



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, January 18, 2023

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

PUBLIC REQUESTS

- 3) Request of Philip McLaughlin, representing Tri Counties Bank, to present an unrestricted donation in the amount of \$5,000 to Kern Medical Center Foundation –
HEAR PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on December 14, 2022 –
APPROVE

CA

- 5) Proposed Agreement with Arman G. Froush, D.O., a contract employee, for professional medical and administrative services in the Department of Radiology from February 1, 2023 through January 31, 2028, in an amount not to exceed \$5,300,000 plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Cerner Sales Order OPT-0460783 with Cerner Corporation, an independent contractor, for professional consulting services to integrate the new radiology NOVARAD PACS imaging storage system, in an amount not to exceed \$57,253 plus travel expenses –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY

CA

- 7) Proposed Cerner Sales Order OPT-0451356 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for professional and shared computing services to integrate the Atellica Chemistry Analyzer Laboratory Instrument, for a term of 60 months, effective January 18, 2023, in an amount not to exceed \$12,100 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY

CA

- 8) Proposed Schedule A-3 to Agreement 58122 with Healthcare Performance Group, Inc., an independent contractor, for the period October 1, 2022 through September 30, 2024, for professional consulting services to assist with the Oracle Cerner Code Upgrade, increasing the maximum payable by \$325,000, from \$164,910 to \$489,910, plus travel expenses –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Personal/Professional Services Agreement with RBB Architects, Inc., for a feasibility study and drawings for the proposed behavioral health tower expansion project, effective January 18, 2023, in an amount not to exceed \$297,500 plus travel expenses –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 4 to Agreement 08919 for Personal/Professional Services with Quality Floor Covering, an independent contractor, for the period December 1, 2018 through November 30, 2024, for flooring maintenance and repair services, effective January 18, 2023, extending the term for two years from December 1, 2024 through November 30, 2026, and increasing the maximum payable by \$750,000, from \$750,000 to \$1,500,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Engagement Letter to Agreement 2017-025 with Strata Decision Technology, LLC, an independent contractor, for the period March 16, 2022 through March 16, 2026, for software integration of clinical data from the Electronic Health Record into Stata for decision support, cost accounting and operating budget reporting, increasing the maximum payable by \$114,376, from \$4,162,124 to \$4,276,500, to cover the cost of the project –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Purchase Order Agreement with Accurate Surgical and Scientific Instruments, an independent contractor, containing nonstandard terms and conditions, for purchase of instruments and supplies for micro-tendon, vascular and breast reconstruction procedures, effective January 18, 2023, in an amount not to exceed \$12,360 plus taxes and shipping –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Master Subscription Agreement with ESO Solutions, Inc., an independent contractor, containing nonstandard terms and conditions, for software to link emergency medical services patient information to the Electronic Health Record, effective January 18, 2023, in an amount not to exceed \$23,500 per year –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Price Agreement with Teleflex, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of surgical gastrointestinal dilators, effective January 18, 2023, in an amount not to exceed \$27,500 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Certification of Medical Necessity for BD Alaris™ System Infusion Pump –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Amendment No. 6 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through January 31, 2023, extending the term for one month from February 1, 2023 through February 28, 2023, and increasing the maximum payable by \$40,000, from \$1,620,000 to \$1,660,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Third Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, increasing the capital contribution by \$4,781,363, from \$2,000,000 to \$6,781,363, effective January 18, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed retroactive Agreement with Kern Medical Surgery Center, LLC, for management and administrative services, effective August 1, 2018, in an amount not to exceed \$13,005,450 for the period August 1, 2018 through December 31, 2022, and \$4,125,000 per calendar year, effective January 1, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Resolution in the matter of creating an ad hoc committee of the Board of Governors for the limited, specific purpose of undertaking a public employee performance evaluation of the Chief Executive Officer, appointing Chairman Bigler, Director Berjis, and Director Pelz to the ad hoc committee, and directing the Vice President & General Counsel to assist the ad hoc committee in implementing the provisions of the Resolution, effective January 18, 2023 –
APPROVE; ADOPT RESOLUTION

CA

- 20) Proposed Amendment No. 3 to Agreement 871-2015 with Shahab Hillyer, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, increasing the maximum vacation accrual from 280 hours to 320 hours, effective January 18, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 21) Proposed Amendment No. 3 to the License Agreement 04518 with Decision Resources Group, Inc., on behalf of its Healthcare Business Insights division, an independent contractor, for the period February 12, 2018 through February 11, 2023, for renewal of the Revenue Cycle Academy/E-Learning Membership, extending the term one year from February 12, 2023 through February 11, 2024, and increasing the maximum payable by \$29,330, from \$132,722 to \$162,052, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 22) Kern County Hospital Authority Chief Financial Officer report –
RECEIVE AND FILE
- 23) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE
- CA
- 24) Monthly report on What's Happening at Kern Medical Center –
RECEIVE AND FILE
- CA
- 25) Claims and Lawsuits Filed as of December 31, 2022 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 26) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer
(Government Code Section 54957) –
- 27) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice
President & General Counsel Karen S. Barnes, and designated staff - Unrepresented
Employee: Chief Financial Officer (Government Code Section 54957.6) –
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice
President & General Counsel Karen S. Barnes, and designated staff - Unrepresented
Employee: Chief Executive Officer (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, FEBRUARY 15, 2023 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

25) CLAIMS AND LAWSUITS FILED AS OF DECEMBER 31, 2022 –
RECEIVE AND FILE

- A) Claim in the matter of Don R. Moore
- B) Claim in the matter of Charles Wayne Barker
- C) Application for Leave to Present Late Claim in the matter of Claim of Ronald Squyres Against Kern County Hospital Authority



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, December 14, 2022

11:30 A.M.

BOARD RECONVENED

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

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. In addition, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**
NO ONE HEARD

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

DIRECTOR BERJIS EXPRESSED HIS APPRECIATION TO DIRECTOR KITCHEN FOR HER SERVICE ON THE BOARD OF GOVERNORS; CHAIRMAN BIGLER CONCURRED

ITEMS FOR CONSIDERATION

CA

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

APPROVED; ADOPTED RESOLUTION 2022-026

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

APPROVED

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 5) Report on 2022 Community Health Needs Assessment for Kern Medical Center –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 143-2022

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 144-2022

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 145-2022

Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 9) Proposed Amendment No. 5 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through December 31, 2022, extending the term for one month through January 31, 2023, and increasing the maximum payable by \$40,000, from \$1,580,000 to \$1,620,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 146-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

CA

- 11) Proposed Amendment No. 2 to Agreement 26121 with Bryant A. Nachtigall, D.P.M., a contract employee, for professional medical services in the Department of Surgery, for the period July 17, 2021 through July 16, 2024, extending the term from July 17, 2024 through December 31, 2025, and increasing the maximum payable by \$800,000, from \$1,000,000 to \$1,800,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 147-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 12) Proposed Amendment No. 1 to the Software License and Services Agreement 036-2018 with Corepoint Health, LLC doing business as Lyniate, an independent contractor, for the purchase of Web Service licenses and support, with a one-time cost of \$30,000 and annual support fees of \$6,000, increasing the maximum annual payable by \$6,000, from \$140,511 to \$146,511, effective December 14, 2022, renewing each year for a one-year term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 148-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 13) Proposed Change Order No. 6 to Agreement 006-2021 with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for additional construction management services related to the 4th Floor Pediatric and Postpartum Renovation project, increasing the maximum payable by \$95,012, from \$1,863,962 to \$1,958,974 –
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 149-2022; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$1,958,974
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 14) Proposed Purchase Agreement with OEC Medical Systems, Inc., a GE Healthcare business, an independent contractor, for purchase of an Elite Vascular C-Arm and MedRad Injector and associated Service Agreement, containing nonstandard terms, for maintenance and repair services, in an amount not to exceed \$452,326 plus applicable tax, effective December 14, 2022, for a seven-year term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 150-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 15) Proposed Service Agreement with OEC Medical Systems, Inc., a GE Healthcare business, an independent contractor, containing nonstandard terms and conditions, for maintenance and repair services for the Stille vascular imaging table, in an amount not to exceed \$19,950, effective December 14, 2022, for a seven-year term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 151-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 16) Proposed Purchase Order Agreement with Millennium Surgical, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of fiberoptic retractors for complex breast reconstructive surgical procedures, effective December 14, 2022, in an amount not to exceed \$4,560 plus taxes and shipping, if applicable –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 152-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 17) Proposed Amendment No. 2 to Agreement 05514 for Personal/Professional Services with Outpatient Services Group, Inc., formally known as Diversified Data Processing and Consulting, Inc., an independent contractor, containing nonstandard terms and conditions, for services related to processing of patient payments, extending the term for six months for May 11, 2023 through August 10, 2023, and increasing the maximum payable by \$11,000, from \$168,000 to \$179,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 153-2022
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 18) Proposed Report of Independent Auditors from Moss Adams LLP regarding the audit of the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees as of December 31, 2020, 2019, 2018, 2017 and 2016 –
RECEIVED AND FILED
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

- 19) Miscellaneous Correspondence
RECEIVED AND FILED
Berjis-Pelz: 5 Ayes; 2 Absent - Alsop, Kitchen

CA

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

CA

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

CA

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

ADJOURNED TO CLOSED SESSION

Pelz-Berjis

CLOSED SESSION

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

- 31) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION
Pelz-Berjis

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 23 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855, subdivision (j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR BRAR; 2 ABSENT - ALSOP, KITCHEN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 24 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 25 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 26 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 27 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern Medical Center; Kern County Hospital Authority Board of Governors and DOES 1 through 100, Inclusive, Kern County Superior Court Case No. BCV-20-102881-TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 28 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 29 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 30 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 31 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JANUARY 18, 2023 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 18, 2023

Subject: Proposed Agreement for Professional Services with Arman G. Froush, D.O. for professional medical and administrative services in the Department of Radiology

Recommended Action: Approve; Authorize Chairman to Sign

Summary:

Kern Medical requests your Board approve an Agreement with Arman G. Froush, D.O., for professional medical and administrative services in the Department of Radiology. Dr. Froush is a board-certified interventional radiologist and has been employed by Kern Medical as a full-time employee since October 2016. Dr. Froush also serves as the Chair, Department of Radiology and Chief, Division of Vascular and Interventional Radiology.

The proposed Agreement is for a term of five years from February 1, 2023 through January 31, 2028. Dr. Froush's initial annual salary of \$614,000 per year is based on 16 10-hour shifts per month and is calculated using the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents fair market value compensation for the services provided, and includes a base salary for teaching and administrative duties and payment for the care of Kern Medical patients. Dr. Froush is required to maintain a median level (50th percentile) of worked relative value units during the term of the Agreement in order to earn the base salary. He will receive salary increases of approximately one percent (1%) or \$6,000 commencing February 1, 2026 and February 1, 2027. In addition to his annual salary, Dr. Froush is eligible to receive an annual retention bonus of \$25,000, an annual chair stipend of \$50,000, and additional compensation as outlined in the agreement for weekday and weekend call coverage. Dr. Froush will continue to receive the same benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, healthcare coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$5,300,000 over the five-year term, excluding the cost of benefits.

Therefore, it is recommended that your Board approve the Agreement with Arman G. Froush, D.O., for professional medical and administrative services in the Department of Radiology from February 1, 2023 through January 31, 2028, in an amount not to exceed \$5,300,000, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Arman G. Froush, D.O.)**

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

**I.
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #073-2019, dated December 11, 2019), for the period December 11, 2019 through January 31, 2023; and

(e) Physician has met the conditions of paragraph 5.4 as set forth in Agt. #073-2019, which provides in relevant part that Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings; and

(f) Each party expressly understands and agrees that Agt. #073-2019 is superseded by this Agreement as of the Commencement Date, with the exception of the retention bonus set forth in paragraph 5.6 of Agt. #073-2019, which becomes payable to Physician on December 11, 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 as follows:

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of five (5) years, commencing as of February 1, 2023 (the “Commencement Date”), and shall end January 31, 2028 (the “Term”),

unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

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

4.3 Qualifications.

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

4.3.2 Board Certification. Physician shall be board certified by the American Osteopathic Association in radiology-general certification with certification of added qualifications in vascular/interventional radiology, and maintain such certifications at all times during the Term of this Agreement.

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

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

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

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

4.6 Managed Care Contracting. Physician shall cooperate in all reasonable respects necessary to facilitate KMC’s entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable KMC to

participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a “Managed Care Organization”) designated by KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

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

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

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician’s activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of

KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

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

5. Compensation Package.

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

5.1.1 Annual Salary Effective February 1, 2023. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$614,000 per year, to be paid as follows: Physician shall be paid \$23,615.38 biweekly not to exceed \$614,000 annually.

5.1.2 Annual Salary Effective February 1, 2026. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$620,000 per year, to be paid as follows: Physician shall be paid \$23,846.15 biweekly not to exceed \$620,000 annually.

5.1.3 Annual Salary Effective February 1, 2027. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$626,000 per year, to be paid as follows: Physician shall be paid \$24,076.92 biweekly not to exceed \$626,000 annually.

5.1.4 Salary Methodology. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA

Survey”) for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units (“Worked RVU”) based on the current MGMA Survey and fulfill all the duties set forth in Exhibit “A” during the Term of this Agreement.

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

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

5.2 Chair Stipend. Authority shall pay Physician an annual stipend of \$1,923.07 biweekly, less all applicable federal and state taxes and withholdings, not to exceed \$50,000 annually for services as Chair, Department of Radiology. Physician understands and agrees that he must remain in the position of Chair, Department of Radiology as of each payout date in order to earn and receive the stipend.

5.3 Excess Call Coverage. Authority shall pay Physician for excess call coverage (vascular/interventional radiology only) as follows: (i) Physician shall be paid a per diem rate in the amount of \$1,000 per 24-hour day for every weekday (Monday-Friday) of excess call coverage assigned; (ii) Physician shall be paid a per diem rate in the amount of \$2,000 per 24-hour day for every weekend (Saturday and Sunday) of excess call coverage assigned; and (iii) Physician shall be paid a per diem rate in the amount of \$2,000 per 24-hour day for holiday coverage (designated Authority holidays only). All excess call coverage payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.4 Additional Shifts. Authority shall pay Physician for additional shifts as follows: (i) Physician shall be paid a per diem rate in the amount of \$2,000 for every weekday shift (Monday-Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month; (ii) Physician shall be paid a per diem rate in the amount of \$2,200 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month; and (iii) Physician shall be paid a per diem rate in the amount of \$2,200 per 24-hour day for holiday coverage (designated Authority holidays only). All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.

5.5 Backup Call Coverage. Authority shall pay Physician a fixed fee in the amount of \$500, less all applicable federal and state taxes and withholdings, for backup call coverage (vascular/interventional radiology only), unless otherwise on service.

5.6 Retention Bonus.

5.6.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$25,000, less all applicable federal and state taxes and withholdings, payable within thirty (30) days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on February 1, 2024, for the previous Employment Year, and each February 1 thereafter.

5.6.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$25,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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

5.7 Professional Fee Billing.

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

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

5.8 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$5,300,000 over the five (5) year Term of this Agreement.

6. Benefits Package.

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

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

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

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician’s current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. **[Reserved]**

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by

Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

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

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

Notice to Physician:

Arman G. Froush, D.O.
P.O. Box 60816
Bakersfield, California 93306

Notice to Authority:

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

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

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

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

28. **Termination.**

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

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

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

29. **Effect of Termination.**

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

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

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

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

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

[Signatures follow on next page]

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

PHYSICIAN

By _____
Arman G. Froush, D.O.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Froush.011223

EXHIBIT “A”
JOB DESCRIPTION
Arman G. Froush, D.O.

Position Summary: Reports to Chief Medical Officer; serves as Chair, Department of Radiology and Chief, Division of Vascular and Interventional Radiology; serves as a full-time physician in the Department; day-to-day work activities and clinical workload shall include coverage within the Department; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of care, direct patient care, leadership, and administrative services. Physician shall work collaboratively with Department physicians, staff, managers, and administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience. Physician work effort will be at a minimum of 2,500 hours annually in teaching, administrative, leadership, and clinical activity.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Leadership as Department Chair, including mentoring and professional development of all Department faculty, residents, and medical students
- Develop a Department culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization as well as a culture that consistently focuses on patient care and patient safety
- Develop a Department culture that does not allow disruptive behavior
- Monitor individual physician clinical performance by tracking and trending outcomes, utilization of resources, adherence to established protocols, and document and counsel as appropriate
- Develop mechanisms to conduct patient care reviews objectively for the purpose of analyzing and evaluating the quality and appropriateness of patient care and treatment
- Responsible for preparing or delegating staff schedules and clinical assignments to maximize productivity and quality care as well as ensuring that all faculty are present at KMC performing their assigned and scheduled clinical, teaching, and administrative duties
- Oversight of Department meetings and ensuring leadership, structure and function of Department committees, including assigning faculty to appropriate committees and facilitating their involvement in hospital-wide quality and performance improvement programs
- Conduct annual performance evaluations of faculty
- Pursue further alignment with the University of California, Los Angeles (UCLA) in conjunction with all other KMC initiatives as well as specific alignment for the Department of Radiology with UCLA or another appropriate academic medical institution
- Membership on the Medical Executive Committee and participate on Medical Staff and other hospital committees
- Participation in quality and system improvement initiatives, including improving patient satisfaction and enhancing timely access to care as well as peer review within the Medical Staff and Department

- Collaboration with all other KMC Department Chairs
- Collaboration with KMC administration to enhance engagement with area health plans, community physicians, and members of the Medical Staff to improve patient care and overall volume growth
- Lead the clinical preparation monitoring, review, and performance of clinical activity in the Department
- Develop and maintain a Department Strategic Plan in consultation with Department faculty, radiology management, and KMC administration.
- Develop a faculty succession and recruitment plan. In consultation with Department faculty, recruit and recommend to hospital administration new faculty, after appropriate vetting, for faculty appointments in the Department
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across clinical departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Support the development of Graduate Medical Education within the institution and other education programs and curriculum
- Follow and comply with the Medical Staff Bylaws, Rules, Regulation, and policies, and Authority and KMC policies and procedures
- Participate in clinical and administrative integration efforts across the organization as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment
- Gather data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Ensure preparation, monitoring, review, and performance of clinical activity in the Department
- Participate in the quality improvement and risk management activities, including peer review and quality control functions, as assigned to services in the Department
- Complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation
- Participate in other clinical, academic, and administrative activities as assigned by the Chief Medical Officer
- Participate in additional administrative responsibilities, as required

B. Clinical Responsibilities

- The Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors as well as provides professional and administrative services
- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and procedures within the scope of practice for an interventional radiologist as well as a diagnostic radiologist
- Provide radiology services on-site at KMC or other KMC locations and in accordance with generally accepted professional standards
- Provide professional services for all patients who present to KMC for treatment

- Participate in special procedures and in rotations in the various departmental image reading queues
- Provide shift coverage for weekdays and weekends as well as call coverage for weekday nights and 24-hour weekend call in accordance with the schedule
- Provide first call and backup call for vascular and interventional radiology
- Respond to call within 10 minutes, when on call
- Supervise residents and medical students in the Department
- Supervise any Advance Practice Providers (APP) in the Department or Interventional and Vascular Clinic and ensure competence
- Pursue optimized vascular and interventional radiology services and continue development of a comprehensive imaging service

C. Medical Education, Teaching, and Academic Responsibilities

- Participate in the instruction of residents and medical students, as appropriate
- Pursue as appropriate an academic appointment at the David Geffen School of Medicine at UCLA
- Serve as a mentor to residents and medical students as appropriate
- Support the activities of the residency educational programs
- Participate in the development of Department curriculum as appropriate
- Deliver lectures as appropriate throughout the year

Employment Standards:

Completion of an accredited residency program in diagnostic radiology; completion of a fellowship in vascular and interventional radiology; one (1) year of post-residency experience in diagnostic and interventional radiology

AND

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

AND

Certification by the American Osteopathic Association in diagnostic radiology-general certification with certification of added qualifications in vascular/interventional radiology

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

[Intentionally left blank]

EXHIBIT “B”

AUTHORIZATION TO RELEASE INFORMATION

[Attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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

Physician

Date



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

January 18, 2023

Subject: Proposed Cerner Sales Order OPT-0460783 with Cerner Corporation for the purchase of professional services for the integration of the NOVARAD PACS Imaging system

Recommended Action: Approve; Authorize Chairman to sign and the Chief Executive Officer to sign receipt of delivery

Summary:

Kern Medical requests that your Board approve the proposed Cerner Sales order for professional services to assist Kern Medical with the implementation of an outbound orders interface from the Cerner Electronic Health Record (EHR) to the NOVARAD Picture Archiving and Communication System (PACS) and an inbound results interface from PACS to the EHR. Completion of these services will provide for the replacement of the current interfaces existing in the PACS environment which allows radiological images to populate in the EHR. Cerner requires a minimum of 90 days to prepare to implement the 12-week project, so it is crucial that Kern Medical completes the contracting process as soon as possible.

Therefore, it is recommended that your Board approve the proposed Sales Order OPT-0460783 with Cerner Corporation for the purchase of professional services to assist Kern Medical with the transition of PACS from Change Healthcare to NOVARAD, with a cost of \$57,253 plus any travel expenses, and authorize the Chairman to sign and the Chief Executive Officer to receive delivery.



CERNER SALES ORDER

This Cerner Sales Order is made on January 18, 2023 ("Effective Date"), between

Kern County Hospital Authority ("Client")

a local unit of government with its principal place of business at

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States
Telephone: (661) 326-2000

and **Cerner Corporation ("Cerner")**

a Delaware corporation with its principal place of business at

8779 Hillcrest Road
Kansas City, MO 64138, United States
Telephone: (816) 221-1024

Cerner Sales Contact: Pete Stewart
18169066664
pete.stewart@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-036), dated July 01, 2016, between Client and Cerner (the "**Agreement**"). If the total fees due from Client for products and services set forth in this Cerner Sales Order are US \$250,000 or less, then Client's submission of a Purchase Order referencing this Cerner Sales Order shall be deemed Client's confirmation of agreement to the terms and conditions of the Agreement, regardless of whether this Cerner Sales Order is signed by Client.

Client understands that hand-written changes to this Cerner Sales Order will not be accepted. Client will engage their Cerner Sales Contact to request any revisions.

KERN COUNTY HOSPITAL AUTHORITY

Authorized signatory: _____

(signature)

Russell Bigler
(printed name)

Title: Chairman, Board of Governors

CERNER CORPORATION

Authorized signatory: _____

Teresa Waller

Title: Sr. Director, Contract Management

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

Client Invoice Contact: _____

Contact Phone #: _____

Contact Email Address: _____

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

APPROVED AS TO FORM
Legal Services Department

By
Kern County Hospital Authority



Kern County Hospital Authority
OPT-0460783_Q-186397.1_LA-0000336989
January 4, 2023

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CERNER SALES ORDER

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
PROFESSIONAL SERVICES		
Fee for Service	57,253.00	--
TOTALS:	57,253.00	0.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until April 04, 2023. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

AS-INCURRED FEES		
Description	Percent (%) Of Total Due	Payment Due
Professional Services: Fee for Service	100%	Monthly in arrears

PROFESSIONAL SERVICES

FEE FOR SERVICE				
Service Project Detail	Role	Hourly Rate	Estimated Hours	Total Fees
Bundled Services				
--	Cerner Interface Connection Implementation	--	--	--
Professional Service **	System Engineer	127	194	24,638
Professional Service **	Interface Architect	175	77	13,475
Professional Service **	Technical Engagement Leader	165	116	19,140
TOTALS:				57,253

** This is an Interoperability Element subject to the 21st Century Cures Act. All available allowances have been applied.



Kern County Hospital Authority
OPT-0460783_Q-186397.1_LA-0000336989
January 4, 2023

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/ Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States

The parties may add or substitute Permitted Facilities by amending this section.



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

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

SCOPE NOTES

- Cerner will provide professional service resources to assist Client with the implementation of:
 - An HL7 Orders (ORM) outbound interface from *Cerner Millennium* to a non-Cerner system, *NOVARAD*
 - An HL7 Solicited Observation Result (ORU) Discrete URL inbound interface to *Cerner Millennium* from a non-Cerner system, *NOVARAD*
- Estimated duration: 12 weeks

GENERAL SCOPE

PROFESSIONAL SERVICES

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

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

Client and Cerner must fulfill their responsibilities and adhere to the other requirements and descriptions set forth herein to meet the goals of an 'on-time' and 'on-budget' project. Modifications to this Scope shall be mutually agreed upon by Cerner and Client's executive steering committee and set forth on a new Cerner Sales Order.

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

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

Fee-for-Service Implementation. Any fee-for-service hours specified in this Cerner Sales Order are estimates, and Client will pay any overage of the estimated hours as Cerner continues to work towards the agreed-upon Scope. Work and payment should continue until either Client notifies Cerner to stop work, or the Scope is delivered as agreed herein.



Kern County Hospital Authority
OPT-0460783__LA-0000336989
January 4, 2023



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

SOLUTION DETAIL SCOPE

PROFESSIONAL SERVICES

CERNER INTERFACE CONNECTION IMPLEMENTATION

(IF-40200-IMP, IF-40200-PVWX-IMP, IF-40200-CMVX-IMP, IF-40250-IMP)

Cerner Tasks/Activities	<ul style="list-style-type: none">• Provide the Services set forth herein and in the 'Scope Notes' section of this Ordering Document, as applicable to the FSI Services.<ul style="list-style-type: none">◦ Design interface, including site-specific interface specification document(s).◦ Build, code, and configure interface to the processing requirements.◦ Perform functional testing of the interface.◦ Support Client validation testing of the interface.◦ Attend project status meetings regularly.◦ Migrate interface to production domain and support interface activation.• Provide conversion support during normal business hours (8 AM–5 PM CST).
Client Tasks/Activities	<ul style="list-style-type: none">• Synchronize data values between Cerner and the foreign supplier; including building of code value aliasing within Cerner that will be required for interface processing.• Modify <i>Cerner Millennium</i> application, if necessary.• Create and execute interface test plans.• Validate interface testing.
Project Assumptions	<ul style="list-style-type: none">• Cerner standard interface specifications are available upon request.<ul style="list-style-type: none">◦ Real-time interfaces will conform to the Cerner universal interface (UI) specifications requirements, which are based upon the <i>Health Level Seven International (HL7)</i> standards as they relate to the <i>Cerner Millennium</i> architecture.◦ Batch interfaces will conform to the Cerner standard specification requirements, which are based upon the <i>Accredited Standards Committee (ASC) X12</i> standards or flat file protocol as they relate to the <i>Cerner Millennium</i> architecture.• Cerner transmission protocols:<ul style="list-style-type: none">◦ Real-time interfaces will utilize Transmission Control Protocol/Internet Protocol (TCP/IP) for data transfer and will be <i>Cerner Millennium HL7</i> UI compliant.◦ Batch interfaces will utilize Secure File Transfer Protocol (SFTP) for data transfer and will be either <i>Cerner Millennium</i> standard or <i>ASC X12</i> compliant unless otherwise noted in the 'Cerner Tasks/Activities' section of this Scope.• Custom scripting required outside the standard Cerner UI is expected to be performed within Client's interface engine. If this is not possible or desirable, custom scripting can be performed within the <i>Cerner Millennium</i> interface but may require additional hours at Cerner's then-current fees for a Cerner resource to complete the work.



Kern County Hospital Authority
OPT-0460783__LA-0000336989
January 4, 2023



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

CERNER INTERFACE CONNECTION IMPLEMENTATION

(IF-40200-IMP, IF-40200-PWX-IMP, IF-40200-CMWX-IMP, IF-40250-IMP)

	<ul style="list-style-type: none">• This Scope covers the initial configuration and testing of the interface in a designated non-production environment and 1 copy to the production environment. Any additional domain support, including copies to additional domains and rebuild due to domain refreshes or updates may require additional hours and fees.• Client and Cerner will work on this project concurrently on an agreed upon project timeline.• Client shall incur additional fees if services are requested beyond this Scope.• Adjustments supported as part of the standard scope of services:<ul style="list-style-type: none">◦ Moving an existing data element from one field to another in the same message◦ Concatenation of two existing data elements◦ Addition or subtraction of leading zeroes to a numeric value◦ Hard coding a default value◦ Nulling fields◦ Basic conditional statements◦ Repeating field filtering, such as PID-3, PID-4, and personnel fields◦ Suppressing transaction types◦ Removing special characters from a field, such as dashes in a social security number• The following custom adjustments are supported outside the standard scope of services, and include any necessary Cerner-approved workaround:<ul style="list-style-type: none">◦ Querying data from standard <i>Cerner Millennium</i> tables and inserting into a field◦ Full message character-string replacements◦ Adding segments to a trigger not defined in Cerner Specifications◦ Creating custom tables in <i>Cerner Millennium</i>, and inserting/updating/querying those tables◦ Creating custom Z segments• Adjustments not supported under this Scope:<ul style="list-style-type: none">◦ Modification of the clinical content of a result from any source, including OBX;3,4,5,6,7,8,11 and 14◦ Creating custom insert statements to insert rows into standard <i>Cerner Millennium</i> database tables• All work set forth herein will be performed virtually unless otherwise agreed upon by Cerner and Client.
Trademarks	<ul style="list-style-type: none">• HL7 is the registered trademark of <i>Health Level Seven International</i>, and their use of this trademark does not constitute an endorsement by HL7.



Kern County Hospital Authority
OPT-0460783_Q-186397.1_LA-0000336989
January 4, 2023



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

January 18, 2023

Subject: Proposed Cerner Sales Order OPT-0451356 with Cerner Corporation for the purchase of professional and shared computing services for the integration of the Atellica Chemistry Analyzer Laboratory Instrument

Recommended Action: Approve; Authorize Chairman to sign and the Chief Executive Officer to sign receipt of delivery

Summary:

Kern Medical requests that your Board approve the proposed Cerner Sales order for professional and shared computing services, with a one-time fee of \$4,500 and maintenance fees of \$123 per month paid over 60 months. The total cost would not exceed \$12,100 over the term of the contract.

Cerner will provide professional services and shared computing services for the CareAware iBus for Laboratory Medical Device Integration used to support the Atellica Chemistry Analyzer Laboratory Instrument. Completion of these services will provide for the digital communication of orders and results to and from the instrument and into the electronic health record, therefore eliminating the current manual entry.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the possibility that the fees for services can increase each year of the agreement, the agreement auto-renews for one (1) year terms, and any goods purchased are FOB at origin.

This is the most efficient method to integrate the laboratory process into the electronic health record, therefore, it is recommended that your Board approve the proposed Sales Order OPT-0451356 with Cerner Corporation for the purchase of professional and shared computing services for the integration of the Atellica Chemistry Analyzer Laboratory Instrument, with a maximum payable of \$12,100, for a term of sixty (60) months beginning on the January 18, 2023, and authorize the Chairman to sign and the Chief Executive Officer to receive delivery.



CERNER SALES ORDER

This Cerner Sales Order is made on January 18, 2023 ("Effective Date"), between

Kern County Hospital Authority ("Client")

a local unit of government with its principal place of business at

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, United States
Telephone: (661) 326-2000

and **Cerner Corporation ("Cerner")**

a Delaware corporation with its principal place of business at

2800 Rock Creek Parkway
North Kansas City, MO 64117, United States
Telephone: (816) 221-1024

Cerner Sales Contact: Jordan Russell
+1 816 906 2094
jordan.russell@cerner.com

Client agrees to purchase the specific products and services set forth herein, and Cerner agrees to furnish such products and services upon the terms and conditions of this Cerner Sales Order and the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-036), dated July 01, 2016, between Client and Cerner (the "**Agreement**"). If the total fees due from Client for products and services set forth in this Cerner Sales Order are US \$250,000 or less, then Client's submission of a Purchase Order referencing this Cerner Sales Order shall be deemed Client's confirmation of agreement to the terms and conditions of the Agreement, regardless of whether this Cerner Sales Order is signed by Client.

Client understands that hand-written changes to this Cerner Sales Order will not be accepted. Client will engage their Cerner Sales Contact to request any revisions.

KERN COUNTY HOSPITAL AUTHORITY

Authorized signatory: _____

(signature)

Russell Bigler

(printed name)

Title: Chairman, Board of Governors

CERNER CORPORATION

Authorized signatory: _____

Teresa Waller

Title: Sr. Director, Contract Management

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

Client Invoice Contact: _____

Contact Phone #: _____

Contact Email Address: _____

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

REVIEWED ONLY
NOT APPROVED AS TO FORM

By
Legal Services Department

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Kern County Hospital Authority
OPT-0451356_Q-168084.1_LA-0000328936
October 26, 2022

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees
SOLUTIONS		
Shared Computing Services	--	123.00
PROFESSIONAL SERVICES		
Fixed Fee	4,500.00	--
TOTALS:	4,500.00	123.00

All prices in this Cerner Sales Order are shown in USD. Pricing is valid until January 31, 2023. If this Cerner Sales Order is not executed on or before such date, this pricing is considered null and void and will be subject to revision.

Not applicable is indicated by "--".

PAYMENT TERMS

ONE-TIME FEES			
Description	Payment Number	Percent (%) Of Total Due	Payment Due
Professional Services: Fixed Fee	1	50%	On the Effective Date
	2	50%	90 days following the Effective Date

MONTHLY RECURRING FEES		
Description	Percent (%) Of Total Due	Payment Due
Shared Computing Services	100%	Annually beginning on the Effective Date

TERM AND TERMINATION

Other Services. Unless otherwise set forth herein, all other recurring Services (such as subscription services, application services, shared computing services, employer services, recurring professional services, and managed services) begin on the Effective Date and continue for the term set forth in the "Solutions", "Professional Services", or "Managed Services" sections.

Renewal. Unless otherwise set forth herein, at the end of the applicable term, each recurring Service will automatically renew for additional 12 month periods at the rate charged in the final period of the then-current term, unless either party provides the other party with written notification of its intent to terminate the relevant Service no less than 60 days prior to the expiration of the applicable then-current term.

FEE INCREASES

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

SOLUTIONS
SHARED COMPUTING SERVICES

Mfg. Part No.	Solution Detail Description	Scope of Use Metric	Qty./ Scope of Use Limit	Term (Mo.)	Monthly Range	Extended One-Time Fees	Extended Monthly Fees	Solution Description Code	Third-Party Component(s)	Pass-Through Code	Per Unit Monthly Expansion Fees
CI-400500	CareAware iBus for Laboratory Medical Device Integration **	Devices	1	60	1-60	--	123	SD100565_04	--	--	--
TOTAL:						--	123	--	--	--	--

** This is an Interoperability Element subject to the 21st Century Cures Act. All available allowances have been applied.

