



## **AGENDA**

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

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

Regular Meeting  
Wednesday, January 19, 2022

11:30 A.M.

#### **BOARD TO RECONVENE**

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

INTRODUCTION

- 3) Introduction of Kern County Hospital Authority Chief Nursing Officer Dawn C. LeRoy, RN, MSN, CEN-BC –  
MAKE INTRODUCTION

RECOGNITION

- 4) Presentation by the Chief Executive Officer recognizing the 'Association of Kern County Nurse Leaders 2022' nominees from Kern Medical Center –  
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

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

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on December 15, 2021 –  
APPROVE

CA

- 7) Proposed retroactive Resolution reaffirming the prior appointments of Scott Thygerson, Andrew J. Cantu, Tyler S. Whitezell, and Glenn E. Goldis, M.D., and affirming the recent appointment of Dawn C. LeRoy, RN, MSN, CEN-BC, as Officers of the Kern County Hospital Authority, effective December 27, 2021 –  
APPROVE; ADOPT RESOLUTION

CA

- 8) Proposed Kern County Hospital Authority Organizational Chart effective January 19, 2022 –  
APPROVE

CA

- 9) Proposed Second Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, appointing Renee Villanueva to the Board of Managers in place of Russell V. Judd, effective January 19, 2022 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Purchase Order with TSI, Inc., an independent contractor, containing non-standard terms and conditions, for annual calibration services of PortaCount devices used for N95 respirator mask fit testing from January 19, 2022 through January 18, 2027, in an amount not to exceed \$10,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Software Subscription Agreement with Rarestep, Inc., doing business as Fleetio, an independent contractor, containing non-standard terms and conditions, for an electronic fleet management tracking system from January 31, 2022 through January 30, 2023, in an amount not to exceed \$4,632 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Amendment No. 6 to Agreement 1048-2010 with Total Renal Care, Inc., an independent contractor, for acute dialysis services for the period December 1, 2010 through January 29, 2022, extending the term from January 30, 2022 through November 30, 2023, and increasing the maximum payable by \$3,061,000, from \$4,525,000 to \$7,586,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed retroactive Business Associate Agreement with Varian Medical Systems, Inc., an independent contractor, containing non-standard terms and conditions, for the term of the underlying services agreement from November 5, 2021 through November 4, 2024 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed retroactive Amendment No. 1 to Agreement 01317 with TALX Corporation, a provider of Equifax Workforce Solutions, an independent contractor, for employment verification and unemployment cost management services for the period January 1, 2017 through December 31, 2021, extending the term for three years from January 1, 2022 through December 31, 2024, in an amount not to exceed \$20,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Professional Service Agreement and Telemedicine Credentialing and Privileging Agreement with Retina Vue, P.C., an independent contractor, containing non-standard terms and conditions, for remote ophthalmology and delegated credentialing services, from January 19, 2022 through January 18, 2027, in an amount not to exceed \$200,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Amendment No. 1 to Agreement 014-2020 with Virtual Radiologic Professionals of California, P.A., an independent contractor, for remote radiology afterhours interpretation services for the period April 15, 2020 through April 14, 2022, increasing the maximum payable by \$218,000, from \$910,000 to \$1,128,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Purchase Order Agreement with TIMS Medical by Foresight Imaging, LLC, an independent contractor, containing non-standard terms and conditions, for preventive maintenance, repairs and required software updates of fluoroscopy equipment in the Radiology Department from January 19, 2022 through January 18, 2026, in an amount not to exceed \$10,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed First Amendment to Enhanced Purchasing Agreement 2017-002A with Quorum Purchasing Advantage, LLC, an independent contractor, for access to group purchasing services, for the period February 1, 2017 through January 31, 2022, extending the term for five years from February 1, 2022 through January 31, 2027 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Service Request with Presidio Networked Solutions Group LLC, an independent contractor, containing non-standard terms and conditions, for network remediation and technical support, effective January 19, 2022, in an amount not to exceed \$92,250 plus applicable taxes –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed retroactive Side Letter of Agreement with Service Employees International Union, Local 521, to implement minimum wage increase, effective January 1, 2022 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 21) Proposed Engagement Letter from Moss-Adams LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2022, in an amount not to exceed \$203,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 22) Presentation on Report of Independent Auditors from Moss Adams LLP regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2021 –  
HEAR PRESENTATION; RECEIVE AND FILE; REFER TO KERN COUNTY BOARD OF SUPERVISORS

23)

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



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

CA

- 25) Claims and Lawsuits Filed as of December 30, 2021 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 26) Request for Closed Session regarding per review of health facilities (Health and Safety Code Section 101855(j)(2)) –
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: William Coughran v. Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County Superior Court Case No. BCV-21-100662 –
- 28) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL –
- 29) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, FEBRUARY 16, 2022 AT 11:30 A.M.

## **SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

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

## **AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)**

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

25) CLAIMS AND LAWSUITS FILED AS OF NOVEMBER 30, 2021 –  
RECEIVE AND FILE

- A) Claim in the matter of Petra Lopez
- B) Claim in the matter of Ronnie Dean Romo

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

January 19, 2022

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

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

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

**Discussion:**

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

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

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

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

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

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

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

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

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

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In the matter of:

Resolution No. 2021-\_\_\_\_

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

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

AYES:

NOES:

ABSENT:

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

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

7. Resolution No. 2021-016, adopted by the Board of Governors on December 15, 2021, is hereby repealed and superseded by this Resolution.

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

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



Members, Board of Governors  
Chief Executive Officer  
Legal Services Department



## **SUMMARY OF PROCEEDINGS**

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

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

Regular Meeting  
Wednesday, December 15, 2021

11:30 A.M.

#### **BOARD RECONVENED**

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

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. 16A: MADE FINDING THAT THE NEED TO TAKE ACTION ON A NON-AGENDA MATTER OCCURRED AFTER THE AGENDA WAS POSTED ON DECEMBER 10, 2021. KERN COUNTY HOSPITAL AUTHORITY OPERATES TWO OUTPATIENT RETAIL PHARMACIES. THESE RETAIL PHARMACIES ARE SCHEDULED TO CEASE OPERATION ON DECEMBER 31, 2021, PURSUANT TO ACTION TAKEN BY THE BOARD OF GOVERNORS ON NOVEMBER 17, 2021. ON FRIDAY, DECEMBER 10, 2021, AFTER THE AGENDA WAS POSTED, AUTHORITY STAFF RECEIVED NOTICE THAT THE VENDOR SELECTED TO ACQUIRE THE PATIENT PHARMACY FILES WOULD BE UNABLE TO COMPLETE THE TRANSACTION BY THE DECEMBER 31, 2021 CLOSURE DATE, DUE TO ORGANIZATIONAL RESTRUCTURING. PURSUANT TO STATE LAW, THE PATIENT PHARMACY FILES MUST BE RETAINED IN A FACILITY LICENSED BY THE BOARD OF PHARMACY, AND THE AUTHORITY IS UNABLE TO TRANSFER SUCH FILES TO A LICENSED PHARMACY BY DECEMBER 31, 2021, AS REQUIRED BY LAW

**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

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

BOARD ACTION SHOWN IN CAPS

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON AND EMPLOYEES OF MERIDIAN HEALTHCARE PARTNERS, INC. JOINED THE MEETING AFTER THE MOTION AND VOTE ON THE NON-AGENDA ITEM AND CONSENT AGENDA

#### PUBLIC PRESENTATIONS

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

#### RECOGNITION

- 3) Resolution honoring Toni Smith, Chief Nursing Officer, upon her retirement with 25 years of dedicated service to Kern Medical Center and the nursing profession –  
ADOPTED RESOLUTION; MADE PRESENTATION TO TONI SMITH; CHIEF EXECUTIVE OFFICER SCOTT THYGERSON AND TONI SMITH HEARD  
**Berjis-McLaughlin: 6 Ayes; 1 Absent - Alsop**
- 4) Resolution honoring Clinica Sierra Vista for 50 years of dedicated service to Kern County and Stacy Ferreira, Chief Executive Officer, for her outstanding leadership of the organization –  
ADOPTED RESOLUTION; CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop**

#### ITEMS FOR CONSIDERATION

CA

- 5) Proposed Resolution in the matter of making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings –  
APPROVED; ADOPTED RESOLUTION 2021-016  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 6) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on November 17, 2021 –  
APPROVED  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 7) Proposed Amendment No. 2 to Agreement 014-2019 with Meridian Healthcare Partners, Inc., an independent contractor, for Chief Executive Officer and healthcare management services for the period December 16, 2018 through December 15, 2025, extending the term for an additional three years through December 15, 2028, revising the compensation methodology effective December 16, 2021, and adding a new maximum payable of \$10,859,649 for the two-year period from December 16, 2021 through December 15, 2023 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 073-2021  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 8) Proposed Agreement with Adventist Health Physicians Network, an independent contractor, for the provision of certain Kern Medical Center physicians to provide professional services in various clinical specialties including neurological surgery at Adventist Health Bakersfield from January 1, 2022 through December 31, 2031 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 074-2021 SUBJECT TO APPROVAL AS TO FORM BY COUNSEL  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 9) Proposed Agreement with Valley Neurosurgery and Neurorestoration Center, A Medical Corporation, an independent contractor, for the provision of neurological surgery professional services at Adventist Health Bakersfield from January 1, 2022 through December 31, 2024, in an amount not to exceed \$6,000,000 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 075-2021 SUBJECT TO APPROVAL AS TO FORM BY COUNSEL  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 10) Proposed retroactive Change Order No. 3 to Agreement 006-2021 with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction management services related to the 4th Floor Pediatric and Postpartum Renovation project, increasing the maximum payable by \$33,588, from \$1,660,923 to \$1,694,511, to cover the cost of additional services –  
MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 076-2021; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$1,694,511  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 11) Proposed Sourcewell State & Local FMV Lease Agreement with Pitney Bowes Inc., an independent contractor, containing nonstandard terms and conditions, for postage mail equipment and services from December 15, 2021 through December 16, 2026, in an amount not to exceed \$52,845 plus applicable taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 077-2021  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 12) Proposed Certificate of Acceptance and Acknowledgement of Assignment with Presidio Technology Capital, LLC, an independent contractor, for the acceptance of leased equipment and the assignment of payments in support of the information technology infrastructure –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 078-2021  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 13) Proposed retroactive Amendment No. 5 to Agreement 1048-2010 with Total Renal Care, Inc., an independent contractor, an independent contractor, for acute dialysis services for the period December 1, 2010 through November 30, 2021, extending the term through January 29, 2022 –  
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 079-2021  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

- 14) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVED AND FILED  
**Berjis-Pelz: 6 Ayes; 1 Absent - Alsop**

- 15) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**McLaughlin-Berjis: 6 Ayes; 1 Absent - Alsop**

CA

- 16) Claims and Lawsuits Filed as of November 30, 2021 –  
RECEIVED AND FILED  
**Pelz-Berjis: 6 Ayes; 1 Absent - Alsop**

- 16A) Proposed continuation of outpatient pharmacy services pending disposition of patient pharmacy files to a licensed retail pharmacy –  
APPROVED  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Alsop**

ADJOURNED TO CLOSED SESSION  
**Berjis-Pelz**

CLOSED SESSION

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

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

RECONVENED FROM CLOSED SESSION  
**McLaughlin-Berjis**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 17 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR MCLAUGHLIN; 1 ABSENT - DIRECTOR ALSOP) THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 18 concerning Request for Closed Session regarding per review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JANUARY 19, 2022 AT 11:30 A.M.  
**Berjis**

/s/ Mona A. Allen  
Authority Board Coordinator

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



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

January 19, 2022

**Subject:** Proposed retroactive Resolution reaffirming the prior appointments of Scott Thygerson, Andrew J. Cantu, Tyler S. Whitezell, and Glenn E. Goldis, M.D., and affirming the recent appointment of Dawn C. LeRoy, RN, MSN, CEN-BC, as Officers of the Kern County Hospital Authority, effective December 27, 2021

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

On April 16, 2016, your Board adopted Resolution No. 2016-004 appointing Russell Judd, Scott Thygerson, Andy Cantu, Dr. Glenn Goldis, Jared Leavitt, and Toni Smith, RN, MSN, to serve as initial officers of the Authority. The action by your Board complied with the state statute, county ordinance, and the hospital Authority's Bylaws for Governance.

On October 16, 2019, your Board approved the appointment of Scott Thygerson, Chief Strategy Officer, as President, Hospital & Clinic Operations. With this new appointment, on January 15, 2020, your Board adopted Resolution No. 2020-003, reaffirming the appointment of these same officers, albeit with the change in title for Mr. Thygerson.

Chief Operating Officer Jared Levitt resigned effective July 14, 2020. On July 14, 2020, Mr. Judd appointed Tyler Whitezell, Vice President of Administrative Services, as Chief Operating Officer in place of Mr. Levitt.

On October 13, 2021, Mr. Judd officially resigned his position as Chief Executive Officer, effective December 1, 2021. In anticipation of Mr. Judd's impending retirement, on October 12, 2021, approval was obtained for the appointment of Scott Thygerson as Chief Executive Officer. The next day, following the resignation of Mr. Judd, your Board appointed Mr. Thygerson as Chief Executive Officer, effective December 1, 2021.

Chief Nursing Officer Toni Smith, RN, MSN, retired effective December 27, 2021. Following an extensive search, Mr. Thygerson appointed Dawn C. LeRoy, RN, MSN, CEN-BC, as Chief Nursing Officer effective upon Ms. Smith's retirement. Ms. LeRoy commenced her employment with the hospital authority on December 27, 2021.



January 19, 2022

Page 2 of 2

The Authority is recommending that your Board retroactively adopt the attached resolution affirming and reaffirming, as the case may be, the appointment of the following individuals by name and title as officers of the Authority, effective December 27, 2021:

Chief Executive Officer:	Scott Thygerson
Chief Financial Officer:	Andrew J. Cantu
Chief Operating Officer:	Tyler S. Whitezell
Chief Medical Officer:	Glenn E. Goldis, M.D.
Chief Nursing Officer:	Dawn C. LeRoy, RN, MSN, CEN-BC

Therefore, it is recommended that your Board retroactively approve the recommended action and adopt the attached Resolution.

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

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In the matter of:

Resolution No. 2021-\_\_\_\_

**REAFFIRMING THE APPOINTMENT OF SCOTT  
THYGERSON, ANDREW J. CANTU, TYLER S.  
WHITEZELL, AND GLENN E. GOLDIS, M.D., AND  
AFFIRMING THE APPOINTMENT OF DAWN C.  
LEROY, RN, MSN, CEN-BC, AS CHIEF NURSING  
OFFICER TO SERVE AS OFFICERS OF THE KERN  
COUNTY HOSPITAL AUTHORITY**

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

AYES:

NOES:

ABSENT:

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

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

(a) Health and Safety Code section 101855(a)(6) provides that the Kern County Hospital Authority shall have the power “*to appoint and employ or otherwise engage a chief executive officer and other officers and employees that may be necessary or appropriate, ...and to define the power and duties of officers and employees*”; and

(b) Section 2.170.070 of the Ordinance Code of the County of Kern (“Ordinance Code”) titled *Powers of Hospital Authority* provides that “*the hospital authority shall have the power to appoint and employ or otherwise engage a chief executive officer and other necessary officers and employees*”; and

(c) Section 2.170.080 of the Ordinance Code also provides that the “*board of supervisors shall approve the initial and any successive chief executive officer of the hospital authority prior to his or her appointment by the hospital authority*” (Ord. No. A-356, § 2, 10-6-15, eff. 11-6-15); and

(d) Section 5.01 of the Hospital Authority Bylaws for Governance provides that “*the Board of Governors shall appoint a competent and experienced Chief Executive Officer, subject to the prior approval by the Board of Supervisors, to have responsibility for the general management of the Hospital Authority. Subject to the rights of the Board of Supervisors, the Chief Executive Officer shall be employed, contracted with, or otherwise engaged by the Hospital Authority*”; and

(e) On March 16, 2016, by a unanimous vote of those Directors present, the Board of Governors recommended Russell V. Judd be appointed the Chief Executive Officer of the Hospital Authority and referred the matter to the Board of Supervisors for approval. On April 5, 2016, the Board of Supervisors approved the initial appointment of Russell V. Judd as the Chief Executive Officer of the Hospital Authority; and

(f) Section 4.03 of the Hospital Authority Bylaws for Governance provides that “*the Chief Financial Officer shall be appointed by the Chief Executive Officer.... Prior to appointing the Chief Financial Officer, the Chief Executive Officer shall consult with and receive direction from the Board of Governors*”; and

(g) On March 16, 2016, Russell V. Judd consulted with and received direction from the Board of Governors regarding the appointment of a Chief Financial Officer of the Hospital Authority; and

(h) On March 16, 2016, by unanimous vote of those Directors present, the Board of Governors approved the recommendation of Russell V. Judd to appoint Andrew J. Cantu as the Chief Financial Officer of the Hospital Authority; and

(i) On April 16, 2016, the Board of Governors adopted Resolution No. 2016-004 appointing Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., Jared W. Leavitt, and Antoinette C. Smith, RN, MSN, to serve as initial officers of the Hospital Authority; and

(j) On January 16, 2019, the Board of Governors adopted Resolution No. 2019-001 reaffirming the appointments of Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., Jared W. Leavitt, and Antoinette C. Smith, RN, MSN, to serve as officers of the Hospital Authority; and

(k) On October 16, 2019, by unanimous vote of those Directors present, the Board of Governors appointed Alton Scott Thygerson, Chief Strategy Officer, as President, Hospital & Clinic Operations of the Hospital Authority; and

(l) On January 15, 2020, the Board of Governors adopted Resolution No. 2020-003 reaffirming the appointments of Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., Jared W. Leavitt, and Antoinette C. Smith, RN, MSN, to serve as officers of the Hospital Authority, effective October 16, 2019; and

(m) Effective July 14, 2020, Jared W. Leavitt resigned his position as Chief Operating Officer; and

(n) On July 14, 2020, Tyler S. Whitezell was appointed Chief Operating Officer by the Chief Executive Officer of the Hospital Authority; and

(o) On January 20, 2021, the Board of Governors adopted Resolution No. 2021-001 reaffirming the appointments of Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., and Antoinette C. Smith, RN, MSN, and affirming the appointment of Tyler S. Whitezell, to serve as officers of the Hospital Authority, effective July 14, 2020; and

(p) On October 12, 2021, pursuant to Section 2.170.080 of the Ordinance Code, approval was obtained for the appointment of Alton Scott Thygerson as Chief Executive Officer of the Hospital Authority (Ord. No. G-8814, § 3, 3-19-19); and

(q) On October 13, 2021, Russell V. Judd officially resigned his position as Chief Executive Officer of the Hospital Authority, effective December 1, 2021; and

(r) On October 13, 2021, by unanimous vote, the Board of Governors appointed Scott Thygerson as Chief Executive Officer of the Hospital Authority, effective December 1, 2021; and

(s) Chief Nursing Officer Toni Smith, RN, MSN, retired after 25 years of service effective December 27, 2021; and

(t) Following an extensive search, Mr. Thygerson appointed Dawn C. LeRoy, RN, MSN, CEN-BC, as Chief Nursing Officer effective upon Ms. Smith's retirement. Ms. LeRoy commenced her employment with the hospital authority on December 27, 2021; and

(u) The Board of Governors desires to reaffirm the prior appointments of, Scott Thygerson, Andrew J. Cantu, Tyler S. Whitezell, and Glenn E. Goldis, M.D., and affirm the recent appointment of Dawn C. LeRoy, RN, MSN, CEN-BC, as Chief Nursing Officer, to serve as officers of the Hospital Authority, effective December 27, 2021.

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

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

2. This Board hereby affirms and reaffirms, as the case may be, the appointment of the following individuals by name and title as officers of the Kern County Hospital Authority, effective December 27, 2021:

Chief Executive Officer:	Scott Thygerson
Chief Financial Officer:	Andrew J. Cantu
Chief Operating Officer:	Tyler S. Whitezell
Chief Medical Officer:	Glenn E. Goldis, M.D.
Chief Nursing Officer:	Dawn C. LeRoy, RN, MSN, CEN-BC

3. The provisions of this Resolution shall be effective, in force, and operative as of the 27th day of December, 2021.

4. Resolution No. 2021-014, adopted by the Board of Governors on November 17, 2021, is hereby repealed and superseded by this Resolution.

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

Kern Medical Center  
Scott Thygerson, Chief Executive Officer  
Andrew J. Cantu, Chief Financial Officer  
Tyler S. Whitezell, Chief Operating Officer  
Glenn E. Goldis, M.D., Chief Medical Officer  
Dawn C. LeRoy, RN, MSN, CEN-BC, Chief Nursing Officer  
Legal Services Department



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

January 19, 2022

**Subject:** Kern County Hospital Authority Organizational Chart effective January 19, 2022

**Recommended Action:** Approve

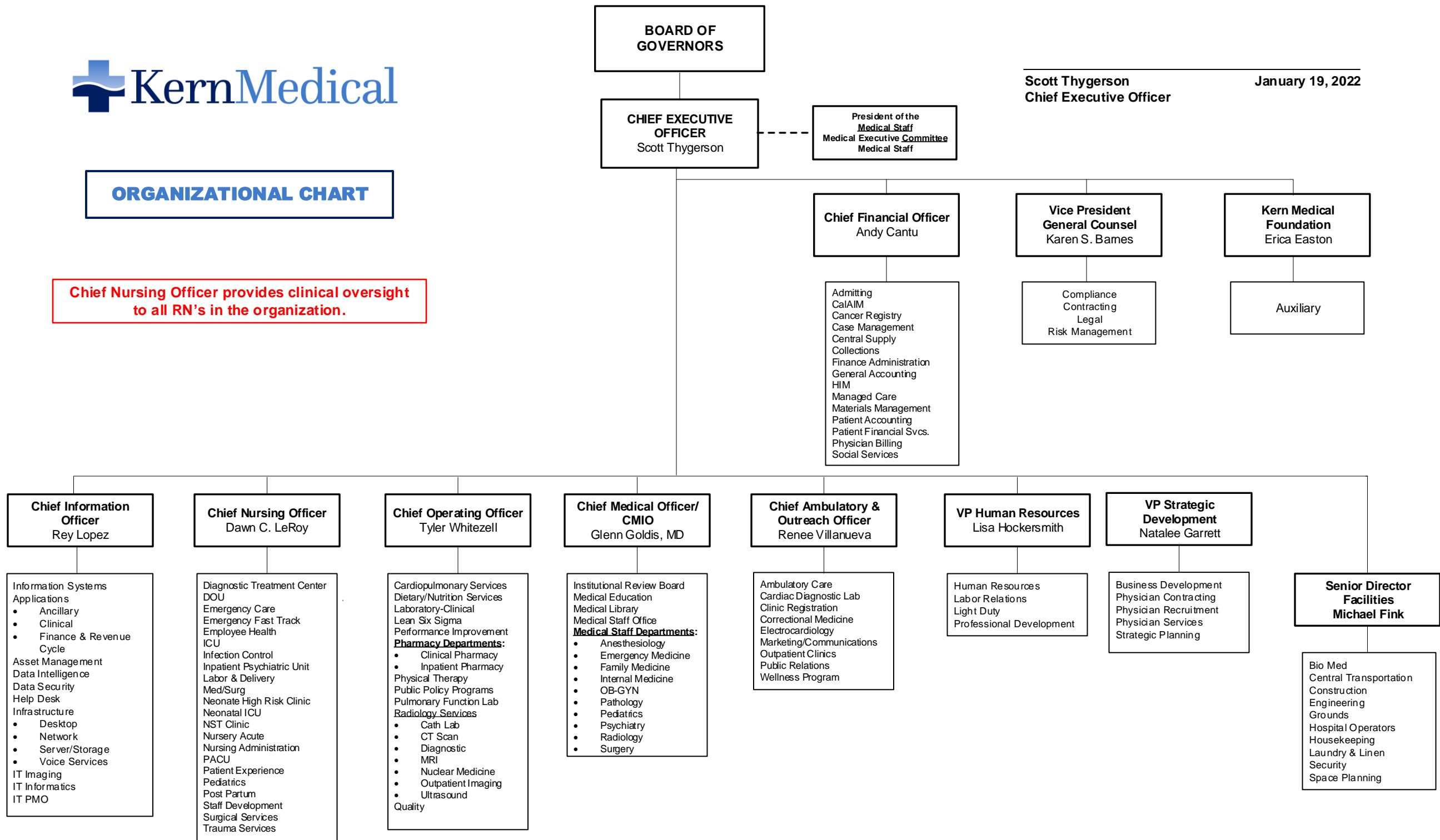
**Summary:**

Kern Medical requests your Board approve the Kern County Hospital Authority Organizational Chart effective January 19, 2022.



## ORGANIZATIONAL CHART

Chief Nursing Officer provides clinical oversight to all RN's in the organization.







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

January 19, 2022

**Subject:** Proposed Second Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, a California Limited Liability Company

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

**Summary:**

Kern Medical Surgery Center, LLC (“Company”), was formed in 2016 with the purpose to develop, own, and operate an ambulatory surgery center located in Bakersfield, California. Kern County Hospital Authority is the sole member of the Company.

Section 6.2 of the Operating Agreement states that the business, property and affairs of the Company shall be managed by three managers (each a “Manager” and, collectively, the “Board of Managers” or the “Board”), all of whom shall be appointed by the Member. Upon execution of the Operating Agreement, your Board appointed Russell Judd, Scott Thygerson and Andrew Cantu as the initial Managers of the Company. Mr. Judd resigned his position as Manager in the Company, effective December 1, 2021, the date that coincides with his recent retirement, leaving a vacant Manager position to be filled.

The Company is recommending that your Board appoint Renee Villanueva, Chief Ambulatory and Outreach Officer, to fill the position vacated by Mr. Judd, effective with your Board’s approval of the attached Second Amendment, which updates Section 6.2 of the Operating Agreement to reflect the names of the Managers. Ms. Villanueva is the best fit for the position, due to her position at Kern Medical.

Therefore, it is recommended that your Board approve the Second Amendment to the Operating Agreement of Kern Medical Surgery Center, LLC, a California Limited Liability Company, effective January 19, 2022, and authorize the Chairman to sign.

**SECOND AMENDMENT  
TO  
OPERATING AGREEMENT  
OF  
Kern Medical Surgery Center, LLC  
a California Limited Liability Company**

This Second Amendment (this “Amendment”) to the Operating Agreement of Kern Medical Surgery Center, LLC, a California limited liability company (the “Company”), dated as of August 18, 2016, amends the Operating Agreement of the Company (the “Agreement”), effective as of this 19th day of January, 2022, and is made by the Kern County Hospital Authority, a California governmental entity, in its capacity as the sole member (the “Member”) of the Company.

WHEREAS, Section 6.2 of the Agreement states that the business, property and affairs of the Company shall be managed by three (3) managers, all of whom shall be appointed by the Member; and

WHEREAS, Section 10.7 of the Agreement states the Agreement shall not be amended or modified except by a writing signed by the Member; and

WHEREAS, the Member desires to amend the Agreement as set forth herein;

NOW, THEREFORE, the Member hereby amends the Agreement as follows:

1. Article VI, Management; Member Action, Section 6.2, Management by Board, shall be deleted in its entirety and replaced with the following:

“6.2 Management by Board. Pursuant to the Articles, the business, property and affairs of the Company shall be managed by three (3) managers (each a “Manager” and, collectively, the “Board of Managers” or the “Board”), all of whom shall be appointed by the Member. The Managers shall collectively, sitting as the Board, have all of the powers and authority given to the sole manager of a California limited liability company under the Act. A Manager shall serve indefinitely until his or her resignation or death, or his or her removal or replacement by the Member, which the Member may do at any time by notice to such effect to all Managers then serving. The Member may at any time increase or decrease the authorized number of Managers by notice to such effect to all Managers then serving. By its execution of this Agreement, the Member appoints as the Managers, Scott Thygerson, Andrew J. Cantu and Renee Villanueva.”

2. Except as otherwise defined herein, all capitalized terms used in this Amendment have the meaning set forth in the Agreement.

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

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

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

[Signatures follow on next page]

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to the Agreement as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY,  
a California governmental entity

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Karen S. Barnes  
Vice President & General Counsel  
Kern County Hospital Authority



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

January 19, 2022

**Subject:** Proposed Purchase Order with TSI, Inc.

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

**Summary:**

Kern Medical requests that your Board approve the proposed Purchase Order with TSI, Inc., for the annual calibration of two PortaCount devices, which are used for employee N95 respirator mask fit testing.

The term of the Purchase Order is five years, effective January 19, 2022, with a total maximum payable not to exceed \$10,000.

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

Therefore, it is recommended that your Board approve the Purchase Order with TSI, Inc., effective January 19, 2022, with a maximum payable not to exceed \$10,000 for the five-year term, and authorize the Chairman to sign.



500 Cardigan Road  
Shoreview, MN 55126  
USA  
EIN 41-0843524

Tel: (800) 680-1220  
Fax: (651) 490-3824  
Web: www.TSI.com  
Email: answers@TSI.com

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## Quotation

<b>Quote Contact</b> Cheryl DeLuca Tel: 661-326-2580 Email: cheryl.deluca@kernmedical.com	<b>Make PO Out To:</b> <b>TSI Inc.</b>
<b>Bill-To-Party</b> Kern Medical Center 1700 Mount Vernon Ave Bakersfield CA 93306-4018	<b>Quotation Number</b> 20215705 <b>Quotation Date</b> 11/09/2021 <b>Customer No</b> 5165995 <b>Cust. Ref.</b> <b>Incoterms</b> 2010 CPT: Prepay & Add Consignee's Premises <b>Payment Term</b> Net 30 days <b>Valid To</b> 12/09/2021 <b>Currency</b> USD <b>Method of Payment</b> PO, Visa, Amex, Mastercard Reference Quote number when submitting PO
<b>Ship-To-Party</b> Kern Medical Center 1700 Mount Vernon Ave Bakersfield CA 93306-4018	

Item	Material/Description	Quantity	Unit Price	Amount
1	CLC5-8038 Pre-Paid Cal Contract; 5-Yr, 8038  QualityGuard Calibration Contracts are for "Clean and Calibration" only. This is not for use with Warranty Service or when Repair Service is deemed necessary by the TSI Service Group. All Service Contracts will be valid from the date of instrument shipment for new products, and the purchase order date for existing products. The Service Contract is linked to the serial number of the instrument. This Calibration Contract is non-transferrable, and no other instrument serial numbers will be accepted for service.	2.00 EA	4,700.00	9,400.00

**Sub Total** 9,400.00

**Total Amount** 9,400.00

Maximum of 5 calibrations in 5 years,  
Return ground shipping,  
FastTrak (expediting).

SN 8038164509/8038164511  
Particle Generator 8026164501/8026164502

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.



500 Cardigan Road  
Shoreview, MN 55126  
USA  
EIN 41-0843524

Tel: (800) 680-1220  
Fax: (651) 490-3824  
Web: [www.TSI.com](http://www.TSI.com)  
Email: [answers@TSI.com](mailto:answers@TSI.com)

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## Quotation

**Bill-To-Party**  
Kern Medical Center

**Quotation Number** 20215705  
**Quotation Date** 11/09/2021

Item	Material/Description	Quantity	Unit Price	Amount
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This Quotation is subject to the warranties, disclaimers and all other terms and conditions set forth by TSI Inc. and incorporated by reference and to no others. Seller reserves the right to change prices effective on any new orders, provided Seller notifies in writing those with currently valid Quotations prior to any order being placed. This quotation shall become an agreement binding upon the Buyer and Seller when accepted by the Buyer and subsequently accepted by an authorized representative of the Seller at the Seller's home office and thereupon shall constitute the entire agreement between the parties.

*Renata Lelis*  
TSI Incorporated

Date 11/09/2021

TSI Terms and Conditions apply and are incorporated by reference. See <http://www.tsi.com/tc.pdf>  
For payment terms, complete credit application at <http://www.tsi.com/credit-app/>



**TERMS AND CONDITIONS**  
**TSI INCORPORATED SHALL HEREINAFTER BE REFERRED TO AS "SELLER"**

1. **PAYMENT; DELIVERY.** Unless otherwise agreed, payment is due in U.S. Dollars within 30 days of the date of shipment. Charges for services are due upon receipt of invoice. Buyer shall reimburse Seller for all costs and expenses incurred in the collection of amounts past due, including attorneys' fees. All quoted delivery dates are approximate and shall commence when Seller has acknowledged receipt of documents required to effect shipment. Seller may require payment in advance if it believes the financial condition of Buyer does not justify shipment, or subsequent deliveries, on the payment terms originally specified. If the Buyer becomes bankrupt or insolvent, or a proceeding is brought by or against Buyer under such laws, Seller may cancel any outstanding order, and Buyer shall reimburse Seller for its cancellation charges. Seller reserves the right to ship and to make collection by sight draft.

2. **RISK OF LOSS; TITLE.** Unless otherwise agreed, the risk of loss passes to Buyer when the goods are delivered to the carrier. Where the risk of loss has passed to Buyer, or where Buyer has selected the method of shipment or delivery, Buyer must obtain redress for freight losses, shortages or damages from the carrier or its insurer. Seller is not responsible for any such losses. Notwithstanding any provision of INCOTERMS or contained herein, equitable title and accession to the goods shall, where permitted by law, remain with Seller until Buyer is paid in full. This shall be the case even if legal title to the goods shall be deemed by law to have passed to Buyer at the time of delivery and prior to performance of all of Buyer's obligations. Buyer shall grant, and by acceptance of the goods is deemed to have granted, to Seller a first security interest in all goods to secure payment of amounts owed by Buyer. Buyer agrees to execute a financing statement at Seller's request. Seller may reclaim any goods delivered or in transit if Buyer fails to make payment when due.

3. **SHIPMENT.** Unless otherwise agreed, prices are FCA Seller's factory (Reference INCOTERMS 2010) and any charges Seller may be required to pay or collect on the sale, purchase, delivery, storage, use or transportation of the goods shall be paid by Buyer. Method of shipment or delivery will be at Seller's discretion unless otherwise agreed.

4. **TAXES; RE-EXPORT.** Any government tax, fee, duty or charge on the sale, purchase, delivery or use of the goods and/or services sold hereunder shall be paid by Buyer, in addition to the purchase price, unless otherwise agreed. Certain goods are subject to international export control regulations. Buyer shall be responsible for compliance with all regulations related to the export of goods to end-users including, but not limited to, adherence to the US Export Administration Regulations. Buyer agrees to provide Seller with any end user information requested by Seller necessary to support compliance with all regulations related to the export of goods.

5. **LIMITATION OF WARRANTY AND LIABILITY.** Seller warrants the goods, excluding software, sold hereunder, under normal use and service as described in the operator's manual, to be free from defects in workmanship and material for **12 months**, or if less, the length of time specified in the operator's manual, from the date of shipment to the customer. This warranty period is inclusive of any statutory warranty. **This limited warranty is subject to the following exclusions and exceptions:**

a. Hot-wire or hot-film sensors used with research anemometers, and certain other components when indicated in specifications, are warranted for 90 days from the date of shipment; b. Pumps are warranted for hours of operation as set forth in product or operator's manuals; c. Parts repaired or replaced as a result of repair services are warranted to be free from defects in workmanship and material, under normal use, for 90 days from the date of shipment; d. Seller does not provide any warranty on finished goods manufactured by others or on any fuses, batteries or other consumable materials. Only the original manufacturer's warranty applies; e. This warranty does not cover calibration requirements, and seller warrants only that the instrument or product is properly calibrated at the time of its manufacture. Instruments returned for calibration are not covered by this warranty; f.

This warranty is **VOID** if the instrument is opened by anyone other than a factory authorized service center with the one exception where requirements set forth in the manual allow an operator to replace consumables or perform recommended cleaning; g. This warranty is **VOID** if the product has been misused, neglected, subjected to accidental or intentional damage, or is not properly installed, maintained, or cleaned according to the requirements of the manual. Unless specifically authorized in a separate writing by Seller, Seller makes no warranty with respect to, and shall have no liability in connection with, goods which are incorporated into other products or equipment, or which are modified by any person other than Seller.

The foregoing is **IN LIEU OF** all other warranties and is subject to the **LIMITATIONS** stated herein. **NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. WITH RESPECT TO SELLER'S BREACH OF THE IMPLIED WARRANTY AGAINST INFRINGEMENT, SAID WARRANTY IS LIMITED TO CLAIMS OF DIRECT INFRINGEMENT AND EXCLUDES CLAIMS OF CONTRIBUTORY OR INDUCED INFRINGEMENTS. BUYER'S EXCLUSIVE REMEDY SHALL BE THE RETURN OF THE PURCHASE PRICE DISCOUNTED FOR REASONABLE WEAR AND TEAR OR AT SELLER'S OPTION REPLACEMENT OF THE GOODS WITH NON-INFRINGEMENTS.**

TO THE EXTENT PERMITTED BY LAW, THE EXCLUSIVE REMEDY OF THE USER OR BUYER, AND THE LIMIT OF SELLER'S LIABILITY FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES CONCERNING THE GOODS (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) SHALL BE THE RETURN OF GOODS TO SELLER AND THE REFUND OF THE PURCHASE PRICE, OR, AT THE OPTION OF SELLER, THE REPAIR OR REPLACEMENT OF THE GOODS. IN THE CASE OF SOFTWARE, SELLER WILL REPAIR OR REPLACE DEFECTIVE SOFTWARE OR IF UNABLE TO DO SO, WILL REFUND THE PURCHASE PRICE OF THE SOFTWARE. **IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS, BUSINESS INTERRUPTION, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES.** SELLER SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING OR REINSTALLATION COSTS OR CHARGES. No Action, regardless of form, may be brought against Seller more than 12 months after a cause of action has accrued. The goods returned under warranty to Seller's factory shall be at Buyer's risk of loss, and will be returned, if at all, at Seller's risk of loss.

Buyer and all users are deemed to have accepted this LIMITATION OF WARRANTY AND LIABILITY, which contains the complete and exclusive limited warranty of Seller. This LIMITATION OF WARRANTY AND LIABILITY may not be amended, modified or its terms waived, except by writing signed by an Officer of Seller.

**6. INSPECTION: ACCEPTANCE.** Buyer shall inspect goods delivered or repairs performed within 15 business days from the date of receipt of the goods or completion of the repairs. Within that time Buyer shall send Seller a written notice specifying any respects in which the goods or repairs are nonconforming. Failure to send a written notice shall constitute a waiver of Buyer's claims for any nonconformity that an inspection, whether or not in fact carried out, should have discovered. Buyer is deemed to have accepted delivered goods on terms set forth herein, unless within 15 business days of receipt of the goods Buyer sends a written notice of rejection that provides detailed grounds for rejection. No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by the Seller. Seller may impose reasonable cancellation charges. Goods may not be returned for credit unless pre-approved in writing by Seller. A restocking charge will be applied.

**7. CAUSES BEYOND SELLER'S CONTROL.** Seller shall not be liable for any damage, loss or expense suffered by Buyer as a result of any delay or nonperformance, when the delay or nonperformance is, directly or indirectly, caused by or arises from war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of

civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the Seller.

8. **BUYER'S SPECIFICATIONS AND USE OF GOODS.** If the goods sold are manufactured to Buyer's specifications, or if the goods are used in conjunction with products not supplied by Seller, then Buyer shall indemnify and hold Seller harmless from and against any suits, claims, losses, expenses, and other liabilities including costs and attorneys' fees, whether for loss, personal injury, infringement or otherwise, which result from Buyer's specifications or use of product not furnished by Seller. Product or equipment furnished to Seller by Buyer shall be at Buyer's sole risk and expense. Unless agreed in writing by Seller, any tools, dies, or materials used in producing goods to Buyer's specifications shall remain Seller's property.

9. **EXPRESS INDEMNIFICATION Both Parties have agreed to remain silent.**

10. **DESIGN OR MANUFACTURE CHANGES.** Seller in its sole discretion may change the design or manufacture of any of its goods without incurring any obligation to incorporate such changes into goods manufactured for or delivered to Buyer prior to such changes.

11. **SOFTWARE.** If the goods sold incorporate software or firmware containing software, Buyer is granted only a nonexclusive and nontransferable license to use one copy of the software originally installed in or supplied with the goods. Buyer acknowledges and agrees that the software is proprietary and constitutes a trade secret, copyright or patent of the Seller. The Buyer shall acquire no title or rights of ownership in the software nor have the right to copy (except for backup), modify, reverse engineer or compile, license others, transfer or disclose to any third party, all or part of the software. Software is provided and sold "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING, BUT NOT LIMITED TO WARRANTIES OF INSTALLATION, USE OR PERFORMANCE, AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Notwithstanding the foregoing, Seller will replace any defective disc within 90 days from the date of original shipment.

12. **SOLE AND EXCLUSIVE TERMS OF SALE.** Except as otherwise agreed to in writing by Seller as to each paragraph herein, Buyer agrees that this document contains the sole and exclusive terms and conditions which shall apply to the sale of the goods and/or services sold hereunder. Any additional or different terms in documents provided by Buyer in any transaction paperwork or otherwise shall not apply and are hereby expressly objected to by Seller.

13. **ARBITRATION Both parties have agreed to remain silent.**

14. **GOVERNING LAW Both parties have agreed to remain silent.**

15. **MISCELLANEOUS.** This document is not an acceptance of any offer. All orders are subject to acceptance by Seller. Any action arising hereunder, or concerning the transactions evidenced hereby, in contract, in tort, or otherwise, other than an action for failure to pay, must be commenced within 12 months of the date the cause of action accrues. Seller may correct any errors in the typed portion of this document at any time.

