 14.2 Non-Use and Nondisclosure

- (a) A Receiving Party shall use Confidential Information only as allowed by this Agreement or in connection with its activities under this Agreement, unless such Confidential Information is required to be disclosed by a court of competent jurisdiction or by any governmental authority, or as otherwise necessary in connection with the enforcement or performance of this



Agreement, or as part of such Party's normal reporting or review procedure, to its auditors, agents, advisors and its attorneys.

- (b) The Receiving Party shall take appropriate steps to protect the Confidential Information received, using the same degree of care that it uses to protect its own similar information (but in no event less than reasonable care).
- (c) Receiving Party shall limit disclosure and access to the Confidential Information received from the Disclosing Party to only (i) those employees and agents that are directly involved with Receiving Party's activities under this Agreement, and (ii) any legal or financial advisors, including auditors, agents, advisors and its attorneys, who reasonably require access to such Confidential Information, and even then only to such extent as is necessary and essential to complete the work involved therewith.
- (d) Except as required by law or court order, and even then, only after giving reasonable prior notice to the Disclosing Party, a Receiving Party shall not disclose Confidential Information to any third party without first receiving the Disclosing Party's written consent, which consent may be withheld for any or no reason.
- (e) No Party shall be liable under any trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (f) Upon termination of this Agreement for any reason, each Party shall return to the other party all Confidential Information and property (if any) received from the other pursuant to or in contemplation of this Agreement. Notwithstanding the foregoing, no Party shall be required to return or destroy (a) electronic data or records containing Confidential Information that are stored pursuant to its standard IT policies and procedures (**IT Backup Information**) so long as such IT Backup Information is not accessed in the ordinary course of business or used or disclosed in a manner prohibited by this Agreement; or (b) copies of Confidential Information retained by a Party's legal or compliance department, or third-party legal or compliance Representative, to the extent required to comply with Applicable Laws and standard business procedures. Any Confidential Information so retained shall remain subject to the confidentiality protections described herein. Further, Client and each Facility, as applicable, shall immediately stop accessing vRad's Radiology Platform and Systems.

## Section 15. **Miscellaneous**

### 15.1 Force Majeure

Neither Party shall be liable or deemed to be in default for any failure of or delay in the performance of this Agreement for the period that such failure or delay is (a) beyond the reasonable control of the Party, (b) materially affects the performance of any of its obligations under this Agreement; and (c) could not reasonably have been foreseen and provided against. A party who becomes aware of a force majeure which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will notify the other of the situation and provide the length of time for which it is estimated that such failure or delay will continue.

### 15.2 Relationship between the Parties

- (a) Nothing in this Agreement creates any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the Parties. Nothing in this Agreement authorizes a Party to bind the other, to incur any liability on behalf of the other, or to act as an agent for the other. Each Party shall conduct itself in accordance with all Applicable Laws to maintain the independent contractor status of this contractual relationship. No Party will pay or withhold on behalf of another Party or its contractors or employees or agents any sums for income tax, unemployment insurance, social security, retirement benefits or any other withholding pursuant to any law or requirement of any governmental body, and all of such payments and withholdings are the sole responsibility of the Party employing and/or engaging such individual.
- (b) Client shall not seek and shall use reasonable efforts to ensure Facility does not seek, payer or hospital credentialing related signatures directly from Physicians.

### 15.3 Amendment

No modification or amendment of this Agreement, whether by course of dealing or otherwise, shall be valid unless set forth in a separate writing signed by the Parties and only to the extent expressly stated therein.

### 15.4 Assignment

A Party may not assign any of its rights, interests or obligations without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties as well as their respective successors and permitted assigns.

#### 15.5 Waiver

A Party's waiver of its rights under any provision of this Agreement shall not operate or be construed as that Party's waiver of any other provision or of any subsequent breach by the other Party. Neither the failure nor any delay by a Party in exercising any right, and no exercise of any such right, shall preclude any other or further exercise of such right. The rights and remedies afforded to Parties under this Agreement are cumulative and not alternative. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

#### 15.6 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Laws. If any provision is held to be prohibited or invalid under any present or future law by a court or other body of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

#### 15.7 Disputes

*Governing law.* The domestic law of the State of California, other than as regards conflicts of laws principles, shall govern all questions concerning the construction, validity, interpretation and performance of this Agreement.

#### 15.8 Notices

- (a) Notices, demands, and communications shall be in writing, sent to each Party's respective address indicated on the signature page to this Agreement unless another address for such Party is specified by written notice given to the other Party.
- (b) All notices, demands and other communications to be given or delivered under this Agreement shall be in writing and shall be deemed to have been given (i) when delivered, if personally delivered by hand; (ii) when received, if sent by UPS, FedEx or other similar overnight service; (iii) 3 business days after being mailed, if sent by first class mail, return receipt requested, or (iv) when receipt is acknowledged by an affirmative act of the Party receiving notice, if sent electronically (provided that such an acknowledgment does not include an acknowledgment generated automatically by an electronic transmission device).

#### 15.9 No Third-Party Beneficiaries

Except for the rights of Affiliates pertaining to indemnification, nothing in this Agreement is intended or shall be construed to confer upon any person, firm or entity other than the Parties and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as a third-party beneficiary or otherwise.

#### 15.10 Entire Agreement

This Agreement, including any recitals and attached documents, which are hereby incorporated into the Agreement, constitutes the entire Agreement between the Parties with respect to its subject matter and there are no other representations, undertakings or agreements between them relating to such subject matter.

#### 15.11 Survival

The provisions of Sections 5 (Compensation Terms); 6 (Records), 8.6 (Other Termination Events / Matters), 9.3 (By Client- Non-Solicitation of Physicians); 10 (Insurance); Section 11 (Liability of Client); Section 12 (Limitation on Damages); 14 (Confidentiality); and any other provisions or sections reasonably required to survive either by their terms or to give effect to their provisions shall survive termination of this Agreement.

#### 15.12 Interpretation

- (a) The word **including** (and its variants) followed by one or more examples means including all things or conditions of the same kind or class as the examples provided.
- (b) The phrase **reasonable efforts** means efforts that a reasonable person would use to comply with that obligation as promptly as possible.
- (c) This Agreement is the product of negotiation between the Parties. The fact that counsel to a Party prepared the draft(s) or final form of this Agreement shall not be relevant in the construction or interpretation of this Agreement should any provision or portion of this Agreement be deemed to be ambiguous.
- (d) Except as otherwise specifically provided in this Agreement, all references in this Agreement to a number of "days" during which a particular matter, issue or task needs to be either completed, finalized, resolved, within which notice must be given, etc., shall be construed to mean a number of "calendar days" and not a number of "banking days" or "business days." "Quarters" refer to calendar quarters. Time is of the essence in connection with the terms and provisions of this Agreement.



- (e) Section headings are for convenience only and shall not be used in construing or interpreting the meaning of any of the provisions of this Agreement.

#### 15.13 Advertising and Publicity

The Parties each reserve the right to use and control the use of its name and all symbols, trademarks, and service marks presently existing or later established by it. Client and vRad shall not, and shall not permit any of its Affiliates or agents to mention, or otherwise use the other Party's (or its Affiliate's) name, insignia, symbols, trademark, trade names, logotypes or service marks, including any abbreviation or adaptation thereof, in any advertising, publication, press release or promotional materials or other form absent the prior written consent of the other Party to its specific contemplated use in each instance, and should either Party provide such written consent, the use thereof shall cease immediately upon written notice from the other Party or termination of this Agreement, whichever is sooner.

#### 15.14 No Discrimination

Each Party agrees that, in the performance of this Agreement, services will be provided without discrimination toward any patients, employee or other persons regardless of their race, creed, color, ethnic background, insurance status, ability to pay, gender identity, or any other basis prohibited by law. Each of the Parties is an equal opportunity employer. Each of the Parties shall comply with all applicable requirements and provisions of federal, state and local civil rights laws, including the Civil Rights Act of 1964.

#### 15.15 Counterparts

This Agreement may be executed in one or more counterparts, and by facsimile or pdf signature, each of which shall be deemed an original, and all of which shall together be deemed to constitute one agreement.

\_[Remainder of page intentionally left blank.]

### Schedule A – Coverage Periods and Key Client Contacts

Coverage Periods (Pacific Time)						
Coverage begins at the initial time shown and continues until the following morning.						
5 p.m. – 8 a.m.	5 p.m. – 8 a.m.	5 p.m. – 8 a.m.	5 p.m. – 8 a.m.	5 p.m. – 8 a.m.	8 a.m. – 8 a.m.	8 a.m. – 8 a.m.
<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Sunday</b>

**Target Start Date: April 13, 2020**

<b>Facilities</b> (Facility - State)	Kern Medical Center - Bakersfield, CA
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<b>Primary Contact</b>	Suzanne Knight Manager, Radiology	Email: Suzanne.Knight@kernmedical.com Phone: (661) 326-2534
<b>Accounts Payable</b> <i>This is where vRad will send invoices. Client is responsible for ensuring payment. If blank, Client's address on page 1 will be used.</i>	Han Nguyen	Email: Han.Nguyen@kernmedical.com Phone: 661.862.4133
<b>Clinical Quality</b> <i>(must be physician member of peer review committee)</i>	Arman Froush Chair, Radiology	Email: Arman.Froush@kernmedical.com Phone: (661) 326-2517
<b>IT Key Contact</b>	Tony Mestaz	Email: Tony.Mestaz@kernmedical.com Phone: (661) 326-5364
<b>Legal and Compliance</b>	Jamie Mason	Email: Contracts@kernmedical.com Phone: (661) 862-8191

### Schedule B – Modalities and Compensation

#### Interpretation Fees

Studies to be interpreted via teleradiology are shown below. This Agreement is conditioned upon vRad

obtaining a minimum in monthly fees for Interpretations. Beginning the earlier of the Full Service Start Date or the third full calendar month following the Effective Date, on a monthly basis Client shall pay (a) \$22,000 or (b) the aggregate of all fees for Studies Interpreted, per the table below, whichever is greater. In either case, the allowed minimum charges or the aggregate in fees are the Interpretation Fees.

**Fee per Study**

Modality	Study Type (CPT Codes)	Preliminary Interpretation	Approx. Monthly Study Demand
CT	<b>General</b>	\$35.00	592
	<b>Ab/Pelvis</b> (74176-74178)	\$52.50	204
CTA <sup>1</sup>	<b>Head, Neck, Chest, Abdomen, Pelvis, Extremity- Upper or Lower</b> (70496, 70498, 71275, 74175, 72191, 73206, 73706)	\$45.00	57
	<b>Ab/Pelvis</b> (74174)	\$67.50	<1
	<b>ABD/AORTA &amp; BILAT LWR EXTREM RUN OFF</b> (75635)	\$115.00	1
MR	<b>General</b> (multiple CPTs, excludes Breast and MR Brain for perfusion)	\$63.00	25
	<b>MRA/MRV</b> (multiple CPTs)	\$63.00	<1
NM	<b>General (other than PT or PT/CT)</b> (multiple CPTs)	\$40.00	<1
US	<b>General</b> (multiple CPTs, excludes Breast)	\$34.00	29
XR	<b>General</b> (excludes Breast)	\$14.00	1

## CREDENTIALING AND PRIVILEGING AGREEMENT

THIS CREDENTIALING AND PRIVILEGING AGREEMENT (Agreement) is between Virtual Radiologic Corporation for itself and on behalf of Telemedicine Entity defined below, (collectively, vRad) and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (Facility). It is effective the latter of the dates signed (the Effective Date).

Whereas, Virtual Radiologic Services, LLC (VRS) and Virtual Radiologic Professionals, LLC (VRP) engage teleradiologists to provide interpretation services to clients of Virtual Radiologic Corporation (VRC) and VRC's managed radiology practices, which collectively are recognized by The Joint Commission as part of a unified ambulatory care accredited organization (collectively, Telemedicine Entity); and

Whereas, Telemedicine Entity credentials and privileges radiologists for provision of services to distant sites such as Facility; and

Whereas, Facility credentials and privileges physicians to provide patient care, including through telemedicine, at one or more of its locations, and anticipates the need for Telemedicine Entity radiologists to apply for, and if qualified, receive clinical privileges in their specialty from Facility; and

Whereas, federal regulations allow Facility's Medical Staff Office to rely on the credentialing and privileging decisions of Telemedicine Entity provided there is a written agreement concerning the topics covered by this Agreement;

Therefore, the parties agree as follows:

### Section 1. Contractor Relationship.

- 1.1 Telemedicine Entity is a contractor of services to Facility within the meaning of 42 CFR Part 482 and 485<sup>1</sup>, as such may be amended from time to time (the Telemedicine Final Rule). Specifically, Telemedicine Entity provides radiology interpretations of procedures performed on Facility patients via a telemedicine link (Contracted Services). For purposes of this Agreement, each such radiologist providing or that is anticipated to provide Contracted Services is a Physician (collectively, Physicians).

### Section 2. Compliance with Conditions of Participation.

- 2.1 Telemedicine Entity shall furnish Contracted Services in a manner that permits Facility to comply with all applicable Medicare Conditions of Participation, as required by the Telemedicine Final Rule.
- 2.2 Without limiting the foregoing, Telemedicine Entity's credentialing and privileging processes shall at least meet the standards at 42 CFR §482.22(a)(I)

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<sup>1</sup> Effective May 5, 2011.



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through (a)(2), 42 CFR §482.12(a)(1) through (a)(7), and/or 42 CFR § 485.616(c)(1)(i) through (c)(1)(vii), as such may apply to Facility and as may be amended from time to time.

2.3 Telemedicine Entity warrants:

- (a) each Physician providing Contracted Services shall hold a current, valid, unrestricted license issued or recognized by the State in which Facility patients are receiving Contracted Services and shall otherwise be qualified to provide Contracted Services within the scope of the Physician's respective privileges; and
- (b) Telemedicine Entity's processes shall meet or exceed applicable standards of The Joint Commission.

2.4 Telemedicine Entity shall provide Facility a current list of privileges the Physicians have received from vRad Privileging Board.

2.5 Telemedicine Entity shall provide Facility with the most current information available. If more current verification is needed by Facility, Facility is responsible for securing the necessary verification.

**Section 3.** Decision of Facility Governing Body.

3.1 Facility represents that its Governing Body has directed Facility's medical staff to rely on the credentialing and privileging decisions made by Telemedicine Entity when making Facility privilege recommendations for the Physicians as allowed by 42 CFR §482.22(a)(4).

3.2 Facility shall use Physician's 2-year privilege renewal cycle with Telemedicine Entity as Physician's renewal cycle at Facility.

**Section 4.** Quality Review.

4.1 Facility shall maintain evidence of its internal review of each Physician's performance of Contracted Services. Facility shall advise Telemedicine Entity of any adverse events that result from the telemedicine services and all complaints that Facility has received about any Physician.

**Section 5.** Standards of The Joint Commission.

5.1 Per Hospital Accreditation Standards of The Joint Commission, Facility shall annually evaluate if Telemedicine Entity is providing the Contracted Services safely and effectively. The following quality indicators will be used in performing that evaluation:

- (a) Reporting Time within contracted ranges;
- (b) Physicians' discrepancies within clinically reasonable ranges.

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Facility shall promptly notify Telemedicine Entity of any concerns so that Telemedicine Entity may evaluate the root cause of the issues and develop a corrective action plan.

**Section 6.**      Credentialing Related Materials; Certain Reports.

- 6.1      Telemedicine Entity will provide packets of information via the Credentialing Portal on each Physician that includes the following information including primary source verification:
- (a)      Curriculum vitae;
  - (b)      Board certificate;
  - (c)      Educational verification and certificates (verified via primary source-AMA/FCVS);
  - (d)      Work verifications (verified via primary source);
  - (e)      Government-issued identification;
  - (f)      Certificate of Insurance; and
  - (g)      State of California physician's license.
- 6.2      Telemedicine Entity agrees to provide a comprehensive report of each Physician's qualifications that must include at least the following:
- (a)      Confirmation that Physician is privileged by Telemedicine Entity for those services to be provided at Facility; and
  - (b)      Each Physician's global and/or Facility-specific QA statistics via Telemedicine Entity's QA Program and any adverse events that result from the telemedicine services to Facility. This subsection does not require either Party to release information that would compromise its or its employees' or physicians' peer review protections, patient safety privilege, attorney-client privilege, or other legal immunities, privileges or defenses to release of such information. Such information is to be used for credentialing, quality improvement, and peer review activities only. The Parties intend all such activities and communications to be afforded protection under all applicable peer review confidentiality laws. The Parties shall treat all quality-related information shared pursuant to this Section as privileged and confidential. Each Party shall ensure that no portion of any materials or information received from the other Party are disclosed by it or its agents to any employee or third party for reasons unrelated to evaluating the Physician's quality and credentials to provide the Interpretation Services, except as required by Applicable Laws.

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- 6.3 Telemedicine Entity shall make electronic copies of certain credentialing materials available via a secure online Credentialing Portal. Telemedicine Entity will not provide Facility any reports Telemedicine Entity receives from third parties that are subject to restrictions on further distribution; however, Telemedicine Entity will provide summaries of findings, as appropriate.
- 6.4 Facility shall obtain electronic copies of credentialing-related materials from the Credentialing Portal and shall periodically review the roster shown there to ensure it conforms to the roster of Telemedicine Entity Physicians that Facility maintains.
- 6.5 Facility is responsible for providing Credentialing Portal user names and passwords to Facility staff. Facility shall limit access to the Credentialing Portal to users authorized by Facility's credentialing staff and peer review committee(s). Facility shall not permit such users to share log-in credentials. Facility peer review committee members may access statistical information concerning the quality of Physicians' radiology interpretations, solely for Facility's confidential and statutorily protected peer review committee activities.

**Section 7.** Non-Solicitation of Telemedicine Entity Physicians.

- 7.1 Facility shall not, during the term of this Agreement and for a period of 12 months following termination of this Agreement for any reason, knowingly solicit, engage, hire or retain (in any capacity), the professional services of any Physician engaged by vRad during the term hereof. Broad employment advertisements or mass InMail marketing or other targeted recruitment solicitations shall not be deemed a breach of this Agreement. (However, for the avoidance of doubt, retention of a physician recruited in this manner is precluded by this section). This section will remain in effect after termination or expiration of this Agreement.

**Section 8.** Confidentiality.

- 8.1 The parties shall treat all credentialing and quality-related information as privileged and confidential. Such information may only be used for credentialing, quality improvement, and peer review activities. Each party shall ensure that no portion of any materials or information received from the other party is disclosed by it or its agents to any employee or third party for reasons unrelated to evaluating a Physician's quality and credentials to provide Contracted Services or to obtain legal advice from appropriate legal counsel, unless court ordered. This section will remain in effect after termination or expiration of this Agreement.

**Section 9.** Term and Termination.

- 9.1 Term. This Agreement has an initial term expiring two (2) years from the Effective Date (Initial Term). The Agreement shall automatically renew for



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successive one-year periods (each a Renewal Term) unless a party provides to the other party a written notice of its intent not to renew at least 90 days prior to the end of the then-current term.

- (a) Upon Notice. Either party may terminate this Agreement without cause on at least 90 days' prior written notice to the other party.
- (b) Termination upon Material Breach. A non-breaching party may terminate this Agreement for cause at any time upon 30 days' prior written notice of intent to terminate. If the defaulting party cures such default within such 30-day notice period, the non-breaching party may elect, at its discretion, to rescind the termination notice in writing, in which case this Agreement shall continue in full force and effect.

9.2 Legislative/Regulatory Modification. If any law, regulation, or standard is enacted, promulgated, or modified in a manner that, in the opinion of a party's legal counsel

- (a) prohibits, restricts or in any way materially affects this Agreement;
- (b) subjects either party to a fine or penalty in connection with its representations or responsibilities hereunder; or
- (c) subjects either party to a loss of certification or accreditation because of the party's representations or performance of obligations hereunder, then within 5 days following notice, the parties shall complete the good faith negotiation of an amendment to this Agreement or a substitute agreement that will carry out the parties' original intention to the extent possible given the modification and each party shall execute such amendment or new agreement.

9.3 If the parties cannot reach agreement on new terms within 5 days following the notice provided hereunder or such earlier date as necessary to avoid substantial penalties or fines, then this Agreement shall immediately terminate, following written notice of termination from either party.