PROFESSIONAL SERVICES
FIXED FEE

Service Project Detail	Manufacturer Part No.	Solution	One-Time Fees	Third-Party Component(s)	Pass-Through Code
Standard Services					
CareAware MDI	CTS-CAMDI-IMP	CareAware iBus for Laboratory Medical Device Integration Imp	4,500	--	--
TOTALS:			4,500	--	--

SCOPE OF USE

Client will use the solutions set forth in this Cerner Sales Order in accordance with the Documentation and subject to the scope of use limits set forth in the Solutions section. In the event Client requests additional scope beyond the limits set forth in the Solutions section and no Per Unit Expansion Fees are referenced therein, Client must execute a new Ordering Document setting forth the additional scope and fees at Cerner's then-current rates.

Scope of use will be measured periodically by Cerner's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g. FTEs or locations), Client will provide the relevant information (including records to verify the information) to Cerner at least once per year. Client agrees that if an event occurs that will affect Client's scope of use (such as the acquisition of a new hospital or other new facility), Client will notify Cerner in writing of such event no later than 30 days following the effective date of such event so that Client's scope of use can be reviewed. Any additional fees



CERNER SALES ORDER

due under this Section will be payable within 60 days following Client's receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

The pricing in the Solutions section of this Cerner Sales Order is based on the following scope of use metrics, which are defined as follows.

Scope of Use Metric	Scope of Use Definition
Devices	The total number of instruments, personal computers, handheld devices, or other pieces of mechanical or electronic equipment to be used in conjunction with the application being licensed.

FACILITIES

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/ Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	United States

The parties may add or substitute Permitted Facilities by amending this section.

SOLUTION DESCRIPTIONS

Each solution with a Solution Description has a code noted in the "Solutions" section of this Cerner Sales Order, and that code can be entered at <https://solutiondescriptions.cerner.com> to view the Solution Description.

QUOTE ASSUMPTIONS

The following are general assumptions regarding the solutions, services, and project set forth in this Cerner Sales Order.

Device in scope: Atellica Multiplexor

ADDITIONAL TERMS AND PROVISIONS

SHARED COMPUTING SERVICES

Client Responsibilities. Client agrees to comply with all applicable laws, rules, and regulations as they relate to its use of the Services and its provision of the Services to Users ("Laws"), including, but not limited to, HIPAA, state medical privacy and security laws, and state and federal laws applicable to sensitive categories of medical information, such as mental health, alcohol and drug abuse, genetic, and AIDS/HIV information. Client or its Users must obtain all appropriate and necessary authorizations and consents to access, use, and disclose any personally identifiable information in compliance with applicable Laws (including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the Telephone Consumer Protection Act) and the Agreement. Client must have security and privacy policies and procedures in place that govern its Users' ability to access information on or through the Services and to prevent unauthorized access, use, and disclosure of personally identifiable information including, but not limited to, protected health information.

Medical Record. The Services do not constitute a medical record. Client and its Users are responsible for ensuring that the information sent through the Services is incorporated into the applicable patient's medical record as necessary. Client acknowledges that the health information exchanged through the Services may not include the individual's full and complete



Kern County Hospital Authority
OPT-0451356_Q-168084.1_LA-0000328936
October 26, 2022

SHARED COMPUTING SERVICES

medical or encounter record or history. Cerner may leverage a public cloud infrastructure to provide the Services.

Access to Data. Cerner may use and disclose the Data as necessary to perform, analyze and improve the Services, to the extent permitted by law. Cerner may use and disclose performance and usage data for any purpose permitted by law so long as the data does not contain protected health information as defined under HIPAA or Client-specific identifiable information. Data means data that is collected, stored, processed or generated through Client's use of the Services.

Right to Aggregate. Cerner may use or disclose protected health information, as defined by 45 C.F.R. 160.103, to provide data aggregation services as permitted by 45 C.F.R. 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law.

De-identify and Use Rights. Cerner may de-identify protected health information in accordance with the standards set forth in 45 C.F.R. 164.514(b) and may use or disclose such data unless prohibited by applicable law.

Information Management Tools. Client acknowledges and agrees that the Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Services. Client further acknowledges and agrees that the Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

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

GENERAL SCOPE

PROFESSIONAL SERVICES

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

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

Client and Cerner must fulfill their responsibilities and adhere to the other requirements and descriptions set forth herein to meet the goals of an 'on-time' and 'on-budget' project. Modifications to this Scope shall be mutually agreed upon by Cerner and Client's executive steering committee and set forth on a new Cerner Sales Order.

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

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

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



Kern County Hospital Authority
OPT-0451356__LA-0000328936
October 26, 2022



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

SOLUTION DETAIL SCOPE

PROFESSIONAL SERVICES

CAREAWARE IBUS FOR LABORATORY MEDICAL DEVICE INTEGRATION IMPLEMENTATION (CI-400550, CTS-CAMDI-IMP)	
Implementation Summary	<ul style="list-style-type: none">• Number of Multiplexor devices to be implemented: 1• Number of facilities to be implemented: 1• When implementing on the traditional <i>CareAware</i> platform implementation is limited to 1 production environment and 1 non-production environment• When implementing on the <i>CareAware</i> Cloud platform implementation is limited to 1 production and 2 non-production environments
Cerner Tasks/Activities	<ul style="list-style-type: none">• Assist in the integration of devices from agreed upon <i>CareAware</i> MDI devices as defined in this Scope• Define data elements for integration via <i>CareAware</i> MDI• Establish connectivity to device(s)• Assist in the configuration and verification of assay alias mapping from the device to the electronic health record (EHR)• Assist in the configuration and verification of assay orders from the EHR to the device (if applicable)• Assist in troubleshooting and the resolution of issues that arise during Client testing
Client Tasks/Activities	<ul style="list-style-type: none">• Ensure all <i>CareAware</i> MDI device connectivity hardware is configured and connected to the network• Run cable for <i>CareAware</i> MDI device connectivity hardware throughout the facility (if applicable)• Perform all parameter testing with all <i>CareAware</i> MDI devices in scope• Responsible for all aspects related to Client-owned equipment and medical devices located at Client facilities (such as procurement, installation, management, and support)• Provide connectivity from Client facility to the <i>iBus</i> Cloud application through secured internet connection<ul style="list-style-type: none">◦ Dedicated telecommunication circuit from Client to Cerner Data Center can be leveraged. Additional fees will apply for new circuit deployment.
Deliverables	<ul style="list-style-type: none">• Implement and configure <i>CareAware</i> MDI device(s) as set forth in this Scope• Provide specialized solution training and Documentation regarding maintenance, server configuration, and operational procedures
Project Assumptions	<ul style="list-style-type: none">• Estimated project duration is 4 to 6 months depending on the number of devices and connectivity method.<ul style="list-style-type: none">◦ Quantity of devices and device availability will determine the actual project duration.



Kern County Hospital Authority
OPT-0451356_LA-0000328936
October 26, 2022



CERNER SALES ORDER

EXHIBIT A SCOPE OF SERVICES

CAREWARE IBUS FOR LABORATORY MEDICAL DEVICE INTEGRATION IMPLEMENTATION

(CI-400550, CTS-CAMDI-IMP)

- | | |
|--|---|
| | <ul style="list-style-type: none">• A solution overview focus group will follow where the project plan, domain strategy, remaining visits, and more will be discussed.• Cerner will provide remote support for 1 go-live event, when applicable.• Should additional on-site support be needed, additional services and fees will apply.• Client shall incur additional fees if services are requested beyond the scope of work herein. |
|--|---|



Kern County Hospital Authority
OPT-0451356_Q-168064.1_LA-0000328936
October 26, 2022



EXECUTION INVOICE

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

Invoice No: EXEC CSO No. OPT-0451356
Invoice Date: October 26, 2022
Due Date: Effective Date

Remit: **Via FedEx:**
Cerner Corporation
Attn: Accounts Receivable, 5th Floor
2800 Rock Creek Parkway
North Kansas City, MO 64117

OR

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

TOTAL AMOUNT DUE: \$3,726

Sales tax, if applicable, will be invoiced separately.

Description	Total Amount	Percent Payable	Net Amount
Professional Services: Fixed Fee	\$4,500	50%	\$2,250
Shared Computing Services Monthly Fees - Year 1	\$1,476	100%	\$1,476
GRAND TOTAL:			\$3,726



Kern County Hospital Authority
OPT-0451356_LA-0000328936
October 26, 2022



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

January 18, 2023

Subject: Proposed Schedule A-3 to the Agreement for Professional Consulting Services with Healthcare Performance Group, Inc (#58122)

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed Schedule A-3 to the Agreement for Professional Consulting Services with Healthcare Performance Group, Inc. (HPG), for consulting service support to assist with the Oracle Cerner Code Upgrade.

HPG will provide project management, application support, consulting and other related professional services for the Cerner Millennium code upgrade. The scope of work includes Cerner Millennium, mPages, Fetalink, LaunchPoint, and Ambulatory Organizer.

There is a critical need to use HPG for upgrade services in order to provide additional support in the areas of project management, application testing, validation, and analysis. Kern Medical's current daily operations and new project starts, during the time of the upgrade, require additional support to meet all application team required obligations. Kern Medical believes the consulting expense is necessary in order to complete a successful code upgrade, while working on current projects and keeping up with day to day incidents and change requests.

Therefore, it is recommended that your Board approve the proposed Schedule A-3 with Healthcare Performance Group, Inc. for consulting services to assist with the Oracle Cerner Code Upgrade, within the current Agreement term of October 1, 2022 through September 30, 2024, increasing the maximum payable by \$325,000 from \$164,910 plus travel fees to \$489,910 plus travel fees, and authorize the Chairman to sign.

Schedule "A-3"

Kern County Hospital Authority (Customer) and Healthcare Performance Group, (HPG), wish to attach this Schedule as an addendum to the Agreement effective October 1, 2022 between the parties in order to define the services to be provided by HPG to CUSTOMER.

Project Background

Customer has licensed the EHR applications from Oracle Cerner and is in the process of implementing and supporting these applications. Customer requires additional support in the capacity of HPG Upgrade Services. Key responsibilities of this project engagement are as follows:

- ◆ Assist Customer with its Oracle Cerner Code Upgrade covering the following applications and associated applications:
 - ◇ Acute Case Management
 - ◇ Anesthesia Management
 - ◇ Behavioral Health
 - ◇ Cerner HIM (ProFile)
 - ◇ Cerner Patient Accounting
 - ◇ Charge Services
 - ◇ Clinical Reporting/RRD
 - ◇ Cerner Supply Chain
 - ◇ Digital Objects
 - ◇ Eligibility Management
 - ◇ Enterprise Person Management Index
 - ◇ ePrescribe/EPCS
 - ◇ FetaLink (testing only; dependent on code activation timeline)
 - ◇ FirstNet
 - ◇ ED Launch Point (testing only, dependent on code activation timeline)
 - ◇ Infection Control
 - ◇ MPages (Cerner Standard)
 - ◇ Millennium Mobile
 - ◇ Nursing Documentation
 - ◇ Operation jobs (test only)
 - ◇ PathNet (GL, Micro, BB, Outreach, AP) - **Blood Bank Validation is not included**
 - ◇ PharmNet Inpatient
 - ◇ Physician Documentation
 - ◇ PowerChart Ambulatory
 - ◇ PowerChart Inpatient
 - ◇ PowerChart Maternity
 - ◇ PowerChart Oncology
 - ◇ PowerOrders
 - ◇ RadNet
 - ◇ Referral Management
 - ◇ Registration Management
 - ◇ Scheduling Management
 - ◇ SurgiNet
- ◆ Provide Project Management to work closely with Executive Leadership and Customer Application Team to ensure proper coordination and execution of tasks within designated timelines
- ◆ Testing and validation of the Customer's Oracle Cerner functionality will be a like-for-like of applications currently installed into the Production Domain at the time of execution of this contract. Testing and validation of any new functionality to be implemented is not included within the scope of this work.
- ◆ Roles and Responsibilities for engagement of resources are outlined in the Roles and Responsibilities documentation provided separately

Engagement Scope and Approach

HPG will provide Project Management Services and Consulting Services for the code upgrade. HPG Upgrade Services will assist the Customer in the project as described above and will report to Mr. Reynaldo Lopez. HPG team will begin this engagement starting on or around **January 3, 2023** and provide services on a continuous, ongoing basis until project

completion. Customer may wish to extend these services and will provide written notification and professional services contract will be estimated and agreed upon for extension.

- ◆ Work closely with Executive Leadership and Customer Application Team to ensure proper coordination and execution of tasks within designated timelines.
- ◆ Customer is responsible for testing all hardware devices such as label printers, labels, printers, and physical reports.
- ◆ Testing and validation of the Customer's Cerner Millennium functionality will be a like-for-like of applications currently installed into the Production Domain. Testing and validation of any new functionality to be implemented is not included within the scope of this work, with the exception of the five (5) agreed upon Quick Wins.
- ◆ Testing will be completed in one (1) upgraded non-production domain.

Fees, Terms and Payment

RESOURCE	RATE	BUDGET
Project Management <ul style="list-style-type: none"> ◆ Pre-planning sessions prior to the kickoff of the Upgrade ◆ Management of Upgrade Processes, project plans, and deliverables ◆ Coordinate all events and resource needs for HPG team ◆ Coordinate and provide management over technical calls with Cerner ◆ Document and evaluate all service requests with Cerner ◆ Gap analysis between current code and upgrade code ◆ Provide documentation to Customer for Communication Plan, Learning Plans, provide guidance on Post Go-Live Stabilization Plan ◆ Provide Routine Dashboard of Status Reporting ◆ Complete Non-Prod Pre-Work - Build, Troubleshooting, and Planning <ul style="list-style-type: none"> ◇ Address any build steps that need to be taken applicable to the organizational workflows ◇ Identification of CRs ◇ Complete RBS steps in Non-Prod and Prod 	(flat rate)	\$325,000
Application Support <ul style="list-style-type: none"> ◆ Oracle Cerner upgrade support for like-for-like solutions ◆ Coordination of Solution Assessments (one call per solution) to review current functionality ◆ Provide Quick Wins (5) Agreed Upon by Customer and HPG ◆ Conduct (one) overview call for Release Analysis Information for Code changes and provide spreadsheet for documentation ◆ Provide mentorship in test scripts with the Customer team ◆ Unit and Integration Testing (1) event for all areas defined above ◆ Conduct Post-Testing Event Troubleshooting ◆ Provide Go-Live Support (2 days) 		
PROFESSIONAL SERVICE FEES		\$325,000



STANDARD UPGRADE PACKAGE:

The fee for Standard Upgrade Services. Invoices for the fee will be prepared and payments are due as follows: Invoices will be due upon receipt.

1. First initial payment due at Project Kick-off -\$70,000.00
2. Second payment due 30 days post Project Kickoff - \$70,000.00
3. Third payment due 60 days post Project Kickoff -\$60,000.00
4. Final payment due July 15, 2023 - \$125,000

ADD-ON SUPPORT:

- ◆ The add-on professional service fees will be billed by the hour at the rates indicated in a good faith estimate and will be billed biweekly.
- ◆ Additional requested hours will require an addendum for an extension.
- ◆ The work efforts for this project are assumed to be all remote.
- ◆ The Invoice will be sent to the attention of Sandra Bakich, at Sandra.Bakich@kernmedical.com and Accounts Payable at accounts.payable@kernmedical.com
- ◆ Payment is expected by either () electronic payment* or by (X) check and is due within 30 days of the Invoice Date. HPG does not accept credit card payments.

CANCELATION & POSTPONEMENT:

The following charges apply upon cancellation of the Standard Upgrade Services Agreement.

- ◆ Cancellation within 30 days of execution of agreement: 40% of total investigation is payable plus any disbursement or other expenses incurred by HPG
- ◆ Cancellation within 60 days of execution of agreement: 80% of total investigation is payable plus any disbursement or other expenses incurred by HPG
- ◆ Cancellation within 61+ days of execution of agreement: 100% of total investigation is payable plus any disbursement or other expenses incurred by HPG

NON-SOLICIT AGREEMENT:

Each party agrees not to knowingly solicit the other's employees or subcontractors during this Agreement and for a period of one (1) year after the termination of this Agreement. If either becomes aware of an agreement outside of the terms set herein, such party will be entitled to fees equal to Twenty-Five Percent (25%) of the fees/salary for one year of the other part's subcontractor/employee relationship.

All other terms and conditions of the original Master Agreement remain unchanged.



Kern Medical:
HPG Upgrade Services

December 5, 2022
Page 4

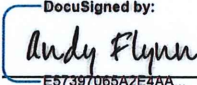
ACCEPTED by:

CUSTOMER:

SIGNATURE: _____

DATE: _____

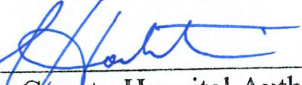
HPG:

SIGNATURE:  _____
ES7397065A2E4AA...

DATE: 1/4/2023 | 19:23 CST

***ABA routing number: 101100045; *Account number: 005048626030; Address: Healthcare Performance Group, Inc., P.O. Box 588, Spring Hill, KS 66083**

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority





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

January 18, 2023

Subject: Proposed Personal/Professional Services Agreement with RBB Architects, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Personal/Professional Services Agreement with RBB Architects, Inc., to provide a feasibility study and conceptual drawings for the behavioral health tower expansion project, which includes the demolition of existing structures and the development of a new building on the Kern Medical campus.

The Agreement is effective January 18, 2023, until project completion, with a maximum payable not to exceed \$297,500, plus travel expenses. The funds for this project will utilize a grant with the City of Bakersfield which Kern Medical secured in September 2022 for the purposes of the much-needed behavioral health expansion project.

Therefore, it is recommended that your Board approve the Personal/Professional Services Agreement with RBB Architects, Inc., effective January 18, 2023, with a maximum payable not to exceed \$297,500, plus travel expenses, and authorize the Chairman to Sign.

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

THIS SCHEDULE shall be effective on: January 18, 2023 ("Effective Date") and shall terminate upon project completion.

Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")

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

Service Provider: RBB Architects, Inc. ("Consultant")

Located at: 10980 Wilshire Boulevard, Los Angeles, California 90024

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

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

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$297,500. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

☐ KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.
☒ KCHA shall reimburse Consultant in the amount of \$2,995.

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

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

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

By _____
Russell Bigler, Chairman, Board of Governors

"KCHA"

Date: _____

RBB ARCHITECTS, INC.

By Sylvia Botero

Name: Sylvia Botero

Title:

"Consultant" 1/4/23

Date: _____

APPROVED AS TO CONTENT:
Responsible KCHA Department

By Michael Fink
_____ Michael Fink, Senior Director of Facilities

Date: 1-4-23

APPROVED AS TO FORM:
Legal Services Department

By Jamie A. Mason
_____ Jamie A. Mason, Hospital Counsel

Exhibit 'A'

Project Approach

The scope of the study is defined to include a cost-to-serve analysis to identify the full range of services needed to support the community of Kern County. Current level of service is being reviewed to determine if all services are being provided. The study will also review the current level of service to determine if all services are being provided. The study will also review the current level of service to determine if all services are being provided.

At RBB, our team will review the current level of service to determine if all services are being provided. The study will also review the current level of service to determine if all services are being provided.

- Identify the needs
- Develop a strategy
- Implement the strategy
- Monitor the strategy
- Evaluate the strategy
- Report the results
- Update the strategy
- Complete the project

The study will also review the current level of service to determine if all services are being provided. The study will also review the current level of service to determine if all services are being provided.

The study will also review the current level of service to determine if all services are being provided. The study will also review the current level of service to determine if all services are being provided.



Design Drivers

RBB will work with Kern Medical to identify the most important issues to the hospital. Creating a physical environment that addresses the needs of the patient and staff is a balance that can result in beautiful, safe and efficient design.

RBB will work with staff to create a standard for acuties, integrating best practices and flexibility.

Focusing on the well being of patients, families and staff improve patient outcomes, staff retention and recruitment. Introducing light and nature as well as developing renewal spaces for staff or family members to have a moment of calm or reflection.

Identifying technology that can assist in patient care, comfort, and education so that these systems are included in the planning process.

Flexibility

Planning for flexibility is important whether it be for acuity, new technology or expansion. RBB designs flexible spaces that can accommodate changes as they come and include some of the following strategies:

- Acuity adaptable rooms
- Design with robust infrastructure to assure availability of resources when expansions or renovations are required
- Use modular and uniform grids to organize spaces that can be divided or combined when needed
- Assign areas for specific functions, allowing for specialty departments to adjust to growth by relocating or expanding within the same floor
- Strategically place soft spaces that can change as required for shrinking or expanding of adjacent programs
- Open ended circulation to allow departments to expand incrementally on demand

Process

RBB has developed a campus planning process study that has been tested and proven successful in similar facilities requiring similar scope.

Data Gathering and Campus Design

RBB begins with the thorough evaluation of site conditions. The design team will facilitate interactive workshops to establish the goals of a project. RBB will work with the Kern Medical's Planning Team and other project stakeholders to reach consensus on the important elements of the future Tower requirements, balancing departmental requirements against budget constraints, and assisting users in understanding the implications of their decisions.

Multiple key components must be addressed to successfully complete the programming and conceptual design process. A thorough analysis of the impact of the proposed new hospital expansion footprint is required. This analysis must include options for creating infrastructure to support the new tower and robust systems for future campus development. Proper sequencing will be developed to minimize departmental circulation fragmentation and ease of way finding.

Programming Methodology

Our highly participatory process throughout the owner representative sessions encourages a cross section of participants representing departmental functional areas that impact or are impacted by the Department that is being program/planned. These sessions are an opportunity to foster cross-department collaboration, discuss concerns and responsibilities as well as improve operational strategies.



RBB's senior professional staff has specialized in strategic planning, programming, and planning studies for over forty years. In that experience, our team has gained the ability to listen and has developed skills in working with diverse personalities, which are usually represented within typical user groups. These are tools which are only learned from extensive experience. As necessary, one-on-one meetings occur to address unresolved issues and concerns. It is our goal and responsibility to attempt to gain complete consensus whenever possible.

Our role is to listen to leadership's ideas and issues, and to share potential solutions that may be applicable. We do not have "cookie cutter" models, as each client has specific issues that must be addressed for incorporation into their unique community and culture. Our extensive experience in healthcare planning specific to Psych units and new towers, provides our team a broad array of examples to draw from and to build new innovative approaches to healthcare delivery.

Schematic Design

RBB will test fit the space program with the parameters for the new building. The program area is tracked in the model and a comparison of the program area vs. modeled area generates a schedule that alerts the team of any program creep or deficiencies. RBB will gather the design criteria at user meetings and workshops and the team will inform the Revit model ensuring that each item identified by the client is captured in the model and translated into the final study. Bluebeam Studio is also used to track decisions to ensure that these items are flagged and brought to the attention of each discipline affected.

Programming and Planning

The following tools have been very effective in the successful development of feasibility studies and conceptual planning projects:

Need Projections

- Review and verify needs projections
- Bench mark against other similar facilities

Space Program

- Review, verify, confirm, and bench mark space program drivers, in order to test and align project scope to budget
- Review with owner's team
- Continue to refine the program to maximize space efficiency and reduce building gross factor
- Review with Owner and secure approvals
- Align program and budget

Feasibility Studies and Conceptual Planning

- Once the optimum program is achieved, proceed with blocking and stacking to maximize adjacencies in order to minimize operational cost and maximize space efficiency
- Implement green strategies i.e., building orientation
- Review with owner's team
- Continue to refine plan not only to align with the project budget, but also to identify savings to benefit the project
- Develop structural and MEP systems description and Basis for Design for all disciplines
- Review with owner's team
- Bench mark results against other similar facilities to confirm efficiency
- Secure owner's approval
- Align plans and budget

Schematic Design

- Based on the agreed blocking and stacking, develop room by room block plans
- Implement green strategies
- Review with owner's team
- Refine plans until maximum adjacencies and efficiencies are achieved
- Develop room data sheets
- Develop 3D models for main room types
- Secure owner's approval
- Align plans and Opinion of Probable Cost

Parallel effort will take place to achieve entitlements through the local agencies.

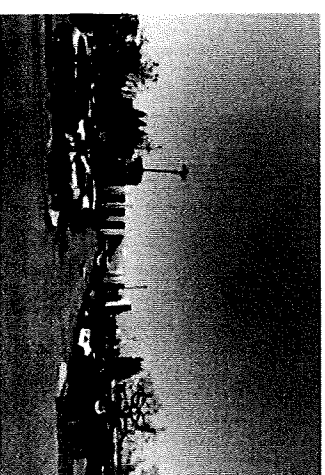
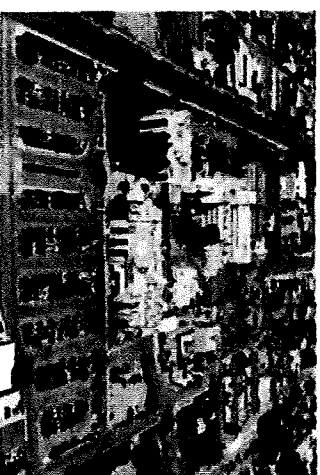
Evidence Based Design

Implement design principles that have demonstrated improved results through Evidence Based Design principles:

- Maximize Psych rooms safety features
- Design features to promote healing and reduce stress
- Eliminate blind spots
- Error free environment
- Safety in material selection
- Privacy without compromising safety
- Staff safety plan
- Create environments that reduce anxiety
- Diminish noise / improve sleep
- Decrease spatial disorientation
- Reduce risk of lifting injuries and patient transportation
- Improve lighting and glare
- Design a more holistic approach that can encourage mental wellness
- Create a sense of community

"...Not only was it easy to work with you, it was a great pleasure. When the hours were long and the problems difficult, you were unfailingly pleasant and your attitude was positive and constructive. Your skill was a constant source of delight. I especially appreciate your ability to understand our needs with regard to flow and function and convert those into a responsive design."

- Marshal T. Morgan, MD, Director, UCLA Emergency Medicine Center



Project Schedule

The project schedule was developed based on receiving a Notice to Proceed by Mid-November. This date can be adjusted to accommodate the Owner's time-line without affecting this proposal.

The schedules have been structured in four distinct parts:

New Tower Feasibility Study - Part 1

- Includes site studies, connections to the existing first floor Emergency Department, and programs on four floors.
- The schedule is approximately 3 months, including the end of year Holiday period; our team is flexible to compress or expand the schedule as required to accommodate the Owner's response time.
- Schedule includes architectural schematic level plans.

New Tower Basic Services - Part 2

- Basic Services start at Design Development through Construction Administration; the approximate duration for project completion is 36 to 38 months, depending on agency review and construction time-lins.
- The agency review times are approximate based on recent experience. Our plan is to engage both the City of Bakersfield and HCAI early in the process to minimize plan check time and expedite approvals.
- The key to reducing plan check durations is solid documentation that passes trage easily and produces minimum plan check comments. RBB exceeds the industry's standard for plan review durations.
- The construction duration is approximately 18 months. We recommend this duration to be confirmed by a General Contractor.

F Ward Building Demolition Feasibility Study - Part 1:

- The Basis for Design will be done parallel to Part 1 of the New Tower study and will take approximately 2 months.

F Ward Building Demolition Basic Services - Part 2.

- Basic Services overall duration depend on delivery strategy and outcome of feasibility study.
- Documentation will be delivered in approximately 3 months. Construction scope will be based on durations established by the Demolition Contractor, but we anticipate a duration of 4-6 months.

Refer to the following pages for the scheduling approach and project schedules for Part 1 and 2 of the New Tower and the Demolition of the F Ward Building Study.



Schedule

- The schedules have been structured to reflect complete projects:
 - Part 1 – Feasibility Study and architectural conceptual drawings for a New Tower and Basis for Design for the Demolition of the F Ward Building
 - Part 2 – Basic Services for a complete project
 - Our fee proposal includes Part 1 as requested in the RFP
- Part 1 Schedule tasks:
 - Discovery Period for all disciplines
 - Conceptual Option Development / Programming and Planning
 - Option refinement and selection
 - Disciplines Basis for Design
 - Architectural Schematic Design, Massing and Stacking, Room Data Sheets, 3D Models for Typical Rooms
 - Opinion of Probable Cost
- Assumptions:
 - The A/E team anticipates 3 to 4 workshops during the programming and planning process. This does not include site visits during the discovery / evaluation period
 - Turnaround times for tasks associated with A/E effort are predicated on receiving owner direction at each workshop
- Part 2 Schedule tasks:
 - Basic Services New Tower
 - Architectural SD refinement and Engineering Schematic Design
 - Design Development all disciplines
 - Construction Documents all disciplines
 - Agency Review – City of Bakersfield and HCAI
 - Bidding and Negotiations
 - Construction Administration
 - Project Close out – Licensing
 - Record Drawings
 - Basic Services Demolition “F” Ward Building
 - Develop concepts for utility disconnect
 - Hazardous Abatement: Owner will retain a hazardous materials consultant to ensure reports and assessment are comprehensive and abatement can take place prior to demolition

- Prepare documents for building demolition; assumes building is vacant and a relocation package is not required
- Provide SD through CA Services.
- Agency Review – City of Bakersfield
- Bidding and Negotiations
- Construction Administration
- Record Drawings

“Never before in California has our agency worked so successfully with a project team.”
 California Department of Corrections and Rehabilitation

A/E Team Fees

The costs of services have been developed based on the information contained in the RFP identified as Reissue 10/4/2022. The total cost for the Feasibility Study inclusive of all services noted below is **\$297,500**, plus \$2,950 for reimbursable expenses. Reimbursable expenses are anticipated to be billed at cost, and will not be charged unless they are incurred.

In order to comply with our sustainable practices, every effort will be made to share files electronically to mitigate printing costs. Electronic file exchange will be facilitated through KCHA's preferred web based platform. Typical expenses include but are not limited to: reproductions, postage, shipping, tel & communication / Web Ex, FTP file storage, parking and other miscellaneous expenses.

Project Description

Develop a feasibility study for the development of a new patient tower and the demolition of Building F Ward at the Kern Medical Campus.

Design team anticipates programming, planning and architectural services and Basis for Design for all disciplines noted below. The new Hospital Building is assumed to be approximately 120,000 BGSF, four stories, with connecting corridors to existing programs. A new Central Utility Plant or connection to the existing infrastructure will be determined based on the result of the capacity analysis during the study phase. The Tower scope of the work is assumed to be under OSHPD 1 jurisdiction.

Disciplines

- Architectural and Planning
- Civil
- Structural
- Mechanical, Electrical, Plumbing
- Low Voltage (Fire Alarm, Nurse Call)
- Fire and Life Safety Code Compliance
- Cost estimating

Deliverables

- Site planning options including pedestrian and vehicular analysis, building entry points
- Develop multiple options for the New Tower location and configuration:
 - o Footprint
 - o Orientation
 - o Adjacencies
 - o Future growth



- Develop Massing and Stacking Options
- Develop room by room programs for New Tower
- Area tabulations to include gross to net square footage
- Program tied to stacking
- Develop multiple architectural test-to-fit planning options
- Refine preferred option into schematic layouts, room by room plans
- Room data sheets
- Interior 3D renderings for main room types
- Structural analysis and recommendations
- MEP systems description
- Statements of Probable Cost to reconcile scope and budget
- Attend meetings as required to successfully complete the study
- Coordinate with consultants from all disciplines as required to achieve a complete study

Scope of Work

- New Tower – OSHPD 1
- Demolition of "F" Ward Building

New Tower

Site

- Identify critical access points
- Analyze pedestrian and vehicular access
- Develop a viable site plan for the development of the new tower to be located east of the Main Hospital Building (E Wing)

First Floor

- Assumes to house a new Emergency Psychiatric Facility with a connecting corridor to the existing Emergency Wing; scope includes a 28-bed licensed emergency care facility to include 4 isolation rooms, 4 padded rooms, and 4 exam/intake rooms; registration and nurse station; 1 conference room and 6 offices; snack closet with ice/water machine; cabinets and refrigerator
- Connectivity analysis between the first floor Emergency Room and the existing department

Second Floor

- Mental Health Inpatient Care: 25 bed, licensed in-patient care facility to include registration and nurse station, 1 conference room, dining room (no kitchen), snack closet with ice/water machine, cabinets and refrigerator, multipurpose room, 2 exam rooms, and a serenity room.

Third Floor

Option 1:

- Detox Center – 25 bed licensed detox facility to include nurse station, registration and 6 offices; snack closet area with ice/water machine, cabinets and refrigerator

Option 2:

- Detox program shares second floor; separate wing
- Third Floor becomes a shell floor

Fourth Floor

- Shelled floor for future use; test fit potential programs
- Develop infrastructure with sufficient capacity for future development

General

- Review available documentation to become familiar with the campus and the as-built conditions
- Define Structural Systems and Basis for Design
- Nurse Call, Fire Alarm and Fire Suppression systems
- Provide outline of space requirements per code.
- Develop schematic layout on site and interior floor plan.

Demotion of Existing Building

Provide Basis for Design for all disciplines for the demolition of the "F" Ward building. Building is vacant and consists of a main floor and partial basement with hospital IT hub located in the basement. IT hub is excluded from this proposal.

Assumptions

- Site will be backfilled; rough grading with clean top soil will be added without landscaping or parking components
- Develop a strategy for capping and disconnecting civil utilities 10' from the existing building (storm, sewer, domestic water, and fire water)
- Develop Conceptual Low Impact Development (LID) Plan for storm water management

Exclusions

- Haz mat abatement
- Underground utility surveys
- Geotech reports

- Site Survey

- Preparation of easement documents

- Seismic upgrades

- Seismic bracing to existing

- Renovation of existing programs except at the first floor Emergency Department where a connection is required

- ADA upgrades in existing buildings

- Furniture and Furnishings

- LEED

- Commissioning

- Specialty solar systems

Billing Rates

General Labor Categories

	Hourly Rates
Principal	\$275.00
Senior Project Manager	\$235.00
Project Manager	\$190.00
Project Architect	\$180.00
Project Coordinator	\$175.00
Job Captain	\$145.00
Senior Production	\$125.00
Intermediate Production	\$110.00
BIM Coordinator	\$85.00
Document Control Coordinator	\$70.00

Planning & Design Resources

Senior Project Designer	\$235.00
Designer / 3D Rendering / Animator	\$150.00
Senior Interior Designer	\$165.00
Interior Designer	\$125.00
Senior Planner	\$230.00
Planner	\$190.00

Exhibit A-1

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

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

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line, do not leave this line blank. RBB ARCHITECTS INC	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C- C corporation, S- S corporation, P- Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.) See instructions. 10980 WILSHIRE BLVD.	Requester's name and address (optional)
6 City, state, and ZIP code LOS ANGELES, CA 90024	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

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

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

Social security number									
			-				-		
or									
Employer identification number									
9	5	-	2	2	7	4	7	2	9

Part II Certification

Under penalties of perjury, I certify that:

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

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

Sign
Here

Signature of
U.S. person ►

Date ► 12/20/22

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

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

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

EXHIBIT "C"

Insurance

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

3. Automobile Liability Insurance:

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

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Consultant's profession.
 - (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
 - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
 - (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. Additional Insured Wording: "Kern County Hospital Authority, its officers, officials, employees and volunteers" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least 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, Consultant must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services – Master Facility Plan.**"
 - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
 - (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (e) Consultant shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (f) Upon written request, certified copies of required insurance policies must be provided to KCHA within 30 days.
9. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
11. Waiver of Subrogation: Consultant hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Consultant may acquire against KCHA by virtue of the payment of any loss under such insurance. Consultant 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.
12. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

[Intentionally left blank]

EXHIBIT E
ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS

The Kern County Hospital Authority (KCHA), a public agency that is a local unit of government, which owns and operates Kern Medical Center, is subject to a variety of statutes (e.g. codes) and regulations that now apply to you as a Consultant/Contractor of KCHA. This Exhibit E outlines some, but not necessarily all of the requirements that you may now be required to meet as a Consultant/Contractor of a public entity.