**TSI Incorporated**

By: 

Name: Stamatios Pothos

Title: American Sales Director

Date: December 16, 2021

**Kern County Hospital Authority**


By: \_\_\_\_\_

Name: Russell Bigler

Title: Chairman, Board of Governors

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

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department



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

January 19, 2022

**Subject:** Proposed Software Subscription Agreement with Rarestep, Inc. doing business as Fleetio

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

**Summary:**

Kern Medical requests your Board approve the proposed Software Subscription Agreement with Rarestep, Inc. dba Fleetio ("Fleetio") for an electronic fleet management tracking system of company-owned vehicles, which includes the tracking of gas, mileage, maintenance, damages, and vehicle value.

The Agreement is for a 12-month term, effective January 31, 2022 through January 30, 2023 with a maximum payable of \$4,632. The term will automatically renew for an additional 12-month period unless terminated with 90 days prior notice.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) limitations of liability, with Fleetio excluding third party claims and limiting liability to gross negligence or fraud; and (2) no indemnification provision. Efforts were made to negotiate these nonstandard terms to no avail, however, Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Software Subscription Agreement with Rarestep, Inc. doing business as Fleetio for a 12-month term, effective January 31, 2022 through January 30, 2023 with a maximum payable of \$4,632, and authorize the Chairman to sign.



Reference: 0065G00000Zq2RsQAJ  
Effective Date: January 6, 2022  
Sign By Date: January 17, 2022  
Account Executive: Michael Hunter

Rarestep, Inc dba Fleetio  
1900 2nd Avenue North, Suite 300  
Birmingham, AL 35203

## Software Subscription Agreement

### Customer

**Fleetio Account ID:**

**Name:** Kern Medical Hospital Authority

**Billing Address:**

Street:

City:

State / Province:

Country:

Zip / Postal Code:

**Billing Email:**

### Contract

**Subscription Start Date:**  
January 31, 2022

**Initial Term:**  
12 Months

**Renewal Term:**  
12 Months

**Cancellation Notice Period:** 90 Days

### Subscriptions

Product	List Price	Minimum Quantity	Discounts	Per Payment Amount	Payment Frequency
Onboarding Services: <50 Vehicles	\$199.00	1	50.00%	\$99.50	One Time

GSA - Advanced Plan Annual Subscription	\$75.60	16	\$1,209.60	Annual
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Signed: *Michael Hunter*, Fleetio  
confirming your GSA Terms.

#### Payment Collection Method

**Onboarding Services: <50 Vehicles:** Automatic

**GSA - Advanced Plan Annual Subscription:** Automatic

*Credit card or bank account (ACH) must be added to automatically process payments. Instructions will be sent upon agreement completion. Payment is due in full within 15 days of receipt for all invoices.*

#### Fees

Upon execution of this Software Subscription Agreement and for each Renewal Term, Customer shall pay the fees as described above. All monetary amounts are in United States dollars unless otherwise expressly stated.

#### Term

The Term of this Software Subscription Agreement shall commence on the Subscription Start Date, continue throughout the Initial Term, and automatically renew for subsequent Renewal Terms unless either party notifies the other party of non-renewal within the Cancellation Notice Period that ends at the start of the next Renewal Term.

All onboarding services must be used within the 90-day period following the 1) Subscription Start Date or 2) Effective Date of this Software Subscription Agreement, whichever is later. Customer and Fleetio agree to begin onboarding services within 30 days of the 1) Subscription Start Date or 2) Effective Date, whichever is later.

#### Agreement

The parties agree to be legally bound by the GSA Terms of Service found at <https://www.fleetio.com/terms/gsa> ("GSA Terms") and this Software Subscription Agreement, including any attached schedules. In the case of any conflict among the preceding documents, the GSA Terms shall govern. The GSA Terms and this Software Subscription Agreement constitute the entire agreement between the parties for the services above and cannot be modified (including by any purchase order not explicitly referenced and incorporated herein) without the prior written consent of both parties.

#### Agreed & Accepted By:

Kern County Hospital Authority

Signed Date:

#### Tax Exemption Information

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department



**Select If Tax Exempt Customer:****Upload Tax Exempt Certificate Here:**

You must provide us with valid documentation, which we shall keep on file, before we can remove taxes from your invoice. Fleetio partners with Avalara to validate sales tax exemption certificates. It will take Avalara 3-7 business days to validate a certificate. Once Fleetio has valid proof of exemption as permitted by applicable law, you will receive a confirmation email and will not be charged sales tax for as long as your certificate is valid. If there are any issues with the certificate, or if more information is needed, you will receive an email with detailed instructions on next steps. Please wait until the validation process is complete to enter your payment information to avoid being charged sales tax.

If no tax exemption certificate is presented, your order will be taxed using the applicable tax rate for your address. Your invoice will reflect the total taxes in effect at the time of invoicing and may differ from any estimated taxes listed in this contract or other communication.

Fleetio is required to charge sales tax on your order pursuant to certain state and local tax laws where it is registered to collect tax. Any applicable tax charges will appear separately on your invoice.

For customers located in other U.S. states or countries outside of the U.S., your government may require you to report your purchase and pay appropriate VAT, GST, sales, and/or use tax amounts directly to them.



# GSA Terms of Service

Last updated on December 9, 2019

**THESE TERMS OF SERVICE ARE THE LEGALLY BINDING CONTRACT BETWEEN YOU AND RARESTEP, INC., AND GOVERN YOUR ACCESS TO ANY SERVICES WE PROVIDE TO YOU. PLEASE READ THESE TERMS CAREFULLY BEFORE SIGNING UP FOR OR USING THE SERVICES.**

The GSA Multiple Award Schedule Contractor acting on behalf of Rarestep, Inc. ("we", "us", or "our") provide services ("Service") to the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("you" or "your" or "Ordering Activity") through our websites and through our mobile apps. By both parties executing this Agreement in writing, you are agreeing to be bound by these terms and conditions ("Terms of Service"). We reserve the right to update and change the non-material Terms of Service from time to time and will provide notice to you by changing the "last updated" date above. All changes are prospective only. It is your obligation to be familiar with the most current version of the Terms of Service. Continued use of the Service after any such changes to non-material terms shall constitute your acknowledgment of and consent to such changes. You can review the most current version of the Terms of Service at any time at <https://www.fleetio.com/terms> (<https://www.fleetio.com/terms>). Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms. Any new features, including the release of new tools and resources, shall be subject to the then-most current Terms of Service.

You represent and warrant that you have the full right and power to enter into and fully perform this agreement in accordance with these Terms of Service. If you are using the Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms of Service and, in such event, "You" will refer and apply to that company or other legal entity.

## ACCOUNT TERMS

1. You must be 13 years or older to use this Service.
2. If you are between the ages of 13 and 18 then you must have a parent assist in registering for an account for the Service.
3. You must be a human. Accounts registered by "bots" or other automated methods are not permitted.
4. You must provide your full legal name, the legal name of your business (where applicable), a valid e-mail address, and any other information requested in order to complete the sign-up process. This information will be kept secure. You reserve the right to store and/or remove any personally identifiable information from your account.

5. You are responsible for maintaining the security of your password. We cannot and will not be liable for any loss or damage from your failure to comply with this security obligation. You will be solely responsible and liable for any activity that occurs within your account. In the event of any dispute between two or more parties about account ownership, you agree that we will be the sole arbiter of such dispute in our sole discretion and that our decision is final and binding.
6. You can create multiple logins for a single account. However, your login may only be used by one person. A single login shared by multiple people is not permitted.
7. You must not use the Service for any abusive or illegal purposes. You must not violate any laws, rules or regulations in your jurisdiction (including but not limited to copyright laws). You expressly agree and acknowledge that you will not submit information that would be a violation of your (or your employer's, as the case may be) policies, including without limitation, any data protection, privacy or security policies or any data privacy laws, rules or regulations.
8. You may not attempt to modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software used or provided by us in connection with the Service.
9. The Service is always evolving and the form and features and modules of the Service may be appended, modified, or replaced. However, in no case, will such changes materially reduce the level of functionality available to Ordering Activity.
10. We reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms of Service, including investigation of potential violations, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect our rights, property or safety as well as those of our users, customers, and the public.
11. You may not do any of the following while accessing or using the Service: (i) access, tamper with, or use non-public areas of the Service, our computer systems, or the technical delivery systems of our providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security measures; (iii) access or search or attempt to access or search the Service by any means (automated or otherwise) other than through our currently available, published interfaces; (iv) in any way use the Service to send altered, deceptive or false information; or (v) otherwise interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Service, or by scripting the creation of content in such a manner as to interfere with or create an undue burden on the Service.

## **TERM, BILLING AND PAYMENT**

1. We may grant you a limited trial period during which you will receive the Service free of charge. Thereafter, you will be charged a recurring service fee for the applicable Service Period.
2. Your account may be renewed at the end of each Service Period by both parties executing a new Purchase Order in writing, provided that both parties shall agree to operate under optional 30-day Extension Periods of this Agreement, if necessary, to provide time for both parties to negotiate a new Purchase Order to cover the optional Extension Period(s) and a future Service Period. If the parties to this Agreement are unable to agree to a new Purchase Order, then this Agreement shall terminate as provided herein.

3. You will be billed a fee for your applicable Service Period. If you have any questions about charges made to your account, please contact us immediately. If the charges were made in error, we will credit your account for the appropriate amount.
4. Reserved.
5. You must provide us with accurate billing information and keep this information up to date.
6. By subscribing to the Service you give us the right to bill You for fees connected with the Service such as renewal fees or fees for extra services.
7. Reserved.
8. We shall state separately on invoices taxes excluded from the fees, and the You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

## CANCELLATION AND TERMINATION

1. You are solely responsible for properly canceling your account. You can cancel your account at any time through the Account Settings screen.
2. All of your information will be immediately deleted from the Service (including our secure servers used to store your information) upon cancellation. If you want to preserve your information, you must export your information before canceling your account. Your information cannot be recovered once your account is canceled.
3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, We shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
4. All provisions of these Terms of Service relating to disclaimers of warranties, limitation of liability and remedies and damages shall survive termination.

## PRIVACY

See our attached Privacy Policy for information about our collection and use of your personally identifiable information (including Cookies). This Privacy Policy is expressly incorporated into these Terms of Service. For non-U.S. users, European Union General Data Protection Regulation (GDPR) compliance and Privacy Shield certification information can also be found in our Privacy Policy located at <https://www.fleetio.com/privacy> (<https://www.fleetio.com/privacy>).

## LIMITED WARRANTIES / REPRESENTATIONS

We warrant that the Service will, for a period of sixty (60) calendar days from the date of your receipt, perform substantially in accordance with Service written materials accompanying it. Your sole and exclusive remedy, and our sole and exclusive liability for any breach of this warranty will be, at our sole discretion, to either fix the Service to remedy the defect or refund the applicable Service license fees paid by you for the Service, in each case on condition that you promptly notify us in writing of any alleged breach of this warranty within such sixty (60) calendar day period. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, You understand and agree that the Service is provided "AS IS" and "AS AVAILABLE" and we expressly disclaim warranties of any kind, express or implied, including without limitation any warranty of

accuracy, merchantability, fitness for a particular purpose, or non-infringement. We make no warranty or representation and disclaim all liability regarding the results that may be obtained from the use of the Service, the correctness or completeness of the data, the security, reliability or availability of the Service, or that the Service will meet any user's requirements. Use of the Service is at your sole risk. Even though we use secure third party vendors and hosting partners (as detailed in our Privacy Policy located at <https://www.fleetio.com/privacy> (<https://www.fleetio.com/privacy>)) to provide the necessary hardware, software, networking, storage, and related technology required to run the Service, you understand and agree that you will be solely responsible for any damage to you (including loss of data) resulting from the use of the Service. The entire risk arising out of use, security, or performance of the Service remains with you. Without limiting the foregoing, the Service is not designed or licensed for use in hazardous environments requiring fail-safe controls.

The above disclaimer applies to any damages, liability or injuries caused by any failure of the performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use the Service, whether for breach of contract, tort, negligence or any other cause of action.

## LIMITATIONS OF LIABILITY

IN NO EVENT WILL WE OR OUR SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS BE LIABLE FOR LOST PROFITS OR ANY OTHER DAMAGES, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM THIS CONTRACT OR ARISING FROM OR CONNECTED IN ANY WAY WITH YOUR USE OF OR INABILITY TO USE THE SERVICE, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE EXCLUSION OF DAMAGES UNDER THIS SECTION IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

IF YOU ARE DISSATISFIED WITH THE SERVICE, YOU DO NOT AGREE WITH ANY PART OF THIS CONTRACT, OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US WITH RESPECT TO THIS CONTRACT OR THE SERVICE, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S GROSS NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

In the event that, notwithstanding the foregoing disclaimers and indemnification, we are found responsible to you for any reason whatsoever, our maximum liability to you, shall be limited to an amount actually paid by you for the Service under the applicable Purchase Order(s) covering the applicable Service Period at the time of such claim, and shall not include punitive damages or consequential or resulting damages of any nature.

## INTELLECTUAL PROPERTY

All information that you post to the Service must comply with applicable copyright laws. We claim no intellectual property rights over the material you provide to the Service when such material is tagged with personally identifiable information. We may share aggregated information that does not include personally identifiable information and we may otherwise disclose non-identifying information with third parties for industry analysis, demographic profiling, and other purposes. Any aggregated information shared in these contexts will not contain your personally identifiable information.

We give you a personal, worldwide, royalty-free, non-assignable, non-transferable, revocable, limited and non-exclusive license to use the Service. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Service as provided by us, in the manner permitted by these Terms of Service.

You shall not copy, sell, transfer, distribute, publish, or assign your license to our Service in any format to any third party. In addition, you may not use the Service in any way that violates applicable federal, state, or international law, or for any unlawful purpose.

All right, title, and interest in and to the Service are and will remain the exclusive property of us (and our licensors, if applicable). The Service is protected by copyright, trademark, and other laws of both the United States of America and foreign countries.

All of the content generated by us for the Service and the software used for the Service is the property of us, our affiliates, or our suppliers, and is protected by United States of America and international copyright laws.

Nothing should be construed as granting, by implication, estoppels, or otherwise, any license or right to use any of the copyrighted works displayed or contained in the Service without our express, written consent. Nothing in these Terms of Service gives you a right to use any of our, our affiliates', or our suppliers' trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

Any feedback, comments, or suggestions you may provide regarding the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you. We acknowledge that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

## **CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES**

These Terms of Service shall be governed and construed in accordance with the Federal laws of the United States and without reference to the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

## **NON-U.S. USERS**

If you are located outside the United States of America then by using the Service, you understand and consent to the processing of personally identifiable information on secure servers within the United States of America. For non-U.S. users, European Union General Data Protection Regulation (GDPR) compliance and Privacy Shield certification information can also be found in our Privacy Policy (<https://www.fleetio.com/privacy>).

## **NOTICES**

Any notices or other communications permitted or required of us under these Terms of Service, including those regarding modifications to these Terms of Service, will be in writing and given to you: i) by us via e-mail (to the address that you provide) or ii) by posting to the Service. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

By registering with us, you understand that we may send you communications or data from us regarding the Service, including but not limited to i) notices about your use of the Service, including any notices concerning violations of use, ii) updates, and iii) promotional information and materials regarding our products and services, via email and in-app message. We give you the opportunity to opt-out of receiving messaging from us at any time by following the opt-out instructions provided in the message.

## GENERAL

If any part of these Terms of Service are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of this agreement shall continue in effect. A printed version of these Terms of Service and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. All rights not expressly granted herein are reserved.

No failure to exercise or enforce any right or provision of these Terms of Service shall constitute a waiver of such right or provision.

The section titles in these Terms of Service are for convenience only and have no legal or contractual effect.

You may not assign or transfer these Terms of Service, by operation of law or otherwise, without our prior written consent, which shall not be unreasonably withheld. Any attempt by you to assign or transfer these Terms of Service, without such consent, will be null and of no effect. We are subject to The Anti-Assignment Act, 41 USC 6305, which governs the assignment of Government contracts. Procedures for securing such approval are set forth in FAR 42.1204. Subject to the foregoing, these Terms of Service will bind and inure to the benefit of the parties, their successors and permitted assigns.

Any claim related to this contract or the Service must be brought within six years. The one-year period begins on the date when the claim first could be filed. If it is not, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.

Excusable delays shall be governed by FAR 52.212-4(f).

These Terms of Service, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), are the entire and exclusive understanding and agreement between you and us regarding the Service. These Terms of Service supersede and replace any and all prior oral or written understandings or agreements between you and us regarding the Service.

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect.

A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

## QUESTIONS

If you have any questions about these Terms of Service, please contact us (<https://www.fleetio.com/contact>).

(/)

### Product

[Features \(/features\)](#)

[Pricing \(/pricing\)](#)

[Mobile App \(/go\)](#)

[Integrations \(/solutions/integrations\)](#)

[Developer API \(/api\)](#)

[Help Center \(<https://help.fleetio.com>\)](#)

### Resources

[White Papers \(/resources/white-papers\)](#)

[FAQs \(/faq\)](#)

### Solutions

[Fleet Management \(/solutions/fleet-management-software\)](#)

[Fleet Maintenance \(/solutions/fleet-maintenance-software\)](#)

[Fuel Management \(/solutions/fuel-management-software\)](#)

[Equipment Management \(/equipment-management-software\)](#)

### Company

[Blog \(/blog\)](#)

[About \(/about\)](#)



[Industries \(/industries\)](#)

[Careers We're Hiring! \(/careers\)](#)

[Onboarding Services \(/onboarding-services\)](#)

[Press \(/resources/press\)](#)

[Fleet Spreadsheet \(/tools/fleet-maintenance-spreadsheet\)](#)

[Partners \(https://partners.fleetio.com\)](https://partners.fleetio.com)

[Work Order Template \(/tools/work-order-template\)](#)

[Contact \(/contact\)](#)

[Replacement Calculator \(/tools/vehicle-replacement-calculator\)](#)

[System Status \(https://status.fleetio.com\)](https://status.fleetio.com)

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[\(https://play.google.com/store/apps/details?id=com.flee](https://play.google.com/store/apps/details?id=com.flee)

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[\(https://www.linkedin.com/company/fleetio\)](https://www.linkedin.com/company/fleetio)

[\(https://www.youtube.com/channel/UCxIwLYzQtVa5T65FgYMDDjA\)](https://www.youtube.com/channel/UCxIwLYzQtVa5T65FgYMDDjA) [\(https://www.instagram.com/fleetio/\)](https://www.instagram.com/fleetio/)



**GENERAL SERVICES ADMINISTRATION  
FEDERAL SUPPLY SERVICE  
AUTHORIZED FEDERAL SUPPLY SCHEDULE CATALOG/PRICE LIST**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order is available through **GSA Advantage!**, a menu-driven database system. The INTERNET address for **GSA Advantage!** is <http://www.gsaadvantage.gov>

**SCHEDULE TITLE:** Multiple Award Schedule  
**LARGE CATEGORY:** Information Technology  
**SUBCATEGORY:** Electronic Commerce  
**PRODUCT SERVICE CODE (PSC):** D304

**Supplement No. (sequentially numbered):**  
- Mass Mod A812, February 5, 2020

**CONTRACT NUMBER: GS-35F- 47QTCA20D0044**

**CONTRACT PERIOD:** January 6, 2020 – January 5, 2025

For more information on ordering from Federal Supply go to this website: [www.gsa.gov/schedules](http://www.gsa.gov/schedules)

**CONTRACTOR:** Rarestep (DBA Fleetio)  
1900 2nd Avenue North, Suite 300  
Birmingham, AL 35203  
Phone number: 1-800-975-5304  
Fax number: 205-708-2126  
E-Mail: [sales@fleetio.com](mailto:sales@fleetio.com)  
Website: [fleetio.com](http://fleetio.com)

**CONTRACTOR'S ADMINISTRATION SOURCE:** Will Yarbrough, Sales Director  
1900 2nd Avenue North, Suite 300  
Birmingham, AL 35203  
Phone number: 1-800-975-5304

Fax number:

E-Mail: [wyarbrough@fleetio.com](mailto:wyarbrough@fleetio.com)

**BUSINESS SIZE:** Rarestep (DBA Fleetio) is registered as a Small Business.

**CUSTOMER INFORMATION:**

**1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs)**

<b>SIN</b>	<b>Description</b>	<b>Awarded Prices</b>
54151ECOM	Fleet maintenance software subscription - Pro Plan Unlimited user access	<b>Pro Plan</b> - \$4.50 per asset per month paid annually, \$5.40 per asset per month paid monthly
54151ECOM	Fleet maintenance software subscription - Advanced Plan Unlimited user access	<b>Advanced Plan</b> - \$6.30 per asset per month paid annually, \$7.20 per asset per month paid monthly
54151ECOM	Software Implementation Services - Standard	<b>Standard Implementation</b> for up to 500 assets - \$5,239
54151ECOM	Software Implementation Services - Premium	<b>Premium Implementation</b> for over 500 assets - \$15,112.50
54151ECOM	Equipment management add-on subscription - Basic Plan (for up to 500 pieces of equipment)	<b>Up to 500 pieces</b> - \$0.48 per equipment asset per month paid annually, \$0.57 per equipment asset per month paid monthly
54151ECOM	Equipment management add-on subscription - Basic Plan (for over 500 pieces of equipment)	<b>Over 500 pieces</b> - \$0.43 per equipment asset per month paid annually, \$0.49 per equipment asset per month paid monthly

**1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN:**

(Government net price based on a unit of one)

Not applicable

**1c. HOURLY RATES (Services only):**

**Customer Success Manager**

- **Minimum/General Experience:** 3+ years experience in software consulting, training or support
- **Functional Responsibility:** Engages with customers to help them achieve their goals with the platform. Leads all implementation services from initial kickoff to more complex services like data configuration. Establishes a strong rapport with
- **Minimum Education/Certification Level:** Bachelor's degree in business or related degree or four year college equivalent  
key stakeholders, leverages their deep knowledge of the fleet industry and outlines precise solutions to complex problems. Works with users at every level of the organization.
- **Rate with IFF:** \$100.75/hour
- **Rate without IFF:** \$100/hour

**2. MAXIMUM ORDER\*:**

The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:  
54151ECOM

NOTE TO ORDERING ACTIVITIES: \*If the best value selection places your order over the Maximum Order identified in this catalog/pricelist, you have an opportunity to obtain a better schedule contract price. Before placing your order, contact the aforementioned contractor for a better price. The contractor may (1) offer a new price for this requirement (2) offer the lowest price available under this contract or (3) decline the order. A delivery order that exceeds the maximum order may be placed under the schedule contract in accordance with FAR 8.404.

**3. MINIMUM ORDER:**

The Minimum Order value for the following Special Item Numbers (SINs) is \$100:  
54151ECOM

**4. GEOGRAPHIC COVERAGE:** Global

**5. POINT(S) OF PRODUCTION:** All software is built within the United States

**6. DISCOUNT FROM LIST PRICES:**

<b>SIN</b>	<b>Description</b>	<b>Discount from List Price</b>
54151ECOM	Fleet maintenance software subscription - Pro Plan Unlimited user access	10%
54151ECOM	Fleet maintenance software subscription - Advanced Plan Unlimited user access	10%
54151ECOM	Software Implementation Services - Standard	20%
54151ECOM	Software Implementation Services - Premium	20%
54151ECOM	Equipment management add-on subscription - Basic Plan (for up to 500 pieces of equipment)	5%
54151ECOM	Equipment management add-on subscription - Basic Plan (for over 500 pieces of equipment)	16%

**7. QUANTITY DISCOUNT(S):**

<b>SIN</b>	<b>Description</b>	<b>Quantity Discount</b>
54151ECOM	Fleet maintenance software subscription - Pro Plan Unlimited user access	5% off for every 1,000 assets, capped at 50%
54151ECOM	Fleet maintenance software subscription - Advanced Plan Unlimited user access	5% off for every 1,000 assets, capped at 50%
54151ECOM	Software Implementation Services - Standard	5% for fleets with more than 1,000 assets
54151ECOM	Software Implementation Services - Premium	5% for fleets with more than 1,000 assets
54151ECOM	Equipment management add-	5% off for every 250

	on subscription - Basic Plan (for up to 500 pieces of equipment)	equipment assets, capped at 40%
54151ECOM	Equipment management add-on subscription - Basic Plan (for over 500 pieces of equipment)	5% off for every 250 equipment assets, capped at 40%

**8. PROMPT PAYMENT TERMS:** Net 30 days

**9.a Government Purchase Cards must be accepted at or below the micro-purchase threshold.**

**9.b Government Purchase Cards are accepted above the micro-purchase threshold. Contact contractor for limit.**

**10. FOREIGN ITEMS:** None

**11a. TIME OF DELIVERY:** 30 days

**11b. EXPEDITED DELIVERY:** 10 days

**11c. OVERNIGHT AND 2-DAY DELIVERY:** Not applicable

**11d. URGENT REQUIREMENTS:** Agencies can contact the Contractor's representative to affect a faster delivery. Customers are encouraged to contact the contractor for the purpose of requesting accelerated delivery.

**12. FOB POINT:** Destination

**13a. ORDERING ADDRESS:**

Rarestep (DBA Fleetio)  
1900 2nd Avenue North, Suite 300  
Birmingham, AL 35203

**13b. ORDERING PROCEDURES:** Ordering activities shall use the ordering procedures described in Federal Acquisition Regulation 8.405-3 when placing an order or establishing a

BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreements (BPA's) and a sample BPA can be found at the GSA/FSS Schedule Homepage ([fss.gsa.gov/schedules](https://fss.gsa.gov/schedules)).

**14. PAYMENT ADDRESS:** Same as contractor

**15. WARRANTY PROVISION:** None. See more on warranty at [fleetio.com/terms](https://fleetio.com/terms).

**16. EXPORT PACKING CHARGES:** Not applicable

**17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE:** Not applicable

**18. TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR (IF APPLICABLE):**  
Not applicable

**19. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE):** Not applicable

**20. TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES (IF AVAILABLE):**  
Not applicable

**20a. TERMS AND CONDITIONS FOR ANY OTHER SERVICES (IF APPLICABLE):** Not applicable

**21. LIST OF SERVICE AND DISTRIBUTION POINTS (IF APPLICABLE):** Not applicable

**22. LIST OF PARTICIPATING DEALERS (IF APPLICABLE):** Not applicable

**23. PREVENTIVE MAINTENANCE (IF APPLICABLE):** Not applicable

**24a. SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES (e.g. recycled content, energy efficiency, and/or reduced pollutants):** Not applicable

**24b. Section 508 Compliance for Electronic and Information Technology (EIT):**  
Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services. Full details can be found at [fleetio.com](https://fleetio.com). The EIT standards can be found at: [www.Section508.gov](https://www.Section508.gov).

25. DUNS NUMBER: 07-864-4894

26. NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD  
MANAGEMENT (SAM) DATABASE: Contractor has an Active Registration in the SAM  
database.





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

January 19, 2022

**Subject:** Proposed Amendment No. 6 to Agreement 1048-2010 for Professional Services with Total Renal Care, Inc., a subsidiary of DaVita, Inc.

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

**Summary:**

Kern Medical requests that your Board approve Amendment No. 6, effective January 29, 2022, to the Agreement with Total Renal Care, Inc., which provides acute dialysis services to Kern Medical patients. The Amendment extends the term twenty-three months from January 30, 2022 through November 30, 2023, and increases the maximum payable by \$3,061,000, from \$4,525,000 to \$7,586,000, to cover the term. This is a critical service that Kern Medical is unable to provide in-house.

Therefore, it is recommended that your Board approve Amendment No. 6 to the Agreement with Total Renal Care, Inc., for the period December 1, 2010 to January 29, 2022, extending the term for twenty-three months from January 30, 2022 through November 30, 2023, and increasing the total maximum payable by \$3,061,000, from \$4,525,000 to \$7,586,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 6 TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR**

THIS AMENDMENT NO. 6 TO THE AGREEMENT FOR PROFESSIONAL SERVICES INDEPENDENT CONTRACTOR ("**Amendment No. 6**") is entered into and effective as of January 29, 2022 ("**Amendment No. 6 Effective Date**"), by and between **Total Renal Care, Inc.**, ("**Contractor**"), a subsidiary of DaVita Inc., "**DaVita**"), and the **Kern County Hospital Authority ("KCHA")**, a local unit of government, which owns and operates Kern Medical Center ("**KMC**").

**WITNESSETH:**

**WHEREAS**, on November 30, 2010, the parties hereto entered into that certain Agreement for Professional Services ("**Agreement**"), Kern County Agreement #1048-2010, pursuant to which KMC agreed to engage the services of Contractor to provide acute dialysis services at KMC; and

**WHEREAS**, on March 25, 2014, the parties hereto executed that certain Amendment No. 1 to the Agreement, KCHA# 157-2014 ("**Amendment No. 1**"), to revise several sections, including the renewal of the Agreement by for a period of three (3) years from December 1, 2013 through November 30, 2016, and replacing several sections with updated language; and

**WHEREAS**, on July 1, 2016, the Assignment of Agreement became effective transferring the Agreement and First Amendment from the County of Kern to KCHA; and

**WHEREAS**, on August 23, 2016, the parties hereto executed Amendment No. 2 to the Agreement, KCHA# 14616PA ("**Amendment No. 2**"), to revise the Fee Schedule and update the Maximum Payable; and

**WHEREAS**, on December 1, 2016, the parties hereto executed Amendment No. 3 to the Agreement, KCHA# 2016-084 ("**Amendment No. 3**"), to extend the term, revise the Fee Schedule, add certain other terms and update the Maximum Payable; and

**WHEREAS**, on June 20, 2018, the parties hereto executed Amendment No. 4 to the Agreement, KCHA# 039-2018 ("**Amendment No. 4**"), to extend the term, revise the Fee Schedule, add certain other terms and update the Maximum Payable; and

**WHEREAS**, on November 30, 2021, the parties hereto executed Amendment No. 5 to the Agreement, KCHA# 55721 ("Amendment No. 5"), to extend the term; and

**WHEREAS**, in accordance with Section 24 of the Agreement, the parties wish to further amend the Agreement to extend the term of the Agreement, and to make other necessary modifications to the Agreement as set forth herein.

**NOW, THEREFORE**, for and in consideration of the premises contained in this Amendment No. 6, the parties do hereby agree as follows:

1. As of the Amendment No. 6 Effective Date, Section 1.2, This Agreement., of the Agreement is hereby deleted in its entirety and replaced with the following:

“1.2 This Agreement. Performance by Contractor and KCHA shall commence on December 1, 2010 (the “Effective Date”), and shall end November 30, 2023(the “Term”), unless earlier terminated pursuant to other provisions of this Agreement.”

2. As of the Amendment No. 6 Effective Date, Section 2.16, Contractor Education Program, shall be deleted in its entirety and replaced with the following:

"2.16 Patient and Family Education Program. In conjunction with the terms of this Agreement, and upon request from KCHA, Contractor will provide education to patients and family members. Such education may include dialysis related education and/or chronic kidney disease education, as well as catheter and fistulas, vascular access, modalities and dialysis care generally. Contractor, including those providing services on behalf of the Contractor, may collect, analyze and use data from patients, providers, KCHA and other sources regarding the provision of and effectiveness of such education, as well as utilization of such information for operational purposes of the Contractor.”

3. As of the Amendment No. 6 Effective Date, Section 3.2 Maximum Payable, of the Agreement is hereby deleted in its entirety and replaced with the following:

“3.2 Maximum Payable. The maximum payable under this Agreement will not exceed \$275,000 per year or \$825,000 for the three year period of December 1, 2010 to November 30, 2013; will not exceed \$300,000 per year or \$900,000 for the three year period of December 1, 2013 to November 30, 2016; will not exceed \$400,000 per year for the one year period of December 1, 2016 to November 30, 2017; will not exceed \$754,000 per year or \$3,061,000 for the four year period of December 1, 2017 to November 30, 2021; and will not exceed \$1,200,000 per year for each year of the two year period of December 1, 2021 to November 30, 2023. The total maximum payable for the thirteen year term of this Agreement will not exceed \$7,586,000.

4. As of the Amendment No. 6 Effective Date, Section 3.5 Invoices shall be deleted in its entirety and replaced with the following:

“3.5 Invoices. Invoices for payment shall be submitted in a form approved by KCHA and list each Service performed by Contractor. Payment shall be made to Contractor within thirty (30) days of receipt and approval of each invoice by KMC. In the event KMC disputes a Service billed by Contractor, KMC will notify Contractor of such dispute on or before the thirtieth (30th) day of the month following the month in which such Service was provided. The notice shall be in writing and shall identify the Service and the reason for the dispute. KMC shall have no obligation to pay Contractor for such disputed Service until the thirtieth (30th) day of the month

following the month in which the dispute is resolved, at which time Contractor shall accept such payment as its sole and entire compensation for such Services. Upon reasonable demonstration by Contractor of any such untimely and/or undocumented adjustments, offsets, retractions, recoupments or other improper claims asserted by KMC against Contractor's fees for Services as set forth in Exhibit G-5, KMC shall immediately make the appropriate payment to Contractor. Any undisputed amounts not paid by KMC or KCHA in accordance with the terms of this Agreement will be subject to late fees at the rate of one and one half percent (1.5 %) per month compounding or, if lower, the maximum rate allowed by law. Contractor will not accept credit card payments from KMC. Any outstanding balance that is not received by Company within sixty (60) days of the month in which the Services were provided may trigger the termination provision set forth in Section 34.1 below. KMC agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Contractor in connection with the collection of fees owed by KMC."

3. Exhibit G-4, Fee Schedule, is hereby deleted in its entirety and replaced with Exhibit G-5, Fee Schedule, which is attached hereto and incorporated into the Agreement by this reference.
4. Except as otherwise amended herein, all other terms and conditions remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No.6 by their duly authorized representatives:

**KCHA:**  
**Kern County Hospital Authority**

By: \_\_\_\_\_

Name: Russell Bigler

Title: Chairman, Board of Governors

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

**CONTRACTOR:**  
**Total Renal Care, Inc.**

By: \_\_\_\_\_  
DocuSigned by:  
tim souza  
B70F4E426C5041E...

Name: Tim Souza

Title: Division Vice President

Date: January 12, 2022

**APPROVED AS TO CONTENT:**  
**Kern Medical Center**

By: \_\_\_\_\_

Name: Dawn C. Leroy, RN

Title: Chief Nursing Officer

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

**APPROVED AS TO FORM ONLY:**  
**DaVita Inc.**

By: \_\_\_\_\_

Name: Thor Paulson

Title: Group General Counsel

**APPROVED AS TO FORM ONLY:**  
**Kern County Hospital Authority, Legal Services Department**

By: \_\_\_\_\_  


Name: Jamie Mason

Title: Hospital Counsel

**EXHIBIT G-5****FEE SCHEDULE**

*NOTE: the fees listed in the schedule set forth below include services provided to admitted and non- admitted persons for whom such persons' treatments are being billed by KMC to any third party payors (or otherwise paid for by KMC).*

**Hemodialysis:**

Hemodialysis: 1: 1 patient to staff ratio, up to 4 hours	\$765.34 per treatment
Hemodialysis: 2:1 patient to staff ratio, up to 4 hours <sup>1</sup>	\$540.25 per treatment
Hemodialysis: additional charge per hour for treatments ordered longer than 4 hours	\$56.28 per hour

**Peritoneal Dialysis (PD: CAPD, CCPD)**

CAPD Visit	\$416.44 per visit
CCPD Visit	\$416.44 per visit

**Continuous Renal Replacement Therapy (CRRT: SCUF, CVVH, CVVHD, CVVHDF)**

CRRT Full Service: Visit	\$732.12 per visit
CRRT Full Service: Cartridge Change	\$285.20 per change
CRRT Full Service: Initial Cartridge	\$285.20 per cartridge
CRRT Full Service: Pre Set Up Cancellation (labor)	\$109.27 per cancellation
CRRT Full Service: Post Set Up Cancellation (labor and supplies, if costs incurred)	\$273.19 per cancellation

**Apheresis**

Therapeutic Plasma Exchange	\$ 1350.61 per treatment
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**Miscellaneous**

Waiting Time (after 15 minute grace period beginning on 16 <sup>th</sup> minute)	\$56.28 per ½ hour
RN Consultation <sup>2</sup>	\$56.28 per ½ hour
Program Maintenance Fee	\$4,502.04 per month

**Fee Schedule Footnoted Descriptions and Definitions:**

- 1. Definition of 2:1:** A ratio of 2 patients to 1 nurse, where the treatment is performed in a designated dialysis suite and the longer of the 2 patient treatments must overlap the other treatment by at least 50%.
  
- 2. Definition of RN Consultation:** Any nursing service outside of the scope of dialysis related services set forth in this Agreement. This includes, but is not limited to, the following: Initiation/Discontinuation of JV infusion via dialysis access (not in conjunction with a dialysis treatment); dressing changes; non-dialysis related medication delivery, etc.

**Certificate Of Completion**

Envelope Id: 5F3F6DB95C384CB5978DFC66A7E06250

Status: Completed

Subject: Please DocuSign: Kern County Amendment No 6 to ISA v4 final execution (clean 011122).docx

Source Envelope:

Document Pages: 6

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 0

Josh Connelly

AutoNav: Enabled

2000 16th Street

Envelopeld Stamping: Enabled

Denver, CO 80202

Time Zone: (UTC-07:00) Mountain Time (US &amp; Canada)

Josh.Connelly@davita.com

IP Address: 69.137.64.78

**Record Tracking**

Status: Original

Holder: Josh Connelly

Location: DocuSign

1/12/2022 1:30:28 PM

Josh.Connelly@davita.com

**Signer Events**

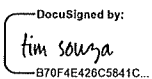
tim souza

Timothy.Souza@davita.com

Divisional Vice President

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



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Signature Adoption: Pre-selected Style  
Using IP Address: 174.208.171.247**Timestamp**

Sent: 1/12/2022 1:36:35 PM

Viewed: 1/12/2022 2:05:15 PM

Signed: 1/12/2022 2:22:34 PM

**Electronic Record and Signature Disclosure:**

Accepted: 1/12/2022 2:05:15 PM

ID: fd462324-07b2-4985-9497-a0caa8e06f58

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tabitha young

tabitha.young@davita.com

Security Level: Email, Account Authentication  
(None)**COPIED**

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**Electronic Record and Signature Disclosure:**

Accepted: 1/7/2022 8:08:03 PM

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**Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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1/12/2022 1:36:35 PM

Certified Delivered

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1/12/2022 2:05:15 PM

Signing Complete

Security Checked

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Completed

Security Checked

1/12/2022 2:22:36 PM





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

January 19, 2022

**Subject:** Proposed retroactive Business Associate Agreement Varian Medical Systems, Inc.

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

**Summary:**

Kern Medical requests that your Board retroactively approve the proposed Business Associate Agreement ("BAA") with Varian Medical Systems, Inc. This BAA runs with the underlying services agreement with Varian Medical Systems, Inc., effective November 5, 2021 to November 4, 2024, for cryoablation and microwave ablation mobile equipment services and consumables supplies. The underlying services agreement was executed prior to the BAA to allow for a Kern Medical patient to undergo an urgent procedure while the terms of the BAA were being negotiated, necessitating the need for retroactive approval of the BAA.

The BAA contains nonstandard terms and cannot be approved as to form by Counsel due to (1) limitation of insurance coverage to cyber insurance only; and (2) limitation on liability, with Varian Medical Systems, Inc. limiting its liability to a total of \$2,000,000 for the term of the BAA. Efforts were made to negotiate these nonstandard terms to no avail. These services provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the BAA, despite the nonstandard terms.

Therefore, it is recommended that your Board retroactively approve the proposed Business Associate Agreement with Varian Medical Systems, Inc. for the term of the underlying services agreement, and authorize the Chairman to sign.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and Varian Medical Systems, Inc. ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of date of the underlying Agreement (the "**Effective Date**").

### RECITALS

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

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

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

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

### AGREEMENT

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

#### ARTICLE I DEFINITIONS

1.1 "**Breach**" shall have the meaning given under 45 C.F.R. § 164.402.

1.2 "**Breach Notification Rule**" shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 "**Designated Record Set**" shall have the meaning given such term under 45 C.F.R. § 164.501.

1.4 "**Disclose**" and "**Disclosure**" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.

1.5 "**Electronic PHI**" or "**e-PHI**" means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.

1.6 "**Protected Health Information**" and "**PHI**" mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or

medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA.

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

## 2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident involving Covered Entity PHI or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA within three (3) days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than ten (10) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity and Business Associate shall upon mutual agreement determine the timing and method of providing notification of such Breach to the affected individual(s) and the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA, provided that Business Associate shall not be obliged to admit negligence on behalf of Covered Entity or Business Associate as part of its mitigation efforts.

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

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

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

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

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

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

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and will continue to represent throughout the term of the Agreement that it shall

comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

#### **3.1 Covered Entity's Obligations.**

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

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

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

3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI and notify Business Associate of any changes or revocation of that permission to the extent that such changes may affect Business Associate's use or disclosure of PHI.

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

3.1.6 Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 (including restrictions on disclosure of Protected Health Information that pertains solely to a health care item or service for which the Individual has paid the Covered Entity in full), to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

### **ARTICLE IV TERM AND TERMINATION**

4.1 Term. Subject to the provisions of Section 4.1, this BAA will become effective on the Effective Date and shall remain in effect for the term of any Underlying Agreement.

#### **4.2 Termination of Underlying Agreement.**

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

Covered Entity may terminate the Underlying Agreement if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined. The parties will meet to discuss the underlying issue of the criminal proceeding to determine if it may proceed with the Underlying Agreement without jeopardizing Covered Entity's ability to participate in any federal or state health care program or violate any federal or state law or regulatory rule or regulation or condition of accreditation or certification that Covered Entity is subject.

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon either Party's knowledge of a material breach or violation of this BAA, the non-breaching Party shall either:

4.3.1 Notify the breaching Party of the breach in writing, and provide an opportunity for the breaching Party to cure the breach or end the violation within thirty (30) calendar days of such notification; provided that if the breaching Party fails to cure the breach or end the violation within such time period to the satisfaction of the non-breaching Party, the non-breaching Party may terminate this BAA and any Underlying Agreement at the end of such time period, upon thirty (30) calendar days written notice to breaching Party; or

4.3.2 Upon thirty (30) calendar day written notice to the breaching Party, immediately terminate this BAA and any Underlying Agreement if the material breach is reasonably incapable of cure.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## **ARTICLE V MISCELLANEOUS**

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

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act. This BAA may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties.