**Section 10.** Indemnification.

Each party shall indemnify, defend, and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, that arise directly from a breach of this Agreement to the extent caused by the indemnifying party, or its employees, subcontractors, or agents. This section will remain in effect after termination or expiration of this Agreement. No settlement shall be made without each party's consent, which shall not be unreasonably withheld.



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**Section 11.** Notice.

- 11.1 Any notice required by this Agreement shall be in writing and shall be deemed to have been properly given to a party (i) if hand delivered, (ii) if delivered overnight by UPS or FedEx, effective on the first business day following delivery to such carrier, or (iii) if sent certified mail, return receipt requested, effective three (3) days after deposit in the United States mail, addressed to the address below or as the parties may designate by giving notice pursuant to this Section:

<b><u>Kern County Hospital Authority</u></b> 1700 Mount Vernon Avenue Bakersfield, California 93306 Attn: Chief Executive Officer	<b><u>Virtual Radiologic Corporation</u></b> 11995 Singletree Lane, #500 Eden Prairie, MN 55344 Attn: General Counsel
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**Section 12.** Third-Party Beneficiaries.

- 12.1 This Agreement shall not confer any benefit or rights upon any person other than Facility and Telemedicine Entity, and no third party shall be entitled to enforce any obligation, responsibility or claim of any party to this Agreement.

**Section 13.** Other Agreements.

- 13.1 This Agreement, including all exhibits and attachments referenced herein, contains the entire understanding and agreement of the parties with respect to the credentialing and privileging of Telemedicine Entity Physicians.

**Section 14.** No Remuneration.

- 14.1 This Agreement is intended to benefit both parties in a commercially reasonable manner by establishing a process for Facility to rely on Telemedicine Entity's credentialing and privileging decisions and dates and remain in compliance with Medicare Conditions of Participation. This Agreement does not contemplate the payment of any remuneration by either party to the other. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

**Section 15.** Counterparts.

- 15.1 This Agreement may be executed by facsimile signature or encrypted, digital signature, and by either of the parties in counterparts, each of which will be deemed to be an original, but all such counterparts will constitute a single instrument.

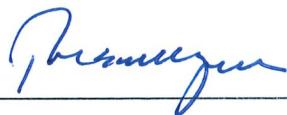
**Section 16.** **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

**Section 17.** **Liability of Facility.** The liabilities or obligations of Facility with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Facility and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

The undersigned parties hereto have executed this Credentialing and Privileging Agreement effective as of the later of the dates signed.

**Kern County Hospital Authority**

Signed



By

Russell V. Judd

Title

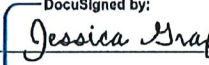
Chief Executive Officer

Date

4/9/20

**Virtual Radiologic Corporation**

Signed

DocuSigned by:  
  
CC#87F4EDC43B...

By

Jessica Graf

Title

Director of Physician Services

Date

April 8, 2020

[For vRad only: \_\_\_\_\_]

APPROVED AS TO FORM  
Legal Services Department

By

  
Kern County Hospital Authority

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## CREDENTIALING AND PRIVILEGING AGREEMENT

### Schedule 1 List of Physicians

**Instructions to Facility:**

**If this is the first Schedule**, all Physicians will be "A," meaning *added* to this Schedule. Please indicate that the Physicians may begin performing Contracted Services for Facility by signing and dating below and returning either by fax or email. If strike outs are necessary, please make the change and initial it.

**If this is a revised Schedule**, note in your systems any added ("A") Physicians. Sign and date the form and return it by fax or email. Previously listed Physicians will remain on the Schedule until they are removed. Confirm those Physicians are on your local roster. vRad will notify your facility of any removed Physicians via an automated e-mail to your medical staff office. If there are discrepancies, contact the Physician Services Representative via email, below.

As indicated, the Schedule should be signed by duly authorized representatives of the medical staff and the governing body. EMAIL: [Kayla.Fleming@vrad.com](mailto:Kayla.Fleming@vrad.com) FAX: 952-935-2757.

vRad Privileging Board has issued privileges to the following Physicians. Telemedicine Entity requests confirmation from Facility that each Physician has been issued Facility privileges and is permitted to provide Contracted Services to Facility. Each Physician's Delineation of Privileges (provided separately) is incorporated herein. Reappointment dates will be based on Telemedicine Entity's biennial cycle and will be indicated in the Delineation of Privileges.

Name	(A)Added via this Schedule	Name	(A)Added via this Schedule
Aschkenasi, Carl	A	Behar, Jeffrey	A
Binder, Christian	A	Boden, Thomas	A
Ciabattoni, Steven	A	Cohen, Steven	A
Conway, Deborah	A	Fiore, Eddie	A
Fiorito, Thomas	A	Fox, Matthew	A
Grant, Michael	A	Greenberg, Harvey	A
Hecht, Adam	A	Hurt, Christopher	A
Kaplan, Richard	A	Kerns, Scott	A
Khatibi, Maximilian	A	Klein, Jerome	A
Klisch, Gregory	A	Kulkarni, Kedar	A
McDonnell, Kevin	A	Mohammad, Shaden	A
Reiner, Bruce	A	Sani, Farhad	A



Sonnabend, Steven	A	Zaytsev, Igor	A
Zhang, Jeanie	A		

Kern Medical Center – CA

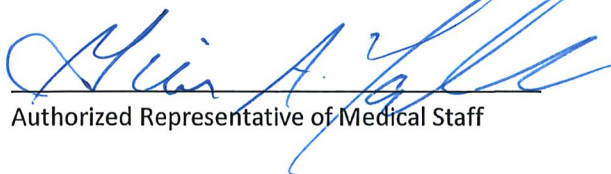
**Medical Staff Recommendation & Confirmation**

Facility's Medical Staff recommends Facility issue radiology privileges to the added Physicians, per each Physician's vRad Delineation of Privileges. The other Physicians named on the roster currently hold active radiology privileges at Facility.

Medical Staff has:

☐ conducted its own full review of credentials of the added Physicians.

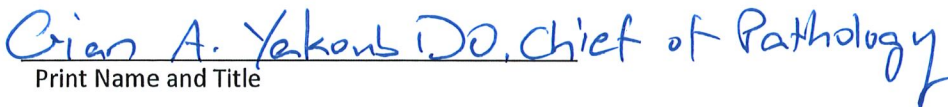
☒ relied upon the decisions of Telemedicine Entity.



Authorized Representative of Medical Staff

Date

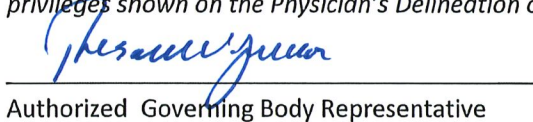
4-8-20



Print Name and Title

**Issuance of Privileges**

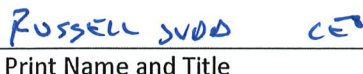
Effective the date signed below, Facility's governing body has issued the added Physicians the same privileges shown on the Physician's Delineation of Privileges received from Telemedicine Entity.



Authorized Governing Body Representative

Date

4/9/20



Print Name and Title

Each Physician agrees to execute both the Kern Medical Staff Bylaws Acknowledgment and the Kern Medical Medicare Program Physician Acknowledgment, attached hereto as Exhibit A, within thirty (30) days of the execution of the Credentialing & Privileging Agreement. The execution, by each Physician, of the Kern Medical Staff Bylaws Acknowledgment and the Kern Medical Medicare Program Physician Acknowledgment will be deemed effective as if executed on the same date as the Credentialing & Privileging Agreement.



**SAMPLE ONLY – SUBJECT TO CHANGE**

**vRad Privileging Board  
DELINEATION OF TELERADIOLOGIST PRIVILEGES**

*Radiologist:* Below, please mark which radiology privileges you are requesting and provide the number of studies interpreted in the past 2 years.

Physician Name:		Date of Application:	
X If Requesting	Radiology Privileges	Number of Studies Interpreted in the Past 2 Years	For VPB Only: Privileges Granted
			Yes No
	<u>Interpretation of Radiograph</u>		
	Abdomen		
	Chest		
	Head		
	Extremity		
	Pelvis		
	Spine		
	Upper GI Series		
	Intravenous Urogram		
	Tomography		
	<u>Interpretation of CT</u>		
	Abdomen		
	Chest		
	Extremity		
	Head		
	Neck		
	Pelvis		
	Spine		
	Neurological		
	Musculoskeletal		
	<u>Interpretation of CTA</u>		

Physician Name:		Date of Application:	
X if Requesting	Radiology Privileges	Number of Studies Interpreted in the Past 2 Years	For VPB Only: Privileges Granted
			Yes No
	<u>Interpretation of Ultrasound</u>		
	Abdominal		
	Endovaginal		
	Neck		
	Pelvis Renal		
	Thyroid		
	Doppler (diagnostic)		
	Arterial		
	Venous		
	Obstetrical		
	<u>Interpretation of Nuclear Medicine</u>		
	Liver		
	Spleen		
	GI Bleed		
	Bone		
	Brain		
	Lung		
	Renal		
	Thyroid		
	Liver Function		
	HIDA		
	<u>Interpretation of MRI and MRA</u>		
	Head		
	MRA		
	Extremity		
	Spine		

Physician Name:		Date of Application:	
X If Requesting	Radiology Privileges	Number of Studies Interpreted in the Past 2 Years	For VPB Only: Privileges Granted
			Yes No
	Abdomen		
	Pelvis		
	Musculoskeletal		
	<u>Interpretation of Mammography</u>		
	<u>Interpretation of Breast MRI</u>		
	<u>Interpretation of PET</u>		

Physician Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**VPB ONLY:**

I have reviewed this list of procedures and agree that this individual is qualified to perform them.

Medical Director or Designee: \_\_\_\_\_ Date: \_\_\_\_\_

These privileges are valid until \_\_\_\_\_.

# EXHIBIT A





**Kern Medical  
Medical Staff**

**Medical Staff Bylaws Acknowledgement**

In making application for appointment to the medical staff of Kern Medical, I acknowledge that I have received and reviewed the Kern Medical Medical Staff Bylaws, Rules and Regulations and the Kern Medical Bylaws for Governance (specific to the medical staff), and have been oriented to them. I agree to be bound by the terms thereof if I am granted staff membership and clinical privileges. I agree further to be bound by the terms thereof in all matters relating to the consideration of my application for appointment to the medical staff of Kern Medical, regardless of whether I am granted staff membership and clinical privileges.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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



**Kern Medical  
Medical Staff**

**Medicare Program Physician Acknowledgement**

Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of federal funds, may be subject to fine, imprisonment, or civil penalty under applicable federal laws.

I acknowledge that I have read and understand the above statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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

Reference: 42 C.F.R. 412.46



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

April 15, 2020

**Subject:** Proposed amended and restated Bylaws of the Kern Medical Auxiliary

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

**Summary:**

This is to request that your Board approve the amended and restated bylaws of the Kern Medical Auxiliary. The Auxiliary was incorporated as a 501(c)(3) corporation in California in 1974, to provide volunteer services that benefit Kern Medical and its patients. The changes to the bylaws include:

1. A name change from “Kern Medical Center Auxiliary” to “Kern Medical Auxiliary”;
2. Referencing the relationship of the Auxiliary to the hospital authority;
3. Adding the new role of Volunteer Services Manager;
4. Revising the structure of standing committees;
5. Adding a Volunteer Services Coordinator<sup>1</sup> as a position on the Auxiliary Board of Directors; and
6. Technical changes throughout.

Therefore, it is recommended that your Board approve the amended and restated bylaws of the Kern Medical Auxiliary, effective April 15, 2020, and authorize the Chairman to sign.

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<sup>1</sup> The Volunteer Services Coordinator will oversee specific areas of the hospital, which include the Emergency Room, NICU, Surgery, Pet Therapy and Patient Care. These areas have specific procedures and education for each hospital department.

**KERN MEDICAL AUXILIARY  
AMENDED AND RESTATED BYLAWS**

**ARTICLE I  
NAME**

The name of this organization will be Kern Medical Auxiliary (“Auxiliary”).

**ARTICLE II  
PURPOSE**

The primary purpose of the Auxiliary is to function as a volunteer body, separate and distinct from the Board of Governors of the Kern County Hospital Authority, to promote and advance the welfare of Kern Medical Center (“Kern Medical”) and its patients by providing supplemental services and benefits.

The purpose of the Auxiliary will include but not be limited to the following:

- (a) To render volunteer service to Kern Medical and its patients.
- (b) To promote public relations for Kern Medical in the community.
- (c) To raise funds for the betterment of Kern Medical.
- (d) To promote interest in health careers.

**ARTICLE III  
ORGANIZATION**

Section 1

The Auxiliary will be a non-profit corporation.

(a) The Auxiliary is not organized, nor will it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits or dividends to the members thereof, and is organized solely for non-profit purposes.

(b) The property of the Auxiliary is irrevocably dedicated to charitable purposes and no part of the net income or assets of the Auxiliary will ever inure to the benefit of any director, officer or member thereof or to the benefit of any private persons.

(c) On the dissolution or winding-up of the Auxiliary, its assets remaining after payment of or provision for payment of all debts and liabilities of the Auxiliary will be distributed to a non-profit fund, foundation or corporation, which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c) (3) of the Internal Revenue Code.

(d) If the Auxiliary holds any assets on trust, or the Auxiliary is formed for charitable purposes, such assets will be disposed of in such manner as may be directed by decree of the Superior Court of the County in which the Auxiliary has its principal office, on petition thereof by the Attorney General or by any person concerned in the liquidation, in a proceeding to which the Attorney General is a party.



## Section 2

The Auxiliary is not a private foundation as described under Section 508(c) of the Internal Revenue Code. The Auxiliary is a membership organization.

## Section 3

The Auxiliary will not engage in or intervene in any political campaign on behalf of any candidate for public office. Any request authorizing support of legislative issues must be approved by a majority vote of the general membership.

## Section 4

The Auxiliary Board of Directors will be referred to as “Board” in these Bylaws.

# **ARTICLE IV MEMBERSHIP**

## Section 1

Membership in the Auxiliary will be open to all persons who are interested in Kern Medical, who apply for membership, who are willing to conform to the Bylaws and policies of the Auxiliary, and who are approved for membership by the Volunteer Services Manager or the Membership Committee and have met all hospital requirements.

Kern Medical’s Hospital Volunteer Services Manager will keep an accurate list of the membership, assist the Membership Committee to recruit new members, and seek in every way possible to promote an efficient and active membership in accordance with the purpose of the Auxiliary.

## Section 2

There will be the following types of members:

- (a) Active members are those members who complete the membership process, participate in active service programs, and serve a minimum of fifty (50) hours in each fiscal year. Only active members are entitled to paid lunches and dinners at Auxiliary events.
- (b) Sustaining members are those members who have been approved for membership and who are interested in the purpose of the Auxiliary but are not required to actively participate. Annual dues cover membership and newsletter only.
- (c) Honorary members are those members who are chosen for recognition due to their outstanding service to the Auxiliary, the Hospital, or the community.
- (d) Life members are those members who (i) have made a one-time dues payment of one hundred dollars (\$100.00) or (ii) have been specially selected for life membership by the

Board because of their unique contributions to the Auxiliary, or (iii) have been an Active member for at least twenty (20) years.

(e) Associate members are those members who have been chosen by the Board on the nomination of Kern Medical staff for temporary membership for a specific purpose consistent with the Auxiliary's purpose of service to Kern Medical. Such memberships may be terminated by the Board at any time.

### Section 3

Unless otherwise specified in the Bylaws, only an active member in good standing will have the right to vote, participate in Membership Meetings, and hold office in the Auxiliary.

### Section 4

The Board may terminate a membership at its discretion. The Board must provide written notice to the terminated member at least fifteen (15) days before such termination is effective and such notice shall provide the grounds for termination. If any person who has his or her membership terminated by the Board wishes to challenge that termination, that person may file within seven (7) days of termination a request for hearing with the Volunteer Services Manager or the Auxiliary President. The Volunteer Services Manager or the Auxiliary President will schedule the hearing upon receipt of the request and at a convenient time for all necessary parties. The person requesting the hearing along with the Volunteer Services Manager, the Auxiliary President and two Board members must be present. The Volunteer Services Manager or the Auxiliary President may conduct such hearing. The decision from the hearing will be made by the Volunteer Services Manager or the Auxiliary President and will be final.

### Section 5

The resignation of a member must be in writing and will become operative upon delivery to the Volunteer Services Manager or the Auxiliary office. The member must also turn in his/her badge, uniform, keys, parking pass and any other Auxiliary item(s) received during his or her membership term.

## **ARTICLE V DUES AND CONTRIBUTIONS**

### Section 1

Annual dues will be determined by the Board. Such dues will be due on the first day of each April and will be delinquent on or after the first day of June of the same year.

### Section 2

Any person whose membership the Board has terminated for non-payment of dues may make application in writing to the Board for reinstatement. Such application must be accompanied by the payment of the dues owing through the current year.

### Section 3

All dues or contributions paid or made to the Auxiliary become the property of the Auxiliary, and the members or contributors will have no further claims or rights thereto. Honorary, Life and Associate members are not required to pay dues in addition to those dues provided for in Section IV.2(d) above.

## **ARTICLE VI OFFICERS**

### Section 1

The officers of the Auxiliary will be a President, a Vice President, a Recording Secretary, a Corresponding Secretary, a Treasurer, a Financial Secretary, an Auditor and a Parliamentarian.

### Section 2

Officers of the Auxiliary will be elected to serve for a term of one (1) year and may be re-elected for a consecutive, additional term of one (1) year in the same office.

### Section 3

The Nominating Committee will, at the January Membership Meeting, present the name of at least one (1) member of the Auxiliary for each office. Additional members in good standing may be placed in nomination from the floor, provided that the consent of the member has been obtained prior to the meeting. The presiding officer will make a request for any additional nominations at which time a member may make a nomination from the floor by raising his or her hand.

The slate of Officers will be available to all members prior to the February Membership Meeting. This may be done by printing the slate in the January newsletter or any other method deemed appropriate by the Board. If any member is not able to attend the February meeting, that member may prepare an Absentee ballot to be turned in to the Recording Secretary for inclusion in the vote tally at the February Membership Meeting.

The election of officers will be held at the February Membership Meeting. An officer will be deemed elected upon receiving at least a plurality of votes cast, whether by Absentee ballot, proxy, or present members. The new officers will be installed in March and take office on April 1<sup>st</sup>.

### Section 4

Without prejudice to any rights of an officer under any contract of employment, any officer may be removed with or without cause by a majority of the members.

## Section 5

Any officer may resign at any time by giving written notice to the Auxiliary. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Auxiliary under any contract to which the officer is a party.

## Section 6

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

# **ARTICLE VII DUTIES OF THE OFFICERS**

## Section 1

The President will serve as the Chief Executive Officer of the Auxiliary and the Chairperson of the Board. The President will supervise the general management of the Auxiliary. The President, with the consensus of the Board, will appoint the Chairpersons/Coordinators of such special membership committees/service programs as occasion may demand and fill any vacant chairs of standing membership committees. The President will be an ex-officio member of all standing committees of the Auxiliary, except the Nominating Committee. The President will perform all duties incident to the office of President and will serve one (1) year on the Board prior to being President. The President will be one of the officers authorized to countersign all checks.

## Section 2

The Vice President, in the absence or disability or resignation of the President, will have the authority to perform all duties of the President.

## Section 3

The Recording Secretary will be responsible for keeping records of meetings of the Auxiliary membership and of the Board in record books belonging to the Auxiliary. These records will be open to the inspection of any member at all reasonable times. In addition, the Recording Secretary will keep a database containing the names and addresses of each member. Termination of any membership will be recorded in the database together with the date on which the membership ceased. If the President and Vice President are unable to continue with their duties, the Recording Secretary will have the authority to perform all duties of the President.

## Section 4

The Corresponding Secretary will be responsible for sending meeting notices and any other correspondence deemed necessary by the Board. He/she will read any incoming



correspondence at the monthly meetings and advise of any correspondence he/she has sent out on behalf of the Auxiliary.

#### Section 5

The Treasurer will be responsible for keeping an accurate record of all financial affairs of the Auxiliary and will render a monthly financial report to the Board. The Treasurer will have charge of the Auxiliary finances under the supervision of the Financial Committee and the Board. All the expenditures, other than routine operating expenditures, must be approved by the Board.

#### Section 6

The Financial Secretary will be responsible for all funds received by the Auxiliary and will keep an accurate account thereof. The Financial Secretary will serve as a member of the Finance Committee.