I. COMPLIANCE WITH LABOR STANDARDS

1. KCHA has determined that the work contemplated by this Agreement falls within the definitions of "Public Works" set forth in the California Labor Code. Contractor acknowledges that Contractor is fully aware of prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code ("Prevailing Wage Requirements") and Contractor agrees to comply with the provisions of that Article to the extent the Prevailing Wage Requirements are applicable to the work conducted under this Agreement. Contractor further agrees that to the extent applicable, Contractor shall require any subcontractor it contracts with to comply with the Prevailing Wage Requirements. Contractor also agrees to indemnify, defend (upon request of KCHA) and hold, its officers, agents and employees, harmless from all claims, costs, causes of action, attorney fees, damages or liability from the failure of Contractor or Contractor's subcontractors to comply with the Prevailing Wage Requirements.

The Department of Industrial Relations of the State of California has determined the general prevailing rate of wages for each craft, classification or type of workers needed in the execution of contracts under the jurisdiction of Kern County. The schedule of rates can be obtained from or are on file with the Engineering Department at Kern Medical Center, located at 1700 Mt. Vernon Avenue, Bakersfield, CA 93305 and is hereby incorporated herein by this reference.

II. APPRENTICESHIP PROGRAM

1. Compliance Required

Contractor and Subcontractors shall comply with the requirements of California Labor Code §§1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

2. Certification of Approval

California Labor Code §1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

3. Fund Contributions

Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

4. Apprenticeship Standards

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

1. INSURANCE

- A. In addition to the Insurance requirements in Exhibit C, Contractor, in order to protect the KCHA and its board members, officials, agents, officers, employees and volunteers against all claims and liability for death, injury, loss and damage as a result of

Contractor's actions in connection with the performance of Contractor's obligations, as required in the Contract Documents, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Contract Documents until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Exigis.

1) Workers' Compensation and Employers Liability Insurance Requirement -- In the event Contractor has employees who may perform any services pursuant to the Contract Documents, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

By signing the Agreement, Contractor makes the following certification, required by section 1861 of the Labor Code:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work pursuant to the Contract Documents.

2) If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from KCHA under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from KCHA, KCHA may retain out of sums due Contractor under the Contract Documents, an amount sufficient to cover such compensation, as fixed by the Workers' Compensation Insurance and Safety Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If KCHA is compelled to pay compensation, KCHA may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse KCHA.

3) Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

4) All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in the Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to KCHA within ten Days of KCHA's request.

2. INDEMNIFICATION

- A. In addition to the indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
 - 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
 - 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.

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

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

RECITALS

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

AGREEMENT

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

house and outside counsel, expert fees, costs of staff time, and investigation costs) ("Claims") which arise out of or relate to any act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("Consultant Representatives"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation Claim arising from or relating to any Services.

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

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

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

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;

2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing KCHA's ability to use the Services as intended;

3. **Procure Rights.** Promptly procure the right of KCHA to continue using the Services; or

4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and KCHA is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to KCHA all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by KCHA if the court does not so direct.

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

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

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

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

a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and

b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and

c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

having authority to set standards governing the operation of KCHA and KMC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

January 18, 2023

Subject: Proposed Amendment No. 4 to Agreement 08919 for Personal/Professional Services with Quality Floor Covering

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 4 to the Personal/Professional Services Agreement with Quality Floor Covering, to provide flooring maintenance and repairs at Kern Medical facilities.

The Agreement term is from December 1, 2018 through November 30, 2024. The Amendment extends the term two years, effective January 18, 2023, from November 30, 2024 to November 30, 2026, and increases the maximum payable by \$750,000 from \$750,000 to \$1,000,000, to cover the term.

Therefore, it is recommended that your Board approve Amendment No. 4 to the Personal/Professional Services Agreement with Quality Floor Covering, effective January 18, 2023, extending the term two years, from December 1, 2024 to November 30, 2026, and increasing the maximum payable by \$750,000 from \$750,000 to \$1,500,000, to cover the term, and authorize the Chairman to sign.

PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority–Quality Floor Covering)

THIS AMENDMENT TO AGREEMENT, effective January 18, 2023, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Quality Floor Covering ("Consultant"), with its principal place of business located at 24551 Bay Court, Tehachapi, California 93561.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement, effective December 1, 2018 (KCHA Agt. No. 08919), Amendment No. 1, effective April 14, 2020 (KCHA Agt. No. 27120), Amendment No. 2, effective September 29, 2021 (KCHA Agt. No. 50121), and Amendment No. 3, effective May 12, 2022 (KCHA Agt. No. 26522) ("Agreement"), for the period December 1, 2018 through November 30, 2024; and

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

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

X **Term.** The Agreement shall be extended from November 30, 2024 to November 30, 2026, unless sooner terminated as provided for in the Agreement.

X Fees payable by KCHA under the Agreement shall increase by \$750,000 from \$750,000 to \$1,500,000.

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

IN WITNESS WHEREOF, this Amendment No. 4 to the Agreement has been executed as of the date indicated below.

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

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


By Scott Thygerson, Chief Executive Officer

Date: _____

Date: _____

QUALITY FLOOR COVERING

APPROVED AS TO FORM:
Legal Services Department

By  _____
"Consultant"

By Jamy
Hospital Counsel

Date: 1-5-23

Date: 1/6/23



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

January 18, 2023

Subject: Proposed Engagement Letter with Strata Decision Technology, LLC for consulting services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve a proposed Engagement Letter with Strata Decision Technology, LLC a software and consulting company providing decision support, cost accounting, and operating budget solutions.

Strata Decision Technology provides the robust software platform needed to support full-time equivalent (FTE) employee productivity reporting, management reporting, management financial reporting, capital project management, decision support analyses, and cost accounting analyses. This Engagement Letter will authorize the work needed to integrate the clinical data from the Cerner Electronic Health Record system into the Strata system. Among other benefits, the automatic integration of data will allow Kern Medical to avoid manual data input and will improve advanced decision support and cost accounting analyses.

Agreement	Term	Maximum Payable	Variance
Software Use Agt. -2017-025	3/16/16 – 3/16/21	\$2,056,164	
Addendum No. 1 - 36517	9/27/17 – 03/16/21	\$2,110,689	\$54,525
Addendum - 11518	3/16/18 – 03/16/21	\$2,257,169	\$146,480
Engagement Letter - 046-2020	09/10/2020	\$2,353,019	\$95,850
Addendum - 018-2022	03/16/22 – 03/16/26	\$4,162,124	\$1,809,105
Proposed Addendum	Upon Execution	\$4,276,500	\$114,376

Therefore, it is recommended that your Board approve the proposed Engagement Letter with Strata Decision Technology, LLC, for an eight (8) month project, that does not extend the term, effective upon execution, for an additional cost of \$114,376 increasing the maximum payable from \$4,162,124 to \$4,276,500, and authorize the Chairman to sign.



200 East Randolph Street
49th Floor
Chicago, Illinois 60601

312.726.1227
www.stratadecision.com

January 4, 2023

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

Dear Mr. Bigler:

This is an engagement letter that outlines the terms and conditions for Strata Decision Technology, LLC ("Strata") to provide Kern County Hospital Authority ("Kern") with consulting services related to StrataJazz Cost Accounting (Hospitals), StrataJazz Contract Analytics (Physicians) and StrataJazz Project Management. This engagement letter shall be pursuant to the Software Use Agreement (the "Agreement") dated March 16, 2017 between Strata and Kern.

StrataJazz Cost Accounting (Hospitals), StrataJazz Contract Analytics (Physicians) and StrataJazz Project Management:

Strata shall provide Kern with the consulting services set forth below in Exhibit A in exchange for a fee of \$114,376. Travel expenses will be billed separately from the cost of this engagement.

Description	Fees
StrataJazz Cost Accounting (Hospitals)	\$59,160
StrataJazz Contract Analytics (Physicians)	\$35,496
StrataJazz Project Management	\$19,720
TOTAL	\$114,376

Payment Terms

The total fees for this engagement will be billed upon receipt of the signed engagement letter, payment terms as set forth in the Agreement. Interest is applied to charges not remitted as set forth in the Agreement.

By signing below, the parties have agreed to the terms stated in the above agreement. The undersigned each individually represents that he or she is duly authorized to execute this agreement.

STRATA DECISION TECHNOLOGY, LLC

By: 
Authorized Signature

Name: DAN DUNHAM

Title: CFO

Date: January 4, 2023

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Authorized Signature

Name: RUSSELL BIGLER

Title: Chairman, Kern County Hospital Authority
Board of Governors

Date: _____

EXHIBIT A

PROJECT MANAGEMENT

Strata will provide a work plan for the Strata scope, designed per the scope discussed, electronically for each project at the onset of the platform implementation as well as throughout the project via weekly status updates (changes to Strata standard workplan may be considered out of scope).

Strata will conduct weekly Technical Meetings: One (1) hour call per week for the duration of each project as established by the initially agreed upon work plan(s).

Strata will manage and deliver the following for the duration of the project for Strata responsibilities and resources as established by the initially agreed upon work plan:

- a) Strata Project Work Plan Maintenance
- b) Scope and Statement of Work Management
- c) Change Request Documentation and Approval Process
- d) Coordination of Strata efforts across solutions
- e) Collaboration on Monthly Steering Committee Meetings (creation of additional presentations and status reports outside of standard weekly status report is out of scope)
- f) Strata Executive Sponsor calls
- g) Strata defined support for overall training and adoption planning for each solution
- h) Risk management and mitigation support

DECISION SUPPORT – COST ACCOUNTING

Strata will configure prior fiscal year cost model based on go-live fiscal year for scoped sites of care areas purchased (ex. Hospital, Physician, Home Health, etc.) including:

- a) The implementation of both Hospital and Professional Billing Cost Accounting
- b) Strata Best Practice Analytics for CFO/VP Finance
- c) Supply acquisition data from billing source system if available
- d) Calculation of net revenue based on collection rate, financial class, and patient type
- e) One (1) on-site/remote working session with Strata.
- f) All training will be performed remotely

DECISION SUPPORT – CONTRACT ANALYTICS

Strata will configure up to two (2) StrataJazz® hospital and seven (7) professional contract models defined by a unique set of contracts terms, conditions, and rates for scoped sites of care purchased (ex. Hospital, Physician, Home Health, etc.).

Strata will assist Customer validation on the nine (9) StrataJazz® contract models configured targeting between 3-10% variance of historical expected payment or actual payment:

- a. Variance targets will be defined as a part of requirements gathering
- b. Validation assistance on additional contracts built outside of configuration scope is not included and may result in a change request



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

January 18, 2023

Subject: Proposed Purchase Order Agreement with Accurate Surgical & Scientific Instruments

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Purchase Order Agreement with Accurate Surgical & Scientific Instruments, which provides instruments and supplies for the performance of micro-tendon, vascular, and breast reconstruction procedures. The agreement is effective January 18, 2023 with a maximum payable not to exceed \$12,360, plus taxes and shipping.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to Accurate Surgical & Scientific Instruments inability to provide indemnification to Kern Medical. Efforts were made to negotiate these nonstandard terms to no avail. The instruments and supplies are necessary to perform certain procedures, and Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the Purchase Order Agreement with Accurate Surgical & Scientific Instruments, effective January 18, 2023, with a maximum payable not to exceed \$12,360, plus taxes and shipping, and authorize the Chairman to sign.

KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS
(Kern County Hospital Authority – Accurate Surgical & Scientific Instruments)

This Purchase Order is entered into this 18th day of January, 2023 ("Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA") and Accurate Surgical & Scientific Instruments ("Vendor"), with its principal place of business at 300 Shames Drive, Westbury, New York 11590.

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) Westbury, with transfer of title and risk of loss to rest with Customer at the time goods are transferred to transport company.

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 \$12,360.04 plus taxes and shipping, if applicable.

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 or payment will not be made. Payment shall be made to Vendor within 30 days of receipt and approval of each invoice by KMC.

13. Intentionally Omitted.

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 if applicable, the terms found at [KCHA-TC.pdf \(kernmedical.com\)](#), contains 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. KCHA and Vendor agree that the provisions of this Purchase Order or agreement will be construed pursuant to the laws of the State of California, and that venue of any action relating thereto shall be in the Superior Court of and for Kern County.

18. Intentionally Omitted.

19. Intentionally Omitted.

20. Intentionally Omitted.

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: _____

ACCURATE SURGICAL & SCIENTIFIC INSTRUMENTS

By Marie Bonazinga
MARIE BONAZINGA (Print Name)
PRESIDENT (Title)

Date: 12/15/22

APPROVED AS TO CONTENT:

Kern Medical Center

By _____
Dawn C. LeRoy
Chief Nursing Officer

REVIEWED ONLY; NOT APPROVED AS TO FORM:

Legal Services Department

By Jamie A. Mason
Jamie A. Mason
Hospital Counsel

ORDERING INFORMATION

In order to avoid errors, please be sure to list catalog number, complete item description, and exact quantity desired. Please mark all confirming orders as "CONFIRMING" to avoid duplication and unnecessary charges. All orders are shipped F.O.B. Westbury, N.Y., plus sales tax where applicable. Customers brokerage fees and duty, if applicable, become the responsibility of the customer. Customer takes legal possession as soon as merchandise is delivered to a common carrier. Our terms are 2% 10 days, net 30 days, unless quoted otherwise.

TERMS AND CONDITIONS

F.O.B. WESTBURY, N.Y.
FREIGHT CHARGES PREPAID AND ADDED TO INVOICE.
2% 10 DAYS, NET 30 DAYS

Sales Tax laws:

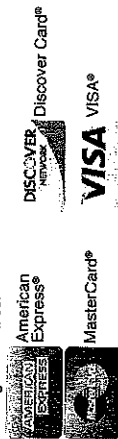
Tax laws require that sales tax be collected on sales made to the following states: New York, New Jersey, North Carolina, California, Indiana and Texas.

International Sales and Shipments:

All international shipments, including Canadian shipments require that the consignee be responsible for all Customs Duty, Brokerage Fees and Local Taxes.

CREDIT AND DEBIT CARDS ACCEPTED

The purchase of instruments and accessories may be charged to the following credit cards:



Please indicate your name as it appears on the credit or debit card, card number, effective and expiration dates as well as the security code (3 or 4 digit number found on the front or back of your card)

GUARANTEE

The materials, design and workmanship of the products listed in this catalog are unconditionally guaranteed to be of superior quality and free of manufacturing defects. ASSI will replace free of charge a damaged instrument if the damage is found to have been caused by a defect in workmanship or materials. Claims must be submitted in writing within 30 days of the invoice date.

This guarantee does not include normal wear and tear. Instruments which have been repaired by other than the ASSI Repair Department will not be covered under the guarantee.

Instruments in need of repairs should be sent to ASSI Repair Department, 300 Shames Drive, Westbury, NY 11590.

Due to our policy of continual product development, we reserve the right to alter product specifications.

We assume the user to be technically competent and professional; therefore, user must take all necessary precautions normally associated with instruments during their care, handling and storage. Our instruments should be handled only by technically competent personnel and should never be entrusted to others.

To the best of our knowledge the information contained in this catalog is accurate and reliable; however, all recommendations or suggestions are made without guarantee. We disclaim any liability incurred in connection with the use of these instruments. Nothing contained in this catalog shall be construed to imply the nonexistence of any relevant patent. No invention covered by any patent shall be utilized in any way without authorization from the owner of that patent.

RETURNS AND CREDITS

If you wish to return an unused instrument, please contact ASSI for authorization before doing so. Any returns not authorized in advance will be rejected by our shipping department and returned at your expense. Unused instruments can be returned or exchanged within 30 days of the invoice date. Instruments must be returned in their original packing, and shipping charges must be prepaid. Any unused instrument returned without its original packing may be subject to a 50% restocking charge. The invoice number and reason for return must be indicated. After examination, defective instruments will be immediately replaced at no charge. Instruments ordered in error and returned for exchange may be subject to a 50% restocking charge, plus the shipping charges originally incurred.

Used, autoclaved or sterilized instruments are not returnable for credit or exchange.

Orders for custom-made instruments are non-cancelable, non-returnable and non-refundable.

Custom etched instruments are non-returnable and non-refundable.

Sterile packaged items cannot be accepted for return unless they are defective, in which case we will replace them.

PRICES

We reserve the right to alter packaging or change prices at any time without prior notification. We will always notify the customers prior to shipping an order when such changes occur, unless the increase is minimal and would not warrant delaying an order. We reserve the right to make partial shipments at our discretion unless instructed to the contrary. We also reserve the right to discontinue any items without prior notice.

Notes: Photographs in this catalog are not shown actual size. Refer to descriptive copy for sizes and specifications.

ASSI® is a registered trademark of Accurate Surgical & Scientific Instruments Corporation.

The following brand names are registered trademarks of Accurate Surgical & Scientific Instruments Corporation (ASSI®).

bir-polar®	Mozart Gold®
INSTRA-mate®	Polar-Mate®
InstruWipes™	Satellite®
MicroLite™	StaySharp®
Microspike™	True Blue™

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Accurate Surgical & Scientific Instruments

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Phone Number (800) 645-3569
Fax Number (516) 997-4948
Info e-mail assi@accuratesurgical.com
Orders e-mail orders@accuratesurgical.com
Website www.accuratesurgical.com

Sales Quote Number:	SQ/P048494
Sales Quote Date:	08/24/22
Page:	1
EXPIRATION DATE:	11/22/22

SALES QUOTE - PROFORMA INVOICE

Self
To: KERN MEDICAL CENTER
ATTN: ACCOUNTS PAYABLE
1700 MT VERNON AVE
BAKERSFIELD, CA 93306

Ship
To: KERN MEDICAL CENTER
ATTN: ACCOUNTS PAYABLE
1700 MT VERNON AVE
BAKERSFIELD, CA 93306

Ship Via UPS - United Parcel Service
Terms Net 30

Customer ID KE0618
Order Taken By: MICHAEL
SalesPerson Michael Draper

Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
Chest Flap Tray					
ASSI.SAS21RV	Adventitia Scissors Vannas Pattern 21cm Rnd. Hdl. 8mm dia., Str. Bl. 7mm;	EA	1	568.80	568.80
ASSI.SDC21R8	Diss. Sciss. 21cm Lg., Rnd. Hdl. 8mm Dia, Cvd. Blds. 18mm Lg.	EA	1	540.00	540.00
ASSI.B210804	Needle Holder, 21cm, Rnd Hdl. 8mm dia., curved jaw 0.4mm dia, without lock	EA	1	528.30	528.30
ASSI.183102	Dilator Classic Forceps 21cm Rnd Hdl. 8mm dia. Cvd. 0.2mm tip dia	EA	1	461.70	461.70
ASSI.JF321P	Fcps. 21cm Lg., Flat Hdl. 9mm Wide, Str. Tip 0.3mm Dia. W/Tying Platform	EA	1	169.20	169.20
Transferred to page 2					2,268.00

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Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
ASSI.JFP321	Transferred from page 1 Tissue Forceps by Pierse 21cm lg, Fat Hdl 9mm Wide, Str. 0.3mm dia.	EA	1	123.30	2,268.00
ASSI.JF321	Fcps. 21cm Lg., Flat Hdl. 9mm Wide, Str. Tip 0.3mm Dia.	EA	1	84.60	123.30
ASIM1224426	Moon Drahos Dissecting SuperCut Scissors 15cm, w/Dissecting Platform, cvd. delicate BL/BL	EA	3	301.50	84.60
					904.50

"SUBJECT TO PRIOR SALE"

THE ABOVE QUOTATION IS EXCLUSIVE OF SHIPPING CHARGE!

e-mail Orders to - orders@accuratesurgical.com

Any questions e-mail - assi@accuratesurgical.com

Subtotal:	3,380.40
Invoice Discount:	0.00
Sales Tax:	245.08
Total:	3,625.48

W-9

Form
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

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

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

See Specific Instructions on page 2.

Print or type

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☐ S Corporation ☒ C Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C-C corporation, S-S corporation, P-partnership) ▶

☐ Other (see Instructions) ▶

Address (number, street, and apt. or suite no.)

300 SHAMES DRIVE

City, state, and ZIP code

WESTBURY, NY 11580

List account number(s) here (optional)

Exemptions (see Instructions):

Exempt payee code (if any)

Exemption from FATCA reporting

code (if any)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

3. I am a U.S. citizen or other U.S. person (defined below), and

4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the Instructions on page 3.

Sign Here

Signatures of U.S. person

Date

4/14/14

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, including any future developments that may be posted on that page.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);

2. Certify that you are not subject to backup withholding; or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

• An individual who is a U.S. citizen or U.S. resident alien,

• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,

• An estate (other than a foreign estate), or

• A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are treated as U.S. persons for purposes of this section.

1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

Cat. No. 10231X

Form W-9 (Rev. 8-2013)

Accurate Surgical & Scientific Instruments

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Westbury, NY 11590
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Fax Number (516) 997-4948
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Orders e-mail orders@accuratesurgical.com
Website www.accuratesurgical.com

Sales Quote Number:	SQ/P048489
Sales Quote Date:	08/23/22
Page:	1
EXPIRATION DATE:	11/21/22

SALES QUOTE - PROFORMA INVOICE

Sell
To: KERN MEDICAL CENTER
ATTN: ACCOUNTS PAYABLE
1700 MT VERNON AVE
BAKERSFIELD, CA 93306

Ship
To: KERN MEDICAL CENTER
ATTN: ACCOUNTS PAYABLE
1700 MT VERNON AVE
BAKERSFIELD, CA 93306

Ship Via UPS - United Parcel Service
Terms Net 30
Customer ID KE0618
Order Taken By: MICHAEL
SalesPerson Michael Draper

Item No.	Description	U/M	Qty	Price-US\$	Unit	Total Price-US\$
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Microvascular Tray

ASSI.ABB33A	Approximator Clamp, For Thick Walled Arteries, W/O Frame, 1.0-2.25mm Vessel Dia.	EA	2	276.30		552.60
ASSI.AB822A	Approximator Clamp, For Thick Walled Arteries, W/O Frame, 0.6-1.5mm Vessel Dia.	EA	2	307.80		615.60
ASSI.B2A	Single Clamp for Thick Walled Arteries, 0.6-1.5mm Vessel Dia.	PR	2	155.70		311.40
ASSI.B3A	Single Clamp, For Thick Walled Arteries, 1.0-2.25mm Vessel Dia	PR	2	141.30		282.60
Transferred to page 2.....						1,762.20

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Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
Transferred from page 1.....					
ASSI.B1VB	Single Clamp, General Purpose, 0.4-1.0 mm Vessel Dia., Black	PR	2	172.80	345.60
ASSI.B2VB	Single Clamp, General Purpose, 0.6-1.5mm Vessel Dia., Black	PR	2	167.40	334.80
ASSI.B3VB	Single Clamp, General Purpose, 1.0-2.25mm Vessel Dia., Black	PR	2	154.80	309.60
ASSI.ABB33VB	Approximator Clamp, General Purpose, W/O Frame, 1.0-2.25mm Vessel Dia., Black	EA	2	293.40	586.80
ASSI.ABB22VB	Approximator Clamp, General Purpose, W/O Frame, 0.6-1.5mm Vessel Dia., Black	EA	2	325.80	651.60
ASSI.ABB11VB	Approximator Clamp General Purpose, W/O Frame, 0.4-1.0mm Vessel Dia., Black	EA	2	344.70	689.40
Transferred to page 3.....					4,680.00

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Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
ASSI.SAS18R8	Transferred from page 2..... Adventitia Scissors 18cm Rnd. Hdl. 8mm dia, Str bl 10mm lg.	EA	1	481.50	481.50
ASSI.SDC18R8	Diss. Sciss., 18cm Lg., Rnd Hdl. 8mm Dia., Cvd. Bl. 10mm Lg.	EA	1	497.70	497.70
ASSI.SAS15R8	Adventitia Sciss., 15cm Lg. Rnd. Hdl. 8mm Dia., Str. Bl. 9mm	EA	1	422.10	422.10
ASSI.SDC15R8	Diss. Sciss. 15cm Lg., Rnd. Hdl. 8mm Dia., Curved blade, 9mm long	EA	1	441.90	441.90
ASSI.SAA15	Potts Sciss., 15cm Lg., Flat Hdl. 8mm W., Str. Bl. 45° Angle 8mm Lg.	EA	1	381.60	381.60
ASSI.SAA18	Potts Sciss., 18cm Lg., Flat Hdl. 9mm W., Str. Bl. 45° Angle 12mm Lg.	EA	1	392.40	392.40
	Transferred to page 4.....				7,297.20

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Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
ASSI.SYST	Transferred from page 3 Microvascular Clamp Case w/Insert Tray, (Case & Insert Tray Only Without Clamps)	EA	1	262.80	262.80
ASSI.B158	Needle Holder 15cm Lg., Rnd. Hdl. 8mm Dia., Cvd. Tip 0.4mm Dia., W/Out Lock	EA	1	444.60	444.60
ASSI.B188	Needle Holder 18cm Lg., Rnd. Hdl. 8mm Dia., Cvd. smooth jaw, Tip 0.4mm Dia., W/Out Lock	EA	1	495.00	495.00
103000BP	Jewelers BP Fcps Str. 10cm, Tip 0.4mm Dia.	EA	1	177.30	177.30
ASSI.JFL3DZ	Vessel Dilator 13.5cm Flat Hdl. 9mm Wide, Str. Tip 0.2mm Dia.	EA	2	128.70	257.40
	Transferred to page 5				8,934.30

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SalesPerson Michael Draper

Item No.	Description	U/M	Qty	Unit Price-US\$	Total Price-US\$
ASSI.JFL3P	Transferred from page 4. Fcps. 13.5cm Lg., Flat Hdl. 9mm Wide Str. Tip 0.3mm Dia. W/ Tying Platform	EA	2	102.80	8,934.30 205.20
ASSI.JFAL3D	Vessel Dilator, 13.5cm Flat Hdl. 9mm Wide, Angulated 45° Tip 0.3mm Dia.	EA	1	137.70	137.70
ASSI.JF3	Forceps 12cm Lg., Flat Hdl. 9mm Wide, Str. Tip 0.3mm Dia.	EA	2	63.00	126.00
ASSI.JFP618	Tissue Fcps. By Pierse 18cm Lg., Flat Hdl. 9mm Wide, Str. Tip 0.6mm Dia. Hole	EA	1	119.70	119.70
ASSI.CAF4	Clamp Applying Fcps. W/Out Lock, 14cm for Small Clamps	EA	1	69.30	69.30
ASSI.CAF3	Clamp Applying Fcps., Flat Hdl. 15cm W/Out Lock, Angled	EA	1	139.50	139.50
Transferred to page 6.....					9,731.70

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Terms Net 30

Customer ID KE0818
Order Taken By: MICHAEL
SalesPerson Michael Draper

Item No.	Description	U/M	Qty	Unit Price-Us\$	Total Price-Us\$
ASSI.JFAL318D	Transferred from page 5..... Vessel Dilator, 18cm Flat Hdl. 9mm Wide; Angulated 45°, Tip 0.3mm Dia.	EA	1	163.80	9,731.70 163.80
ASSI.230	Classic Forceps 18cm Long, Rnd Hdl 8mm Dia. Str. Tip W/ Platform	EA	2	340.20	680.40
ASSI.227	Classic Forceps 15cm Long, Rnd Hdl 8mm Dia., Str. Tip 0.3mm dia w/ tying platform	EA	2	340.20	680.40
ASSI.JF318P	Fcps. 18cm Lg., Flat Hdl. 9mm Wide, Str. Tip 0.3mm Dia. W/Tying Platform	EA	2	134.10	268.20

"SUBJECT TO PRIOR SALE"

THE ABOVE QUOTATION IS EXCLUSIVE OF SHIPPING CHARGE!

e-mail Orders to - orders@accuratesurgical.com

Any questions e-mail - assi@accuratesurgical.com

Subtotal:	11,524.50
Invoice Discount:	0.00
Sales Tax	835.54
Total:	12,360.04



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

January 18, 2023

Subject: Proposed Master Subscription Agreement with ESO Solutions, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Master Subscription Agreement with ESO Solutions, Inc., for software which enables patient information obtained through emergency medical services during transport to directly link to the Kern Medical electronic health record.

The term of this Agreement is one-year, effective January 18, 2023, with auto-renew of successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the effective date, with a total maximum payable not to exceed \$23,500 per year.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the (1) inability to terminate without cause, at any time, and the auto-renew provision; and (2) limitation on liability in which claims for an intellectual property breach may not exceed \$500,000 and claims for breach of confidentiality may not exceed \$1,000,000. Efforts were made to negotiate these nonstandard terms to no avail. Due to the necessity of this software, 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 Master Subscription Agreement with ESO Solutions, Inc., effective January 18, 2023, with a maximum payable not to exceed \$23,500 per year, and authorize the Chairman to sign.

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this "**Agreement**") is entered into as of January 18, 2023 ("**Effective Date**"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, "**ESO**") and **Kern Medical Center**, having its principal place of business at 1700 Mount Vernon Avenue Bakersfield, CA 93306 ("**Customer**"). This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer certain technology products and/or services and that Customer will pay ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement have the meanings below:

"Add-On Software" means any complementary software components or reporting service(s) that ESO makes available to customer through its Software.

"Addendum" means a document addressing the order of a specific set of products or services which is executed by authorized representatives of each party. An Addendum may be (a) an ESO sales form or "Quote", (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.

"Anonymized Data" means Customer Data from which all personally identifiable information is removed, as well as the names and addresses of Customer and any of its Users and/or Customer's clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

"Customer Data" means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Software.

"Deliverable" means software, report, or other work product created pursuant to a Statement of Work.

"Documentation" means the Software's user guides and operating manuals.

"Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.

"Intellectual Property" means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

"Outage" means Customer is unable to access SaaS, or such access is materially delayed, impaired or disrupted, in each case as caused or controlled by ESO.

"Professional Services" means professional services provided by ESO under a Statement of Work.

"Protected Health Information" or "PHI" has the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

"Reporting Services" means, collectively, the different tools or features in the Software allowing Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

"SaaS" means software-as-a-service that ESO hosts (directly or indirectly) for Customer's use on a periodic subscription basis.

"Scheduled Downtime" means periods when ESO intentionally interrupts SaaS to perform system maintenance or otherwise correct service errors during non-peak hours (except for critical circumstances), typically between midnight and 6 a.m. Central Time on a fortnightly basis.

"Software" means any ESO computer program, programming or modules specified in the Agreement or any Addendum. For the avoidance of doubt, Add-on Software and SaaS are collectively referred to as Software.

"Support Services" means those services described in Exhibit B.

"Third-Party Data" means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

"Third-Party Service" means a service not provided by ESO but which is made available by ESO in connection with its Software under a Software Schedule or Addendum.

"Third-Party Software" means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

"Use Restrictions" means the restrictions imposed on Customer's use of Software as described in Section 3.3.

"User" means any individual who uses the Software on Customer's behalf or through Customer's account or passwords.

2. **SOFTWARE ORDERS.** During the Term, Customer may order Software from ESO by signing an appropriate Addendum. Customer's subscription to SaaS are set forth below. Each such Addendum is incorporated herein by reference.

3. SUBSCRIPTION TO SOFTWARE

- 3.1. **Grant of Subscription: SaaS.** For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, with the access and volume limitations set forth on the applicable Addendum, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.
- 3.2. **Use Restrictions.** Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (including any affiliate not specifically listed in the applicable Addendum).
- 3.3. **Ownership.** The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.
- 3.4. **Third-Party Software and Services.** This Section 3.5 applies to Third-Party Software and Services offered by ESO. Refer to the product table following the Agreement for applicability.
- 3.4.1. ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services.

3.4.2. Third-Party Data. If Customer (as indicated on an Addendum) elects to license Third-Party Data, then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer's internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Addendum, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.

4. HOSTING, SLA & SUPPORT SERVICES

4.1. Hosting & Access Obligations. ESO shall host and manage the SaaS. Customer is solely responsible for obtaining, maintaining, and securing its network devices and connections for its access of the SaaS, and acknowledges such devices and connections are essential to the effective operation of the Software. Customer is solely responsible for the performance and security of any network, service, or device not provided or managed by ESO. Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data as necessary for the implementation and operation of the Software.

4.2. Service Level Agreement. If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for any three-month period (the "Uptime Commitment"), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.

4.3. Scheduled Downtime. ESO will endeavor to provide reasonable (72 hour) notice of Scheduled Downtime to Customer's Users within the Software or via email. Scheduled Downtime shall never constitute a failure of performance or Outage by ESO. Notification timelines and the frequency of Scheduled Downtime are subject to the emergence of security concerns outside of ESO's control.

4.4. Support and Updates. During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.

5. FEES

5.1. Fees. In consideration of the rights granted hereunder, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Addendum(s) (collectively, "Fees"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer (or Third-Party Payer, if applicable) shall pay all invoices within 30 days of receipt.

5.2. Third-Party Payer. If Customer desires to use a third-party to pay some or all of the Fees on behalf of Customer (a "Third-Party Payer"), then (i) each applicable Addendum will identify such arrangement, (ii) the Third-Party Payer will enter into a written agreement with ESO regarding such arrangement, (iii) Customer may replace the Third-Party Payer by written notice to ESO (provided that no such change shall be made until the then-current Term's renewal), (iv) references within this Section 5 to Customer's responsibility for Fees shall be understood to refer to the Third-Party Payer when applicable, and (v) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.

5.3. Uplift on Renewal. Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.

5.4. Taxes and Fees. The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Customer provides ESO a tax exemption certificate, Customer will be responsible for and will remit (or will promptly reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) related to this Agreement.

5.5. Appropriation of Funds. If Customer is a city, county or other government entity, Customer may terminate the Agreement at the end of the Customer's fiscal term if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.

5.6. Usage Monitoring. Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Addendum. ESO may monitor Customer's use of the Software, and if Customer's usage exceeds the level indicated in the applicable Addendum (an "Overage"), Customer shall owe ESO the Fee corresponding to such usage level at a rate no higher than ESO's then-standard pricing for new customers at an equivalent usage level. ESO may invoice for Overages immediately.