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control.

Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

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

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

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

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

5.8 Indemnification. Business Associate shall defend, at its expense, any third party Claim or state or federal regulation violation brought against Covered Entity as a direct result of a Use or Disclosure of Protected Health Information in violation of this Agreement by Business Associate or the failure to comply with HIPAA or applicable state privacy or security law ("Claim") by Business Associate and its respective officers, directors, managers, members, employees and agents, including SubContractors, in performing services under the Underlying Agreement, and agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents against any fines, settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees, finally awarded against Covered Entity arising out of a Claim and/or violation of regulation, subject to Section 5.8 (b) below.

Covered Entity shall defend, at its expense, any third party Claim brought against Business Associate as a direct result of a violation of this Agreement or an impermissible Use or Disclosure of Protected Health Information by Covered Entity and agrees to indemnify and hold harmless Business Associate and its respective officers, directors, managers, members, employees and agents against settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees, finally awarded against Business Associate arising out of a Claim subject to Section 5.8 (b). below.

- a. Each Party's obligation to indemnify the other is conditioned upon the indemnified Party: (a) notifying the indemnifying Party promptly in writing of the Claim; (b) giving the indemnifying Party sole control of the defense, management, and settlement of the Claim, provided that the indemnified Party may participate in such defense at its own costs with counsel of its choice if it gives the indemnifying Party such control; and (c) upon request, at the indemnifying Party's cost,



reasonably cooperating with the indemnifying Party in such defense.

- b. IN NO EVENT SHALL COVERED ENTITY, OR BUSINESS ASSOCIATE, BUSINESS ASSOCIATE'S SUPPLIERS AND/OR LICENSORS BE LIABLE UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST BUSINESS, LOST PROFITS, LOSS OF USE, LOST, COMPROMISED OR DAMAGED DATA HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Covered Entity and Business Associate, its Suppliers and Licensors' total aggregate liability in damages or otherwise arising under or relating to this Agreement shall be limited in proportion to each party's relative fault for damages and not exceed two million dollars (\$2,000,000). The existence of one or more claims or parties will not enlarge the limit. The limitation in this Section 5.8 (b) (the "BAA Limitation") will not operate to increase any limitation of liability included in other agreement(s) or Quotation(s) between Covered Entity and Business Associate ("Other Limitations"), and likewise Other Limitations will not operate to increase the BAA Limitation. The same or similar claims underlying and/or arising from alleged improper disclosure, mishandling and/or otherwise relating to PHI or other breach of this BAA or other agreements shall be subject to and applied toward the BAA Limitation notwithstanding Other Limitations that may exist in other agreements between the parties.

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

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI received while performing services under the Underlying Agreement or an accounting thereof, unless prohibited by law from doing so. Business Associate shall promptly comply with Covered Entity's reasonable instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine

that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Varian Medical Systems, Inc.  
9825 Spectrum Drive, Building 2  
Austin, Texas 78717  
Attn: Legal Department

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

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

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

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

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

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

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

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

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

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

**COVERED ENTITY:**

The Kern County Hospital Authority

\_\_\_\_\_  
Title: Chairman, Board of Governors  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

Varian Medical Systems, Inc.

  
\_\_\_\_\_  
Title: Director GCO The Americas  
Date: Dec 23, 2021

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
\_\_\_\_\_  
Legal Services Department



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

January 19, 2022

**Subject:** Proposed Retroactive Amendment No. 1 to Universal Service Agreement 01317 with TALX Corporation, a provider of Equifax Workforce Solutions

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

**Summary:**

Kern Medical requests your Board retroactively approve the proposed Amendment No. 1 to Universal Service Agreement 01317 with TALX Corporation, a provider of Equifax Workforce Solutions, which currently provides employee employment verification and unemployment cost management services to Kern County Hospital Authority.

The Agreement expired December 31, 2021. The Amendment extends the term of the Agreement for these services for three years from January 1, 2022 through December 31, 2024, and increases the allowed number of unemployment claims to be managed under the Agreement before additional fees are assessed. The number of claims allowed under our current Agreement (135) is no longer sufficient based on increased COVID-19-related unemployment claims over the past two years. Claims in excess of the “allowed” amount result in additional administrative fees. In 2020, a total of 402 unemployment claims were processed and during 2021, a total of 263 claims were processed.

There will be an additional \$352 added to the base fees; new base fees will be \$5,240 for year one of the extension, with a 3% increase to the base plan fees annually thereafter. Estimated base plan fees for the three-year term is \$16,196. Additional costs may be incurred for unemployment hearing preparation and any excess claims over the allowed number in Agreement.

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to Universal Service Agreement 01317 with TALX Corporation, a provider of Equifax Workforce Solutions, extending the term for three years from January 1, 2022 through December 31, 2024, in an amount not to exceed \$20,000, and authorize the Chairman to sign.

**AMENDMENT No. 1 TO Schedule A - Employment Verifications and  
Amendment No. 1 to Schedule B - Unemployment Cost Management Services**

This Amendment ("**Amendment**") is by and between **TALX Corporation** (a provider of Equifax Workforce Solutions), a Missouri corporation ("**EWS**") and Kern County Hospital Authority ("**Client**"), and is effective as of **January 1, 2022** ("**Effective Date**"). This Amendment is entered into with the express agreement that except as addressed herein, all terms, conditions and stipulations contained in the Universal Service Agreement between EWS and Client, with an Effective Date of January 1, 2017, (the "**Agreement**") shall remain in full force and effect and without any change or modification whatsoever. For the purposes of this Amendment, all capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.

**WHEREAS**, the parties desire to amend the Agreement, as set forth herein and hereby reaffirm and ratify each of the terms and conditions in the Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

**Amendment to Schedule A – Employment Verifications with an Effective Date of January 1, 2017**

**Employment Verifications Service**

**Contract Term.** The contract term shall be extended for three (3) years from January 1, 2022 through December 31, 2025. This Schedule may renew for successive one (1) year terms ("**Successive Terms**") if either party provides the other with written notice of renewal at least ninety (90) days prior to the end of the then current term.

**Amendment to Schedule B – Unemployment Cost Management Service with an Effective Date of January 1, 2017 ("**UCM Schedules**")**

**Exhibit 1 – Fees of the UCM Schedule. Exhibit 1 – Fees shall be modified as follows:**

**1. Annual Fee.** The first sentence of the Annual Fee Section 1 is hereby deleted in its entirety and replaced as follows:

"The annual fee to be paid to EWS for the unemployment cost management Service to be rendered under this UCM Schedule for Client shall be \$5,240 annually, payable in equal quarterly installments."

**2. Excess State Unemployment Account Fee.** Workload Estimates set forth in Section 3 shall be modified follows:

<u>Transaction Item(s)</u>	<u>Workload Estimate</u>
i) Unemployment Claims	200
ii) Wage Audits	Complete All

The remainder of the **Excess State Unemployment Account Fee** section of Exhibit 1 - Fees of the UCM Schedule shall remain unchanged with this amendment.

**3. Contract Term.** The contract term shall be extended for three (3) years from January 1, 2022 through December 31, 2025. This Schedule may renew for successive one (1) year terms ("**Successive Terms**") if either party provides the other with written notice of renewal at least ninety (90) days prior to the end of the then current term.

**Effect of Amendment; Entire Agreement.** This Amendment together with the Agreement (and any attachments, addenda, and supplements thereto) shall be the complete and exclusive statement of the Agreement between the parties as to the subject matter of the Agreement, and shall be binding upon each of the parties hereto, their respective successors and to the extent permitted their assigns. In the event of a conflict between the terms and conditions hereof, and the terms and conditions of the Agreement, the specific terms and conditions set forth in the Amendment shall govern.

**Client Purchase Orders** If the use of a Purchase Order ("PO") or similar ordering document is required by Client, the following information must be provided as part of the Agreement. Failure to include this information reflects Client's agreement that a PO shall not be required by Client. Client shall provide notice of any PO changes no less than ninety (90) days prior to the expiration of the current PO. No additional terms and conditions shall be included in the PO unless

expressly agreed to in writing by the Parties. If there is a conflict between language in the PO and the Agreement, the Agreement shall control. Client shall send the PO's to [purchaseorders@equifax.com](mailto:purchaseorders@equifax.com).

PO Number (or similar)		
PO Amount	\$	per timeframe
PO Effective Dates	From:	
	To:	
PO Contact	Name:	
	Phone:	
	Email:	

**Miscellaneous; Other Terms.** Neither this Amendment nor the Agreement can be amended or otherwise modified, except as agreed to in writing by each of the parties hereto.

This Amendment is accepted and agreed to by the following authorized representatives of the parties and each person signing below represents and warrants that he or she has the necessary authority to bind the principal set forth below.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the Effective Date written above.

**Client** Kern County Hospital Authority

By: \_\_\_\_\_

Name: Russell E. Bigler

Title: Chairman, Board of Governors

Date: January 19, 2022

**TALX Corporation,**  
**provider of Equifax Workforce Solutions**

By:   
Russell McAllister (Jan 6, 2022 18:38 EST)

Name: Russell McAllister

Title: VP, National Accounts

Date: 01/06/2022

APPROVED AS TO FORM:

LEGAL SERVICES DEPARTMENT

By: 

Vice President & General Counsel

Kern County Hospital Authority



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

January 19, 2022

**Subject:** Proposed Professional Service Agreement and Telemedicine Credentialing and Privileging Agreement with Retina Vue, P.C.

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

**Summary:**

Kern Medical requests that your Board approve two agreements with Retina Vue, P.C. ("Retina Vue"). The first is the Professional Service Agreement for remote ophthalmology services for diabetic retinopathy readings. The second is the Credentialing and Privileging Agreement to delegate the credentialing of the Retina Vue ophthalmologists who will be performing the diabetic retinopathy readings. Delegated credentialing is the process by which a provider such as Kern Medical agrees to turn over a portion of its credentialing review to a qualified entity, in this case Retina Vue. The medical staff office will continue to verify the original source of specific credential (e.g., licensure, National Practitioner Data Bank, etc.) to determine the accuracy of the qualifications of each Retina Vue ophthalmologist.

The term of these agreements is five years, effective January 19, 2022, with auto-renewal periods of one year each, unless notice is provided. The cost of the Professional Service Agreement is \$40,000 per year with a maximum payable not to exceed \$200,000 for the five-year term.

The Professional Service Agreement contains non-standard terms and cannot be approved as to form by Counsel due to (1) auto-renewal provision for successive renewal terms; (2) limitations on liability, with Retina Vue limiting its liability to the total of service fee payments made during the 12-month periods proceeding the event; and (3) no indemnification from Retina Vue. Efforts were made to negotiate these nonstandard terms to no avail. These services provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Professional Services Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Professional Service Agreement and Telemedicine Credentialing and Privileging Agreement with Retina Vue, P.C., effective January 19, 2022, with a maximum payable not to exceed \$200,000 for the five-year term, and authorize the Chairman to sign.



**Retina Vue Professional Service Agreement**

This Retina Vue Professional Service Agreement (the "Agreement") is made as of the date of last signature below by and between RetinaVue, P.C. (the "P.C.") and the undersigned customer ("Customer").

<b>Agreement Term</b>	Commences on the Effective Date and continues until terminated as provided herein.
<b>Termination for Cause</b>	By either party upon written notice with immediate effect if (i) the other party fails to perform an obligation hereunder and does not correct such failure within 15 days after the date of written notice from the non-failing party, or (ii) the other party becomes insolvent or declares bankruptcy.  By the P.C. upon written notice to Customer with immediate effect if Customer's RetinaVue Network license is terminated.
<b>Termination for Convenience</b>	By either party upon 30 days' written notice to the other party.
<b>Termination of Software Plan</b>	By Customer upon 30 days' written notice to the P.C.
<b>Effect of Termination</b>	If the P.C. terminates this Agreement for cause, or if Customer terminates this Agreement for convenience or terminates any Software Plan(s), Customer (i) shall be liable for the balance of all Software Plan Fees owing for each terminated Software Plan still in the Software Plan Term, which balance(s) will become immediately due and payable on the effective date of termination, but (ii) shall not be liable for Software Plan Fees for any terminated renewed Software Plan after the effective date of termination.
<b>Software Plan Fee</b>	12-month Software Plan Term: \$188 per-Retinal Camera/per-month. 24-month Software Plan Term: \$160 per-Retinal Camera/per-month. 36-month Software Plan Term: \$140 per-Retinal Camera/per-month. 48-month Software Plan Term: \$130 per Retinal Camera/per-month. 60-month Software Plan Term: \$120 per Retinal Camera/per-month.
<b>Service Fee</b>	\$15 per-Report multiplied by the number of Reports produced by the P.C. in the previous month.
<b>Payment</b>	Net 30 days from invoice date.
<b>Sales or Excise Taxes</b>	If applicable, added to the Software Plan Fee and/or Service Fee.
<b>Software Plan Fee and/or Service Fee Change</b>	By the P.C. upon 90 days' written notice to Customer, provided, however, that no change in the Software Plan Fee or Service Fee will be effective for any Software Plan still in the Software Plan Term.
<b>Electronic Signature Opt-Out</b>	<input type="checkbox"/> Customer does not agree to sign this Agreement electronically.

This Agreement is subject to the terms and conditions attached hereto.

**RETINAVUE, P.C.**

By: Welch Allyn, Inc., its administrator & power of attorney

By:   
Niesa Johnson (Dec 22, 2021 09:58 EST)

Name: Niesa Johnson

Title: Executive Director, Vision Care

Date: Dec 22, 2021

Address for notices:  
c/o Welch Allyn, Inc.  
P.O. Box 220  
4341 State Street Road  
Skaneateles Falls, New York 13153

Attn: Legal Department

RetinaVue, P.C. PSA\_Software Plan Version\_Monthly\_MULTI-PARTY\_5.11.2021

**Kern County Hospital Authority, a local unit of government,  
which owns and operates Kern Medical Center**

By: \_\_\_\_\_  
(signature)

Name: Russell Bigler  
(print name)

Title: Chairman, Board of Governors  
(print title)

Date: January 19, 2022  
(print date)

Address for notices:  
1700 Mount Vernon Avenue  
Bakersfield, California 93306

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

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By:   
**Legal Services Department**



## Terms and Conditions

### 1. Definitions.

- 1.1. *Affiliate* means an entity that controls, is controlled by, or is under common control with Customer, where "control" means possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, through membership, by contract or otherwise, but only for so long as such control continues to exist, and includes any d/b/a(s) under which Customer or an Affiliate operates.
- 1.2. *Authorized User* means an employee of Customer, or an independent contractor engaged by Customer, authorized to perform Image Acquisition and/or use the RetinaVue Network.
- 1.3. *Effective Date* means the date Customer orders its first Software Plan(s).
- 1.4. *Image Acquisition* means an Authorized User's operation of a Retinal Camera to acquire Retina Images and upload them to the RetinaVue Network.
- 1.5. *Physician* means a retinal specialist or board-certified ophthalmologist engaged by the P.C. to perform the Professional Service.
- 1.6. *Professional Service* means the evaluation and interpretation of Retina Images by Physicians for purposes of diagnosing diabetic retinopathy and other conditions.
- 1.7. *Report* means a structured, written report of the results of the Professional Service.
- 1.8. *Retina Images* means digital fundus images acquired by the Retinal Camera.
- 1.9. *Retinal Camera* means the digital eye-fundus camera separately purchased by Customer.
- 1.10. *RetinaVue Network* means proprietary software separately licensed by Customer that transmits Retina Images to Physicians for performance of the Professional Service and Reports back to Customer.
- 1.11. *Service Fee* means the fee for the Professional Service, invoiced by the P.C. monthly in arrears.
- 1.12. *Software Plan* means the license to the RetinaVue Network purchased by Customer for each active Retinal Camera.
- 1.13. *Software Plan Fee* means the fee for each Software Plan, invoiced by the P.C. monthly in arrears.
- 1.14. *Software Plan Term* means the initial 12-, 24-, 36-, 48-, or 60-month term of each Software Plan commencing on the date specified in Customer's Software Plan order.

### 2. Professional Service.

- 2.1. Physicians will be licensed to practice medicine in Customer's and/or any Affiliate's state and will perform the Professional Service in accordance with all applicable laws, regulations, rules, and standards.
- 2.2. The P.C. and Physicians will use commercially reasonable efforts to complete the Professional Service within 24 hours of Image Acquisition.
- 2.3. Neither the P.C. nor any Physician has responsibility for following up with patients regarding Reports, including further diagnosis or treatment, or billing any payer or patient for the Professional Service. In the

event either party receives an inquiry related to the Professional Service from a payer, the parties will cooperatively review records, including the applicable Report, and respond accordingly.

- 2.4. No restriction whatsoever is imposed upon the exercise of medical judgment by the P.C. or Physicians or by Customer or physicians associated with Customer.

### 3. Customer Responsibilities.

- 3.1. Customer acknowledges and agrees that it is solely responsible for: (i) directing and supervising Authorized Users' performance of Image Acquisition and/or use of the RetinaVue Network; (ii) ensuring compliance with all requirements associated with Customer's billing of claims to patients, federal and state payer plans, and private payer plans, including, without limitation, supervision and all other coverage requirements, the requirements of the physician services exception or the in-office ancillary services exception under the Stark Law regulations (42 C.F.R. § 411.355(a) and (b)) and the requirements of the Anti-Markup Rule (42 C.F.R. § 414.50); and (iii) following up with patients regarding Reports, including further diagnosis and treatment.
- 3.2. Customer shall cause Affiliates to comply with the terms and conditions of this Agreement.
- 3.3. Customer acknowledges and agrees that the P.C. may (i) elect to recover from Customer and Affiliates the full amount of any collective liability of Customer and Affiliates under this Agreement, and (ii) bring a separate action against Customer and Affiliates with respect to any such liability.

### 4. Software Plans.

- 4.1. Customer shall order a Software Plan for each active Retinal Camera. Customer may acquire Retinal Cameras and order Software Plans at any time during the Agreement Term. Software Plans may be for different Software Plan Terms but once ordered, Software Plans may not be changed; in no event may Customer convert a Software Plan to a different Software Plan Term and Software Plan Fee.
- 4.2. Upon expiration of the Software Plan Term each Software Plan will automatically renew for consecutive 12-month periods (irrespective of the duration of the Software Plan Term). The Software Plan Fee payable for the renewed Software Plan will be the Software Plan Fee corresponding to the Software Plan Term.
- 4.3. All Software Plan Fee payments are due and payable whether or not Customer uses or accesses the RetinaVue Network during the Software Plan Term or, under a renewed Software Plan, in the previous month.

### 5. Affiliate Software Plans.

- 5.1. Customer may order Software Plans for itself and/or Affiliates. Where Customer orders Software Plans for Affiliates, Customer may direct Affiliates be invoiced for Software Plan Fees.

- 5.2. Affiliates may order Software Plans only for their own account and shall be liable for all applicable Software Plan Fees.
- 5.3. Affiliates may terminate Software Plans, whether ordered by Customer or by them, but have no right to terminate Customer's or any other Affiliate's Software Plans and no right to terminate this Agreement.
6. **HIPAA.**
  - 6.1. The P.C. and Physicians are covered entities (as such term is defined under Health Insurance Portability and Accountability Act of 1996, as amended, and all implementing regulations ("HIPAA")) and are subject to HIPAA requirements applicable to covered entities.
7. **Limitation of Liability; Insurance.**
  - 7.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS AND LOST BUSINESS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHER LEGAL THEORY. THE TOTAL AGGREGATE LIABILITY OF ONE PARTY TO THE OTHER UNDER THIS AGREEMENT FOR ANY REASON AND UPON ANY OR ALL CAUSES OF ACTION SHALL BE LIMITED TO THE TOTAL SERVICE FEE PAYMENTS MADE BY CUSTOMER TO THE P.C. DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.
  - 7.2. The P.C. shall maintain, throughout the term of this Agreement, at its expense, professional liability insurance covering it for malpractice claims in the amount of \$1,000,000 per occurrence, \$3,000,000 annual aggregate, and shall require each Physician to maintain, at his/her expense, professional liability insurance covering him/her for malpractice claims in the amount of \$1,000,000 per occurrence, \$3,000,000 annual aggregate. Customer shall maintain, throughout the term of this Agreement, at its expense, professional liability insurance covering Customer and its employees and subcontractors (or, if Customer is a health plan, covering Customer's applicable employees and subcontractors) for malpractice claims in the amount of \$1,000,000 per occurrence, \$2,000,000 annual aggregate, or insurance limits not less than any applicable statutory cap on liability in the state where Customer practices medicine (or, if Customer is a health plan, where Customer's applicable employees and subcontractors practice medicine). Upon request, each party will provide the other party with certificates of insurance evidencing such coverage. Each party will provide the other party with at least 30 days' prior written notice of the cancellation or reduction of such insurance coverage.
8. **General Provisions.**
  - 8.1. Until the expiration of 4 years after the provision of the Professional Service hereunder, each party shall, upon request, make available to the Secretary, United States Department of Health and Human Services, the United States Comptroller General, and their representatives, a copy of this Agreement and such books, documents and records of such party that are necessary to certify the nature and extent of any cost incurred by either party. If either party carries out the duties of this Agreement through a subcontract with a related organization worth \$10,000 or more over a 12-month period, the subcontract shall contain a clause placing the same obligations on subcontractor as this Section 8.1 places on such party.
  - 8.2. In the event this Agreement is terminated during the first 12 months following the Effective Date, the parties shall not enter into an agreement with each other for the same or similar services on different terms within 12 months of the Effective Date. This Section 8.2 does not apply if Customer is a Medicare Advantage Plan as defined by the Centers for Medicare & Medicaid Services.
  - 8.3. The parties are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the terms of this Agreement. Neither party has any authority to make contracts on behalf of the other party, or to bind the other party to perform obligations or incur liabilities for third parties.
  - 8.4. Except with respect to any payment obligations, neither party shall be liable for any failure to perform its obligations hereunder if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party, including, without limitation, acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.
  - 8.5. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof.
  - 8.6. Except for a change in the Software Plan Fee and/or Service Fee by the P.C., no modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by the party to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party subsequently to require performance of that provision. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision.

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)

- 8.7. This Agreement shall be interpreted and enforced in accordance with the law of the State of California without giving effect to its rules governing the conflicts of laws.
- 8.8. By entering into this Agreement, the parties intend to comply with all applicable laws, rules, regulations and third-party payer requirements, including, without limitation, those relating to any applicable federal health care program, as defined in 42 U.S.C. § 1320a-7b(f) (including, without limitation, 42 U.S.C. § 1320a-7b(b), commonly known as the Anti-Kickback Statute, and 42 U.S.C. § 1395nn, commonly known as the Stark Law, and all rules and regulations thereunder).
- 8.9. Unless Customer opted out above, the parties agree that this Agreement may be electronically signed and that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 8.10. 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

## TELEMEDICINE CREDENTIALING AND PRIVILEGING AGREEMENT

This Telemedicine Credentialing and Privileging Agreement (“**Agreement**”) is made by and between RetinaVue, P.C. (the “**P.C.**”) and the undersigned customer (“**Customer**”) and is subject to the terms of that certain RetinaVue Professional Service Agreement dated January 19, 2022 by and between the P.C. and Customer (the “**Master Agreement**”). Any term defined in this Agreement will have the meaning for such term only as set forth in this Agreement; all other capitalized terms used but not defined herein will have the meaning set forth in the Master Agreement.

WHEREAS, by entering into this Agreement, the parties desire to ease the burdensome credentialing and privileging process relating to telemedicine providers by establishing a telemedicine credentialing and privileging process that meets, as applicable, the requirements of the Centers for Medicare and Medicaid Services (“**CMS**”), The Joint Commission (“**TJC**”), and applicable state and federal laws.

NOW, THEREFORE, in consideration of their mutual covenants and agreements herein, the parties hereby agree as follows:

### 1. Definitions

A. “**Credentialing**” means the evaluation and verification of Telemedicine Providers’ qualifications and competence to provide the Professional Service.

B. “**Credentialing Program**” means the process by which Telemedicine Providers’ qualifications and competence are evaluated and verified.

C. “**Telemedicine Provider**” means a duly qualified, credentialed and privileged health care professional who holds a license issued by the state where Customer (and/or, if applicable, any Affiliate) is located, is under contract with the P.C. to provide the Professional Service, and has completed the Credentialing Program.

### 2. P.C. Responsibilities

A. Compliance with Medicare Conditions of Participation and TJC Standards. The P.C. is an independent contractor providing the Professional Service to Customer (and/or, if applicable, any Affiliate). The Credentialing Program has been reviewed and approved by its governing body, and complies with and permits Customer (and/or, if applicable, any Affiliate) to comply with all applicable Medicare Conditions of Participation related to Credentialing and the Professional Service, including but not limited to the requirements at 42 C.F.R. § 482.12(a)(1) through (a)(7), 42 C.F.R. § 482.22(a)(1) and (a)(2), and 42 C.F.R. § 485.616(c)(1), as applicable, and all applicable requirements in the Medical Staff chapter of TJC’s Comprehensive Accreditation Manual for Hospitals,

including, but not limited to, MS.06.01.01 through MS.06.01.13.

B. Credentialing. The P.C. warrants that each Telemedicine Provider (i) will be credentialed and privileged by the P.C. in accordance with its credentialing and privileging processes and standards; and (ii) will render the Professional Service within the scope of his/her privileges.

C. List of Telemedicine Providers. Upon request, the P.C. will provide Customer a current list of privileges for each Telemedicine Provider who is seeking or has obtained telemedicine privileges at Customer’s (and/or, if applicable, any Affiliates’) facility(ies).

D. Credentialing File Requests. Upon reasonable written request and subject to state law limitations and requirements, the P.C. will provide Customer with the complete credentialing and privileging file maintained by the P.C. for each Telemedicine Provider covered by this Agreement, which shall include the following:

- (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) Peer reference verifications;
- (f) Government-issued identification;
- (g) Certificate of Insurance; and
- (h) State of California physician’s license

However, the P.C. will be under no obligation to provide Customer a copy of any information received from the National Practitioner Data Bank or Healthcare Integrity and Protection Data Bank, however, will do so upon approval from the applicable Telemedicine Provider.

E. Re-credentialing. The P.C. will conduct re-credentialing of Telemedicine Providers every two years in accordance with its established policies and procedures, applicable Medicare Conditions of Participation, and applicable TJC standards, and will include in its re-credentialing process information provided by Customer.

F. Changes in Privileges; Disciplinary Action. The P.C. will notify Customer as soon as reasonably practicable of any change in privileges of a Telemedicine Provider, including but not limited to any disciplinary action taken against a Telemedicine Provider pursuant to the P.C.’s credentialing policies.

G. Licensure. The P.C. warrants that at all times while providing the Professional Service to Customer each Telemedicine Provider will hold a license issued or recognized by the state where Customer (and/or, if applicable, any Affiliate) is located.

### 3. Customer Responsibilities

A. Credentialing by Proxy. The governing body and the medical staff of Customer (and/or, if applicable, any Affiliate) may choose to rely on the P.C.'s Credentialing Program decisions when making its own credentialing and privileging decisions regarding Telemedicine Providers. To that end, the governing body of Customer (and/or, if applicable, any Affiliate) will ensure compliance with the requirements at 42 C.F.R. § 482.22(a)(4), 42 C.F.R. § 485.616(c)(2), and Standards LD.04.03.09 of TJC's Comprehensive Accreditation Manual for Hospitals, as applicable. Customer (and/or, if applicable, any Affiliate) will ensure that each Telemedicine Provider holds a license issued or recognized by the state where Customer (and, if applicable, any Affiliate) is located. Customer (and/or, if applicable, any Affiliate) will ensure the privileges it grants each Telemedicine Provider for provision of the Professional Service do not exceed the privileges granted to such Telemedicine Provider by the P.C.

B. Customer Confirmation of Changes in Current List of Privileges. When pursuant to Section 2 (C) the P.C. delivers to Customer a current list of privileges for each Telemedicine Provider who is seeking or has obtained telemedicine privileges at Customer's (and/or, if applicable, any Affiliates') facility(ies), the P.C. will deem such list confirmed unless Customer, within 10 days of receipt of such list, notifies the P.C. in writing of any errors contained therein.

C. Removal of Telemedicine Providers by Customer. If Customer (and/or, if applicable, any Affiliate) no longer wishes to receive the Professional Service from a Telemedicine Provider, Customer will request the removal of such Telemedicine Provider in writing.

D. Customer Performance Information. Customer (and/or, if applicable, any Affiliate) will maintain evidence of its internal reviews of each Telemedicine Provider's performance and quality and will provide such performance and quality review information to the P.C. for the P.C.'s periodic appraisal of Telemedicine Providers in accordance with 42 C.F.R. § 482.22(a)(4)(iv) and 42 C.F.R. § 485.616(c)(2)(iv), as applicable. At a minimum, such performance and quality review information will include (i) all adverse events resulting from the Professional Service, and (ii) all complaints Customer (and/or, if applicable, any Affiliate) has received about any Telemedicine Provider (including but not limited to any adverse outcomes related to sentinel events that are considered reviewable by TJC). Customer will notify the P.C. immediately of any disciplinary action that it (and/or, if applicable, any Affiliate) expects to take against a Telemedicine Provider pursuant to its (and/or, if applicable, any Affiliate's) credentialing policies.

E. State and/or Federal Disciplinary Action. Customer will notify the P.C. as soon as reasonably practical of any action taken by a state or federal authority that restricts or limits the practice or professional prerogatives of a Telemedicine Provider in Customer's (and/or, if applicable, any Affiliate's) state, including an involuntary change or reduction in licensure status.

F. Affiliates. If applicable, Customer shall cause Affiliates to comply with the terms and conditions of this Agreement.

#### **4. Term**

A. Term. This Agreement will commence on the Effective Date of, and be co-terminus with, the Master Agreement.

#### **5. Confidentiality; Legislative/Regulatory Modification**

A. Confidentiality. Each party will treat all credentialing information shared under this Agreement as privileged and confidential. Each party will use such information for credentialing, quality improvement, and peer review activities only. Each party will 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 Telemedicine Providers' quality and credentials, except as required by law or requested by regulatory and accrediting bodies. It is understood that disclosure of any peer review documents does not waive any privileges or protections afforded such documents by law.

B. 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 (i) prohibits, restricts or in any way materially affects this Agreement; (ii) subjects any party to a fine or penalty in connection with its representations or responsibilities hereunder; or (iii) subjects any party to a loss of Medicare or Medicaid certification or other accreditation because of the existence of this Agreement or the applicable party's representations or performance of obligations hereunder, then within 5 business days following notice from one party to the other, the parties will complete the good faith negotiation of an amendment to this Agreement or a substitute agreement that will carry out the original intention of the parties to the extent possible in light of such law, regulation or standard. If the parties cannot reach agreement on new terms within 5 business days following the notice provided hereunder or such earlier date as necessary to avoid substantial penalties or fines, then this Agreement will immediately terminate, following written notice of termination from either party.


*Signature Page Follows*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**RETINAVUE, P.C.**

**KERN COUNTY HOSPITAL AUTHORITY**

**CENTER** By: Welch Allyn, Inc., its administrator & power of attorney

By:   
Name: Niesa Johnson  
Title: Executive Director, Vision Care  
Date: Dec 22, 2021

By: \_\_\_\_\_  
Name: Russell Bigler  
Title: Chairman, Board of Governors  
Date: January 19, 2022

APPROVED AS TO FORM  
Legal Services Department

By:   
Kern County Hospital Authority



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

January 19, 2022

**Subject:** Proposed Amendment No. 1 to Agreement 014-2020 for Teleradiology Services with Virtual Radiologic Professionals of California, P.A.

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

**Summary:**

On April 15, 2020, your Board approved the Teleradiology Services Agreement with Virtual Radiologic Professionals of California, P.A. ("vRad") for remote radiology services for after-hours preliminary interpretation of radiologic images with a maximum payable not to exceed \$910,000 for the first two years of the agreement. The agreement contains an annual auto renewal provision and an option to terminate at any point with 90 days' notice.

Amendment No. 1 will increase the maximum payable for the initial two-year term of the agreement by \$53,800 from \$453,200 to \$507,000 for the first year and by \$164,200 from \$456,800 to 621,000 for the second year, for a total maximum payable of \$1,128,000 for the term of April 15, 2020 through April 14, 2022. Fees for this agreement are accrued on a fee-for-service basis and an increase in the maximum payable is a result of higher than anticipated imaging volumes during the hours covered by vRad. This increase in imaging volume is consistent with the increased census throughout the organization as well as the additional imaging needs associated with treatment of COVID-19 patients.

Therefore, it is recommended that your Board approve the proposed Amendment No. 1 to the Teleradiology Services Agreement with Virtual Radiologic Professionals of California, P.A. to increase the total maximum payable by \$218,000, from \$910,000 to \$1,128,000, for the term April 15, 2020 through April 14, 2022, and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
TELERADIOLOGY SERVICES AGREEMENT  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority- Virtual Radiologic  
Professionals of California, P.A.)**

This Amendment No. 1 to the Teleradiology Services Agreement is made and entered into this 19<sup>th</sup> day of January, 2022, between the Kern County Hospital Authority, a local unit of government ("Authority"), which owns and operates Kern Medical Center ("KMC"), and Virtual Radiologic Professionals of California, P.A. ("Contractor"), with its principal place of business located at 11995 Singletree Lane, Suite 500, Eden Prairie, MN 55344.

**RECITALS**

(a) Authority and Contractor have heretofore entered into a Teleradiology Services Agreement (HA Agmt. # 014-2020) (the "Agreement") for the period April 15, 2020 through April 14, 2021, whereby Contractor provides remote diagnostic radiology interpretations services during coverage periods for the Radiology Department at KMC; and

(b) The Initial Term of the Agreement ended on April 14, 2021; and

(c) Pursuant to Section 8.1 of the Agreement, the Agreement shall renew automatically for successive one (1) year periods (each, a "Renewal Term") until terminated on April 15, 2022 pursuant to notice provided by Contractor; and

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

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

(f) The Agreement is amended effective January 19, 2022;

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



1. Change the "Effective Date" from April 15, 2020 to April 13, 2020 with the initial term ending April 12, 2021.
2. Add Section 16 to the Agreement, which shall state, in its entirety, the following:

"16. Maximum Payable. The maximum payable under this Agreement shall increase by \$53,800 from \$453,200 to \$507,000 for the period from April 13, 2020 through April 12, 2021 and shall increase by \$164,200 from \$456,800 to \$621,000 for the period from April 13, 2021 through April 15, 2022."
3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.
6. Except as provided herein, all other terms, conditions and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

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

KERN COUNTY HOSPITAL AUTHORITY

VIRTUAL RADIOLOGIC  
PROFESSIONALS OF CALIFORNIA, PA

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

DocuSigned by:  
By  January 5, 2022  
649130BF8260411...  
Ryan Check  
Co-Secretary

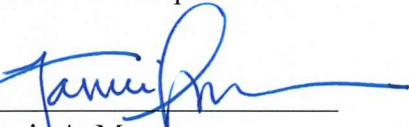
APPROVED AS TO CONTENT:  
Kern Medical Center

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

APPROVED AS TO FORM:

DocuSigned by:  
By   
023516FC59EF41E  
Gerald Fitterer--CFO

APPROVED AS TO FORM:  
Legal Services Department

By  \_\_\_\_\_  
Jamie A. Mason  
Hospital Counsel



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

January 19, 2021

**Subject:** Proposed Purchase Order Agreement with TIMS Medical by Foresight Imaging, LLC

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

**Summary:**

Kern Medical requests your Board approve the Purchase Order Agreement with TIMS Medical by Foresight Imaging, LLC ("TIMS Medical") for the preventive maintenance, repairs and required software updates for the live image capture feature of the fluoroscopy equipment in the Radiology department.

The term of the Agreement is four years, effective January 19, 2022, with a total maximum payable not to exceed \$10,000.

The Purchase Order Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to (1) limitations on liability, with TIMS Medical limiting liability to ten times the fees paid by Kern Medical for a 12-month period; and (2) TIMS Medical only agrees to indemnify Kern Medical for claims that arise out of its gross negligence or willful misconduct. Efforts were made to negotiate these nonstandard terms to no avail. These services provide a critical function to which there is no current alternative, and Kern Medical believes the benefit outweighs the risk of moving forward with the Purchase Order Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Purchase Order Agreement with TIMS Medical by Foresight Imaging, LLC, effective January 19, 2022, with a maximum payable not to exceed \$10,000 for the four-year term, and authorize the Chairman to sign.

**FIRST AMENDMENT TO  
FORESIGHT IMAGING, L.L.C. TIMS SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

THIS FIRST AMENDMENT ("Amendment") to the TIMS SUPPORT AND MAINTENANCE TERMS AND CONDITIONS ("Agreement") is made and entered into by and between **Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center** ("Customer"), and **Foresight Imaging, LLC** ("Company"). Customer and Company are sometimes referred to in this Amendment individually as "Party" or, collectively, as the "Parties."

WHEREAS the Parties wish to revise the Agreement;

Now, therefore, in consideration of the mutual benefits, promises, payments and undertakings of the Parties, it is hereby agreed that:

- 1) Section 7.3 of the Agreement is hereby deleted in its entirety and replaced with the following new section 7.3: "These Terms and Conditions, together with the Confirmation Letter and the Kern County Hospital Authority Purchase Order Terms & Conditions, set forth the entire agreement and understanding between the Customer and the Company as to the subject matter hereof, and neither the Customer nor the Company shall be bound by any conditions, definitions, warranties, understandings or representations, oral, written or otherwise, with respect to such subject matter other than as expressly provided herein, or as duly set forth in a subsequent writing signed by a duly authorized representative of the party to be bound."
- 2) Section 7.5 of the Agreement is hereby deleted in its entirety.
- 3) The following is hereby added to section 7.7 of the Agreement: "Company is aware that Customer is a government entity and is subject to the California Public Records Act, *Cal. Govt. Code §6250 et seq.*, the Brown Act, *Cal. Govt. Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation."

Except as set forth in this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the last date shown below.

Customer:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Customer Contact Information:

Designated Representative: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_  
Title: \_\_\_\_\_

Company:

Foresight Imaging, LLC

**Anthony**

By: **Molinari**

Print Name: **Anthony Molinari**  
Title: **VP**  
Date: **01/04/2022**

Company Contact Information:

Designated Representative: **Kathy Demers**  
Designated Representative: \_\_\_\_\_  
Title: **Senior Manager**

Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

Address: 1 Executive Dr., Suite 202  
Chelmsford, MA 01824  
Telephone: 978-458-4624  
Facsimile: 978-458-5488  
E-mail address: [kdemers@tims.com](mailto:kdemers@tims.com)

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department

## **TIMS SYSTEM SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

These TIMS System Support and Maintenance ("TIMS Support Services") Terms and Conditions apply to the support services described below that are offered by Foresight Imaging, LLC and/or its affiliates ("Foresight Imaging" or the "Company").

YOU ("CUSTOMER") SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE ELECTING TO PURCHASE ONE OR MORE OF THE TIMS SUPPORT SERVICES AND PAYING THE ASSOCIATED INVOICE YOU WILL RECEIVE OR HAVE RECEIVED FROM AN AUTHORIZED COMPANY RESELLER OR FROM THE COMPANY DIRECTLY. THE COMPANY'S AGREEMENT TO PROVIDE THE SERVICES THAT YOU HAVE ELECTED TO PURCHASE IS EXPRESSLY CONDITIONED UPON YOUR AGREEMENT TO THESE TERMS AND CONDITIONS, AND YOUR ACCEPTANCE OF ANY SUCH SERVICES FROM THE COMPANY CONSTITUTES YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

### **1.0 DEFINITIONS**

1.1 "Authorized Reseller" means a commercial reseller of Foresight Imaging products that is currently authorized by the Company to act as such.

1.2 "Confirmation Letter" means the letter sent by the Company to the Customer which confirms the Company's acceptance of the Customer's purchase of TIMS Support Services and lists the services purchased and the Software Products and Hardware Products to which the services apply. The Company will provide only those services described in these Terms and Conditions that are set forth in the Confirmation Letter, and then only with respect to the Software Products and Hardware Products also listed therein.

1.3 "Program License" means the Company's standard end-user software license agreement (EULA) applicable to the Software Products and Software Updates. In the case of software programs or hardware owned and licensed by third parties, "Program License" means the end-user software or hardware license agreement supplied by such third-party licensor. The Program License is a separate license and, except as provided herein, is governed by the Confirmation Letter and the EULA's separate terms and conditions.

1.4 "Software Products" means the software programs licensed to the Customer by the Company (or by a third-party licensor approved by Company) and described in the Confirmation Letter. Only those Software Products (and related Software Updates) set forth in the Confirmation Letter are covered by the applicable services provided hereunder.

1.5 "Software Updates" means the software programs licensed by the Company that are generally offered and expressly designated by the Company, in its sole discretion, as updates to specified Software Products. Software Updates generally consist of product enhancements, improved performance and error corrections that the Company has determined, in its sole discretion, to provide with respect to specified Software Products. Documentation may be provided in electronic format only.

1.6 "Hardware Products" means the TIMS Computer system(s) purchased by the Customer from the Company (or by a third-party licensor approved by Company) and described in the Confirmation Letter. Only the Hardware Products set forth in the Confirmation Letter are covered by the applicable services provided hereunder.

### **2.0 TERM AND TERMINATION**

2.1 The TIMS Support Services purchased by the Customer will commence upon acceptance by

the Company as set forth in the Confirmation Letter. The Confirmation Letter will also state the termination date for each of the purchased services.