#### Section 7

The Auxiliary Auditor will conduct semi-annually an internal audit of the books and records of the Auxiliary in accordance with accepted accounting principles and report the same to the Board.

The President will appoint two (2) members of the Auxiliary, who are not members of the Financial Committee, to assist the Auditor in the conduct of the semi-annual audits.

#### Section 8

The Parliamentarian will keep a current list of standing rules and will advise the Board or any members of the Auxiliary as to any question of parliamentary laws that may arise at any meeting. The Parliamentarian will serve as Chairman of the Bylaws Committee which will function at the request of the President or the Board. At the regular meeting held for elections of officers, the Parliamentarian will read those sections from the Bylaws pertaining to elections and nominations.

#### Section 9

Members may be bonded at the expense of the Auxiliary. The amount of said bond will be determined by the Board.

### **ARTICLE VIII AUXILIARY BOARD OF DIRECTORS**

#### Section 1

The Auxiliary Board of Directors will consist of the President, Vice President, Recording Secretary, Corresponding Secretary, Treasurer, Financial Secretary, Auditor and Parliamentarian. The President may call a special meeting of the Board as needed.

The Chief Executive Officer of Kern Medical, or his or her designee, and the Volunteer Services Manager, if any, will be ex-officio members of the Board.

## Section 2

All actions of the Board must be in compliance with the California Nonprofit Corporation Law. In the event the Board of Governors of the Kern County Hospital Authority find an action of the Auxiliary to not be in the best interests of Kern Medical, the Board will forthwith comply with the requirements of the Board of Governors with reference to such action. With the above limitations, management and control of property, funds and affairs of the Auxiliary will be administered by the Board.

## Section 3

Special meetings of the Board may be held at any time and place as determined by the President. Further, the President may call a special meeting, when requested in writing, by no fewer than two (2) members of the Board.

Any meeting may be held by conference telephone or similar communication equipment, as long as all Board members participating in the meeting can hear one another. All such Board members shall be deemed to be present in person at such a meeting.

## Section 4

A majority of the Board members present at a Board meeting will constitute a quorum at any meeting. In the absence of a quorum, the meeting will be adjourned.

## Section 5

Every action taken or decision made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be the act of the Board, subject to the more stringent provisions of the California Nonprofit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a Board member has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the Board, and (d) indemnification of Board members.

## Section 6

There need be no notice of regularly scheduled Board meetings, but for special meetings of the Board, a notice must be by one of the following:

- (1) Written notice personally delivered at least forty-eight (48) hours prior to the meeting time;
- (2) Written notice posted by U.S. Mail at least three (3) days prior to the meeting date (i.e., for a Thursday meeting, a Monday mailing); or
- (3) Telephone notice to the member at least forty-eight (48) hours prior to the meeting time.

Notice of a meeting need not be given to any Board member who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any Board member who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

The actions taken at any special meeting of the Board, however called and noticed, or wherever held, will be valid as though properly called and noticed, if a quorum is present and if the directors, not present sign, a written waiver of notice or a consent to the holding of such meeting.

#### Section 7

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

#### Section 8

Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the Board members who were not present at the time of the adjournment.

#### Section 9

Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to the action; provided, however, that the consent of any Board member who has a material financial interest in a transaction to which the Auxiliary is a party and who is an "interested director" as defined in section 5233 of the California Nonprofit Corporations Law shall not be required for approval of that transaction. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with the minutes of the proceedings of the Board.

### **ARTICLE IX MEETINGS OF THE AUXILIARY ACTIVE MEMBERS**

#### Section 1

Regular Membership Meetings will be held once a month, except for the months of July and August when no regular Membership Meetings will be held. Special meetings of the Auxiliary membership may be called by the Board or the President and such notice must include the date, time and place of such special meeting.

#### Section 2

One-third of the active members of the Auxiliary will constitute a quorum at any Membership Meeting. In the absence of a quorum, the meeting will be adjourned.

### Section 3

Unless otherwise required by law or specified in the Bylaws, an action by the members will be by majority vote of those members present at a Membership Meeting or by majority vote pursuant to a written ballot. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum specified in Section 2 and the number of approvals equals or exceeds a majority of the votes cast. A written ballot may be sent and voted on by electronic transmission.

### Section 4

The annual Membership Meeting will be the regular monthly Membership Meeting held in February of each year. During the annual Membership Meeting, officers and standing committee chairpersons will be elected by the membership. The membership will receive annual reports of officers and standing committee chairpersons and conduct such other business as may properly come before the membership. Written notice of the date, time and place of any meeting of the members will be emailed or mailed to each member of the Auxiliary by electronic or U.S. Mail posted at least ten (10) days and not more than ninety (90) days in advance of such meeting. Notice in the Auxiliary Newsletter will be deemed proper to cover this requirement.

## **ARTICLE X COMMITTEES OF THE BOARD OF DIRECTORS**

The Board, by resolution adopted by a majority of the Board members then in office, provided a quorum is present, may create one or more committees each consisting of two (2) or more Board members and no persons who are not Board members to serve at the pleasure of the Board. Appointments to committees of the Board shall be by majority vote of the Board members then in office. The Board may appoint one or more Board members as alternate members of any such committee, who may replace any absent member at any meeting. Any such committee, to the extent provided in the Board resolution, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- (1) Take any final action on any matter that, under the California Nonprofit Corporation Law, requires action by the Board;
- (2) Fill vacancies on the Board or on any committee that has the authority of the Board;
- (3) Fix compensation of the Board members for serving on the Board or on any committee;
- (4) Amend or repeal bylaws or adopt new bylaws;
- (5) Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;



- (6) Create any other committees of the Board;
- (7) Expend corporate funds to support a nominee for the Board after more people have been nominated for the Board than can be elected; or
- (8) Approve any contract or transaction to which the Auxiliary is a party and in which one or more of the Board members has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the California Nonprofit Corporation Law.

## **ARTICLE XI STANDING AND SPECIAL MEMBERSHIP COMMITTEES**

### **Section 1**

The Nominating Committee will, at the January Membership Meeting, present the name of at least one (1) member of the Auxiliary for each membership standing committee chairperson. Additional members in good standing may be placed in nomination from the floor, provided that the consent of the member has been obtained prior to the meeting. The presiding officer will make a request for any additional nominations at which time a member may make a nomination from the floor by raising his or her hand.

The slate of membership standing committee chairpersons will be available to all members prior to the February Membership Meeting. This may be done by printing the slate in the January newsletter or any other method deemed appropriate by the Board. If any member is not able to attend the February meeting, that member may prepare an Absentee ballot to be turned in to the Recording Secretary for inclusion in the vote tally at the February Membership Meeting.

The election of membership standing committee chairpersons will be held at the February Membership Meeting. A membership standing committee chairperson will be deemed elected upon receiving at least a plurality of votes cast, whether by Absentee ballot, proxy, or present members. The new membership standing committee chairpersons will be installed in March and take office on April 1<sup>st</sup> and will serve for a term of one (1) year, and may serve for additional terms if so elected.

### **Section 2**

Each membership standing committee chairperson, in conference with the President, will appoint members of each committee, except as otherwise directed in the Bylaws.

### **Section 3**

The chairperson of each membership standing committee will be responsible for making regular reports and a summary report in writing at the March Membership Meeting.

### **Section 4**

With the approval of the Board, the President of the Auxiliary may appoint a chairperson/coordinator and members of special membership committees/service programs as necessary to carry out the purposes of the Auxiliary. Special membership committees/service programs will be dissolved by the Board when they have discharged their functions.

#### Section 5

Membership standing committees may be added or deleted as deemed necessary and prudent to the operation of the Auxiliary.

### **ARTICLE XII STANDING COMMITTEES**

#### Section 1. Finance Committee

(a) The Finance Committee will consist of a Chairperson and four (4) members. The Chairperson and the four (4) members will each be assigned to the following positions as determined by the Chairperson, the Financial Secretary, the Treasurer, the Gift Shop Manager, the Snack Bar Manager, and the Auditor.

(b) It will be the duty of the Finance Committee to keep informed as to the financial status of the Auxiliary; to make recommendations to the Board in regard to financial affairs of the Auxiliary; to advise the Board in regard to investment and disbursement of funds; and, to prepare an annual budget for submission to the Board.

#### Section 2. Nominating Committee

(a) The Nominating Committee will consist of a Chairperson and five (5) members. The Board, at its regular April meeting, will elect three (3) of its members and two (2) persons from the membership (not including Board members) to be the Nominating Committee for the ensuing year. No Board member or non-Board member serve on the Nominating Committee for two (2) successive years.

(b) The Nominating Committee will, at the January meeting, present the name of at least one (1) member of the Auxiliary for each office and for each chairperson of the standing committees. Additional members in good standing may be placed in nomination from the floor, provided that the consent of the member has been obtained prior to the meeting. The presiding officer will make a request for any additional nominations at which time a member may make a nomination from the floor by raising his or her hand.

(c) The Nominating Committee will nominate, for Board approval, a member to fill a vacancy occurring in any office or standing membership committee chairperson.

#### Section 3. Membership Committee

(a) A Membership Committee will be instituted in the absence of the Volunteer Services Manager position. The Membership Committee will consist of a Chairperson and two (2) members. The Vice President will serve as the chairperson.

(b) The Membership Committee will keep an accurate list of the membership. It will be responsible for recruitment of new members. It will seek in every way possible to promote an efficient and active membership in harmony with the purpose of the Auxiliary.

(c) The Membership Committee will be responsible for screening all applicants for membership and presenting recommendations to the Board.

#### Section 4. Policy Committee

(a) The Policy Committee will consist of a Chairperson, the Volunteer Services Manager and three (3) members.

(b) It will be the duty of the Policy Committee to analyze and evaluate the operations of the Auxiliary and to recommend procedures for the improvement of service rendered by the divisions and services. It serves as a clearinghouse for complaints, suggestions and recommendations from the President, other committees and individual members of the Auxiliary.

(c) It is the responsibility of the Policy Committee to originate studies, formulate conclusions, suggest procedures, and evolve plans for submission to the Board and the membership for approval and appropriate action. Its major objective is to improve the quality of service rendered by all divisions of the Auxiliary.

#### Section 5. Projects Committee

(a) The Projects Committee will consist of a Chairperson and two (2) members. The Vice President will serve as Chairman.

(b) This committee will initiate minor projects with approval of the Auxiliary Board and be in charge of existing projects, except in those cases where a project becomes, or has become large enough, to require its own special committee.

#### Section 6. Historical Committee

(a) The Historical Committee will consist of one Chairperson who will be the "Historian."

(b) The Historian will keep up-to-date the history of the Auxiliary and will also keep a scrapbook of newspaper clippings, pictures and any news items of interest to the Auxiliary history.

(c) The Historian will take photographs or arrange to have photographs taken at Auxiliary functions.

#### Section 7. Snack Bar Committee

(a) The Snack Bar Committee will consist of a Chairperson and two (2) members.

(b) It will be the duty of the Chairperson to direct the business of the Snack Bar and to make monthly reports to the Board and to make recommendations regarding policy and procedures of the Snack Bar.

#### Section 8. Gift Shop Committee

(a) The Gift Shop Committee will consist of a Chairperson and five (5) members.

(b) It will be the duty of the Chairperson to direct the business of the Gift Shop, to make monthly reports to the Board and to make recommendations regarding policy and procedures of the Gift Shop.

#### Section 9. Awards and Hours Committee

(a) The Awards and Hours Committee will consist of a Chairperson.

(b) The Chairperson will keep an accurate record of the hours served by the members and order appropriate awards.

(c) The Chairperson will arrange for presentation of such awards, the President's gift at the annual luncheon not to exceed the cost of one hundred dollars (\$100.00), and any other presentations as may be approved by the Board.

#### Section 10. Scholarship Committee

(a) The Scholarship Committee will consist of a Chairperson and two (2) members.

(b) The Chairperson will serve as liaison to the local colleges in regards to health career scholarship recipients.

#### Section 11. Student Volunteer Committee

(a) The Student Volunteer Committee will consists of two (2) Chairpersons (one for High School and one for College students).

(b) The Chairperson will be the Advisor to the Student Volunteers.

(c) The Advisor will work with the Student Volunteers. Any major decisions made by the Student Volunteers must have the approval of the Board.

(d) The Advisor is responsible for the activities of the Student Volunteers. The Auxiliary is not responsible for Student Volunteers' social activities held without the Advisor present.

(e) Activities of the Student Volunteers will be reported by the Advisor to the Board. In addition, an annual written report will be submitted to the Board.



(f) Expenditures by the Student Volunteers will be approved by the Advisor and the President of the Auxiliary.

#### Section 12. Hospitality Committee

(a) The Hospitality Committee will consist of a Chairperson and two (2) members.

(b) The Hospitality Committee will be responsible for all Auxiliary social events, including the annual installation and awards luncheon, birthday luncheon, and Christmas party.

#### Section 13. Telephone Committee

(a) The Telephone Committee will consist of a chairperson and two (2) members.

(b) The Telephone Committee will be responsible for telephoning Auxiliary membership as needed.

#### Section 14. Christmas and Special Events Committee

(a) The Christmas and Special Events Committee will consist of a Chairperson and three (3) members.

(b) The Christmas and Special Events Committee will be responsible for giving out Christmas patient gifts, giving flowers and other gifts at other times of the year and presenting gifts for the first baby of the year.

#### Section 15. Ethics Committee

(a) The Ethics Committee will consist of a Chairperson and four (4) members. All members of the Committee will be appointed by the President. It will consist of two (2) members from the Board and three (3) non-Board members.

(b) The purpose of the Ethics Committee is to handle internal problems.

#### Section 16. Legislation Committee

(a) The Legislation Committee will consist of a Chairperson and two (2) members. The committee will be appointed by the President. The Committee will consist of (1) member from the Board and (2) non-Board members.

(b) The purpose of the Legislation Committee is to stay informed of new legislative measures which may affect the hospital and the auxiliary. The chairperson will provide a report at the Membership Meetings as necessary.

### **ARTICLE XIII VOLUNTEER SERVICES COORDINATORS**

#### Section 1. Volunteers

(a) Emergency Department Coordinator - The Emergency Department Coordinator's duties include directing all training, scheduling and reporting of the Emergency Department, and to make monthly reports to the Board as well as make recommendations regarding policy and procedures of the Emergency Department.

(b) NICU Cuddler Program Coordinator - The NICU Cuddler Program Coordinator's duties include directing all training, scheduling and reporting of the NICU Cuddler Program and to make monthly reports to the Board as well as make recommendations regarding policy and procedures of the NICU Cuddler Department.

(c) Surgery Waiting Department Coordinator - The Surgery Waiting Department Coordinator's duties include directing all training, scheduling and reporting of the Surgery Waiting Program and to make monthly reports to the Board as well as make recommendations regarding policy and procedures of the Surgery Waiting Department.

(d) Patient Care Department Coordinator - The Patient Care Department Coordinator's duties include directing all training, scheduling and reporting of the Patient Care Program and to make monthly reports to the Board as well as make recommendations regarding policy and procedures of the Patient Care Department.

(e) Section 22. Pet Therapy Coordinator - The Pet Therapy Coordinator's duties include directing all training, scheduling and reporting of the Pet Therapy Program and to make monthly reports to the Board as well as make recommendations regarding policy and procedures of Pet Therapy Department.

## **ARTICLE XIV FUNDS**

### Section 1

All fundraising activities, other than regular Auxiliary membership dues, will be subject to the approval of the Board with the advice of the President of the Kern Medical Center Foundation or their designee.

### Section 2

The proceeds from all fundraising, other than membership dues, will be expended only for purposes approved by the Board with the advice of the Chief Executive Officer of Kern Medical and/or his designee.

### Section 3

All documents made, accepted or executed by the Auxiliary will be signed by the President or his or her designee.

### Section 4

All checks drawn against funds of the Auxiliary will be signed by the Treasurer and countersigned by the President. In the absence of the Treasurer or the President, or both, checks will be signed and countersigned by any two of the following: President, Treasurer, Recording Secretary or Financial Secretary.

## **ARTICLE XV BOOKS AND RECORDS**

### Section 1

The Auxiliary will keep the following books and records at its principal office:

- (a) Adequate and correct books and records of account;
- (b) Minutes of the Membership Meetings, Board meetings, and meetings of the membership committees; and
- (c) A record of all Auxiliary members giving their names and addresses and the class of membership held by each.

### Section 2

The Auxiliary will keep at its principal office the original or a copy of the articles of incorporation and Bylaws, as amended to date, which shall be open to inspection by all parties as required by law.

### Section 3

Every Board member shall have the absolute right at any reasonable time to inspect the Auxiliary's books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. The inspection may be made in person or by the Board member's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

### Section 4

The Board will send an annual report to the members not later than one hundred twenty (120) days after the close of the fiscal year. The annual report will contain information regarding the following:

- (a) Assets and liabilities, including trust funds;
- (b) Principal changes in assets and liabilities, including trust funds;
- (c) The revenue or receipts of the Auxiliary, both unrestricted and restricted to particular purposes;
- (d) Expenses or disbursements of the Auxiliary, for both general and restricted purposes; and
- (e) Information required by Section 6322 of the California Nonprofit Corporation Law regarding statement of transactions with interested persons and of indemnifications.

The annual report will be accompanied by any report on it of independent accountants or, if there is no such report, by the certificate of an authorized officer of the

Auxiliary that such statements were prepared without audit from the Auxiliary's books and records.

This requirement of an annual report will not apply if the Auxiliary receives less than twenty-five thousand dollars (\$25,000) in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all Board members.

#### **ARTICLE XVI FISCAL YEAR**

The fiscal year of the Auxiliary will commence on April 1<sup>st</sup> and will end on March 31<sup>st</sup>.

#### **ARTICLE XVII PARLIAMENTARY AUTHORITY**

Robert's Rules of Order (revised) will govern the conduct of all meetings of the Auxiliary, its Board and its committees where such Rules are not inconsistent with these Bylaws.

#### **ARTICLE XVIII AMENDMENTS**

Bylaws of the Auxiliary may be revised, amended or repealed by the affirmative vote of two-thirds of the members present and voting at any regular or special meeting of the Auxiliary members provided that such notice of such regular or special meeting has been given by U.S. mail or email to each active member of the Auxiliary, posted at least two (2) weeks prior to such meeting. Such notice will also either contain the proposed changes in the Bylaws or designate to place, or places, where the proposed changes may be examined or compared with the Bylaws then in effect.

No amendment or revision of the Bylaws of the Auxiliary will be effective until approved by the Chief Executive Officer of Kern Medical and the Board of Governors of the Kern County Hospital Authority.

  
\_\_\_\_\_  
Auxiliary President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kern Medical Center Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman, Kern County Hospital Authority Board of Governors

\_\_\_\_\_  
Date





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

April 15, 2020

**Subject:** Proposed retroactive Resolution regarding medical staff credentialing during the COVID-19 emergency, effective March 1, 2020

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

In March 2020, the Governor of the state of California and the President of the United States issued various proclamations and executive orders declaring states of emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak. These proclamations and orders have provided, among other things, waivers related to the normal medical staff credentialing processes by which practitioners are granted medical staff clinical privileges to care for patients, in particular, disaster privileges. Consistent with these proclamations and orders, the proposed Resolution provides for the emergency management of medical staff privileging during the declared state of emergency.

Therefore, it is recommended that your Board adopt the proposed retroactive Resolution regarding medical staff credentialing during the COVID-19 emergency, effective March 1, 2020.

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

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In the matter of:

Resolution No. 2020-\_\_\_\_

**MEDICAL STAFF CREDENTIALING  
DURING THE COVID-19 NATIONAL  
EMERGENCY**

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 15th day of April, 2020, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

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

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

(a) On March 4, 2020, the Governor of the state of California proclaimed a state of emergency to exist in California due to the Novel Coronavirus Disease (COVID-19) outbreak (Proclamation of a State Emergency); and

(b) On March 13, 2020, the President of the United States declared a national emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak; and

(c) On March 13, 2020, the Centers for Medicare & Medicaid Services issued COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers retroactive to March 1, 2020, and continuing through the end of the emergency declaration, to help healthcare providers contain the spread of 2019 Novel Coronavirus Disease (COVID-19); and

(d) On March 20, 2020, the Chief Executive Officer of the Kern County Hospital Authority, which owns and operates Kern Medical Center, activated its emergency management plan due to the Novel Coronavirus Disease (COVID-19) outbreak; and

(e) The Novel Coronavirus Disease (COVID-19) outbreak has created extraordinary circumstances which disrupt the normal credentialing processes by which practitioners are granted medical staff privileges.