6. TERM AND TERMINATION

6.1. Term. The term of this Agreement (the "Term") commences on the Effective Date and continues for a period of one year (or any longer period provided in an Addendum). Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date.

6.2. Termination for Cause. Either party may terminate this Agreement or any individual Addendum for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.

6.3. Effect of Termination.

6.3.1. If Customer terminates this Agreement or any Addendum as a result of ESO's material breach, then to the extent Customer prepaid any Fees, ESO shall refund to Customer those prepaid Fees on a pro-rata basis from the date Customer actually ceases use of the Software.

6.3.2. Upon termination of this Agreement or any Addendum, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO's then-current rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer's Agreement includes a multi-year discount plan with diminishing discounts, and Customer terminates the Agreement prior to the completion of the discount plan, Customer shall promptly pay ESO's invoice recouping such discounts for a maximum of two years prior to the date of termination.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. Delivery of Data. ESO will provide Customer its Customer Data in a searchable .pdf format upon request made within 60 days of the expiration or termination of this Agreement. Customer acknowledges that ESO has no obligation to retain Customer Data more than 60 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. Material Performance of Software. After it is fully implemented (and subject to Customer's obligations under Sections 3.2 and 4.1, and any applicable Software Schedule), ESO warrants that the Software will

reliably collect, transmit, store and/or permit access to data in compliance with applicable law and industry standards.

7.2. Due Authority. Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated hereby is duly authorized by all necessary corporate or government action.

8. **DISCLAIMER OF WARRANTIES**. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

9. CONFIDENTIALITY

9.1. **"Confidential Information"** refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, reports, or other information concerning ESO's security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) as to ESO, Customer's Feedback; or (v) is PHI (*which shall be governed by the Business Associate Agreement rather than this Section*).

9.2. Nondisclosure. Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the **"Purpose"**). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

9.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law (including a lawful public records request), provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. **INSURANCE**. Throughout the Term (and for a period of at least three years thereafter for any insurance written on a claims-made form) ESO shall maintain in effect the insurance coverage described below:

10.1. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$1 million aggregate;

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of \$1 million for bodily injury and property damage liability;

10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of \$1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (a/k/a technology errors and omissions) covering the liability for financial loss due to error, omission or negligence of ESO, and privacy and network security insurance ("cyber coverage") covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of \$1 million.

11. INDEMNIFICATION

11.1. IP Infringement. Subject to the limitations in Section 12, ESO shall indemnify and defend Customer from any damages, costs, liabilities, expenses (including reasonable attorney's fees) (**"Damages"**) actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an **"Indemnified Claim"**). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Addendum, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Addendum. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.

11.2. Indemnification Procedures. Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), Customer must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the Customer. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. Customer will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on Customer without the Customer's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at ESO's expense.

12. LIMITATION OF LIABILITY

12.1. LIMITATION OF DAMAGES. NEITHER ESO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF

DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT.

12.2. **SPECIFIC LIABILITY.** LIABILITY SHALL BE LIMITED AS FOLLOWS:

- (a) ESO'S OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO \$500,000.
- (b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO \$1,000,000.
- (c) DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT SHALL NOT BE LIMITED.

12.3. **GENERAL LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED "SPECIFIC LIABILITY," ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY (OR ON BEHALF OF) CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE ADDENDUM OR EXHIBIT GIVING RISE TO THE CLAIM.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. **CUSTOMER DATA & PRIVACY**

13.1. **Ownership of Data.** As between ESO and Customer, all Customer Data shall be owned by Customer.

13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO shall not grant any third-party access to Customer Data, except (a) subcontractors that are subject to a reasonable nondisclosure agreement or (b) authorized participants in the case of Software designed to permit Customer to transmit Customer Data. ESO may only use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise contest such required disclosure, at Customer's expense.

13.3. **Anonymized Data.** CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED CUSTOMER DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.

14. **WORK PRODUCT**

14.1. **Work Product Ownership.** In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and

agrees that nothing in this Agreement or a separate Addendum gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

15. **GOVERNMENT PROVISIONS**

15.1. **Compliance with Laws.** Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement.

15.2. **Business Associate Addendum.** The parties agree to the terms of the Business Associate Addendum attached as Exhibit C and incorporated herein by reference.

15.3. **Equal Opportunity.** The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable (prohibiting discrimination on the basis of protected veteran status, disability, race, color, religion, sex, sexual orientation, gender identity or national origin).

15.4. **Excluded Parties List.** ESO agrees to report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. **PHI ACCURACY & COMPLETENESS**

16.1. **Customer Responsibilities.** The Software allows Customer and its Users to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

16.2. **HDE Customer Certifications.** In the interest of furthering community health through the power of data, ESO encourages Customers subscribing to ESO's Health Data Exchange ("HDE") Software to empower joint healthcare providers by incorporating relevant, HIPAA-compliant data elements in Customer's outgoing patient care records delivered through HDE. ESO may periodically accredit qualifying customers based on the quality and quantity of data delivered; Customer may reference such certification in marketing materials.

17. **MISCELLANEOUS**

17.1. **Independent Contractors.** The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.

17.2. **Notices.** Notices provided under this Agreement must be in writing and delivered by (a) a recognized delivery service with signature-receipt proof of delivery to a party's principal place of business designated on page 1 hereof, (b) hand delivered, or (c) e-mail to a person designated in writing by the receiving party. In the case of delivery by e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.

17.3. **Merger Clause.** In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather, each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

- 17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 17.5. Subcontracting. Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.
- 17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or tier increases for Software products and services then in use by Customer.
- 17.7. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than 30 days, the other party may immediately terminate the applicable Addendum.
- 17.8. Waiver & Breach. Neither party will be deemed to waive any rights under this Agreement except through an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach hereof.
- 17.9. Survival of Terms. Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.
- 17.10. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.
- 17.11. Governing Law. This Agreement, any claim dispute or controversy hereunder (a "Dispute") will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity or agency thereof, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.
- 17.12. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 17.13. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 17.14. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).
- 17.15. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Addendum, with most recent Addendum taking precedence over earlier ones. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.
- 17.16. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.
- 17.17. Signatures. Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

By: 
(signature)

Name: Robert Munden
(print name)

Title: Chief Legal and Compliance Officer
(print title)

Customer

By: _____
(signature)

Name: Russell Bigler
(print name)

Title: Chairman, Board of Governors
(print title)

REVIEWED ONLY
NOT APPROVED AS TO FORM

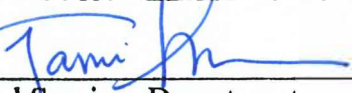
By 
Legal Services Department

EXHIBIT A-2

HEALTH DATA EXCHANGE ("HDE") SOFTWARE SCHEDULE

1. The Health Data Exchange ("HDE") Software subscription term shall begin the earlier of 180 calendar days after the Effective Date or the first day the HDE Software is used in production mode ("HDE Subscription Start Date"). Customer shall be deemed to have accepted the HDE Software on the HDE Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the HDE Software as quickly as possible, but in no event will the HDE Subscription Start Date be modified for implementation delays.
2. HDE Software (a data interoperability platform for connecting EMS with other healthcare providers <http://www.eso.com/software/hde>) may be ordered under this Exhibit:
3. Third-Party Payer is responsible for the following products and Fees:

N/A

4. Customer hereby agrees to timely pay for the following Software and services according to the listing below:

Health Data Exchange				
Product	Volume	Hospital Name	Total	Fee Type
Health Data Exchange, facility with 201-450 Beds			\$23,500.00	Recurring
Implementation Fee			\$4,995.00	One-time
Total Recurring Fees			\$	23,500.00
Total One-Time Fees			\$	4,995.00
TOTAL FEES			\$	28,495.00

5. Fees will be invoiced by ESO as follows:
 - 5.1. Implementation Fees, if any, shall be invoiced on the Effective Date.
 - 5.2. The remaining Fees shall be due on the HDE Subscription Start Date.
 - 5.3. During the second year and any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the HDE Subscription Start Date.
 - 5.4. In addition, an additional Implementation Fee shall be due if Customer migrates to a new hospital EHR vendor that requires ESO to update the HDE Software.
6. Customer will coordinate with ESO to determine which data elements below will be delivered via HDE, provided that Customer shall at a minimum provide the indicated "Essential" data elements (the pre-selected minimal set of data elements for functional data exchange). Recommended data elements are optional elements that may be selected for improved exchange.

Data Category / Element	Essential	Recommended Emergency Department	Recommended Hospital
Demographic/ Billing Information			
Patient Demographics			
Patient Name	X		
Patient Gender	X		
Patient Race	X		
Patient Date of Birth	X		
Patient Address	X		
Patient Phone Number	X		
Patient Email	X		
Insurance Coverage			
Insurance Company ID	X		
Insurance Company Billing Priority	X		
Insurance Policy ID Number	X		
Insurance Group	X		
Insured Person's Name	X		
Patient's Relationship to Insured Person	X		
Payer Type (Medicare, Medicaid, Commercial, etc)	X		
Next of Kin (Relative or Guardian)			
Next of Kin Name	X		
Next of Kin Address	X		
Next of Kin Phone Number	X		
Next of Kin Email	X		
Patient's Relationship to Next of Kin	X		
Employer			
Employer Name	X		
Employer Address	X		
Employer Phone Number	X		
Clinical Summary			
ED Arrival Date/Time	X		
ED Discharge Date/Time	X		
ED Discharge Disposition	X		
ED Diagnosis ICD 10 Code (Multiple)	X		
ED Diagnosis Description (Multiple)	X		
ED Physician Note	X		
Hospital Admission Date/Time	X		
Hospital Discharge Date/Time	X		
Hospital Discharge Disposition	X		
Hospital Discharge ICD Code (Multiple)	X		
Diagnosis Priority (admitted, working, final)	X		
Acuity Description/ESI Triage Score			
Chief Complaint			
Cause of Injury			
ED Physician Name			
Procedure Code			

Data Category / Element	Essential	Recommended Emergency Department	Recommended Hospital
Procedure Description			
Procedure Date/Time			
Patient Weight			
ICU Admission Date/Time			
ICU Discharge Date/Time			
Ventilator Start Date/Time			
Ventilator Stop Date/Time			
Vital Signs/Scores			
BP Date/Time			
BP Value			
Pulse Rate Date/Time			
Pulse Rate Value			
Respiratory Rate Date/Time			
Respiratory Rate Value			
SpO ₂ Date/ Time			
SpO ₂ Value			
EtCO ₂ Date/Time			
EtCO ₂ Value			
Temperature Date/Time			
Temperature Value			
Temperature Route			
12-Lead ECG Date/Time			
12-Lead ECG Interpretation			
Patient Weight Date/Time			
Patient Weight Value			
Pain Scale Date/Time			
Pain Scale Value			
NIHSS Date/Time			
NIHSS Value			
Cerebral Performance Category (CPC) Score			
Labs/Radiology			
Complete Blood Count			
Chemistries			
Troponin			
Cultures/virology			
Imaging interpretation by radiologist			
Notes/Narrative			
Physician Notes (Procedures, Admission, Discharge Summary, etc)			

Note: shaded boxes indicate not applicable

EXHIBIT B
SUPPORT SERVICES ADDENDUM

1. DEFINITIONS. Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
- 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
- 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
- 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
- 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
- 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
- 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).
- 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).
- 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).
- 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.
- 1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.6. "Update" means an update or revision to Software, typically for Error Correction.
- 1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2. SUPPORT SERVICES.

- 2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software,

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

- 2.3. ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
- 2.4. Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.
3. **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.
 - 3.1. Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.
 - 3.2. Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.
 - 3.3. Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.
 - 3.4. Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.
4. **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.
5. **EXCLUSIONS.**
 - 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.
 - 5.2. ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
 - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
 - 5.5. ESO will respond to reasonable technology and security questionnaires / assessment requests prior to or during implementation, but subsequent questionnaires or assessments will be charged as consulting services to the extent they require more than one hour to complete.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

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 ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, "**ESO**") ("**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 the Master Subscription 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 the 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 allowed in the Underlying Agreement or with the advance written permission of Covered Entity. For the avoidance of doubt, de-identified PHI is not considered PHI under this BAA.

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 forty-eight (48) hours after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity upon request. 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. Subject to the limitation of liability in the Underlying Agreement, Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

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

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

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

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

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

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

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

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

2.13 Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

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.

3.1.6 Covered Entity shall not include PHI in the information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to PHI once it is sent to or from Covered Entity outside ESO's Software over the public Internet.

3.1.7 Covered Entity shall not Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.

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 retain no copies of the PHI. Business Associate shall remain bound by the provisions of this BAA, even after termination of the Underlying Agreement, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified PHI shall not be subject to this provision.

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

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

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

Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance, 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 document evidencing the policy shall be provided to Covered Entity at Covered Entity's written request.

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and 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 by Business Associate.

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

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

5.10 Notice of Request or Subpoena for Data. 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 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 means with confirmation that the email was delivered; 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:

ESO SOLUTIONS, INC.
11500 Alterra Parkway,
Suite 100 Austin, TX 78758
Attention: Chief Legal and Compliance Officer
Fax: 512 687 5190

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, or directed by a regulatory entity that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Business Associate or its agents will supply its internal practices, books, and records necessary to confirm 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.



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

January 18, 2023

Subject: Proposed Price Agreement with Teleflex, LLC

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Price Agreement with Teleflex, LLC, for the purchase of dilators used for elective gastrointestinal surgeries. The Agreement is effective January 18, 2023, with a total maximum payable not to exceed \$27,500.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the vendor's limitation of liability and inability to provide indemnification. Efforts were made to negotiate these nonstandard terms to no avail. Due to the necessity of the products, 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 Price Agreement with Teleflex, LLC, effective January 18, 2023, with a maximum payable not to exceed \$27,500, and authorize the Chairman to sign.



ARROW
BAYNE
HUDSON RCI
LAMA
MILAG
RUSCH
UROLIFT
WEICK

Special Price Agreement

Contract No. 50216179

Account No. 1280242

Kern Medical Center

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Kern Medical Center
PO Box 3519
BAKERSFIELD CA 93306-4018
USA

Contract Type	Notification Type	Replacement for	Printed on	Contract Dates
Direct	New		01/09/2023	01/18/2023-04/30/2024

Teleflex LLC is pleased to offer this pricing for purchases made directly through Teleflex LLC. This pricing is offered only for the account(s) listed herein. Teleflex LLC reserves the right to adjust this pricing at any time. Typographical errors are subject to correction. All purchases are subject to Teleflex LLC's Standard Terms and Conditions of Sale - Products (<https://www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/index.html>), which are incorporated herein by reference and shall take precedence over any different, additional or conflicting terms set forth in any customer purchase order or other document presented in connection with the purchase of products hereunder.

Additional Comments

Material	Brand	Material Description	Units	SUoM	Qty/SUoM	Price USD	Valid From	Valid To
507595	Pilling	HURST TUNGSTEN FILLED BOUGIE 20FR	1	EA		281.96	01/18/2023	04/30/2024
507596	Pilling	HURST TUNGSTEN FILLED BOUGIE 22FR	1	EA		281.96	01/18/2023	04/30/2024
507597	Pilling	HURST TUNGSTEN FILLED BOUGIE 24FR	1	EA		281.96	01/18/2023	04/30/2024
507598	Pilling	HURST TUNGSTEN-FILLED BOUGIE 26FR	1	EA		281.96	01/18/2023	04/30/2024
507599	Pilling	HURST TUNGSTEN FILLED BOUGIE 28FR	1	EA		281.96	01/18/2023	04/30/2024
507601	Pilling	HURST TUNGSTEN FILLED BOUGIE 32FR	1	EA		348.61	01/18/2023	04/30/2024
507602	Pilling	HURST TUNGSTEN FILLED BOUGIE 34FR	1	EA		348.61	01/18/2023	04/30/2024
507603	Pilling	HURST TUNGSTEN FILLED BOUGIE 36FR	1	EA		348.61	01/18/2023	04/30/2024
507604	Pilling	HURST TUNGSTEN FILLED BOUGIE 38FR	1	EA		348.61	01/18/2023	04/30/2024
507605	Pilling	HURST TUNGSTEN FILLED BOUGIE 40FR	1	EA		348.61	01/18/2023	04/30/2024
507606	Pilling	HURST TUNGSTEN FILLED BOUGIE 42FR	1	EA		435.76	01/18/2023	04/30/2024
507607	Pilling	HURST TUNGSTEN FILLED BOUGIE 44FR	1	EA		435.76	01/18/2023	04/30/2024
507608	Pilling	HURST TUNGSTEN FILLED BOUGIE 46FR	1	EA		435.76	01/18/2023	04/30/2024
507609	Pilling	HURST TUNGSTEN FILLED BOUGIE 48FR	1	EA		435.76	01/18/2023	04/30/2024

Teleflex LLC
3015 Carrington Mill Blvd Morrisville, NC 27560
Tel: (919) 544-8000 Fax: (919) 433-4995 Email: contractservices@teleflex.com www.teleflex.com

Special Price Agreement

Contract No. 50216179
Account No. 1280242
 Kern Medical Center

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Material	Brand	Material Description	Units	SUoM	Qty/SUoM	Price USD	Valid From	Valid To
507610	Pilling	HURST TUNGSTEN FILLED BOUGIE 50FR	1	EA		435.76	01/18/2023	04/30/2024
507611	Pilling	HURST TUNGSTEN FILLED BOUGIE 52FR	1	EA		553.68	01/18/2023	04/30/2024
507612	Pilling	HURST TUNGSTEN FILLED BOUGIE 54FR	1	EA		553.68	01/18/2023	04/30/2024
507613	Pilling	HURST TUNGSTEN FILLED BOUGIE 56FR	1	EA		553.68	01/18/2023	04/30/2024
507614	Pilling	HURST TUNGSTEN FILLED BOUGIE 58FR	1	EA		553.68	01/18/2023	04/30/2024
507615	Pilling	HURST TUNGSTEN FILLED BOUGIE 60FR	1	EA		553.68	01/18/2023	04/30/2024
507920	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 20F	1	EA		302.47	01/18/2023	04/30/2024
507922	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 22F	1	EA		302.47	01/18/2023	04/30/2024
507924	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 24F	1	EA		302.47	01/18/2023	04/30/2024
507926	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 26F	1	EA		302.47	01/18/2023	04/30/2024
507928	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 28F	1	EA		302.47	01/18/2023	04/30/2024
507930	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 30F	1	EA		302.47	01/18/2023	04/30/2024
507932	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 32F	1	EA		369.12	01/18/2023	04/30/2024
507934	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 34F	1	EA		369.12	01/18/2023	04/30/2024
507936	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 36F	1	EA		369.12	01/18/2023	04/30/2024
507938	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 38F	1	EA		369.12	01/18/2023	04/30/2024
507940	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 40F	1	EA		369.12	01/18/2023	04/30/2024
507942	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 42F	1	EA		456.27	01/18/2023	04/30/2024
507944	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 44F	1	EA		456.27	01/18/2023	04/30/2024
507946	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 46F	1	EA		456.27	01/18/2023	04/30/2024
507948	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 48F	1	EA		456.27	01/18/2023	04/30/2024
507950	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 50F	1	EA		456.27	01/18/2023	04/30/2024
507952	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 52F	1	EA		574.18	01/18/2023	04/30/2024
507954	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 54F	1	EA		574.18	01/18/2023	04/30/2024

Teleflex LLC

3015 Carrington Mill Blvd Morrisville, NC 27560

Tel: (919) 544-8000 Fax: (919) 433-4995 Email: contractservices@teleflex.com www.teleflex.com

Special Price Agreement

Contract No. 50216179

Account No. 1280242

Kern Medical Center

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Material	Brand	Material Description	Units	SUoM	Qty/SUoM	Price USD	Valid From	Valid To
507956	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 56F	1	EA		574.18	01/18/2023	04/30/2024
507958	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 58F	1	EA		574.18	01/18/2023	04/30/2024
507960	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 60F	1	EA		574.18	01/18/2023	04/30/2024
508000	Pilling	BOUGIE STORAGE TRAY HOLDS 12 BOUGIES	1	EA		2,435.15	01/18/2023	04/30/2024

Teleflex LLC

3015 Carrington Mill Blvd Morrisville, NC 27560

Tel: (919) 544-8000 Fax: (919) 433-4995 Email: contractservices@teleflex.com www.teleflex.com



AKRON
BAXTER
HUDSON RCI
LMA
Pilling
RUSCH
UROLIFT
WEEK

Kern Medical Center
PO Box 3519
BAKERSFIELD CA 93306-4018
USA

Special Price Agreement

Contract No. 50216179
Account No. 1280242
Kern Medical Center

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Contract Type	Notification Type	Replacement for	Printed on	Contract Dates
Direct	New		01/09/2023	01/18/2023-04/30/2024
<p>Teleflex LLC is pleased to offer this pricing for purchases made directly through Teleflex LLC. This pricing is offered only for the account(s) listed herein. Teleflex LLC reserves the right to adjust this pricing at any time. Typographical errors are subject to correction. All purchases are subject to Teleflex LLC's Standard Terms and Conditions of Sale - Products (https://www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/index.html), which are incorporated herein by reference and shall take precedence over any different, additional or conflicting terms set forth in any customer purchase order or other document presented in connection with the purchase of products hereunder.</p>				
Additional Comments				
Customer No.	Customer Name	Customer Address	Valid From	Valid To
1280242	Kern Medical Center	PO Box 3519 / Bakersfield CA 93306-4018	01/18/2023	04/30/2024
<p>Kern County Hospital Authority</p> <p>Russell Bigler, Chairman, Board of Governors</p>				



AKMAN
HUDSON RCI
LMA
Pilling
RUSCH
WECK

Customer: Kern Medical Center
Address: 1700 Mount Vernon Avenue
Location: Bakersfield, CA 93306-4018
Customer #: 1280242

Attn: Luciano Molina

Phone: 323-483-2777

Committed:

Quote #: 0297892

Representative: Savannah Herczog

Telephone: (919) 704-1594

Teleflex LLC
3015 Carrington Mill Blvd
Morrisville, NC 27560
Cust. Service (866) 246-6990
Contract Svcs. Fax (919) 433-4995
Medical

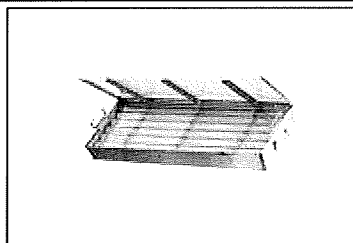
Expiration: November 6, 2022

Description: Bougie Storage Tray
Quote #3

Email: savannah.herczog@teleflex.com

Mobile:

Material	Sales Org	Brand	Description	#/SU	SUoM	Sales Price (USD)	Qty	Total Price (USD)
508000		Pilling	BOUGIE STORAGE TRAY HOLDS 12 BOUGIES	1	EA	2435.15	4	9740.60



Grand Total: USD 9,740.60

Comments

Terms are net 30. Free shipping will be applied on all orders over \$2500. Estimated taxes are approximately 8.2%. Bougies are not on HPG contract, Teleflex courtesy discount applied,



AWM
 HUBBARD
 IMA
 Pilling
 RUSCH
 WECK

Customer: Kern Medical Center
Address: 1700 Mount Vernon Avenue
Location: Bakersfield, CA 93306-4018
Customer #: 1280242

Attn: Luciano Molina

Phone: 323-483-2777

Committed:

Quote #: 0297893

Representative: Savannah Herczog

Telephone: (919) 704-1594

Teleflex LLC

3015 Carrington Mill Blvd

Morrisville, NC 27560

Cust. Service (866) 246-6990

Contract Svcs. Fax (919) 433-4995
Medical

Expiration: November 6, 2022

Description: Maloney Dilator Quote #1

Email: savannah.herczog@teleflex.com

Mobile:

Material	Sales Org	Brand	Description	#/SU	SUoM	Sales Price (USD)	Qty	Total Price (USD)
507920		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 20F	1	EA	302.47	1	302.47
507922		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 22F	1	EA	302.47	1	302.47
507924		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 24F	1	EA	302.47	1	302.47
507926		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 26F	1	EA	302.47	1	302.47
507928		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 28F	1	EA	302.47	1	302.47
507930		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 30F	1	EA	302.47	1	302.47
507932		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 32F	1	EA	369.12	1	369.12
507934		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 34F	1	EA	369.12	1	369.12
507936		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 36F	1	EA	369.12	1	369.12
507938		Pilling	MALONEY TUNGSTEN FILLED BOUGIE 38F	1	EA	369.12	1	369.12
			MALONEY TUNGSTEN FILLED					

507940	Pilling	BOUGIE 40F	1	EA	369.12	1	369.12
507942	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 42F	1	EA	456.27	1	456.27
507944	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 44F	1	EA	456.27	1	456.27
507946	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 46F	1	EA	456.27	1	456.27
507948	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 48F	1	EA	456.27	1	456.27
507950	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 50F	1	EA	456.27	1	456.27
507952	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 52F	1	EA	574.18	1	574.18
507954	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 54F	1	EA	574.18	1	574.18
507956	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 56F	1	EA	574.18	1	574.18
507958	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 58F	1	EA	574.18	1	574.18
507960	Pilling	MALONEY TUNGSTEN FILLED BOUGIE 60F	1	EA	574.18	1	574.18

Grand Total: USD 8,812.67

Comments

Terms are net 30. Free shipping will be applied on all orders over \$2500. Estimated taxes are approximately 8.2%. Bougies are not on HPG contract, Teleflex courtesy discount applied.

Page of _____ SURGICAL

Teleflex®



AGAAR
 HUDSON RCI
 IMA
 Pilling
 RUSCH
 WECK

Customer: Kern Medical Center
Address: 1700 Mount Vernon Avenue
Location: Bakersfield, CA 93306-4018
Customer #: 1280242

Attn: Luciano Molina

Phone: 323-483-2777

Committed:

Quote #: 0297918

Representative: Savannah Herczog

Telephone: (919) 704-1594

Teleflex LLC
3015 Carrington Mill Blvd
Morrisville, NC 27560
Cust. Service (866) 246-6990
Contract Svcs. Fax (919) 433-4995
Medical

Expiration: November 6, 2022

Description: Hurst Tungsten Bougie
Dilator Quote #2

Email: savannah.herczog@teleflex.com

Mobile:

Material	Sales Org	Brand	Description	#/SU	SUoM	Sales Price (USD)	Qty	Total Price (USD)
507595		Pilling	HURST TUNGSTEN FILLED BOUGIE 20FR	1	EA	281.96	1	281.96
507596		Pilling	HURST TUNGSTEN FILLED BOUGIE 22FR	1	EA	281.96	1	281.96
507597		Pilling	HURST TUNGSTEN FILLED BOUGIE 24FR	1	EA	281.96	1	281.96
507598		Pilling	HURST TUNGSTEN-FILLED BOUGIE 26FR	1	EA	281.96	1	281.96
507599		Pilling	HURST TUNGSTEN FILLED BOUGIE 28FR	1	EA	281.96	1	281.96
507600		Pilling	HURST TUNGSTEN FILLED BOUGIE 30FR	1	EA	281.96	1	281.96
507601		Pilling	HURST TUNGSTEN FILLED BOUGIE 32FR	1	EA	348.61	1	348.61
507602		Pilling	HURST TUNGSTEN FILLED BOUGIE 34FR	1	EA	348.61	1	348.61
507603		Pilling	HURST TUNGSTEN FILLED BOUGIE 36FR	1	EA	348.61	1	348.61
507604		Pilling	HURST TUNGSTEN FILLED BOUGIE 38FR	1	EA	348.61	1	348.61
			HURST TUNGSTEN FILLED BOUGIE					

507605	Pilling	40FR	1	EA	348.61	1	348.61
507606	Pilling	HURST TUNGSTEN FILLED BOUGIE 42FR	1	EA	435.76	1	435.76
507607	Pilling	HURST TUNGSTEN FILLED BOUGIE 44FR	1	EA	435.76	1	435.76
507608	Pilling	HURST TUNGSTEN FILLED BOUGIE 46FR	1	EA	435.76	1	435.76
507609	Pilling	HURST TUNGSTEN FILLED BOUGIE 48FR	1	EA	435.76	1	435.76
507610	Pilling	HURST TUNGSTEN FILLED BOUGIE 50FR	1	EA	435.76	1	435.76
507611	Pilling	HURST TUNGSTEN FILLED BOUGIE 52FR	1	EA	553.68	1	553.68
507612	Pilling	HURST TUNGSTEN FILLED BOUGIE 54FR	1	EA	553.68	1	553.68
507613	Pilling	HURST TUNGSTEN FILLED BOUGIE 56FR	1	EA	553.68	1	553.68
507614	Pilling	HURST TUNGSTEN FILLED BOUGIE 58FR	1	EA	553.68	1	553.68
507615	Pilling	HURST TUNGSTEN FILLED BOUGIE 60FR	1	EA	553.68	1	553.68

Grand Total: USD 8,382.01

Comments

Bougies are not on HPG contract, Teleflex courtesy discount applied. Terms are net 30. Free shipping on all orders over \$2500. Estimated taxes are approximately 8.2%

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SURGICAL

Teleflex®

United States

Standard Terms and Conditions of Sale – Products

These standard terms and conditions of sale ("Terms") apply to all orders received from and all sales made to customer ("Customer") by Teleflex LLC ("Teleflex"), a Teleflex Incorporated company, for products ("Products"). Teleflex's offer to sell Products to Customer, and Teleflex's acknowledgment of any purchase order or other Customer document ("Order") is hereby expressly limited to and conditioned on Customer's acceptance of these Terms. The applicability of terms contained in Customer's Order is limited to the identification and the quantity of Products ordered. Teleflex objects to and rejects all other Customer terms, in any form, that are different from or additional to these Terms, except that if a written contract is already in effect between Teleflex and Customer for purchase of the ordered Products, the terms of that contract will prevail to the extent that those terms are inconsistent with these Terms. Teleflex reserves the right to change these Terms at any time without notice. Any Orders placed after these Terms are changed will be subject to the amended Terms.

1. **Credit Terms.** If Customer qualifies, Teleflex may extend credit to Customer after approval of credit application, in which case Customer shall pay for Products in full based on the payment terms specified in Teleflex's invoice. If at any time Customer's financial condition becomes unsatisfactory to Teleflex, in Teleflex's sole discretion, or if Customer fails to make any payment when due, in addition to any other rights Teleflex may have, Teleflex may defer or decline to make any shipments hereunder or may condition any such shipments on receipt of satisfactory security or cash payments in advance.
2. **Orders.** Order quantities must meet stated minimums for Products. Orders received with a value of less than \$250.00 will be subject to a handling charge of \$25.00. All Orders are subject to acceptance by Teleflex, which may be in writing or electronic record delivered to Customer or by shipping Products. Teleflex may accept any Order in whole or in part, and Teleflex's shipment of less than all Products ordered will constitute acceptance of the Order only as to those Products shipped. Customer may cancel a pending Order, in whole or in part, for Products (other than special order, private label or otherwise custom Products) only by written notice to Teleflex Customer Service prior to Teleflex processing the Order. Any request to cancel an Order after processing is subject to Teleflex's written approval, and Teleflex reserves the right to charge a restocking fee with respect thereto.
3. **Taxes.** Prices do not include any applicable taxes, tariffs, duties, fees, or charges of any type imposed by any governmental authority, whether federal, state, local or foreign, in connection with the Order. If applicable, a separate charge for any such taxes, tariffs, duties, fees or charges will be shown on Teleflex's invoice, and Customer is responsible for, and agrees to, their payment in full (unless when the Order is submitted Customer provides Teleflex with an exemption certificate or other documents satisfactory to Teleflex and acceptable to taxing or custom authorities). Customer shall reimburse Teleflex the amount of any such taxes, tariffs, duties, fees or charges that Teleflex is required to prepay.
4. **Delivery and Risk of Loss; Security Interest.** Except as otherwise expressly stated herein, all deliveries will be F.O.B. Teleflex's shipping point, and will be packed in Teleflex's standard commercial shipping packages. Title and risk of loss or damage will pass to Customer when Teleflex has delivered the Products to the carrier for shipment to Customer. Customer hereby grants to Teleflex, and its successors and assigns, a security interest in all Products until all amounts due or to become due under these Terms have been paid, and agrees, without further consideration, to execute and deliver all documents reasonably requested by Teleflex to perfect its security interest.
5. **Shipping.** All applicable shipping charges are the responsibility of Customer and will be prepaid by Teleflex and invoiced to Customer or paid directly by Customer. Shipping and delivery dates are estimates only. Teleflex reserves the right to fill Orders with multiple shipments. Products may be placed on backorder at Teleflex's sole discretion, and if Product availability is limited for any reason, Teleflex may fill orders or otherwise allocate Products in any manner it deems appropriate. Under no circumstances will Teleflex be liable for failure to deliver or for Customer's failure to receive Products by a certain date. Orders with requested shipment directly to a patient, temporary/mobile site or residential address will not be filled.
 - **Standard Freight Terms.** Except for Products offered by Teleflex Interventional Urology (e.g., UroLift® System and related kits and accessories) ("Interventional Urology Products"), Teleflex will ship all Products via preferred standard ground service carriers with charges prepaid and invoiced to Customer and subject to the terms and conditions of Teleflex's Value Ship Program, available at www.teleflex.com/usa/services/value-ship/, unless Customer elects Collect terms in accordance with the procedures stated in the following paragraph. Customer is responsible for all applicable freight upgrades, including but not limited to any special level of service, handling or packaging, expedited freight charges, liftgate service and special delivery appointments, requested by Customer.
 - **Third-Party Freight Programs.** To opt out of Teleflex's Value Ship Program and participate in a third-party freight program, in which case applicable freight charges will be billed to Customer's designated third-party freight collect account, Customer must submit a written request of its election to Teleflex at cs@teleflex.com no later than 10 calendar

days before expected implementation of the change. All election requests must include designation of a qualified carrier, applicable billing information and a collect account number for each applicable Customer facility, and any other applicable special instructions for the third-party freight program. Following Teleflex's approval of the election request, Customer's account will be changed to Collect, and shipments will be subject to the fees and charges imposed by the designated carrier. Notwithstanding the foregoing, Teleflex reserves the right to change the terms applicable to Collect shipments to Prepaid and Add (using the list rates from the carrier selected by Teleflex at the time of shipment) if any applicable shipment is not collected within 24 hours of contacting Customer's designated carrier for pickup or that carrier fails to provide sufficient capacity for Customer's order volume or the requisite transportation equipment (i.e., trailers, cargo containers). Teleflex will not be liable for any disputed freight incorrectly charged if Customer fails to comply with the requirements stated herein.