2.2 The Company's obligations will cease automatically upon the termination or expiration of each specified service set forth in the Confirmation Letter, or upon the termination of the Customer's Program License applicable to the Software Products, Software Updates or license key, in accordance with its terms. The Company's obligations will cease if the Customer assigns or otherwise transfers any Software Product (including Software Updates and license keys, if applicable) or related Company Hardware Product covered hereunder (whether or not permitted by the applicable Program License) without the Company's prior written consent. TIMS Support Services cover one person on one system for one year. No refunds will be made as a result of any termination or expiration of services hereunder for any reason.

### **3.0 TIMS SUPPORT SERVICES**

Set forth below are descriptions of the Company's TIMS Support Services. Not all services are available in all locations and for all products.

#### **3.1 Software Updates**

3.1.1 This service provides that the Customer will be entitled to receive Software Updates on the Software Products listed in the Confirmation Letter. The Company is only obligated to make Software Updates available via download from its website. The Company may, at its sole discretion, make Software Updates available via other media for an additional charge to be determined by the Company.

3.1.2 The Company will not be obligated to deliver to the Customer any Software Updates that are not compatible with the Hardware Products, nor shall the Company be obligated to release updates to Software Products that the Company has not elected, in its sole discretion, to release or offer to customers generally.

3.1.3 The timing of the release of Software Updates will be determined by the Company in its sole discretion. The Company may from time to time make particular error corrections available electronically from its website. The Company will be under no obligation to release a Software Update in any portable media format (such as a disk or drive) containing any such "error correction" contemporaneously with such posting.

3.1.4 The Customer's use of each Software Update is governed by and subject to the Program License applicable to the related Software Product. Software Updates are subject to the warranty (including its limitations and disclaimers) included in the applicable Program License.

#### **3.2 Technical Support**

3.2.1 The Company will provide telephone assistance to the Customer for the Software Products and Hardware Products listed in the Confirmation Letter. The Company will provide telephone assistance only on the most current version of the Software Products, Hardware Products and the prior versions.

3.2.2 Calls for telephone assistance to the U.S. Technical Support Center can only be accepted from 8:00 A.M. to 8:00 P.M., EST, Monday through Friday, excluding Company recognized holidays and during company and departmental meetings. The Company will provide telephone assistance within a reasonable period of time after the Customer adequately describes a problem with the Software Product or Hardware Products to the Company's Technical Support Center.

3.2.3 The Company will provide telephone assistance as described above for the Company Hardware Products used in conjunction with the Software Products listed in the Confirmation

Letter. This assistance will be with respect to board setup and changes in installation and configuration.

3.2.4 The Company will provide web-based (if available at Customer site) and email assistance from the U.S. Technical Support Center from 8:00 A.M. to 8:00 P.M., EST, Monday through Friday, excluding Company recognized holidays and during company and departmental meetings. The Company will make reasonable efforts to respond within 1 (one) business day.

3.2.5 There is no on-site or in-person service provided hereunder, unless mutually agreed upon between the Company and the Customer for an additional cost. The Company will be obligated to provide service in accordance with this Section 3.2 only for Software Products and Hardware Products that are used in the recommended operating environment and system in accordance with the technical requirements specified in the hardware and software documentation. THE COMPANY RESERVES THE RIGHT TO CANCEL OR DENY SERVICE DESCRIBED IN THIS SECTION 3.2 WITHOUT ANY REFUND IF THE CUSTOMER REQUESTS SERVICE FOR SOFTWARE PRODUCTS THAT ARE BEING USED IN CONJUNCTION WITH NON-APPROVED CPU'S AND PERIPHERALS.

### **3.3 Quick Turn Repair and Depot Exchange Program**

3.3.1 Calls to the U.S. Technical Support Center concerning the Quick Turn Repair and Depot Exchange Program can only be accepted from 8:00 A.M. to 8:00 P.M. EST, Monday through Friday, excluding Company recognized holidays.

3.3.2 The Company will in its sole discretion determine whether to repair or exchange the Hardware Products purchased and listed in the Confirmation Letter. Monitors, mobile carts, keyboards, mice, cables, and related accessories are not covered by these TIMS Support Services. Any items not listed in the Confirmation Letter are covered exclusively by their manufacturer's warranty. Consult the sales department for the individual product's manufacturer's warranty. This repair or exchange program shall not apply to defects or failures due to accident, neglect or misuse; any party other than the Company modifying, adjusting, repairing or servicing the TIMS computer and failure to provide a suitable installation environment.

3.3.3 The Company will, at its own expense, if after determining that replacement Hardware Products (the "Replacement") need to be sent, or returned and repaired Hardware Products (the "Repair") need to be sent back, ship via 2-day express courier a Replacement or Repair that is comparable (but not necessarily identical) to the Hardware Products being returned to the Company for credit, and any remaining warranty or support services purchased by the Customer will be transferred to the Replacement or Repair retained by the Customer, as appropriate. The Company will use commercially reasonable efforts to ship the Replacement, or ship back the Repair after receiving the original Hardware Products from the Customer, within two business days to a U.S. site, or courier for international customers. The Customer is responsible for any applicable duties, taxes and international shipping charges, if applicable.

3.3.4 For a Repair, the Customer must, at its own expense, package and ship the corresponding Hardware Products to the Company using a one- or two-day delivery service of its choice. For a Replacement, within two (2) business days of receiving the Replacement, the Customer must, at its own expense, package and ship the corresponding Hardware Products to the Company for credit using a one- or two-day delivery service of its choice. The Customer bears the risk of loss or damage with respect to any items sent to Company while in transit, and return of items to the Company will be deemed to have been made only when such items are actually received by the Company. Failure to return the Hardware Products for credit upon receipt of the Replacement will result in a charge to the Customer for the purchase of new Hardware Products.



3.3.5 The Company's obligation to provide a Repair or Replacement to the Customer on a timely basis is subject to availability within the Company, and the Company is not responsible for delays beyond its reasonable control.

#### **4.0 CUSTOMER'S GENERAL RESPONSIBILITIES WITH RESPECT TO ELECTED SERVICES**

4.1 The Customer shall give the Company reasonable access to its equipment, the Software Products, Software Updates, Hardware Products and all relevant documentation and records, and shall provide such assistance as the Company may reasonably request, including sample output and other diagnostic information, in order to assist the Company in performing its obligations hereunder.

4.2 The Customer shall use the Software Products (including Software Updates, if applicable) and Hardware Products in the recommended operating environment and system in accordance with the technical requirements specified in the hardware and software documentation. It is also the Customer's responsibility to have adequate knowledge of and proficiency with the operation of the computer platform and operating system as well as the peripheral equipment used in conjunction with the Software Products and Hardware Products.

4.3 The Customer shall, to the best of the Customer's ability, read, comprehend and follow operating instructions and procedures specified in the Company's documentation related to the Software Products and Hardware Products, and follow procedures and recommendations provided by the Company's U.S. Technical Support Center in an effort to correct problems. The TIMS Support Services is not intended to provide the Customer with training on the Software Products and Hardware Products.

4.4 The Customer will designate a single individual at each relevant location as the Company's contact. All communications by the Customer to the Company in connection with the foregoing services will be made by the designated contact person. The Customer will promptly notify the Company in writing of any change in this contact person.

4.5 The Customer agrees that the rights granted to the Customer, the use limitations and the Customer's responsibilities to prevent unauthorized disclosure specified in the Program Licenses applicable to the Software Products apply with equal force and effect to all service elements, such as corrective codes, enhancements and Software Updates that are provided to the Customer hereunder.

4.6 If the Customer requests any maintenance or service not covered by these Terms and Conditions, and the Company agrees to provide such service, the Customer will be billed at the Company's prevailing billing rate to be determined at time of the request. Charges must be remitted using approved credit or charge card.

#### **5.0 EXCLUSIONS AND LIMITATIONS**

5.1 The Company does not warrant that any Software Products, Software Updates or Hardware Products will meet the Customer's requirements or be error-free. The Company's obligation to provide TIMS Support Services hereunder shall be limited to commercially reasonable efforts to perform its obligations hereunder. The Company is not responsible for costs or expenses incurred in acquiring additional hardware or software (including additional memory or similar items) in connection with the use of Company products covered hereunder, whether or not Company personnel suggest the use of such additional hardware or software is advisable.

5.2 The Company shall have no obligation to provide TIMS Support Services hereunder with respect to Software Products and related Hardware Products that were not licensed and/or purchased as new by the Customer directly from the Company or an Authorized Reseller. The

Customer agrees that any transfer or assignment (whether or not permitted by the Company) of any Software Products, Software Updates or related Hardware Products covered hereunder to another party shall be without liability or warranty or any other obligation on the part of the Company.

5.3 The Company shall have no obligation to provide TIMS Support Services hereunder that are required by any of the following: (a) abuse, misuse or neglect; or (b) repairs, alterations and/or modifications which are not permitted by the Program License and which are performed by other than the Company or an Authorized Reseller; or (c) use of the Software Products and related Hardware Products in conjunction with computer platform, operating system and peripherals that have not been approved by the Company; or (d) malfunction or modification of peripherals used in conjunction with the Software Products and Hardware Products; or (e) failure by the Customer to follow operating instructions and procedures specified in the Company's documentation related to the Software Products or Hardware Products or to follow procedures and recommendations provided by the Company's U.S. Technical Support center in an effort to correct problems.

## **6.0 LIMITATION OF LIABILITY AND REMEDIES**

6.1 Company shall defend, indemnify, and hold harmless Customer from and against any and all actual claims brought by third parties resulting in damages, liabilities, costs and/ or expenses (including reasonable attorneys' fees) that arise out of Company's gross negligence or willful misconduct in providing the TIMS Support Services under these Terms and Conditions, provided that Customer: (a) promptly notifies Company thereof and (b) gives to Company all authorization, information, co-operation and assistance to defend, compromise or settle the applicable claim. Customer shall have no authority to compromise or settle any such claim on Company's behalf.

6.2 IN CONNECTION WITH THE TIMS SUPPORT SERVICES RENDERED HEREUNDER, AND COMPUTER SOFTWARE AND DOCUMENTATION SUPPLIED UNDER THE EULA, THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, ORAL OR WRITTEN, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ALL OF WHICH THE COMPANY SPECIFICALLY DISCLAIMS.

6.3 THE COMPANY'S CUMULATIVE LIABILITY HEREUNDER FOR ALL CAUSES OF ACTION SHALL BE LIMITED TO AND NOT EXCEED TEN TIMES THE FEES PAID BY THE CUSTOMER FOR THE TIMS SUPPORT SERVICES HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE APPLICABLE CLAIM AGAINST COMPANY, REGARDLESS OF WHETHER THE COMPANY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR THAT ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE IN CONNECTION WITH THE TIMS SUPPORT SERVICES RENDERED AND COMPUTER SOFTWARE, HARDWARE PRODUCTS AND DOCUMENTATION SUPPLIED HEREUNDER FOR (1) SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, COVER OR TORT DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY, OR FROM PRODUCTS NOT BEING AVAILABLE, LOSS OF DATA OR LOSS OF PROFITS, BUSINESS, INVESTMENT OR GOODWILL, OR (2) ANY CLAIM THAT AROSE MORE THAN ONE YEAR PRIOR TO THE INSTITUTION OF SUIT THEREON. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FEES PAID BY THE CUSTOMER FOR THE SERVICES HEREUNDER REFLECT THIS ALLOCATION OF RISK.

6.4 The Company shall be relieved of its obligations to perform hereunder in the event that Acts of God, war, terrorism, labor disputes, shortages of materials, unavailability of transportation, failure of telephone, electrical, internet or other service, acts or omissions of vendors or subcontractors, pandemic or epidemic, or other causes beyond its reasonable control cause a

delay or render performance by the Company impracticable or impossible.

## 7.0 GENERAL

7.1 The Company retains the right to subcontract any TIMS Support Services described herein to subcontractors it selects.

7.2 Except in the event of a merger, acquisition, sale of all or substantially all of the assets, or change in control of more than 50% of the ownership interests of the assigning party, neither party may assign or transfer any of its rights under these Terms and Conditions, including monies payable thereunder, without the prior written consent of the other party. Any assignment made without such consent is null and void. These Terms and Conditions are binding on and, subject to the first sentence of this clause, inure to the benefit of the parties, their successors and assigns.

7.3 These Terms and Conditions, together with the Confirmation Letter, set forth the entire agreement and understanding between the Customer and the Company as to the subject matter hereof, and neither the Customer nor the Company shall be bound by any conditions, definitions, warranties, understandings or representations, oral, written or otherwise, with respect to such subject matter other than as expressly provided herein, or as duly set forth in a subsequent writing signed by a duly authorized representative of the party to be bound.

7.4 Notices to Customer shall be sent to the address specified in the Confirmation Letter and to the Company shall be sent to: Foresight Imaging, Attn: Customer Service, 1 Executive Drive, Suite 202, Chelmsford, MA 01824, U.S.A. Notices to the Company of any change in address can be made in writing on the Customer's letterhead or by email or phone.

7.5 These Terms and Conditions shall be governed by and construed in accordance with the procedural and substantive laws of the Commonwealth of Massachusetts, excluding its conflicts of laws provisions. The parties agree to the exclusive jurisdiction and venue of the courts located in the Commonwealth of Massachusetts with respect to any claims or controversies arising out of or in connection with these Terms and Conditions. The parties agree that the UN Convention on Contracts for the International Sale of Goods is specifically excluded from application hereto. Except for small claims disputes in which a party seeks to bring an individual action in small claims court located in the county of its billing address or disputes in which such party seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, Customer and Company waive their rights to a jury trial and to have any dispute arising out of or related to these Terms and Conditions or the TIMS Support Services resolved in court. Instead, all disputes arising out of or relating to these Terms and Conditions or the TIMS Support Services will be resolved through confidential binding arbitration held in Boston, Massachusetts in accordance with the Streamlined Arbitration Rules and Procedures ("Rules") of the Judicial Arbitration and Mediation Services ("JAMS"), which are available on the JAMS website and hereby incorporated by reference. The arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms and Conditions. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's/entity's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual or entity. Each party will pay its own costs and expenses in connection with the arbitration, but shall share equally any administrative costs charged by JAMS. Customer and Company each agree that the state or federal courts of the State of Massachusetts and the United States sitting in Massachusetts have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

7.6 Payment: All invoices for TIMS Support Services must be pre-paid or paid within 30 days of invoice date with approved credit. TIMS Support Services may be denied for non-payment of TIMS Support Services invoices.

7.7 Confidentiality: Any communication marked as Confidential between the Company and the Customer, whether written, electronic, verbal, transactional information, data, material, pricing, terms and conditions offered herein or during the performance of this Agreement is confidential and neither the Company nor the Customer shall disclose any of the other party's said confidential information to any third party except as expressly permitted herein, required by law, or upon receipt of written authorization from the discloser of the confidential information. This confidentiality requirement excludes the disclosure of confidential information with attorneys, accountants and temporary employees hired by the Company and the Customer whose position requires access to this information and who are bound by confidentiality obligations substantially similar to those set forth herein. For purposes of confidential pricing information, Customer may share confidential pricing information with owned, managed, leased, and affiliated organizations as well as their physicians, patients, third-party payors and consultants who assist with financial, operational, and performance improvement activities and who agree to maintain the confidentiality of such information.

7.8 Insurance: The Company will maintain, at the Company's sole cost and expense, throughout the entire term of this agreement, a policy of Professional Liability Insurance with licensed insurance companies in a minimum amount of One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate and General Comprehensive Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence, to cover any loss, liability or damage alleged to have been committed by the Company, or the Company's agents, servants, or employees. In addition, the Company will maintain throughout the entire term of this Agreement, Motor Vehicle insurance in the amount of Three Hundred Thousand Dollars (\$300,000) per claim. The Company will provide the Customer with Certificates of Insurance upon written request evidencing all required coverages and coverage extensions.

7.9 Debarment, Suspension, and Other Responsibilities Matters: The Company declares that neither itself or any individual employed by the Company: (a) is currently listed by any federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal and/or state healthcare procurement programs; or (b) has been convicted of any crime relating to federal and/or state healthcare procurement program.

## 8.0 TIMS Support Services Renewals

8.1 Customer may purchase additional years of TIMS Support Services as listed below.

### Support & Maintenance

TIMS Support & Maintenance - Year 2	081000-2
TIMS Support & Maintenance - Year 3	081000-3
TIMS Support & Maintenance - Year 4	081000-4
TIMS Support & Maintenance - Year 5	081000-5
TIMS Support & Maintenance Bundle - Years 2-5	081000-555
TDRS Support & Maintenance, 1 Year	081000-12
TDRS Support & Maintenance Bundle - Years 2-5	081000-12-B
Technical Support Only - One Year	081000-13
Software Upgrades Only - One Year	081000-600
TIMS Technical Support - One Incident	018000-14

8.2 The purchase of the current year of TIMS Support Services may require the purchase of prior years of TIMS Support Services if the support contract has lapsed.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and TIMS Medical by Foresight Imaging ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of the effective date of the underlying Agreement (the "**Effective Date**").

### RECITALS

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

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

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

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

### AGREEMENT

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

#### ARTICLE I DEFINITIONS

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

medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 **Permitted Uses and Disclosures of Protected Health Information.** Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the other entity to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity. Business Associate may Use or Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than three (3) calendar days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, unsuccessful log-on attempts, denials of service, malware such as worms or viruses and any combination of the above, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance for up to one (1) year or as required per state and federal guidelines for affected individuals whose PHI has or may have been compromised as a result of the Breach).

2.3.3 Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of PHI that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the



implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

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

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

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

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

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

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

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

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other applicable guidance issued thereunder.

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

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

#### **3.1 Covered Entity's Obligations.**

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

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

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

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

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

### **ARTICLE IV TERM AND TERMINATION**

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement. This Agreement shall continue in effect until the later of (a) termination or expiration of the Underlying Agreement or (b) when all of the PHI provided by Covered Entity to Business Associate or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity in accordance with Section 4(4) below.

#### **4.2 Termination of Underlying Agreement.**

4.2.1 A breach by Business Associate of any provision of this BAA shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Either party may terminate this BAA and the Underlying Agreement without penalty, effective immediately, if: (i) either party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that either party has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

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

4.3.2 Upon thirty (30) calendar day written notice to the breaching party, immediately terminate this BAA and any Underlying Agreement if the terminating party determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## **ARTICLE V MISCELLANEOUS**

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

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

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

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

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

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

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any SubContractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA reasonably available to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security by Business Associate or its SubContractors.

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

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

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably

cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

TIMS Medical by Foresight Imaging  
1 Executive Drive, Suite 202  
Chelmsford, MA 01824  
Attn: Legal Department

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

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

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

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

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

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

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

5.20 Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or Consultants may, at Covered Entity's expense, and no more than once annually unless required by an outside regulatory agency, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or Consultants to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

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

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

**COVERED ENTITY:**

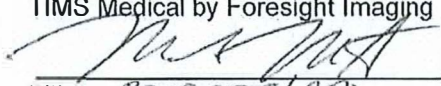
The Kern County Hospital Authority

Title: Chairman, Board of Governors

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

**BUSINESS ASSOCIATE:**

TIMS Medical by Foresight Imaging



Title: PRESIDENT/CEO

Date: 01/10/2021

APPROVED AS TO FORM

By   
Legal Services Department

**KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS**  
**(Kern County Hospital Authority – TIMS Medical by Foresight Imaging)**

This Purchase Order is entered into this 19<sup>th</sup> day of January, 2022 ("Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA") and TIMS Medical by Foresight Imaging ("Vendor"), with its principal place of business at 1 Executive Drive, Suite 202, Chelmsford, Massachusetts 01824 for a term of four (4) years.

Vendors must comply with all instructions, and the following conditions shall apply to any order awarded pursuant to this Purchase Order:

**Obligations of Vendor**

1. Vendor shall provide products/services as set forth in Purchase Order, Exhibit A, attached hereto. Such order(s) may be modified by mutual agreement, by a written Purchase Order Amendment
2. Vendor shall provide products/services at the pricing identified in the Purchase Order. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the products and/or services involved herein.
4. Unless stated otherwise on the Purchase Order, all products provided by the Vendor shall be new, unused, in original manufacturer packaging and labeling, and shall conform to the specifications provided herein.
5. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:

(a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.

(b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(c) **Professional Liability (Errors and Omissions) Insurance** for liability arising out of, or in connection with the performance of all required services under this Purchase Order or agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate unless otherwise indicated by KCHA's Risk Manager.

The **Commercial General Liability Insurance** shall include an endorsement naming KCHA and KCHA's board members, officials, officers, agents and employees as additional insureds. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by KCHA. Any exception to these requirements must be approved by KCHA's Risk Manager. KCHA's Risk Manager may require higher limits depending on the nature of the goods and/or services being provided. All insurance coverage requirements shall be maintained by vendor until completion of all of vendor's obligations to KCHA, and shall not be reduced, modified or canceled without 30 days prior written notice to the Chief Executive Officer ("CEO").

6. Intentionally Omitted.

7. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

**Obligations of KCHA**

8. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.

9. KCHA shall notify Vendor of any discrepancies in products shipped or services rendered, be the quantity, condition, or otherwise, promptly upon completion of the receiving inspection

**Delivery, Invoicing, and Payment**

10. Unless stated otherwise on the Purchase Order, all goods and services shall be delivered Free On Board (F.O.B) Destination, with transfer of title and risk of loss to rest with Vendor until goods are accepted by KCHA.

11. As consideration for the products/services provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Purchase Order. KCHA's finance office pays claims and Purchase Orders each week. The maximum payable of this Purchase Order is \$7,984.00 plus applicable taxes and shipping.

12. Invoices for payment shall be submitted in a form approved by KCHA and list each good ordered and received. Invoices shall be sent to KCHA for review and processing within 60 days of receipt of goods. Payment shall be made to Vendor within 30 days of date of invoice.

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

14. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination.

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

#### **General Provisions**

16. This Purchase Order, including any attachments hereto, and the TIMS System Support and Maintenance Terms and Conditions, contain the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing the KCHA PO terms and conditions, Vendor agrees that in the event there is any inconsistency or conflict between the KCHA Purchase Order terms and conditions and Vendor's terms and conditions, the KCHA Purchase Order terms and conditions shall control.

17. Intentionally Omitted.

18. Access to Books and Records. Until the expiration of four (4) years after the expiration or termination of this Purchase Order, Vendor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Purchase Order and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Vendor provided under this Purchase order. Vendor further agrees that if it carries out any of its duties under this Purchase Order through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, that 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 of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

19. Audits, Inspection and Retention of Records. Vendor agrees to maintain and make available to KCHA, accurate books and records relative to all its activities under this Purchase Order. At a mutually agreeable date and time, and at KCHA's expense, Vendor shall permit KCHA 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 Purchase Order. Vendor 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 Purchase Order, 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 Purchase Order shall have the same rights conferred upon KCHA herein.

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

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

22. Non-collusion Covenant. Vendor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Purchase Order with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Purchase Order from KCHA.



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

**KERN COUNTY HOSPITAL AUTHORITY**

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

**TIMS Medical by Foresight Imaging**

By **Anthony Molinari** Digitally signed by Anthony Molinari  
Date: 2022.01.11 09:57:04 -05'00'  
\_\_\_\_Anthony Molinari\_\_\_\_ (Print Name)  
\_\_\_\_VP\_\_\_\_ (Title)  
Date: \_\_01/11/2022\_\_\_\_\_

**APPROVED AS TO CONTENT:**  
Kern Medical Center

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

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

By  \_\_\_\_\_  
Jamie A. Mason  
Hospital Counsel

# TIMS Support Quote

Quote Number: 110323  
Quote Date: 11/24/2021  
Status: Quote  
FOB: FOB Factory



Account: Kern Medical Center  
Main Phone: (661)326-2000  
Fax:  
Ship Via: UPS Ground

Bill To: Kern Medical Center  
  
Attn. To:  
  
Address: 1700 Mt. Vernon Ave.  
Bakersfield, CA 93306  
USA

Ship To: Kern Medical Center  
Attn. To:  
Address: 1700 Mt. Vernon Ave.  
Bakersfield, CA 93306  
  
USA

Item	Description	Quantity	Price	Discounted Unit Price	Ext. Price
081000-555	TIMS Support & Maintenance 4 Year Bundl	1	\$10,780.00	\$7,984.00	\$7,984.00

Created By: Kathleen Demers

Grand Total: \$7,984.00

## COMMENTS:

Support & Maintenance Bundle, period covering 4 years, (12/29/2021 –12/29/2025)

Support Bundle includes 26% discount vs. annual renewal

(Total amount on quote paid up front).

Support for serial# 8000709

Send POs to KDEMERS@TIMS.COM (Kathleen Demers 978-458-4624 ext.252)

## TIMS Support & Maintenance:

- Technical Support via telephone, email and WebEx (Online)
- Normal business hours (8:00 A.M. - 8:00 P.M. Eastern Standard Time)
- Two business day system replacement warranty
- Software upgrades as available via download
- Onsite support is not included

## PURCHASE ORDER REQUIREMENTS:

- All orders must have an authorized signature.
- The "Bill To" and "Ship To" addresses must be clearly marked on the Purchase Order.
- The purchase order must designate by what method the order will be shipped (UPS, Federal Express, etc.) and include a freight collect account number .
- All International shipments require a freight forwarder account number to ship.
- Foresight part numbers must be referenced on the purchase order.

## STANDARD TERMS:

- With approved credit, payment terms are Net 30 from date of invoice. Otherwise, payment terms are payment in advance of shipment via Wire Transfer, Check, or MasterCard/Visa with a 3% convenience fee.
- All shipments are FOB Factory (customer pays shipping charges)
- Standard delivery is 2-4 weeks ARO unless otherwise indicated.
- We confirm all orders. This confirmation also indicates an estimated ship date.
- This quotation is valid for 30 Days.
- Any changes to these Terms & Conditions requires a re-quotation.
- All amounts are in US dollars.



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

January 19, 2022

**Subject:** Proposed First Amendment to the Enhanced Purchasing Services Agreement 2017-002A with Quorum Purchasing Advantage LLC ("QPA")

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

**Summary:**

Kern Medical is requesting your Board approve the proposed First Amendment to the Enhanced Purchasing Services Agreement with QPA to provide for the extension of Kern Medical's Group Purchasing Organization (GPO) membership with the HealthTrust Purchasing Group and Quorum Health Resources Vendors and Pricing.

The GPO membership is required to maintain "best pricing" for all goods and services purchased for all areas of patient care and hospital administration.

The parties have agreed to the following compensation arrangement as it relates to Kern Medical's purchase, license, and/or lease of such eligible supplies in accordance with the below schedule: 20% administrative fee share if annualized HealthTrust spend is greater than \$20 million, 30% administrative fee share if annualized HealthTrust spend is greater than \$30 million, 40% administrative fee share if annualized HealthTrust spend is greater than \$40 million. The 'spend' shall be measured every 12 months from the effective date of the proposed First Amendment, through the term of the current contract (each a "Measurement Period"). The first payment will be made within 90 days after the first Measurement Period and each 90 days thereafter, effective February 1, 2022.

Therefore, it is recommended that your Board approve the proposed First Amendment to the Enhanced Purchasing Services Agreement for a term of 60 months, effective February 1, 2022, and authorize the Chairman to sign.

**FIRST AMENDMENT TO  
ENHANCED PURCHASING SERVICES AGREEMENT**

This Amendment to the Enhanced Purchasing Services Agreement (the “First Amendment”), by and between Kern County Hospital Authority on behalf of Kern Medical Center (“Hospital”) and Quorum Purchasing Advantage, LLC (“QPA”), is executed as of the last date below the parties’ respective signatures, but is effective as February 1, 2022 (the “First Amendment Effective Date”). Both Hospital and QPA are individually referred to herein as the “Party” and collectively referred to herein as the “Parties”.

**WITNESSETH**

**WHEREAS**, Hospital and QPA (as assigned by Quorum Health Resources, LLC) are Parties to that certain Enhanced Purchasing Services Agreement effective February 1, 2017 (referred to herein as the “Agreement”); and

**WHEREAS**, Hospital and QPA, marketed as PLUS, a QHR Health Company, desire to amend and extend the Agreement as set forth below.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. The **Term** field as set forth on the **Cover Page** shall be deleted.
2. The **Expiration Date** as set forth on the **Cover Page** shall be January 31, 2027.
3. Section **6.1 Term** shall be amended so that each Renewal Term is for a three (3) year period.
4. **Section 2.2.2.1 Compliance Incentive Payments** shall be amended and restated in its entirety as follows:

**2.2.2.1 Administrative Fee Share Back Rebate.**

The Parties have agreed to the following compensation arrangement as it relates to Hospital’s purchase, license, or lease of such eligible supplies in accordance with the below schedule:

20 % admin fee share if annualized HealthTrust spend is greater than \$20M  
30 % admin fee share if annualized HealthTrust spend is greater than \$30M  
40 % admin fee share if annualized HealthTrust spend is greater than \$40M+

Spend shall be measured every twelve (12) months from the First Amendment Effective Date, through the term of the current contract (each a “Measurement Period”).

The first payment will be made within ninety (90) days after the first Measurement Period and each ninety (90) days thereafter.

5. Except as set forth above, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment to be effective on the First Amendment Effective Date.

**HOSPITAL: Kern County Hospital Authority  
on behalf of Kern Medical Center**

**QPA: Quorum Purchasing Advantage, LLC**

By: \_\_\_\_\_  
Printed Name: Russell Bigler  
Title: Chairman, Board of Governors  
Date: 01/19/2022

By: Dwayne Gunter  
Printed Name: Dwayne Gunter  
Title: CEO  
Date: 1-12-2022

Approved As To Form:  
Legal Services  
  
Shannon Hochstein  
Kern County Hospital Authority



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

January 19, 2022

**Subject:** Proposed Service Request with Presidio Networked Solutions Group LLC for information technology network remediation

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

**Summary:**

Kern Medical requests your Board approve the proposed Service Request with Presidio Networked Solutions Group LLC for a specified scope of work that includes network remediation and technical support for Kern Medical. The remediation work will be completed to finalize configurations for disaster recovery and prepare Kern Medical's network for upcoming infrastructure projects.

The Service Request is effective January 19, 2022, with a total cost based on actual hours of \$92,250 plus applicable taxes.

Although the Service Request does include the terms of the Master Service Agreement (Agt. #053-2018), it also contains stand-alone terms that are non-standard and cannot be approved as to form by Counsel. The non-standard terms include a limitation of liability to the fees of the Service Request and a broad and vague indemnification for 911 calls that are not limited to Kern Medical-controlled entities. Efforts were made to negotiate the deletion of this offending provision to no avail. The Information Systems department is aware of the added liability and has indicated it will make accommodations while the services are being performed to limit the exposure.

Therefore, it is recommended that your Board approve the Service Request with Presidio Networked Solutions Group LLC for a specific scope of work that includes network remediation and technical support for Kern Medical, effective January 19, 2022, in an amount not to exceed \$92,250 plus applicable taxes, and authorize the Chairman to sign.

## General Information

Client Name	Kern Medical Center	Account Manager	Thomas Driver
Contact Name	Craig Witmer	Solution Architect	Chris Sanchez
Contact Phone	661-645-9692	Opportunity #	1003221108800
Contact Address	1700 Mt Vernon Ave Bakersfield CA 93306-4018 US	Date	08-Dec-2021
Contact Email	craig.witmer@kemmedical.com	Service Title	Kern T&M: Remediation and Support Hours

## Service Information

Technology Area	<input checked="" type="checkbox"/> Collaboration <input checked="" type="checkbox"/> Data Center <input checked="" type="checkbox"/> Network <input checked="" type="checkbox"/> Security <input type="checkbox"/> Other: _____
Type of Request	T&M

Presidio Networked Solutions Group LLC ("Presidio") is pleased to provide the following services to Kern Medical Center ("Client"). This Service Request defines the scope of work to be accomplished by Presidio. The tasks to be performed by Presidio are defined and the responsibilities of Presidio and Client are contained herein as well.

## Description of Services

1. Confirm 10.2.0.0/16 network is presented at 14 remote sites
  - o Verify BGP configuration
    - AT&T ASE WAN
    - Spectrum EV LAN
2. Move WAN links from 4500 to Nexus 9K
  - o KMC
  - o Verify at COL
3. Configure Cerner router changes/deployment for Kern Medical
  - o KMC - add 2 Cerner provided routers to network
  - o COL - add 1 Cerner provided router to network
  - o Verify Cerner link failover
4. Move IDF fiber uplinks from 6800 to 9K at KMC
  - o KMC will work on port matrix and verify dual fiber connection to all IDF closets
5. Verify failover for P2P on 10GB links
  - o ATT and Spectrum P2P are now 10GB links - load balance links utilize both links for traffic. And setup failovers
6. UCS Chassis network
  - o Review configuration and recommend changes within the VCenter configuration
7. Assist in any other tasks as directed by Kern Medical Center

## Assumptions

1. The Master Services Agreement ("MSA") executed between the parties on 15-Aug-2018 governs this scope of work (HA Agmt. #053-2018). In the case of a conflict between the language of this agreement and the executed MSA the language of the MSA shall supersede. All changes to this agreement must be executed in writing and accepted by both parties, as indicated by authorized signature, prior to the execution of work.
2. Modifications in project scope will necessitate a project change request (PCR).
3. This Service Request supersedes any previous scope discussion or agreement including "Vision Deck" PowerPoint proposals, emails, or verbal communications.
4. Client has read and agrees with all items contained or omitted within this Service Request.
5. Any items or tasks not explicitly listed as in-scope within this Service Request are considered to be outside of the scope and not associated with this Service Request and price.
6. Client's acceptance of all deliverables described in this agreement and of the completion of the project shall be in writing. Deliverable acceptance shall be in the form of an email or signature (as applicable) and final project acceptance shall be in the "Project Completion" form, provided by the project manager. If acceptance is refused, the Client shall provide, in writing to Presidio, a reason for refusal. Presidio shall address the issue before subsequent work is undertaken.
7. Work shall be warrantied for 30 days after completion. Product is warrantied per manufacturer warranty policies. Presidio will hold no responsibility for any changes made "after" releasing the system to the Client. Presidio expressly disclaims any liability for non-performance or the delivery of poor quality of services resulting from errors or omissions in information provided to Presidio by Client, whether or not Presidio knew or should have known of any such errors or omissions, or whether Presidio was responsible for or participated in gathering of such information.
8. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S ENTIRE LIABILITY AND EXCLUSIVE REMEDY FOR DAMAGES FROM ANY CAUSE WHATSOEVER,



INCLUDING, BUT NOT LIMITED TO, NONPERFORMANCE OR MISREPRESENTATION, AND REGARDLESS OF THE FORM OF ACTIONS, SHALL BE LIMITED TO THE AMOUNT WHICH HAS BEEN ACTUALLY PAID TO PRESIDIO BY CLIENT HEREUNDER.

9. During the term of this Agreement and for one (1) year following the completion of this project, neither party shall (a) knowingly solicit, offer to hire, or hire an employee, agent, or contractor of the other party, or (b) assist any third party who wishes to solicit, offer to hire, or hire an employee, agents, or contractor of the Other Party without a prior written consent of the Other Party.
10. PLEASE READ CAREFULLY. IT IS THE CUSTOMER'S RESPONSIBILITY TO UNDERSTAND ITS OBLIGATIONS TO ENABLE E911 SERVICE.
  - 1.1 **E911 SERVICE.** UNDER RULES ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION AS WELL AS PURSUANT TO VARIOUS STATE LAWS, CERTAIN MULTI-LINE TELEPHONE SYSTEMS ("SYSTEM") MUST ENABLE E911 SERVICE BY PERMITTING CALLERS TO DIAL 911 AND BY PROVIDING CERTAIN INFORMATION ABOUT THE CALLER'S LOCATION TO EMERGENCY RESPONDERS (COLLECTIVELY, "THE E911 RULES"). CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SALE, INSTALLATION, AND/OR OPERATION OF THE SYSTEM BY PRESIDIO ARE FUNCTIONS PERFORMED BY PRESIDIO UNDER THE CONTROL AND DIRECTION OF THE CUSTOMER. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT IT CONTROLS AND OVERSEES IMPLEMENTATION OF THE SYSTEM AFTER INSTALLATION AND THAT IT IS RESPONSIBLE FOR COMPLIANCE WITH THE E911 RULES.
  - 1.2 **E911 CHARACTERISTICS.** CUSTOMER ACKNOWLEDGES THAT THE SYSTEM HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED SERVICES. THESE CHARACTERISTICS MAY MAKE THE SYSTEM UNSUITABLE FOR SOME CUSTOMERS. CUSTOMER SHOULD CAREFULLY EVALUATE CUSTOMER'S OWN CIRCUMSTANCES WHEN DECIDING WHETHER TO RELY SOLELY UPON THE SYSTEM TO ENABLE E911 SERVICE. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET CUSTOMER'S EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO E911 SERVICE (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS).
  - 1.3 **E911 LIMITATION OF LIABILITY.** CUSTOMER ACKNOWLEDGES AND AGREES THAT PRESIDIO WILL HAVE NO LIABILITY WHATSOEVER IN THE EVENT THAT: (A) CUSTOMER OR ANY OTHER CALLER USING THE SYSTEM IS UNABLE TO PLACE, OR COMPLETE, A CALL TO 911 OR ACCESS E911 SERVICE; (B) EMERGENCY RESPONDERS DO NOT RESPOND, OR DO NOT RESPOND TO THE LOCATION AT WHICH THE SYSTEM, CUSTOMER, OR CALLER IS PHYSICALLY PRESENT OR REQUIRE EMERGENCY SERVICES; OR (C) CUSTOMER FAILS TO COMPLY WITH THE E911 RULES. UNDER NO CIRCUMSTANCES WHATSOEVER WILL PRESIDIO HAVE ANY LIABILITY ASSOCIATED WITH E911 SERVICE, INCLUDING, AND WITHOUT LIMITATION, IN THE EVENT OF: (A) LOSS OF ELECTRICAL POWER; (B) LOSS OF INTERNET CONNECTIVITY; (C) DEFECTIVE OR MISCONFIGURED CUSTOMER PREMISES EQUIPMENT; (D) NETWORK CONGESTION; (E) DELAYS ASSOCIATED WITH THE DELIVERY OF CALLER LOCATION INFORMATION; (F) RESTRICTIONS CREATED BY NON-VOICE EQUIPMENT; (G) RELOCATED EQUIPMENT, INCLUDING OUTSIDE OF THE UNITED STATES; (H) THE SIMULTANEOUS USE OF ONE LINE WITH MULTIPLE PIECES OF EQUIPMENT; (I) FAILURE OF EMERGENCY RESPONSE CENTERS TO ANSWER A 911 CALL; (J) FAILURES OF ANY THIRD PARTIES THAT ARE RESPONSIBLE FOR ROUTING 911 CALLS; (K) THE USE OF NON-NATIVE TELEPHONE NUMBERS; OR (L) ANY FORCE MAJEURE EVENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF PRESIDIO'S LIABILITY IS A MATERIAL TERM TO THIS AGREEMENT, AND THAT IT WOULD NOT OTHERWISE ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION, AND THAT CUSTOMER AGREES THAT THESE LIMITATIONS ARE REASONABLE.
  - 1.4 **E911 INDEMNITY.** CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS PRESIDIO, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR ANY CALLER USING THE SYSTEM RELATING TO E911 SERVICE, INCLUDING, AND WITHOUT LIMITATION, THE INABILITY OF A CALLER TO PLACE OR COMPLETE A 911 CALL OR THE FAILURE OF CUSTOMER TO DELIVER CUSTOMER LOCATION INFORMATION AS REQUIRED BY THE E911 RULES.
11. Time and Material engagements do not provide defined deliverables. To the extent that documentation or other task-related materials or deliverables are required, time to prepare, deliver, and review those deliverables will accrue against the hours purchased.
12. Hours for Time and Material services are best effort estimates and may require additional hours in order to satisfy the request.
13. For Time and Materials services, it is the Client's responsibility to direct the activities of the Presidio consultant through the creation of a prioritized Task List or similar documented instruction. It is recommended that this be provided to the Presidio Engineer 48 hours prior to the first day of services.
14. Time and Material Services will be invoiced monthly and will be based on actual hours incurred.

#### Client Responsibilities



1. The Client, with assistance from Presidio, shall verify operation of any installed/upgraded equipment per the predefined Verification Plan. Presidio will require the Client to witness the verification of the solution, as well as sign off on the completed verification plan.
2. Client will designate a single point of contact with authority to act on all aspects of the services provided and to coordinate the activities of internal personnel, Telco, and other circuit providers, and all non-Presidio third-party contractors as applicable.
3. Client resources and site access must be readily and/or continuously available over the engagement period.
4. The Client is responsible for having in place, active manufacturer support contracts on all devices that are the subject of this SOW.

#### Project Management

Presidio will provide a Project Manager (PM), who will be single point of contact for all project support issues within the scope of this project. The PM is experienced in project management best practice methodologies and familiar with the technology involved. This Project Manager is responsible for timely completion of the scope, schedule and budget utilizing Presidio's Project Management Method. Included for our standard Project Management offering for this engagement are the following:

- Remote kickoff meeting
- Planning and design session facilitation
- Deliverable/milestone tracking (High-Level Plan)
- Resource scheduling and oversight
- Escalation facilitation
- Working calls as required
- Regularly scheduled status meetings
- Agenda, meeting minutes and risk/issue/action item tracking
- Scope/budget Management
- Project closeout

## Locations

Work will be done at the following locations. All work will be performed remotely unless otherwise specified:

Site Name	Address	City State ZIP	On-Site / Remote Services
Primary	1700 Mt Vernon Ave	Bakersfield CA 93306-4018	Remote

## Price and Payment Terms

Client agrees to provide reasonable access to facilities, equipment, and personnel necessary to complete this effort. Unless otherwise noted, all work shall be performed during normal business hours (8:00 a.m. – 5:00 p.m. M-F, excluding holidays) at the location indicated. Travel expenses are estimated and include, but are not limited to, mileage, hotels, meals, airfare, rental car, parking fees, taxis, and tolls performed in accordance with the Presidio Advance Travel Policy. Client agrees to make timely payment for services rendered, including partial payments prior to final acceptance.