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 finds that if an established provider's clinical privileges are scheduled to expire during the time of the declared national emergency, The Joint Commission will allow an automatic extension of medical staff reappointment beyond the two-year period. The duration of the extension cannot exceed 60 days after the declared state of emergency has ended.

3. This Board finds that disaster privileges can only be granted to volunteer licensed independent practitioners when the organization's emergency operations plan has been activated. A disaster is an emergency that, due to its complexity, scope, or duration, threatens the organization's capabilities and requires outside assistance to sustain patient care, safety, or security functions. Kern Medical Center will comply with the applicable requirements for granting privileges during a disaster.

4. This Board finds that licensed independent practitioners currently credentialed and privileged by the organization, who would now provide the same services via a telehealth link to patients, would not require any additional credentialing or privileging. For volunteer licensed independent practitioners that are not currently credentialed and privileged by the organization, disaster privileges may be granted in compliance with the applicable requirements for disaster privileging.

5. This Board finds that the Proclamation of a State of Emergency and the COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers temporarily waive requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state. This applies to Medicare and Medicaid.

6. This Board finds that extending the duration of providers' privileges during an emergency is not prohibited by state law.

7. The provisions of this Resolution shall be effective, in force, and operative as the 1st day of March, 2020.

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

Chief Executive Officer  
President of Staff  
Chief Medical Officer  
Department Chairs  
Medical Staff Office  
Legal Services Department





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

April 15, 2020

**Subject:** Proposed retroactive Premium Finance Agreement with IPFS Corporation of California to finance earthquake coverage through Specialty Risk Underwriters in an amount to exceed \$294,969.78

**Recommended Action:** Approve; Authorize Chief Executive Officer to sign Agreement and Certificate of Incumbency

On March 18, 2020, your Board authorized the renewal and binding of earthquake coverage through Specialty Risk Underwriters with a total dedicated coverage limit of \$25 million, from March 31, 2020 through March 31, 2021. IPFS Corporation of California has agreed to finance the coverage, which requires the signing of a separate Premium Finance Agreement and Certificate of Incumbency. Financing will require a 20% cash down payment (\$58,995), plus finance charges currently at a rate of 4.050% (up to \$4,402.42), for total payments not to exceed \$240,377.20, as set forth below:

Total Premium	\$294,969.78
Cash down payment	\$58,995.00
Amount financed	\$235,974.78
Finance charges (4%)	\$4,402.20
Total payments	\$240,377.20

Therefore, it is recommended that your Board approve the Agreement with IPFS Corporation of California, in an amount not to exceed \$294,969.78, to finance earthquake coverage through Specialty Risk Underwriters from March 31, 2020 through March 31, 2021; and authorize the Chief Executive Officer to sign the Premium Finance Agreement with IPFS Corporation and Certificate of Incumbency.

# Kern County Hospital Authority

## 2020-2021 EARTH MOVEMENT

### REQUEST TO BIND COVERAGE

#### FIRST NAMED INSURED: Kern County Hospital Authority

We have reviewed the proposal and agree to the terms and conditions of the coverages presented. We are requesting coverage to be bound as outlined by coverage line below:

COVERAGE	EFFECTIVE DATE
<b>Earthmovement</b>	
<input type="checkbox"/> Option 1 - \$10M - Specialty Risk Underwriters	3/31/2020
<input checked="" type="checkbox"/> Option 2 - \$25M - Specialty Risk Underwriters	3/31/2020
<input type="checkbox"/> Option 3 - \$50M - Specialty Risk Underwriters (\$25M) & Arrowhead Special Risk (\$25Mx\$25M)	3/31/2020

*This Authorization to Bind Coverage also acknowledges receipt and review of all disclaimers and disclosures, including exposures used to develop insurance terms, contained within this proposal.*



Signature of Authorized Insurance Representative  
(See attached Email confirming KCHA Board approval)

March 27, 2020  
Date

**This proposal does not constitute a binder of insurance. Binding is subject to final carrier approval. The actual terms and conditions of the policy will prevail.**



SPECIAL RISK UNDERWRITERS

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If the policy issued by AmWINS Special Risk Underwriters excludes Flood, the following shall apply:

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**Flood Exclusion Acknowledgement**

I understand the policy issued by AmWINS Special Risk Underwriters does NOT provide coverage for loss or damage caused by or resulting from Flood, including any flooding and/or storm surge associated with windstorm events.

I understand that Flood insurance can be purchased elsewhere from a private flood insurer or the National Flood Insurance Program.

It is strongly recommended that Insureds in "Special Flood Hazard Areas" or areas subject to Flooding, including flooding and/or storm surge from windstorm events, obtain Flood coverage.

I also understand that execution of this form does NOT relieve me of any obligation that I may have to my mortgagees or lenders to purchase Flood insurance.

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If the policy issued by AmWINS Special Risk Underwriters includes Flood, the following shall apply:

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**Flood Coverage**

I understand the policy issued by AmWINS Special Risk Underwriters does provide coverage for loss or damage caused by or resulting from Flood, including any flooding and/or storm surge associated with windstorm events.

I understand that loss or damage caused by or resulting from Flood, including any flooding and/or storm surge associated with windstorm events, will be subject to the Flood sublimit stated elsewhere in the policy.

**I understand that if I do not sign this form that my application for coverage may be denied or that my policy issued by AmWINS Special Risk Underwriters may be cancelled or non-renewed. I have read and I understand the information above.**

A handwritten signature in blue ink, appearing to read "Russell V. Judd", written over a horizontal line.

Policyholder/Applicant's Signature

Russell V. Judd

Print Name

Account No. S-2002-108440-01  
Kern County Hospital Authority



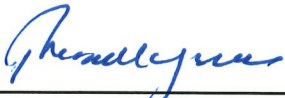
**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM  
INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, as amended: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2027, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 80% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

	I hereby elect to purchase coverage for acts of terrorism for a prospective premium of USD: <span style="float: right;">\$17,500</span>
X	I hereby elect to have coverage for acts of terrorism excluded from my policy. I understand that I will have no coverage for losses arising from acts of terrorism.



Policyholder/Applicant's Signature

On behalf of the subscribing Insurers and their respective participants

Russell V. Judd

Print Name

S-2002-108440-01

Account Number

March 27, 2020

Date

Kern County Hospital Authority



**Maryland Fraud Warning**

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**New Jersey Fraud Warning**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

**New Mexico Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**New York Fraud Warning**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**Ohio Fraud Warning**

Any person, who with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

**Oklahoma Fraud Warning**

WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

**Pennsylvania Fraud Warning**

Any person who knowingly and with intent to defraud any insurance company or other person files an application or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**Rhode Island Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance, including failing to disclose whether the applicant or applicants have been convicted of any degree of the crime of arson, is guilty of a crime and may be subject to fines and confinement in prison.

**Tennessee Fraud Warning**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**Virginia Fraud Warning**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

**Washington Fraud Warning**

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

**West Virginia Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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Insured Signature

March 27, 2020

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Date

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Producer Signature

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Date

**FRAUD WARNING NOTICE**

**Policy Number:** TBA (Account No. S-2002-108440-01)

**Effective Date:** 3/31/2020

**Named Insured:** Kern County Hospital Authority\*\*

THE UNDERSIGNED IS AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT AND CERTIFIES THE INFORMATION PROVIDED TO OBTAIN THIS COVERAGE IS ACCURATE TO THE BEST OF THEIR KNOWLEDGE. THIS INCLUDES ANY APPLICATIONS, LOCATION SCHEDULES, VALUATION STATEMENTS, LOSS HISTORY INFORMATION AND ENGINEERING REPORTS.

THE FOLLOWING STATEMENT APPLIES IN ALL STATES EXCEPT THOSE NOTED BELOW:

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT ACT, WHICH IS A CRIME AND MAY SUBJECT THE PERSON TO CRIMINAL AND CIVIL PENALTIES.**

**Alabama Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

**Arkansas Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information on an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**Colorado Fraud Warning**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**District of Columbia Fraud Warning**

WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

**Florida Fraud Warning**

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**Kentucky Fraud Warning**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**Louisiana Fraud Warning**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**Maine Fraud Warning**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.



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

April 15, 2020

**Subject:** Proposed Retroactive Agreement for Professional Services with Eugene H. Roos, D.O.

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

**Summary:**

Kern Medical requests your Board approve a retroactive Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology. This agreement with Dr. Roos is retroactive due to the current COVID situation. Dr. Roos will provide remote radiology reading services on a permanent basis for Kern Medical.

Dr. Roos has provided radiology services at Kern Medical as an independent contractor since December of 2008. Kern Medical continues to require the services of Dr. Roos to provide scheduled and as-needed coverage in the Department and both parties have agreed to the terms of the one-year agreement.

Therefore, it is recommended that your Board approve the retroactive Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology, from April 1, 2020 through March 31, 2021, in an amount not to exceed \$375,000 and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Eugene H. Roos, D.O.)**

This Agreement for Professional Services (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Eugene H. Roos, D.O., a sole proprietor (“Contractor”), whose principal place of business is located at 31562 Wildwood Road, Laguna Beach, California 92651.

**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 owns and operates KMC, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California (the “Premises”), in which is located the Department of Radiology (the “Department”); and

(c) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians employed by Authority, as such services are unavailable from Authority resources, and Contractor agrees to provide such services on the terms and conditions set forth in this Agreement; and

(d) Contractor has special knowledge, training and experience, and is qualified to render such services;

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.** This Agreement shall be effective and the term shall commence as of April 1, 2020 (the “Effective Date”), and shall end March 31, 2021, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.



2.2 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of his work will be performed and that his operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.5 Qualifications.

2.2.1 Licensure/Board Certification. Contractor shall at all times during the term of this Agreement be duly licensed as a physician and surgeon in the state of California, and certified or eligible for certification by the American Board of Radiology in diagnostic radiology-general.

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

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

2.2.4 Training/Experience. Contractor shall have (i) recent diagnostic radiology experience, (ii) a background to include experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.3 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of his license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.4 Standards of Medical Practice. The standards of medical practice and professional duties of Contractor shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice 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.

2.5 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by Contractor. 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 Contractor will 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.

2.6 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

### 3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Reading Station Equipment. Authority shall furnish for the use of Contractor such reading station equipment ("Equipment"), as is deemed necessary by KMC in order for Contractor to perform the services set forth in this Agreement at Contractor's office space located at 28202 Cabot Road, Laguna Niguel, California. Contractor shall not relocate the Equipment without the prior written approval of KMC. KMC shall keep and maintain this Equipment in good order and repair and replace such Equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints. Contractor shall be responsible for installation and maintenance of any required connection to operate the Equipment. Contractor shall arrange with Authority's assigned primary contact to return the Equipment to KMC upon termination or expiration of this Agreement.

3.5 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by KMC for follow-up action and evaluation of performance.

#### 4. Payment for Services.

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor according to the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Shift Coverage. Authority shall pay Contractor for shift coverage, regardless of the number of assigned shifts per month, as follows: (i) Physician shall be paid a per diem rate in the amount of \$1,665 per eight (8) hour shift; and (ii) Physician shall be paid a per diem rate in the amount of \$2,081.25 per ten (10) hour shift.

4.1.2 Emergency Night Shift Coverage. Authority shall pay Contractor a per diem rate of \$2,000 per day for emergency night shift coverage (i.e., not a scheduled shift).

4.1.3 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Contractor and Group Physicians under this Agreement.

4.1.4 Payment All-inclusive. The compensation paid to Contractor is inclusive of accommodations, mileage reimbursement, car rental, meals, and incidental expenses.

4.1.5 Limitations on Compensation. Except as expressly stated herein, neither Contractor nor Group Physicians shall receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$375,000 over the one-year term of this Agreement.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "B," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor 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.

4.6 Managed Care Contracting. Contractor 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 Authority or KMC to participate in any third-party payer arrangements, Contractor 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.

5. **Access to Books and Records.** Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

6. **Anti-referral Laws.** Contractor acknowledges that he is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

7. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all his activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that Contractor, 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.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within 30 days of such negotiation period, this Agreement shall automatically terminate at the end of such 30-day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor 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.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of his duties described herein that he shall act, and cause his employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and his employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written

notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 Trade Secrets. The parties acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

15.3 Medical Records. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Contractor, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind ("Documents"), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. Conflict of Interest. Contractor 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 or that would otherwise conflict in any manner or degree with the performance of his services hereunder. Contractor further covenants that in the performance of this Agreement no

person having any such interests shall be employed. 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.

17. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

18. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

19. **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.

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the Office of the Inspector General (“OIG”) or the Government Services Administration (“GSA”); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **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.



22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 22.

23. **Indemnification and Hold Harmless.** Authority shall assume liability for and indemnify and hold Contractor harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Contractor or for which Contractor becomes liable, arising out of or related to professional services rendered or which a third party alleges should have been rendered by Contractor pursuant to this Agreement. Authority's obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Contractor 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 KMC 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 Contractor harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

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

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

29. **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 Contractor, 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. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

30. **Non-collusion Covenant.** Contractor represents and agrees that he has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

31. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

32. **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 Contractor. 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.

33. **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 Contractor:

Eugene H. Roos, D.O.  
31562 Wildwood Road  
Laguna Beach, California 92651

Notice to Authority:

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

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including all attachments hereto, 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.

36. **Termination.**

36.1 **Termination with Cause.** Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement will not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 30 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 30 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

36.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

36.3 **Immediate Termination.** Notwithstanding the foregoing, Authority shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) Authority determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) the 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; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (vi) 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; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 36.1.

37. **Effect of Termination.**

37.1 **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 Contractor after the effective date of the termination, and Contractor shall be entitled

to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

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

37.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

39. **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.

CONTRACTOR

By   
Eugene H. Roos, D.O.

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
VP & General Counsel  
Kern County Hospital Authority

Agreement.Roos.032320

**EXHIBIT “A”**  
**DESCRIPTION OF SERVICES**  
**Eugene H. Roos, D.O.**

Contractor will provide services, as assigned by the Department chair, as follows:

1. Contractor shall provide radiology services on-site at KMC or remotely from an office located 28202 Cabot Road, Laguna Niguel, California, and in accordance with generally accepted professional standards. Contractor will provide professional services for all patients who present to KMC for treatment.
2. Contractor shall perform such administrative and teaching duties and responsibilities, as mutually agreed upon between Contractor and the Department chair.
3. Contractor shall provide shift coverage Monday through Friday in eight (8) hour or ten (10) hour shifts, as assigned by the Department chair.
4. Contractor shall provide shift coverage on Saturday and Sunday in eight (8) hour or ten (10) hour shifts or until the work is completed, as assigned by the Department chair.
5. Contractor shall provide mutually agreed upon call coverage weekday nights from 6:00 p.m. to 8:00 a.m. and Saturday and Sunday, as assigned by the Department chair. Contractor agrees to carry a pager when on call and respond to KMC within 30 minutes of being called. If assigned call coverage, Contractor will cover one weekend in three. If assigned call coverage, Contractor will cover one in three holidays and no fewer than four per year.
6. Contractor shall provide coverage an average of 15 shifts per months.
7. Contractor shall actively participate in assigned hospital and Department committees.
8. Contractor shall hold Group Physicians accountable for timely completion of medical records and work to improve the quality, accuracy, and completeness of their documentation.

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**EXHIBIT “B”**  
**IRS FORM W-9**

## **EXHIBIT “C” INSURANCE**

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

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

### **1. Workers’ Compensation and Employers Liability Insurance:**

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

### **2. General Liability Insurance:**

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.



- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "F" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

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

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

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

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

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

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

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

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

April 15, 2020

**Subject:** Comments Regarding Budget Variances – February 2020

**Recommended Action:** Receive and File

**Summary:**

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

**Patient Revenue:**

Gross patient revenue has a favorable month-to-date and year-to-date budget variance primarily because of improved revenue cycle efficiency.

**Indigent Funding:**

Indigent funding is over budget for the month due to a lower than average budgeted amount for the 29 day month of February. On a year-to-date basis, indigent funding is under budget due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2020 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, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of the total projected revenue for the Medi-Cal Waiver Programs of Public Hospital Redesign and Incentives in Medi-Cal (PRIME), the Global Payment Program (GPP), and the Whole Person Care Program (WPC). Kern Medical will also recognize 100% of the projected revenue for the Enhanced Payment Program (EPP) and the Quality Incentive Program (QIP).

**Capitation Premium Revenue:**

Capitation premium revenue for February has an unfavorable budget variance due to a change in the estimated amount of capitation revenue expected to be received for fiscal year 2020. The estimate is based on a negotiated reimbursement rate paid to Kern Medical by Kern Health Systems for patients covered by managed Medi-Cal health plans implemented as part of the Affordable Care Act that are administrated by Kern Health Systems and assigned to Kern Medical for health care services.

**Salaries Expense:**

Salaries expense is over budget for the month and on a year-to-date basis primarily because the salaries for management and supervision, registered nurses, and aides and attendants, have been consistently more than budget throughout the year.

**Registry Nurse Expense:**

Registry nurse expense has an unfavorable budget variance for the month and on a year-to-date basis. Kern Medical continues to rely on contracted nurse staffing to supplement the nursing departments while maintaining nurse recruiting efforts.



**Medical Fees:**

Medical fees are at the budgeted amount for the month. On a year-to-date basis medical fees are under budget due to a decrease in contracted physician services used by Behavioral Health Department.

**Other Professional Fees:**

Other professional fees have a favorable variance for the month because of lower than average legal fees for the month. On a year-to-date basis, other professional fees have a favorable budget variance because of the reclassification of Information Technology (IT) contract labor staff expense. IT contract labor expense that pertains to the Cerner EHR implementation project is reclassified from expense and into the Cerner capital project each month. In addition, 25 individuals that were previously contract laborers across several different departments have been hired by Kern Medical as full-time employees. Therefore, the labor expense for these individuals are now reported under salaries and benefits expenses.

**Supplies Expense:**

Supplies expenses are under budget for the month because of lower than average costs for pharmaceuticals. However, pharmaceutical costs, as well as general medical supply costs and computer software costs, are the primary reason for the unfavorable year-to-date budget variance for supplies expenses.

**Purchased Services:**

Purchased services are over budget for February due to an additional accrual for out-of-network services for Adventist Health. In addition, Healthcare Financial Resources, Inc. (HFRI) was slightly under accrued in prior month. On a year-to-date basis, purchased services expenses are only slightly higher than plan. The year-to-date variance is primarily due to the fact that Trans-West Security expense was budgeted low for FY 2020.