- **Expedited Orders.** Expedited Orders are only processed when specifically requested by Customer at the time of ordering. Requests for expedited Orders must be received by Teleflex before 5pm eastern time, and include the exact level of service requested (e.g., Second Day, Overnight, Overnight Early AM) and a valid address to which the designated carrier delivers. Expedited Orders are not eligible for free freight of any type, and Customer is responsible for all freight charges as prepaid and added to Teleflex's invoice, or through provision of a third-party collect account number. Teleflex assumes no liability for the reliability or outcome of requests for expedited Orders.
- **Interventional Urology Products.** For all Interventional Urology Products, Customer bears full costs and risks of moving the goods from Teleflex's shipping point to the requested shipping destination, and shall promptly reimburse Teleflex for all freight charges, including but not limited to premiums for freight insurance, inspection fees, assessments, express delivery charges and all other costs incurred in transporting the Interventional Urology Products to the shipping destination. Teleflex assumes no liability for any Interventional Urology Products damaged during transit, but will extend assistance to help Customer settle claims with the carrier; contact Teleflex Interventional Urology Customer Service by phone at 877-408-9628 or by email at UroLiftCustomer@teleflex.com.

6. **Acceptance and Returns.** Customer shall inspect Products promptly upon their receipt. Any damage should be noted on the freight bill and reported to the carrier. Unless Customer notifies Teleflex Customer Service in writing within 10 calendar days after receipt of the Products of shipping discrepancies or that the Products are upon inspection non-conforming or defective, describing the alleged non-conformance or defect in reasonable detail, Customer will be deemed to have accepted the Products. Products delivered and accepted under these Terms are not returnable except in accordance with Teleflex's Return Goods Policy, available at www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/.
7. **Payment Terms.** Customer shall pay the amount stated on Teleflex's invoice within 30 calendar days from the invoice date unless otherwise expressly stated in these Terms. All amounts payable under these Terms are denominated in the currency invoiced unless expressly agreed otherwise by Teleflex in writing. Customer shall promptly notify Teleflex Customer Service at cs@teleflex.com in writing of any disputed invoice, and shall not make any discounts or setoffs against any invoices unless approved in advance by Teleflex. Any invoiced amount not paid when due may, in Teleflex's sole discretion, bear interest at the rate of 1.5% per month or the highest rate then permitted by law, whichever is less, until paid in full. Teleflex reserves the right to exercise any of its lawful remedies if Customer fails to make payments when due, and Customer shall promptly reimburse Teleflex for all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by Teleflex in collecting sums due it under these Terms. Customer will be subject to a fee of \$50.00 for any checks returned unpaid to Teleflex for any reason.
8. **Force Majeure.** Each of Teleflex and Customer will be excused from any default in its obligations under these Terms, other than the payment of money due, resulting from any act or event beyond its reasonable control, including but not limited to acts of God, accident, fire, flood, storm, riot, war, sabotage, explosion, strike, lockout, labor disturbance, pandemic, epidemic, governmental action, inability to obtain raw materials, labor, component products or transportation, failure of normal sources of supply, or any similar or different contingency that would make performance or timely performance commercially impracticable. The party relying on any of these acts or events of force majeure shall notify the other thereof promptly after it becomes known to that party. If any of these acts or events of force majeure exceed 60 calendar days, then either party may, as its sole remedy, cancel outstanding Orders to the extent not previously fulfilled by notifying the other party in writing. Neither party will be liable for damages resulting from such cancellation.
9. **Limited Warranty.** Unless a more specific limited warranty is expressly granted in the Instructions For Use, or Operating Manual if applicable, published by Teleflex for the Product ("Product Documentation") (in which case such warranty governs), Teleflex warrants that, subject to the exceptions stated herein, each Product will substantially conform to the published specifications contained in the Product Documentation and will be free from defects in materials and workmanship, from the date of purchase until the expiration date printed on the Product's packaging or, if no such expiration date applies, for one year from the date of purchase (as applicable, the "Warranty Period"). The foregoing warranty will be void and of no effect if the Product is: (a) stored, installed, maintained, operated or used in any manner inconsistent with the Product Documentation, (b) subjected to abuse, misuse, neglect, mishandling, accident or unusual physical or environmental (including but not limited to thermal or electrical) stress; or (c) repaired, altered or modified other than by Teleflex authorized

service personnel. PRODUCTS DISTRIBUTED, BUT NOT MANUFACTURED, BY TELEFLEX ARE NOT WARRANTED BY TELEFLEX AND CUSTOMER MUST INSTEAD RELY ON THE REPRESENTATIONS AND WARRANTIES, IF ANY, PROVIDED DIRECTLY TO CUSTOMER BY THE MANUFACTURER OF SUCH PRODUCT.

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY STATED HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO CUSTOMERS OF CUSTOMER. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE.

TELEFLEX'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THE FOREGOING WARRANTY IS, AT TELEFLEX'S OPTION, TO REPAIR OR REPLACE THE NON-CONFORMING OR DEFECTIVE PRODUCT OR TO CREDIT TO CUSTOMER'S ACCOUNT THE PURCHASE PRICE PAID BY CUSTOMER FOR THE NON-CONFORMING OR DEFECTIVE PRODUCT. All claims for breach of the foregoing warranty shall be made by Customer, by contacting Teleflex Customer Service in accordance with Teleflex's Return Goods Policy, available at www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/, to obtain a return goods authorization, within the applicable Warranty Period and no later than 30 calendar days after discovery of the alleged non-conformance or defect in the Product. Unless otherwise directed in writing by Teleflex, within 30 calendar days after receiving a return goods authorization, Customer shall package the allegedly non-conforming or defective Product in its original shipping carton, or a functional equivalent, and ship it to Teleflex for inspection and verification of the alleged non-conformance or defect. Teleflex shall reimburse Customer for its reasonable documented shipping costs of returning the Product, and assume the risk of loss or damage to such returned Product while in transit, after verification by Teleflex of the alleged non-conformance or defect. If no breach of the foregoing warranty is discovered by Teleflex upon receipt of the returned Product, to the extent practicable the Product will be returned to Customer at Customer's expense, and Customer shall reimburse Teleflex for its shipping costs. All warranty claims not made in compliance with this section shall be deemed to have been waived.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, (A) TELEFLEX'S LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THESE TERMS, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, AND EVEN IF CUSTOMER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, WILL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL PURCHASE PRICE RECEIVED BY TELEFLEX FOR THE PRODUCTS ORDERED BY CUSTOMER, AND (B) TELEFLEX SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, FOR ANY LOST PROFITS OR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF TELEFLEX HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
11. **Unauthorized Distribution; Import/Export; Export Control.** Unless authorized by Teleflex in writing in advance, Customer shall not resell or distribute Products outside the country to which Teleflex ships Customer's Order. The sale of Products in violation of this section voids Teleflex warranties to the extent permitted by applicable law. If Customer is outside the United States and approved by Teleflex to import Products at the final intended destination, then Customer will be responsible for obtaining all required import licenses and making proper customs entry for the Products. For routed export shipments out of the United States, Customer is responsible for meeting applicable United States export regulations and declarations. Customer shall not re-export any Products from the destination country. Customer further acknowledges that the Products and any related software and technical information provided under these Terms are subject to U.S. and other export laws and regulations. Customer shall not export, re-export, transfer or transmit the Products, or any such software or technical information, except in compliance with all such laws and regulations. At Teleflex's request, Customer shall sign written assurances and other export-related documents as may be required for Teleflex to comply with export laws and regulations.
12. **Intellectual Property Ownership.** Subject to any license necessary for Customer's use of a Product that incorporates software, no transfer of any right, interest, ownership or any intellectual property will occur under these Terms. Teleflex or, if applicable, Teleflex's licensor retains all interest to software, modifications, improvements, upgrades, derivative works and all other intellectual property rights in connection with the software incorporated in or used by the Products. Customer will have no right to or interest in any Teleflex intellectual property, including but not limited to copyrights, trade secrets, know how, patents, websites, internet domain name registrations, trademarks or trade names, applied for, owned, used or claimed now or in the future by Teleflex, its affiliates or licensors.
13. **Safe Medical Device Act.** If Customer files with the U.S. Food and Drug Administration ("FDA") an FDA Form 3500A or a similar form of medical device report under the federal Safe Medical Device Act, regarding the Products or any part of the Products, then Customer shall simultaneously furnish to Teleflex a copy of the form or report. Customer shall maintain adequate tracking for the Products to enable Teleflex to meet the FDA requirements applicable to tracking of medical

devices. If Teleflex recalls the Products or any part of the Products, Customer shall cooperate fully with Teleflex in implementing the recall, including but not limited to by returning the Products to Teleflex to the extent that Teleflex requests.

14. **Fraud and Abuse.** Each party represents that it has never been debarred, excluded or suspended by the Office of Inspector General of the Department of Health and Human Services; otherwise deemed ineligible to participate in federal healthcare or procurement programs, or to the extent applicable, state healthcare or procurement programs; or convicted of a criminal offense regarding health care reimbursement.
15. **Discount Reporting Obligations.** If the pricing offered to Customer hereunder constitutes "a discount or other reduction in price" for purposes of the federal Anti-Kickback Statute ("AKS") discount exception (42 U.S.C. §1320a-7b(b)(3)(A)) and the AKS discount safe harbor (42 C.F.R. §1001.952(h)), Customer shall disclose the discount or reduction in price to the full extent required under any state or federal program that provides cost or charge-based reimbursement to Customer for Products. Customer may also be required, upon request, to provide documentation of the discount or other reduction in price to the Secretary of the Department of Health and Human Services and/or state agencies. Customer shall make written request to Teleflex if Customer requires additional information from Teleflex to meet its reporting requirements.
16. **Access to Books and Records.** Until the expiration of four years after the furnishing of services under these Terms, Teleflex shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, these Terms and such books, documents and records of Teleflex as are necessary to certify the nature and extent of the costs under these Terms. If Teleflex carries out any of its duties under these Terms through a subcontract, for the value or cost of \$10,000 or more over a 12-month period, the subcontract must contain a clause placing the same duty on the subcontractor as these Terms place on Teleflex. If applicable law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount stated herein will be amended accordingly. Notwithstanding the presence of this section in these Terms, this section only applies if the actual dollar amount paid during any 12-month period equals or exceeds the government threshold amount.
17. **Confidentiality.** Teleflex may disclose confidential information to Customer, including but not limited to invoice terms, Product pricing and new product introductions. Customer shall not use, publish or disclose, or cause anyone else to use, publish or disclose, such confidential information without Teleflex's prior written consent, except information subject to legal process or if Customer can demonstrate the information was already known to, independently developed by, or publicly available to Customer prior to Teleflex's disclosure, or as otherwise permitted by these Terms. If disclosure is required by law, Customer agrees to provide prompt notice to Teleflex before any disclosure.
18. **Applicable Law and Venue.** These Terms and the transactions contemplated hereby are governed by, and to be construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to the sale of any Products hereunder. Any legal action relating to the Products shall be commenced and maintained exclusively before the Pennsylvania state court of record in Montgomery County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. By purchasing the Products, Customer hereby submits to the jurisdiction of those courts and waives any right to challenge or otherwise raise questions of personal jurisdiction or venue in any action commenced or maintained therein. Each party hereby waives any right to jury trial in connection with any legal action in any way arising out of or related to these Terms.
19. **Assignment; No Third-Party Beneficiaries.** Customer shall not transfer or assign these Terms or any interest herein, by operation of law or otherwise, without Teleflex's prior written consent. Any attempted transfer or assignment without such consent will be void. Teleflex may assign its rights and delegate its duties under these Terms. The rights and remedies conferred under these Terms apply only to Teleflex and Customer, and are not to be construed to inure to the benefit of or to provide any right of action to any other person or entity, including but not limited to any patient or third-party payor.
20. **Miscellaneous.** These Terms contain the entire agreement, and supersede any prior written or oral agreements or understandings, between Teleflex and Customer regarding the subject matter hereof. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of these Terms. No failure by Teleflex to insist on strict performance of any of term or condition hereof will constitute a waiver of such term or condition or any breach thereof, nor will such failure in any way affect Teleflex's legal remedies regarding any default by Customer hereunder. No addition to or waiver, modification or cancellation of any provision of these Terms will be binding upon Teleflex unless in writing and signed by a duly authorized representative of Teleflex. If any provision of these Terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will, to the extent permitted by law, not in any way be affected or impaired thereby.

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



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

January 18, 2023

Subject: Proposed Certification of Medical Necessity for BD Alaris™ System Infusion Pump

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the attached Certification of Medical Necessity related to the BD Alaris™ System Infusion Pump ("Alaris"), received by Kern Medical on January 4, 2023, and required by Alaris to be signed and returned by February 5, 2023. Your Board approved a similar Certification of Medical Necessity on January 18, 2021, acknowledging receipt of four recall notifications issued specific to Alaris infusion pumps. Failure to sign the Certification will prevent Kern Medical from purchasing critically needed infusion pumps, which are necessary to provide patient care.

Alaris has been mandated by the FDA to obtain an authorized signature on the Certification to confirm that Kern Medical is aware of the Alaris remediation plan for recalled infusion pumps. Alaris has submitted notice to the FDA, which includes modifications to the infusion pumps, including updated features and remediation intended to address the issues identified in the recalls. However, this device has not yet been cleared by the FDA, and such a determination may take over a year to make. As such, Alaris currently provides limited distribution of the infusion pumps and software updates to existing customers upon certification of medical need.

Kern Medical has evaluated the benefits and risks associated with the affected products and has determined that the need to provide uninterrupted patient care outweighs the remote risks of any pump failure. This conclusion is based on the fact that software updates have been, and will continue to be, made to the pumps owned by Kern Medical. Kern Medical currently owns 263 of the infusion pumps with no indication of any issues, including past problems or failures.

Therefore, it is recommended that your Board approve the Certification of Medical Necessity and authorize the Chairman to sign.



10020 Pacific Mesa Blvd
San Diego, CA 92121
1-888-876-4287 (toll-free)

www.bd.com

Dear Valued BD Alaris™ System Customer:

In conjunction with voluntary U.S. recalls of the Alaris™ System, BD has been in discussions with the FDA about a number of modifications to the Alaris™ System since its last 510(k) clearance. Based on these discussions, BD submitted a 510(k) notice for the Alaris™ System for agency review. This device has not been cleared by FDA, and any FDA determination regarding the device may take several months to over a year and may not result in a cleared product.

BD takes our responsibility to our customers and patients very seriously. We stand behind the safety and clinical benefits of the Alaris™ System. As noted in BD's recall notifications, we have assessed the potential risks associated with the Alaris™ System and determined that it can continue to be used in accordance with the Alaris™ System with Guardrails™ Suite MX User Manual, User Manual Addendum, Service Addendum and the recall notifications until they are serviced by BD with an upcoming software release and affected hardware is replaced.

Until we receive a new 510(k) clearance, we have suspended the distribution of the Alaris™ System except for limited distribution to existing customers upon certification of medical need. In addition, after consultation with FDA, BD is releasing the Alaris™ System software v12.1.3 through certification of medical need to remediate the issues in the February 4, 2020 software-related recall letter.

The attached certificate of medical necessity confirms that your facility is aware of the recall notifications and that the 510(k) submission for the Alaris™ System with software v12.1.3 has not been cleared by FDA. It further confirms that your facility has evaluated the benefits and risks associated with the affected products and has immediate medical needs that require shipment of infusion pumps that are subject to the recall to ensure uninterrupted patient care or to initiate remediation to Alaris™ System software v12.1.3, which addresses the issues outlined in the February 4, 2020 software-related recall letter.

The certificate should be completed by a Senior Hospital Administrator or Clinician with decision making capacity and returned to your BD Alaris™ Account Executive. BD Medical Affairs will review each certificate to verify medical necessity and will reach out directly to the authorized approver with any additional questions.

If you have additional questions for the BD Medical Affairs team, please do not hesitate to contact them at AlarisMedicalAffairs@bd.com.

A handwritten signature in blue ink, appearing to read "Idal Beer", written in a cursive style.

Idal Beer, MD

Vice President of Medical Affairs for
Medication Management Solutions



CERTIFICATE OF MEDICAL NECESSITY

BD Alaris™ System Infusion Pump

On February 4, June 30, and August 4, 2020, BD initiated recalls of the Alaris™ System that addressed specific software and hardware issues. The associated Customer Recall Notifications included important actions that users should implement to help mitigate the potential risks. The issues outlined in these recalls have been associated with serious injury and death. BD has assessed the potential risks with the issues outlined in the recall letter and determined that affected products can continue to be used in accordance with the Alaris™ System with Guardrails™ Suite MX User Manual, User Manual Addendum, Service Bulletins, and the Customer Recall Notification letters until they are serviced by BD with an upcoming software release and affected hardware is replaced.

The U.S. Food and Drug Administration (FDA) has classified the February 4, June 30, and August 4 recalls, with the exception of the Dim Segment issue from the August 4 recall notification letter, as Class I recalls. The Dim Segment issue was classified as a Class II recall. FDA's classification of these recalls can be found on FDA's website at <https://www.fda.gov/medical-devices/medical-device-recalls/2020-medical-device-recalls>.

BD is committed to providing safe and secure products to our customers given their important benefits to patient health. As such, BD submitted a 510(k) notice for the Alaris™ System, which includes all modifications to the Alaris™ System since its last 510(k) clearance, implements updated features, and includes remediations intended to address the issues identified in the recalls referenced above. This device has not been cleared by FDA, and any FDA determination regarding the device may take several months to over a year and may not result in a cleared product.

Until we receive a new 510(k) clearance, we have suspended the distribution of the Alaris™ System except for limited distribution to existing customers upon certification of medical need. In addition, after consultation with FDA, BD is releasing the Alaris™ System software v12.1.3 through certification of medical need to remediate the issues in the February 4, 2020 software-related recall letter. Until we can release additional recall remediations, the following hardware issues from the June 30 and August 4 recalls will remain open on devices upgraded to software v12.1.3:

- Dim Segment. The LED display on the affected module may have some segments that appear dim, and therefore, the number may not be clearly displayed. (June 30, 2020)
- PC Unit Keypad. Affected BD Alaris™ PC unit keypad may have one or more keys that become unresponsive or stuck (i.e., constantly pressed state) due to fluid ingress. (August 4, 2020)
- Syringe or PCA module syringe barrel clamp. Excessive force when extending and rotating the syringe barrel clamp either clockwise or counterclockwise can damage the internal mechanism of the syringe barrel clamp. Damage to this mechanism on either the Alaris™ Syringe Module or Alaris™ PCA Module may result in the Alaris PC unit displaying incorrect syringe types and/or sizes or in display of a "Syringe not Recognized" prompt. (August 4, 2020)

This certificate of medical necessity confirms that your facility is aware of the aforementioned recall notifications and that the 510(k) submission for the Alaris™ System has not been cleared by FDA. It further confirms that your facility has evaluated the benefits and risks associated with the requested products and has immediate medical needs that require shipment of the infusion pumps that are the subject of these recalls to ensure uninterrupted patient care or to initiate remediation to Alaris™ System software v12.1.3, which addresses the issues outlined in the February 4, 2020 software-related recall letter.

Once completed, this document is considered a record that must be stored in accordance with company procedures.

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Customer Name: KERN MEDICAL CENTER

Address (end-user location): 1700 MOUNT VERNON AVE

City, State, Zip: BAKERSFIELD CA 93306-4018

Transaction #: CPQ-12451

Expiration Date: 02/05/2023

Model Number	Product Description	Expansion Quantity	Replacement Quantity
8015	BD Alaris™ PC Unit	15	-
8100	BD Alaris™ Pump Module	10	-
8110	Syringe Module	-	-
8120	PCA Module	-	-
8300	EtCO2 Module	5	-

This Certificate of Medical Necessity shall expire if not completed and returned to BD by the date identified above.

I certify that the above-mentioned facility requires BD Alaris™ System infusion pumps and/or software remediation that are medically necessary to ensure adequate and uninterrupted patient care to prevent harm, significant illness or disability, to alleviate severe pain, and ultimately to protect life during peak demands or increase in active number of beds due to the following reasons (check all that apply):

- ☒ Increase in active beds due to 1) flu season; 2) other seasonal higher occupancy rates; or 3) emergent public health events (e.g., coronavirus). **Please add as much detail as possible below:**

- ☒ Expansion of existing units (e.g., additional beds to ICUs) and new hospital wards or wings where infusion system workflow compatibility and/or interoperability are essential to patient care. **Please add as much detail as possible below:**

- ☐ Replacement of aged devices with new devices including software v12.1.3. **Please add as much detail as possible below:**

- ☐ Other (Specify):

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By signing this Certificate of Medical Necessity, Customer confirms that within thirty (30) days of purchase order acceptance by BD, Customer will schedule a start date for software remediation of all installed Alaris System Equipment at the end user facility identified above, unless all devices at the facility have already been remediated. Such remediation will begin as soon as possible, as mutually agreed between BD and the Customer.

Pursuant to the Authorized Signature below, Customer represents that the Alaris™ Equipment and/or the software upgrades identified on this Certificate of Medical Necessity shall be placed in use at the end-user location/address identified herein.

Authorized Signature: _____

Name (Print): Russell Bigler

Title: Chairman, Board of Governors

Date: 01/18/2023 Telephone # _____ Email Address: _____

For BD Only:

Number of devices approved:

8015: _____ 8100: _____ 8110: _____ 8120: _____ 8300: _____ 8600: _____

Rationale:

Approved by _____ (VP, Medical Affairs MMS) **Date:** _____

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Record number 0901-107-001-R, DIR 10000365926, Version 10 Release Date: 22APR22

DOCO Use Only (Approver's List): 0204-001-001-S (Latest Version) to determine authorized approvers

DOCO Use Only (Record Format Template) 0204-011-005-R, DIR 10000153640, Ver 04, Release Date: 21OCT21

BD-61190



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

January 18, 2023

Subject: Proposed Amendment No. 6 to Agreement 20119 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 6 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through January 31, 2023. Dr. Lopez, a board-certified obstetrician and gynecologist, has been employed by Kern Medical Center since 2004. Currently he serves as Chair of the Department.

The proposed Amendment is extending the term of the Agreement for one month through February 28, 2023, during which time a new agreement will be negotiated with Dr. Lopez. The Amendment increases the maximum payable by \$40,000, from \$1,620,000 to \$1,660,000, to cover the extended term.

Therefore, it is recommended that your Board approve Amendment No. 6 to Agreement 20119 with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology, extending the term for one month through February 28, 2023, increasing the maximum payable by \$40,000, from \$1,640,000 to \$1,680,000, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 6
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Juan M. Lopez, M.D.)**

This Amendment No. 6 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Juan M. Lopez, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #20119, dated May 30, 2019), Amendment No. 1 (Agt. #55319, dated November 26, 2019), Amendment No. 2 (Agt. #05321, dated February 15, 2022), Amendment No. 3 (Agt. #074-2022, dated July 20, 2022), Amendment No. 4 (Agt. #074-2022, dated July 20, 2022) (the “Agreement”), and Amendment No. 5 (Agt. #146-2022, dated December 14, 2022), for the period July 1, 2019 through January 31, 2023, whereby Physician provides professional medical and administrative services in the Department of Obstetrics and Gynecology at KMC; and

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

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

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

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

“1. **Term.** The term of this Agreement shall commence as of July 1, 2019 (the “Commencement Date”), and shall end February 28, 2023 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement date and each annual period thereafter.”

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

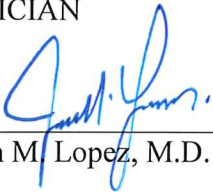
“5.8 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$1,660,000 over the Term of this Agreement.”

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

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 6
as of the day and year first written above.

PHYSICIAN

By 

Juan M. Lopez, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend6.Lopez.010623



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

January 18, 2023

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

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The Operating Agreement provides that the Kern County Hospital Authority ("Hospital Authority"), a California governmental entity, in its capacity as the sole member of the Kern Medical Surgery Center, LLC ("Surgery Center"), shall contribute cash and other property to the Surgery Center as the Hospital Authority determines is needed and is appropriate. The proposed Third Amendment increases the capital contribution amount by \$4,781,363, from \$2,000,000 to \$6,781,363, to equip the remaining operating and procedure rooms, for additional equipment, and for additional working capital.

Therefore, it is recommended that your Board approve the Third Amendment to the Operating Agreement of Kern Medical Surgery Center, LLC, increasing the capital contribution amount by \$4,781,363, from \$2,000,000 to \$6,781,363, effective January 18, 2023, and authorize the Chairman to sign.

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

This Third 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 18th day of January, 2023, and is made by Kern County Hospital Authority, a California governmental entity, in its capacity as the sole member (the “Member”) of the Company.

WHEREAS, the Agreement provides that the Member, as its Capital Contribution, shall contribute such cash and other property to the Company as the Member determines that the Company may need and is appropriate; and

WHEREAS, pursuant to paragraph 3.2 of the Agreement, the Board of Managers shall cause Exhibit “A” to the Agreement to be amended to reflect all Capital Contributions made in cash or other property; and

WHEREAS, paragraph 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. First Amendment Exhibit “A” to Operating Agreement shall be deleted in its entirety and replaced with Second Amendment to Exhibit “A” to Operating Agreement, attached hereto and incorporated herein by this reference.
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 Third Amendment to the Agreement as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY,
a California governmental entity

By _____
Chairman
Board of Governors

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Karen S. Barnes
Vice President & General Counsel

**SECOND AMENDMENT
TO
EXHIBIT "A"
TO
OPERATING AGREEMENT**

Record of Capital Contributions made and Units issued to the Member:

<u>Member Name</u>	<u>Units Owned</u>	<u>Contribution Amount; Date</u>
Kern County Hospital Authority	One (1)	\$6,781,363; date(s) to be determined In-kind, including but not limited to, legal, financial, management, administrative, contracting, Agreement for Lease, equipment, and insurance; date(s) to be determined



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

January 18, 2023

Subject: Proposed retroactive Agreement for Professional Services with Kern Medical Surgery Center, LLC, a California limited liability company

Recommended Action: Approve; Authorize Chairman to sign

Summary: The Authority recommends that your Board approve an Agreement for Professional Services with Kern Medical Surgery Center, LLC (the "LLC"), effective retroactively to August 1, 2018.

Health and Safety Code section 1206 identifies the conditions under which certain types of clinics, facilities, and centers may be exempt from licensure to operate in the state of California. Section 1206(b) states in relevant part that "any clinic directly conducted, maintained, or operated by [the state of California] or by any of its political subdivisions or districts" is exempt from licensure. The Authority operates various outpatient clinics that qualify for exemption under Section 1206(b), and requires the assistance of the LLC to provide management and administrative services to operate these clinics.

The term of the Agreement commences August 1, 2018, and will remain in effect until terminated. The LLC will provide the services listed in Exhibit "A" of the agreement, which include such office and staff management functions as collecting and process patient collections; human resources, including recruiting, hiring, training, evaluating, supervising, and termination of all staff; scheduling, including making and tracking all patient appointments; staffing, including assuring adequate administrative staff, and assisting Authority with scheduling adequate professional staff; and general office management, including filing, maintenance of records, etc.

Payment for services include a monthly staffing fee for staff engaged or employed by the LLC that is based on the hourly rate for the position plus costs, which include benefits, taxes and other expenses, and is calculated on a prorated basis as positions are filled and/or vacated. The Authority has no obligation to pay the staffing fee until the LLC incurs the expense. The maximum payable under the Agreement will not exceed \$13,005,450 for the period August 1, 2018 through December 31, 2022. Effective January 1, 2023, the maximum payable under this Agreement will not exceed \$4,125,000 per calendar year.

Therefore, it is recommended that your Board retroactively approve the Agreement for Professional Services with Kern Medical Surgery Center, LLC, for management and administrative services, effective August 1, 2018, in an amount not to exceed \$13,005,450 for the period August 1, 2018 through December 31, 2022, and \$4,125,000 per calendar year, effective January 1, 2023, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Kern Medical Surgery Center, LLC)**

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), and Kern Medical Surgery Center, LLC, a California limited liability company (“Contractor”), with its principal place of business located at 9300 Stockdale Highway, Suite 200, Bakersfield, California 93311.

**I.
RECITALS**

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

(b) Health and Safety Code section 1206 identifies the conditions under which certain types of clinics, facilities, and centers may be exempt from licensure to operate in the state of California; and

(c) Section 1206(b) states in relevant part that “any clinic directly conducted, maintained, or operated by [the state of California] or by any of its political subdivisions or districts” is exempt from licensure; and

(d) Authority operates various outpatient clinics that qualify for exemption under Section 1206(b) (“Clinic” or “Clinics”); and

(e) Authority requires the assistance of Contractor to provide management and administrative services to operate the Clinics, and Contractor agrees to provide such services on the terms and conditions set forth in this Agreement; and

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence as of August 1, 2018 (the “Commencement Date”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 Specified Services. Contractor shall provide to Authority 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.

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: (a) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (b) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (c) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of 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 Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 37; or (c) pursue any and all other remedies at law or in equity.

2.5 Contractor Staff. Contractor shall engage or employ such qualified personnel as may be requested by Authority for the proper and efficient staffing of the Clinics. All personnel provided by Contractor shall be compensated by Contractor and shall be employees or independent contractors of Contractor. Contractor shall be responsible for compensating all such engaged or employed persons, including, as applicable, payroll taxes, benefits, and workers' compensation insurance. Contractor shall be responsible for supervision of activities performed by all employees and independent contractors.

2.6 Compliance with Standards. All services performed by Contractor shall be performed in accordance with applicable state and federal laws and regulations, accreditation standards, and Authority policies and procedures.

2.7 Cooperation with Authority. Contractor shall cooperate with Authority and Authority staff in the performance of all work hereunder.

2.8 Assigned Personnel.

2.8.1 Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time Authority, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority.

2.8.2 In the event that any of Contractor's personnel assigned to perform services under this Agreement becomes unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

2.8.3 Contractor understands and agrees that Contractor's assigned personnel will perform the services required of Contractor under this Agreement on a full-time basis, and includes any other hours in excess thereof that are necessary for Contractor's assigned personnel to perform the services as set forth in this Agreement.

2.10 Practice of Medicine. Contractor shall not provide or otherwise engage in services or activities which constitute the practice of medicine as defined by the laws of the state of California.

2.11 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.12 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for Authority staff assistance, as may be required.

3.2 Space. Authority shall furnish for the use of Contractor such space and facilities at the Clinics as may be deemed necessary by Authority for the proper operation and conduct of the Clinics ("Premises"). Authority will, in its sole discretion, determine the amount and type

of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. Contractor shall not use any part of the Clinics for the provision of any services to any person or entity other than the provision of the services in accordance with this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority shall, at all times, have full and free access to the same.

3.4 Equipment. Authority shall furnish for the use of Contractor such equipment as is deemed necessary by Authority for the proper operation and conduct of the Clinics consistent with community standards. Authority shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and budget constraints.

3.5 Services and Supplies. Authority shall provide or arrange for the provision of janitorial services, housekeeping services, utilities, together with such other Clinic services, including medical records, administrative and engineering services, and expendable supplies, as Authority deems necessary for the proper operation and conduct of the Clinics.

3.6 Physician Employment and Contracting. Authority shall employ or contract with all physician personnel ("Professionals") necessary to provide the patient care services at the Clinics. Authority shall have the sole right and authority to hire, employ, train, supervise, terminate and compensate all of its Professionals. Authority agrees to keep the Clinics adequately staffed with such Professionals as may be necessary to efficiently carry out the practice of medicine in the Clinics. Authority shall be responsible to ensure that such Professionals are supervised in accordance with the requirements of state and federal law and in a manner consistent with current standards of medical practice in the community.

3.7 Credentialing of Professionals. Authority shall be responsible for the establishment of appropriate credentialing standards and review committees for purposes of credentialing its Professionals. Contractor shall provide the administrative support necessary to obtain and verify such credentialing information, as directed by Authority.

3.8 Control Retained in Authority. In compliance with title 22, California Code of Regulations, section 70713 Authority shall retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise Authority of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by Authority for follow-up action and evaluation of performance.

4. **Payment for Services.** As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor in accordance with the fiscal provisions set forth in paragraph 6.1. All services are payable in arrears.

4.1 **Fiscal Provisions.**

4.1.1 **Staffing Fee.** Authority shall pay Contractor a monthly staffing fee for staff engaged or employed by Contractor pursuant to paragraph 2.5 (the “Staffing Fee”), based on the hourly rate for the position plus costs (benefits and expenses). Authority shall have no obligation to pay the Staffing Fee set forth in this paragraph until Contractor has incurred such expenses. The Staffing Fee shall be calculated on a prorated basis as positions are filled and/or vacated.

4.1.2 **Fair Market Value.** The parties acknowledge that the compensation set forth herein was negotiated at arm’s length without taking into account the value or volume or referrals between the parties, represents the parties’ best estimate of fair market value, and covers Contractor’s actual cost to provide the services on a fully loaded basis.

4.2 **Invoices; Direct Deposit Account.** Invoices for payment shall be submitted in a form approved by Authority. Invoices shall be sent to Authority for review and processing on or before the 1st day and 16th day of each month. Contractor shall establish and maintain a direct deposit account with Authority. Authority shall direct deposit the amount of each approved invoice on or before the 5th day and 20th day of each month.

4.3 **Taxpayer Identification.** To ensure proper tax reporting of the compensation paid under this Agreement, Contractor shall complete, execute and deliver to Authority an IRS Form W-9, attached hereto and incorporated herein as Exhibit “B,” which sets forth the correct taxpayer identification number for Contractor. To the extent required by law, Authority shall report all payments to Contractor on IRS Form 1099 and its state law counterpart.

4.4 **Maximum Payable.** The maximum payable under this Agreement shall not exceed \$13,005,450 for the period August 1, 2018 through December 31, 2022. Effective January 1, 2023, the maximum payable under this Agreement shall not exceed \$4,125,000 per calendar year.

5. **Access to Books and Records.** Contractor shall make available, upon written request from Authority, 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 Authority of the nature

and scope of the request, and Contractor shall make available, upon written request of Authority, all such books, documents or records.

6. **Anti-referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Contractor or Authority. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

7. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **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 Authority 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 thirty (30) days of such negotiation period, this Agreement shall automatically terminate.

11. **Compliance with Rules and Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Authority, including but not limited to The Joint Commission, and with the Bylaws, rules, regulations and policies of Authority now in effect or hereafter enacted, each of which is made a part of this Agreement and incorporated herein by this reference.

12. **Confidentiality.**

12.1 **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: (a) pursuant to applicable law; (b)

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 (c) on a confidential basis to its legal or financial advisors.

12.2 Trade Secrets. The parties acknowledge 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 and 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.

12.3 Patient Information. Contractor shall not disclose, and shall ensure that its employees will not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Authority in writing, any patient or medical record information regarding Clinic patients, and Contractor shall comply, and shall ensure that its employees will comply, with all federal and state laws and regulations, all rules, regulations and policies of Authority, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

12.4 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind ("Documents"), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format, as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

12.5 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any email, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party.