Services will be provided on a time, materials, and expense basis. The Client will be invoiced at the completion of the project and/or at the conclusion of each calendar month for actual hours worked, subject to applicable minimums plus expenses. Client will not be invoiced for hours that are unused. Presidio will invoice all hours consumed and expenses accrued at the end of the month regardless of engagement status on the final day of the month. This is an estimate only.

Resource Type	Hours	Hourly Rate	OT Hours	OT Hourly Rate
Senior Security Engineer	50.00	\$225.00	0.00	\$337.50
Senior Network Engineer	200.00	\$225.00	0.00	\$337.50
Senior Data Center Engineer	50.00	\$225.00	0.00	\$337.50
Principal Engineer	0.00	\$300.00	0.00	\$450.00
Architect	0.00	\$250.00	0.00	\$375.00
Senior Collaboration Engineer	50.00	\$225.00	0.00	\$337.50
Senior Project Manager	60.00	\$225.00		
			<b>Total</b>	<b>\$92,250.00</b>

Actual Hours will be billed. Additional hours may be required to complete outlined scoped work.

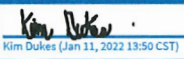
## Expenses

There are no anticipated travel or incidental expenses to be incurred by Presidio in association with the execution of this Statement of Work and therefore no expenses will be billed to Client.

## Travel Time

Travel to and from the work site(s) by Presidio resources in association with the execution of this Statement of Work will not be charged to Client.

The scope and pricing are valid for 60 days unless otherwise noted.

<b>Authorized Client Signature</b>	<b>Title</b>	<b>Date</b>
 <small>Kim Dukes (Jan 11, 2022 13:50 CST)</small>	Director of Sales Operations	Jan 11, 2022
<b>Authorized Presidio Signature</b>	<b>Title</b>	<b>Date</b>



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

January 19, 2022

**Subject:** Proposed Retroactive Side Letter of Agreement with Service Employees International Union, Local 521

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

**Summary:**

Kern Medical requests your Board retroactively approve the proposed Side Letter of Agreement with Service Employees International Union, Local 521 (SEIU). The parties have previously entered into a Memorandum of Understanding ("MOU") regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, as more particularly set forth in Section 2 of the MOU, for the period September 19, 2018 through October 31, 2020.

Pursuant to Senate Bill No. 3 (SB 3), an act to amend Sections 245.5, 246, and 1182.12 of the Labor Code, the state minimum wage increased to \$15 per hour for employers with 26 or more employees on January 1, 2022. The proposed Side Letter allows the Authority to implement minimum wage increases for 357 employees in 55 job classifications throughout the organization. The parties have agreed that the minimum wage rate range increases will be applied retroactively to January 1, 2022, the effective date of the minimum wage increase required by state law. The minimum wage rate range increases will be paid out to those employees affected by the minimum wage increase commencing January 25, 2022 (pay period 2022-01). Except as provided in the Side Letter, nothing will be construed to expand the rights of any employee affected the minimum wage increase.

Therefore, it is recommended that your Board retroactively approve the Side Letter of Agreement with Service Employees International Union, Local 521, effective January 1, 2022, and authorize the Chairman to sign.

**SIDE LETTER OF AGREEMENT  
BETWEEN  
KERN COUNTY HOSPITAL AUTHORITY  
AND  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521**

This Side Letter of Agreement ("Side Letter") between Kern County Hospital Authority ("Authority"), a local unit of government, which owns and operates Kern Medical Center, and Service Employees International Union, Local 521 ("SEIU"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, with respect to the following:

WHEREAS, the parties have previously entered into a Memorandum of Understanding ("MOU") regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, as more particularly set forth in Section 2 of the MOU, for the period September 19, 2018 through October 31, 2020; and

WHEREAS, pursuant to Senate Bill No. 3 (SB 3), an act to amend Sections 245.5, 246, and 1182.12 of the Labor Code, relating to labor, the state minimum wage increased to \$15 per hour for employers with 26 or more employees effective January 1, 2022; and

WHEREAS, Authority is subject to the minimum wage increase, effective January 1, 2022, as required by state law; and

WHEREAS, on Wednesday, December 22, 2021, after negotiating in good faith, the parties agreed to minimum wage rate range increases for those Authority employees affected by the minimum wage increase; and

WHEREAS, during the process of negotiating with SEIU to come to agreement on these minimum wage rate range increases, the parties agreed that, in order to ensure clarity and to memorialize the agreement, a Side Letter to the MOU should be executed articulating the intent of Authority to increase the minimum wage for those employees affected by the minimum wage increase on January 1, 2022; and

WHEREAS, the parties agree that the minimum wage rate range increases will be applied retroactively to January 1, 2022, the effective date of the minimum wage increase required by state law;

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

- (A) Exhibit A, Minimum Wage Rate Range Increases, Effective January 1, 2022, attached hereto and incorporated herein by this reference, shall be made part of the MOU.
- (B) Nothing in this Side Letter shall be construed to expand the rights of any employee affected by the minimum wage increase, except as provided herein.

- (C) The provisions of this Side Letter shall be effective Saturday, January 1, 2022.
- (D) The minimum wage rate range increases shall be paid out to those employees affected by the minimum wage increase commencing January 25, 2022 (pay period 2022-01).
- (E) SEIU understands and agrees that it will not file any grievance with Authority or an Unfair Practice Charge with California Public Employment Relations Board on any matter pertaining to the minimum wage increase, as a result of Authority's actions to implement the minimum wage rate range increases as agreed to by the parties on December 22, 2021.
- (F) All capitalized terms used in this Side Letter and not otherwise defined, shall have the meaning ascribed thereto in the MOU.
- (G) This Side Letter shall be governed by and construed in accordance with the laws of the state of California.
- (H) This Side Letter may be amended only by mutual, written consent of duly authorized representatives of the parties.
- (I) This Side Letter 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.
- (J) In the event of any inconsistency between the provisions of this Side Letter and any provision of the MOU, the terms of this Side Letter shall govern and control.

[Intentionally left blank]

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

Service Employees International Union, Local 521

By \_\_\_\_\_  
Yvonne Davila  
Director, Region 5

Kern County Hospital Authority

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

# **EXHIBIT A**

## **EXHIBIT A, MINIMUM WAGE RATE RANGE INCREASES, EFFECTIVE JANUARY 1, 2022**





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

January 19, 2022

**Subject:** Proposed Engagement Letter from Moss-Adams, LLP

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

**Summary:**

Kern Medical requests your Board approve the proposed Engagement Letter from Moss-Adams, LLP, an independent contractor, for financial auditing services for fiscal year ending June 30, 2022.

The primary purpose of an external financial audit is to conduct an audit sufficient to express an opinion as to whether the Kern County Hospital Authority's financial statements are fairly presented in accordance with Generally Accepted Accounting Principles and whether supplementary information is fairly presented in relation to the basic financial statements. The audit will include an evaluation and report of the Authority's internal controls for the purpose of identifying areas of weakness or noncompliance.

Fees for the audit services are estimated at \$158,000. Additionally, there will be an incremental audit fee not to exceed \$25,000 for the June 30, 2022 audit related to the required Single Audit Associated with the receipt of and expenditure of federal awards, in the event a Single Audit is required. Additional fees related to the company's implementation of Government Accounting Standards Board Statement 87, in an amount not to exceed \$20,000 will apply if required. In addition to the audit fees, we will be charged for expenses including a flat expense charge, calculated as 5% of the audit fees, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel and related expenses will be billed separately and are not included in the 5% charge.

Therefore, it is recommended that your Board approve the Engagement Letter from Moss-Adams LLP to audit the Kern County Hospital Authority effective January 19, 2022, in an amount not to exceed \$203,000, and authorize the Chairman to sign.



January 7, 2022

Russell E. Bigler, Chairman, Board of Governors  
Andrew Cantu, Chief Financial Officer  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306-4018

Re: Audit and Nonattest Services Engagement Letter Fiscal Year Ending June 30, 2022

Dear Chairman Bigler:

Thank you for the opportunity to provide services to Kern County Hospital Authority, a local unit of government and a subdivision of the state of California, which owns and operates Kern Medical Center ("Kern Medical"). This engagement letter ("Engagement Letter") and the attached Agreement for Professional Services (Agt. #005-2021) between Moss Adams LLP and Kern County Hospital Authority, effective January 1, 2021 ("PSA"), which is incorporated by this reference, confirm our acceptance and understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams," "we," "us," and "our") will provide to Kern County Hospital Authority ("you," "your," "KCHA", and "Company").

### **Scope of Services – Audit**

You have requested that we audit the Company's financial statements, which comprise the statement of net position as of June 30, 2022, and the related statements of revenue, expenses, and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.

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

- 1) Management's Discussion and Analysis
- 2) Schedule of the proportionate share of the net OPEB liability for Kern Medical
- 3) Schedule of the proportionate share of the net pension liability for Kern Medical
- 4) Schedule of contributions for Kern Medical



If a Single Audit under Uniform Guidance is required, we will also report on whether the schedule of expenditures of federal awards, presented as supplementary information, is fairly stated, in all material respects, in relation to the financial statements as a whole.

### **Scope of Services and Limitations – Nonattest**

We will provide the Company with the following nonattest services:

- 1) Assist you in drafting the financial statements and related footnotes as of and for the year ended June 30, 2022. Although we will assist in drafting the financial statements and related footnotes, our fee estimate included in this engagement letter is based on management providing a substantially complete working draft of the financial statements and required footnotes. Should you request additional assistance, we can discuss the additional fees that may be required prior to commencing additional work.
- 2) Assist you in drafting the auditee section of the OMB Data Collection Form for the year ended June 30, 2022, if a Single Audit is required.

Our professional standards require that we remain independent with respect to our attest clients, including those situations where we also provide nonattest services such as those identified in the preceding paragraphs. As a result, Company management must accept the responsibilities set forth below related to this engagement:

- Assume all management responsibilities.
- Oversee the service by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to oversee our nonattest services. The individual is not required to possess the expertise to perform or reperform the services.
- Evaluate the adequacy and results of the nonattest services performed.
- Accept responsibility for the results of the nonattest services performed.

It is our understanding that Andrew Cantu, the Company's Chief Financial Officer, has been designated by the Company to oversee the nonattest services and that in the opinion of the Company is qualified to oversee our nonattest services as outlined above. If any issues or concerns in this area arise during the course of our engagement, we will discuss them with you prior to continuing with the engagement.

### **Timing**

Kimberly Sokoloff is responsible for supervising the engagement and authorizing the signing of the report. We expect to be on-site or virtual the weeks of August 15, 2022 and August 22, 2022 for planning, interim, and the start of final test work, and again starting the week of October 24, 2022, to continue our final fieldwork. We expect to issue our report no later than December 31, 2022. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial



statements will be available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the report of independent auditors.

Our scheduling depends on your completion of the year-end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services.

### **Fees**

We have agreed to the following payment schedule for the services based on a total fee estimate of \$148,000 - \$158,000.

Month Due	Amount
July 2022	\$ 41,000
September 2022	41,000
October 2022	41,000
November 2022	25,000 – 35,000
<b>Total</b>	<b>\$148,000 – \$158,000</b>

Additionally, there will be an incremental audit fee, estimated as \$15,000 - \$25,000, for the June 30, 2022 audit, related to the required Single Audit associated with the receipt of and expenditure of federal awards, in the event a Single Audit is required.

In addition to fees, we will charge you for expenses. Our invoices include a flat expense charge, calculated as five percent (5%) of fees, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel expenses and client meals/entertainment expenses will be billed separately and are not included in the 5% charge, and will be reimbursed in accordance with the terms set forth in the PSA.

### ***Additional Fees Related to Statement 87 Consulting Services or Audit Procedures***

Our fees for consulting services and audit procedures relating to the Company's implementation of Government Accounting Standards Board Statement 87 are not included in the above fee estimate and will be billed based on the experience of the individuals involved and the amount of work performed, which will be discussed and agreed upon with you prior to the work being performed.

Our ability to provide services in accordance with our estimated fees depends on the quality, timeliness, and accuracy of the Company's records, and, for example, the number of general ledger adjustments required as a result of our work. To assist you in this process, we will provide you with a Client Audit Preparation Schedule that identifies the key work you will need to perform in preparation for the audit. We will also need your accounting staff to be readily available during the engagement to respond in a timely manner to our requests. Lack of preparation, poor records, general ledger



adjustments, and/or untimely assistance will result in an increase of our fees. We estimate that the additional fees for this service will not exceed \$20,000.

### **Reporting**

We will issue a written report upon completion of our audit of the Company's financial statements. Our report will be addressed to the Board of Governors of the Company. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will be concluded upon delivery to you of our report on your financial statements for the year ended June 30, 2022.

At the conclusion of the engagement, if a Single Audit is required, we will complete the auditor section of the Data Collection Form and electronically sign the Data Collection Form that summarizes our findings. We will provide electronic copies of our reports to you; however, it is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan, as applicable) along with the Data Collection Form to the Federal Audit Clearinghouse. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period. At the conclusion of the engagement, we will make arrangements with management regarding Data Collection Form submission procedures.

### **Objectives of the Audit**

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

The objectives of our audit are also to obtain reasonable assurance about whether the Company has complied with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major federal program.

The objectives also include reporting on the following:

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*.



- Internal control over compliance related to major federal programs and on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and the audit requirements contained in OMB Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

The reports on internal control and compliance will each include a statement that the purpose of the report is solely to: describe the scope of testing of internal control over financial reporting and compliance and the result of that testing and not to provide an opinion on the effectiveness of the entity's internal control over financial reporting or on compliance; describe the scope of testing internal control over compliance for major federal programs and major federal program compliance and the result of that testing and to provide an opinion on compliance but not to provide an opinion on the effectiveness of internal control over compliance; that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control over financial reporting and compliance and the OMB Uniform Guidance in considering internal control over compliance and major federal program compliance; and, accordingly, it is not suitable for any other purpose.

The objectives of our audit are also to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

### **The Auditor's Responsibility**

We will conduct our audit in accordance with U.S. GAAS; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the audit provisions of the OMB Uniform. As part of an audit conducted in accordance with U.S. GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control or to identify deficiencies in the design or operation of internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the



financial statements, including the disclosure, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time

In accordance with the OMB Uniform Guidance we also:

- Determine major program(s).
- Identify and assess the risks of material noncompliance, whether due to fraud or error, design and perform audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion on compliance with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major federal program.
- Obtain an understanding of internal control over compliance that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program in order to design audit procedures that are appropriate in the circumstances. We will perform tests of controls to evaluate the effectiveness of the design and operation of such controls, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over compliance or to identify deficiencies in the design or operation of internal control over compliance. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control over compliance that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program that we have identified during the audit.

The supplementary information will be subject to certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves.

If our opinion on the financial statements or the Single Audit compliance opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion we may decline to express an opinion or to issue a report as a result of this engagement.

### **Procedures and Limitations**

Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of certain receivables and certain other assets, liabilities and transaction details by correspondence with selected individuals, funding sources, creditors, and financial institutions. We may also request



written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about the financial statements and supplementary information and related matters. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. Pursuant to *Government Auditing Standards*, we will not provide reasonable assurance of detecting abuse. As required by the Single Audit Act Amendments of 1996 and the audit provisions of the OMB Uniform Guidance, our audit will include tests of transactions related to major federal award programs for compliance with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements and noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS, *Government Auditing Standards*, and the OMB Uniform Guidance. An audit is not designed to detect immaterial misstatements or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that do not have a direct and material effect on the financial statements or noncompliance with the provisions of federal statutes, regulations, and the terms and condition of federal awards that do not have a direct and material effect on major federal programs. However, we will inform you of any material errors, fraudulent financial reporting, misappropriation of assets, and noncompliance with the provisions of laws, federal statutes, regulations, contracts, grant agreements, and federal awards that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

We may assist management in the preparation of the Company's financial statements and supplementary information. Regardless of any assistance we may render, all information included in the financial statements and supplementary information remains the representation of management. We may issue a preliminary draft of the financial statements and supplementary information to you for your review. Any preliminary draft financial statements and supplementary information should not be relied upon, reproduced or otherwise distributed without the written permission of Moss Adams.





### **Procedures and Limitations—Internal Control**

Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with the provisions of laws, regulations, contract and grant agreements and other noncompliance matters that have a direct and material effect on the financial statements.

Our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the OMB Uniform Guidance.

### **Procedures and Limitations—Compliance**

Our audit will be conducted in accordance with the standards referred to in the section titled “Objectives of the Audit.” As part of obtaining reasonable assurance about whether the financial statements are free from material misstatement, we will perform tests of the Company’s compliance with the provisions of laws, regulations, contracts, and grant agreements that may have a direct and material effect on the financial statements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Our procedures will consist of the applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of your major federal programs. The purpose of those procedures will be to express an opinion on the Company’s compliance with requirements applicable to each of its major federal programs in our report on compliance issued pursuant to the OMB Uniform Guidance.

### **Management’s Responsibility for Financial Statements, Internal Control, and Federal Award Compliance**

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, including the schedule of expenditures of federal awards, but management remains responsible for the financial statements and the schedule of expenditures of federal awards. Management also acknowledges and understands that management is responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, and the safeguarding of assets.





You are responsible for informing us about all known or suspected fraud affecting the Company involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, grantors, regulators, or others. In addition, management is responsible for identifying and ensuring that the Company complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud or noncompliance with the provisions of laws, regulations, contract, and grant agreements, that we may report.

Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

Management is responsible for establishing and maintaining internal control and for compliance with federal statutes, regulations, and the terms and conditions of federal awards and for identifying and ensuring that the Company complies with such provisions. Management is also responsible for informing us of any significant contractor relationships in which the contractor is responsible for program compliance. Management is also responsible for addressing the audit findings and recommendations, establishing and maintaining a process to track the status of such findings and recommendations, and taking timely and appropriate steps to remedy any fraud and noncompliance with federal statutes, regulations, and the terms and conditions of federal awards or abuse that we may report. Additionally, as required by the OMB Uniform Guidance, it is your responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management agrees that as a condition of our engagement, management will provide us with:

- access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, whether obtained from within or outside of the general and subsidiary ledgers (including all information relevant to the preparation and fair presentation of disclosures), such as records, documentation, and other matters;
- additional information that we may request from management for the purpose of the audit; and
- unrestricted access to persons within the Company from whom we determine it necessary to obtain audit evidence.



### **Management's Responsibility to Notify Us of Affiliates**

Our professional standards require that we remain independent of the Company as well as any "affiliate" of the Company. Professional standards define an affiliate as follows:

- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclose, and is included or disclosed in its basic financial statements, in accordance with generally accepted accounting principles (U.S. GAAP);
- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclosed in its basic financial statements in accordance with U.S. GAAP, which is material to the Company but which the Company has elected to exclude, and for which the Company has more than minimal influence over the entity's accounting or financial reporting process;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate controls the investee, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate has significant influence over the investee and for which the investment is material to the Company's financial statements, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services

In order to fulfill our mutual responsibility to maintain auditor independence, you agree to notify Moss Adams of any known affiliate relationships, to the best of your knowledge and belief. Additionally, you agree to inform Moss Adams of any known services provided or relationships between affiliates of the Company and Moss Adams or any of its employees or personnel.

### **Management's Responsibility for Supplementary Information**

Management is responsible for the preparation of the supplementary information in accordance with the applicable criteria. Management agrees to include the auditor's report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information. Management is responsible to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by the entity of the supplementary information and the auditor's report thereon. For purposes of this Engagement Letter, audited financial statements are deemed to be readily available if a third party user can obtain the audited financial statements without any further action by management. For example, financial statements on your Web site may be considered readily available, but being available upon request is not considered readily available.



### **Other Information Included in an Annual Report**

When financial or nonfinancial information, other than financial statements and the auditor's report thereon, is included in an entity's annual report, management is responsible for that other information. Management is also responsible for providing the document(s) that comprise the annual report to us as soon as it is available.

Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon. Our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the audited financial statements. If we identify that a material inconsistency or misstatement of the other information exists, we will discuss it with you; if it is not resolved U.S. GAAS requires us to take appropriate action.

### **Key Audit Matters**

U.S. GAAS does not require the communication of key audit matters in the audit report unless engaged to do so. You have not engaged us to report on key audit matters, and the Engagement Letter does not contemplate Moss Adams providing any such services. You agree we are under no obligation to communicate key audit matters in the auditor's report.

If you request to engage Moss Adams to communicate key audit matters in the auditor's report, before accepting the engagement we would discuss with you the additional fees to provide any such services, and the impact to the timeline for completing the audit.

### **Dissemination of Financial Statements and Reports**

We will provide copies of our reports to the Company; however, management is responsible for distribution of the reports and the financial statements. Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make copies of our report, but only if the entire financial statements (including related footnotes and supplementary information, as appropriate) are reproduced and distributed with our report. You agree not to reproduce or associate our report with any other financial statements, or portions thereof, that are not the subject of this engagement.

### **Offering of Securities**

This Engagement Letter does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. Neither you nor Kern Medical Center may incorporate or reference our report in a private placement or other offering of equity or debt securities without our express written permission. We are under no obligation to reissue our report or provide written permission for the use of our report at a later date in connection with an offering of securities, the issuance of debt instruments, or for any other circumstance. We will determine, at our sole discretion, whether we will reissue our report or provide written permission for the use of our report



only after we have conducted any procedures we deem necessary in the circumstances. You agree to provide us with adequate time to review documents where (a) our report is requested to be reissued, (b) our report is included in the offering document or referred to therein, or (c) reference to our firm is expected to be made. If we decide to reissue our report or provide written permission to the use of our report, you agree that Moss Adams will be included on each distribution of draft offering materials and we will receive a complete set of final documents. If we decide not to reissue our report or withhold our written permission to use our report, you may be required to engage another firm to audit periods covered by our audit reports, and that firm will likely bill you for its services. While the successor auditor may request access to our engagement documentation for those periods, we are under no obligation to permit such access.

### **Changes in Professional or Accounting Standards**

To the extent that future federal, state, or professional rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we may terminate this Engagement Letter as provided herein, regardless of the stage of completion.

### **Representations of Management**

During the course of our engagement, we may request information and explanations from management regarding, among other matters, the Company's operations, internal control, future plans, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In view of the foregoing, you agree that we will not be responsible for any misstatements in the Company's financial statements and supplementary information that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by the Company's management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

Notwithstanding section 21 of the PSA to the contrary, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, the Company further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the Company's financial statements and supplementary information resulting in whole or in part



from knowingly false or misleading representations made to us by any member of the Company's management.

#### **Use of Electronic Communication**

In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential. We employ measures in the use of electronic communications designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume you consent to our use of electronic communications to your representatives and other use of these electronic devices during the term of this Engagement Letter as we deem appropriate.

#### **Use of Moss Adams' Name**

Neither the Company nor Kern Medical Center may use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Engagement Letter or otherwise without the prior written permission of Moss Adams, which permission may be withheld for any or no reason and may be subject to certain conditions.

#### **Use of Nonlicensed Personnel**

Certain engagement personnel who are not licensed as certified public accountants may provide services during this engagement.

#### **Hiring of Employees**

Any offer of employment to members of the audit team prior to issuance of our report may impair our independence, and as a result, may result in our inability to complete the engagement and issue a report.

#### **Mutual Waiver of COVID-19 Claims**

This provision addresses issues regarding the novel coronavirus ("COVID-19"). The parties acknowledge their respective understanding of the hazards of COVID-19, including, but not limited to, its highly contagious nature and the corresponding health risks associated with being exposed to or infected by COVID-19. Each party agrees to waive, release, discharge, and covenants not to sue the other party or its affiliates and its and their respective officers, directors, partners, principals, employees, agents, or subcontractors from any and all claims, damages, expense, liability, illness or losses that may occur from exposure to or infection by COVID-19 arising out of, related to, or in any way connected with the auditing services provided by Moss Adams under this Engagement Letter.



We appreciate the opportunity to be of service to you. If you agree with the terms of our engagement as set forth in this Engagement Letter, please sign the enclosed copy of this Engagement Letter and return it to us.

Very truly yours,

A handwritten signature in cursive script that reads 'Kimberly Sokoloff'.

Kimberly Sokoloff, Senior Manager, for  
Moss Adams LLP

Enclosures

**Accepted and Agreed:**

This Engagement Letter and the attached PSA set forth the entire understanding of Kern County Hospital Authority with respect to this engagement and the services to be provided by Moss Adams LLP:

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

Print Name: \_\_\_\_\_ Russell E. Bigler \_\_\_\_\_

Title: \_\_\_\_\_ Chairman, Board of Governors \_\_\_\_\_

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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



**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Moss Adams LLP)**

This Agreement is made and entered into this 20 day of January 2021, between the Kern County Hospital Authority, a local unit of government (“KCHA”), which owns and operates Kern Medical Center (“KMC”), and Moss Adams LLP, a Washington limited liability partnership (“Contractor”), with its national office located at 999 Third Avenue, Suite 2800, Seattle, Washington 98104.

**I.  
RECITALS**

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

(b) KCHA requires the assistance of Contractor to provide external auditing services to the KCHA, as such services are unavailable from KCHA resources, and Contractor, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement; and

(c) KCHA contracts with Contractor as an independent contractor for the provision of external financial statement auditing services (Agt. #06918, dated October 17, 2018), under an agreement term August 17, 2018 through August 16, 2021 for the fiscal years ended June 30, 2018, June 30, 2019, and June 30, 2020; and

(d) Each party expressly understands and agrees that Agt. #06918 is terminated upon completion of financial statement auditing services for the fiscal year ended June 30, 2020 and is succeeded by this Agreement.

(e) KCHA is now contracting with Contractor as an independent contractor for the provision of external financial statement auditing services for the fiscal years ended June 30, 2021, June 30, 2022, and June 30, 2023;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence January 1, 2021 (the “Effective Date”), and shall end March 31, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

## 2. Obligations of Contractor.

2.1 Specified Services. Contractor shall perform the 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. Each audit shall be documented in an engagement agreement (collectively, "Engagement Agreement"), which Engagement Agreement shall incorporate and be governed by the terms of this Agreement and attached as an exhibit to Exhibit "A" (starting with Exhibit "A-1," followed by Exhibit "A-2" and "A-3" in subsequent audit years).

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 the KCHA nor does Contractor represent a person or firm with an interest adverse to the KCHA 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. KCHA 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 its work will be performed and that its 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 the KCHA 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 KCHA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KCHA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KCHA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the Services hereunder. In the event that at any time KCHA, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform the Services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from KCHA.

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 KCHA 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 KCHA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish KCHA with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that KCHA will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that KCHA shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of KCHA.**

3.1 KCHA Designee. KCHA will designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 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 Fees and Charges. As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 Travel Reimbursement. Contractor will be reimbursed for all approved travel expenses, which approval will not be unreasonably withheld, incurred by Contractor on behalf of KCHA in an amount not to exceed \$15,000.00 each year over the three (3) year term of this Agreement. Reimbursement of travel expenses will include actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County ("County"), and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by County. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within 30 days of receipt and approval of each invoice by KMC.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KCHA and list each service performed. Invoices and receipts shall be sent to KCHA 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 Maximum Payable. The maximum payable under this Agreement will not exceed \$622,000.00 over the three (3) year term of this Agreement, unless separately agreed to by KCHA and Contractor in writing and signed by both parties through a formal written amendment to this Agreement.

4.5 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "C," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

5. Access to Books and Records. Until the expiration of four (4) years after the expiration or termination of this Agreement, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Contractor provided under this Agreement. Contractor further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that 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 of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. 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 KCHA.

7. Audits, Inspection and Retention of Records. Contractor shall make available, upon written request from KCHA 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. Notwithstanding the foregoing, or anything to the contrary in this Agreement, KCHA and KMC shall not have access to audit work papers, in order to protect the integrity of the audit. If there is a question regarding any recommended audit adjustments, work papers may be made available to KCHA or KMC in support of conclusions made by Contractor.

8. Authority to Incur Financial Obligation. It is understood that Contractor, in its performance of any and all duties under this Agreement, has no right, power or authority to bind KCHA to any agreements or undertakings.

9. **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.

10. **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.

11. **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.

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

13. **Confidentiality.**

13.1 **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 employees, contractors, services providers, and legal or financial advisors.

13.2 **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.

13.3 **Medical Records.** If applicable, 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.

13.4 Protected Health Information. Contractor and KCHA recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of KCHA or KMC (as defined by the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum, attached as Exhibit "D" and incorporated herein by this reference. In the event of a conflict between Exhibit "D" and any other confidentiality provision of this Agreement, Exhibit "D" shall control.

13.5 Ownership of Records. All final audit reports and other complete deliverables prepared by Contractor or Contractor's assigned personnel during and in connection with this Agreement and provided to KCHA, excluding any Contractor Material (defined below) contained or embodied therein (hereafter, "Deliverables"), shall be the property of KCHA at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KCHA all such Deliverables, which have not already been provided to KCHA in such form or format as the parties mutually agree. Such Deliverables shall be and will remain the property of KCHA, subject to any restriction or limitation set forth in the Engagement Agreement. In addition, KCHA may not alter or modify the audit report or any other Deliverable issued in Contractor's name. Contractor may retain copies of the above described Deliverables 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 KCHA. Contractor shall own its workpapers and general accounting-related skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property which may have been discovered, created, received, developed or derived by Contractor either prior to or as a result of providing services under the Agreement (collectively, "Contractor Materials"). KCHA shall have a non-exclusive, non-transferable license to use Contractor Materials for its own internal use and for the purposes for which they are delivered to the extent they form part of a Deliverable. Notwithstanding anything to the contrary in this Agreement, Contractor and its personnel are free to use and employ their general skills, know how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of KCHA.

14. Conflict of Interest. Contractor covenants that it has no interest and that it 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 its 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, KCHA may immediately terminate this Agreement by giving written notice thereof.

15. **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.

16. **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 KCHA 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 KCHA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

17. **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.

18. **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.

19. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to KCHA 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.

20. **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 confirmation of such verification required in 8 USCA section 1324a, if requested by KCHA. Without limiting the generality of the indemnification in section 21, Contractor agrees to indemnify, defend, and

hold harmless KCHA, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

21. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA'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 Hospital Counsel and counsel retained by KCHA, 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 personal injury (including death) or damage to real or tangible personal property, to the extent caused by any act or omission of Contractor or Contractor'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 KCHA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

In addition, Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA'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 Hospital Counsel and counsel retained by KCHA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, to the extent arising out of or caused by a breach of confidentiality by Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives.

As a condition to the foregoing indemnity obligations, KCHA shall provide Contractor with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with Contractor in connection with any such claim. Contractor shall be entitled to control the handling of any such claim and to defend any such claim, in its sole discretion, with counsel of its own choosing.

22. **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 KCHA. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to KCHA 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.

23. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require its subcontractors, consultants, and other agents providing services to KCHA under this Agreement to maintain, insurance as described in Exhibit "E," attached hereto and incorporated herein by this reference.
24. **Liability of KCHA.** The liabilities or obligations of KCHA with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. (Health & Saf. Code, § 101853, subd. (g).)
25. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.
26. **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 KCHA 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 KCHA and Contractor that any such person or entity, other than KCHA or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
27. **Non-appropriation.** KCHA 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, KCHA 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 KCHA requires such an action.
28. **Non-collusion Covenant.** Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA. Contractor has received from KCHA no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.
29. **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.
30. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other party, employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement. The foregoing will not prevent a party from employing any such person who (i) ceases to be employed by the other party prior to any direct solicitation by or encouragement or (ii) responds

to a general employment advertisement or other general solicitation or recruitment effort not specifically aimed at employees of the other party. Notwithstanding the foregoing, any offer of employment to members of the audit team prior to issuance of Contractor's report may impair independence, and may result in Contractor's inability to complete the engagement and issue a report.

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

32. **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: Moss Adams LLP  
10960 Wilshire Blvd., Suite 1100  
Los Angeles, CA 90024  
Attn.: Stelian Damu, CPA, Partner

With a copy to:  
Moss Adams LLP  
999 Third Avenue, Suite 2800  
Seattle, WA 98104  
Attn: General Counsel

Notice to KCHA: Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn.: Chief Executive Officer

33. **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.

34. **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.

35. **Termination.**



35.1 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.

35.2 Termination without Cause. Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

35.3 Immediate Termination. Notwithstanding the foregoing, KCHA shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) KCHA 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 KCHA or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which KCHA or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to KCHA or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against KCHA 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 section 35.1.

### 36. Effect of Termination.

36.1 Payment Obligations. In the event of termination of this Agreement for any reason, KCHA 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.

36.2 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. KCHA may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

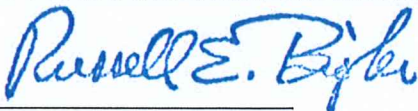
36.3 No Interference. Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by KCHA to contract with any other individual or entity for the provision of services or to interfere in any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

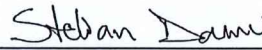
37. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

[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.

KERN COUNTY HOSPITAL AUTHORITY      MOSS ADAMS LLP


By   
Chairman  
Board of Governors

By   
Stelian Damu  
Partner

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By   
Andrew Cantu  
Chief Financial Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By   
Vice President & General Counsel  
Kern County Hospital Authority

**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES**

The primary purpose of the financial audit will be to conduct an audit sufficient to express an opinion as to whether the KCHA financial statements are fairly presented in accordance with generally accepted accounting principles and whether supplementary information is fairly presented in relation to the basic financial statements.

The Report on the financial statements must state the scope of the audit and that the audit was performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Governmental Auditing Standards, issued by the Comptroller General of the United States.

The audit will include an evaluation and report of the KCHA's internal control for the purpose of identifying areas of weakness or noncompliance. The purpose of this report is to: 1) report any significant deficiencies (including material weaknesses) which are identified as a result of performing an audit of the financial statements; and 2) report occurrences of noncompliance with provisions of laws, regulations, contracts and grants, which could have a direct and material effect on the required financial statements.

**Standards of field work**

During the period of time leading up to the year-end audit procedures, the designated Moss Adams LLP representative shall meet regularly with the KMC Finance Team and KCHA's Chief Financial Officer.

A draft copy of the reports should be delivered to KCHA's Chief Financial Officer. The Chief Financial Officer will address potential findings identified in the Schedule of findings and provide clarifications or responses to the findings. Final draft reports should be submitted to the Chief Financial Officer within six (6) months after the fiscal year end.

Contractor shall submit the following reports to KCHA:

1. Client Assistance Schedule;
2. Draft Independent Auditor's Report, report of Internal Control Over Financial Reporting and on Compliance and other Matters Based on an Audit of Financial Statements Performance in accordance with Government Auditing Standards; and
3. Final Report on the financial statements to those charged with governance of KCHA.

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**EXHIBIT "B"**  
**FEE SCHEDULE**

<b>AUDIT YEAR</b>	<b>FEES</b>
Fiscal year ended June 30, 2021	\$144,000-\$154,000
Fiscal year ended June 30, 2022	\$148,000-\$158,000
Fiscal year ended June 30, 2023	\$152,000-\$162,000

Contractor shall issue invoices based on the timeframe set forth in the Engagement Agreement or, if none, on a monthly basis.

KCHA acknowledges that the following circumstances may result in an increase in fees:

- Failure to prepare for the audit as evidenced by accounts and records that have not been subject to normal year-end closing and reconciliation procedures;
- Failure to complete the audit preparation work by the applicable due dates;
- Significant unanticipated transactions, audit issues, or other such circumstances;
- Delays causing scheduling changes or disruption of fieldwork;
- After audit or post fieldwork circumstances requiring revisions to work previously completed or delays in resolution of issues that extend the period of time necessary to complete the audit;
- Issues with the prior audit firm, prior year account balances or report disclosures that impact the current year engagement; and/or
- An excessive number of audit adjustments.

Contractor will advise KCHA in the event these circumstances occur. In addition, to the extent future federal, state, or professional rule-making activities require modification of Contractor's audit approach, procedures, scope of work, etc., Contractor will advise KCHA of such changes and the impact on fees.

**EXHIBIT “C”**

**IRS FORM W-9**

**EXHIBIT "D"**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and Moss Adams LLP ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of the effective date of the underlying agreement ("**Effective Date**").

**RECITALS**

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

**WHEREAS**, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate may create, receive, maintain, or transmit Protected Health Information ("**PHI**");

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

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

**AGREEMENT**

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

**ARTICLE I**  
**DEFINITIONS**

1.1 "**Breach**" shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 "**Breach Notification Rule**" shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 "**Designated Record Set**" shall have the meaning given such term under [45 C.F.R. § 164.501](#).



1.4 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

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

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

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

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

1.10 “**Subcontractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

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

1.12 “**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.13 “**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

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



## **ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE**

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

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

### 2.3 Reporting Non-Permitted Use or Disclosure.

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

permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for the following reasonable and actual costs and expenses in providing the notification and as required by regulation, reasonable administrative costs associated with providing notice, printing and mailing costs, and one (1) year (or for the duration required by statute or regulation, if longer) of credit monitoring services for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

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

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for

inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

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

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

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

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

2.11 Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply and represents that it shall comply with HIPAA, the HITECH Act, and the HIPAA

Rules. Business Associate shall comply with all state privacy and security laws, to the extent that such state laws are applicable to Business Associate and are not preempted by HIPAA or the HITECH Act.

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

#### **3.1 Covered Entity's Obligations.**

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

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

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

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

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

### **ARTICLE IV TERM AND TERMINATION**

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

#### **4.2 Termination of Underlying Agreement.**

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI.

4.4.2 If destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination. For the avoidance of doubt, Covered Entity agrees that it is infeasible for Business Associate to return or destroy PHI to the extent incorporated into Business Associate's working papers supporting its professional services for Covered Entity, and Business Associate shall be permitted to retain such PHI without further notice and shall maintain its confidentiality in accordance with this BAA.

## **ARTICLE V MISCELLANEOUS**

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

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act. Any amendment to this BAA must be made in writing and signed by both Parties.

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

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

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

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

5.7 Assistance in Litigation or Administrative Proceedings. Provided Business Associate is not a party to the action or in an adversarial position with Covered Entity, Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security caused or contributed to by Business Associate, Business Associate's Subcontractors or members of Business Associate's Workforce.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify, defend, and hold harmless

Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI to the extent resulting from the violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Business Associate's rights and obligations of indemnity set forth above are conditioned on (i) the prompt written notification from the Covered Entity to Business Associate of the claim for which indemnity is sought and (ii) cooperation and assistance from Covered Entity, including reasonable disclosure of information and authority necessary to perform the above. In the event of a claim for which the Covered Entity may seek indemnification hereunder, Business Associate shall be entitled to control the handling of such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing. Business Associate agrees to pay any claims and losses awarded against the Covered Entity by final judgment of a court, or the amount of any agreed settlement regarding any such claims and losses.

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

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such

other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern County Hospital Authority  
c/o Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
Attn: Chief Executive Officer

Business Associate's Notice Address:

Moss Adams LLP  
10960 Wilshire Blvd., Suite 1100  
Los Angeles, CA 90024  
Attn: Stacy J. Stelzriede, CPA, Partner

With a copy to:  
Moss Adams LLP  
999 Third Avenue, Suite 3300  
Seattle, WA 98104  
Attn: General Counsel

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

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

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

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

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

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



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

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

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

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

**COVERED ENTITY:**

The Kern County Hospital Authority on  
behalf of Kern Medical Center

Title: Chairman

Date: Jan. 14, 2021

**BUSINESS ASSOCIATE:**

Moss Adams LLP

Title: Partner

Date: January 14, 2021

**EXHIBIT "E"**  
**Insurance**

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

KCHA reserves the right to review any and all of the required insurance policies (except for the declarations pages of such policies) and/or blanket 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 KCHA (blanket endorsement is acceptable) 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.
- (c) Contractor is responsible for any deductible for a claim that is covered under its General Liability Insurance or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving KCHA.

- (d) KCHA shall be named as an additional insured on Contractor's General Liability Insurance (blanket endorsement is acceptable) for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement.
- (e) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (f) 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).
- (g) The policy shall cover inter-insured suits between KCHA and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- (h) Required Evidence of Insurance: (i) Copy of the additional insured blanket 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.
- (d) KCHA shall be named as an additional insured on Contractor's Automobile Liability Insurance (blanket endorsement is acceptable) for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Contractor's profession.
- (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate.
- (c) Contractor is responsible for any deductible for a claim that is covered under its Professional Liability or self-insured retention. .
- (d) Required Evidence of Coverage: Certificate of Insurance.