**Other Expenses:**

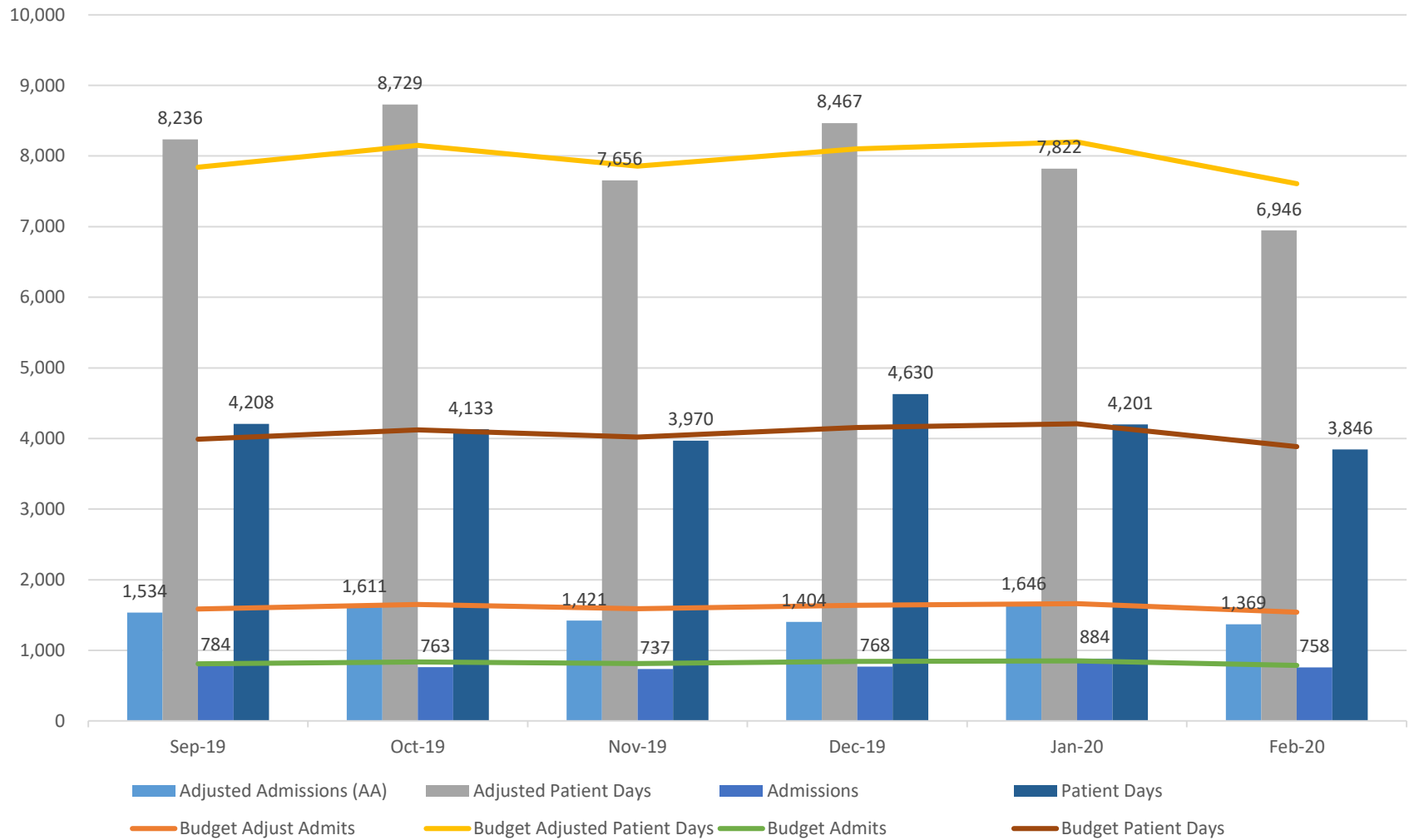
Other expenses are at the budgeted amount for the month. On a year-to-date basis, other expenses are under budget due to lower than average repairs and maintenance expenses.



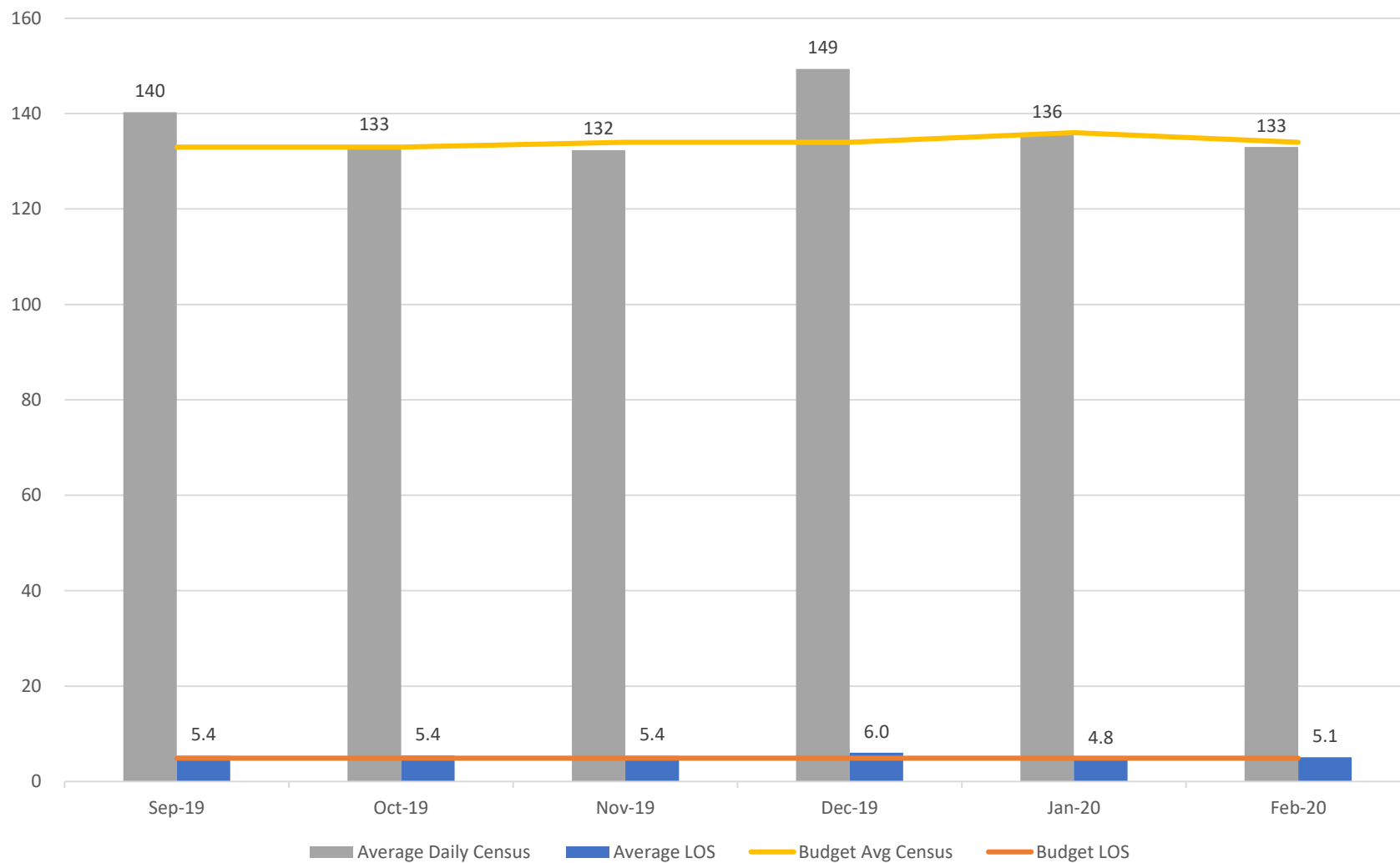
**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – FEBRUARY 2020**