13. **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, Authority may immediately terminate this Agreement by giving written notice thereof.

14. **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.

15. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

16. **Corporate Compliance Program.** Contractor shall comply with Authority's corporate compliance program. Contractor shall cooperate with any corporate compliance audits, reviews and investigations that relate to Contractor and/or any of the services provided by Contractor under this Agreement. Subject to request by Authority, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to the services provided by Contractor under this Agreement. Contractor and its employees shall participate in compliance training and education as reasonably requested by Authority.

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: (a) 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"); (b) 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 (c) debarred, suspended,

excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

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

20. **Governing Law; Venue.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the state of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction. Any dispute between the parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

21. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement. Such cooperation between the parties shall not operate as a waiver of the attorney-client privilege or the attorney work-product doctrine.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide Authority with a copy of such verification (8 U.S.C. § 1324). Contractor agrees to indemnify, defend, and hold harmless Authority, its officers, directors, employees and agents, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

23. **Indemnification and Hold Harmless.** Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, officers, members, shareholders, partners, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, members, shareholders, partners, employees or agents.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be in fact and law an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

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

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

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

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

30. **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 letting of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

31. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

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

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

Notice to Contractor:

Kern Medical Surgery Center, LLC
9300 Stockdale Highway, Suite 200
Bakersfield, California 93311
Attn: Its President and Chief Executive Officer

Notice to Authority:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chief Executive Officer

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

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

36. **Survival.** The provisions of sections 7 (Access to Books and Records), 10 (Authority to Incur Financial Obligation), 14 (Confidentiality), 18 (Corporate Compliance Program), 23 (Governing Law; Venue), 24 (Litigation Cooperation), 26 (Indemnification and Hold Harmless), 27 (Independent Contractor), 28 (Insurance), 29 (Liability of Authority), 36 (Notices), and 41 (Effect of Termination) shall survive termination or expiration of this Agreement.

37. **Termination.**

37.1 **Termination with Mutual Agreement.** The parties may terminate this Agreement upon mutual written consent with notice of not less than ninety (90) days.

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

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

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

38. Effect of Termination.

38.1 Obligations. Except as otherwise provided in this section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Notwithstanding the foregoing, each party understands and agrees that termination of this Agreement shall not release or discharge the parties from any obligation, debt or liability, which shall have previously accrued and remains to be performed upon the date of termination.

38.2 Vacate Premises. Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate the Clinics, removing at such time any and all personal property of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

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

38.4 No Hearing Rights. In the event Authority exercises its right to terminate this Agreement pursuant to section 37, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to Authority employees.

39. 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 MEDICAL SURGERY CENTER, LLC

By _____
Scott Thygerson
Its President and Chief Executive Officer

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT "A"
DESCRIPTION OF SERVICES
Kern Medical Surgery Center, LLC

Contractor shall provide the following services:

1. Patient Collections. Carry out all activities related to collection of patient fees, including but not limited to the following activities:
 - 1.1 Develop and implement policies and procedures;
 - 1.2 Prepare and present invoices to patients for payment;
 - 1.3 Collect and process all payments received;
 - 1.4 Reconcile patient accounts; and
 - 1.5 Provide reports of patient account status as requested.
2. Patient Inquiries/Complaints. Develop and implement a program for management of patient inquiries and complaints in accordance with Authority requirements including but not limited to the following activities:
 - 2.1 Respond to initial patient inquiries and complaints;
 - 2.2 Track inquiries and complaints; and
 - 2.3 Notify Authority of patient complaints.
3. Credentialing Program (OPTIONAL). Provide administrative support to Practice as necessary to obtain and verify credentialing information in accordance with applicable laws, standards and Practice requirements, including, but not limited to, the following activities:
 - 3.1 Prepare Credentialing Policies and Procedures;
 - 3.2 Provide administrative support to all credentialing activities;
 - 3.3 Obtain primary source verification;
 - 3.4 Prepare applicable documentation; and
 - 3.5 Set up provider credentialing file and follow-up of credentialing documents.
4. Regulatory Compliance. Contractor shall supervise Authority's compliance with all regulatory and accreditation standards applicable to the Clinics, including without limitation, those required by contractual obligation or any state or federal law or regulation, or private or public accreditation agency.
5. Technical Support. Contractor shall, at Authority's request, provide technical advice regarding the installation and renovation of equipment for the Clinics.
6. Reports. Contractor shall provide to Authority on a monthly basis, and at such other times as reasonably requested by Authority, such reports as are mutually agreed upon between

Contractor and Authority as reasonably necessary for the informed management and operation of the Clinics.

7. Operations. Contractor shall carry out all office and staff management functions, including but not limited to:

- 7.1 Human Resources, including recruiting, hiring, training, evaluating, supervising, and termination of all staff;
- 7.2 Scheduling, including making and tracking all patient appointments;
- 7.3 Staffing, including assuring adequate administrative staff, and assisting Authority with scheduling adequate Professional staff; and
- 7.4 General office management, including filing, maintenance of records, etc.

8. Contractor's Financial Authority. Contractor shall have the authority to receive funds from patients on behalf of Authority. Such funds shall be deposited by Contractor to a bank account established by Authority for such purposes. Only Authority shall have signature and withdrawal authority on such account.

9. Limitations on Contractor's Authority. Contractor shall not, without the prior written consent of Authority, which may be withheld in Authority's sole discretion:

- 9.1 Borrow money in the name of Authority;
- 9.2 Transfer, hypothecate, compromise or release any Authority claim except on payment in full;
- 9.3 Sell, lease or hypothecate Authority's property; or
- 9.4 Knowingly suffer or cause anything to be done whereby Authority's property may be seized or attached or taken in execution, or its ownership or possession otherwise endangered.

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EXHIBIT “B”

IRS FORM W-9

EXHIBIT "C"

INSURANCE

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.

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

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (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. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
 - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
 - (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. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least 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.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services.**"
 - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.

- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.
9. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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

January 18, 2023

Subject: Proposed Resolution in the Matter of Creating an Ad Hoc Committee of the Board of Governors

Recommended Action: Approve; Adopt Resolution

Summary:

The Kern County Hospital Authority (“Authority”) Bylaws for Governance (“Bylaws”) provides that “[a]d hoc committees may be created as deemed necessary by a resolution adopted by a majority vote of the Board of Governors” (Bylaws, Article III, Section 3.01, Standing and Ad Hoc Committees).

The Board of Governors has deemed it necessary to create an ad hoc committee for the limited, specific purpose of undertaking a public employee performance evaluation of the Authority’s Chief Executive Officer, effective January 18, 2023. The ad hoc committee will have a duration of no more than one year and will have no authority to act on behalf of the Authority. As an ad hoc committee, the committee will not be subject to the Brown Act unless the committee’s membership includes a majority of Members of the Board of Governors, or as determined otherwise by the Board of Governors, or as otherwise required by law.

Therefore, it is recommended that your Board approve and adopt the proposed Resolution creating an ad hoc committee for the limited, specific purpose of undertaking a public employee performance evaluation of the Authority’s Chief Executive Officer, appointing Chairman Bigler, Director Berjis, and Director Pelz to the ad hoc committee, and directing the Vice President & General Counsel to assist the ad hoc committee in implementing the provisions of the Resolution, effective January 18, 2023.

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

In the matter of:

Resolution No. 2023-____

**CREATING AN AD HOC COMMITTEE
OF THE BOARD OF GOVERNORS**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 18th day of January, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Hospital Authority ("Authority") Bylaws for Governance ("Bylaws") provides that "[a]d hoc committees may be created as deemed necessary by a resolution adopted by a majority vote of the Board of Governors" (Bylaws, Article III, Section 3.01, Standing and Ad Hoc Committees); and

(b) The Board of Governors has deemed it necessary to create an ad hoc committee for the limited, specific purpose of undertaking a public employee performance evaluation of the Authority's Chief Executive Officer; and

- (c) The ad hoc committee shall have a duration of no more than one year; and
- (d) The ad hoc committee shall have no authority to act on behalf of the Authority; and
- (e) The ad hoc committee shall not be subject to the Brown Act unless the committee's membership includes a majority of Members of the Board of Governors, or as determined otherwise by the Board of Governors, or as otherwise required by law; and
- (f) It is in the best interest of the Authority that the Board of Governors create an ad hoc committee for the limited, specific purpose of undertaking a public employee performance evaluation of the Authority's Chief Executive Officer.

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 creates an ad hoc committee for the limited, specific purpose of undertaking a public employee performance evaluation of the Authority's Chief Executive Officer.
- 3. This Board hereby appoints Chairman Bigler, Director Berjis, and Director Pelz to the ad hoc committee.
- 4. This Board hereby directs the Vice President & General Counsel to assist the ad hoc committee in implementing the provisions of this Resolution.
- 5. The provisions of this Resolution shall be effective, in force, and operative as the 18th day of January, 2023.
- 6. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Members, Board of Governors
Chief Executive Officer
Vice President & General Counsel



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

January 18, 2022

Subject: Proposed Amendment No. 3 to Agreement 871-2015 with Shahab Hillyer, M.D., for professional medical and administrative services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

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

The proposed Amendment increases Dr. Hillyer's maximum vacation accrual from 280 hours to 320 hours, effective January 18, 2023. There are no other changes to the Agreement.

Therefore, it is recommended that your Board approve Amendment No. 3 to Agreement 871-2015 with Shahab Hillyer, M.D., for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, increasing Dr. Hillyer's maximum vacation accrual from 280 hours to 320 hours, effective January 18, 2023 and authorize the Chairman to sign.

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

This Amendment No. 3 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Shahab Hillyer, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #871-2015, dated December 8, 2015), Amendment No. 1 (Agt. #055-2021, dated September 15, 2021), and Amendment No. 2 (Agt. #067-2022, dated June 15, 2022) (the “Agreement”), for the period January 1, 2016 through December 31, 2025, whereby Physician provides professional medical and administrative services in the Department of Surgery at KMC; and

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

(c) The Agreement is amended effective January 18, 2023;

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

1. Section 6, Benefits Package, paragraph 6.4, shall be deleted in its entirety and replaced with the following:

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

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

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

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

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

[Intentionally left blank]

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

PHYSICIAN

By _____
Shahab Hillyer, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend3.Hillyer.010523



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

January 18, 2023

Subject: Proposed Amendment No. 3 to the License Agreement (#04518) with Decision Resources Group, Inc. on behalf of its Healthcare Business Insights division

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed third amendment with Decision Resources, Inc. to renew the service level agreement for their Revenue Cycle Academy/E-Learning Membership.

- Revenue Cycle Academy is an enterprise-wide membership focused on providing insights into how/why your peers have implemented revenue cycle performance improve initiatives along with related benchmarks, job aids, job descriptions, tip sheets, policies, etc.
- E-Learning includes interactive, on-line training modules (130+ in total). This will be important to educate staff on new responsibilities and help to assess their ongoing understanding of key front- end revenue cycle functions and their impact on the organization and the patient experience.

Decision Resource, Inc. is a nationally recognized leader in the healthcare industry. The services and resources offered by their Revenue Cycle Academy, including independent research, actionable best practices and training for leadership and front-line staff in Patient Access are highly recommended. The eLearning has been beneficial in allowing Kern Medical to further improve and deliver upon revenue cycle objectives & related KPI's, including but not limited to industry changes with CMS compliance, Healthcare Reform, Revenue Cycle Alignment and Integration, Denial Prevention, and Improved Patient Experience.

Agreement	Term	Additional Costs	Variance
License Agt. 04518	02/12/18 – 02/11/19	\$25,000	
Amend. 1 08419	02/12/19 – 02/11/21	\$52,272	\$1,136 per year
Amend. 2 09321	02/12/21 – 02/11/23	\$55,450	\$2,725 per year
Proposed Amend. 3	02/12/23 – 02/11/24	\$29,330	\$4,330
		Maximum Payable	\$162,052

Therefore, it is recommended that your Board approve the proposed Amendment No. 3, extending the term for one (1) year, February 12, 2023 through February 11, 2024, increasing the maximum payable by \$29,330, from \$132,722 to \$162,052 and authorize the Chairman to sign.



Part of **Clarivate**

Decision Resources, Inc.
3133 West Frye Road
Suite 400
Chandler, AZ 85226

AMENDMENT 3

THIS THIRD AMENDMENT (this "Amendment 3"), effective as of January 18, 2023, (the "Amendment Effective Date"), entered into between Decision Resources, Inc. ("Company"), and Kern County Hospital Authority ("Customer") hereby incorporates by reference and amends the terms of the Licensed Agreement dated February 12, 2018 between the parties (the "Agreement").

In consideration of the promises and of the mutual covenants contained herein, the parties hereby agree as follows:

- The accompanying Exhibit A, sets forth the additional deliverables to be delivered by Company to Customer and the fees due under this Amendment 3. Said Exhibit A is attached hereto and incorporated by reference herein.

Insofar as the provisions of this Amendment 3 modify, are inconsistent with or conflict with any of the provisions of the Agreement, the provisions of this Amendment 3 shall control and take precedence over, supersede and replace such provisions of the Agreement. Otherwise, the Agreement shall remain in full force and effect. This Amendment 3, together with the Agreement, represents the entire mutual agreement of the parties and supersedes all prior agreements and understandings between the parties relating to its subject matter.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have caused this amendment to the Agreement to be executed as of the Amendment Effective Date.

For **Kern County Hospital Authority**:


Signature: _____

Print Name: _____

Title: _____

Date: _____

For **Decision Resources, Inc.:**

Signature:  _____

Print Name: **Jeff Anusbigian** _____

Title: **Vice President, Sales Operations** _____

Date: **January 5, 2023** _____

APPROVED AS TO FORM
Legal Services Department

By  _____
Kern County Hospital Authority

EXHIBIT A TO AMENDMENT 3

DRG MATERIAL(S)	LICENSE TYPE (# OF USERS)	ACCESS TERM/DATA POINT	FEE (USD)
HBI Academy Revenue Cycle	Enterprise	February 12, 2023 – February 11, 2024	\$14,805.52
HBI Learning Revenue Cycle	Enterprise	February 12, 2023 – February 11, 2024	\$14,524.18
TOTAL FEE (USD):			\$29,329.70

The DRG Materials provided to Customer are as further detailed in Exhibit B, which is attached hereto and incorporated by reference herein.

The nonrefundable fee for these services is \$29,329.70. Invoice(s) for such fee will be sent to Customer in accordance with the Invoicing Schedule set forth below. Invoices are due and payable by Customer within thirty (30) days of date of the invoice. Sales tax, use taxes, or VAT, if and where applicable, will be billed in addition to this stated fee.

Invoicing Schedule

INVOICE #	INVOICE DATE/MILESTONE	INVOICE AMOUNT (USD)
1	February 13, 2023	\$29,329.70
INVOICE TOTAL AMOUNT (USD):		\$29,329.70

Exhibit B

REVENUE CYCLE ACADEMY MEMBER OFFERING

The mission of the Revenue Cycle Academy (“RCA”) is to provide our members—hospitals and health systems across the country—with objective research into the healthcare revenue cycle, thus enabling members to improve their financial health and patient satisfaction levels. RCA does this through providing unlimited access to our research, resources, and information, which is tailored to the executives, directors, managers, and staff involved in each revenue cycle function.

RCA is a membership-driven community; as a result, the membership offering changes from time to time. What follows is a brief summary of each aspect of the current membership:

Annual Thesis

- Annual report, published toward the beginning of each calendar year, exploring the implications of industry trends and major themes in year ahead
- Designed to help leaders stay apprised of developments and support strategic planning within the revenue cycle

Best Practice Reports

- Series of reports each year exploring best practices based on The Academy's surveys, research, and analysis
- Features case studies on specific strategies other hospitals and health systems have implemented to improve performance

Peer Benchmarking

- Objective data to help members evaluate their revenue cycle KPIs, policies, and practices based on what peers are doing
- Several ways to participate and access benchmarks—including annual FY comparisons and/or monthly reports via our Revenue Cycle Scorecard

Educational Events & Networking

- Monthly virtual conferences presented exclusively by and for hospital and health system revenue cycle leaders, featuring case studies, peer perspectives, and Q&A sessions
- Two (2) member retreats each year that all leaders and staff can attend, featuring peer presentations, panel discussions, and networking opportunities with fellow members (there is no registration fee, and CPE credits are available)

Journals & Newsletters

- Four (4) monthly and four (4) quarterly publications written for executives, management, and staff—covering trends, case studies, proven strategies, and tips for improving performance
 - Journals include: Revenue Cycle Management
 - Collecting in Healthcare
 - Patient Access
 - Service Documentation
 - Group Practice Quarterly
 - Critical Access Quarterly
 - Pediatric Quarterly
 - Revenue Cycle Analytics

Implementation Portfolio

- Job aids and planning documents to assist leaders in implementing best practices and following through on revenue cycle initiatives
- Example tool includes policies and procedures, job descriptions, process flows, tips sheets, organizational charts, checklists, and more

Analyst Advisory Service

- Customized, on-demand research and analysis based on members' personal requests
- Call or email us to request information to support your process improvement projects—whether you're looking for best practices, seeking a case study, or have another question we can help with

E-Learning

- Unlimited access to revenue cycle courseware to improve staff competencies and performance through the available certification programs and packages



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

January 18, 2023

Subject: Kern County Hospital Authority Chief Financial Report – November 2022

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$184,246 for November is \$85,230 more than the November budget of \$99,017 and \$151,901 less than the \$336,147 average over the last three months
- EBIDA of \$1,304,538 for November is \$170,070 more than the November budget of \$1,134,468 and \$150,499 less than the \$1,455,037 average over the last three months
- Average Daily Census of 164 for November is 18 more than the November budget of 146 and 8 less than the 172 average over the last three months
- Admissions of 754 for November are 218 less than the November budget of 972 and 86 less than the 840 average over the last three months
- Total Surgeries of 485 for November are 26 more than the November budget of 459 and 18 less than the 503 average over the last three months
- Clinic Visits of 15,509 for November are 778 more than the November budget of 14,731 and 1,617 less than the 16,348 average over the last three months. The total includes 126 COVID-19 vaccination visits

The following items have budget variances for the month of November 2022:

Patient Revenue:

Kern Medical operated at the budgeted dollar amount for gross patient revenue for the month. On a year-to-date basis there is a small unfavorable budget variance of 0.2%.

Indigent Funding Revenue:

Indigent funding has an unfavorable budget variance for the month and on a year-to-date basis due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2023 Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), CalAIM, the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

Other Operating Revenue:

Other operating revenue has an unfavorable budget variance for the month and year-to-date. Revenue for items such as grants and Proposition 56 are received on a quarterly, or otherwise periodic basis. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year, but should agree with the planned budgeted dollar amount on a year-to-date basis at year-end.

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month and on a year-to-date basis because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Nurse Registry Expense:

Nurse registry expense is at the budgeted dollar amount for the month and on a year-to-date basis. Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years the staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. COVID-19 remains active and Kern Medical plans to continue its need for registry services.

Medical Fees:

Medical fees are over budget for the month and on a year-to-date basis because of an increase in services provided by the Acute Care Medical Surgery Group. The budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

Other Professional Fees:

Other professional fees are over budget for the month and on a year-to-date basis because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical. In addition, IT other various contract labor expenses are higher than average for the month and on a year-to-date basis.

Supplies Expense:

Supplies expense is over budget for the month because of higher than average surgical and other medical supplies costs. On a year-to-date basis, supplies expense is under budget due to lower than average costs for pharmaceuticals and for general medical supplies.

Purchased Services:

Purchased services are over budget for the month and on a year-to-date basis because of additional revenue cycle support services provided by Signature Performance and by Health Advocates. Health Advocates helps qualify patients for Medi-Cal coverage. Therefore, Health Advocates' expenses are offset by additional Medi-Cal patient revenue.

Other Expenses:

Other expenses are slightly over budget for the month due in part to an increase in rental expense for the new 19th Street clinic. On a year-to-date basis, the unfavorable variance is primarily because of higher than average utility costs. Electricity expenses were particularly high during July, August, and September due to extreme weather conditions.

Interest Expense:

Interest expense is over budget for the month and on a year-to-date basis due to higher than anticipated certificate of participation (COP) bond interest.

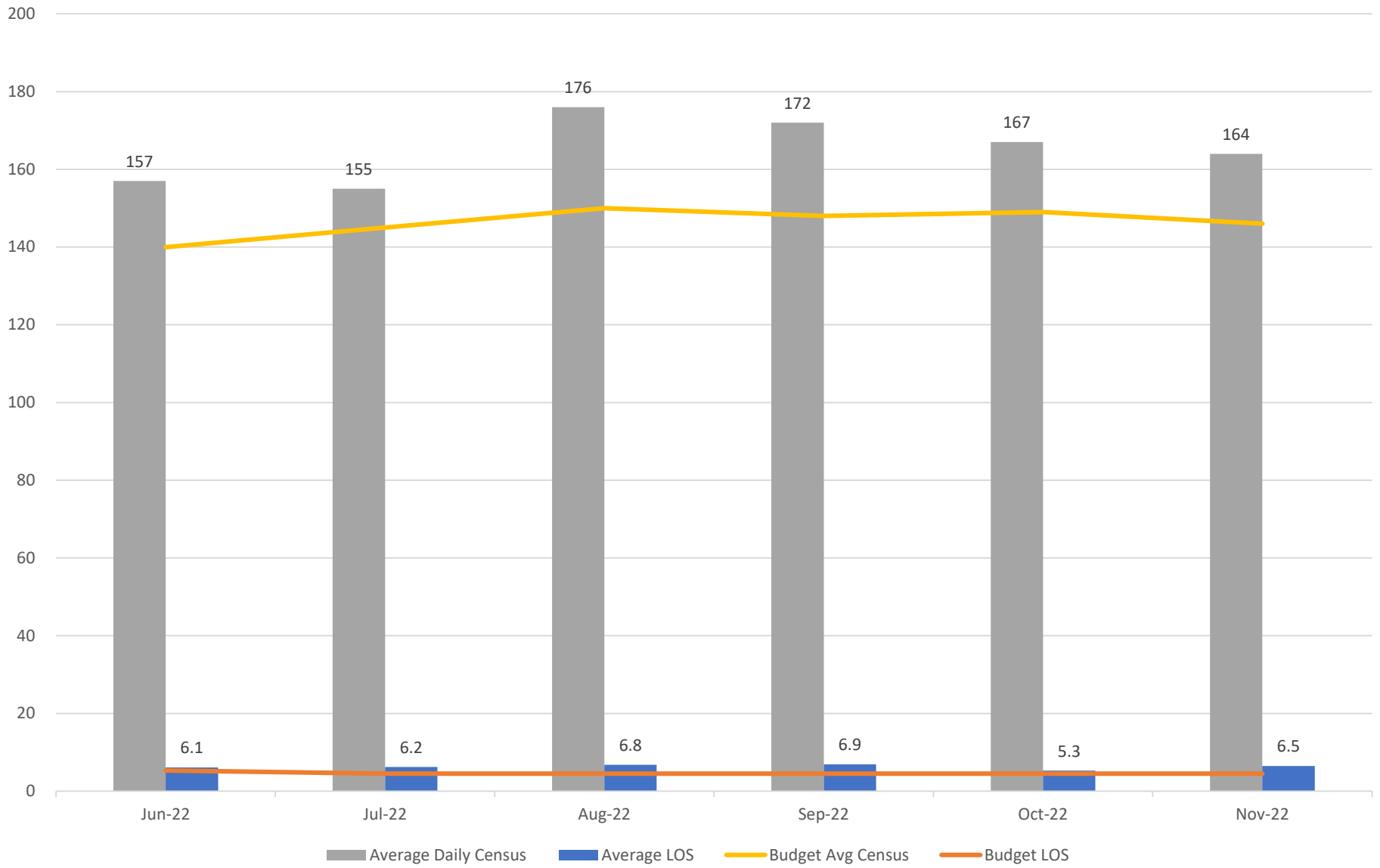
Depreciation and Amortization Expense:

Depreciation and amortization expense is over the budgeted dollar amount for the month and on a year-to-date basis as well. This expense will fluctuate as new equipment is put in service and as capital projects are completed.