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

6. 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 upon request *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) 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 KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
- (b) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (c) Required Evidence of Insurance shall be submitted upon written request for any renewal or replacement of a policy that already exists before expiration or other termination of the existing policy.
- (d) Contractor shall provide immediate written notice if any of the required insurance policies is terminated.
- (e) Upon written request, copies of required insurance policies (except for the declarations pages of such policies) must be provided to KCHA 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: Except as to Professional Liability Insurance, Contractor hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Contractor may acquire against KCHA 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 KCHA has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor's Commercial General Liability and Automobile insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of 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. KCHA, at its sole option, may terminate this Agreement and seek damages from Contractor resulting from

said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Contractor, KCHA may deduct from sums due to Contractor any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

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

January 19, 2022

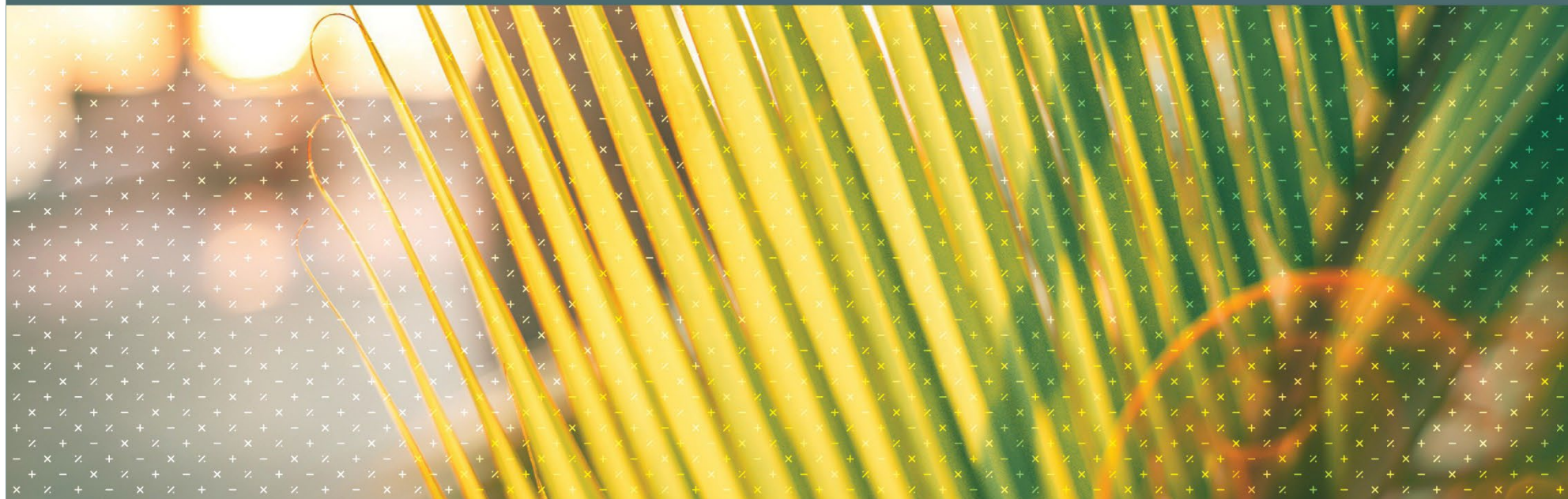
**Subject:** Proposed Report of Independent Auditors from Moss-Adams, LLP

**Recommended Action:** Receive and File; Refer to Kern County Board of Supervisors

**Summary:**

Kern Medical requests your Board receive and file the Report of Independent Auditors from Moss-Adams, LLP, for the audit of Kern Medical Center's financial statements pursuant to Kern County Hospital Authority Agreement No. 005-2021. The scope of the audit includes the audit of Kern Medical Center financial statements, which comprise the statement of net position as of June 30, 2021, and the related statements of revenue, expenses and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.





# FY 2021 Audit Results – Kern County Hospital Authority

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Prepared by the Moss Adams Health Care Group

Presented: January 19, 2022

# Audit Committee

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## Kern Medical



Dear Board of Governors:

Thank you for your continued engagement of Moss Adams LLP. We are pleased to have the opportunity to meet with you to discuss the results of our audit of the financial statements of Kern County Hospital Authority (“Kern Medical”) for the year ended June 30, 2021.

The accompanying report, which is intended solely for the use of the Board of Governors and management, presents important information regarding the financial statements of Kern Medical and our audit that we believe will be of interest to you. It is not intended for, and should not be used by, anyone other than these specified parties.

We conducted our audit with the objectivity and independence that you expect. We received the full support and assistance of the Kern Medical personnel. We are pleased to serve and be associated with Kern Medical as its independent public accountants and look forward to our continued relationship.

We look forward to discussing our report or any other matters of interest with you during this meeting.





# Agenda

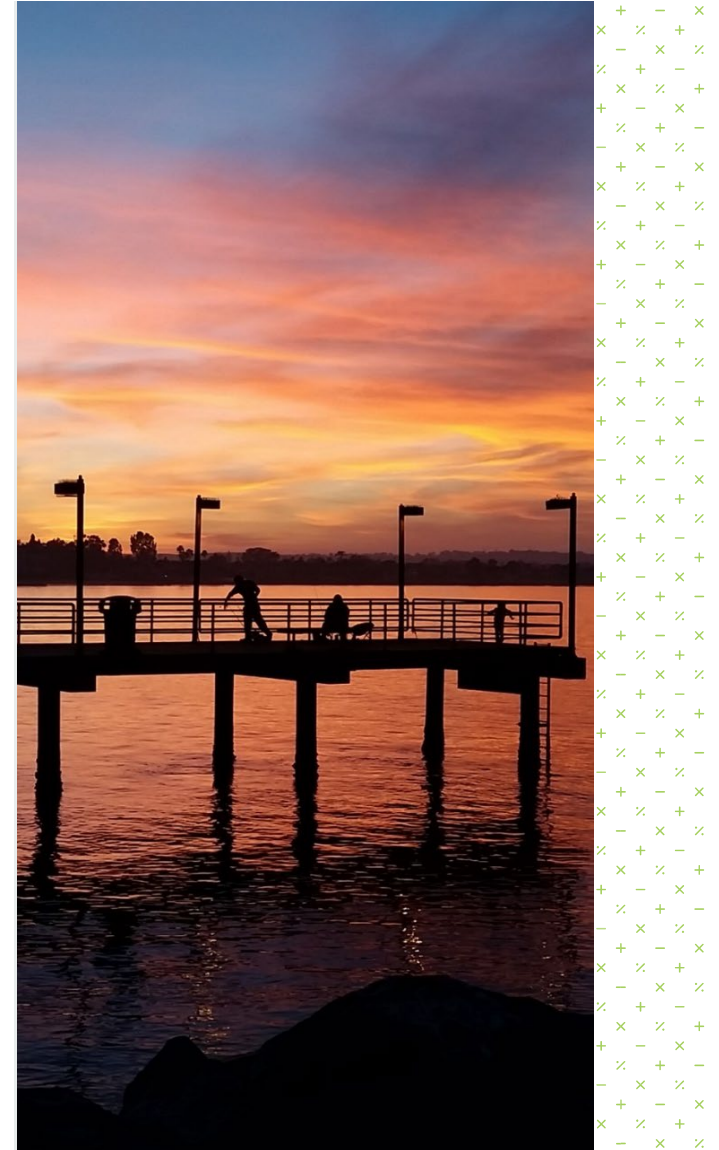
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1. Auditor Opinions & Reports
2. Communications with Those Charged with Governance
3. Exhibit: Management Representation Letter
4. Other Information



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# Auditor Opinions & Reports



# Scope of Services

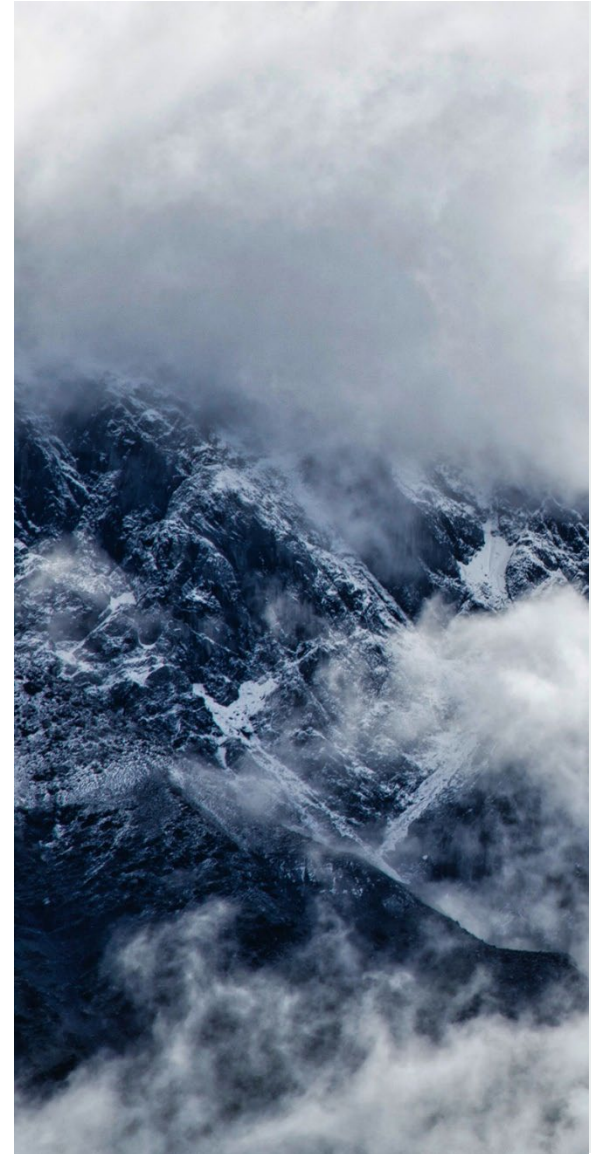
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We have performed, or will be performing, the following services for Kern Medical:

- Annual financial statement audit as of and for the year ended June 30, 2021
- Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*
- Single Audit for the year ended June 30, 2021

We have also performed, or will be performing, the following nonattest services:

- Assisted in drafting the financial statements of Kern Medical, excluding Management's Discussion and Analysis



# Auditor Report on the Financial Statements

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## Unmodified Opinion

- Financial statements are presented fairly and in accordance with U.S. GAAP

## Government Auditing Standards Report

- No financial reporting findings noted
- No compliance findings reported

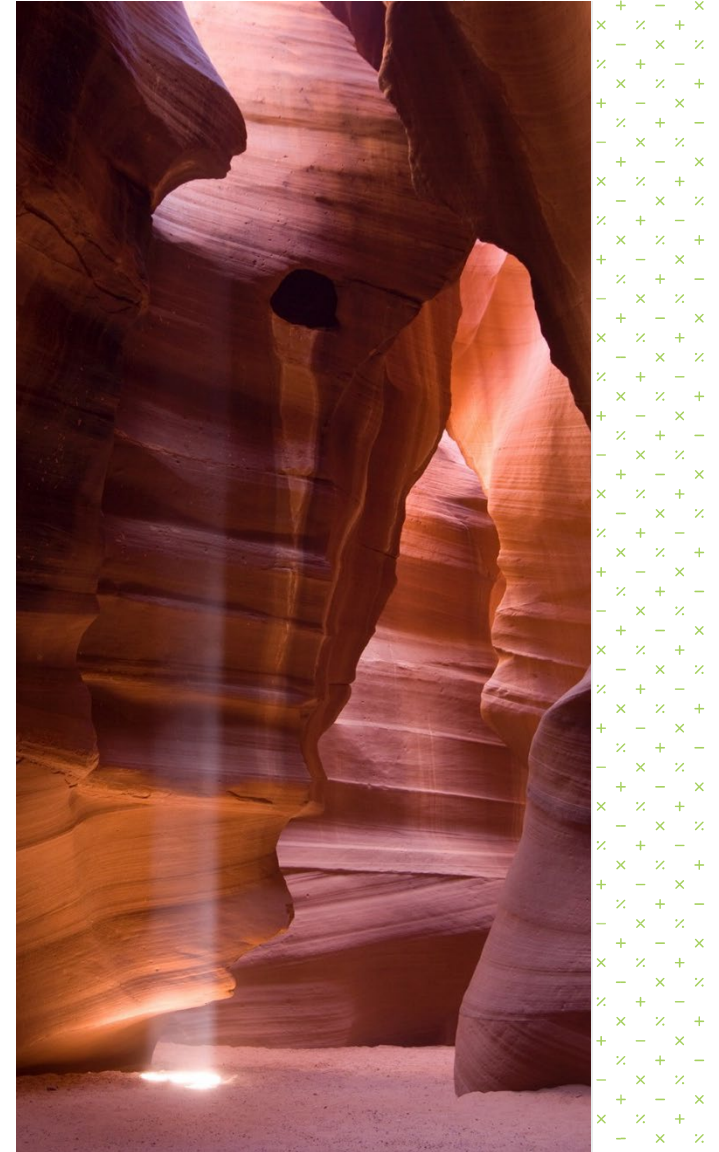










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# Communications with Those Charged with Governance



# Our Responsibility

			
<p>To express our opinion on whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, and in accordance with U.S. GAAP. However, our audit does not relieve you or management of your responsibilities.</p>	<p>To perform an audit in accordance with generally accepted auditing standards issued by the AICPA, <i>Government Auditing Standards</i> issued by the Comptroller General of the United States, and the California Code of Regulations, Title 2, Section 1131.2, <i>State Controller's Minimum Audit Requirements for California Special Districts</i>, and design the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement.</p>	<p>To consider internal control over financial reporting as a basis for designing audit procedures but not for the purpose of expressing an opinion on its effectiveness or to provide assurance concerning such internal control.</p>	<p>To communicate findings that, in our judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.</p>

# Planned Scope & Timing of the Audit

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It is the auditor's responsibility to determine the overall audit strategy and the audit plan, including the nature, timing, and extent of procedures necessary to obtain sufficient appropriate audit evidence and to communicate with those charged with governance an overview of the planned scope and timing of the audit.

## Our Comments

The planned scope and timing of the audit was communicated to Kern Medical's Board of Governors in our audit planning letter and was included in the engagement letter for the year ended June 30, 2021.



# Significant Accounting Policies & Unusual Transactions

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The auditor should determine that the Board of Governors is informed about the initial selection of and changes in significant accounting policies or their application. The auditor should also determine that the Board of Governors is informed about the methods used to account for significant unusual transactions and the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

## Our Comments

Management has the responsibility for selection and use of appropriate accounting policies. The significant accounting policies used by Kern Medical are described in the footnotes to the financial statements. Throughout the course of an audit, we review changes, if any, to significant accounting policies or their application, and the initial selection and implementation of new policies. Kern Medical adopted GASB Statement No. 84, *Fiduciary Activities*, in FY 2021. Other than this new accounting standard, there were no changes to significant accounting policies for the year ended June 30, 2021.

We believe management has selected and applied significant accounting policies appropriately and consistent with those of the prior year.



# Management Judgments & Accounting Estimates

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The Board of Governors should be informed about the process used by management in formulating particularly sensitive accounting estimates and about the basis for the auditor's conclusions regarding the reasonableness of those estimates.

## Our Comments

Management's judgments and accounting estimates are based on knowledge and experience about past and current events and assumptions about future events. We apply audit procedures to management's estimates to ascertain whether the estimates are reasonable under the circumstances and do not materially misstate the financial statements.

Significant management estimates impacted the financial statements including the following: **patient accounts receivable reserves; actuarially determined accruals for workers' compensation, medical malpractice liabilities, pension, and other post-employment liabilities; grant revenue recognition; and accruals for third-party settlements.**

We deem them to be reasonable.



# Areas of Audit Emphasis

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- Information Technology Controls
- Revenue Recognition
- Valuation of Patient Accounts Receivable
- Valuation of Third-Party Settlements, including Indigent Funding
- Pension Obligation
- Related-Party Transactions
- Compliance with Laws, Regulations, and Federal Awards, Including COVID-19 Funding



# Audit Requirement – CARES Act Grant Funding

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## Provider Relief Grant Funds Received

- Approximately \$4.7 million received as of June 30, 2021.
- Nonfederal entities that expend financial assistance of \$750,000 or more in federal awards will have a single or program-specific audit for their fiscal year that includes the periods the funds are expended.
- Guidance on what qualifies as a healthcare-related expense attributable to COVID-19 or what qualifies as lost revenue has evolved over time.
- The Compliance Supplement which outlines the specific audit requirements was released in August 2021.
- Provider Relief Funds received in FY 2020 will be subject to the FY 2021 Single Audit, which is currently due by September 2022.

The receipt of HHS  
Grant Funding under  
the CARES Act subjects  
Kern Medical to a Single  
Audit under the  
*Uniform Guidance*



# Areas of Audit Emphasis: Patient Service Revenue and Valuation of Patient Accounts Receivable

## Accounting issue

- Revenue recognition and adequacy of contractual allowances and allowances for bad debts

## Description of circumstance

- Revenue recognized when service provided
- Receivables, primarily arising from third-party payors

## Audit risk

- Revenue recognition could be inappropriate
- Reserves for contractual allowances are understated

## Moss Adams audit response

- Testing of internal controls around the revenue process
- Testing of management's estimate of allowances using underlying collection history
- Lookback analysis and subsequent cash receipts analysis

## Moss Adams audit results

- Revenue recognition is considered appropriate
- Valuation of patient accounts receivable is appropriate
- *Refer to next slide for hindsight analysis*



# Patient Accounts Receivable - Lookback Analysis

(\$s in 000s) *	2021	2020	2019	2018
Net Patient Accounts Receivable	\$43,117	\$53,568	\$40,824	\$43,129
Subsequent Cash Receipts 4 months after 6/30	\$39,585	\$32,430	\$30,077	\$32,886
% Collected 4 months after 6/30	92%	61%	74%	76%
Exposure after 4 months collections	\$3,532	\$21,128	\$10,747	\$10,243
Collected 16 months after 6/30	n/a	\$42,495	\$38,259	\$40,995
Cash Receipts in Excess of (Less Than) Amounts Recorded	n/a	(\$11,073)	\$2,565	(\$2,134)
Cash Receipts in Excess of (Less Than) Amounts Recorded (%)	n/a	(20%)	(6%)	(5%)
Days in Patient Accounts Receivable	63	96	73	71

\* Amounts exclude Kern Medical Surgery Center



# Areas of Audit Emphasis: Valuation of Third-Party Settlements, Including Indigent Funding

## Accounting issue

- Revenue recognition and adequacy of reserves

## Description of circumstance

- Revenue recognized in accordance with the elements of the respective reimbursement program
- Receivables or payables, arising from expected settlements with third-party payors

## Audit risk

- Revenue recognition could be inappropriate
- Reserves are understated

## Moss Adams audit response

- Testing of internal controls around the revenue process
- Testing of management's estimate of reserves based on contractual reimbursement arrangements, historical settlements, latest available information from payors
- Lookback analysis and subsequent cash receipts analysis

## Moss Adams audit results

- Revenue recognition is considered appropriate based on available information
- Valuation of third-party settlements is appropriate

# Management Judgments & Accounting Estimates

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Our views about the quantitative aspects of the entity's significant accounting policies, accounting estimates, and financial statement disclosures.

## Our Comments

The disclosures in the financial statements are clear and consistent. Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users, however we do not believe any of the footnotes are particularly sensitive. We call your attention to the following notes:

- Note 1 – COVID-19 Pandemic
- Note 6 – Long-Term Debt
- Note 8 – Net Patient Service Revenue
- Note 9 – Indigent Patient Care Funding
- Note 10 – Related-Party Transactions
- Note 11 – Pension Plan



# Significant Audit Adjustments & Unadjusted Differences Considered by Management to be Immaterial

The Board of Governors should be informed of all significant audit adjustments arising from the audit. Consideration should be given to whether an adjustment is indicative of a significant deficiency or a material weakness in Kern Medical's internal control over financial reporting, or in its process for reporting interim financial information, that could cause future financial statements to be materially misstated.

The Board of Governors should also be informed of uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements as a whole.

## Our Comments

### **CORRECTED ADJUSTMENTS:**

The following corrected audit adjustments were recorded:

- An adjustment of \$18.3 million to increase Indigent Funding Revenues and Due From Governmental Agencies to true-up estimates based upon the most recent available information
- An adjustment of \$2.0 million to increase Net Patient Accounts Receivable and Net Patient Service Revenue based upon subsequent cash collection experience
- An adjustment of \$1.0 million to increase Grant Revenue and Grant Receivables related to qualifying expenditures incurred
- An adjustment of \$566 thousand to decrease Due From Governmental Agencies and Net Patient Service Revenue based upon the 2021 Medicare Cost Report filing





# Significant Audit Adjustments & Unadjusted Differences Considered by Management to be Immaterial (Continued)

The Board of Governors should be informed of all significant audit adjustments arising from the audit. Consideration should be given to whether an adjustment is indicative of a significant deficiency or a material weakness in Kern Medical's internal control over financial reporting, or in its process for reporting interim financial information, that could cause future financial statements to be materially misstated.

The Board of Governors should also be informed of uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements as a whole.

## Our Comments

### **CORRECTED ADJUSTMENTS:**

- An adjustment of \$2.3 million to decrease Patient Credit Balances Payable and increase Net Patient Service Revenue based upon subsequent resolution

### **UNCORRECTED ADJUSTMENTS:**

- None noted



# Deficiencies in Internal Control and in Internal Control over Compliance

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Any material weaknesses and significant deficiencies in the design or operation of internal control or of internal control over compliance that came to the auditor's attention during the audit must be reported to the Board of Governors.

## Our Comments

### **MATERIAL WEAKNESS**

- None noted

### **SIGNIFICANT DEFICIENCIES**

- Nothing to communicate

### **NONCOMPLIANCE**

- Nothing to communicate



# Potential Effect on the Financial Statements of Any Significant Risks & Exposures

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The Board of Governors should be adequately informed of the potential effect on financial statements of significant risks and exposures and uncertainties that are disclosed in the financial statements.

## Our Comments

Kern Medical is subject to potential legal proceedings and claims that arise in the ordinary course of business, which are disclosed in the notes to the financial statements.



# Difficulties Encountered in Performing the Audit

---

The Board of Governors should be informed of any significant difficulties encountered in dealing with management related to the performance of the audit, including disagreements with management, whether or not satisfactorily resolved, about matters that individually or in the aggregate could be significant to the Kern Medical financial statements, or the auditor's report.

## Our Comments

No significant difficulties were encountered during our audit.

We are pleased to report that there were no disagreements with management.

We conducted our audit procedures remotely due to the COVID-19 pandemic. The remote environment did not impact our ability to access records of Kern Medical to complete our audit procedures.



# Material Uncertainties Related to Events & Conditions/ Fraud & Noncompliance with Laws and Regulations

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Any doubt regarding the entity's ability to continue, as a going concern, should be communicated to the Board of Governors.

Fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements should be communicated. We are also required to communicate any noncompliance with laws and regulations involving senior management that come to our attention, unless clearly inconsequential.

## Our Comments

No such matters came to our attention.

We have not become aware of any instances of fraud or noncompliance with laws and regulations.



# Other Material Written Communications

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Report to those charged with governance significant written communications between the auditor and management.

## Our Comments

See Exhibit 1 for management representation letter.

Other than the engagement letter, management representation letter, and communication to those charged with governance, there have been no other significant communications.



# Management's Consultation with Other Accountants

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In some cases, management may decide to consult about auditing and accounting matters. If management has consulted with other accountants about an auditing and accounting matter that involves application of an accounting principle to Kern Medical's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts.

## Our Comments

We are not aware of any significant accounting or auditing matters for which management consulted other accountants.

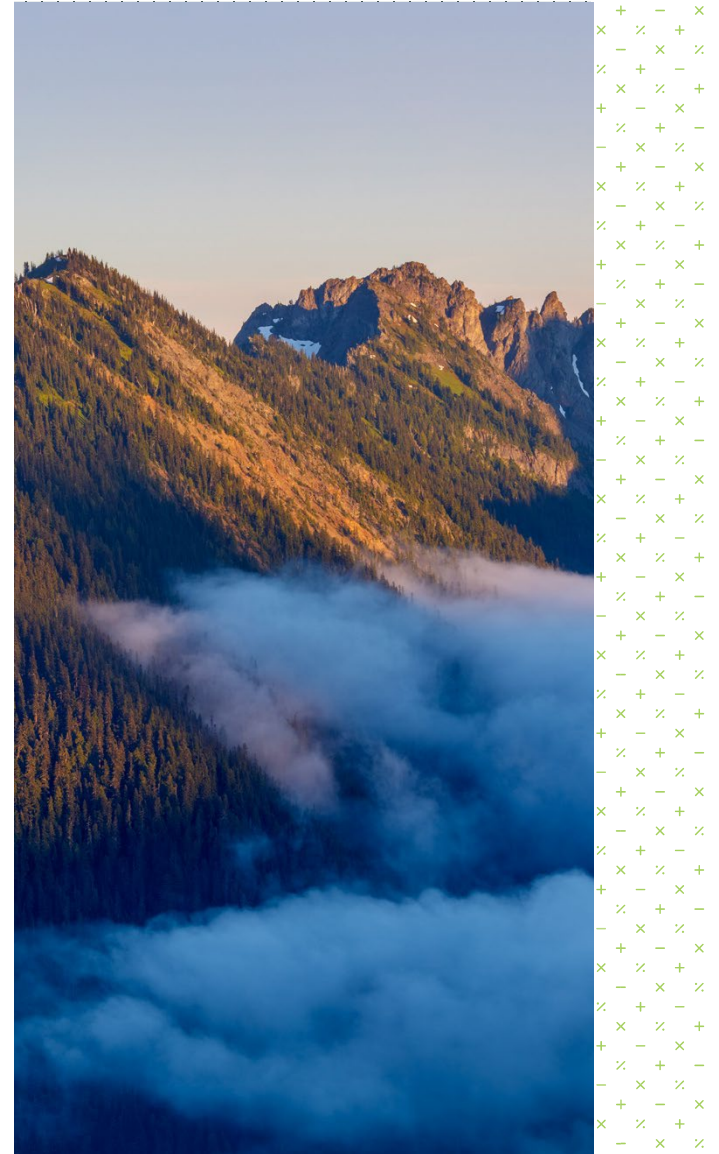




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# Management Representation Letter

*Exhibit 1*





# Management Representation Letter

December 20, 2021

Moss Adams LLP  
1333 N. California Blvd., Suite 350  
Walnut Creek, CA 94596

We are providing this letter in connection with your audits of the financial statements Kern County Hospital Authority (the Authority or Kern Medical), which comprise the statements of net position as of June 30, 2021 and 2020, and the related statements of revenues, expenses, and changes in net position, and cash flows for the years then ended and the related notes to the financial statements for the purpose of expressing an opinion as to whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States (U.S. GAAP). Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Except where otherwise stated below, immaterial matters less than \$475,000 collectively are not considered to be exceptions that require disclosure for the purpose of the following representations. This amount is not necessarily indicative of amounts that would require adjustment to or disclosure in the financial statements.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of December 17, 2021,

## Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated January 14, 2021, for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP.
2. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation and maintenance of internal controls to prevent and detect fraud.
4. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
5. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
6. All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
7. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.

## Information Provided

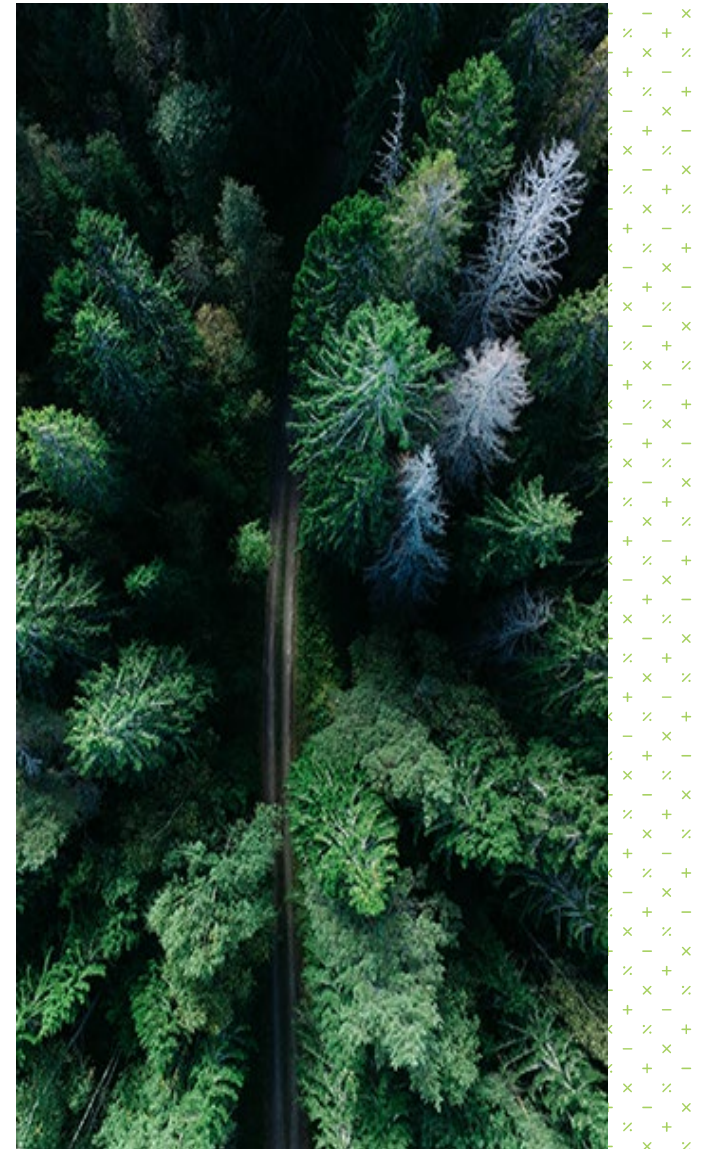
Note: This represents an excerpt only.  
Full management representation letter is  
available upon request.





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# About Moss Adams

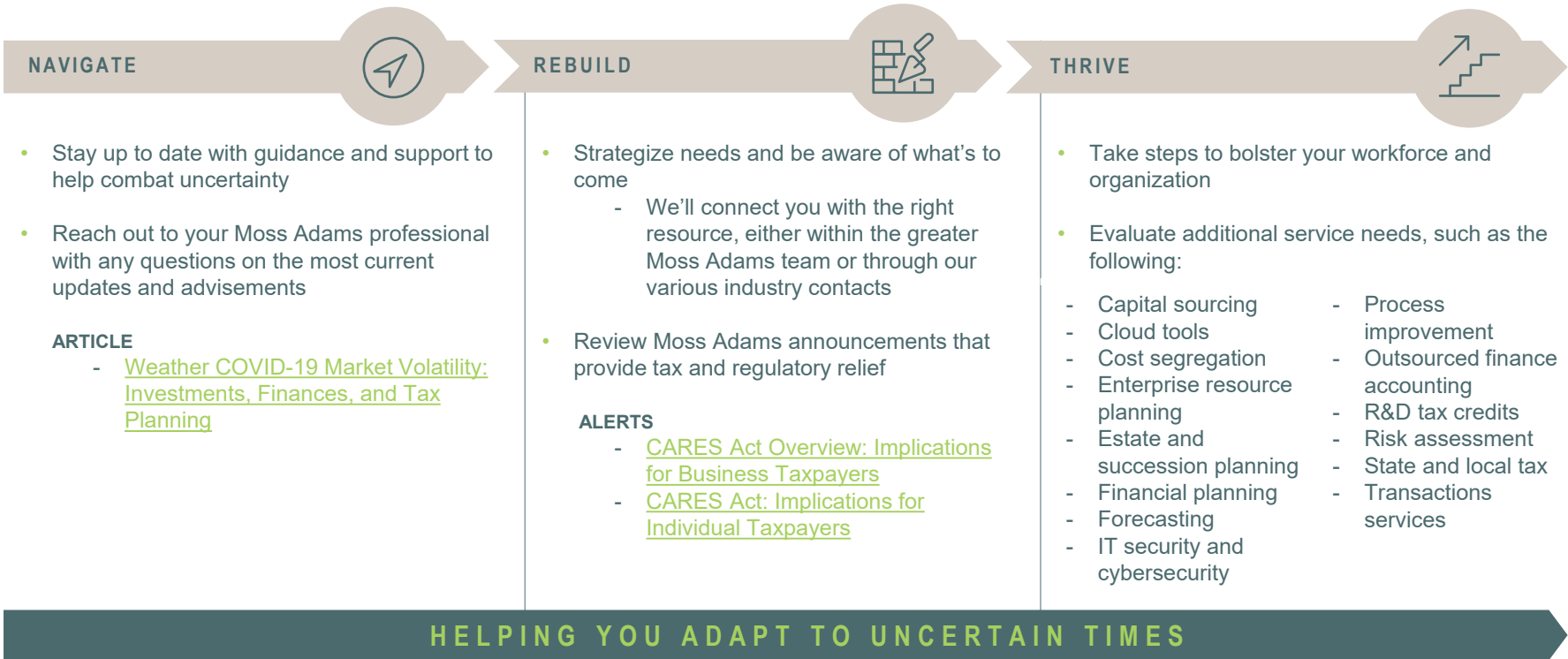


# Our Response to COVID-19

The COVID-19 pandemic has touched all aspects of our lives. We're here to guide you to the information and resources you need now and provide strategies for the changes to come. We'll support you as you rebuild and help you take advantage of rising opportunities.



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Find more information and resources here: <https://mossadams.com/covid-19-implications>

## Our Expertise



30

DEEP

108  
years in  
business

3,400+  
professionals

30+  
industries  
served

*Crater Lake—  
A monument to perseverance, North America's  
deepest lake filled to 1,949 feet over 720 years.*

## Our Reach

WIDE

25+  
locations  
west of the  
Mississippi

110+  
countries served  
through Praxity, AISBL

\$820M  
in revenue  
earned

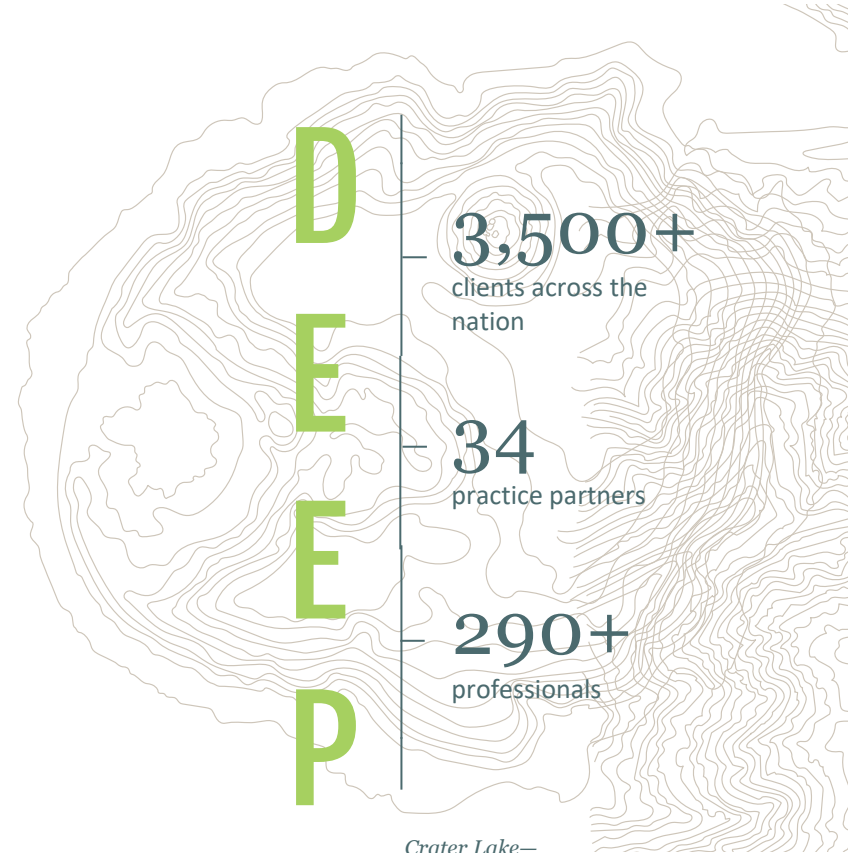
*Grand Canyon—  
At 277 miles long and up to 18 miles  
wide, this icon serves as a testament  
to determination and time.*

# Health Care Industry Experience

Our health care professionals dedicate their careers to serving the industry.

We cover the full spectrum of health care including:

- Hospitals and health systems
- Independent practice associations
- Medical groups
- Community health centers
- Behavioral health organizations
- Long-term care
- Surgery centers
- Knox Keene licensed health plans
- Health care ancillary services



*Crater Lake—  
A monument to perseverance, North  
America's deepest lake filled to 1,949 feet over  
720 years.*



# Hospitals & Health Systems

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Moss Adams has a dedicated Hospitals Practice serving more than 945 hospitals and hospital systems, ranging in size from 15 to over 1,600 beds, across the nation. Our work extends well beyond traditional accounting services and includes consulting and assistance on an array of issues in health care financial management.

We leverage our deep knowledge of the national marketplace and local competitive environments to provide customized solutions that make a difference to your organization.

## Who we serve:

- Integrated health systems
- Tertiary care teaching hospitals
- Hospital districts
- For-profit and not-for-profit organizations
- University-based hospitals
- Community and sole community
- Critical access hospitals
- Pediatric hospitals



# Additional Services

Audit and tax are vital. But you have complex needs that go beyond these core functions. Our dedicated health care consulting team provides a range of services to address all your needs—both now and in the future.



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HEALTH CARE CONSULTING & ADDITIONAL EXPERTISE		
PROVIDER REIMBURSEMENT	GOVERNMENT COMPLIANCE	OPERATIONAL IMPROVEMENT
Medicare & Medicaid	Regulatory Compliance	Revenue Cycle Enhancement
Provider-based Licensure & Certification	Coding Validation	Claims Recovery
Medical Education	Coding Department Redesign	Litigation Support
Uncompensated Care	EHR Internal Controls	Employer Health Benefits
Medicare DSH Analysis & Appeals	Corporate Compliance	Financial Turnaround
Worksheet S-10	LEAN TRANSFORMATION	Performance Excellence
STRATEGY & INTEGRATION	3P & Innovation: redesign processes, products, facilities	INFORMATION TECHNOLOGY
Provider Risk Analysis, Contracting & Operational Design	Lean Management Systems and Strategy Deployment	HIPAA Security and Privacy
M&A Support	Lean operations	Network Security & Penetration Testing
Feasibility Studies	Quality & patient safety	HITRUST Assessment & Certification
Market Intelligence & Benchmarking	PRIVATE EQUITY	SOC Pre-Audit Gap Analysis & Readiness
Service Line Enhancement	Investment Evaluation & Transactions	SOC Audits
Strategic Planning & Implementation	Advising Portfolio Companies	
	Selling Portfolio Companies	

# Insights and Resources

In today's fast-paced world, we know how precious your time is. We also know that knowledge is key. These resources offer what you need to know, when you need to know it, and are presented in the format that fits your life.

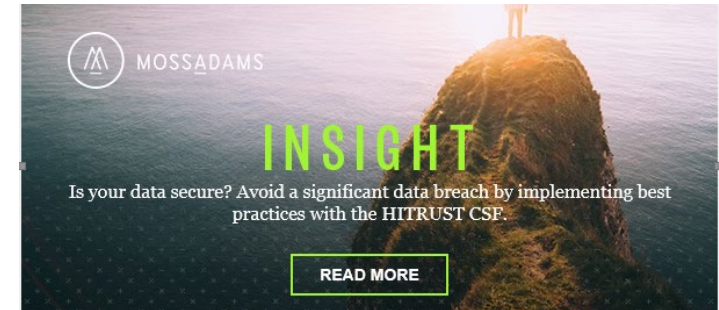
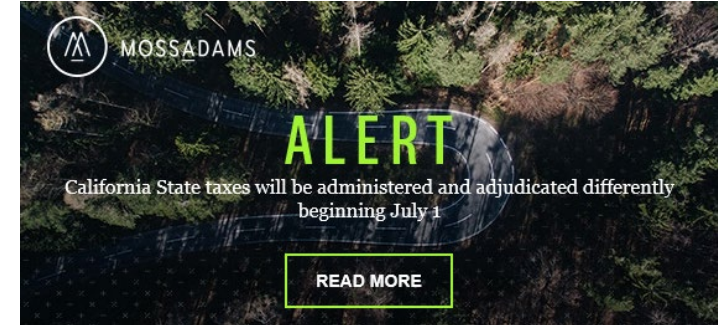
We'll keep you informed to help you stay abreast of critical industry issues.

Moss Adams closely monitors regulatory agencies, participates in industry and technical forums, and writes about a wide range of relevant accounting, tax, and business issues to keep you informed.

We also offer CPE webinars and events which are archived and available on demand, allowing you to watch them on your schedule.



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# Connect With Us

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LinkedIn: [www.linkedin.com/company/moss-adams-llp](http://www.linkedin.com/company/moss-adams-llp)



Twitter: [@Moss\\_Adams](https://twitter.com/Moss_Adams)



Subscribe to our emails: [www.mossadams.com/subscribe](http://www.mossadams.com/subscribe)



RSS feeds: [www.mossadams.com/RSS](http://www.mossadams.com/RSS)



YouTube: <http://www.youtube.com/mossadamslp>



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(925) 952-2506



THANK  
YOU



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

January 19, 2022

**Subject:** Kern County Hospital Authority Financial Report – November 2021

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Average Daily Census of 195 for November is 55 more than the November budget of 140 and 24 more than the 171 average over the last three months
- Admissions of 1,686 for November are 876 more than the November budget of 810 and 656 more than the 1,030 average over the last three months
- Total Surgeries of 499 for November are 24 more than the November budget of 475 and 29 more than the 470 average over the last three months
- Clinic Visits of 16,983 for November are 2,252 more than the November budget of 14,731 and 1,598 less than the 18,581 average over the last three months. The large budget variances are mainly due to 2,267 COVID-19 vaccinations provided during November

The following items have budget variances for the month of November 2021:

**Patient Revenue:**

Gross patient revenue has a favorable budget variance for November and on a year-to-date basis mainly because of strong average daily census levels due to the pandemic. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Year-to-date gross patient revenue has increased 17% compared to prior year.

**Indigent Funding Revenue:**

Indigent funding has an unfavorable budget variance for the month and year-to-date due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2022 Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), the Whole Person Care Program (WPC), the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

**Other Operating Revenue:**

Other operating revenue has a favorable budget variance for November and year-to-date due to the receipt of funds from the County of Kern for the operation of COVID-19 testing facilities and COVID-19 mobile vaccination units. This revenue is offset by Kern Medical's costs to provide these services for the County of Kern.

**Other Non-Operating Revenue:**

Other non-operating revenue has an unfavorable budget variance for the month and year-to-date because federal and state COVID-19 related funding is budgeted evenly throughout FY 2022 as other non-operating revenue; however, this COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

**Salaries Expense:**

Salaries are under budget for the month of November primarily because of lower than average costs for the month for physicians, clerical and administrative staff, and aides and attendants. On a year-to-date basis, salaries are under budget due to lower than average expenses for technicians and specialists, physicians, and clerical and administrative staff.