April 2020

## Hospital Volumes

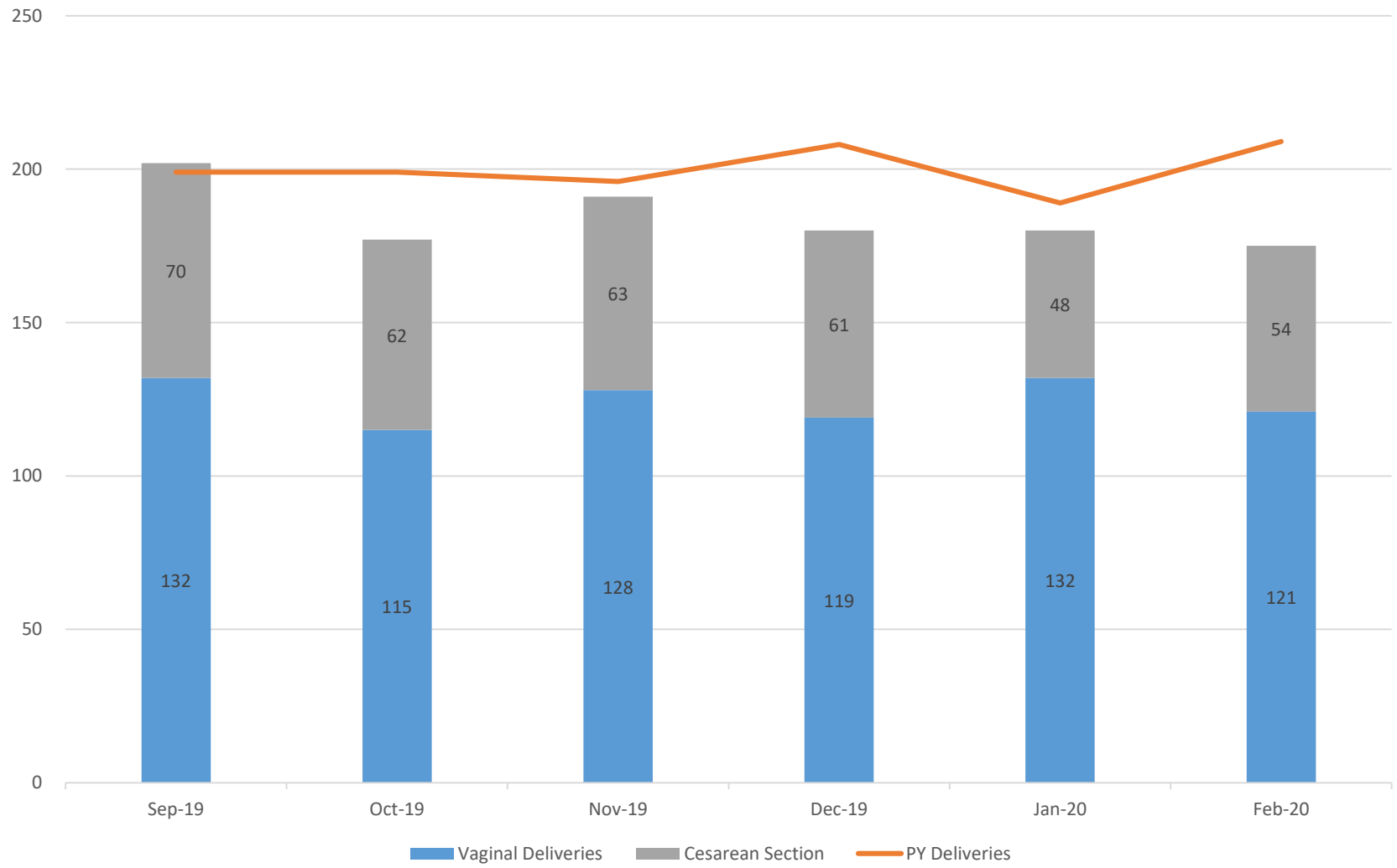


## Census & ALOS

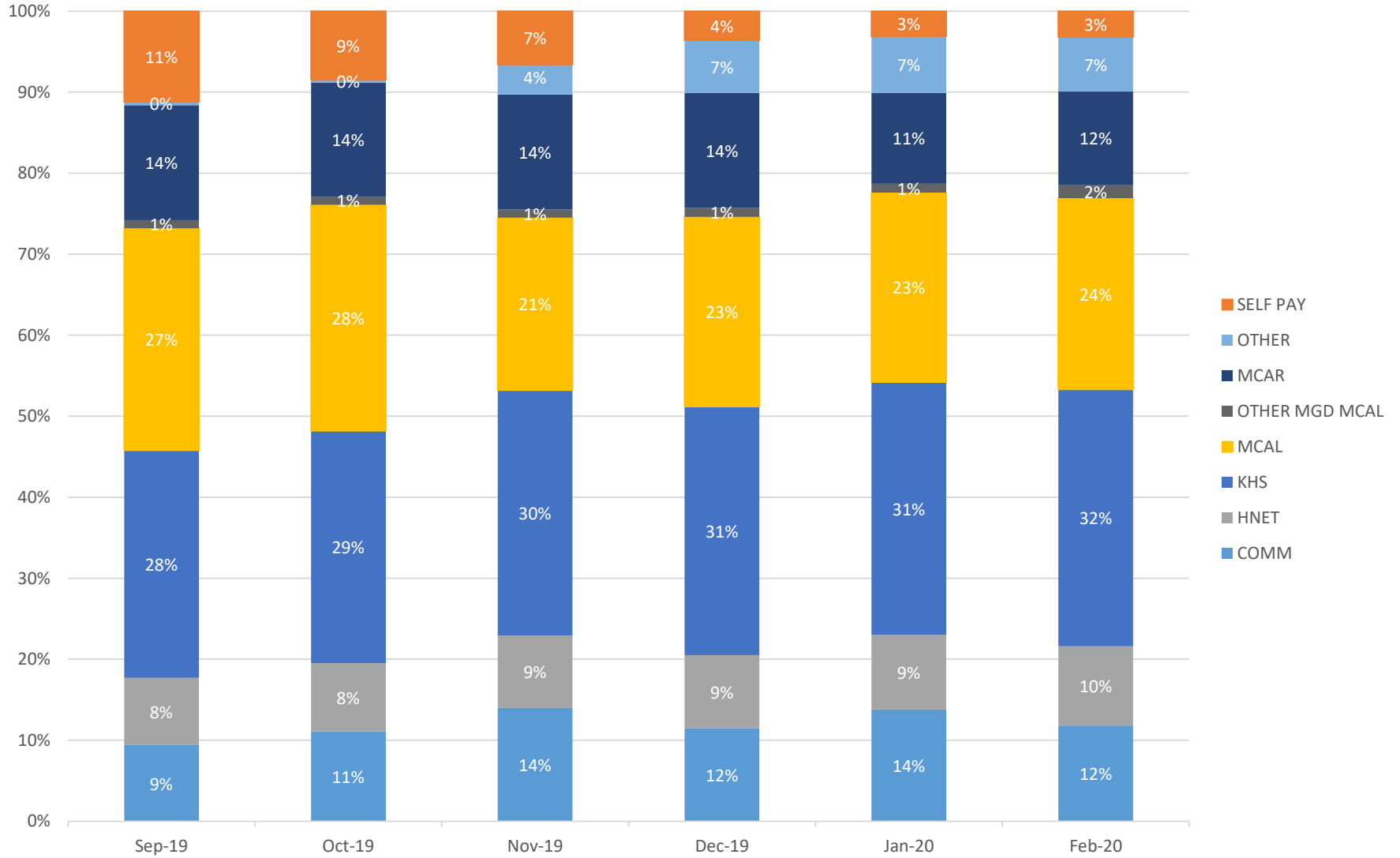




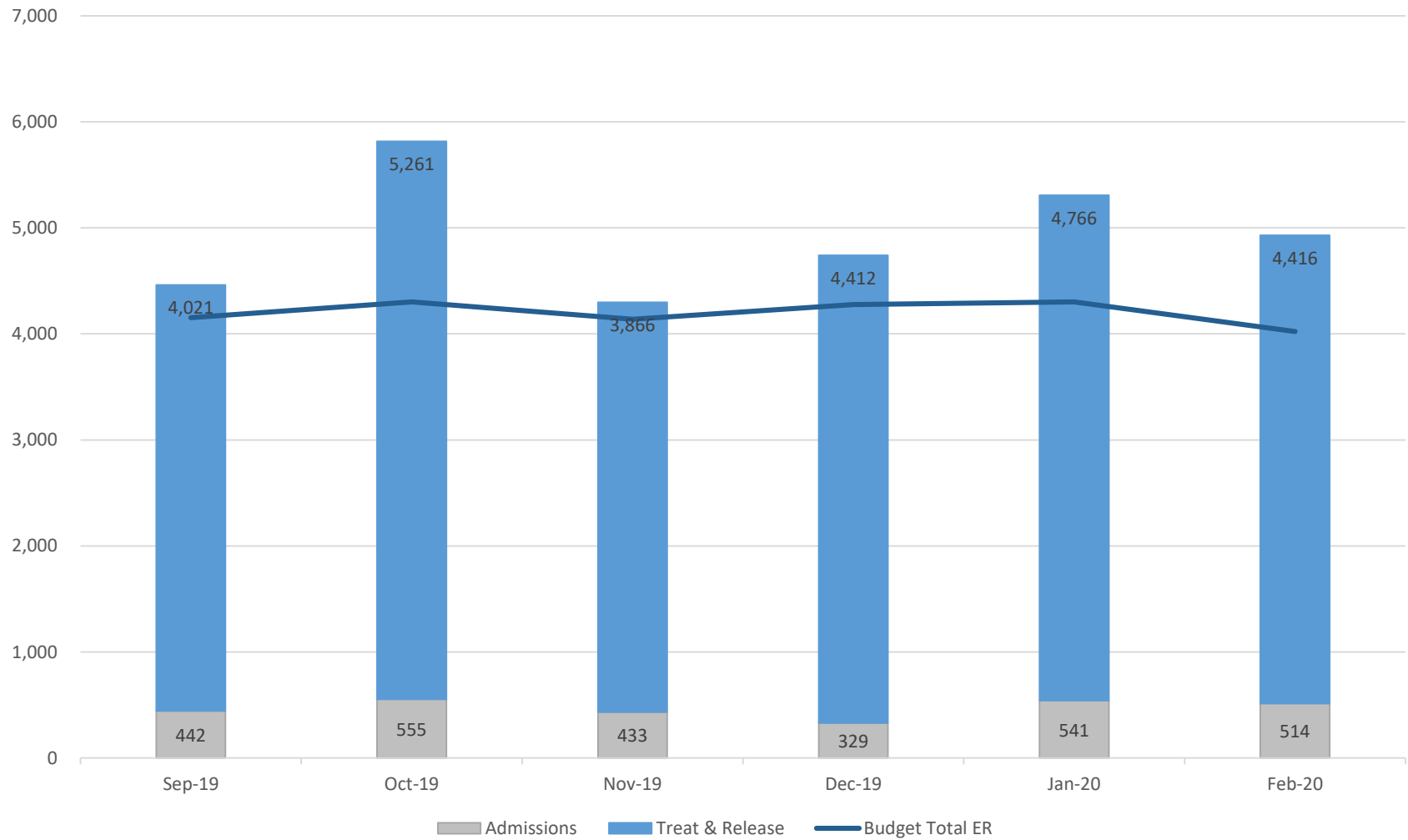
## Deliveries



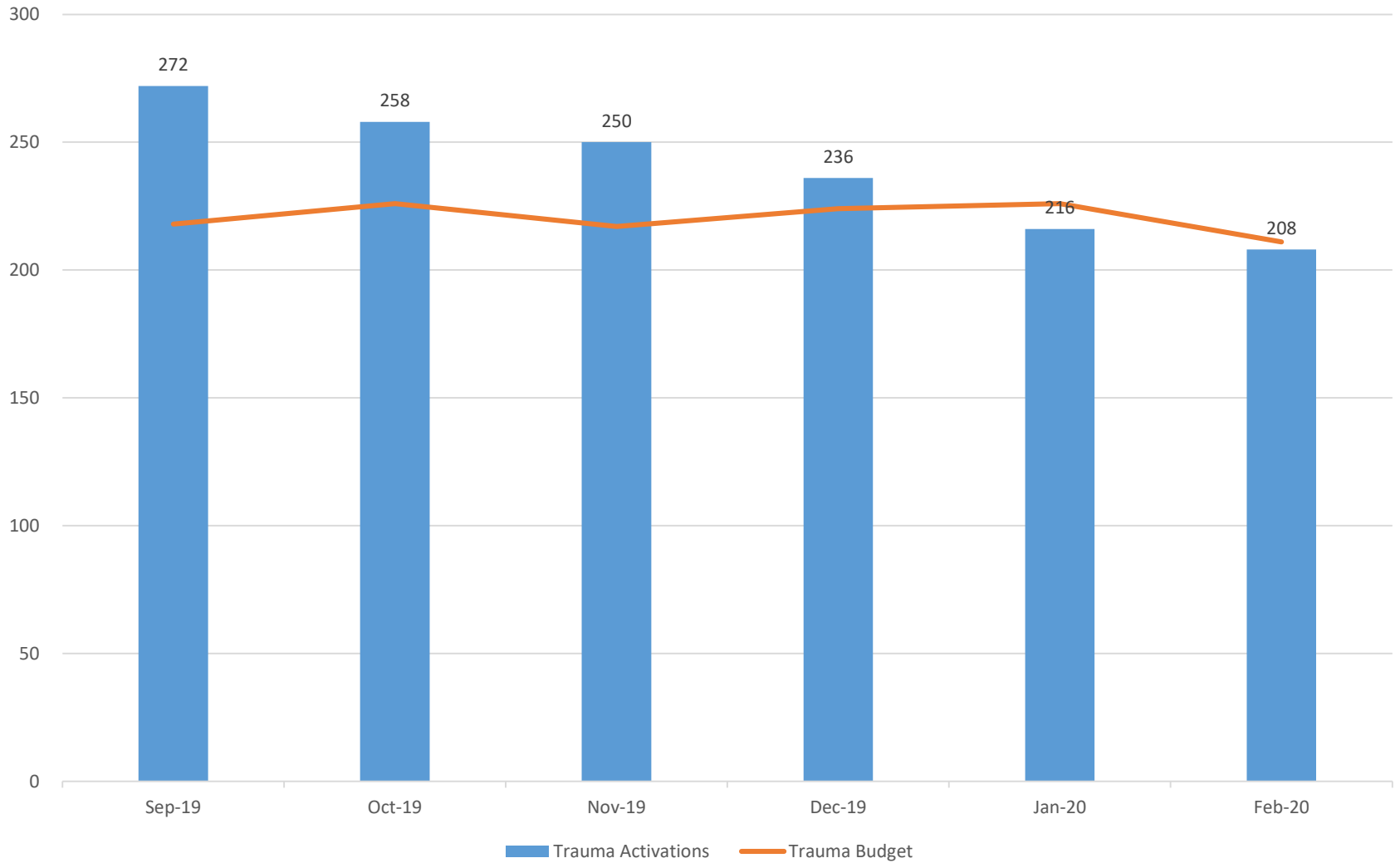
## PAYER MIX



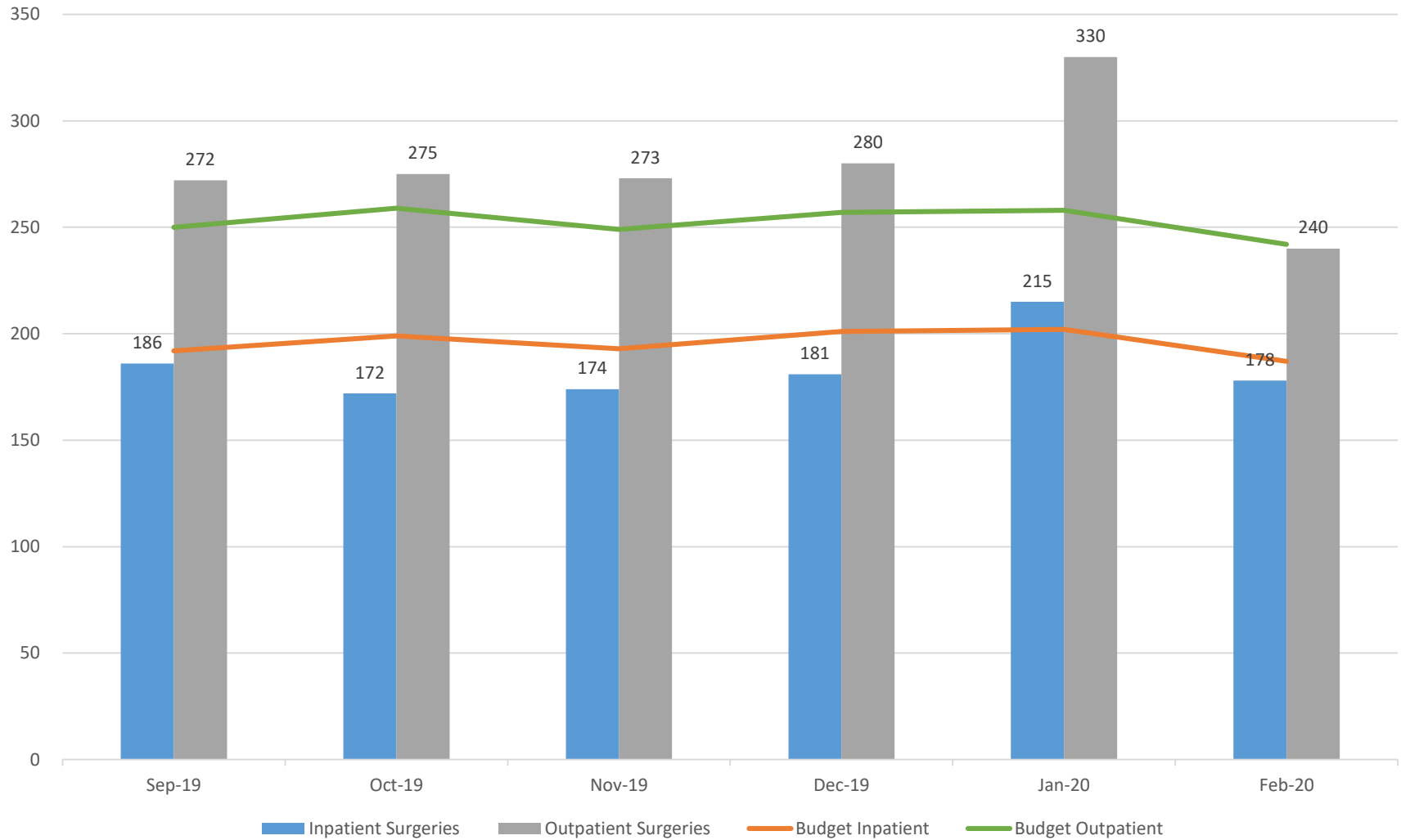
## Emergency Room Volume



## Trauma Activations

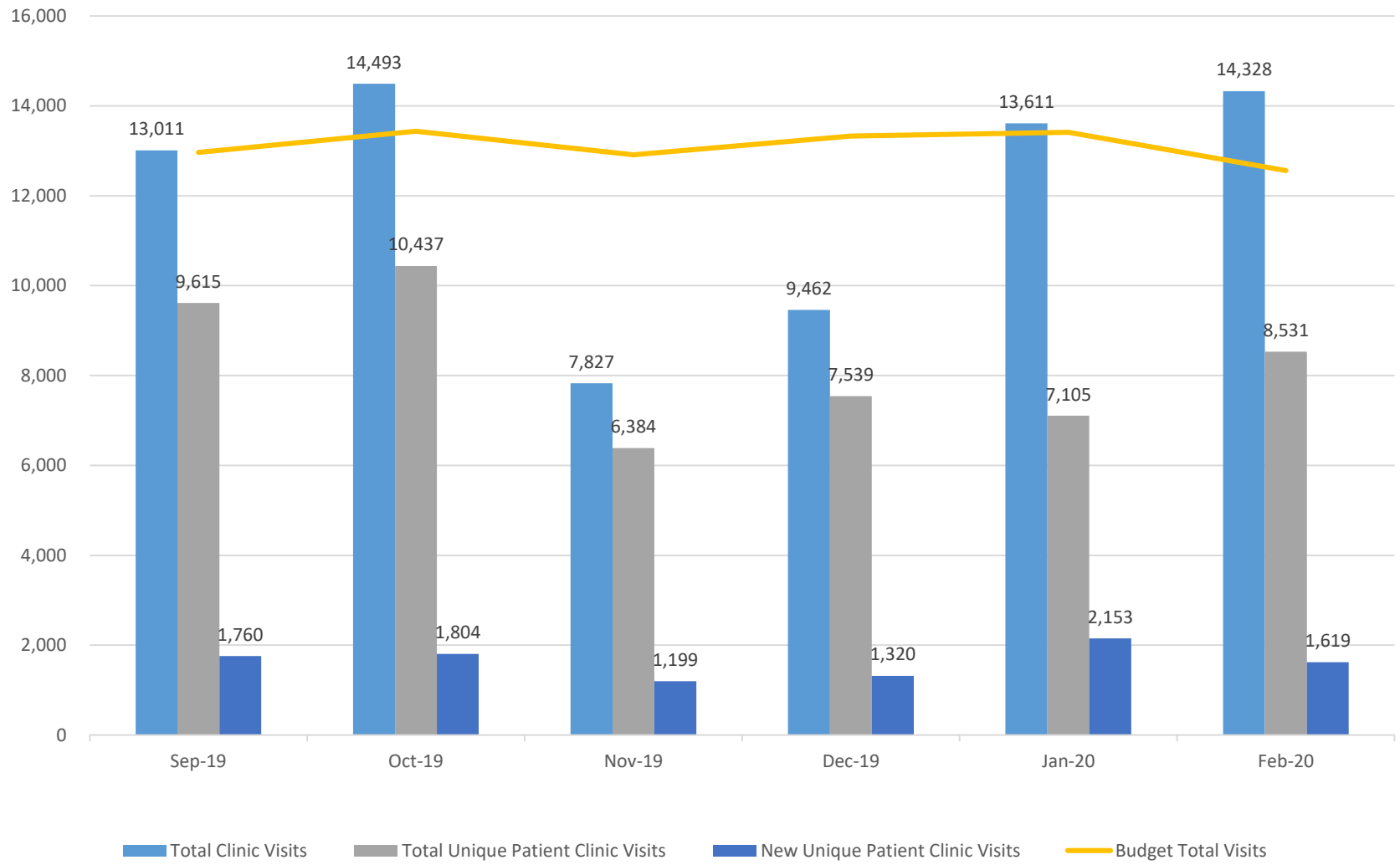


## Surgical Volume

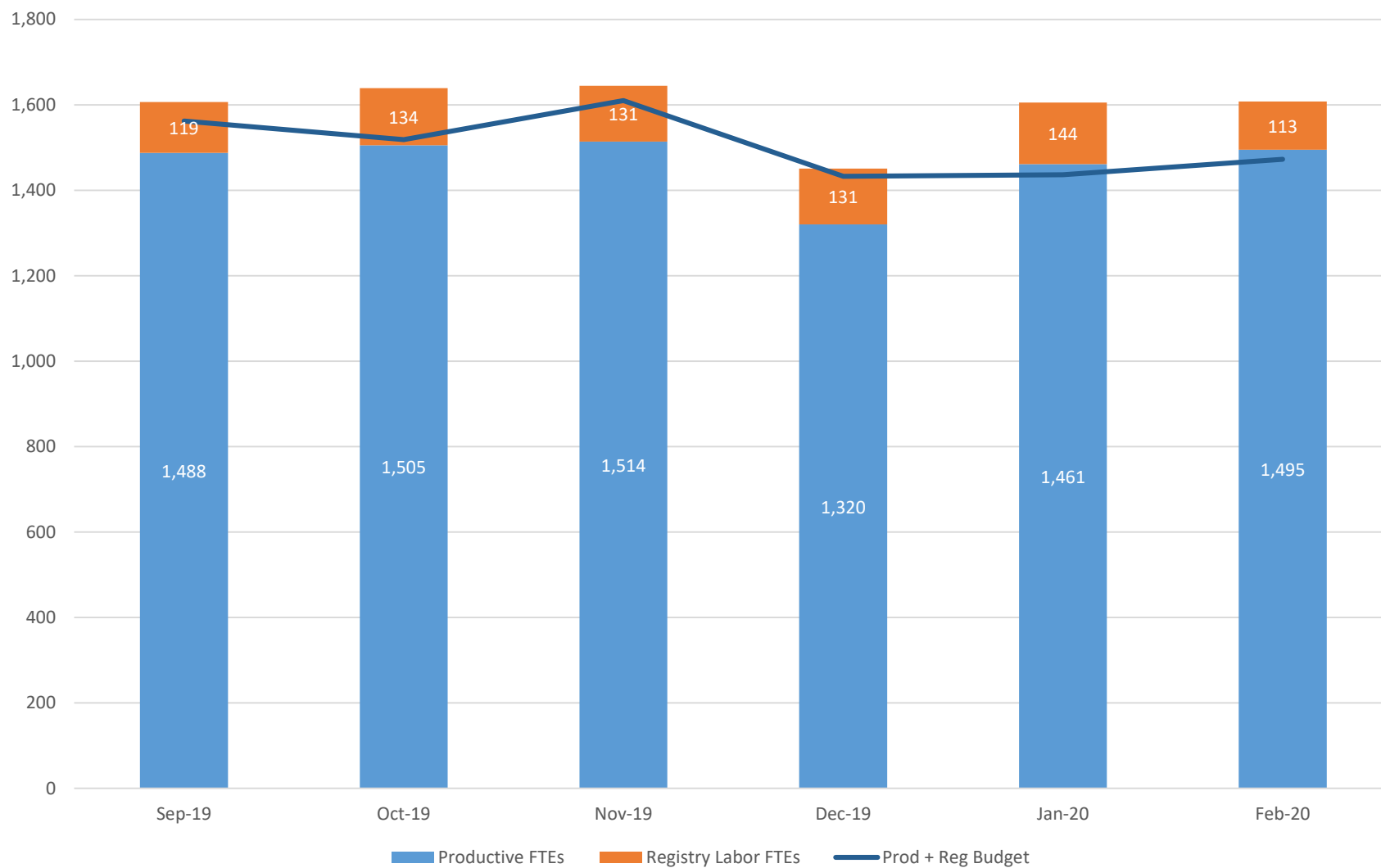




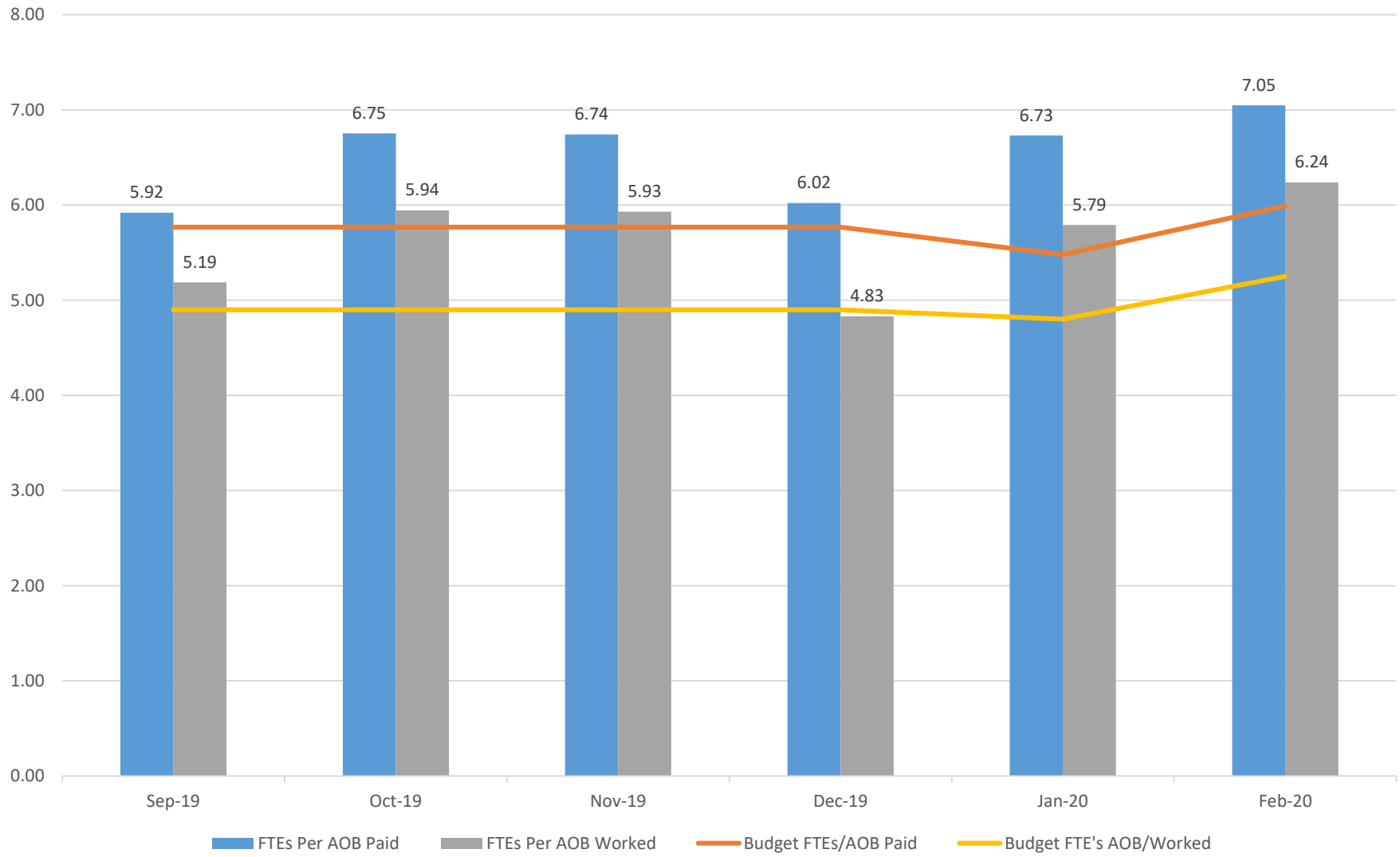
## Clinic Visits



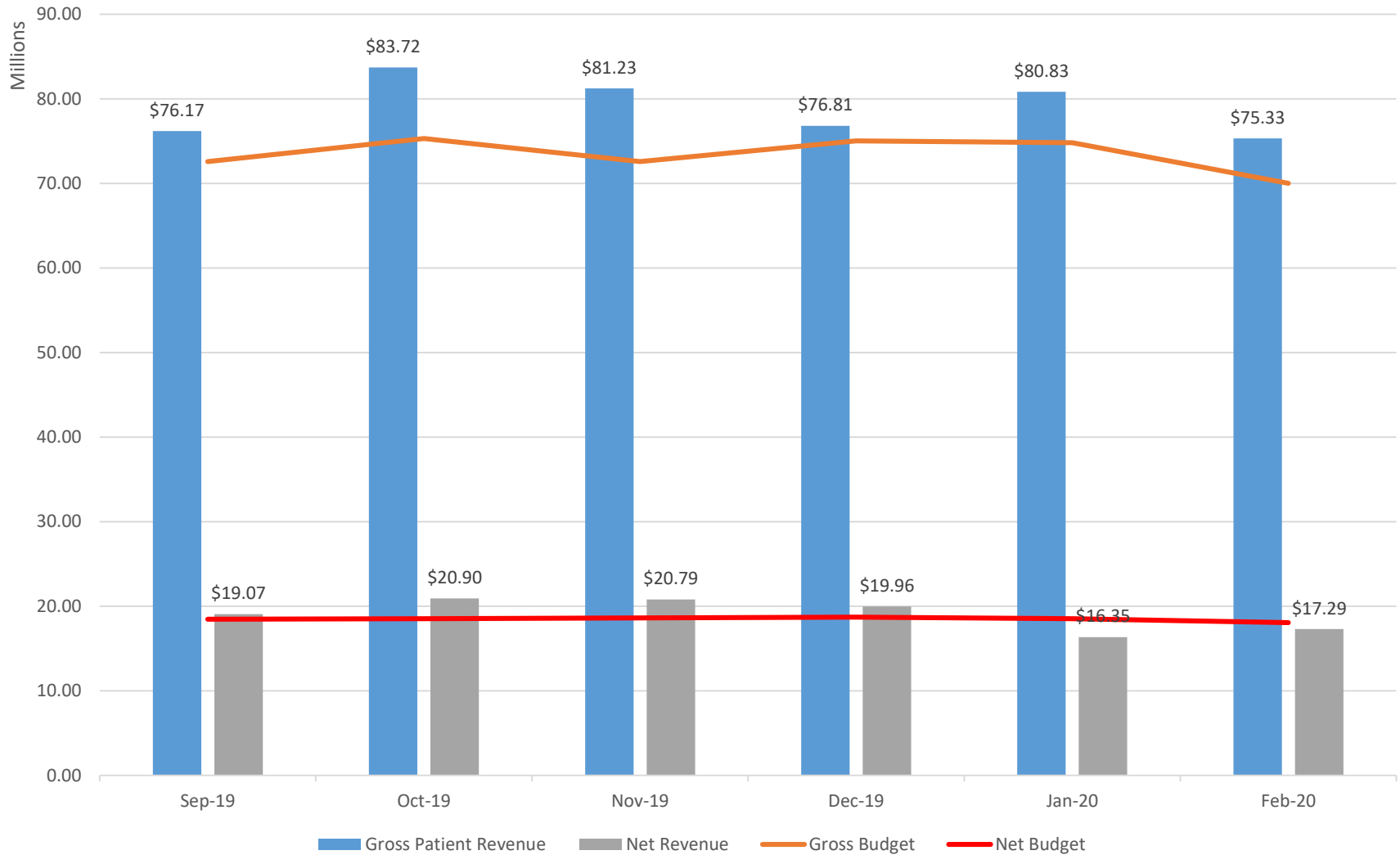
## Productivity



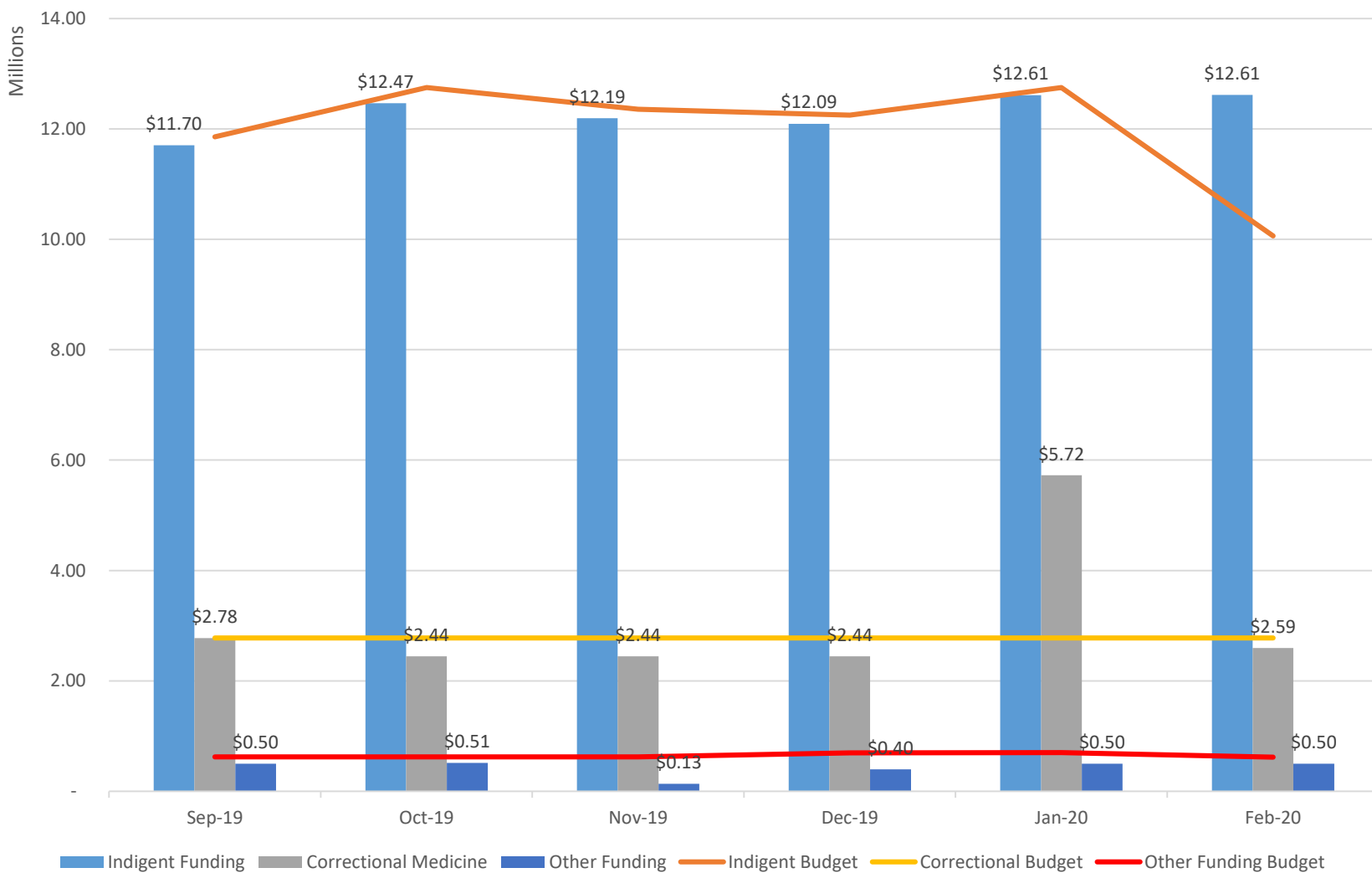
## Labor Metrics



## Patient Revenue

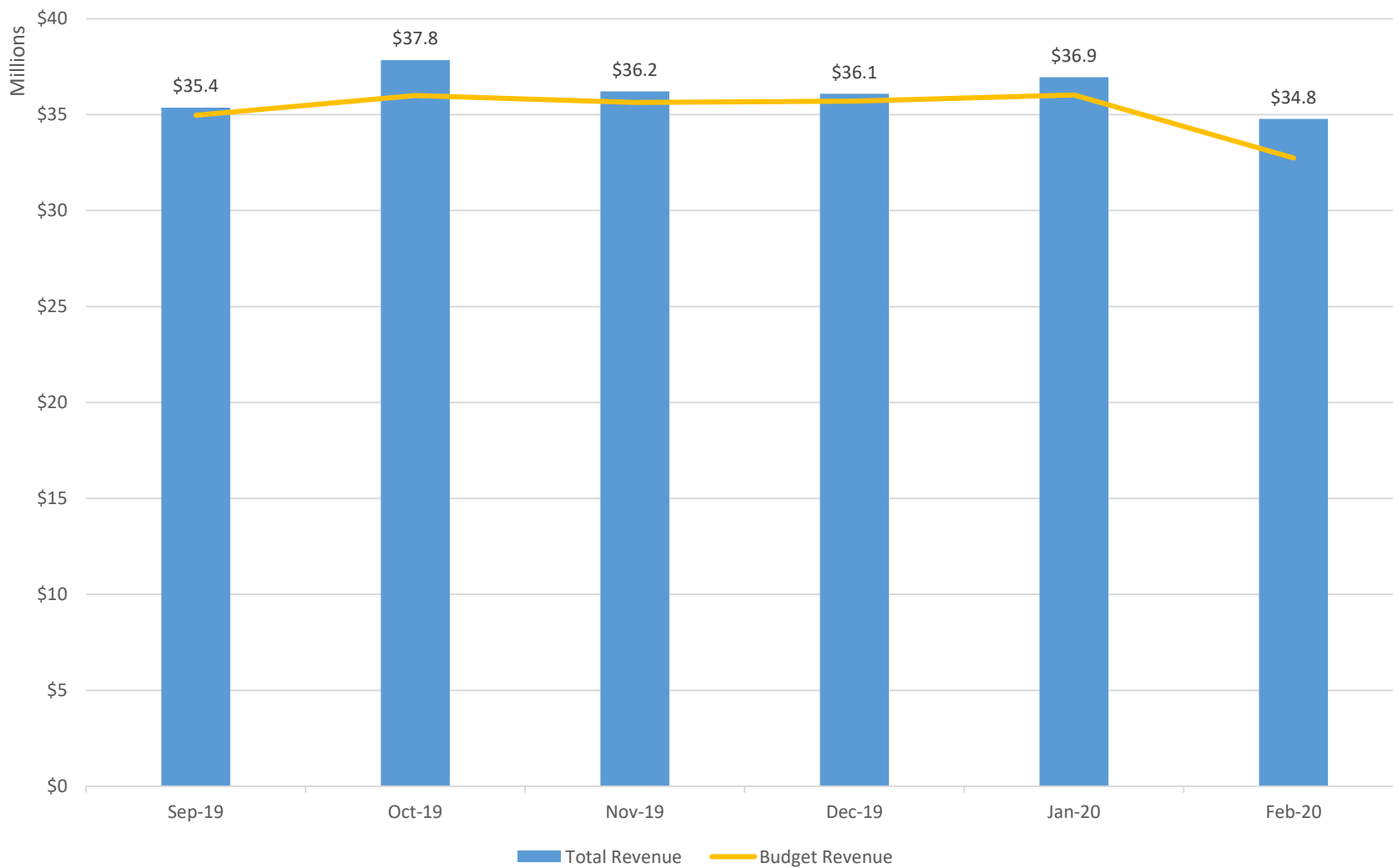


## Indigent & Correctional Revenue

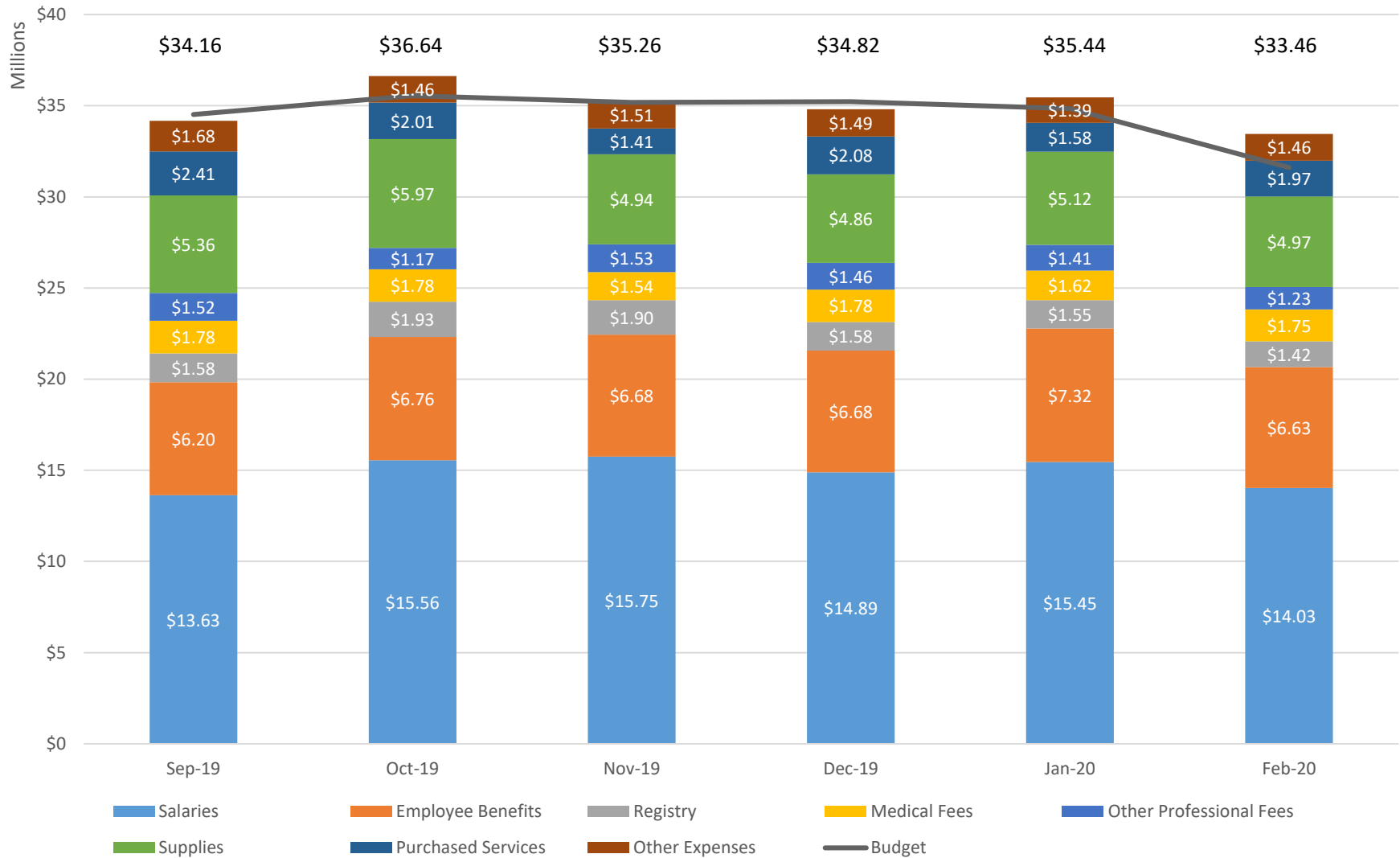




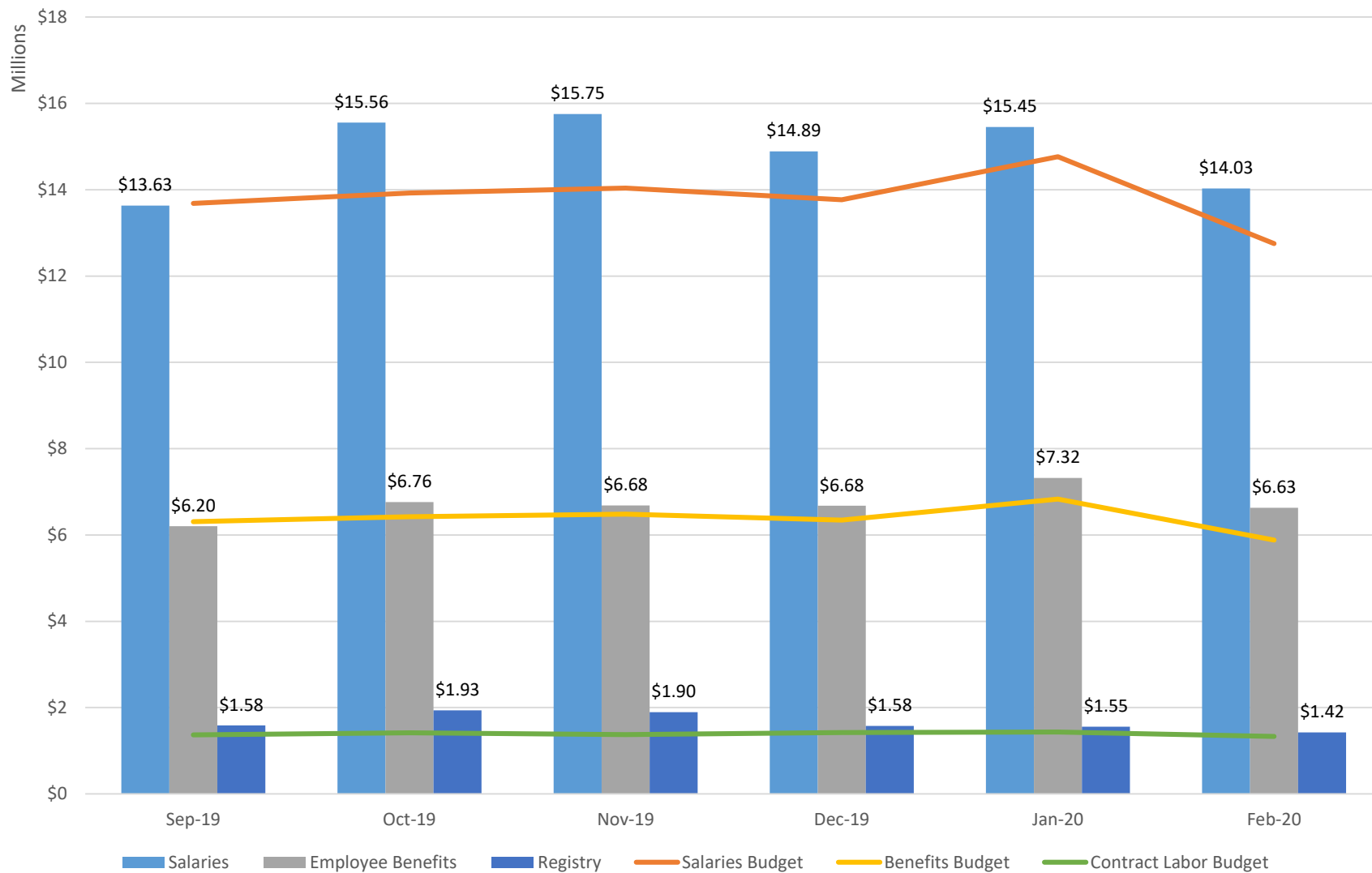
## Total Revenue



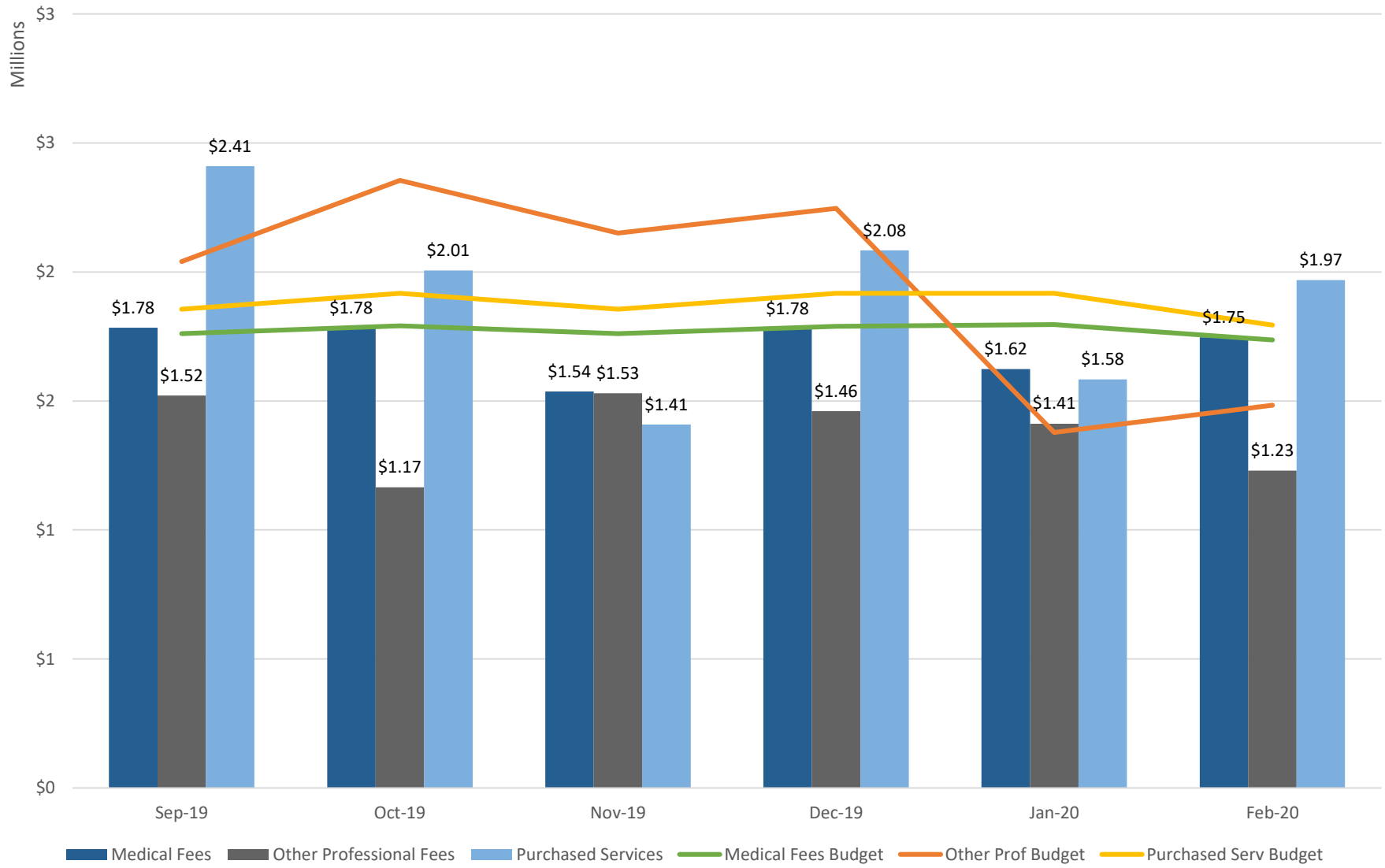
## Expenses FYTD 2020



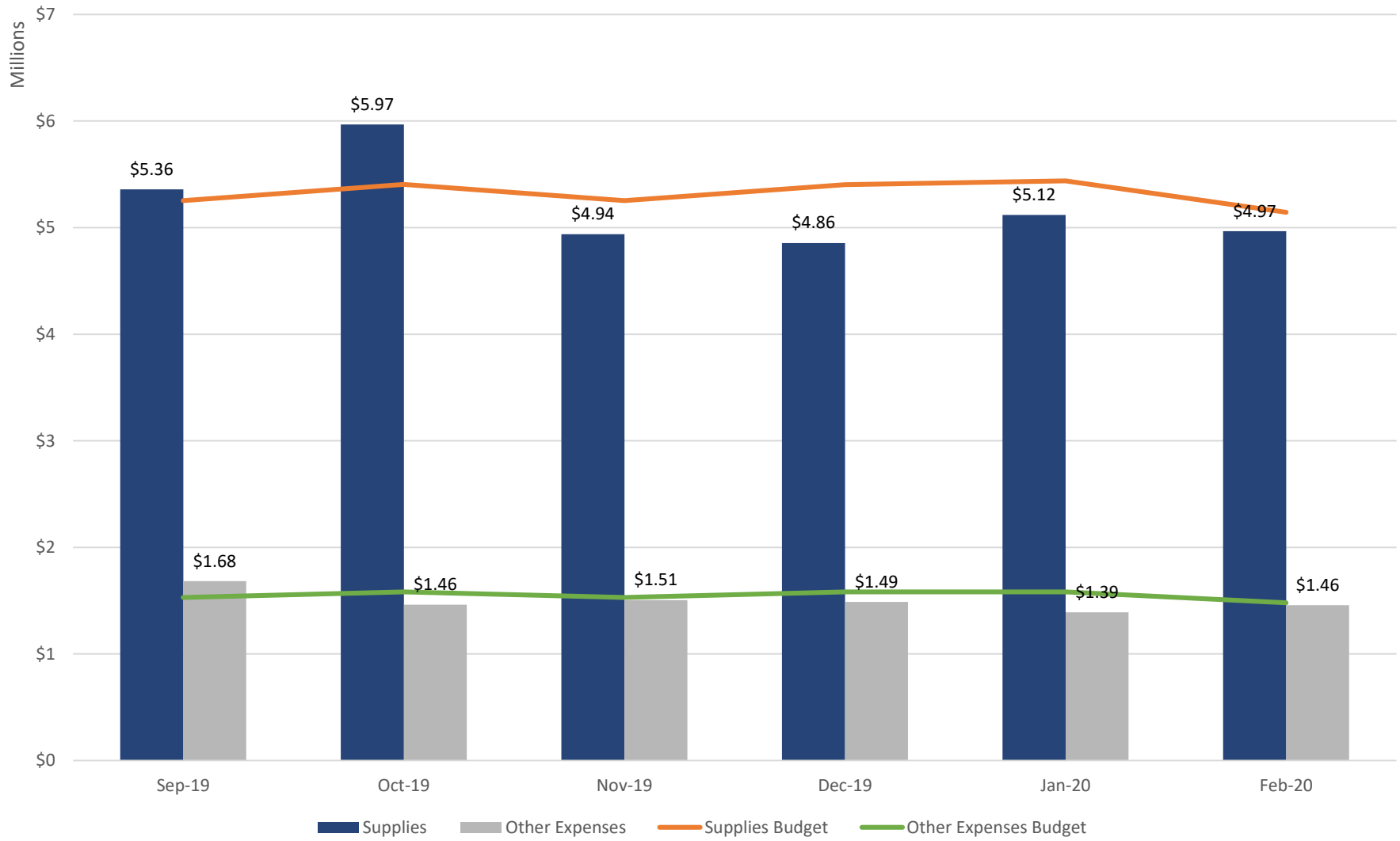
## Salaries & Benefits FYTD 2020



## Purchased Services, Medical, & Other Prof Fees FYTD 2020

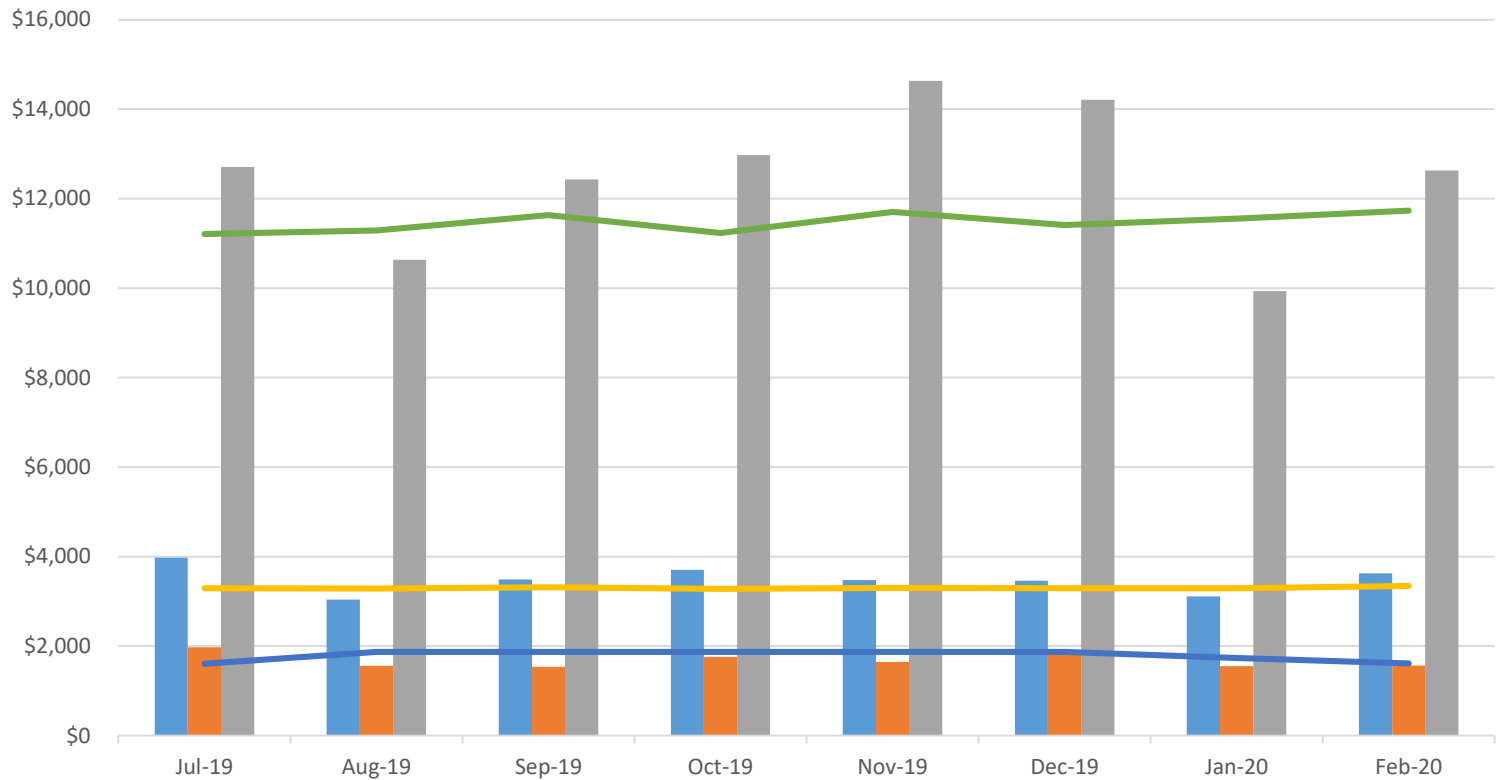


## Supplies & Other Expenses FYTD 2020



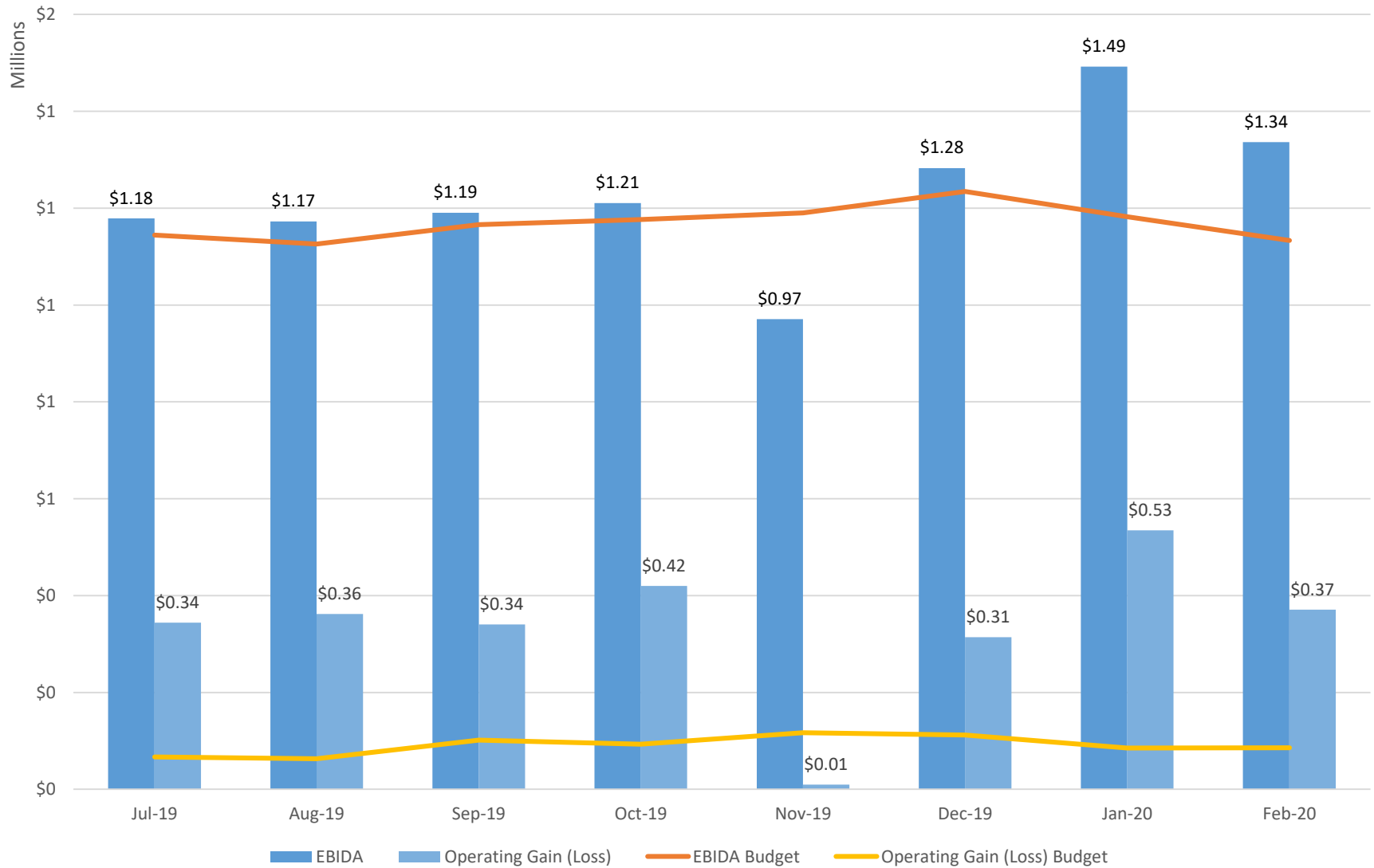


## Operating Metrics

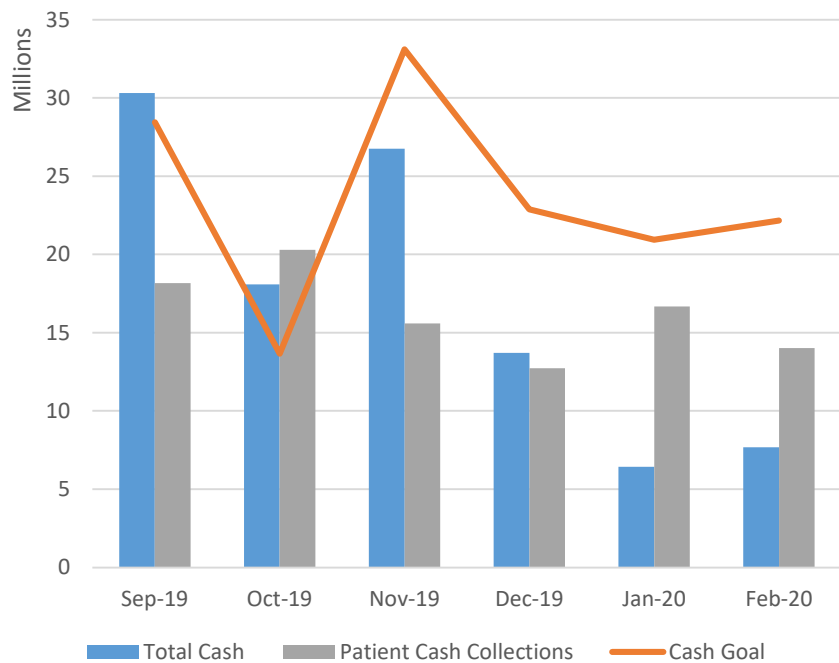


	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20
Supply Expense per AA	\$3,977	\$3,040	\$3,492	\$3,703	\$3,474	\$3,457	\$3,110	\$3,627
Pharm Cost per AA	\$1,976	\$1,558	\$1,536	\$1,762	\$1,646	\$1,905	\$1,549	\$1,569
Net Revenue Per AA	\$12,710	\$10,636	\$12,428	\$12,972	\$14,631	\$14,212	\$9,934	\$12,632
Budget Supp/AA	\$3,295	\$3,286	\$3,313	\$3,277	\$3,303	\$3,293	\$3,291	\$3,343
Budget Pharm/AA	\$1,604	\$1,869	\$1,870	\$1,869	\$1,870	\$1,870	\$1,736	\$1,614
Budget Net Rev/AA	\$11,209	\$11,286	\$11,630	\$11,234	\$11,703	\$11,409	\$11,556	\$11,730

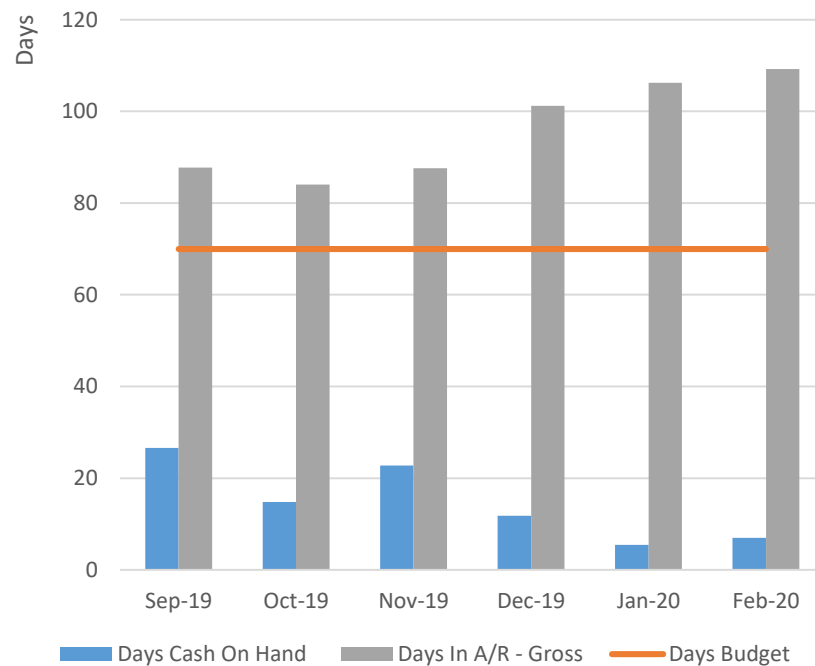
## EBIDA 2020 FYTD



### Cash 2020 FYTD



### AR Days 2020 FYTD



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expense**  
Feb-20

	DECEMBER	JANUARY	FEBRUARY	BUDGET FEBRUARY	VARIANCE POS (NEG)	PY FEBRUARY
<b>Gross Patient Revenue</b>	\$76,811,620	\$80,827,948	\$75,328,913	\$70,012,011	8%	\$68,113,426
Contractual Deductions	(56,851,762)	(64,478,388)	(58,035,996)	(51,958,739)	12%	(52,093,544)