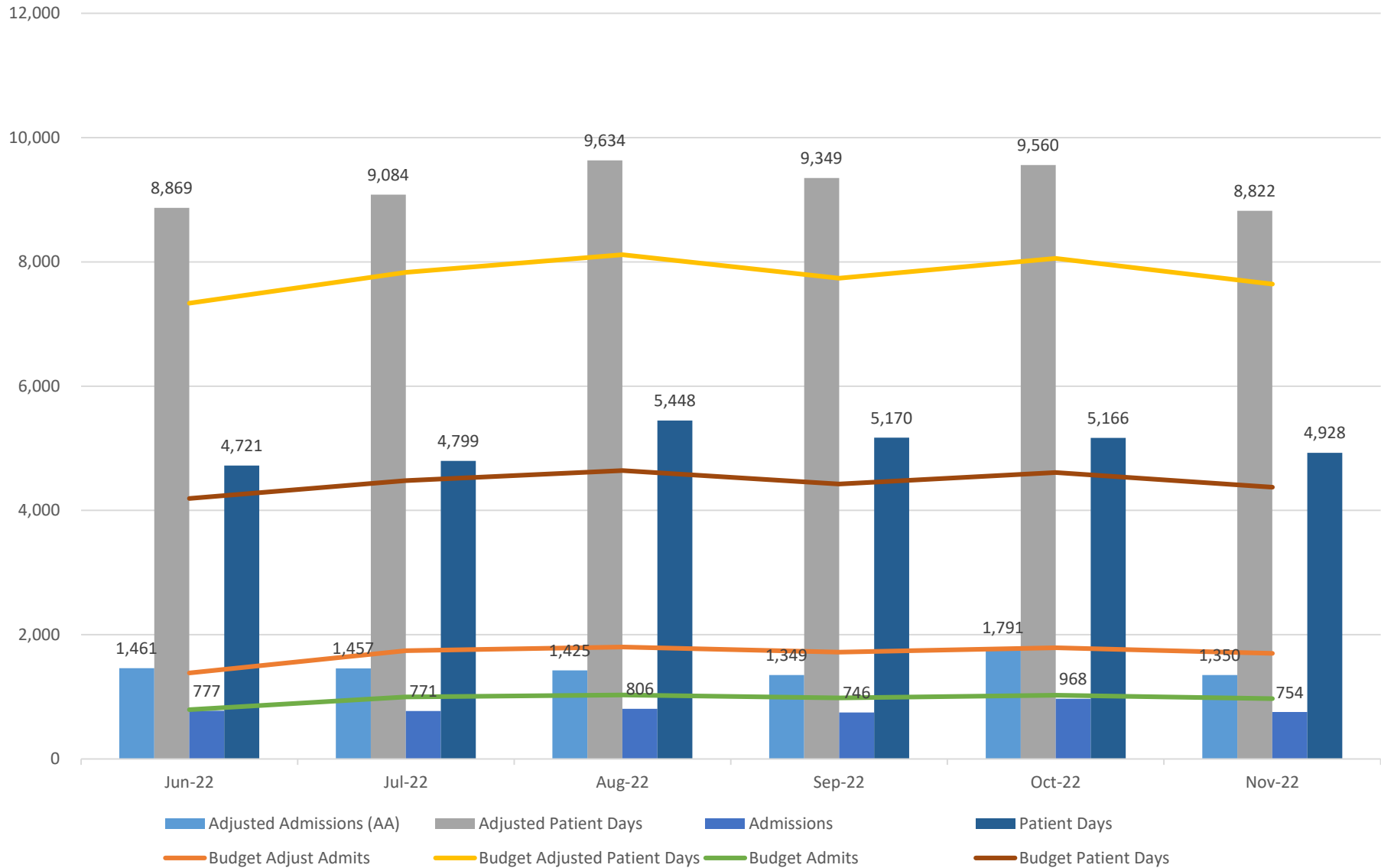


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – NOVEMBER 2022**

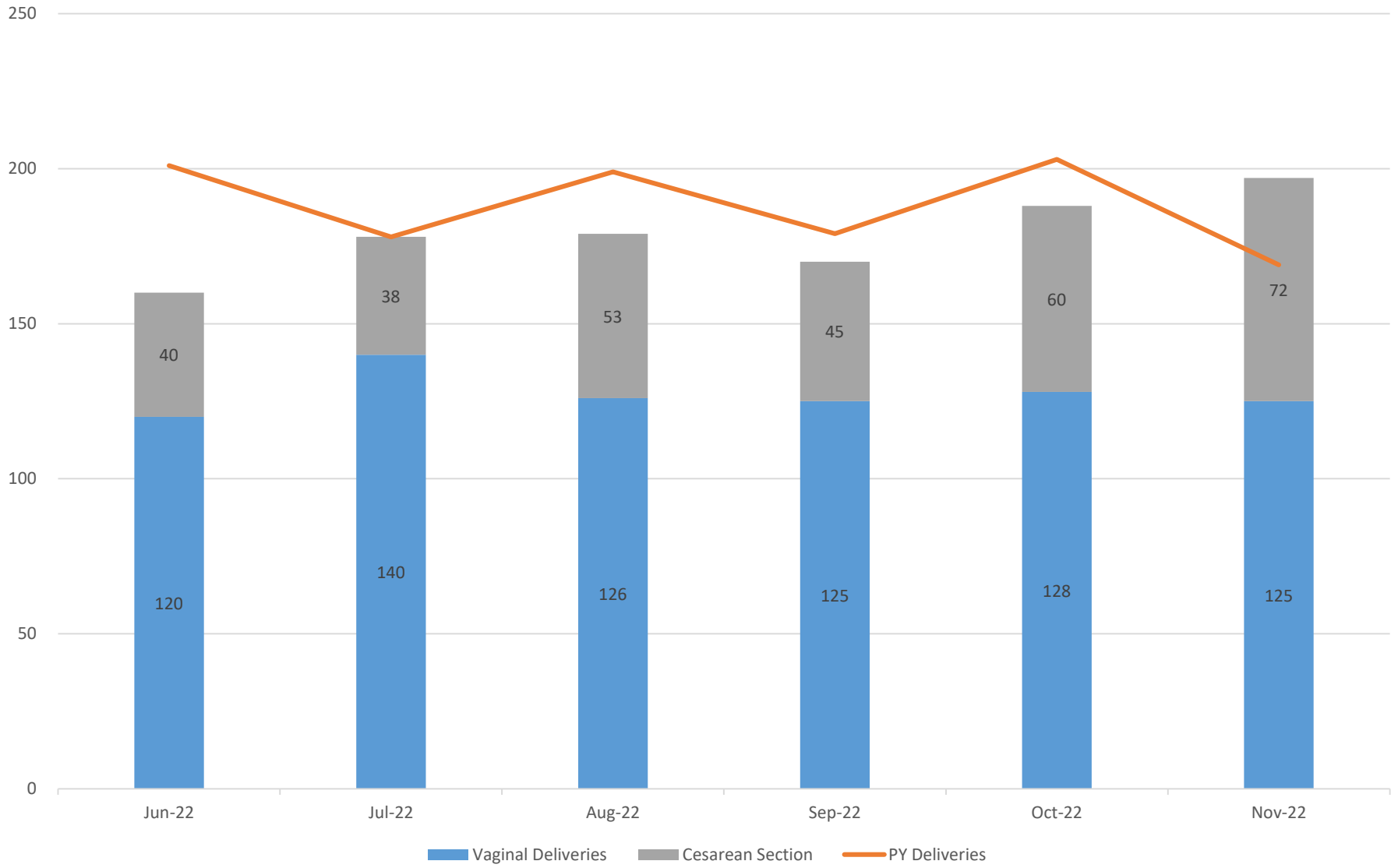
Census & ALOS



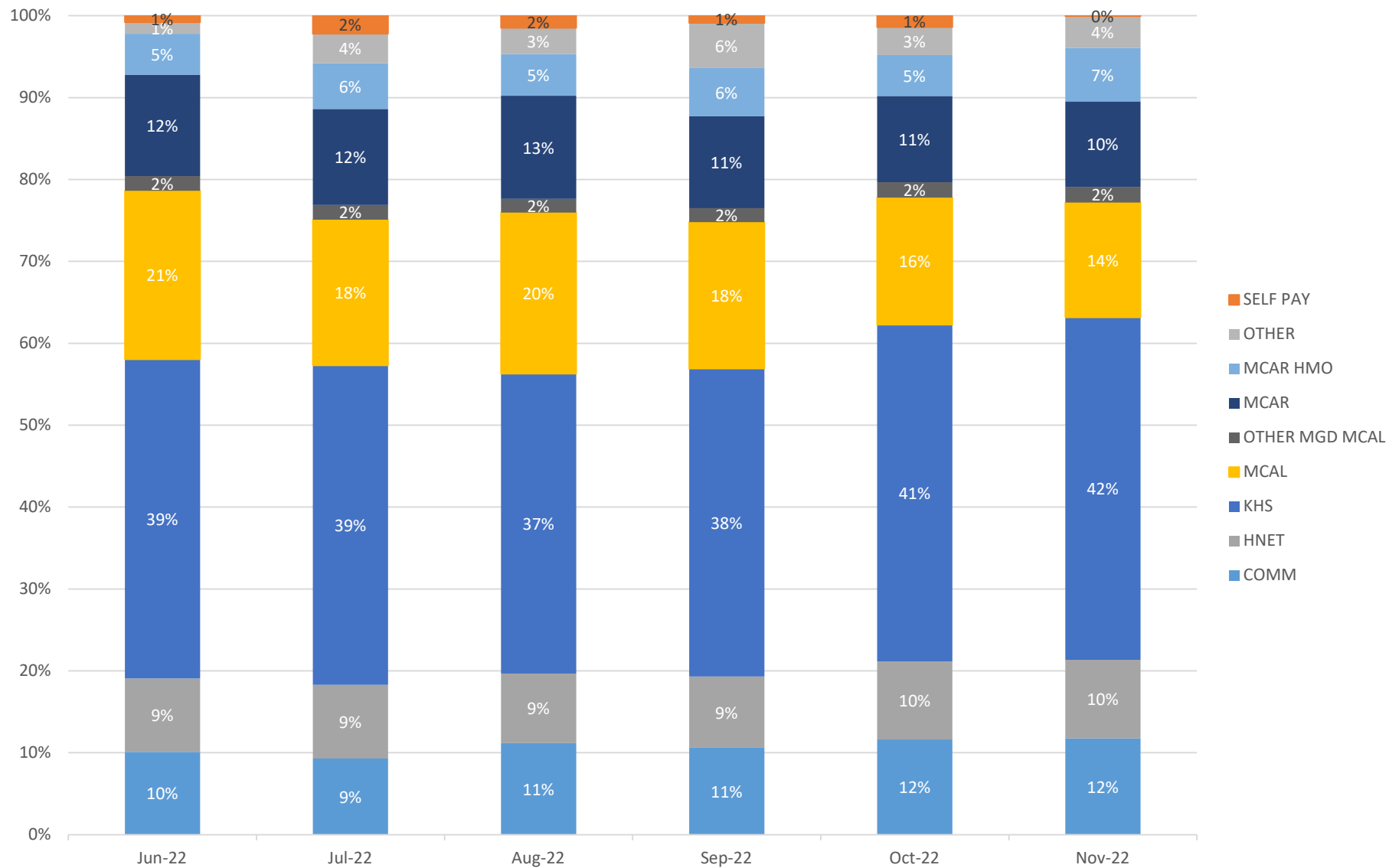
Hospital Volumes



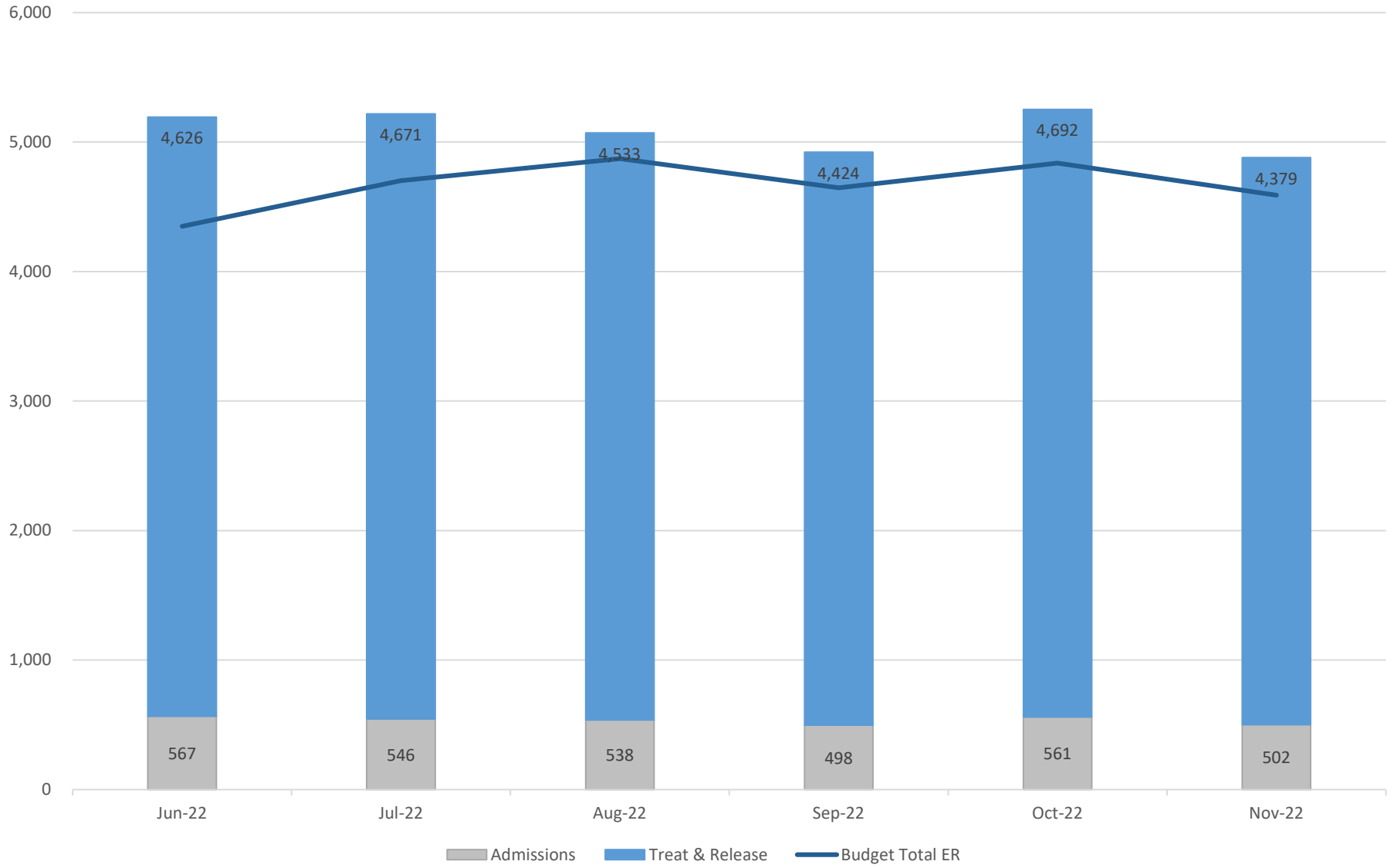
Deliveries



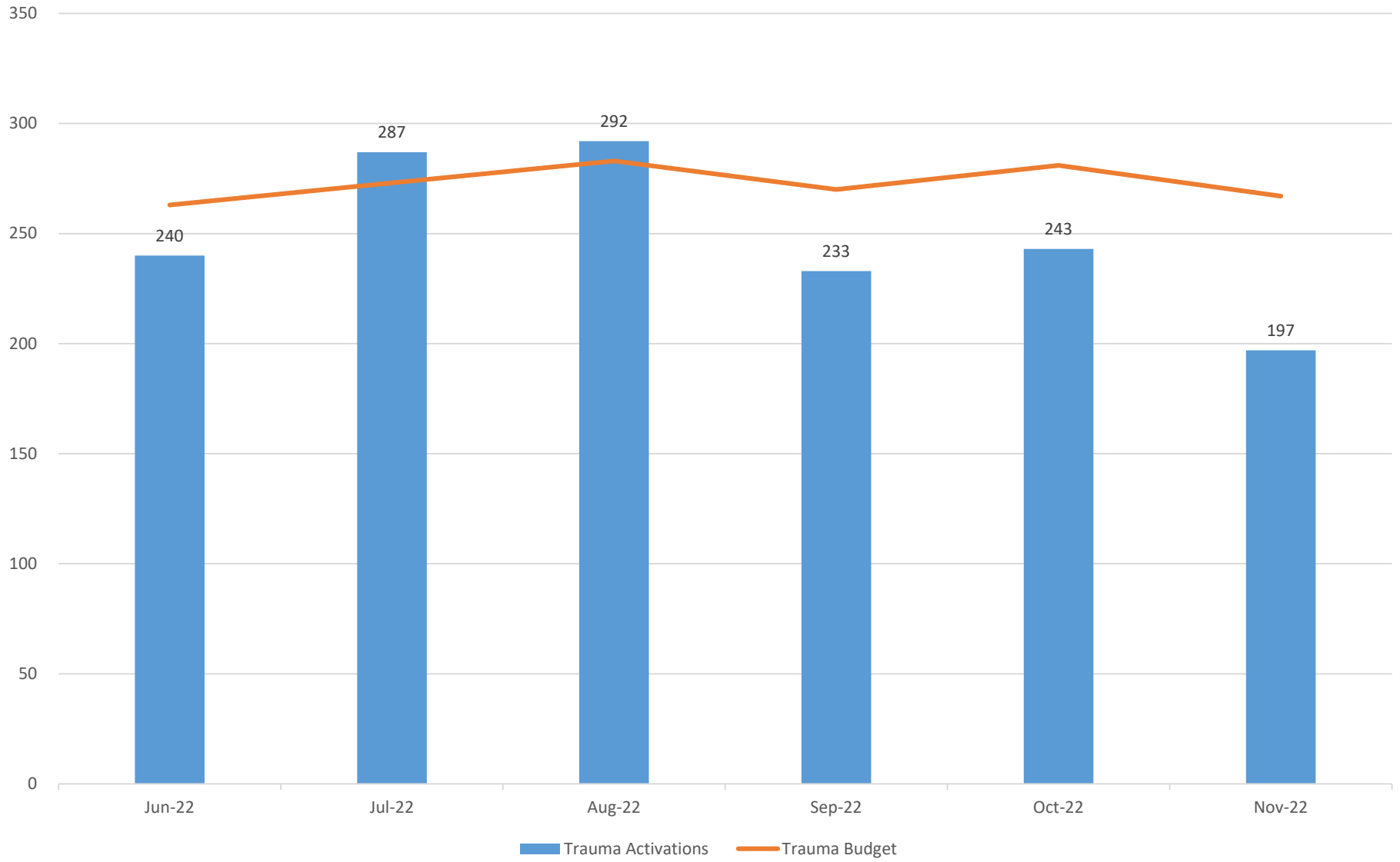
PAYER MIX



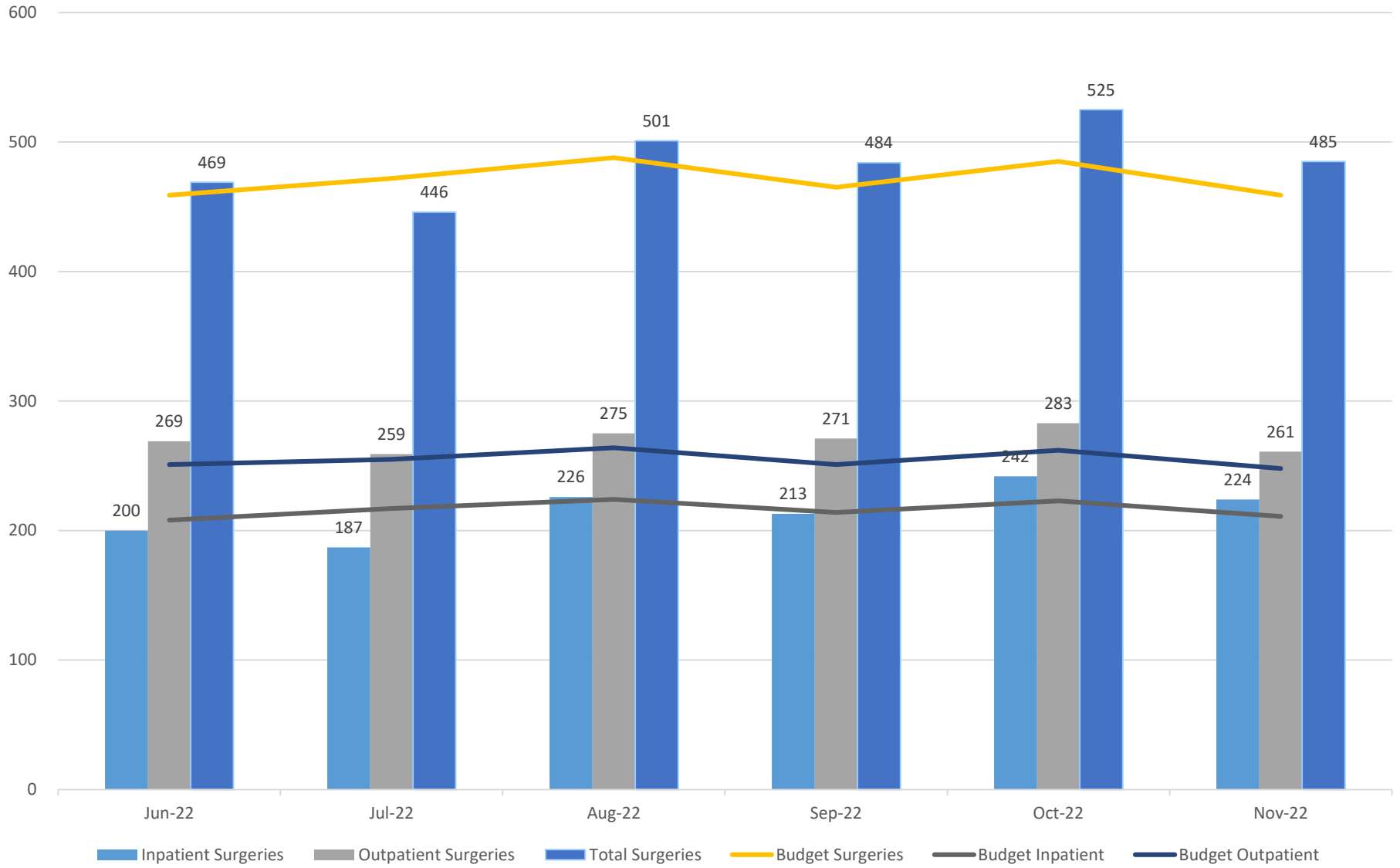
Emergency Room Volume



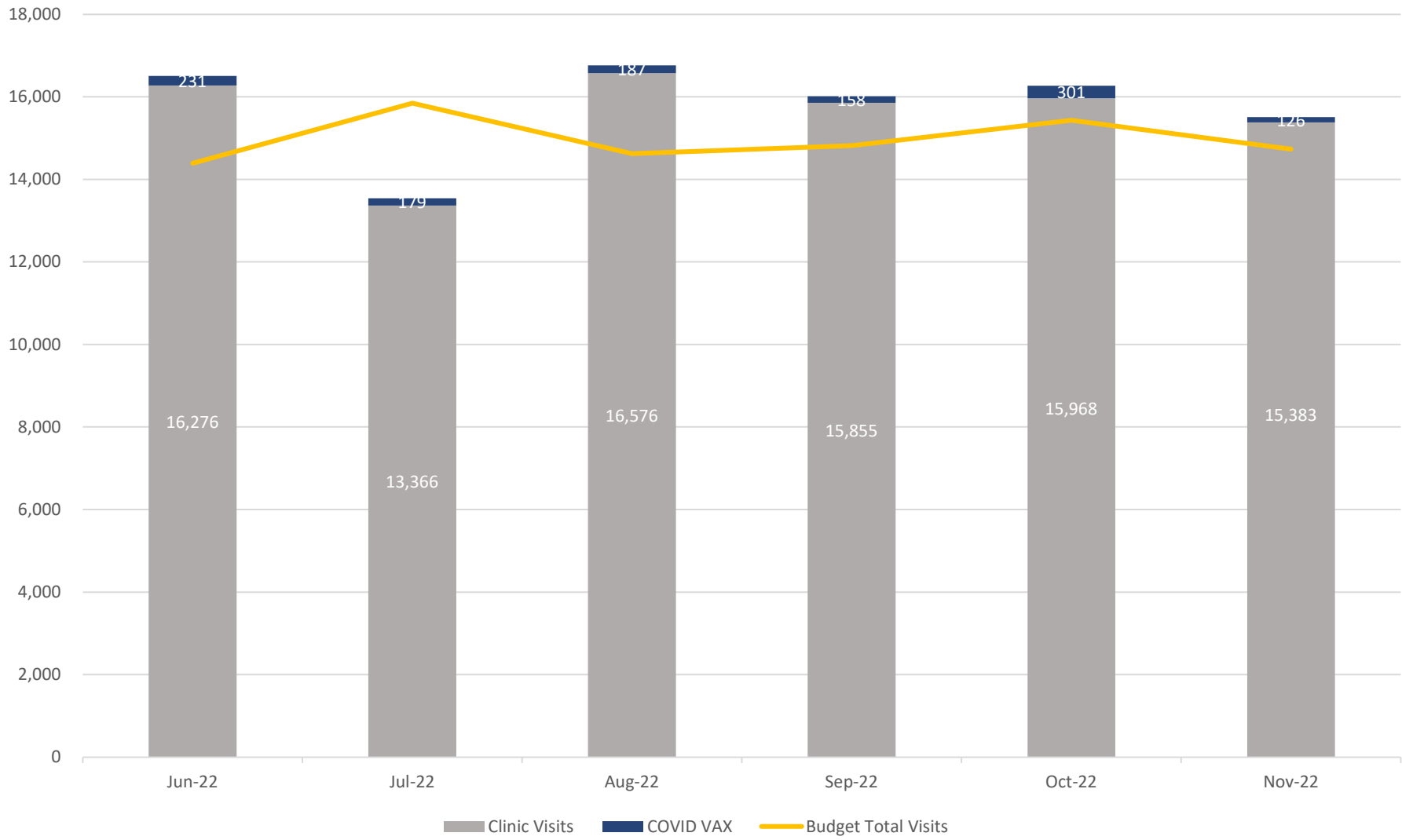
Trauma Activations



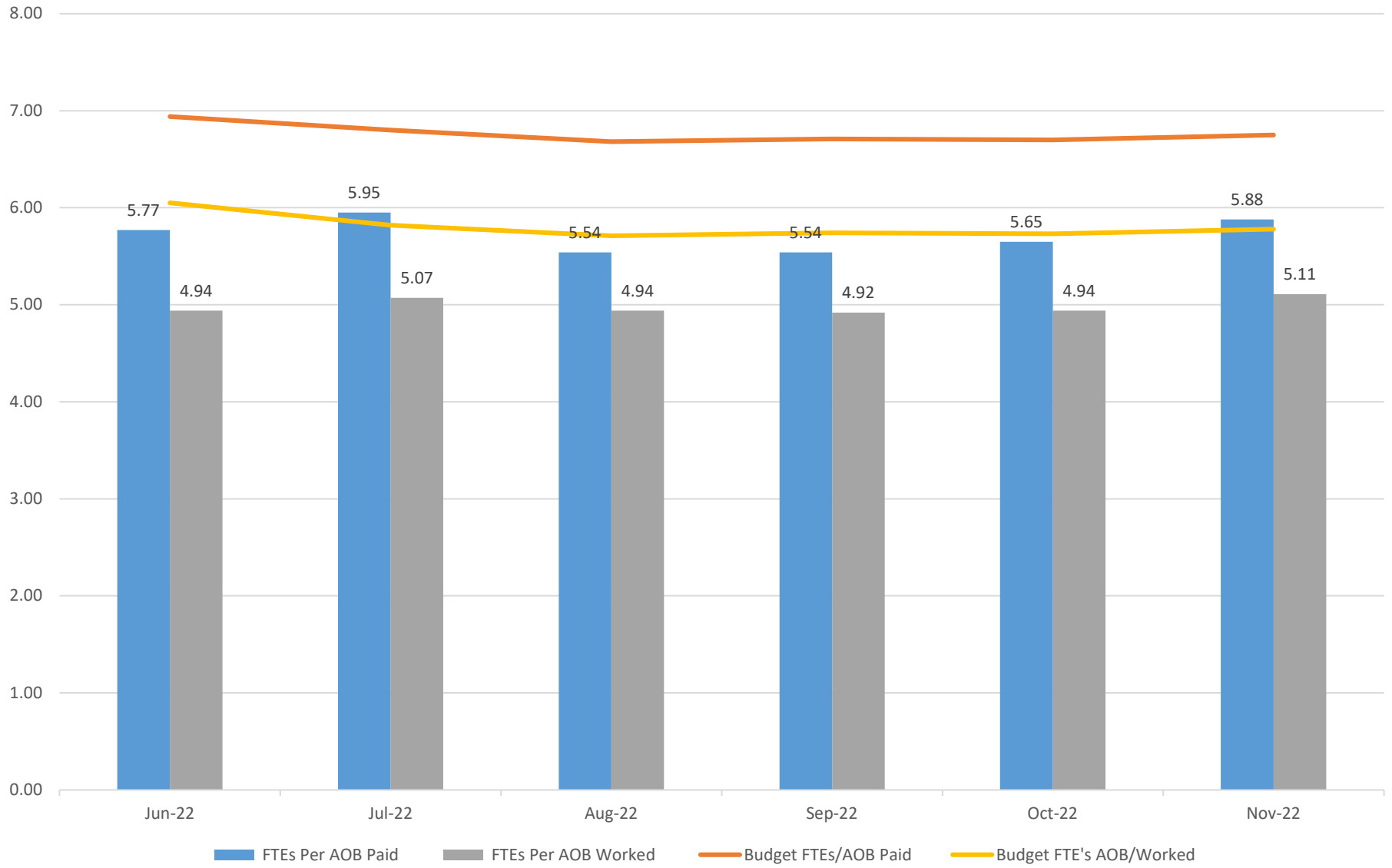
Surgical Volume



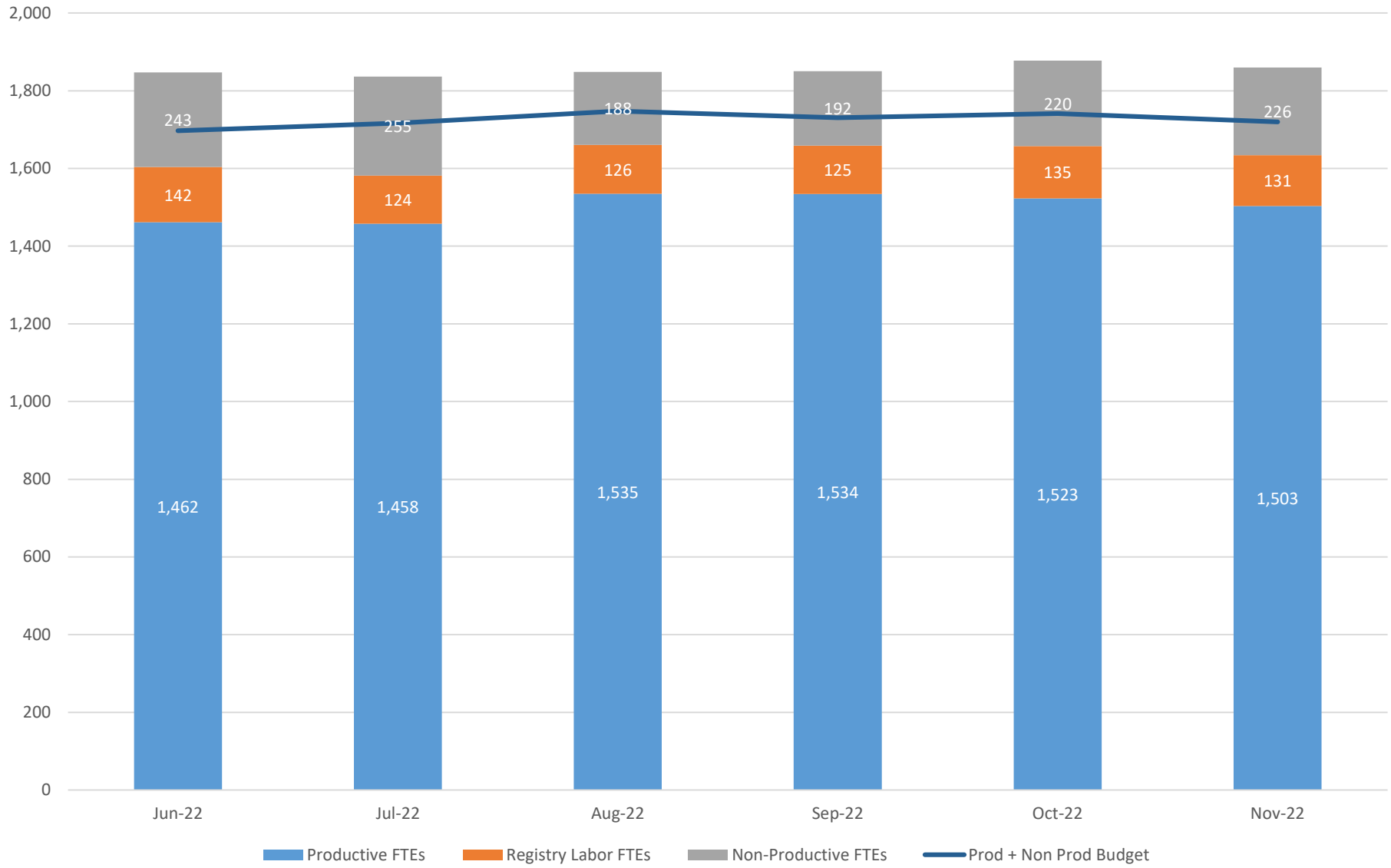
Clinic Visits



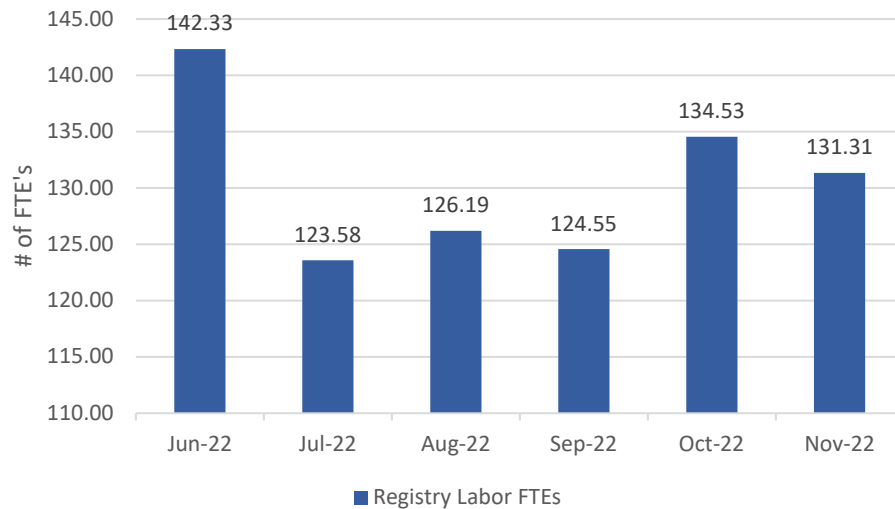
Labor Metrics



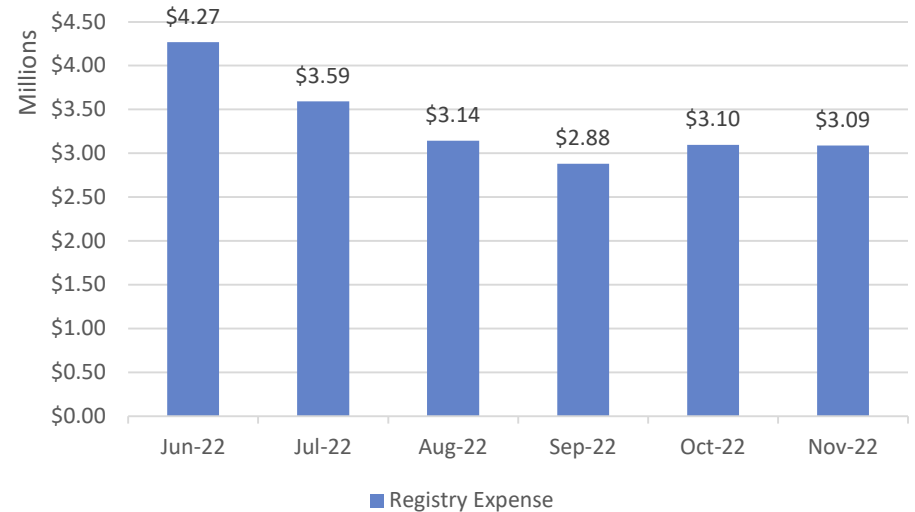
Productivity



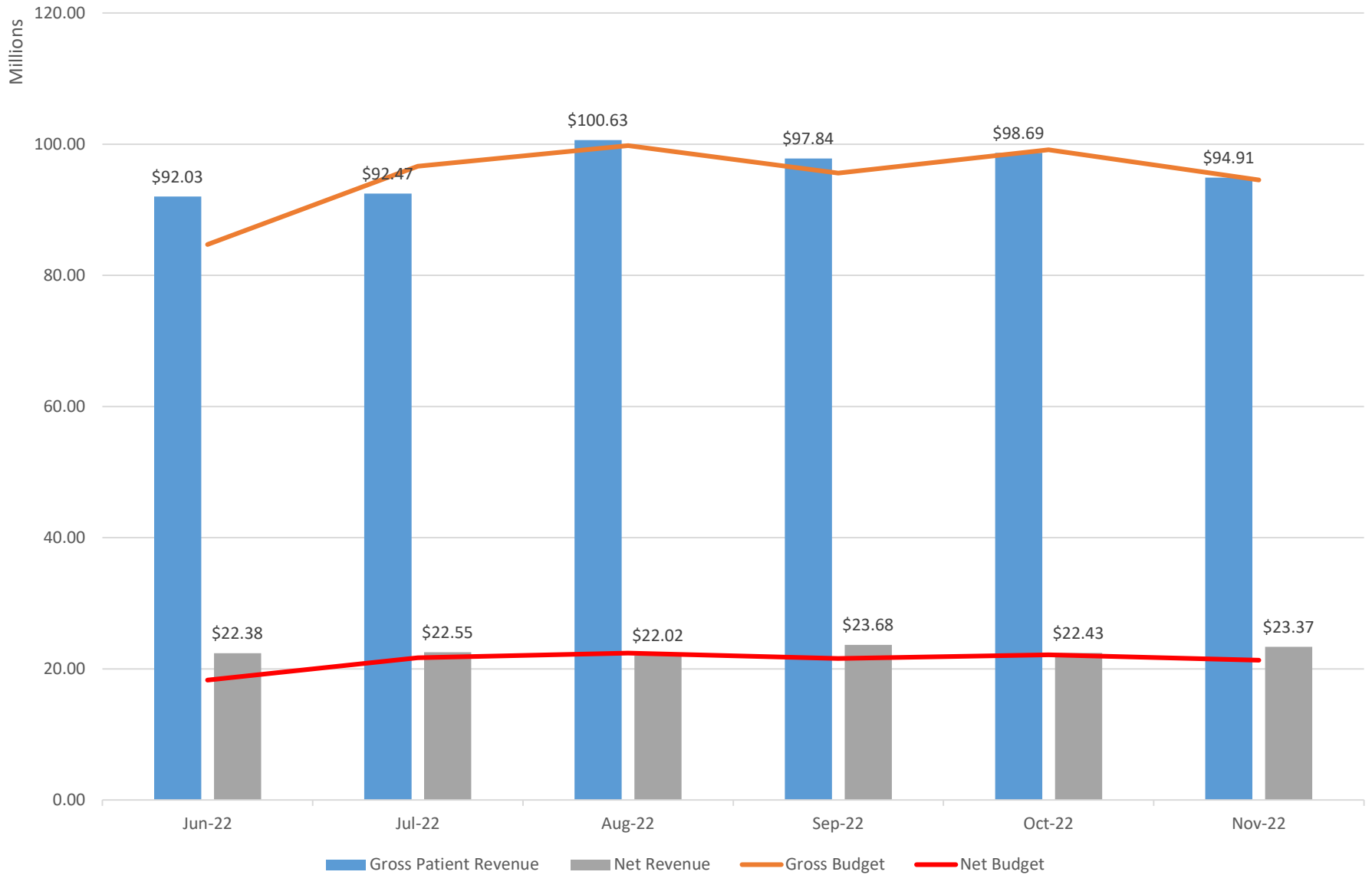
Registry FTE's



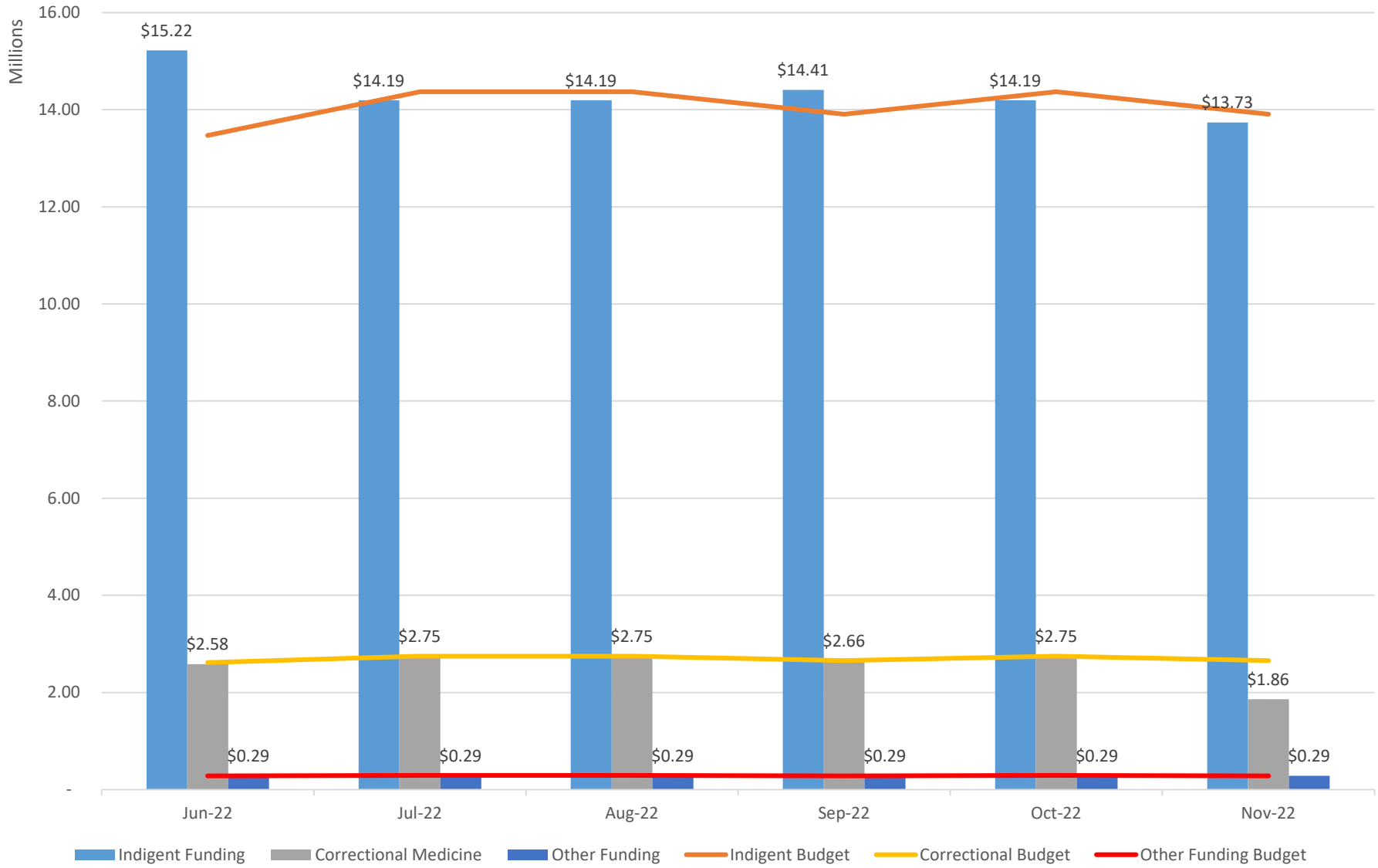
Registry Expense



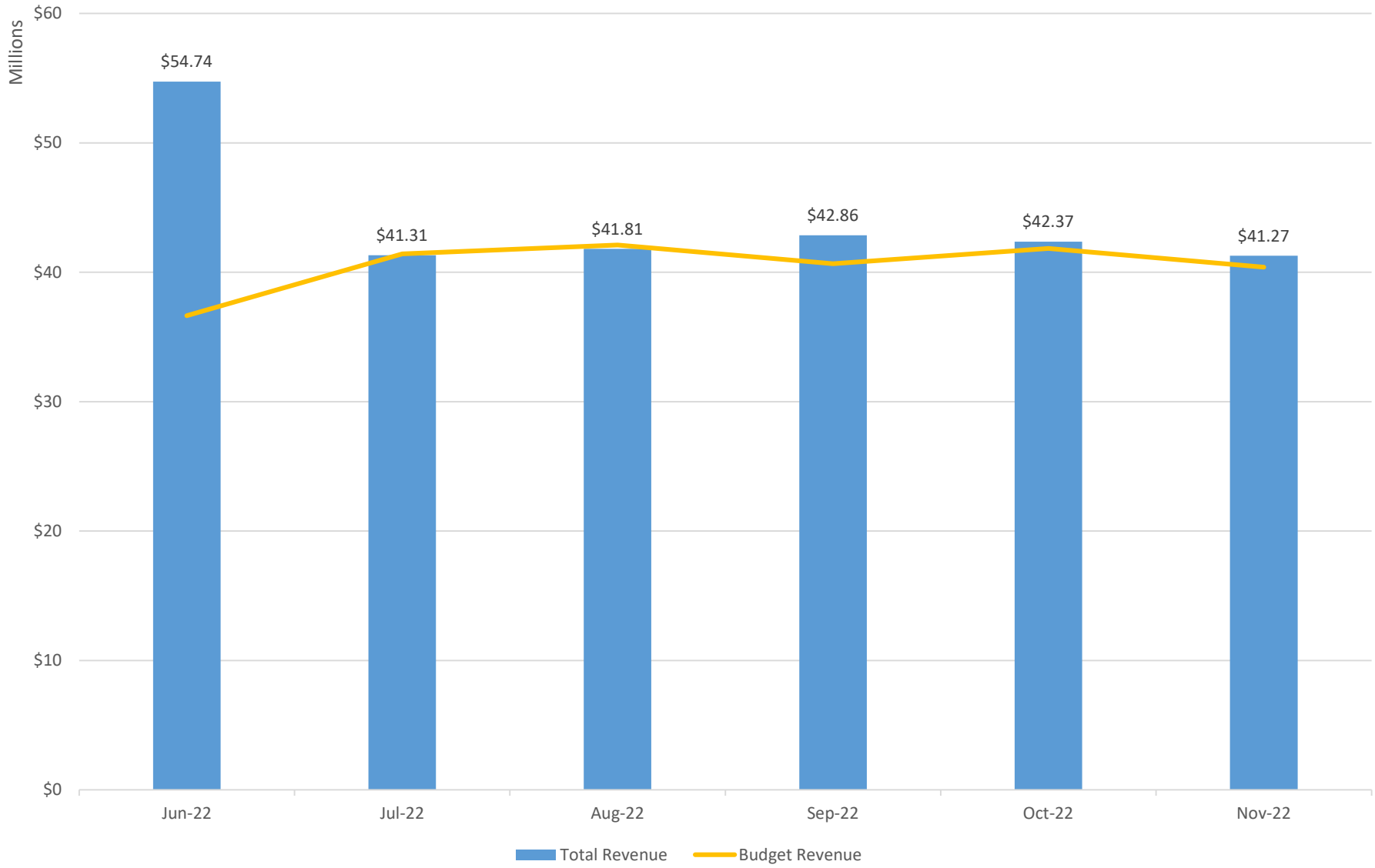
Patient Revenue



Indigent & Correctional Revenue



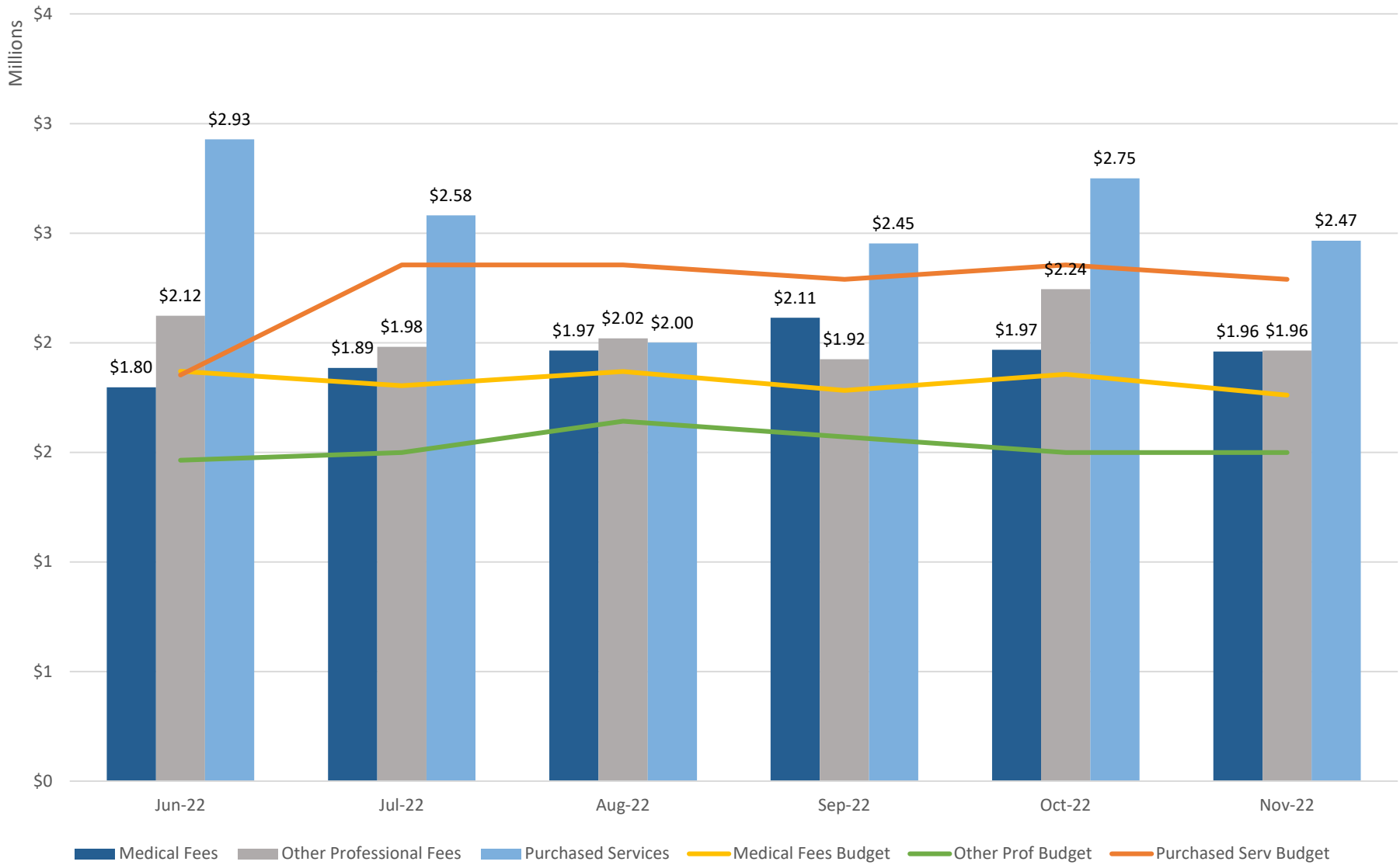
Total Revenue



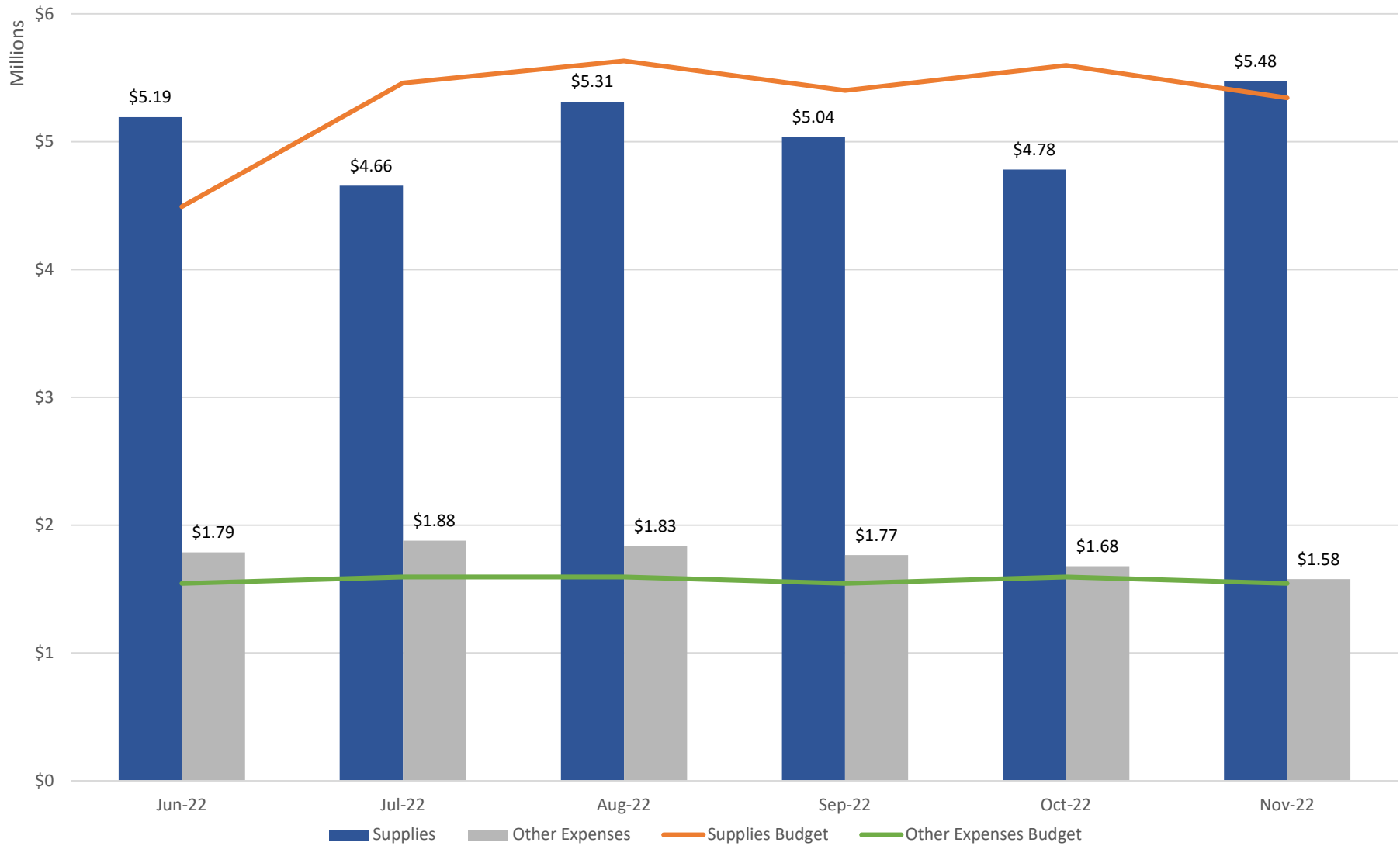
Expenses



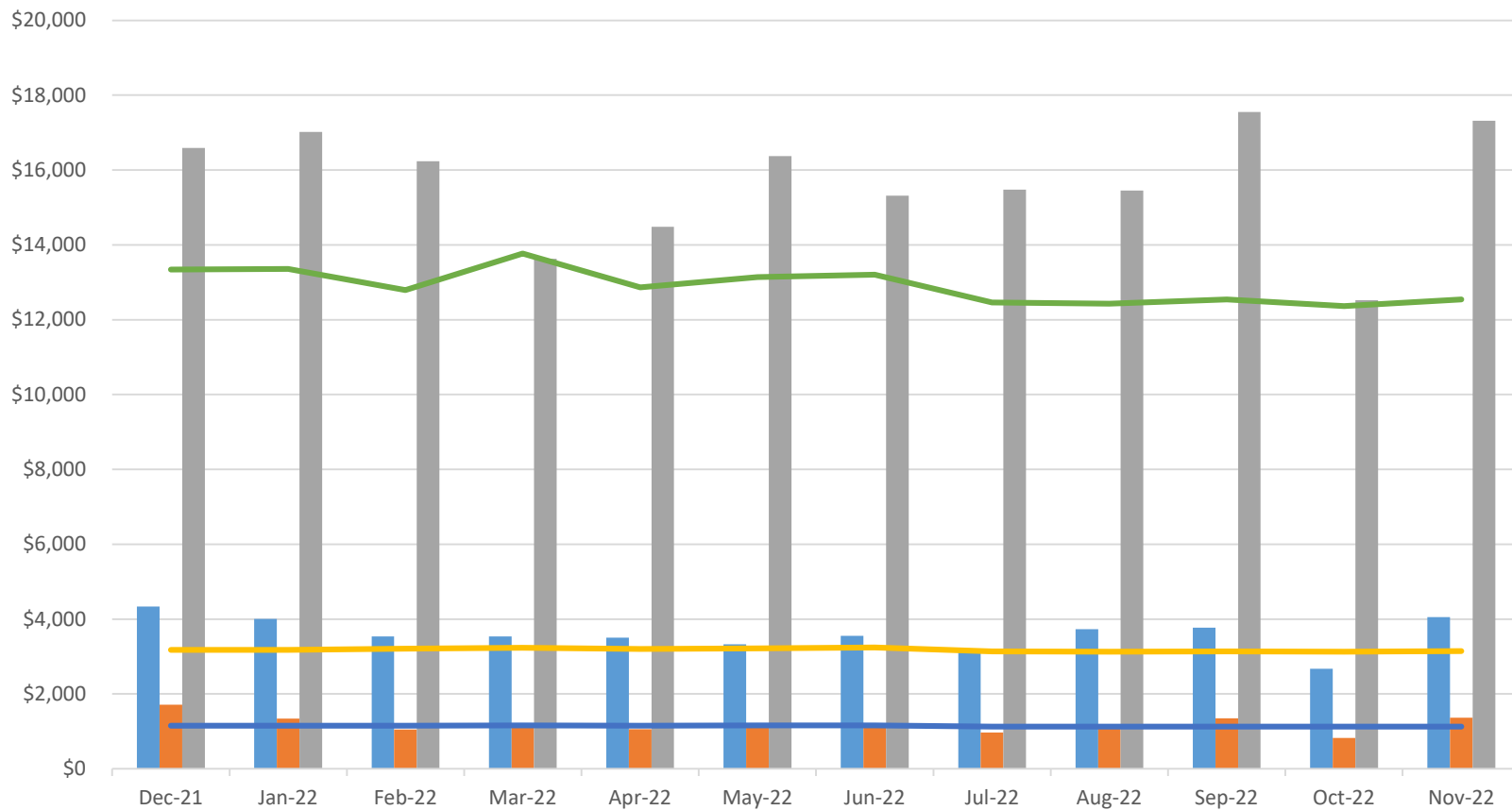
Expenses



Expenses

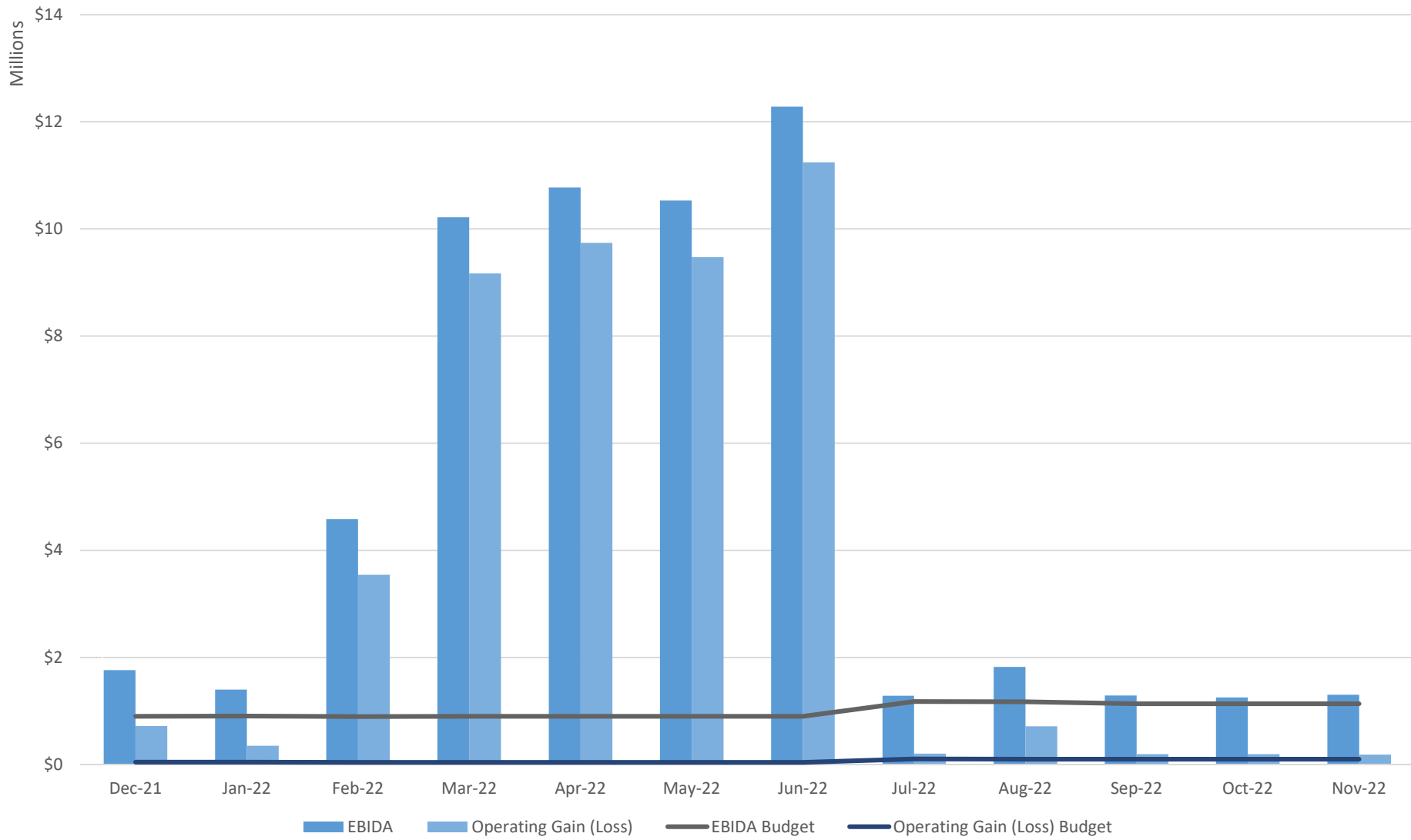


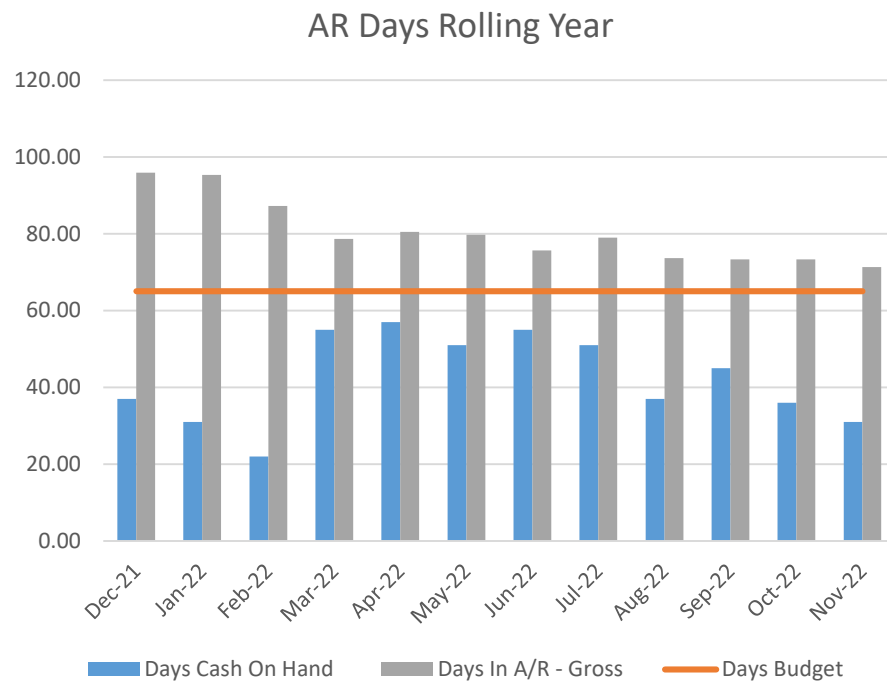
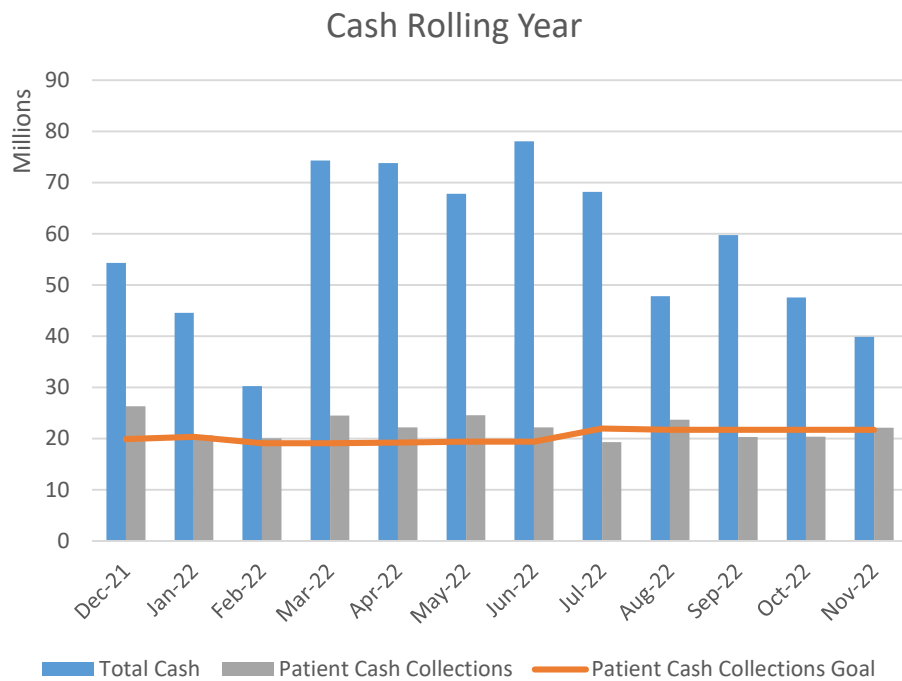
Operating Metrics



	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22
Supply Expense per AA	\$4,333	\$4,007	\$3,534	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728	\$3,773	\$2,670	\$4,056
Pharm Cost per AA	\$1,712	\$1,339	\$1,048	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101	\$1,349	\$826	\$1,368
Net Revenue Per AA	\$16,591	\$17,019	\$16,237	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451	\$17,552	\$12,523	\$17,317
Budget Supp/AA	\$3,175	\$3,174	\$3,208	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125	\$3,140	\$3,127	\$3,145
Budget Pharm/AA	\$1,153	\$1,153	\$1,154	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126
Budget Net Rev/AA	\$13,344	\$13,359	\$12,793	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428	\$12,543	\$12,368	\$12,545

EBIDA Rolling Year





KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
November 30, 2022

	SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
Gross Patient Revenue	\$ 97,840,455	\$ 98,691,585	\$ 94,906,726	\$ 94,536,509	0.4%	\$ 104,093,541
Contractual Deductions	(74,161,703)	(76,259,264)	(71,533,169)	(73,225,795)	(2%)	(77,991,489)
Net Revenue	23,678,752	22,432,321	23,373,557	21,310,714	10%	26,102,052
Indigent Funding	14,409,710	14,191,888	13,734,085	13,907,054	(1%)	36,915,405
Correctional Medicine	2,658,247	2,746,855	1,857,998	2,658,247	(30%)	2,616,667
County Contribution	285,211	285,211	285,211	281,729	1%	285,211
Net Patient Revenue	41,031,920	39,656,275	39,250,851	38,157,744	3%	65,919,335
Other Operating Revenue	1,813,521	2,700,787	2,009,213	2,193,942	(8%)	2,187,437
Other Non-Operating Revenue	15,823	11,864	10,929	47,856	(77%)	11,642
Total Revenue	42,861,263	42,368,925	41,270,993	40,399,542	2%	68,118,415
Expenses						
Salaries	16,765,881	17,377,696	16,674,232	16,647,811	0.2%	15,697,803
Employee Benefits	8,633,534	7,220,131	6,763,065	7,125,160	(5%)	5,893,833
Registry	2,878,459	3,096,947	3,087,751	3,055,371	1%	6,341,786
Medical Fees	2,114,453	1,967,372	1,959,480	1,760,888	11%	1,762,687
Other Professional Fees	1,924,341	2,244,364	1,964,146	1,499,386	31%	1,540,595
Supplies	5,035,783	4,782,904	5,475,098	5,343,135	2%	5,952,097
Purchased Services	2,453,497	2,749,654	2,465,510	2,289,554	8%	1,904,258
Other Expenses	1,766,483	1,678,435	1,577,173	1,543,770	2%	(2,979,968)
Operating Expenses	41,572,431	41,117,501	39,966,456	39,265,075	2%	36,113,091
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,288,832	\$ 1,251,424	\$ 1,304,538	\$ 1,134,468	15%	\$ 32,005,323
EBIDA Margin	3%	3%	3%	3%	13%	47%
Interest	112,658	112,380	112,241	83,419	35%	641,220
Depreciation	687,309	751,066	722,678	660,849	9%	665,749
Amortization	294,594	287,808	285,372	291,183	(2%)	4,827,168
Total Expenses	42,666,992	42,268,755	41,086,747	40,300,526	2%	42,247,228
Operating Gain (Loss)	\$ 194,272	\$ 100,170	\$ 184,246	\$ 99,017	86%	\$ 25,871,186
Operating Margin	0.5%	0.2%	0.4%	0.2%	82.1%	38.0%

KERN MEDICAL
Year to Date: Revenue & Expense
November 30, 2022

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 484,542,976	\$ 485,706,943	(0.2%)	\$ 501,074,408	(3%)
Contractual Deductions	(370,484,454)	(376,587,881)	(2%)	(385,297,046)	(4%)
Net Revenue	114,058,522	109,119,062	5%	115,777,363	
Indigent Funding	70,719,461	70,925,974	(0.3%)	90,089,853	(22%)
Correctional Medicine	12,756,811	13,557,059	(6%)	13,083,333	(2%)
County Contribution	1,426,055	1,436,816	(1%)	1,426,055	(0%)
Net Patient Revenue	198,960,848	195,038,912	2%	220,376,603	(10%)
Other Operating Revenue	10,600,494	11,119,395	(5%)	10,218,710	4%
Other Non-Operating Revenue	62,327	244,067	(74%)	68,469	(9%)