**Benefits Expense:**

Benefits expense has a favorable budget variance for the month and year-to-date due to lower than average paid time off, unemployment insurance, group health insurance, and retirement and pension obligations.

**Nurse Registry Expense:**

Nurse registry expense is over budget for the month and on a year-to-date basis because of higher than average registry usage in the hospital. The increase is primarily due to the pandemic. However, the current high census levels at Kern Medical consist of many other patients besides those with COVID-19, increasing the need for contract nurse services.

**Medical Fees:**

For the month of November, Kern Medical operated at the budgeted dollar amount for medical fees. On a year-to-date basis medical fees are under budget because of over accruals in prior months for several physicians that either no longer provide services for Kern Medical, or have provided relatively less services during the past few months.

**Other Professional Fees:**

Other professional fees are over budget for the month because of the need to engage contracted technicians and specialists due to a staffing shortage caused by high census levels. Contracted positions added include a CT scan technician, an MRI technician, a pharmacist, and a surgical technologist. On a year-to-date basis, other professional fees are over budget in part because of an implementation fee charged by the Acute Care Surgery Group and because of the contract labor positions added to accommodate high census levels.

**Supplies Expense:**

Supplies expense continues to be over budget for the month and on a year-to-date basis due to ongoing operations of the outpatient pharmacy. In addition, there are monthly radiology imaging software expenses that were part of an IT construction-in-progress project in prior year. These software costs were not budgeted for as supplies expenses in FY 2022 and contribute to the unfavorable budget variance.

**Purchased Services:**

For the month of November, Kern Medical operated at budget for purchased services expenses. On a year-to-date basis, purchased services are over budget due in large part to COVID-19 mobile clinic expenses that are reported on this line item. The mobile clinic expenses are offset by reimbursement received from the County of Kern and reported as other operating revenue.

**Other Expenses:**

Other expenses are over budget for the month in part because of the cost of additional hospital beds rented from Hill-Rom to accommodate high patient census levels. On a year-to-date basis, other expenses are over budget because of higher than average repairs and maintenance expenses, an air conditioning and heating unit rental from Hertz Equipment Rental Company (HERC) for the MRI, and because of higher than average utility costs.

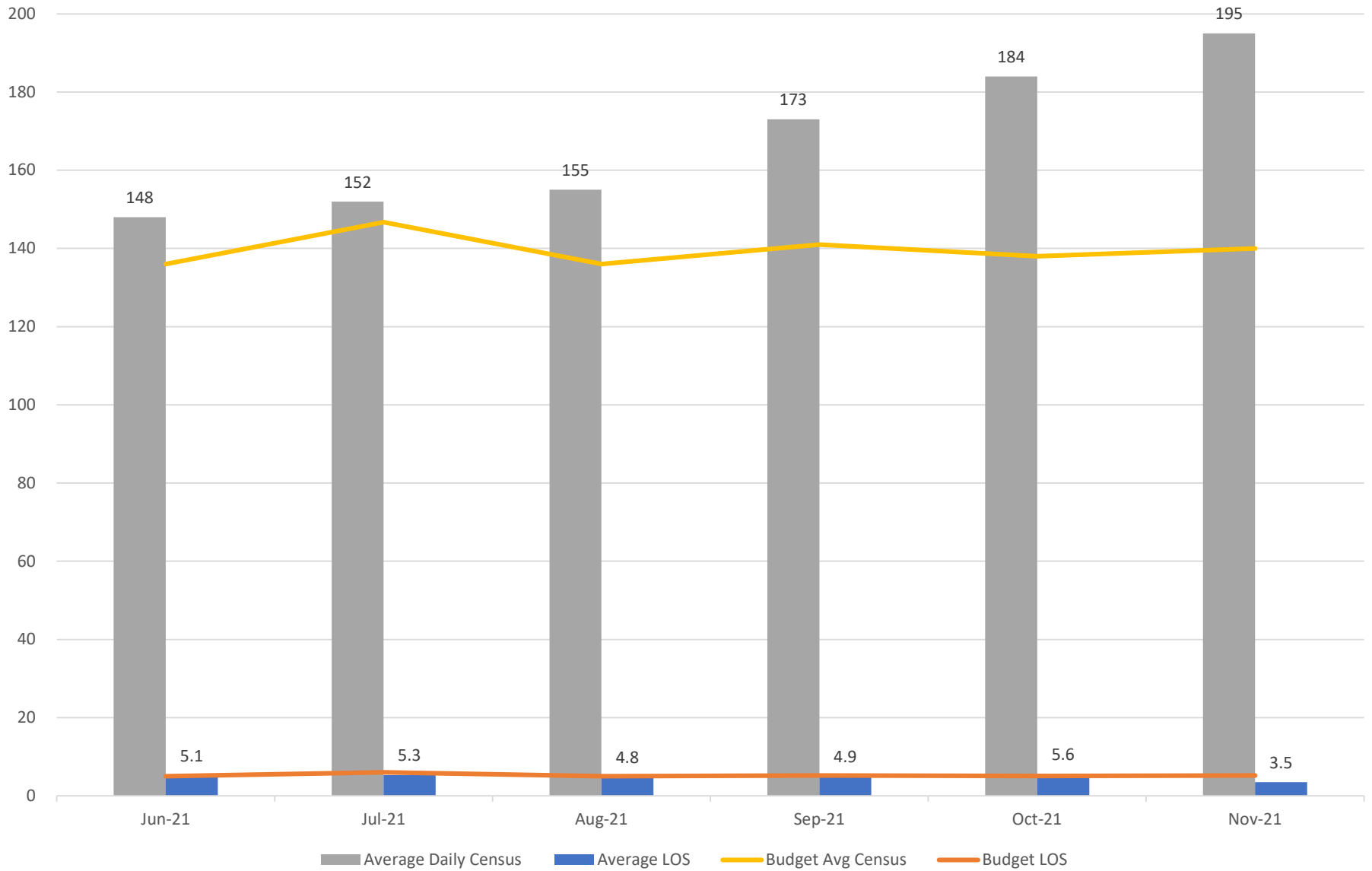
**Depreciation and Amortization Expense:**

Depreciation expense is over budget for the month and year-to-date because of construction-in-progress (CIP) projects that were put into service and have now started depreciating each month.