<b>Net Revenue</b>	<b>19,959,859</b>	<b>16,349,560</b>	<b>17,292,917</b>	<b>18,053,272</b>	<b>(4%)</b>	<b>16,019,882</b>
Indigent Funding	12,090,749	12,609,681	12,612,972	10,059,192	25%	13,118,738
Correctional Medicine	2,443,735	5,723,874	2,594,088	2,777,068	(7%)	2,552,068
County Contribution	285,446	285,211	285,211	284,951	0.1%	285,211
Incentive Funding	212,040	212,040	212,040	333,333	(36%)	250,000
<b>Net Patient Revenue</b>	<b>34,991,828</b>	<b>35,180,366</b>	<b>32,997,228</b>	<b>31,507,817</b>	<b>5%</b>	<b>32,225,899</b>
Gain/(Loss) on Health-Related Entity	(136,548)	(13,626)	548,143	0	0%	0
Other Operating Revenue	1,194,078	1,766,511	1,235,653	1,225,204	1%	1,727,476
Other Non-Operating Revenue	36,748	14,339	3,025	4,340	(30%)	8,229
<b>Total Revenue</b>	<b>36,086,107</b>	<b>36,947,591</b>	<b>34,784,049</b>	<b>32,737,360</b>	<b>6%</b>	<b>33,961,604</b>
<b>Expenses</b>						
Salaries	14,886,695	15,451,068	14,026,440	12,753,112	10%	13,122,109
Employee Benefits	6,676,375	7,322,124	6,630,925	5,883,434	13%	6,110,200
Contract Labor	1,575,265	1,553,723	1,422,161	1,328,532	7%	1,421,214
Medical Fees	1,778,328	1,623,380	1,746,897	1,736,429	1%	1,413,379
Other Professional Fees	1,460,377	1,412,068	1,229,802	1,483,622	(17%)	2,049,298
Supplies	4,855,484	5,118,128	4,965,445	5,144,888	(3%)	4,942,447
Purchased Services	2,083,492	1,583,612	1,968,367	1,793,767	10%	1,889,691
Other Expenses	1,487,391	1,391,420	1,457,730	1,479,992	(2%)	1,323,894
Operating Expenses	34,803,407	35,455,522	33,447,767	31,603,776	6%	32,272,233
<b>Earnings Before Interest, Depreciation, and Amortization (EBIDA)</b>	<b>1,282,700</b>	<b>1,492,069</b>	<b>1,336,282</b>	<b>1,133,584</b>	<b>18%</b>	<b>1,689,371</b>
Interest	224,997	219,497	221,226	342,117	(35%)	56,772
Depreciation	486,792	481,227	488,502	487,314	0%	503,894
Amortization	256,825	256,825	255,683	218,282	17%	59,455
<b>Total Expenses</b>	<b>35,772,021</b>	<b>36,413,070</b>	<b>34,413,179</b>	<b>32,651,489</b>	<b>5%</b>	<b>32,892,354</b>
<b>Operating Gain (Loss)</b>	<b>\$314,086</b>	<b>\$534,521</b>	<b>\$370,869</b>	<b>\$85,871</b>	<b>332%</b>	<b>\$1,069,250</b>

**KERN MEDICAL  
BALANCE SHEET  
FEBRUARY 2020**

	February 2020	February 2019
<b>ASSETS:</b>		
<i><b>Total Cash</b></i>	<b>\$7,685,749</b>	<b>\$16,762,129</b>
Patient Receivables Subtotal	279,620,418	193,300,459