Total Revenue	209,623,669	206,402,374	2%	230,663,782	(9%)
Expenses					
Salaries	85,204,013	85,049,057	0.18%	81,267,867	5%
Employee Benefits	35,392,410	35,982,767	(2%)	34,093,413	4%
Registry	15,798,584	15,852,028	(0%)	18,788,136	(16%)
Medical Fees	9,891,859	9,072,354	9%	8,668,314	14%
Other Professional Fees	10,134,926	7,711,127	31%	7,275,182	39%
Supplies	25,262,746	27,433,890	(8%)	30,126,960	(16%)
Purchased Services	12,249,914	11,645,292	5.2%	9,764,326	25%
Other Expenses	8,735,354	7,873,227	11%	3,420,966	155%
Operating Expenses	202,669,809	200,619,742	1%	193,405,163	5%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 6,953,860	\$ 5,782,632	20%	\$ 37,258,619	(81%)
EBIDA Margin	3%	3%	18%	16%	(79%)
Interest	560,607	425,436	32%	979,318	(43%)
Depreciation	3,539,557	3,370,329	5%	3,368,389	5%
Amortization	1,456,964	1,485,036	(1.9%)	5,723,698	(75%)
Total Expenses	208,226,936	205,900,542	1%	203,476,567	2%
Operating Gain (Loss)	\$ 1,396,733	\$ 501,832	178%	\$ 27,187,215	(95%)
Operating Margin	0.7%	0.2%	174.0%	11.8%	(94%)

**KERN MEDICAL
BALANCE SHEET**

	NOVEMBER 2022	NOVEMBER 2021
ASSETS:		
<i>Total Cash</i>	\$ 39,852,631	\$ 38,135,282
Patient Receivables Subtotal	255,070,800	316,483,070
Contractual Subtotal	(202,241,560)	(267,069,273)
<i>Net Patient Receivable</i>	52,829,240	49,413,797
Total Indigent Receivable	168,825,185	161,018,057
Total Other Receivable	10,923,114	11,083,741
Total Prepaid Expenses	5,476,003	5,062,367
Total Inventory	4,148,327	4,339,276
<i>Total Current Assets</i>	282,054,499	269,052,519
Deferred Outflows of Resources	127,290,855	127,290,855
Total Land, Equipment, Buildings and Intangibles	227,967,704	222,634,268
Total Construction in Progress	8,952,755	1,925,816
<i>Total Property, Plant & Equipment</i>	236,920,459	224,560,083
Total Accumulated Depr & Amortization	(141,666,519)	(129,944,484)
<i>Net Property, Plant, and Equipment</i>	95,253,940	94,615,600
<i>Total Long Term Assets</i>	127,290,855	127,290,855
<i>Total Assets</i>	\$ 504,599,294	\$ 490,958,974

**KERN MEDICAL
BALANCE SHEET**

	NOVEMBER 2022	NOVEMBER 2021
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 17,481,446	\$ 17,646,366
Total Accrued Compensation	31,667,392	29,643,030
Total Due Government Agencies	17,012,124	17,550,700
Total Other Accrued Liabilities	24,584,369	55,470,227
<i>Total Current Liabilities</i>	90,745,331	120,310,322
Unfunded Pension Liability	381,152,811	381,152,811
Other Long-Term Liabilities	61,859,422	64,286,919
<i>Total Long-Term Liabilities</i>	443,012,233	445,439,730
<i>Total Liabilities</i>	533,757,564	565,750,052
Fund Balance	36,714,022	36,714,022
Retained Earnings	(65,872,291)	(111,505,100)
<i>Total Fund Balance</i>	(29,158,270)	(74,791,078)
<i>Total Liabilities and Fund Balance</i>	\$ 504,599,294	\$ 490,958,974



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

January 18, 2023

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

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



What's Happening?



Outlawz Pediatrics Christmas Toy Drive

December 3, 2022



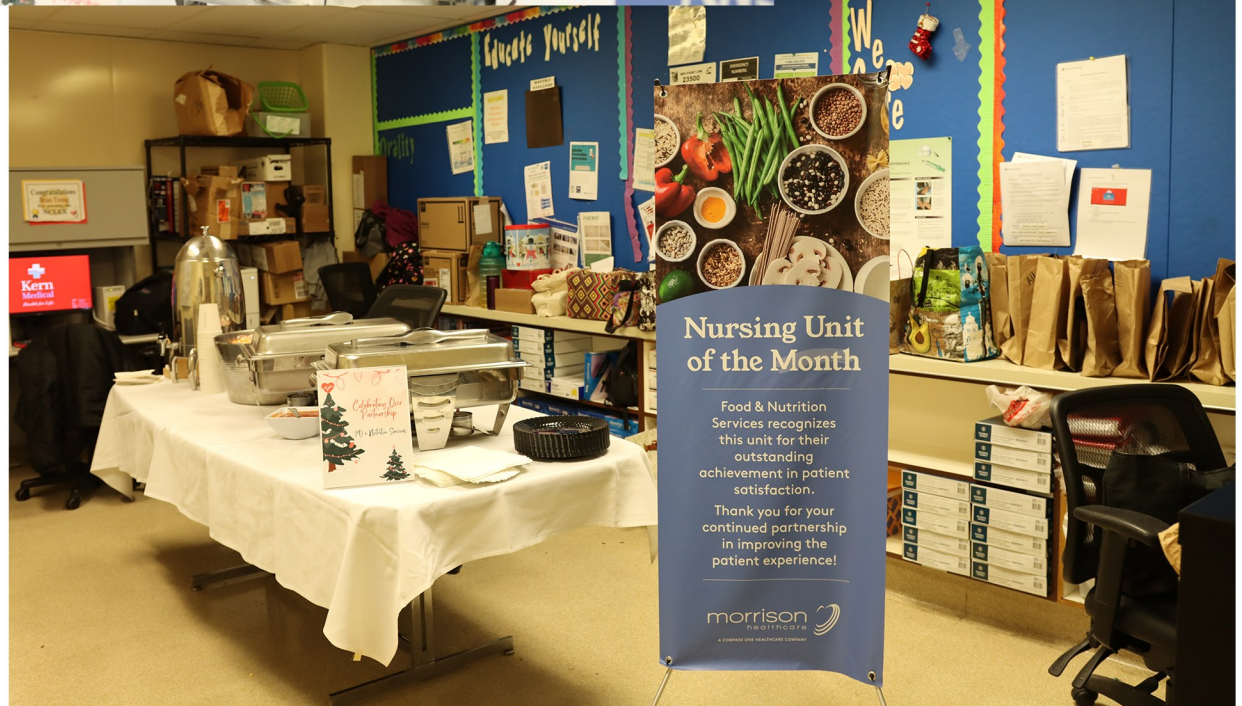
Employee Christmas Lunches

December 12-16, 2022



Food & Nutrition Celebration for 3D

December 20, 2022



Houchin Blood Drive

December 20, 2022



blood drive



TUESDAY, DECEMBER 20 • 9:00 AM - 2:00 PM

KERN MEDICAL

1700 MT. VERNON • BAKERSFIELD, CA. 93306

TO MAKE AN APPOINTMENT, SCAN THE CODE
TO THE RIGHT WITH YOUR PHONE'S CAMERA



when you give, people live

HOUCHIN 
COMMUNITY BLOOD BANK

Walk In Wednesday

Every Wednesday
Beginning January 2023

**RN
WALK-IN
WEDNESDAY**



**ON-SITE INTERVIEWS WITH THE HIRING MANAGERS
EVERY WEDNESDAY!**

Beginning

January 2023
9:00 AM – 4:00 PM

Kern Medical Main Entrance Lobby
1700 Mount Vernon Ave,
Bakersfield, CA 93306



To apply, visit www.KernMedical.com/Careers

Grand Opening of Q St Imaging Center

January 23, 2023

**COMING
SOON**

**Q STREET
RADIOLOGY SUITE**

RADIOLOGY SUITE SERVICES

CT Scan

Mammography

Ultrasound

Bone Density


X-Ray Services



National Recognitions in December

- National AIDS Day (December 1)
- National Influenza Vaccination Week (December 5-9)

National Recognitions in January

- Cervical Cancer Awareness Month
 - Glaucoma Awareness Month
 - National Birth Defects Awareness Month
 - National Blood Donor Month
 - Thyroid Awareness Month
 - National Pharmacist Day (January 12)
 - National IV Nurse Day (January 25)
 - World Leprosy Day (January 29)
- 

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

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on January 18, 2023, to consider:

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on January 18, 2023, to consider:

 X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on January 18, 2023, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) –