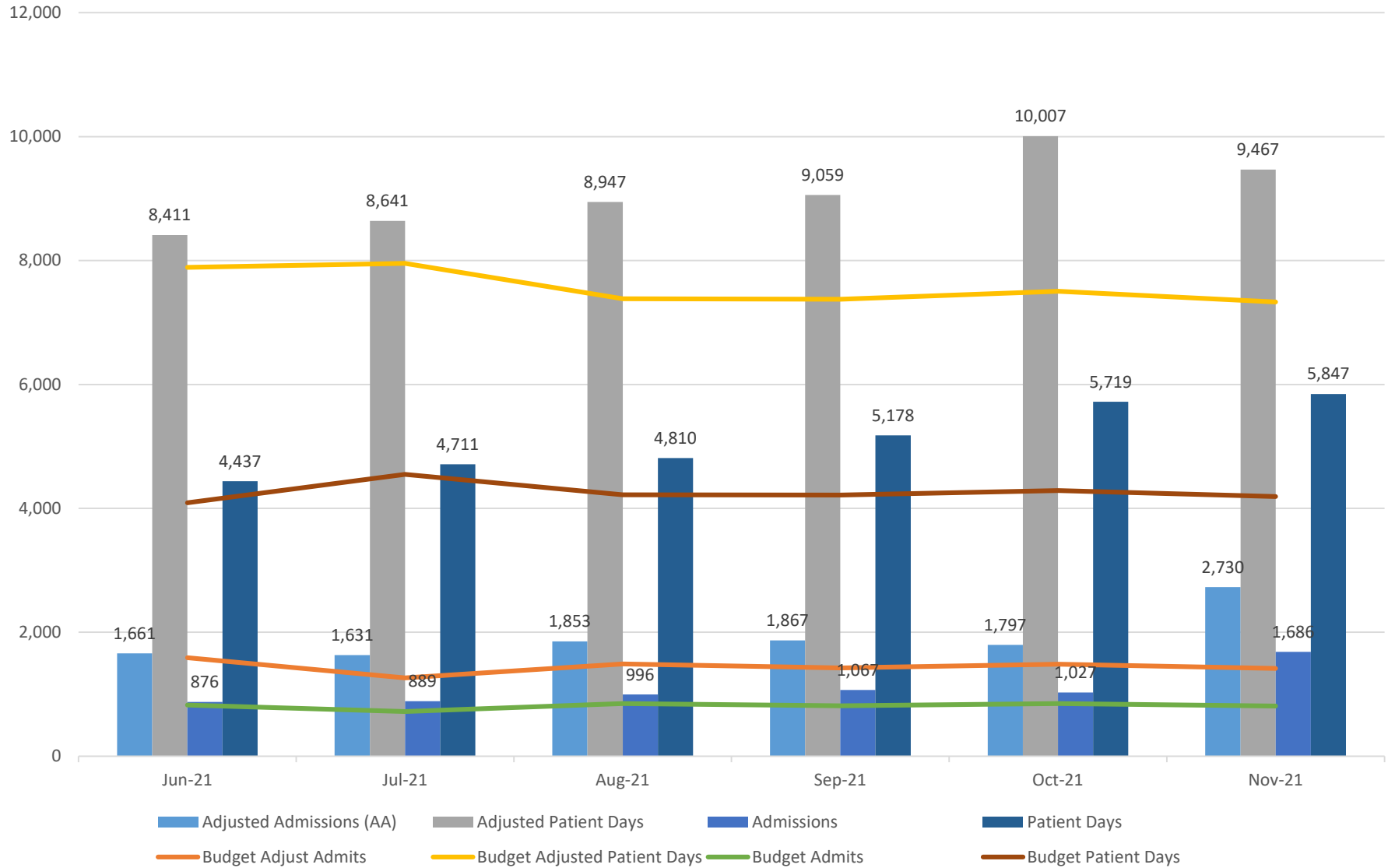


## BOARD OF GOVERNORS' REPORT KERN MEDICAL – NOVEMBER 2021

## Census & ALOS

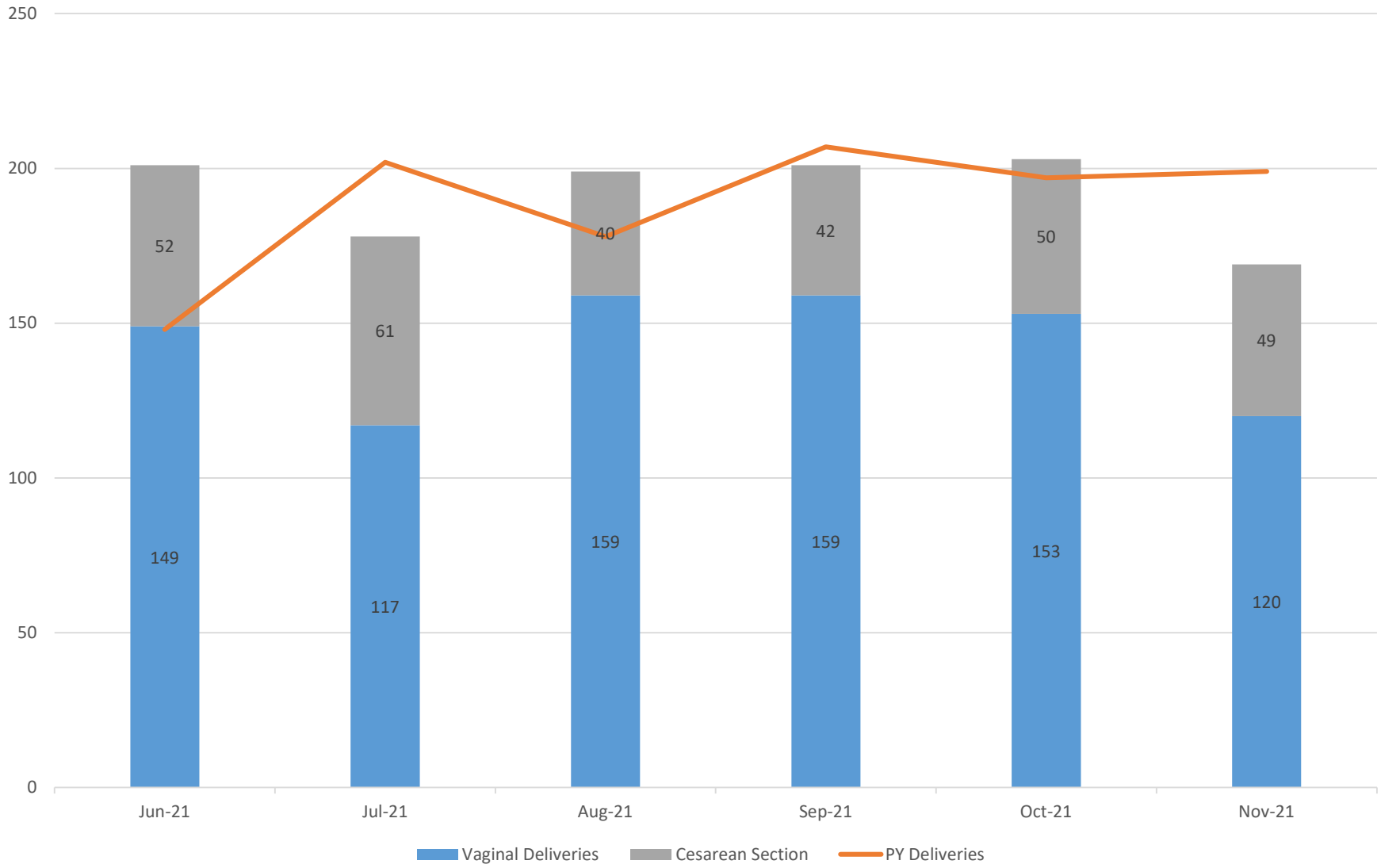


## Hospital Volumes

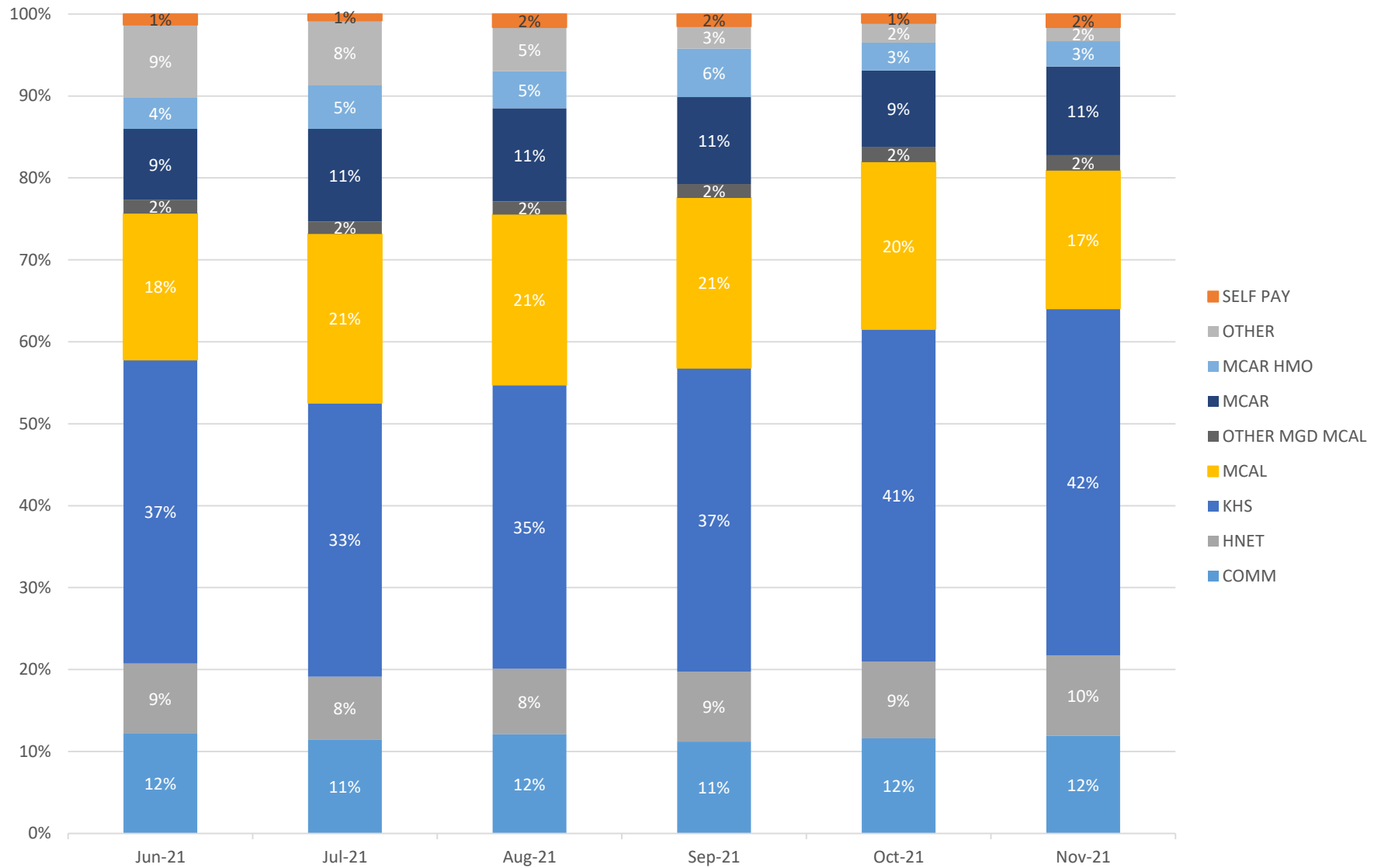




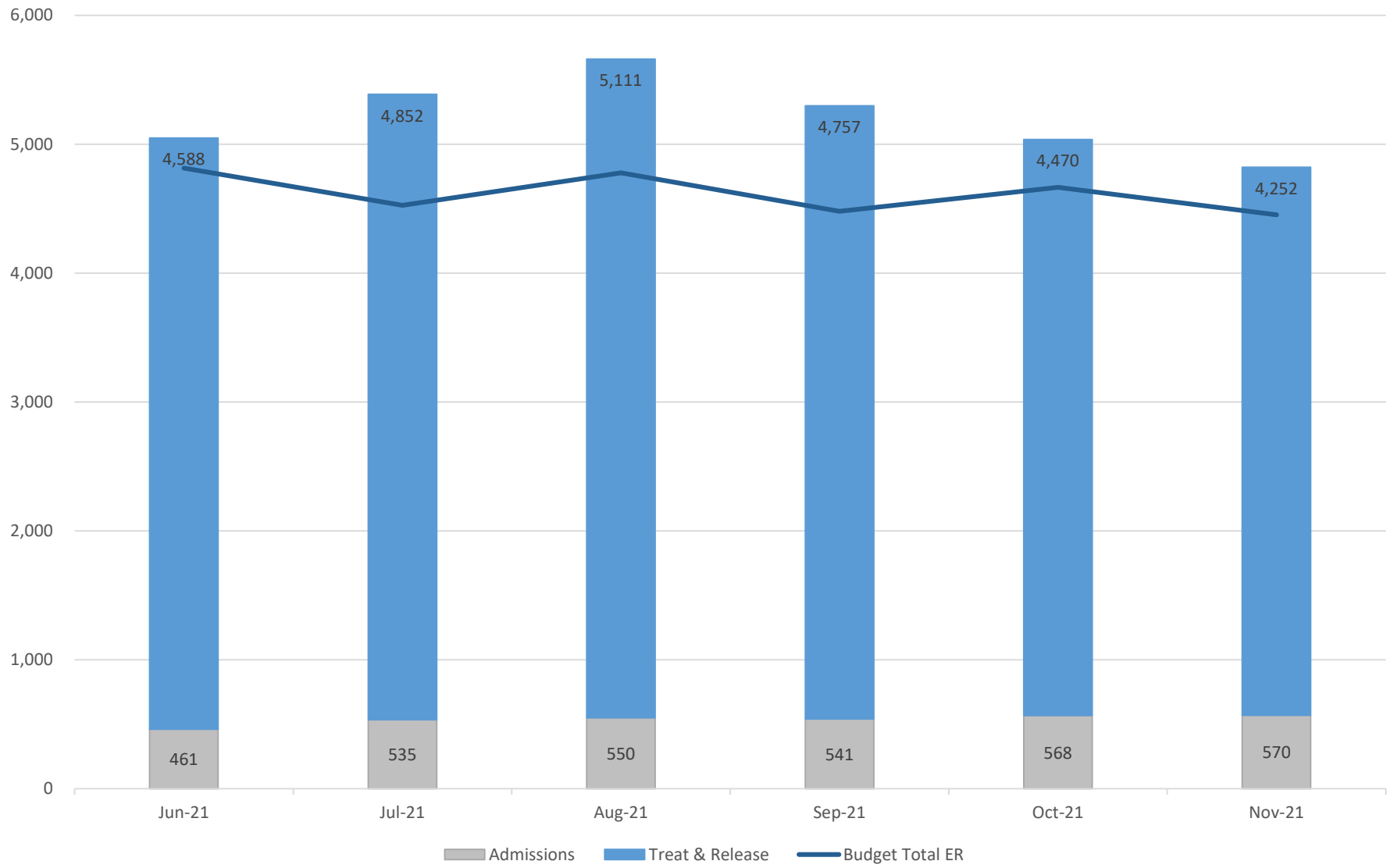
## Deliveries



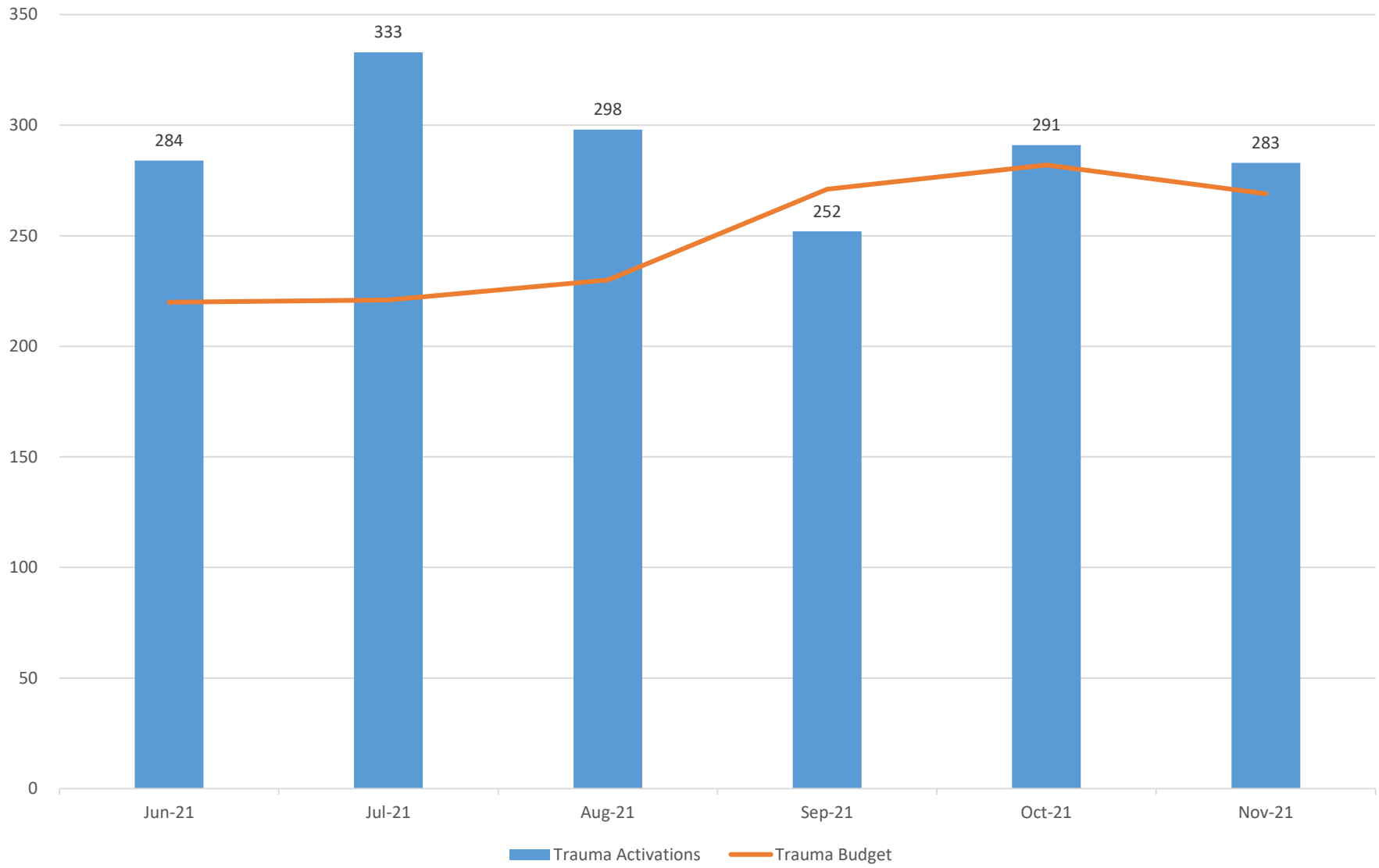
## PAYER MIX



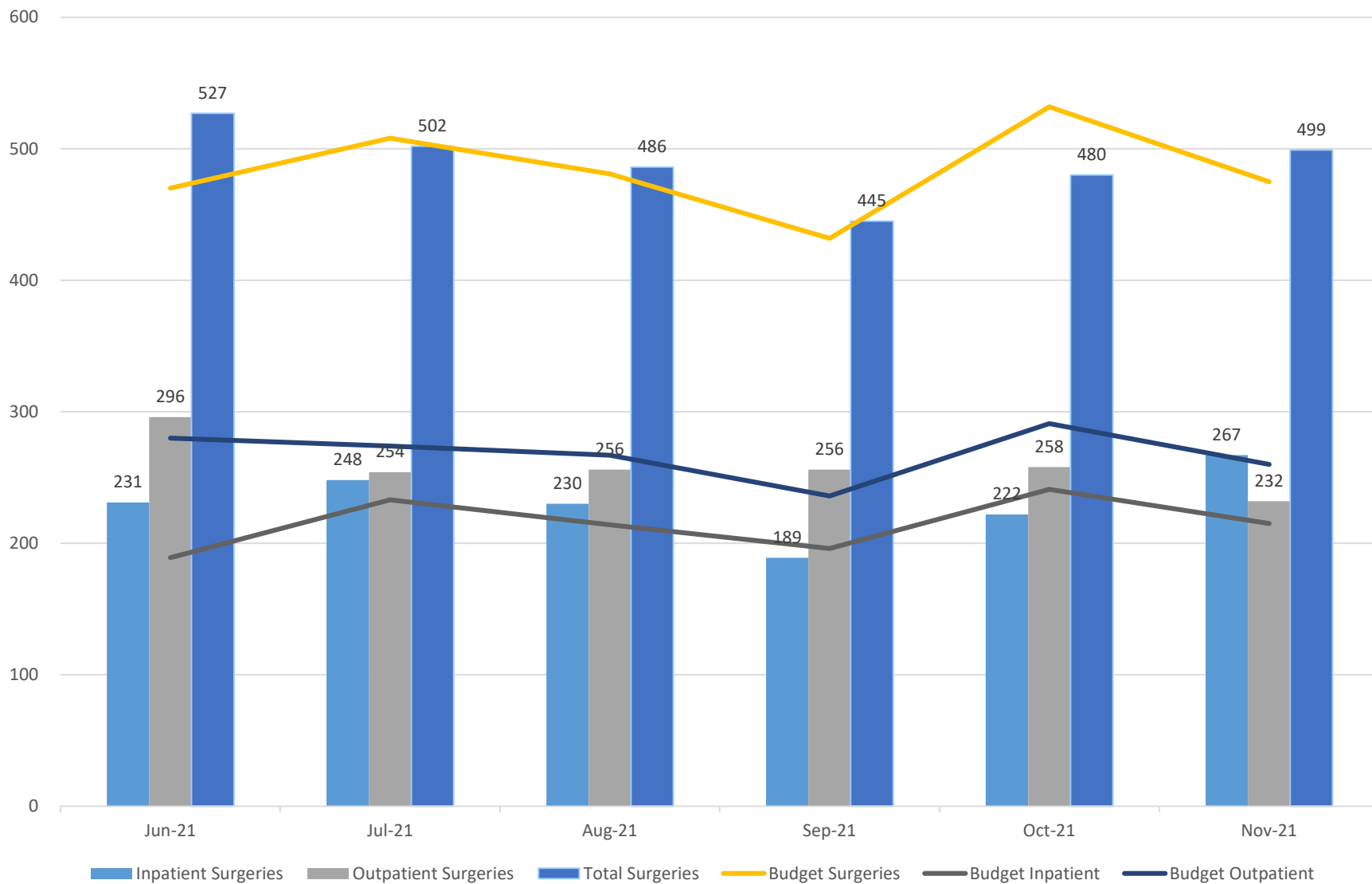
## Emergency Room Volume



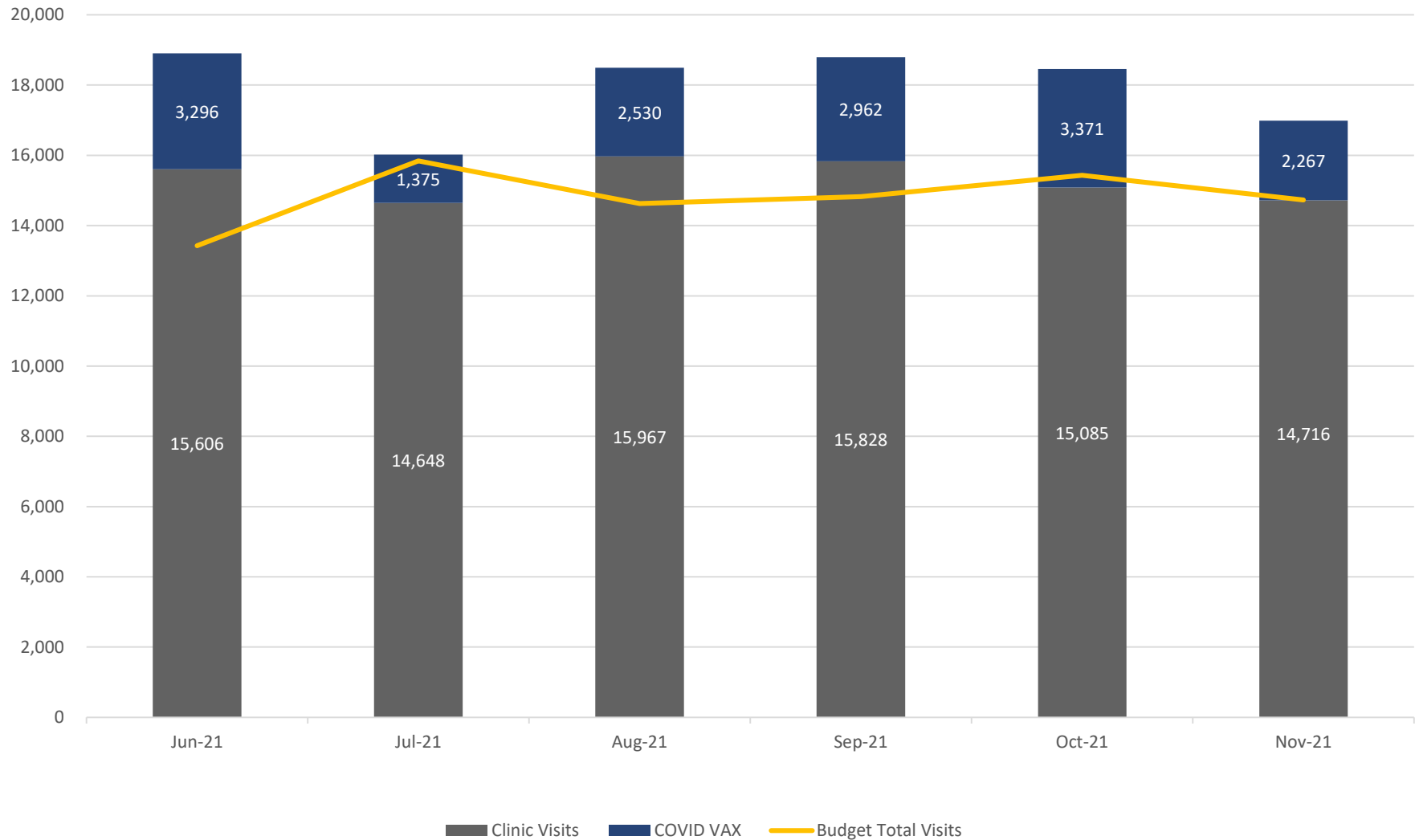
## Trauma Activations



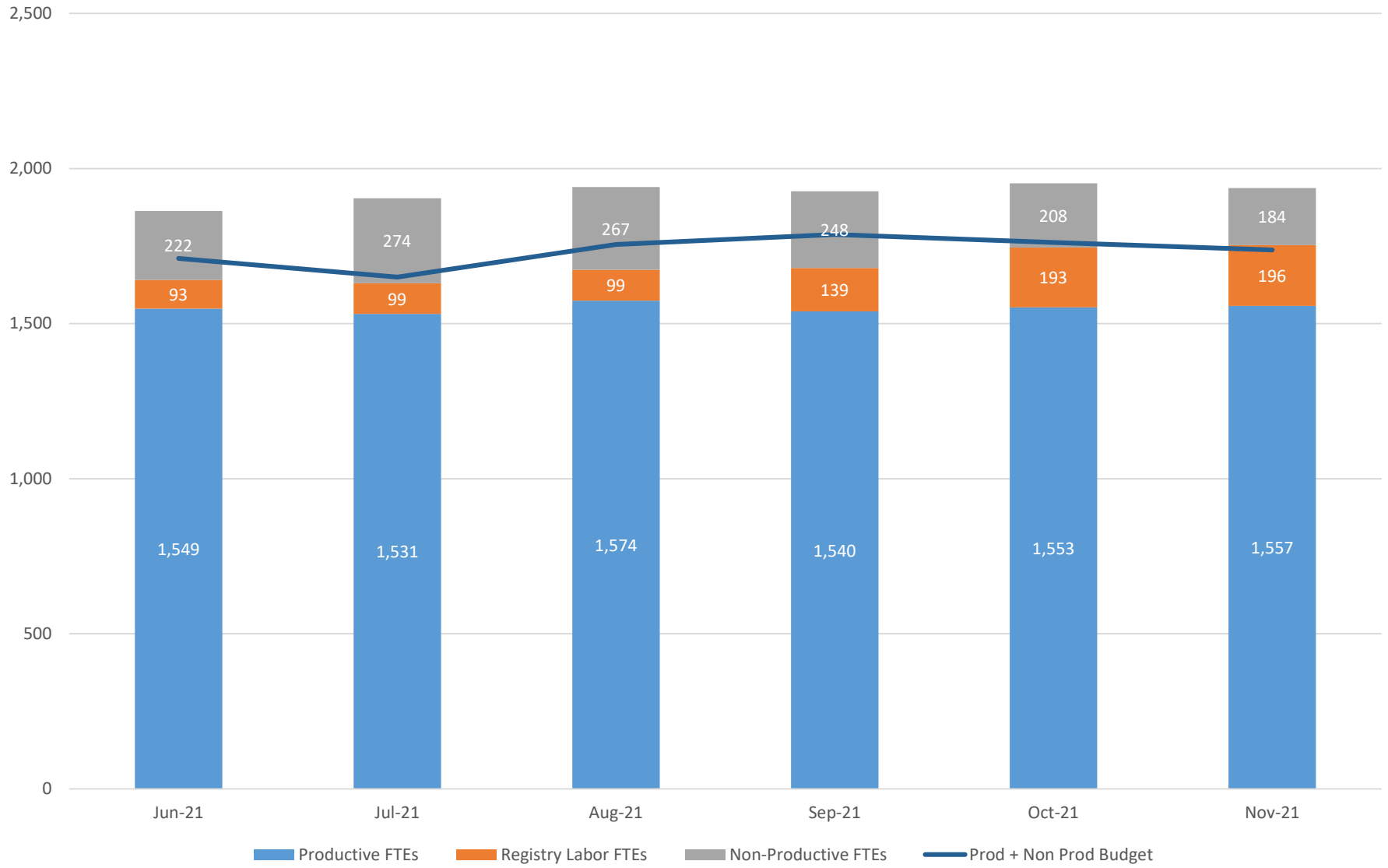
## Surgical Volume



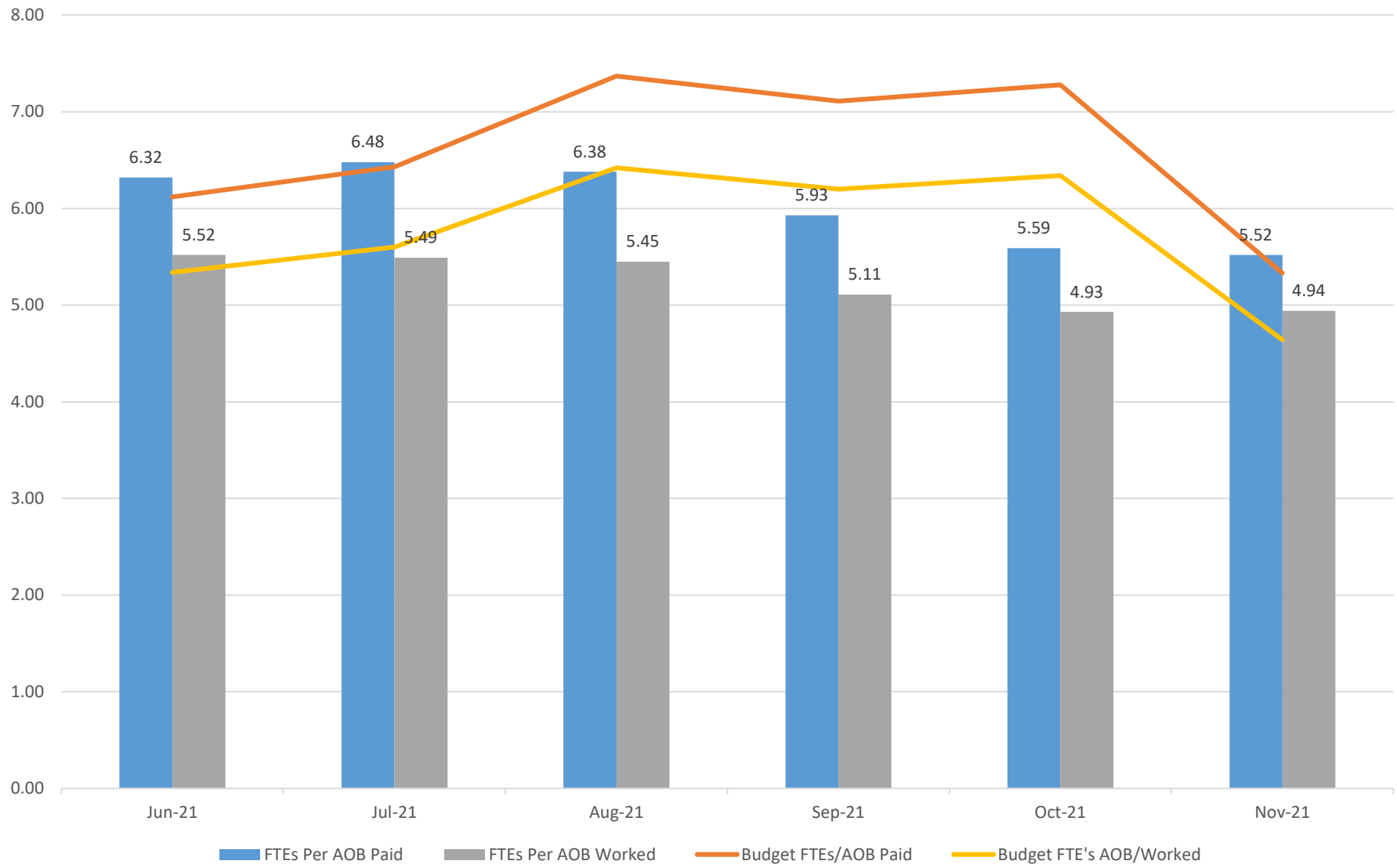
## Clinic Visits



## Productivity

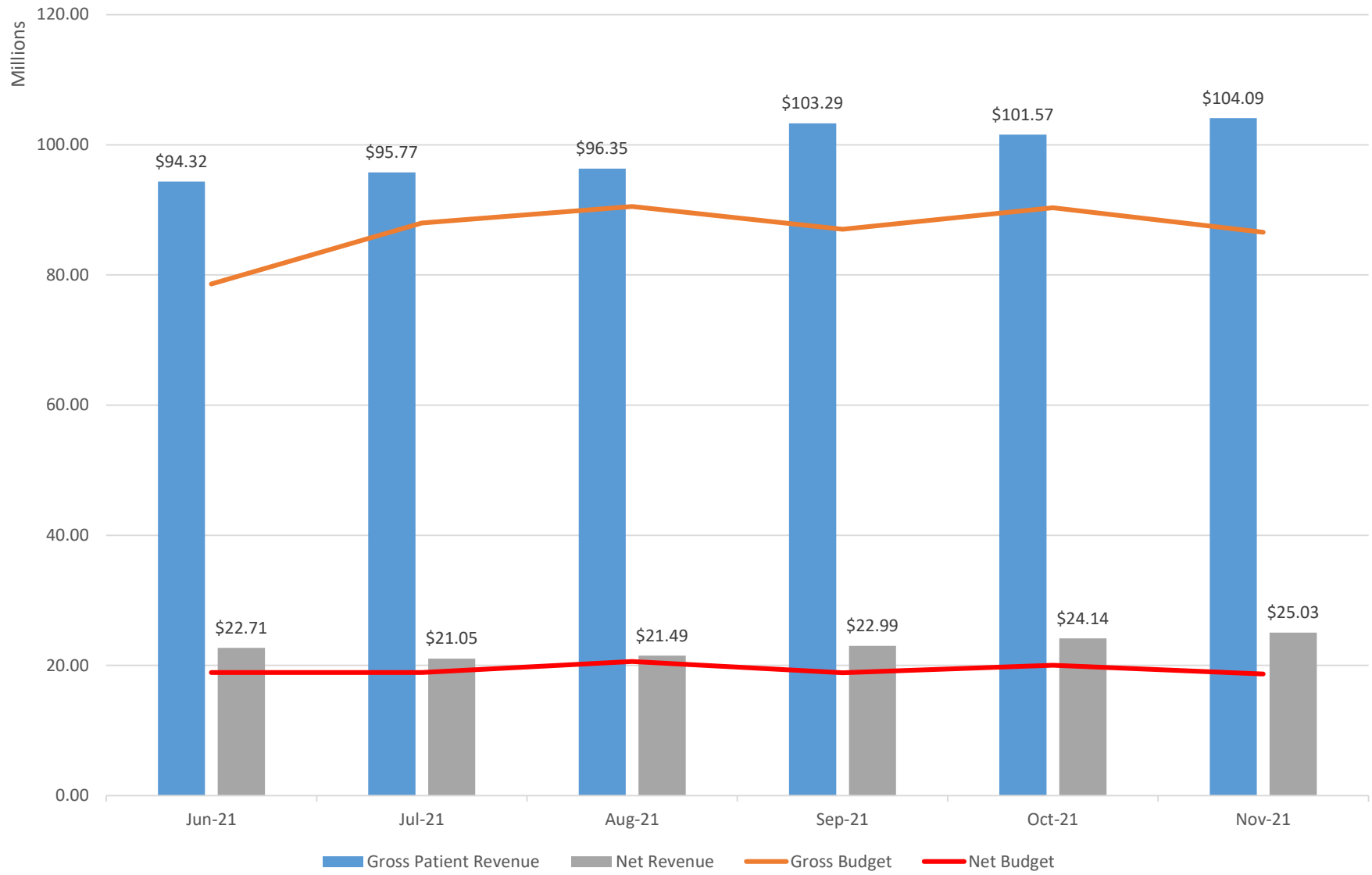


## Labor Metrics

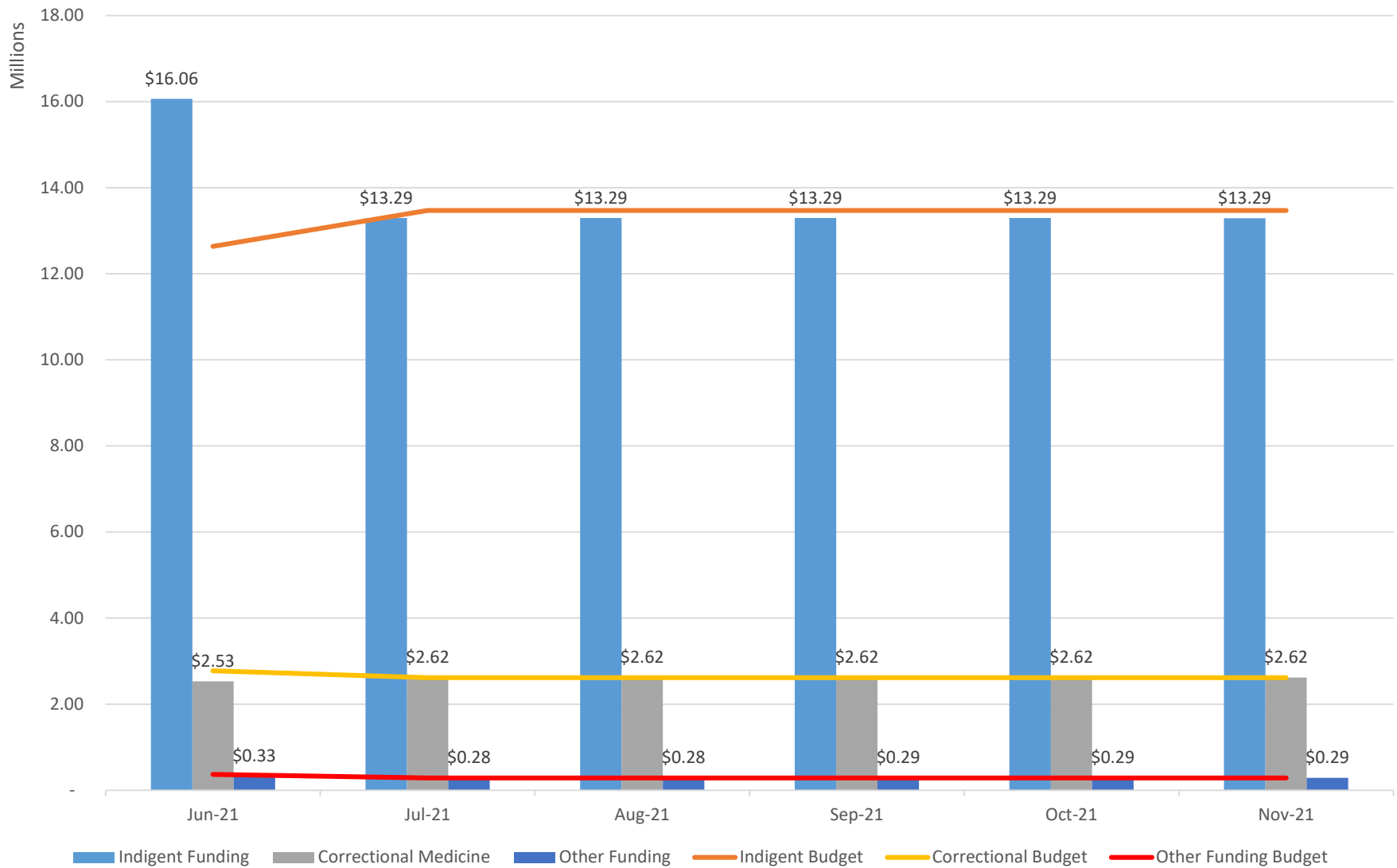




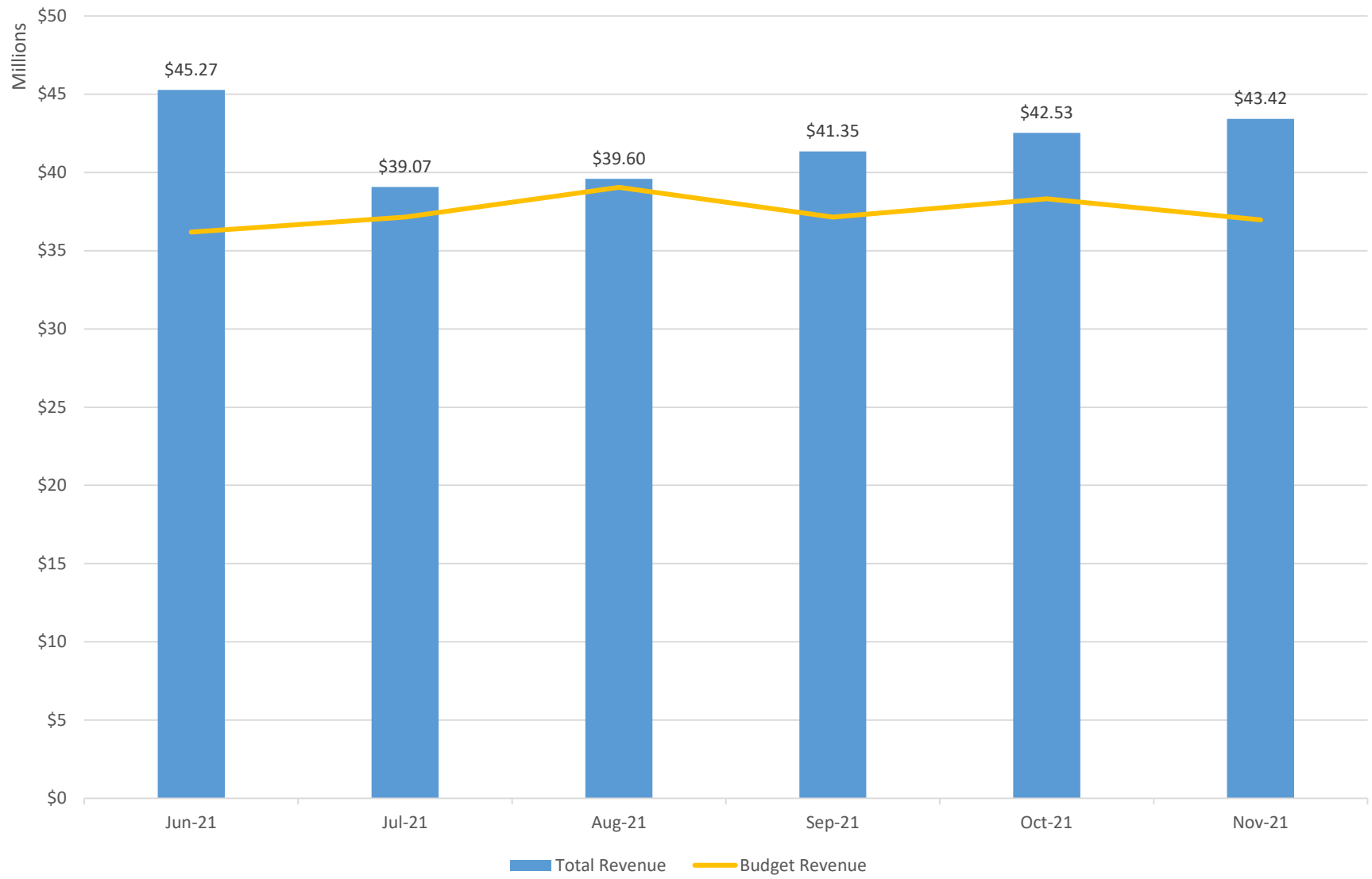
## Patient Revenue



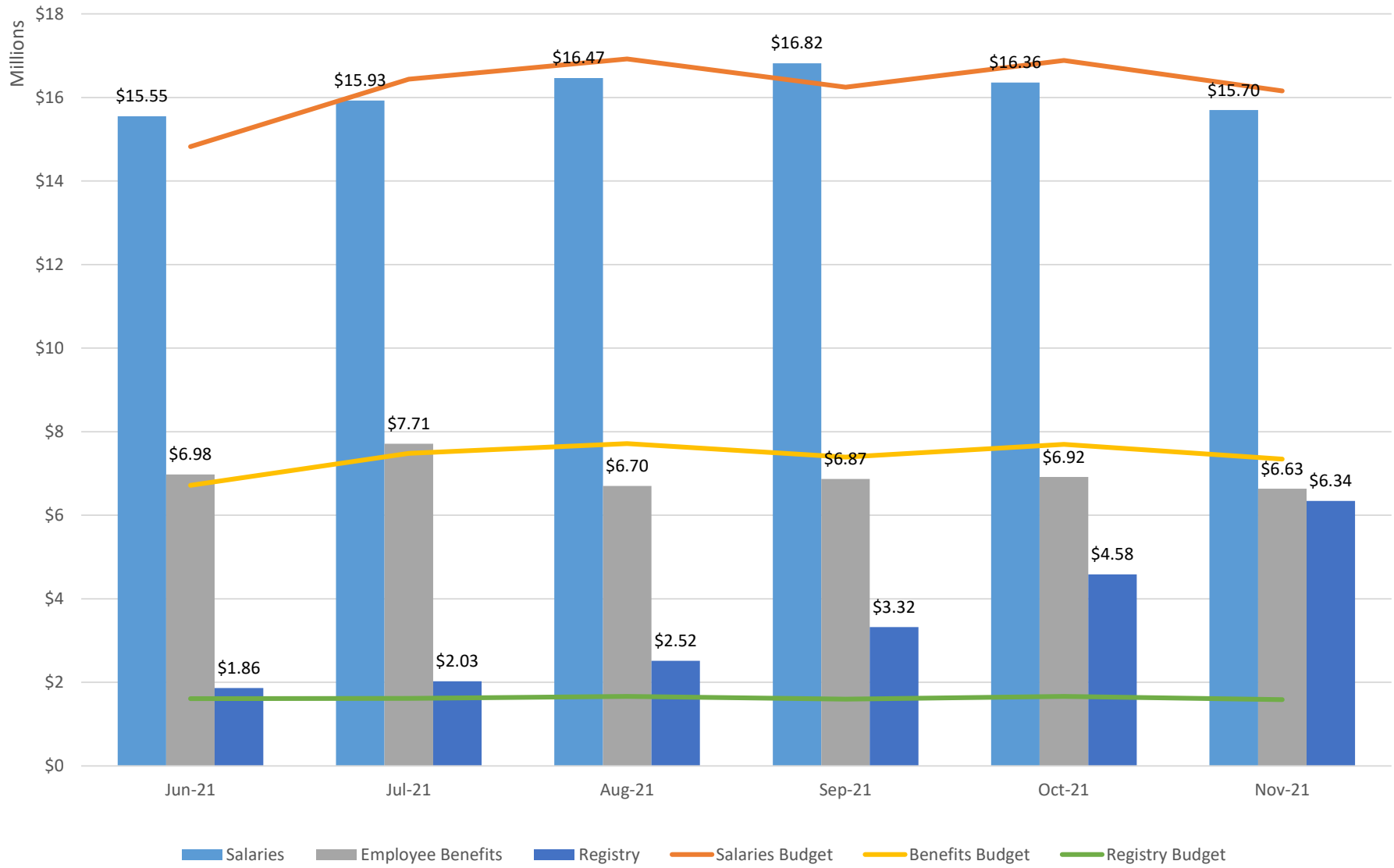
## Indigent & Correctional Revenue



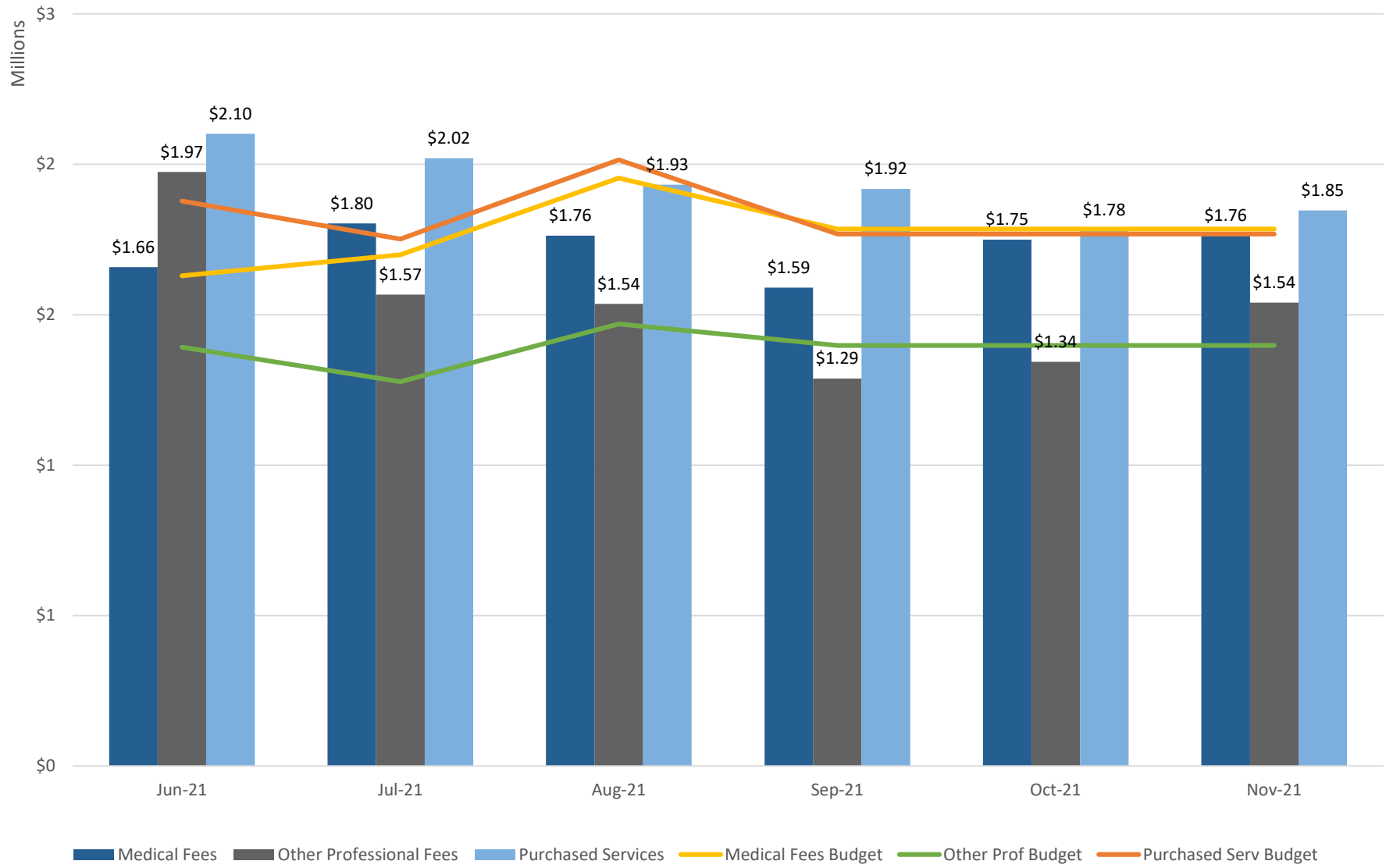
## Total Revenue



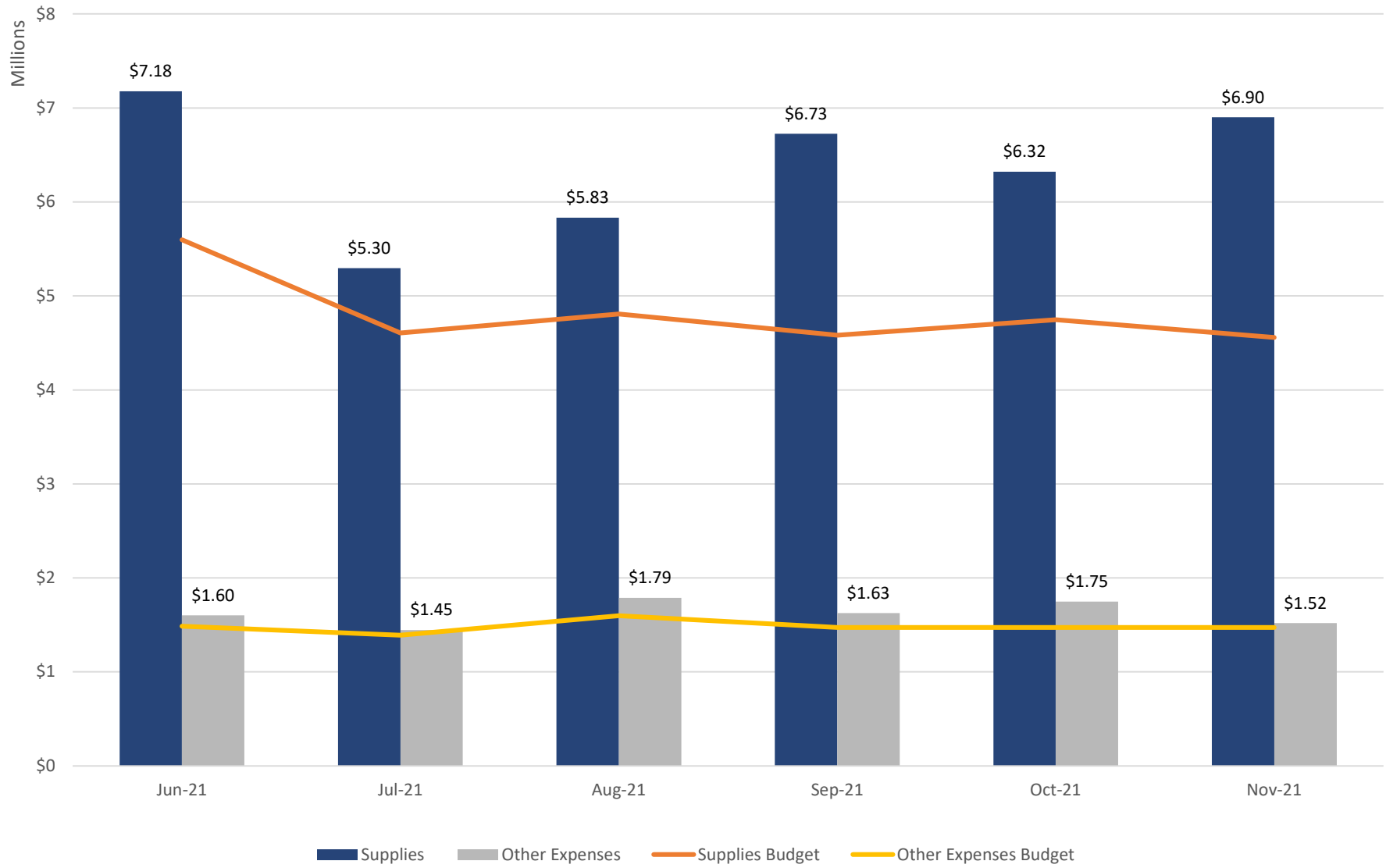
## Expenses



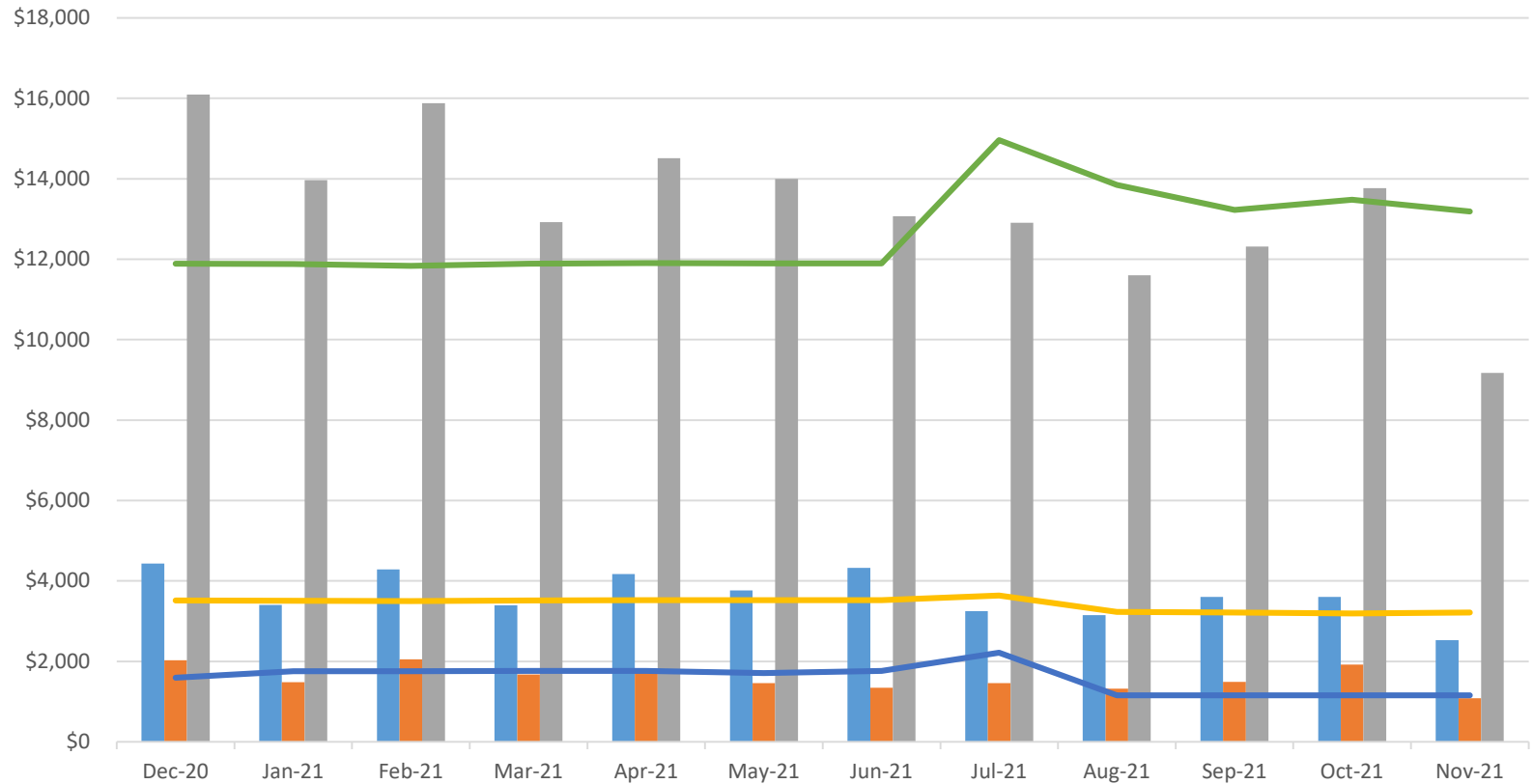
## Expenses



## Expenses

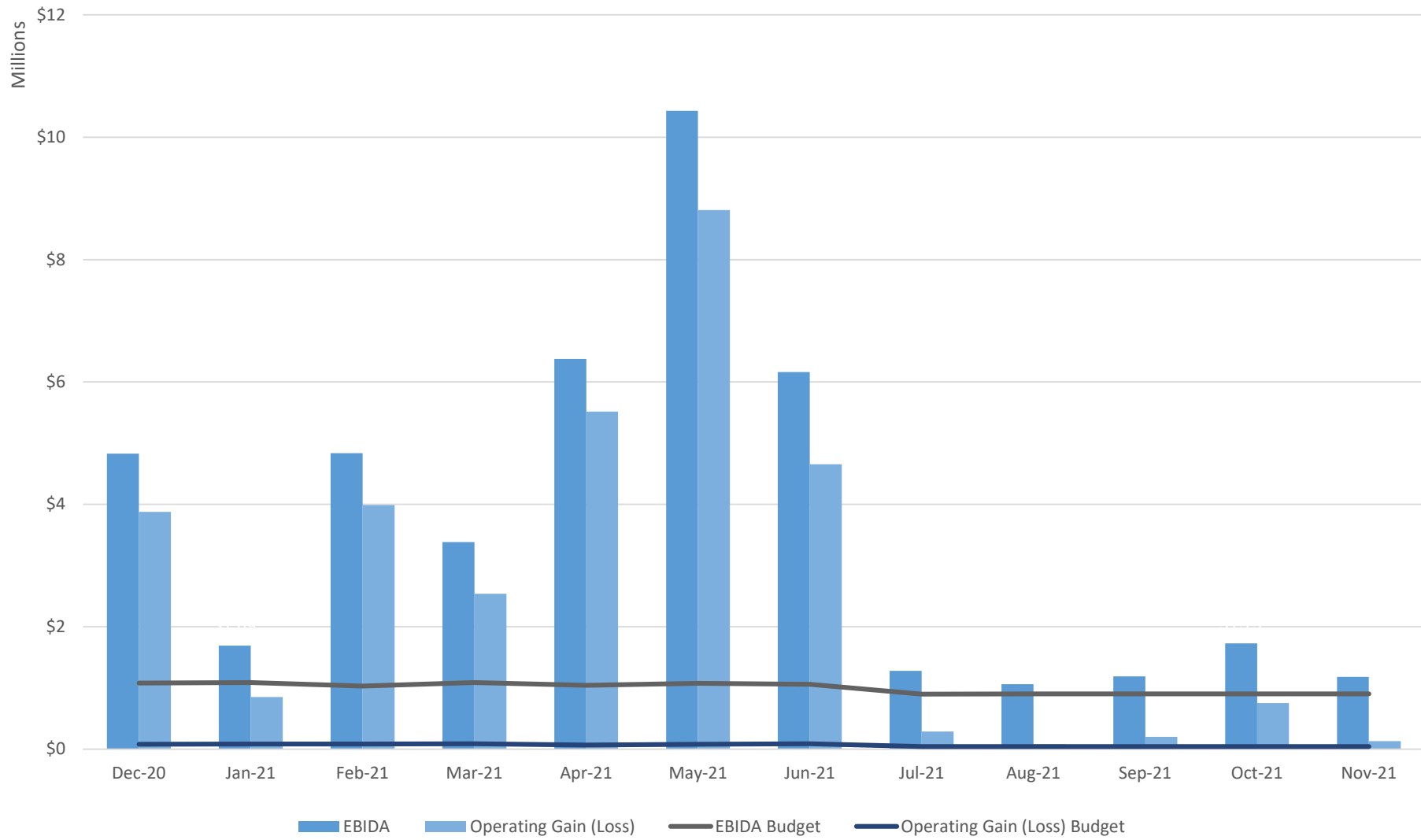


## Operating Metrics



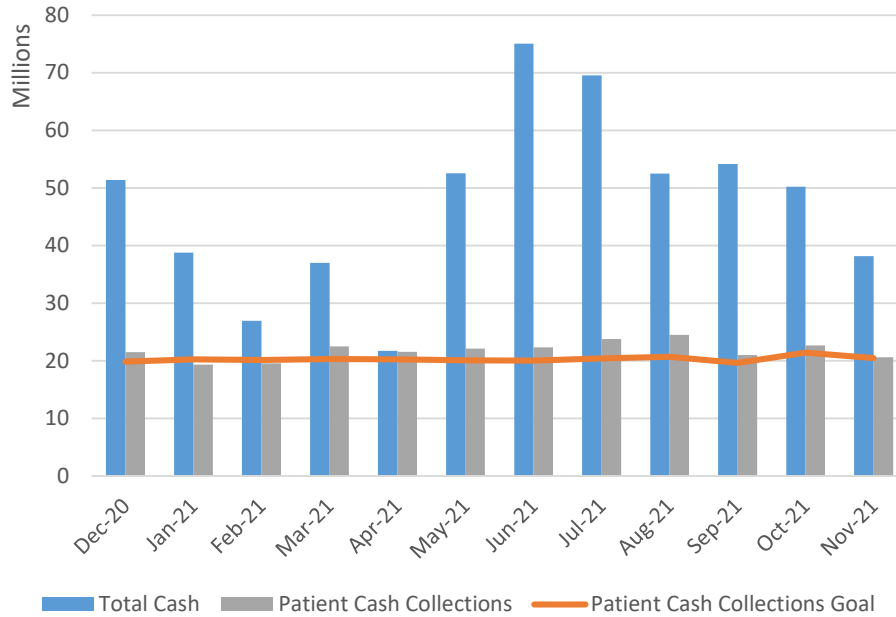
	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21
Supply Expense per AA	\$4,431	\$3,408	\$4,285	\$3,396	\$4,176	\$3,765	\$4,323	\$3,247	\$3,148	\$3,603	\$3,606	\$2,528
Pharm Cost per AA	\$2,028	\$1,481	\$2,050	\$1,678	\$1,809	\$1,458	\$1,345	\$1,457	\$1,319	\$1,492	\$1,918	\$1,081
Net Revenue Per AA	\$16,093	\$13,968	\$15,879	\$12,922	\$14,513	\$13,999	\$13,071	\$12,910	\$11,600	\$12,316	\$13,769	\$9,170
Budget Supp/AA	\$3,516	\$3,511	\$3,501	\$3,518	\$3,526	\$3,522	\$3,522	\$3,641	\$3,229	\$3,214	\$3,196	\$3,217
Budget Pharm/AA	\$1,596	\$1,759	\$1,755	\$1,763	\$1,767	\$1,714	\$1,764	\$2,217	\$1,156	\$1,155	\$1,154	\$1,156
Budget Net Rev/AA	\$11,893	\$11,882	\$11,833	\$11,892	\$11,902	\$11,900	\$11,897	\$14,966	\$13,848	\$13,228	\$13,477	\$13,187

## EBIDA Rolling Year

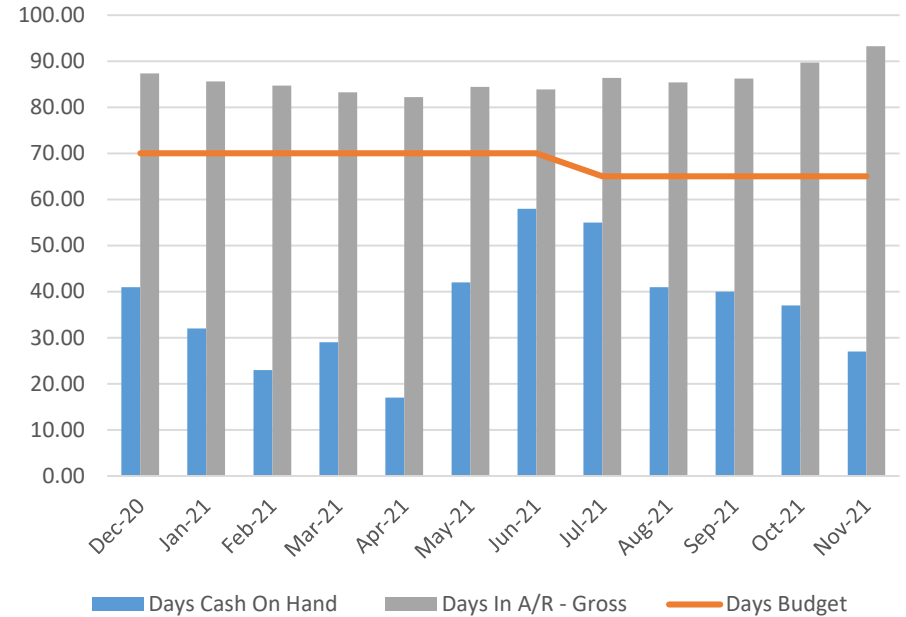




### Cash Rolling Year



### AR Days Rolling Year



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expense**  
November 30, 2021

	SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
<b>Gross Patient Revenue</b>	\$ 103,289,808	\$ 101,572,680	\$ 104,093,541	\$ 86,539,579	20%	\$ 79,669,458
Contractual Deductions	(80,299,516)	(77,429,746)	(79,061,114)	(67,853,600)	17%	(57,019,685)
<b>Net Revenue</b>	22,990,291	24,142,935	25,032,427	18,685,979	34%	22,649,773
Indigent Funding	13,293,612	13,293,612	13,289,890	13,468,684	(1%)	31,988,215
Correctional Medicine	2,616,667	2,616,667	2,616,667	2,616,667	0%	2,846,885
County Contribution	289,845	285,211	285,211	282,894	1%	285,211
Incentive Funding	0	0	0	0	0%	41,667
<b>Net Patient Revenue</b>	39,190,415	40,338,424	41,224,195	35,054,224	18%	57,811,751
Other Operating Revenue	2,141,211	2,175,678	2,187,437	1,641,500	33%	3,238,257
Other Non-Operating Revenue	17,360	12,864	11,642	274,745	(96%)	(1,064,674)
<b>Total Revenue</b>	41,348,986	42,526,966	43,423,275	36,970,469	17%	59,985,334
<b>Expenses</b>						
Salaries	16,821,011	16,356,020	15,697,803	16,156,989	(3%)	15,083,407
Employee Benefits	6,870,264	6,916,640	6,634,978	7,344,728	(10%)	8,686,023
Registry	3,321,361	4,582,330	6,341,786	1,585,618	300%	1,490,362
Medical Fees	1,589,766	1,749,796	1,762,687	1,784,554	(1%)	1,670,322
Other Professional Fees	1,287,916	1,343,747	1,540,595	1,397,697	10%	1,396,417
Supplies	6,726,033	6,322,164	6,901,408	4,558,143	51%	5,530,293
Purchased Services	1,918,454	1,781,505	1,846,351	1,768,319	4%	1,750,279
Other Expenses	1,626,859	1,748,770	1,519,325	1,473,322	3%	3,620,797
Operating Expenses	40,161,664	40,800,971	42,244,934	36,069,369	17%	39,227,900
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,187,323	\$ 1,725,995	\$ 1,178,341	\$ 901,100	31%	\$ 20,757,434
EBIDA Margin	3%	4%	3%	2%	11%	35%
Interest	84,361	84,468	84,329	138,079	(39%)	35,643
Depreciation	677,964	665,319	665,749	466,931	43%	455,582
Amortization	224,132	224,132	296,755	254,168	17%	256,257
Total Expenses	41,148,121	41,774,890	43,291,767	36,928,548	17%	39,975,383
<b>Operating Gain (Loss)</b>	\$ 200,865	\$ 752,076	\$ 131,508	\$ 41,921	214%	\$ 20,009,951
<b>Operating Margin</b>	0.5%	1.8%	0.3%	0.11%	167%	33.36%

**KERN MEDICAL**  
**Year-to-Date: Revenue & Expense**  
November 30, 2021

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
<b>Gross Patient Revenue</b>	\$ 501,074,408	\$ 442,360,246	13%	\$ 427,019,134	17%
Contractual Deductions	(386,366,671)	(345,247,281)	12%	(323,849,009)	19%
<b>Net Revenue</b>	114,707,738	97,112,965	18%	103,170,125	
Indigent Funding	66,464,338	67,343,422	(1%)	83,058,831	(20%)
Correctional Medicine	13,083,333	13,083,333	0%	12,973,506	0.8%
County Contribution	1,426,055	1,414,468	1%	1,426,094	(0.003%)
Incentive Funding	0	0	0%	2,055,853	(100%)
<b>Net Patient Revenue</b>	195,681,463	178,954,189	9%	202,684,409	(3%)
Other Operating Revenue	10,218,710	8,273,662	24%	7,919,718	29%
Other Non-Operating Revenue	68,469	1,401,199	(95%)	1,012,167	(93%)
<b>Total Revenue</b>	205,968,642	188,629,050	9%	211,616,294	(3%)
<b>Expenses</b>					
Salaries	81,267,867	82,653,421	(2%)	77,642,115	5%
Employee Benefits	34,834,558	37,619,336	(7%)	37,186,276	(6%)
Registry	18,788,136	8,121,458	131%	8,111,980	132%
Medical Fees	8,668,314	9,007,747	(4%)	8,519,445	2%
Other Professional Fees	7,275,182	6,939,443	5%	6,832,957	6%
Supplies	31,076,271	23,301,698	33%	27,893,910	11%
Purchased Services	9,498,835	9,071,511	5%	9,690,618	(1.98%)
Other Expenses	8,127,842	7,406,243	10%	10,411,609	(22%)
Operating Expenses	199,537,005	184,120,857	8%	186,288,909	7%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 6,431,637	\$ 4,508,193	43%	\$ 25,327,385	(75%)
EBIDA Margin	3%	2%	31%	12%	(74%)
Interest	422,427	690,397	(39%)	604,371	(30%)
Depreciation	3,368,389	2,334,653	44%	2,352,915	43%
Amortization	1,193,285	1,270,842	(6.1%)	1,281,287	(7%)
Total Expenses	204,521,106	188,416,749	9%	190,527,482	7%
<b>Operating Gain (Loss)</b>	\$ 1,447,536	\$ 212,301	582%	\$ 21,088,812	(93%)
<b>Operating Margin</b>	1%	0.1%	524%	10%	(93%)

**KERN MEDICAL  
BALANCE SHEET**

	NOVEMBER 2021	NOVEMBER 2020
<b>ASSETS:</b>		
<i><b>Total Cash</b></i>	<b>\$ 38,135,282</b>	<b>\$ 27,259,445</b>
Patient Receivables Subtotal	316,483,070	239,659,674
Contractual Subtotal	(267,069,273)	(191,816,819)
<i><b>Net Patient Receivable</b></i>	<b>49,413,797</b>	<b>47,842,855</b>
Total Indigent Receivable	161,018,057	162,935,894
Total Other Receivable	11,083,741	4,838,751
Total Prepaid Expenses	5,062,367	3,490,575
Total Inventory	4,339,276	6,003,816
<i><b>Total Current Assets</b></i>	<b>269,052,519</b>	<b>252,371,335</b>
Deferred Outflows of Resources	127,290,855	87,863,462
Total Land, Equipment, Buildings and Intangibles	222,634,268	194,532,751
Total Construction in Progress	1,925,816	21,091,773
<i><b>Total Property, Plant &amp; Equipment</b></i>	<b>224,560,083</b>	<b>215,624,523</b>
Total Accumulated Depr & Amortization	(129,944,484)	(119,315,636)
<i><b>Net Property, Plant, and Equipment</b></i>	<b>94,615,600</b>	<b>96,308,887</b>
<i><b>Total Long Term Assets</b></i>	<b>127,290,855</b>	<b>87,863,462</b>
<i><b>Total Assets</b></i>	<b>\$ 490,958,974</b>	<b>\$ 436,543,684</b>

**KERN MEDICAL  
BALANCE SHEET**

	<b>NOVEMBER 2021</b>	<b>NOVEMBER 2020</b>
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 17,646,366	\$ 13,922,230
Total Accrued Compensation	29,643,030	40,935,697
Total Due Government Agencies	17,550,700	37,451,619
Total Other Accrued Liabilities	55,470,227	51,044,055
<b><i>Total Current Liabilities</i></b>	<b>120,310,322</b>	<b>143,353,602</b>
Unfunded Pension Liability	381,152,811	322,103,797
Other Long-Term Liabilities	64,286,919	96,456,658
<b><i>Total Long-Term Liabilities</i></b>	<b>445,439,730</b>	<b>418,560,455</b>
<b><i>Total Liabilities</i></b>	<b>565,750,052</b>	<b>561,914,057</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	(111,505,100)	(162,084,395)
<b><i>Total Fund Balance</i></b>	<b>(74,791,078)</b>	<b>(125,370,373)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 490,958,974</b>	<b>\$ 436,543,684</b>



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

January 19, 2022

**Subject:** Kern County Hospital Authority Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

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

**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 January 19, 2022, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on January 19, 2022, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: William Coughran v.  
Kern County Hospital Authority; and DOES 1 through 50, Inclusive, Kern County  
Superior Court Case No. BCV-21-100662 –



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

Government Code Section 54956.9

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- X   CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL  
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**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

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  X   CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D.,  
et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-  
100647 –