Contractual Subtotal	(217,027,121)	(146,632,886)
<i><b>Net Patient Receivable</b></i>	<b>62,593,297</b>	<b>46,667,574</b>
Total Indigent Receivable	125,156,025	79,641,556
Total Other Receivable	8,117,906	6,145,806
Total Prepaid Expenses	3,891,047	4,671,633
Total Inventory	5,590,772	5,632,075
<i><b>Total Current Assets</b></i>	<b>213,034,796</b>	<b>159,520,773</b>
Deferred Outflows of Resources	85,573,671	74,539,340
Investments Deposited with Trustee	931,830	922,330
Total Land, Equipment, Buildings and Intangibles	194,149,524	157,892,253
Total Construction in Progress	13,146,682	29,273,804
<i><b>Total Property, Plant &amp; Equipment</b></i>	<b>207,296,206</b>	<b>187,166,057</b>
Total Accumulated Depr & Amortization	(112,714,782)	(104,895,142)
<i><b>Net Property, Plant, and Equipment</b></i>	<b>94,581,424</b>	<b>82,270,915</b>
<i><b>Total Long Term Assets</b></i>	<b>86,505,500</b>	<b>75,461,670</b>
<i><b>Total Assets</b></i>	<b>\$394,121,721</b>	<b>\$317,253,358</b>



**KERN MEDICAL**  
**BALANCE SHEET CONT'D**  
**FEBRUARY 2020**

**LIABILITIES & EQUITY:**

Total Accounts Payable	\$25,397,652	\$17,931,936
Total Accrued Compensation	28,028,363	25,392,864
Total Due Government Agencies	39,839,387	55,212,432
Total Other Accrued Liabilities	61,686,230	34,349,971
<b><i>Total Current Liabilities</i></b>	<b>154,951,632</b>	<b>132,887,203</b>
<b><i>Total Long-Term Liabilities</i></b>	<b>420,241,413</b>	<b>428,609,276</b>
<b><i>Total Liabilities</i></b>	<b>575,193,045</b>	<b>561,496,479</b>
Fund Balance	36,714,021	36,714,021
Retained Earnings	(217,785,346)	(280,957,141)
<b><i>Total Fund Balance</i></b>	<b>(181,071,324)</b>	<b>(244,243,120)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$394,121,721</b>	<b>\$317,253,358</b>



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

April 15, 2020

**Subject:** Kern County Hospital Authority, Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

The Chief Executive Officer will provide a Hospital-wide update.

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

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

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on April 15, 2020, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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